



CASE STUDY

MUNICIPAL INFRASTRUCTURE

PLDW Attorneys Played Key Role in New York’s First Municipal Wastewater Design-Build-Operate Project



Challenge

Created in 1963, the Rockland County Sewer District No. 1 (the District) primarily serves New York’s Rockland County communities of Ramapo and Clarkstown and several parcels in the Town of Orangetown.

Located within an hour’s driving time of New York City, Rockland County saw explosive population growth after 1950, as the construction of the Palisades Parkway, the Tappan Zee Bridge and other highway enhancements led to rapid suburban expansion. Its



1950 population of 89,000 had risen to more than 265,000 by 1990. To meet the resulting growth in wastewater volumes, the District’s sewer treatment plant, originally constructed to treat 10 million gallons per day (MGD), expanded in the mid-1980s to treat 28.9 MGD.

In 2000, the District’s boundaries were extended to provide sewer services to the Villages of Sloatsburg and Hillburn and the unsewered western portion of the Town of Ramapo. To provide sewer services to these areas, the District needed to construct a minimum 1.5 MGD advanced wastewater treatment

plant (AWTP), as well as the sewer lines, four pump stations, and force mains required to service the new facility.

The District desired to build a wastewater treatment plant with a design capacity of 1.5 – 5 MGD with the primary objective of providing sewer services to these new areas, while also protecting the Western Ramapo River Watershed. The Watershed serves as the primary source of water supply for residents of Rockland County and northern New Jersey. In addition, the District sought to process and treat wastewater received to near drinking water quality standards, a higher standard than required by law, to produce effluent acceptable for recharging the Watershed. With an estimated construction cost of over \$50 million with the traditional design-bid-build procurement model, the District sought a more cost effective solution.

Faced with this significant undertaking, the District turned to attorneys of the highly experienced Municipal Infrastructure Team of Pannone Lopes Devereaux & West LLC (PLDW) to assist them in their deliberations on the legal, financial and structural options that would best serve their purposes.



Solution

After evaluating and balancing the environmental, policy and financial challenges presented by the project, PLDW attorneys, who are experts in alternative procurement methods, proposed the use of a design-build-operate (DBO) construction method to streamline the project and reduce the anticipated construction cost. Under the DBO concept, a single entity is responsible for designing and building an improvement or new facility, and operating the facility once it is functional. Importantly, the single entity is accountable for all results from acceptance of the project through maintenance and repair during the operation phase, effectively shifting much of the project risk to the single source entity.

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Specifically, the private entity often assumes the environmental, business and technical risks, ensuring, for example, that design and performance limits are achieved during construction and throughout the operational lifetime of the contract. Moreover, this alternative delivery method, by yielding a single project team, reduces the potential for claims, litigation, and change orders, and simplifies public project oversight requirements.

PLDW attorneys were responsible for reviewing New York law to determine whether the wastewater treatment plant could be developed pursuant to a DBO approach. DBO had been successfully utilized for water and wastewater projects in many states other than New York and for solid waste projects within New York. However, under New York law, municipalities were not permitted to procure water and wastewater system improvements on an other than low bid basis without special legislation.

PLDW attorneys advised the District to request special legislation and were its principal authors. The legislation required a cost/benefit review insuring the contract was in the best interest of the District, with the overall cost of the proposal being a major criterion in the selection.

Following the enactment of the special legislation in 2002, PLDW attorneys assisted the District with the procurement process, including drafting of the procurement documents, the evaluation of proposals, and participating in negotiating and drafting the DBO agreement.

The District received three responses to its Request for Proposals and, after an exhaustive evaluation process assisted by PLDW attorneys, it entered negotiations with Veolia Water North America (Veolia) in July 2005. Thereafter, PLDW attorneys served as lead negotiators and principal drafters of the DBO agreement which was entered into with Veolia in May 2006. Contract safeguards for the District included guaranteed design-build performance and a scheduled acceptance date, guaranteed performance standards, a fixed design-build price and service fee, a corporate guarantee from the parent entity, and liquidated damages for non-performance.

During the period of construction, PLDW attorneys also represented the District with the development of multiple pump stations pursuant to a value engineered and constructed approach. Based on a comprehensive

design of the pump stations prepared by the District's consulting engineer, proposals were requested to provide pricing and value engineering on the pump station design. As a result, the District obtained both cost savings and a value-based construction process.



Result

With the effective legal counsel and business acumen of the attorneys from PLDW's Municipal Infrastructure Team, the District completed construction of the first New York municipal wastewater DBO project in August 2010. Today, the system is fully operational, providing needed sewer services to previously underserved areas of the County, treating wastewater to near drinking water quality standards, and recharging the Western Ramapo River Watershed.

With a final project cost of approximately \$45 million for the AWTP, the DBO method produced significant cost savings for the District compared with anticipated project costs using the traditional design-bid-build method.

Moreover, by privatizing the operation and maintenance of the AWTP, and utilizing the specialized and experienced employees of Veolia, the District was also able to obtain significant cost savings moving forward. Overall, the use of an alternative delivery method, coupled with innovative funding mechanisms, allowed the District, through its collaboration with PLDW attorneys, to improve its wastewater system and achieve its stated objectives.

PLDW's Municipal Infrastructure attorneys continue to represent the District with legal issues under the DBO agreement, as well as for the expansion of the District's sanitary sewer system, construction claims, consent order negotiations and general litigation matters.

For information about Pannone Lopes Devereaux & West or to speak with Teno A. West, Partner and Principal and Municipal Infrastructure Team Leader, or Josh J. Meyer, Partner, please call 914-898-2400.



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