CASH PURCHASES WITH AVAILABLE FUNDS

The requirements of the Public Property Finance Act (Local Government Code 271.001 and following) do not apply to cash purchases of real property made with moneys from available funds. *Bandera v. Hamilton, 2 S.W.3d 367 (Tex. App.—San Antonio 1999, pet. denied)*

DEFINITIONS

For purposes of this policy, "contract" means an agreement entered under the authority of the Public Property Finance Act, but does not mean a contract solely for the construction of improvements to real property. "Improvements" means a permanent building, structure, fixture, or fence that is erected on or affixed to land, but does not include a transportable building or structure whether or not it is affixed to land. "Real property" means land, improvement, or an estate or interest in real property, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation in real property. *Local Gov't Code 271.003(2), (10)–(11)*

PROPOSED CONTRACT

The Board may execute, perform, and make payments under a contract for the use or purchase or other acquisition of real property or an improvement to real property. If the Board proposes to enter into such a contract, it shall publish notice of that intent not less than 60 days before the date set to approve execution of the contract. Publication shall be in a newspaper of general circulation in the District. The notice must summarize the major provisions of the proposed contract. The notice shall estimate the construction and other costs, but the Board shall not publish the first advertisement for bids for construction of improvements until 60 days after publication of the notice of intent. *Local Gov't Code 271.004(a)*

PETITION AND REFERENDUM

Within 60 days of the date of publication of notice of intent, a written petition signed by a least five percent of the registered voters of the District may be filed with the Board, requesting the Board to order a referendum on the question of whether the contract should be approved. If a petition is filed, the Board may not approve the contract or publish the first advertisement for bids for construction of improvements unless the question is approved by a majority of the votes received in a referendum ordered and held on the question. The referendum shall be held in accordance with the applicable provisions of the Election Code, except that it is not required to be held on a uniform election date. *Local Gov't Code 271.004(b)–(c)*

SUBMISSION TO ATTORNEY GENERAL

A lease-purchase contract entered into for the use, purchase, or other acquisition of real property or an improvement to real property and the records relating to its execution shall be submitted to the attorney general for examination as to their validity. If the attorney general finds that the contract has been authorized in accordance

with the law, the attorney general shall approve them, and the comptroller of public accounts shall register them. Following approval and registration, the contract is incontestable and is a binding obligation according to its terms. *Local Gov't Code 271.004(g)–(i)*

DISTRICT OBLIGATION

A contract under this provision is a special obligation of the District if ad valorem taxes are not pledged to the payment of the contract. If the contract provides that payments by the District are to be made from maintenance taxes previously approved by voters of the District and are subject to annual appropriation or are paid from a source other than ad valorem taxes, the payments under the contract shall not be considered indebtedness under Tax Code 26.04(c). All or part of the District's obligation may be evidenced by one or more promissory notes. *Local Gov't Code 271.004 (d)–(f)*

STATE ASSISTANCE—INSTRUCTIONAL FACILITIES

The District may receive financial assistance from the state when the District lease-purchases an instructional facility under the terms set out in Chapter 46, Education Code, and Commissioner's rules implementing that chapter. *Education Code 46.004; 19 TAC 61.1032(i)*

EMINENT DOMAIN

The District may, by the exercise of the right of eminent domain, acquire title to real property on which to construct school buildings or for any other public use necessary for the District. *Education Code 11.155(a)*

The District may not take private property through the use of eminent domain if the taking confers a private benefit on a particular private party through the use of the property, is for a public use that is merely a pretext to confer a private benefit on a particular private party, or is not for a public use. *Gov't Code 2206.001(b)*

PROCEDURES

When exercising the right of eminent domain, the District must follow the procedures found at Government Code Chapter 2206, Subchapter B and Property Code Chapter 21, Subchapter B.

REPURCHASE OF REAL PROPERTY

If the public use for which real property was acquired by eminent domain is cancelled before the property is used for the public use, no actual progress is made toward the public use, or the property becomes unnecessary for the public use, or a substantially similar public use, before the tenth anniversary of the date of acquisition, the District must provide notice to the previous property owner and offer to sell the property to that person in accordance with Property Code Chapter 21, Subchapter E.

Property Code 21.101–.103

NOTICE OF RIGHT

Not later than December 31, 2012, the District shall submit to the comptroller a letter stating that the District is authorized by the state to exercise the power of eminent domain and identifying each provision of law that grants the District that authority. The District must send the letter by certified mail, return receipt requested. If the District does not submit the letter, the authority of the District to exercise the power of eminent domain expires on September 1, 2013. *Gov't Code 2206.101(b)–(c)*