

471A.03 BASIC AUTHORIZATION AND RELATED POWERS.

Subdivision 1. **Basic authorization.** A municipality may contract with a private vendor to furnish in accordance with a service contract any capital intensive public services the municipality is authorized by law to furnish, and for that purpose a municipality may exercise any and all of the powers provided in this section.

Subd. 2. **Service contract.** Subject to the provisions of section 471A.08, a municipality may enter into a service contract for a term of not more than 30 years. However, the service contract may permit the municipality to either extend or renew the term of the service contract so long as the municipality is not bound under the service contract for an extended or renewal period of more than 30 years. Under the service contract the municipality may, under terms and conditions agreed to by the municipality and the private vendor:

(1) obligate itself to pay or cause to be paid a service fee for the availability and use of the capital intensive public services to be furnished under the service contract;

(2) enter into other agreements relating to the service to be provided and which the municipality considers appropriate that are not otherwise contrary to law; and

(3) either pledge its full faith and credit or obligate a specific source of payment for the payment of the service fee and the performance of other obligations under the service contract and the payment of damages for failure to perform the obligations.

The obligation of the municipality to pay the service fee and perform any other permitted obligations under the service contract are not considered a debt within the meaning of any statutory or charter limitation, and no election is required as a precondition to the municipality entering into any permitted obligation or undertaking a project under a service contract.

Subd. 3. **Procurement procedures.** The municipality may agree under the service contract that the private vendor will acquire, construct, alter, repair, or maintain any and all related facilities without compliance with any competitive bidding requirements. The municipality may enter into the service contract only after requesting from two or more private vendors proposals for the furnishing of the capital intensive public services under terms and conditions the municipality determines to be fair and reasonable. After making the request and receiving any proposals in response to the request, the municipality may negotiate the service contract with any private vendor that responds to the request for proposals. The municipality, at its discretion, may classify all or portions of any (1) proposals received from vendors, and (2) government data received from vendors or generated by the municipality relating to negotiations with the vendors, as nonpublic data under section 13.02, subdivision 9, or as protected nonpublic data under section 13.02, subdivision 13, until completion of negotiations with all the vendors and, if the municipality solicits a best and final offer from one or more vendors, until the offers are received from all vendors who are requested to submit such an offer.

Subd. 4. **Sources of payment; collection procedure.** (a) For the payment of a service fee or other monetary obligation under an existing service contract or in anticipation of need under a future service contract, the municipality may:

(1) levy property taxes, impose rates and charges, levy special assessments, and exercise any other revenue producing authority granted to it and apply public funds for the payment of the service fee and any other monetary obligations under the service contract in the same manner, and

subject to the same conditions that would apply if the related facilities were acquired, constructed, owned, and operated exclusively by the municipality; and

(2) establish by ordinance, revise when considered advisable, and collect just and reasonable rates and charges for the capital intensive public services provided under the service contract. The ordinance may obligate the owners, lessees, or occupants of property, or any or all of them, to pay charges for the capital intensive public services available for their properties and may obligate the user of a related facility to pay a reasonable charge for the use of the related facility. Rates and charges may take into account the character, kind, and quality of the capital intensive public service and all other factors that enter into the cost of the capital intensive public service, including but not limited to the service fee payable with respect to it, depreciation, and payment of principal and interest on money borrowed for the acquisition or betterment of related facilities.

(b) The rates and charges may be billed and collected in a manner the municipality shall determine consistent with this paragraph and other applicable law. On or before October 15 in each year, the municipality shall certify to the county auditor all unpaid outstanding charges for services provided under the service contract and a statement of the description of the lands against which the charges arose. It is the duty of the county auditor, upon order of the governing body of the municipality, to extend the rates and charges with interest as provided for by ordinance upon the tax rolls of the county for the taxes of the year in which the rate or charge is filed. For each year ending October 15 the rates and charges with interest shall be carried into the tax becoming due and payable in January of the following year, and shall be enforced and collected in the manner provided for the enforcement and collection of real property taxes in accordance with the provisions of the laws of the state. The rates and charges, if not paid, shall become delinquent and be subject to the same penalties and the same rate of interest as the taxes under the general laws of the state. All rates and charges shall be uniform in their application to use and service of the same character or quantity.

