

Preliminary Operational Integration and Efficiency Outline for PMWSID

POTENTIAL PROPOSAL:

Powder Mountain Water and Sewer Improvement District (“PMWSID” or “District”) is considering contracting with another public or private entity (the “Contractor”) for a fee to be determined on an annual basis (“Operation Fee”). Powder Mountain has expressed interest in serving as the Contractor, but no decisions as to whether to proceed with a contractual arrangement and the identity of the Contractor will be made until a procurement process has occurred and all relevant considerations have been analyzed, including cost, efficiency, and potential for conflicts of interest.

Any Operation Fee will be subordinated to, and paid, if and only to the extent available from PMWSID’s annual receipts after the payment of all other obligations of PMWSID, including the interest and amortization of its bonds or other loans, liens, etc. It is the intention that (i) the Contractor will be able to carry out the operational requirements of the District more efficiently and more rapidly due to the contractor’s scale, and (ii) those savings will allow the District to not raise customer rates as rapidly. In addition, the proposed operational structure should enable the District and the Contractor to work at a higher pace and efficiency while scaling up the connections, storage tanks and other District requirements for securing and delivering improved systems for both water and sewer. A Contractor with significant execution power will improve our water-sewer systems, especially infiltration. Similarly, a Contractor with significant year-round staffing capabilities, strong IT capabilities, etc., will be financially and operationally efficient for the District’s customers.

This outsourcing of District operations would work on an ongoing basis as the PMWSID greater residential communities and ski resort grow, but the District’s Board of Trustees (the “Board”) would have oversight of the Contractor’s contractual work. Ultimate decision-making authority would remain with the Board. Ownership of infrastructure, equipment, water rights, and property would remain with the District. The Contractor would be required to adhere to all applicable state laws governing improvement districts, including transparency laws. The District would also retain the right to cancel this outsourcing at any time upon short notice, particularly if the cancelation is for cause.

BOARD CONTROL:

The Board will continue in its form as a governmental agency and accordingly will remain in control of water-sewer strategy for short- and long-term needs. To ensure decisions are occurring in the best interest of the District and all its customers, the Board shall be the determining body with respect to:

- a. strategy and priorities;
- b. will-serve requests;
- c. capital expenses and capital facilities planning;
- d. customer oversight;
- e. policies, rules, and procedures;

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- f. change in any policies that impact the usage of water (e.g., irrigation and snowmaking policies) or effluent flows/storage (e.g., development of an MBR or pond expansions, etc.);
- g. all controls and decision-making as required by Utah law and governing body regulations;
- h. annual budgets, audits, and extraordinary expenditures;
- i. rates/charges, impact fees, taxes, and assessments;
- j. debt/bonds;
- k. annexations; and
- l. developer exactions.

The Contractor will be required to provide a monthly operating report to the Board and to give quarterly (or more frequent) presentations to the Board regarding operations and financial performance. Checks will require double signatures (or the equivalent electronic approval).

CONTRACT TERMS:

- a. Initial 3-year term with annual automatic renewal thereafter provided no defaults by the Contractor;
- b. The Contractor is to provide adequate staffing, supervision, systems, and training to perform the contracted services in compliance with applicable law and Board policies;
- c. The Contractor shall maintain adequate insurance as determined by the Board, including general liability, errors and omissions, Director and Officers for the Contractor (and the Board), and other customary or required insurance with such coverages, limits, deductibles, and named insured endorsements as PMWSID's advisors reasonably request, including, as applicable: (i) workers' compensation insurance as required by Utah law (with each employer responsible for coverage of its own employees), (ii) unemployment insurance coverage consistent with employer-of-record status, and (iii) employment practices liability insurance (EPLI) at limits reasonably requested by PMWSID's advisors;
- d. All capital projects performed by the Contractor shall be signed-off upon by a third-party engineer selected from a Board approved list of engineers confirming that all work meets or exceeds required specifications; and
- e. Capital projects currently contemplated shall be completed by the Contractor within a specified time.
- f. The Contractor shall comply with all state laws governing PMWSID, including Open & Public Meetings, Government Records Access and Management, Improvement District, Procurement, and other laws.
- g. The Contractor will comply with all PMWSID policies.
- h. The Contractor will comply with applicable federal/state employment laws in connection with its performance (including nondiscrimination/harassment prevention, wage-and-hour as to Contractor employees, OSHA/safety obligations, and required trainings), and will cooperate with PMWSID so PMWSID can comply with its public-employer obligations for PMWSID employees.

