

White Brenner^{LLP}

Selling a Public Water System

Thursday, June 22, 2023

White Brenner^{LLP}

Historical Background

Joint Powers Agreement Termination

- Water system was previously operated under a joint powers agreement between the City and Solano Irrigation District (“SID”) through Dixon/ Solano Water Authority (“DSWA”)
- DSWA was dissolved in 2014
 - City took over operation of the portion of the City’s water system that was formerly operated by DSWA
 - The JPA establishing the DSWA included a termination provision that requires the City to share the proceeds of the sale with SID until August of 2024

Requirements for Revenue Sharing until August 2024

- The DSWA JPA requires the City to provide SID with six (6) months prior written notice of its intent to lease, sell, transfer, or dispose of the facilities that were included in the JPA
 - SID must consent to the lease, sale, transfer, or disposal, but cannot unreasonably withhold consent
- SID is entitled to at least half of the proceeds of lease, sale, transfer, or disposal of the assets
 - The actual amount that SID would be entitled to depends on the assets that are included in the lease, sale, transfer, or disposal

Dispute Resolution after JPA Termination

- Any disputes that arise following termination of the JPA relating to the sale, lease, disposition, or disposal of assets must be “finally and fully” resolved by arbitration
 - This limits the City’s ability to challenge the amount paid to SID and to challenge need to pay SID

Legal Requirements

Sale of Municipal Utility

- Public Utilities Code section 10061
- Allows for the lease, sale, or transfer of all or part of a publicly owned and operated water utility
- Requires a vote of the qualified voters of the municipal corporation and a process for soliciting, filing, and evaluating proposals for the sale of the water system
 - The solicitation of a buyer must come first, then a vote is taken

Steps in the Sale Process

- **Step 1:** City Council adopts a resolution determining that its inhabitants will be provided with equal or better service by the acquiring entity
- **Step 2:** Acquiring entity's governing body concurs to the sale and terms and condition of the sale
- **Step 3:** Acquiring entity discloses, at least 30 days prior to the election:
 - Summary of price and terms of the acquisition
 - Comparison of the applicable water charges before and after the acquisition
 - Estimated savings or additional costs expected to result from the proposed acquisition
- **Step 4:** An election is held for approval of the sale by a majority of voters voting on the issue of the sale
- **Step 5:** Upon approval through the election, water system is sold to acquiring entity

Practical Considerations

Additional Regulatory Requirements

- State Water Resources Control Board, Division of Drinking Water
 - Permit to operate for public water systems
- Depending on the acquiring entity, California Public Utilities Commission (“CPUC”) may have to approve the sale
 - If the acquiring entity is subject to CPUC jurisdiction

Examples

- Successful Attempts to Shift Ownership of Water System
 - City of Bellflower (2016)
 - Casitas Municipal Water District (2011-2017)
- Unsuccessful Attempts to Shift Ownership of Water System
 - City of Perris (2017-2020)
 - City of Montebello (2016-2017)
 - Town of Apple Valley (2016-2021)

Thank you