(c) An ordinance establishing rates and charges shall also establish a procedure by which a person obligated to pay the rates and charges may, each year at a public hearing held before August 1 of each year, protest the payment of the rates and charges on the grounds that services to be provided under the service contract are not available to the person. The services shall be deemed available for the property of the person if the vendor agrees, and the related facilities have the capacity, to provide the services to the person as soon as the municipality or any other entity provides the property of the person with access to the services. Notice of the hearing shall be published at least 30 days prior to the hearing in an official newspaper in general circulation in the municipality. A person protesting the assessment of rates and charges under this paragraph shall file the objection in writing with the municipality at least five days prior to the hearing. Within ten days after the hearing, the municipality shall determine whether the rates and charges were properly assessed. A person protesting the assessment of rates and charges may appeal the assessment, and a private vendor may appeal a reduction in rates and charges for any person, to the district court in the same manner as appeal of other civil cases. Rates and charges erroneously collected shall be refunded with the same rate of interest as taxes refunded with interest under the general laws of this state.

(d) A public hearing on the proposed ordinance shall be held prior to the meeting at which it is to be considered by the governing body of the municipality and after notice of the hearing has been published in the official newspaper of the municipality not less than ten days prior to

the hearing. The notice shall state the subject matter and the general purpose of the proposed ordinance.

Subd. 5. **Sale or lease of existing facilities.** For purposes of carrying out the service contract, the municipality may, in compliance with subdivision 3, sell or lease to the private vendor or any other municipality on terms and conditions as the municipality considers appropriate any existing related facilities, including land, owned by the municipality.

Subd. 6. **Remedies.** The municipality may provide that title to the facilities shall vest in or revert to the municipality if the private vendor defaults under any specified provisions in the service contract. The municipality may acquire or reacquire any facilities and terminate the service contract in accordance with its terms notwithstanding that the service contract may constitute an equitable mortgage. No lease of facilities by the municipality to the private vendor is subject to the provisions of section 504B.291, unless expressly so provided in the service contract.

Subd. 7. **Interest in related facilities.** The municipality may retain or acquire, on terms and conditions it considers appropriate, a present or future interest in all or part of the related facilities and grant a mortgage or security interest in its interest in the related facilities.

Subd. 8. **Interest in private vendor.** The municipality may, on terms and conditions it considers appropriate, acquire an interest in the private vendor as a joint venturer, including a share in the revenues derived from the related facilities, and grant a security interest in its interest in the private vendor and such revenues. However, no municipality or group of municipalities may have a controlling interest in the private vendor.

Subd. 9. **Use of bond proceeds.** The municipality may issue bonds and other obligations and apply their proceeds toward the payment of the costs of the related facilities in the same manner and subject to the same conditions and limitations that would apply if the related facilities were acquired, constructed, owned, and operated exclusively by the municipality and for these purposes, related facilities shall be considered to be a project within the meaning of section 469.153, subdivision 2, paragraph (b).

Subd. 10. **Required public use.** The municipality may agree, subject to any applicable state statutory requirements as to designated use of the related facilities, that the sole and exclusive right to provide the capital intensive public services within its jurisdiction be assumed by the private vendor under the service contract and may require that any and all members of the public within its jurisdiction use the services provided under the service contract in the same manner and subject to the same limitations and conditions that would apply if the related facilities were acquired, constructed, owned, and operated exclusively by the municipality.

Subd. 11. **Condemnation powers.** The municipality may exercise the power of eminent domain in the manner provided by chapter 117, for the purpose of acquiring for itself or the private vendor any and all related facilities. If the related facilities are acquired for the private vendor, the service contract shall be for a term of at least five years.

Subd. 12. **Contractor's bond and mechanics' liens.** The municipality may waive or require the furnishing of a contractor's payment and performance bond of the kind described in section 574.26 in connection with the installation and construction of any related facilities. If the bond is required, the provisions of chapter 514 relating to liens for labor and materials are not applicable with respect to work done or labor or materials supplied for the related facilities. If

the bond is waived, the provisions of chapter 514 apply with respect to work done or labor or materials supplied for the related facilities.

History: *1986 c 465 art 4 s 4; 1987 c 291 s 226; 1987 c 384 art 1 s 43; 1Sp1989 c 1 art 5 s 39; 1997 c 111 s 4; 1998 c 371 s 17; 1999 c 199 art 2 s 18; 2006 c 214 s 20*