



## **TEXAS J REGIONAL ADVISORY COUNCIL**

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### **Standard Operating Procedure**

GENERAL SOP:

SOP NUMBER:

SOP EFFECTIVE DATE:

SOP REVIEWED:

SOP REVISED:

**INDEMNIFICATION**

**G # 6**

6/09

8/10

#### **SOP AUTHORITY STATEMENT:**

As stated in the By-Laws in Article V 14. The Board of Directors may indemnify individuals pursuant to Article 11 of the Articles of Incorporation of Texas “J” Regional Advisory Council, subject to Article 1396-2.22A of the Texas Non-Profit Corporations Act as may be amended.

#### **OPERATING PROCEDURE:**

Texas “J” RAC shall indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director, officer, employee or agent of Texas “J” RAC only if it is determined in accordance with section 4 of this Standard Operating Procedure that the person:

1. Acted in good faith;
2. Reasonably believed:
  - 2.1. In the case of conduct in his or her official capacity as a director, officer, employee or agent of Texas “J” RAC, that his or her conduct was Texas “J” RAC’s best interests;
  - 2.2. In all other cases, that his or her conduct was at least not opposed to Texas “J” RAC’s best interests; and
3. In the case of any criminal proceeding had no reasonable cause to believe his or her conduct was unlawful.
4. A person described in this Section shall not be indemnified for obligations resulting from a proceeding:
  - 4.1 In which the person is found liable on the basis that personal benefit was improperly received by him or her, whether or not the benefit resulted from an action taken in the person’s official capacity; or
  - 4.2 In which the person is found liable to Texas “J” RAC.
5. The termination of a proceeding by judgment, order, settlement, or conviction or on a plea of nolo contendere, or its equivalent, is not of itself determinative that the person did not meet the requirements set forth in this Section.
6. A person shall be indemnified under this Section against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with proceeding, but if the proceeding was brought by or on behalf of Texas “J” RAC, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

7. A determination of indemnification under this Section must be made:
  - 7.1 By a majority vote of a quorum consisting of the Executive Committee members who at the time of the vote are not named defendants or respondents in the proceeding;
  - 7.2 If such a quorum cannot be obtained, by a majority vote of a committee of the Executive Committee members, designated to act in the matter by a majority vote of all Executive Committee members, consisting solely of two or more Executive Committee members who at the time of the vote are not named defendants or respondents in the proceeding;
  - 7.3 By special legal counsel selected by the Executive Committee members or a committee of the Executive Committee by vote as set forth in Paragraphs 7.1 or 7.2 of this Section, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all members of the Executive Committee; or
  - 7.4 By the members in a vote that excludes the vote of any Executive Committee members who are named defendants or respondents in the proceeding.
8. Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by Section 7.3 of this Section for the selection of special legal counsel.
9. Texas “J” RAC shall indemnify directors (throughout this SOP, “Director” shall be deemed to include any member of the Executive Committee), officers, employees and agents of Texas “J” RAC against reasonable expenses incurred by them in connection with a proceeding in which they are named a defendant or respondent because they are or were acting in such capacity if they have been wholly successful, on the merits or otherwise, in the defense of the proceedings.
10. If, in a suit for the indemnification required by Section 9 of this SOP, a court of competent jurisdiction determines that the director, officer, agent or employee is entitled to indemnification under such Section; such person shall be awarded the expenses incurred in securing the indemnification.
11. If, upon application of a director, officer, employee or agent of Texas “J” RAC, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that such person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she has met the requirements set forth in this SOP or has been adjudged liable in the circumstances described by Section 4 of this SOP, the court may order the indemnification that the court determines is proper and equitable. The indemnification shall be limited to reasonable expenses if the proceeding is brought by or in behalf of Texas “J” RAC or if such person is found liable on the basis that personal benefit was improperly received by him or her, whether or not the benefit resulted from an action taken in the person’s official capacity.
12. Reasonable expenses incurred by a director, officer, employee or agent who was, is, or is threatened to be made a named defendant or respondent in a proceeding shall be paid or reimbursed by Texas “J” RAC in advance of the final disposition of the proceeding after:
  - 12.1 Texas “J” RAC receives a written affirmation by such person of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Section and a written undertaking by or on behalf of such person to repay the

amount paid or reimbursed if it is ultimately determined that he or she has not met those requirements; and

12.2 A determination that the facts then known to those making the determination would not preclude indemnification under this SOP. Determination and authorizations of payments under this SOP must be made in the manner specified by Section 7 of this SOP for determining that indemnification is permissible.

13. As may be provided by specific action of the Executive Committee, Texas "J" RAC may purchase and maintain insurance on behalf of any person who is or was a director, Officer, employee or agent of Texas "J" RAC against any liability asserted against him or her and incurred by such person in such a capacity or arising out of his or her status, whether or not Texas "J" RAC would have the power to indemnify him or her against the liability under this SOP.