

**Manual of Practice
For Drafting Interlocal
Agreements**
for Utility and Other Services

Indiana Rural Community Assistance
Program (RCAP)

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Appendix A: Interlocal Agreement Examples

I. Introduction

The purpose of this manual is to provide assistance to small and medium sized rural communities in the drafting of interlocal agreements for water, wastewater, and other utility services. The manual is designed to reduce costs and prevent one-sided agreements for services that put smaller communities at a disadvantage with larger service providers.

The use of this manual beyond the scope for which it was prepared is not recommended without consulting competent government or outside counsel. Users are cautioned to check for changes in the laws of the State of Indiana before negotiating and implementing an interlocal agreement. Statutory changes may materially affect the performance terms of the interlocal agreement.

II. How To Use This Manual

It is anticipated that users of this manual will have varying skills and experience using Interlocal Agreements. Accordingly, the manual is designed to be complete for any entity interested in entering into an Interlocal agreement. A checklist is provided for entities that have some experience in drafting agreements and simply want to use the checklist to review compliance with state law.

Several effective methods of drafting an Interlocal agreement are supported by this manual. The user may,

- 1) Simply take the model agreement and expand the elements to cover services and provisions desired by the parties.
- 2) Use other example agreements that may be useful in creating the language needed for a complete Interlocal agreement.
- 3) Take a sample Interlocal Agreement from the appendix and adapt the language to fit the circumstances of the parties or,
- 4) Draft the document from scratch using the checklist provided for Interlocal Agreements and ignore the examples and model agreement.

The production document should be as detailed and comprehensive as needed by the communities involved in the agreement. In some cases a more general agreement may be more appropriate than a very detailed and specific agreement allowing flexibility and implying good faith and fair dealing between the parties. The assessment of what type of local agreement is appropriate should be approached through careful research and the consensus of community leaders.

III. Advantages and Disadvantages of Interlocal Agreements

- A. Advantages: Interlocal agreements are principally designed to allow communities to coordinate

- B. Utility service planning and take advantage of the economies of scale available to larger water and wastewater treatment systems. They allow smaller communities to obtain services that are well beyond their capital expenditure capabilities. This is of particular importance when grants and low interest loans for infrastructure development are scarce.

Smaller communities can gain access to the infrastructure of the larger community, so that it may sustain or

create services that would otherwise create a burden on the financial solvency of the smaller community and its residents. The larger community benefits because bigger treatment systems are easier to run and keep within permit limits, the unit cost for treatment or production is lower, and benefits and capital expenditures are more easily justified when the service area is large.

Smaller communities also benefit from having fixed or, at least, definable costs for the period of the Interlocal Agreement. This will allow accurate budgeting for the smaller community and, if rate increases are needed for basic utility services, will allow the community the means of assessing the rate amounts needed to sustain serviceability.

Additionally, every community benefits from the growth of infrastructure within its boundaries. Both the larger and smaller community have the infrastructure to service the community, and unneeded redundancy can be avoided that detrimentally could create competition between communities as service providers.

By increasing the size of the service area, the staffing necessary for two treatment systems is combined into one. While the larger plant may have to increase its staff, the increase is not directly related to size. The Interlocal Agreement may even provide for employees to be hired from the smaller community to work in the shared infrastructure, or the smaller community may have a division of the utility's service and maintenance departments located in its political subdivision or even run by the community.

The final value to the contracting parties is the public perception of unity, both of purpose and rate structure. Different rates for utility services often create intercommunity animosity, as well as, misallocation of resources and development between the communities. Eliminating the differences between the two puts neither at a disadvantage and creates a level playing field.

- C. Disadvantages: Interlocal agreements are easy to conceptualize but difficulties may lie in the details of the agreement. The larger community may attempt to leverage its position, benefit its operations and cost accounting, and charge higher prices because of its size. The smaller community should make every effort to carefully analyze both the cost of service and rate structure for the residents of the other party prior to entering into negotiations. The services of an
- D. Experienced utility rate engineer or consultant may be of substantial value in maneuvering the negotiations to a fair middle ground.

The analysis of the value and cost of an Interlocal Agreement to the smaller community is probably best done by a utility consultant who would prepare a report on the equality of rates and structure between the two for

presentation to the smaller community. The consultant can make sure the negotiations are not one-sided and will expose problems in the Interlocal Agreement structure.

One of the greatest problems with any long-term agreement is the need to make that agreement functional for a long period of time with a minimal amount of adjustment left to the future. Careful drafting and attention to detail using any of the techniques contained in this manual will greatly reduce the risk of problems in the future; Provisions for adjustments of a technical nature upon mutual agreement of the parties are appropriate tools for ensuring the long-term function of an Interlocal Agreement. Safety valves for legal and unforeseen condition changes are also appropriate, as long as they cannot be invoked unilaterally to the invoker's advantage.

