



Construction of Facilities: Timely Approvals

Background

Title 30, Texas Administrative Code, Section 293.46, provides guidelines for developer-initiated construction of a water, wastewater, drainage, or recreational facility prior to a district receiving commission approval of funding for the project. According to 293.46(3), the developer must secure all the required approvals for construction plans and specifications before awarding the construction contract, and a penalty is specified for not doing so. According to 293.46(5), the advertising and awarding of the contract and the construction and installation of facilities must be performed in conformity with statutory requirements; otherwise, there may be reductions in the reimbursements to the developer.

This document discusses reimbursement to a developer for construction of facilities, and how and when the amount of allowable reimbursement may be limited.

Guidance

A developer may be reimbursed by a district for interest accrued on approved construction pay estimates, professional fees, and attendant nonconstruction costs paid by the developer for facilities [see 30 TAC 293.50]. However, if the developer fails to comply with certain rules, the reimbursement may be reduced or denied.

1. If the district provides sufficient written documentation, from a city or agency with jurisdiction over the project, that supports the design engineer's position that said city or agency approval was not necessary, then there will be no reduction in the reimbursement to the developer of interest (unless funds are escrowed as noted in no. 3 below) on commission-approved costs for lack of plan approval from said city or agency prior to contract award or project construction.
2. If approvals of plans and specifications by a city or agency with jurisdiction are not obtained prior to awarding a construction contract, a developer cannot be reimbursed for any additional costs (including interest) resulting from changes required by said city or agency after the construction contract is awarded [see 30 TAC 293.46(3)].

3. If construction plans and specifications have not yet been approved by all cities and agencies having jurisdictional responsibilities over the district, any designated bond proceeds for that project will be escrowed until all the approvals have been granted and the district has received commission approval for release of these escrowed funds. An engineer's certificate of completion or an amended engineer's certificate of completion for a project must be provided, and must be dated after the date of the final project approval(s). Additionally, reimbursable developer interest shall be calculated through a date that is no later than the bond closing date.
4. If the advertising and awarding of contracts or the construction and installation of facilities are not conducted in substantial compliance with statutory requirements, developer interest associated with project costs may be denied, pursuant to 30 TAC 293.46(5). Developer interest will not be denied solely because necessary plan approvals were not obtained prior to contract award or project construction.

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This document supersedes any related guidance document or letter that the commission has previously issued regarding timely plan approval and subsequent allowable reimbursement of interest from a district to a developer.