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DISTRICT EMPLOYEES:

For clarity on personnel: unless and until expressly agreed in writing, (i) all District employees remain employees of PMWSID during the anticipated transition period (“Transition Period”), (ii) all Contractor employees remain employees of the Contractor, and (iii) the Contractor may use its personnel to perform services as contemplated by the management agreement, subject to Board oversight and applicable law. Contractor personnel performing services are not PMWSID employees and will not be eligible for PMWSID-sponsored benefits (including Utah Retirement Systems (URS)) by virtue of performing services for PMWSID. During the Transition Period, the Contractor will follow PMWSID timekeeping, scheduling, and overtime pre-approval requirements for PMWSID employees (as communicated by PMWSID), and will timely provide PMWSID the information PMWSID needs to process payroll and benefit reporting.

At least one District employee/independent contractor will be retained long-term to help the Board provide oversight of the Contractor’s work, ensuring that such work is done in the best interest of the District and all its customers. All other PMWSID employees may be assigned to support the Contractor’s management/operations of the District for the Transition Period (subject to confirmation of legal/benefits feasibility), with the intent that the employees’ compensation and PMWSID-sponsored benefits (including URS participation, if applicable) continue during the Transition Period.

PMWSID will structure any transition/assignment period to comply with PMWSID personnel policies and applicable public-employer requirements and will seek to preserve URS participation and any other public-entity benefits to the extent legally and administratively permissible.

If the parties pursue a conversion of some or all PMWSID employees to Contractor employment after the Transition Period: any move to Contractor employment will be contingent on the employee receiving and accepting an offer from the Contractor (and completing standard onboarding). The parties acknowledge that URS participation and other PMWSID-sponsored public benefits generally will not continue once an individual is no longer a PMWSID employee (unless the Contractor is a public entity that participates in the same benefit programs), and the Contractor will describe the replacement benefit package offered.

If an employee does not wish to convert to Contractor employment, the Board will determine the employee’s ongoing status with PMWSID in accordance with PMWSID policies and applicable law, including whether the employee will (a) remain employed by PMWSID in an available PMWSID position, (b) continue as a PMWSID employee during an extended Transition Period, or (c) be separated from PMWSID employment through a process conducted in compliance with PMWSID policies and applicable law.

CUSTOMER BENEFITS AND FAIRNESS:

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The documentation of the arrangement must ensure that **every** water-sewer customer receives equal treatment, and we would operate as one **equal** customer base. All capital expenditures for expansion of services to PMWSID will be borne by the applicable developer and all capital repairs, improvements, upgrades or the like to any in-service (dedicated) PMWSID infrastructure shall be equally shared by all ratepayers or paid from PMWSID funds as solely determined by the Board.

PROCUREMENT:

Utah Code generally requires use of a “standard procurement process” (a bidding, RFP, approved vendor list, small purchase, or design professional procurement process), although there is an exception where there is only one source available. In this case, it is recommended that an RFP process be utilized so that the Board can evaluate different proposals in terms of cost, efficiency, potential for conflicts of interest, etc.

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APPENDIX A:

THE BELOW SHOULD BE USED AS A PRELIMINARY OUTLINE OF REQUIREMENTS TO BE INCLUDED IN THE CONTRACT (TO BE ADJUSTED AS FURTHER DISCUSSIONS PROGRESS)

1. SERVICES TO BE PROVIDED BY CONTRACTOR.

Working closely and cooperatively with the Board, the Contractor shall assume and be responsible for the management of all day-to-day operations of the District comprising and/or related in any way to the Water Systems (defined below), including, without limitation, the following:

- (a) Water Systems Management, Operation and Maintenance. In conformance with all rules, regulations and policies promulgated by the Board and best practices in the industry:
 - (1) Operate, maintain, repair or cause to be constructed, operated and repaired any and all pipelines, pump stations, meters, valves, and all other facilities and equipment which are associated with the Water Systems;
 - (2) Manage all water rights and water interests, and all water contracts of the District, and maintain the same in good standing and defend against all adverse claims;
 - (3) Manage, operate, maintain and repair all District wells, springs, and other sources of water supply and manage the fulfillment of all related contractual and other obligations of the District;
 - (4) Manage, maintain, and repair all District buildings, grounds, and improvements;
 - (5) Manage, enforce and protect all District easements and properties which are associated with the Water Systems;
 - (6) Perform or cause to be performed all required inspections, monitoring, and testing;

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(7) Manage and maintain all licenses, permits, or consents from all governmental entities or other persons necessary to carry out the business of accomplishing the purposes of the District; and

(b) Water and Sewer Service: In conformance with all rules, regulations, and policies promulgated by the Board:

(1) Manage, administer, and provide municipal water and sanitary sewer service (collectively, "Water Service") to all District customers within the service area of the District;

(2) Receive and administer all new applications for Water Service;

(3) Manage, calculate, bill, collect and enforce the payment of all fees and charges for Water Service provided by the District in conformance with all fiscal procedures and requirements of applicable State law and District policies; and

(4) Implement and enforce all rules, regulations, policies and procedures as promulgated by the Board pertaining to District operations.