IV. Indiana Governing Statutes

Intergovernmental agreements and contracts

Indiana Code 36-1-7 et seq. A power that may be exercised by an Indiana political subdivision and by one (1) or more other governmental entities may be exercised by one or more entities on behalf of others; or jointly by the entities. Entities that want to do this must, by ordinance or resolution, enter into a written agreement under section 3 or 9 of the above referenced code citation.

Agreements to specify certain information

Indiana Code 36-1-7-3. An agreement under this section must provide the following information:

1. Its duration.
2. Its purpose.
3. The manner of financing, staffing, and supplying the joint undertaking and of establishing and maintaining a budget therefore.
4. The method that may be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination.
5. Administration through:
 - a. a separate legal entity, the nature, the organization, composition, and powers of which must be provided; or
 - b. a joint board composed of representatives of the entities that are parties to the agreement, and on which all parties to the agreement must be represented.
6. The manner of acquiring, holding, and disposing of real and personal property used in the joint undertaking, whenever a joint is created under subdivision (5)(B). In addition, such an agreement may provide for any other appropriate matters.
 - a. A separate legal entity or joint board established by agreement under this section has only the powers delegated to it by the agreement. The agreement may not provide for members, directors, or trustees of the separate legal entity or joint board to make appointments (either individually or jointly) to fill vacancies on the separate legal entity or joint board.

V. Feasibility Study and Negotiating an Interlocal Agreement

A. Use of Interlocal Feasibility Studies:

Feasibility studies for joint services do not have to be lengthy, complicated documents. There is no mystery to a feasibility study. It needs to address basic questions with the necessary amount of detail, and common sense is the most important ability in conducting a feasibility study.

The first step is for each local unit to designate someone to be responsible for its contribution to the study. In making this assignment, the governing body must emphasize the importance of the study and the need for its timely completion. The study should be a priority assignment.

Each coordinator should follow the same format and work to an agreed upon schedule. Periodic meetings of all coordinators are needed to keep everyone on the same track and to review preliminary information. This will keep the study moving and on target.

Public input should be considered at the initiation of the study process. This could be in the form of public hearings or through the appointment of a citizen advisory board.

The completed feasibility study serves as an implementation plan for the Interlocal agreement. It is the basis for policy decisions by the local governing bodies and an integral part of the Interlocal agreement that puts the joint service (s) into effect.

The following pages outline a feasibility study. The outline may cover details far greater than your study may require. Choose those elements that pertain to your situation.

OUTLINE OF AN INTERLOCAL AGREEMENT FEASIBILITY STUDY

I. ESTABLISH A CLEAR GOAL FOR THE JOINT SERVICE

- A. Describe the service to be provided.
 - 1. Identify what service is to be provided on a cooperative basis.
 - 2. Clearly define what aspects of the service will remain the individual responsibilities of the participants.
 - 3. State any particular requirements that must be addressed by the joint service.
- B. Clarify expectations about the joint Service.
 - 1. What does your community hope to gain by participating in the joint program?
 - a. Cost savings?
 - b. Improved level of service?
 - c. Establishment of a previously unavailable service?
 - d. Greater efficiency of service operations?
 - 2. Describe the criteria that will be used to measure the quality of services provided or the effectiveness of the joint service.
- C. Identify all potential participants
 - 1. Have all local units that could benefit from the joint service been included in the study?
If not, why not?
 - 2. Will the establishment of a joint service inadvertently have an adverse effect on a non- participating community?

II. DESCRIBE AND ANALYZE THE SERVICE CURRENTLY PROVIDED BY EACH LOCAL UNIT

- A. Describe how the service is currently provided.
 - 1. For each participant, describe how it presently provides the service or accomplishes the task. What department, division, etc. of the local unit provides the service? Describe how the local unit is organized to perform the function. Include an organizational table showing the structure of the agency.
 - 2. Who is responsible for what aspects of the service? Identify positions, titles and responsibilities, including lines of authority, etc. Identify any equipment, vehicles or special material that may be required.
 - 3. Identify the physical facilities used or required to provide the service.
- B. Describe the level of service currently provided

Identify the service and the level of service presently being provided by each participant. Use quantifiable

measures whenever possible. For example, the number of residential trash pick-ups per truck per day, or the number of patrolmen per shift, etc.

C. Does the service meet current needs?

Is the current level of service adequate for present needs? Describe any shortfall or surplus in services provided.

