



District Leasing of Water and Wastewater Treatment Plants

Background

Some districts lease interim water or wastewater treatment plants instead of constructing permanent facilities. Such leased projects must follow the required bidding procedures and receive the required approvals. Some districts request a waiver of the 30 percent developer contribution requirement (Title 30, Texas Administrative Code [TAC], Section 293.47) based on having or obtaining a ratio of debt (including proposed debt) to assessed valuation of 10 percent or less. However, for a waiver to be granted under 30 TAC 293.47(a)(1), a bond issue is required to include funds to provide sufficient capacity in specified types of facilities to serve all the connections (a) on which the feasibility of the bond issue is based or (b) that will be financed by the bond issue. Therefore, the granting of the waiver may require a district to purchase leased water or wastewater treatment plants. Some of these lease agreements include purchase-option provisions; other lease agreements, however, do not and require amendments for processing a bond application to ensure the permanency of the available capacity.

This document discusses requirements regarding district leasing of water and wastewater facilities.

Guidance

1. Unless the facility is exempt from the Texas Engineering Practice Act (TEPA), plans and specifications for a leased facility must be signed and sealed by a professional engineer licensed by the State of Texas in accordance with the TEPA.
2. In accordance with 30 TAC 293.46(3), plans and specifications for a leased facility must be approved by all the entities with jurisdiction, unless documentation is provided showing that a particular entity waived the necessity for such approval.

3. Whether leasing only, leasing with an option to purchase, leasing and purchasing, or expanding a facility, a district must follow the competitive bidding requirements set forth in Texas Water Code (TWC), Section 49.273, in connection with (a) the acquisition or construction of the facility or (b) the site-preparation work that must be performed for the facility. The acquisition or construction of the facility and the site-preparation work can be bid as one or multiple contracts. The agreement for the construction or installation of the facility cannot contain terms or conditions that have the effect of preventing expansion of the facility by a party other than the lessor. In determining the value of the contract under TWC 49.273, the following must be considered: lump-sum amounts, the sum of all lease payments due under the lease for the duration of the lease, and any additional payment (or payments) that must be paid to the lessor to acquire the facility pursuant to a purchase option at the expiration of the lease.
4. A bond applicant seeking a waiver of the 30 percent developer contribution requirement under 30 TAC 293.47 based on having or obtaining a ratio of debt (including proposed debt) to assessed valuation of 10 percent or less must include funds to provide sufficient capacity in the plant (or plants) serving the district. If one or more plants are leased, the district can satisfy this requirement by demonstrating that (1) the maintenance tax and other operating funds provide revenues that are sufficient to meet operating expenses, including the lease payments on the plant (or plants), without developer advances, and (2) the combined projected and the combined no-growth tax rates meet the requirements in 30 TAC 293.59. If the maintenance tax and/or other operating funds do not provide revenues sufficient to meet operating expenses including the lease payments, the district must include funds in the bond application to either (a) purchase the plant (or plants) or the portion of the plant (or plants) required to serve the connections on which the feasibility is based or that are being funded by the bond issue, whichever is greater, under the lease-purchase option (or options); or (b) construct capacity in a permanent plant.