(c) Fiscal Procedures and Services. In conformance with the provisions of UCA 17B-1-601 et seq., Fiscal Procedures for Special Districts, and other applicable law and regulations:

(1) Maintain all financial books, records, and accounts pertaining to all District finances and financial obligations;

(2) Recommend a District budget to be approved by the Board;

(3) Manage, account for, and invest all District revenues, including tax revenues, service fees and charges and all other District revenues, and manage all expenditures of such revenues on behalf of the District;

(4) Pay all contract, bond, and other payment obligations due and owing by the District as and when due;

(5) Receive and process all District invoices;

(6) Coordinate the review, approval, and coding of all invoices with the Board to ensure timely payment; and

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(5) With the approval of the Board, contract for accounting and related services to manage and account for, in whole or in part as determined by the Board in its sole discretion, the services enumerated in this subsection (c) above.

(d) Board Meetings, Notices, Reporting and Communications. The Contractor shall have the following duties and responsibilities with regard to District Board meetings and related matters:

- (1) Coordination of all Board meetings
- (2) Preparation, publishing and posting of all required notices in conjunction with all Board meetings;
- (3) Preparation and distribution of Board agendas and informational materials with respect to each Board meeting;
- (4) The designated representative of the Contractor shall attend all Board meetings and be prepared to report on all Contractor activities pertaining to its duties and responsibilities for the District as requested by the Board;
- (5) Preparation of meeting minutes for all meetings of the Board;
- (6) Manage all other details incidental to meeting preparation and follow-up;
- (7) Administration of the District's website;
- (8) Respond to routine inquiries, questions and requests for information regarding the District;
- (9) Periodic reports to the Board regarding the status of District matters and actions taken or contemplated by the Contractor as requested by the Board; and
- (10) Provide liaison and coordination with all local and state governmental agencies on behalf of the District.

(e) General Administration.

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- (1) Administer and maintain a repository of all District records and act as custodian of records for purposes of the Government Records Access and Management Act and the Utah Open and Public Meetings Act;
- (2) Administer all District contracts and supervise District vendors.
- (3) Provide coordination and consultation with the Board regarding revisions to the District's rules, regulations and policies;
- (4) In conjunction with the District's legal counsel, coordinate all Board appointments in accordance with the applicable State law;
- (5) Make recommendations and report to the Board regarding such other services as may be necessary in fulfilling the purposes of the District.

3. DISTRICT RETAINED POWERS AND RESPONSIBILITIES.

The Board shall retain and maintain all enumerated legislative powers, functions and responsibilities under UCA 17B-1-101 et seq. and other applicable law that are not otherwise specifically delegated to the Contractor, including, without limitation, the following:

- (a) Hold regular Board meetings;
- (b) Be responsible for and approve all District budgets and audits;
- (c) Approve all District expenditures, above an authorized amount as shall be delegated to the Contractor consistent with the adopted budget, and sign pursuant to a system requiring double signatures all District checks;
- (d) Promulgate all District rules, regulations, policies and procedures;
- (e) Set all new and/or increases in Water Service rates and charges, including the imposition of interest and fines and penalties, in conformance with applicable State law;
- (f) Impose District Impact Fees or other exactions, if any, in compliance with the requirements of the Utah Impact Fees Act and other applicable laws;
- (g) Levy all District taxes and assessments;

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- (h) Approve the incurring of all District debt, and approve, issue and execute all District bonds, notes and other debt instruments evidencing District debt obligations;
- (i) Be responsible for the annexation of new lands into the legal boundaries of the District;
- (j) Review, approve and execute all District contracts pertaining to matters not strictly related to District operations and maintenance which may be delegated to the Contractor subject to limitations imposed by the Board;
- (k) Promulgate, approve and execute all District resolutions pertaining to legislative and policy matters involving the District;
- (l) Exercise all other legislative powers, functions and authority under applicable State law not otherwise delegated to the Contractor;
- (m) Oversee an annual independent financial audit; and
- (n) Review, approve, and adopt the District capital facilities plan.