D. What are the future service needs?

Project the level of service to be required for the next two to five years. Will it increase or decrease? What factors are known that will affect the demand for the service? For example: will a new shopping center affect the level of police or fire protection needed?

III. DETERMINE EACH PARTICIPANT'S COST OF PROVIDING THE EXISTING OR NEW SERVICE

A. Determine the total cost for each local unit.

List the current budget (operating and capital, if any) for providing the service. Include all costs, particularly those that may be carried elsewhere in the municipal budget. Using the service units developed in Section II; determine the total cost to each local unit to provide the present level of service to its residents. Include all direct and indirect costs taking into account where applicable, salaries, benefits, equipment, overhead, rent, materials and supplies.

B. What is needed to meet minimum service levels?

1. If a local unit's present service level is inadequate, identify what would be required (in budget dollars, additional staff, operating equipment, etc.), to bring the services up to the minimum acceptable level.
2. If the service is not provided at all, develop the costs that would be required to meet the minimum service level if the local unit were to provide the service on an individual basis.

C. What are the projected service costs?

Using the projected service demands developed in Section II, estimate the total cost to each local unit if it were to provide the service on its own for the next two to five years.

IV. DESCRIBE AND ANALYZE THE PROPOSED JOINT SERVICE

A. Determine service levels required

Using the data from the previous sections, determine the current service needs and the required levels of service for all study participants.

B. Fix responsibility for providing the service

Based on the required services and the current capabilities of the participants, determine which local unit is best suited to provide the service to the other(s). If participants will perform a portion of the total program, identify the responsibilities of each. Describe how the provision of the joint service would be organized and administered.

Identify with necessary detail, the following:

1. Identify the service to be provided. Discuss how it will be provided to the residents of the participating local units.
2. Identify which participant is responsible for what specific aspects of the service.
3. Indicate who (which office or department) is responsible for providing the service.
4. Establish the administrative structure for the joint service. Which department will be responsible for providing the service?
5. Determine the staffing level required, the number of employees, supervisors, clerical, support staff, etc.
6. Determine the salary and benefits costs using the current wages of the service provider.
7. Is there a need for all current employees of the participants or will some be available for other assignments?
8. Determine the type and amount of equipment required. What use can be made of the existing equipment and facilities of the participants? Identify additional equipment or supplies required.
9. What facilities are required? Where should they be located? Who will be responsible for operating and maintenance requirements?
10. Will any existing facilities become surplus or available for other use?

C. Identify potential problem areas

If policy or operational problems can be anticipated, identify them. For example, will Civil Service status be an issue? If employees are to be reassigned, what impact will this have? Do current labor agreements or contracts affect the ability to implement the joint program?

V. DETERMINE THE TOTAL COST OF THE JOINT SERVICE AND EACH PARTICIPANT'S COST

A. Total cost of the proposed service structure

Using the current cost data determine the total cost of providing the service on a joint basis as developed in Section IV. Include all direct and indirect costs.

B. Cost of the service to each participant

Determine the service level provided to each participant and develop an objective, quantifiable basis for calculating the annual cost of service for each participant. If participants will provide equipment or material from their current service programs, include the costs of these "in-kind" contributions.

VI. DEFINE SERVICE CRITERIA AND EVALUATE GOALS

A. Measure the service to each participant

1. Describe the criteria to be used to measure the amount of service provided to each participant.

2. Describe the criteria to be used to measure the quality or effectiveness of the service program.
- B. Does the proposed interlocal service meet the established goals?

Examples:

1. Reduction of service costs for participants
2. Improved levels of service for participants
3. Services provided which would otherwise be unavailable

VII. ASSESS THE ECONOMIC, ADMINISTRATIVE AND OPERATIONAL FEASIBILITY OF PERFORMING THE SERVICE ON A JOINT BASIS

A. Economic feasibility

Compare each participant's individual cost of providing the current service level to the anticipated cost of the proposed joint program. Is it economically feasible? If costs are higher than present, is the service level improved sufficiently to justify the joint effort?

B. Operational and administrative feasibility

1. Will the operational aspects of the proposed joint program deliver the service effectively and efficiently?
Have all administrative matters been addressed to the satisfaction of the participants?
2. What will be the public reaction to the joint provision of the service? What provision has been made for the residents to express their views?

NEGOTIATING BUSINESS TERMS

For the most part, there are few statutorily-mandated legal requirements for Interlocal Agreements. Most states only require that Interlocal Agreements be filed with the Secretary of State; so many important legal issues may be left out of an agreement. Further, most states require very little oversight in creating Interlocal Agreements.

