

Legally (Relevant



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Management Services Contracts

In addition to a safe and reliable water supply, customers are entitled to a system that is run as efficiently as possible. The traditional way of accomplishing this is by hiring and training the best possible people to serve as managers, operators and office staff, and equipping them as necessary to do those jobs well. But sometimes achieving this can mean contracting for some or all of needed services from another system.

While this article is titled “Management” services contracts, it could just as easily be titled “operations”, or “administrative”, or some other description as this article will cover a variety of such services contracts.

What they will all have in common is that concept of one system, whether owned by a city, water district or other entity contracting with another entity for these services rather than relying on its own employees to do that work.

There may be a number of good reasons to look at contracting for management services. Particularly for smaller systems, it may be very difficult to staff at

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appropriate levels. Hiring, training and retaining the best staff is challenging. Buying and maintaining all the necessary equipment to operate and administer a system can be inordinately expensive for a smaller system.

For a system considering providing management services, the benefits can be considerable. A system may have some excess capacity in both staff and equipment that can be available for contract services, resulting in a new profit center, helping to spread the costs of operation across more revenue. Sometimes a management services contract can be a bridge between systems as they consider a more permanent arrangement like consolidation or acquisition.

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There is no lack of legal authority for cities and rural water districts to provide management services for other water and wastewater systems. These can range from limited services, like meter reading and bookkeeping, to backup operations services, to “turn-key” operation of every aspect of a system. Whatever the case may be, these arrangements are important and should be represented by a written agreement, prepared and reviewed by the systems’ attorneys, and approved by their governing bodies. The following are some of the terms that should be considered.

Duties: It is important to describe as thoroughly as possible what the contractor is expected to do under the contract, and what it is not. These duties can generally be separated into two general categories of services: operations and administration.

Operations: This relates to keeping the water running to customers (or in the case of wastewater, keeping the water running away from them). Depending on the source of supply, this could range from monitoring a supply from a wholesale source, to running a water treatment plant, to operating of wells and pumps. This function is the most vital to the system, and the contract should make reference to compliance with applicable regulations, obtaining of necessary samples, record keeping and the like. The contractor should be required to keep one or more qualified operators on staff at all times.

Also under the general heading of system operations is system maintenance. This may include actually providing of repair services, including excavation services, or merely managing the maintenance of the system while contracting with third parties for actual repairs. Consideration

needs to be given to the authority of the contracting system to make repairs, especially emergency repairs, without need for prior approval. It may be appropriate to list the types of situations in which the contractor is authorized to act without additional authorization, dollar limits on that authority, or otherwise.

Administrative: If administrative services are being provided, they should be fully detailed. Phone and e-mail service, as well as maintenance of a Web site should be considered. Administrative services may include billing, meter reading, maintenance of customer and other system records; receipt of payments, making deposits, receipt of invoices and preparation of checks for payment. Preparation of reports for the governing body, attendance at meetings and similar tasks should be detailed.

Fees and Charges: There is no single formula for developing a fair schedule of fees and charges. In most cases, a fixed fee should be established for the routine services being provided. It will be difficult to accurately determine an appropriate fixed fee for routine services at the outset of a new contract, so there should be a provision to allow for adjustment or renegotiation of that fee soon after the contract begins and then at least annually thereafter. Extraordinary services, such as repairs or project administration may be best handled as an additional charge based on hourly fees and equipment rental.

Equipment: If tools and equipment of the managed system are to be used by the managing system in the course of its work, these should be described in detail, including responsibility for the cost of maintenance of this equipment.

Insurance: The contract should specify the insurance requirements being made on the managing system as part of its responsibilities to the managed system under the contract. A Certificate of Insurance should be obtained at the outset of the contract, with the managed system being named as an additional insured.

Contract Duration: Management Services Contracts are often year-to-year, automatically renewable unless one party or the other gives notice of its intent to terminate. Terms need to be included for early termination if one party or the other is not performing under the contract as it should.

Vehicle Titles, Registrations and Taxes

Water systems need vehicles to function, and from time to time those vehicles need to be replaced. The rules that apply to titling and registering these vehicles are different than those that apply to those privately owned.

An individual titling and registering a new vehicle will be required to pay property tax and pay the applicable sales tax, or if purchased from a dealer, demonstrate that the sales tax was already collected. For a city or RWD, the county treasurer will collect the applicable title and registration fees, but no sales or property taxes are to be collected due to exemptions for those taxes. A property tax exemption application is filed with the Board of Tax Appeals simultaneous with the vehicle being titled and, assuming the application is in order, an exemption from the property tax is then issued.

Vehicles used by a city receive a distinctive license plate that says "City". Such plates are permanent, with no year displayed, and are only charged a one-time registration fee. However, those used for utility purposes are issued for five years, and are subject to annual renewal fees.

Rules for plates on RWD vehicles are not so clear. In some cases, RWDs have been required to pay the property tax, then apply for a refund after the property tax exemption has been granted. As for license plates, in some counties the RWD will be issued a "County" plate, valid for five years, like city utility vehicles. In others, the district is issued a standard "SAM123" plate, like privately owned vehicles.

The titling, registering and taxing of motor vehicles are all governed by state law and regulation, but are administered by local officials in the 105 counties. The treatment is often inconsistent from one county to the next. KRWA is making efforts to insure that these rules as they apply to cities and RWD's are applied properly and consistently throughout the state.

While virtually every task can be made the subject of a Management Services Contract, this does not relieve the district board of directors or the city council of its duty to govern. The governing body must be more vigilant than ever to insure that the terms of the contract are being complied with, that

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the financial integrity of the system is being maintained, that customers are being served properly, that the system is being properly operated and maintained, that all regulatory requirements are being met, and that public funds are being managed correctly. Timely, accurate reporting is critical. Communication by the managing system with the governing body of the managed system needs to occur on a regular basis.

Conclusion

Management Services Contracts, in which one or more of the functions of a water or wastewater system are to be provided by another system pursuant to a contract can be a very useful and efficient tool. Great care needs to be used in developing these relationships, represented by a comprehensive written agreement that sets out the responsibilities for both parties. Governing bodies need to be just as vigilant as ever with the oversight of these arrangements to ensure that the system is being well-served in accordance with the contract. Done properly, a management services contract can result in a very beneficial arrangement for both parties.

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