Twelve Questions Before a City Sells Its Utility

A diligence checklist for the investors, lenders, attorneys and accountants on either side of a municipal water or wastewater transaction

VALUE

1	**Which value does the governing statute admit to rate base?**	More than a dozen states have acquisition-valuation laws, and no two work alike. Price above the admitted figure earns no return.
2	**What is the system's depreciated original cost, and how much of it is an estimate?**	Utility accounting starts from cost when the property was first devoted to public service. Municipal books rarely state it.
3	**How much of the plant was contributed or grant-funded?**	Contributed plant is outside rate base, takes a zero tax basis under Internal Revenue Code § 118(c), and has been held compensable in condemnation.
4	**Has the equipment been scheduled and valued separately from the pipe?**	Pumps, drives, generators and controls last 10 to 20 years; gravity sewers 45 or more. Switchgear prices rose 86% from January 2021 to August 2026.

OBLIGATIONS

5	**Are tax-exempt bonds outstanding on the assets?**	A sale to a private owner is private business use. Treasury Regulation § 1.141-12 requires redemption or a defeasance escrow within 90 days, and defeasance is unavailable if the first call date is more than 10½ years from issuance.
6	**Was any plant bought with federal grants or rural utility loans?**	2 Code of Federal Regulations (CFR) § 200.311 requires disposition instructions. Executive Order 12803 sets the order of recoupment. 7 CFR § 1782.16 bars defeasance of rural utility debt.
7	**Is the system under a consent decree or administrative order?**	A decree does not transfer with the assets. Substituting the buyer takes the government's agreement and the court's approval.
8	**Who holds the discharge permit after closing?**	Transfer under 40 CFR § 122.61 takes advance notice and a written agreement allocating responsibility. A change of ownership can alter pretreatment duties and loan eligibility.
9	**What contamination liability travels with the system?**	The Superfund designation of two per- and polyfluoroalkyl substances was upheld in August 2026. Federal policy sparing utilities does not bar private claims. Sludge rules vary by state.

APPROVALS AND AFTER

10	**What approvals, hearings or votes are required, and how may the proceeds be used?**	Commission approval is the start. Some states require public hearings before signing, allow a referendum by petition, or direct proceeds to debt first.
11	**Can the easements, software licenses, warranties and service agreements be assigned?**	An unrecorded right-of-way is a title problem. A control-system license that cannot be assigned has to be bought again.
12	**What happens to rates and taxes after closing, and who decides?**	Returns are authorized, not guaranteed. Exempt plant becomes taxable, and rate-regulated water and sewer property is excluded from bonus depreciation under § 168(k)(9).

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