Thus, prior to drafting the legal terms of an Interlocal Agreement, the parties should meet, negotiate and evaluate specific terms and costs of the agreement, and agree on the roles of each party. Specific terms are necessary for the parties to accurately analyze the benefits and costs of the agreement. Without negotiating agreement terms and costs prior to executing a long-term agreement, the parties will not know whether the agreement is the most cost-effective manner in which to provide a particular service.

It is too late to have cost analysis performed after the agreement is executed. Many agreements require long-term financial commitments from the parties. One party may be stuck in a bad financial arrangement with the other party for twenty or more years. The resentment and political pressure felt by the party in the bad financial position may ultimately jeopardize the success of the agreement. A growing problem in California is parties breaching Interlocal Agreements. The consequences of breaching a long-term agreement are very serious and costly.

It is important to realize that these negotiations are not just bargaining sessions, but are also opportunities for the exchange of information. It is essential that the parties disclose important information in a timely fashion, so that the parties generate the information necessary to make an accurate evaluation of the agreement early in the process. As part of this information exchange, each party should assess the other parties' risks and positions in

relation to such factors as the market, financing, statutory obligations, and pro forma financial assumptions, and evaluate and verify this data independently.

Plan on the need for several negotiation sessions over a period of time. It is not normally possible to conclude a sound, complex ~~interlocal~~ Agreement with one comprehensive negotiation session. Understand the other parties' time constraints. Keep special attention on dates such as when options elapse and when financing commitments expire. For example, many projects rely on grant funding that expires after a certain period of time; it is important that parties do not rush into an agreement in order to meet such deadlines. Have a schedule that both parties are aware of and continue to negotiate until reaching the agreed-upon cut-off date. Keep an accurate record of the other parties' commitments, perhaps by keeping minutes. The basis of the Interlocal Agreement might be prepared from such minutes.

One problem associated with Interlocal Agreements is that sophisticated parties with financial and technical expertise, such as large municipalities, might have advantages in negotiating favorable terms in relation to a small county or sanitation district. The smaller party may unknowingly enter into a long-term agreement that is not in its best interest. If a party does not have the expertise to properly and fully evaluate the agreement, outside experts should be hired to perform the analysis.

OUTLINE OF NEGOTIATION POINTS

The following is an outline of important considerations for parties to use in negotiating an Interlocal Agreement to create a wastewater utility. Following the outline points, are "model" agreement clauses that parties might use in drafting an Interlocal Agreement.

- a. Mission Statement. State the purpose in creating the Interlocal Agreement. Adopt a clear and precise mission statement. Define the objectives and write them down.

The _____ Board of Commissioners has instructed staff to proceed with forming a Regional Water and Wastewater Utility (Resolution _____) having jurisdiction in all of the unincorporated areas of the County.

- b. Cite General Agreement by the Parties to Proceed with the Project.

The parties have agreed that it is mutually beneficial and in the best interest for the County and _____ to actively cooperate and to implement the terms and conditions as set forth in the _____ Agreement.

- c. Cite Specific Terms Agreed To.

It is important to state that the parties agree to their respective roles in the project. With long-term projects the respective roles of the parties to the original agreement may be forgotten or change over the period of the agreement.

In addition, the actual parties may change over time. And finally, the position and power of perform in the agreement may avert future litigation.

The _____ is desirous of operating a wastewater facility and agrees that the County act as fiscal agent and construction grant

administrator for the _____ wastewater Facility
Project to be located in _____.

The County will support the enforcement of the mandatory connection policy by adopting and enforcing a Mandatory Connection Ordinance and General Discharge Prohibition Ordinance.

The County will assist residents in applying for funds for construction of residential hook-up and connection fees.

The County will search for funds to expand the wastewater system as the demand for service increases and system capacity nears maximum limits as indicated in the operator's manual.

d. Ownership & Management.

State ownership and management of the project facilities and name the responsible parties and/or lead agencies.

The County and the _____ have entered into a grant agreement that awards to the county ownership and management responsibilities and responsibility to act as fiscal agent and construction grant administrator for Anywhere wastewater projects in _____ County for the State of _____ (or Federal Agency). The County will own and manage the Wastewater Facility.

e. Authority to Enter agreement. List all statute(s) that allow the parties to enter into the agreement.

Include the statutes that allow parties to create a wastewater utility. Cite the Interlocal Agreement Statute. The parties must determine that the project is allowed under all laws. (e.g: environmental, state purchasing, and employment laws). Certain counties may not, for example, be able to incur the debt (under state law or under the State Constitution) necessary to fund the project.

The County has the authority under _____ Statutes Section _____

f. Funding, Source And Type. The type and source of funding should be secured prior to negotiation of the agreement. If funding is not secured, the agreement should include a contingent funding clause.

Federal (or state) appropriations have been made to the _____ to fund the construction of wastewater facilities, including the design and construction of wastewater collection and treatment systems in communities designated as *Anywhere* in the _____

Statement of Adoption/Creation of Specific Ordinances Necessary to Implement the Interlocal Agreement. State all ordinances, policies, and regulations that must be adopted by one or both parties prior to signing the agreement.

The County will adopt ordinances requiring mandatory sewer connections of the _____ water customers to the County wastewater collection system and establishing general discharge prohibitions

of toxic substances making it illegal to dump chemicals and substances that interfere with operations of the wastewater treatment facility.

_____ will set a policy and establish procedures to disconnect water service to customers delinquent in their payment of monthly sewer bills until all delinquent accounts are brought up to current status and for violations of the General Discharge Prohibition Ordinance.

_____ shall establish a policy and procedures requiring all _____ water customers within the wastewater service area as identified by the _____ Wastewater Facilities Master Plan, to connect to the wastewater collection line within one year of project completion.

h. Specific Terms of the Agreement. State the specific terms, including fees and costs of completing the project prior to signing the agreement. This will allow the parties to accurately compare bids for the project on an equal basis.

After the first year of project completion, _____ will charge an administrative fee of \$250,000 dollars for the County, for all new connections to the system up to the maximum connections the system is designed for all agreement(s) reached by the parties prior to entering the Interlocal Agreement should be referenced and attached as an addendum to the final Interlocal Agreement. Remember that a deal gone wrong can be a very difficult situation to untangle. If the deal does not “feel right” initially, proceed with further caution.

VI. IMPLEMENTING INTERLOCAL SERVICES

IMPLEMENTING INTERLOCAL SERVICES: WORKING TOGETHER

Pragmatism has a place in local government. Those who fail to follow this dictum may soon realize that some financial, political or legal difficulty could have been avoided if certain facts had been taken into account. This section addresses questions that should be considered prior to developing an Interlocal Agreement. These questions fall into four areas:

1. Legal considerations
2. Cost
3. Public reaction and policy issues
4. Assessing resources

When local governments make the decision to formally cooperate, the contract specifying the responsibilities of all of the participating governmental entities needs to be drafted. Each Interlocal Agreement will be unique to the specific situation and requires attention to detail.

This section identifies some of the potential elements found in an interlocal services agreement. The details of the agreement are of critical importance to the success of the activity.

QUESTIONS TO BE ANSWERED

LEGAL CONSIDERATIONS

Most states encourage their political subdivisions to cooperate. This is evidenced by the numerous statutes authorizing interlocal cooperation. The range of Interlocal Agreement or Joint Powers statutes is extremely broad. Joint Powers Acts or Interlocal Services Acts permit local governments to take joint action on providing a wide range of constituent services. Local governments enter into Interlocal Agreements to provide a wide range of services including regional transportation and sewage treatment. After ensuring that there is specific authority for the proposed joint service, the next area of concern is each participant's level of participation. The following questions may serve as a guide to the type of information needed prior to the negotiation of an Interlocal Agreement:

1. Are there any local ordinances that might affect an agreement for interlocal services?
2. Have you considered procedures or requirements for the hiring, release, or change of status of personnel affected by the agreement?
3. What about issues including liability, damages, allowable overhead costs, equipment and property disposition at the termination of the agreement?
4. Are there procedures for amending and monitoring the agreement? Under what conditions or circumstances can the agreement be terminated?
5. Does the proposed activity require the review and/or approval of another local or State agency?
6. Autonomous local authorities, boards and commissions created by and within a single local unit require the approval of that local unit to enter into an interlocal services agreement.

COST CONSIDERATIONS

The costs of implementing the Interlocal Agreement are of primary concern to all participants and their residents. There is always the potential that initial costs may increase until the service or activity is well established. All such possibilities should be thoroughly considered by all of the parties to the agreement. Questions to be considered are:

1. What are the personnel, operating and capital costs of the service to be provided?
2. What provisions should be made to accommodate inflationary costs?
3. If costs paid by the recipient(s) do not cover actual costs, what method can be used for adjustment?
4. What administrative costs should be part of the "cost of services?"

5. Should overhead costs include depreciation of assets, rent, utilities and liability insurance?
6. What is an acceptable method of determining costs and payments?
7. Will the costs be affected by additional participants?
8. Is it really cost-effective to join with other governmental units to provide the service?
9. If costs are higher than present, is the service level improved sufficiently to justify the joint effort?

PUBLIC REACTION AND POLICY ISSUES CONSIDERATIONS

Politics are part of any intergovernmental agreement. Citizen reaction and confidence has to be assessed in all of the participating jurisdictions. What will be the public reaction to the agreement in both the provider and recipient jurisdictions?

1. How will you deal with the residents who object to services being provided by a different agency?
2. To which jurisdiction would citizens complain about the service—the provider or the recipient?
3. How will complaints be addressed?
4. Do the participating jurisdictions understand that the provider may have to assume some policy control over the service?
5. What problems may arise during the transition of independent to interlocal provision of services?
6. Is there a mechanism to resolve the issues?
7. How will the interlocal provision of services affect local businesses? Is it necessary to make provisions to accommodate additional members?

ASSESSING RESOURCE CONSIDERATIONS

The impact of the Interlocal Agreement on local resources should be considered.

1. What changes might be needed to provide the service, including personnel, facilities, equipment, and organization or structural arrangements, and fiscal procedures?
2. Does the potential provider of the service have the capacity to provide the service at the anticipated level of service?
3. Will the present recipients of the service be shortchanged?
4. What impact will the Interlocal Agreement have on current staff?
5. Can present personnel and facilities be reallocated? Relocated?
6. Will the salaries of personnel be affected by the arrangement?
7. How will the Interlocal Agreement affect and be affected by local labor agreements?

STEPS IN EXECUTING AND IMPLEMENTING AN INTERLOCAL AGREEMENT

The decision as to whether or not to enter into an Interlocal Agreement should come as the final step in the comprehensive evaluation process. Following a clear, logical progression in arriving at the threshold question will ensure that the agreement covers the plan of operation satisfactorily and address the concerns of all of the participants. The first step in creating an Interlocal Agreement is to conduct a feasibility study to determine whether the performance of the function or service with another unit of local government is the most economical or desirable course of action. Develop a proposed plan of operations which details how the service or function will be provided on a joint or contractual basis. Using the feasibility study as a guide:

1. Begin negotiations between the parties considering the joint venture to identify the terms and conditions of the agreement.
2. Prepare the preliminary agreement, including all matters agreed upon and providing necessary legal safeguards for all parties concerned.
3. Perform a legal and substantive review of the preliminary agreement.
4. Hold a public hearing in each community to assess citizen feelings and concerns regarding the proposed Interlocal Agreement and the plan of operations.
5. Finalize any outstanding issues and reach a consensus on the terms and conditions in the final agreement.
6. Adopt an ordinance or resolution in each jurisdiction approving execution of the agreement and authorizing the appropriate officials to sign it on behalf of the governmental unit.
7. Execute the agreement and provide copies to all parties.
8. Implement the program as described in the agreement.
9. Evaluate the performance of the service on a regular basis.
10. Make modifications as necessary.

PARTS OF AN INTERLOCAL AGREEMENT

An Interlocal Agreement sets forth the roles and responsibilities of the participating local governments. It details the "who," "what," "when" and "where" of the service or activity to be undertaken and provided. The following is a generalized outline of elements that might be reflected in an Interlocal Agreement. Always refer to the specific statute of each contracting party for the requirements regarding the content and approval of an Interlocal Agreement.

1. Nature of the arrangement

- a. Description of parties involved
- b. Explanation of need for agreement
- c. Citation of legal authority
- d. Definition of terms

2. Exact nature and extent of services to be performed

- a. Measurable performance standards
- b. Specific assignment of responsibility

3. Service charges or formula

- a. Start-up and in-kind contributions
- b. Salaries and employee benefits
- c. Depreciation of equipment
- d. Overhead
- e. Office supplies
- f. Clerical work (support services)
- g. Capital expenditures
- h. Cost modification procedures

4. Administration

- a. Unit(s) responsible for services
- b. Control over responsible units
- c. Citizen inquiries and insight into future changes in the agreement and complaint resolution

- d. Addition of new participants
- e. Liability issues and responsibility

5. Fiscal procedures

- a. Budgets, including distribution of revenues
- b. Manner and time of payments
- c. Maintenance of reports and records

6. Staffing and personnel

- a. Procedures
- b. Terms
- c. Utilization of personnel
- d. Safeguards for Civil Service rights, privileges, immunities and fringe benefits

7. Property arrangements—use, control and maintenance of facilities

8. Monitoring and evaluation—evaluation schedule

9. Duration, termination and amendment, arbitration, question resolution

CHECKLIST FOR DRAFTING INTERLOCAL AGREEMENTS

- DEFINITIONS.** All technical terms to be used in the Interlocal Agreement should be precisely defined in a "table" of definitions. The agreement should also include all terms that have been defined in any applicable statute or ordinance.
- PARTIES.** The agreement should name all parties to the agreement, together with their capacity to enter into the agreement. Public entities should recite their authority to enter into Interlocal Agreements.
- RELATIONSHIP OF THE PARTIES.** The relationship between the parties to the agreement should be stated clearly. Typically, the statement will specify that the relationship is authorized by the Interlocal Agreement statute.
- PROPERTY.** The subject matter of the agreement should be clearly and thoroughly identified. An attachment specifically describing property or describing the subject matter of the agreement in detail should be provided and incorporated into the agreement by reference.
- AUTHORIZATION.** The state and local government legislation under which the parties are enabled and authorized to enter into this agreement should be cited. This is particularly important in the event a state agency is a party. The resolution or ordinance by which the agreement has been approved by the local government body should be cited.
- INTENT OF THE PARTIES.** The intent of the parties to be bound by the terms of the agreement should be clearly stated.
- RECITATION OF CONTRACTUAL TERMS.** The parties should specifically recite the duties each party agrees to bear. Because an Interlocal Agreement is treated as a special form of agreement, the terms of the duties and obligations each party is to receive from and provide to the other should be stated clearly. It is especially critical that the terms exhibit the agreement as consistent with—or as an exercise of—the Interlocal Agreement statute.
- NOTICE AND HEARINGS (or other form of public participation).** The date upon which any statutorily required public hearing was held should be noted, as well as all relevant findings resulting from such hearing.

other pertinent notice and hearing requirements should be recited

□ **APPLICABLE REGULATIONS.** The agreement should contain a precise statement of all regulations to which the project will be subject. The agreement should specify precisely which regulations will apply to the project regardless of future changes, or those which might be affected by the agreement. The statement should make it clear that regulations not specifically so identified will not be affected by the terms of the agreement, and will be subject to enforcement and change under the same criteria that would apply if no agreement were in effect.

- **APPROVAL AND PERMIT REQUIREMENTS.** As far as possible at the time the agreement is written, the parties should specify all discretionary approvals and permits which will have to be obtained before the agreement can proceed. Permits and approvals obtained prior to the execution of the agreement should be specified. Any and all conditions precedent to the obtaining of permits and approvals should be listed.

- **DEDICATIONS AND RESERVATIONS.** The agreement should provide, where appropriate, a statement of all reservations or dedications of land for public purposes as are required pursuant to laws, ordinances, resolutions, rules, or policies in effect at the time of entering into the agreement. The agreement should also state all reservations or dedications that are permitted under existing laws at the agreements are entered, and to which the parties have agreed.

- **DURATION OF THE AGREEMENT.** The agreement must usually provide for a termination date. It may also specify project commencement and completion dates, either for the project as a whole, or for its various phases. The agreement should specify that the termination date can be extended by mutual agreement, and that commencement and completion dates may also be extended at the discretion of the parties.

- **AMENDMENTS, CANCELLATIONS OR TERMINATION.** The agreement should recite the conditions under which the agreement can be amended, cancelled or otherwise terminated. In particular, the agreement should note that the parties may only terminate the agreement under circumstances spelled out in the Interlocal Agreement.

- **PERIODIC REVIEW.** The agreement should provide for periodic reviews of the project in order to determine compliance with the terms of the agreement. The party responsible for performing such reviews should be identified and specific times for such reviews should be stated. A procedure should be developed and specified for dealing with situations in which minor and major noncompliance is discovered.

- **PROGRESS REPORTS.** If the parties agree, the agreement should specify that progress reports be made available to the parties at specified intervals, or upon completion of specified phases of the project, or at whatever time periods the parties choose.

- **REMEDIES.** Remedies for breach on the part of either party should be provided. Specific remedies for specific breaches should be stated, if possible. The agreement should include a statement clarifying whether remedies stated in the agreement are to be exclusive, or whether other statutory or common law remedies will also be available.

- **ENFORCEMENT.** The agreement should specify that it shall be enforceable, unless lawfully terminated or cancelled by any party to the agreement or any party's successor in interest, notwithstanding any subsequent changes in any applicable law adopted by the parties, that alters or amends the laws, ordinances, resolutions, rules or policies frozen by the agreement, except as noted above.

- HOLD HARMLESS CLAUSE.** If the parties so agree, the agreement should contain a clause whereby the parties hold each other and their agents harmless from liability for damages, injury, or death that may arise from the direct or indirect operations of the parties in carrying out the terms of the agreement.

- INSURANCE BONDS.** Any insurance coverage required and/or secured by either party to the agreement, and affecting any aspect of the project, should be specified. Existing performance bonds should be listed in detail, as well as bonds not yet obtained but required as conditions precedent for final approval of the agreement. Applicable ordinances relating to bond requirements should be cited.

- SEVERABILITY CLAUSE.** The agreement should include a clause specifying that the provisions of the agreement are severable, if the parties so agree. Any limitations upon the severability of any particular clause or clauses should be clearly stated.

- MERGER CLAUSE.** A merger clause or other statement should be provided specifying that the terms of the agreement as stated in the written document are both a final and complete expression of the parties' intentions.

- STATEMENTS OF INCORPORATION BY REFERENCE.** All documents related to the agreement or otherwise attached or appended thereto should be expressly stated to be incorporated into the agreement by reference. These might include lists of conditions, schedules of completion for public facilities, imposition of dedications, impact fees, and development plans and specifications.

- COOPERATION.** The agreement should include a statement of the extent to which the parties will cooperate in their efforts to carry out the terms of the agreement.

- SUBSIDIARY OR COLLATERAL AGREEMENTS.** If the governments have obtained additional agreements relating to the project from any nonparty agencies or persons, such agreements and the parties thereto should be specified.

- CONFLICT OF LAWS.** Procedures should be specified for dealing with situations in which the parties to the agreement are in different countries or in different states. Choice of law provisions should be stated in the agreement specifying which law governs the terms and conditions of the agreement and whether the law preempts or otherwise affects local laws.

TEN STEPS TO A MORE EFFECTIVE INTERLOCAL AGREEMENT

Interlocal Agreements have proven to be useful in all types of projects. They are particularly beneficial if the government does not expect to 1) file for all permits immediately following receipt of the city/county approvals required to proceed with a project and 2) immediately perform substantial work and incur significant liabilities in good-faith reliance on those permits.

The following 10 practical steps in negotiating Interlocal Agreements deserve particular attention from drafters of Interlocal Agreements.

STEP ONE: Determine the attitude of elected officials of the city/county toward Interlocal Agreements in general. Some jurisdictions, for a variety of reasons, have taken a categorical position against them. If the project you are considering merits an Interlocal Agreement, determine early on, from a member of the city/county staff or an elected official, whether the jurisdiction would enter into such an agreement.

STEP TWO: Having ascertained that the local jurisdictions are receptive to entering into Interlocal Agreements, try to get a sense of the attitudes of agency staff (director, city manager, and/or city attorney) toward your project.

STEP THREE: Determine what you can expect the city/county to demand as "consideration" for entering into an Interlocal Agreement. Cities and Counties that have had little experience with Interlocal Agreements frequently approach the consideration issue haphazardly. More and more jurisdictions are acknowledging the fact that Interlocal Agreements can be invaluable to another governmental entity and that they can demand significant consideration for the agreement to grant rights to the other party.

STEP FOUR: Establish a good working relationship with city/county staff. This step cannot be overemphasized. Negotiations can, and frequently do, go on for months. Creative, constructive solutions and excellent working relationships are needed to push agreements through the approval process.

STEP FIVE: Use the local jurisdiction's form of Interlocal Agreement to the extent possible, while adding provisions that are unique or essential to your project. Some jurisdictions have adopted "standard form" agreements. Other jurisdictions will permit entities to enter into almost any type of agreement. Under the latter circumstances, using another jurisdiction's standard form can establish immediate credibility with city/county staff.

STEP SIX: Be reasonable when negotiating the terms of an agreement. The more one agency requests from the other entity to the agreement, the less comfortable the local jurisdiction feels. Prepare a reasonable estimate of the costs needed to develop a project and then add a buffer to allow for contingencies. Rely on a well-drafted force majeure provision to give you an allowance for additional expenses that may be encountered.

STEP SEVEN: Carefully draft the agreement, which is a living document for its full term. California's Joint Powers Agreement Statute requires the entity to show that it continues to be in good-faith compliance with the terms of the agreement annually.

STEP EIGHT: Beware of any demand that the agreement include a provision stating that the city/county will not be subject to monetary damages should it breach the agreement. This provision is frequently present in initial drafts. If it remains in the final agreement, the only remedy the other entities have if the city/county violates the agreement is to seek an injunction ordering the jurisdiction to comply. Without some type of monetary damage provision as a disincentive, the city/county risks little in flagrantly refusing to comply. The best approach is to negotiate monetary damage provisions that provide an incentive for jurisdictions to comply with the terms of the agreement.

STEP NINE: Carefully negotiate termination provisions into the agreement. If you anticipate entities will attempt to terminate their participation in the project, negotiate a provision that prevents an entity from terminating participation before completion of the agreement or, if possible, a damages or reimbursement clause.

STEP TEN: Be aware that an Interlocal Agreement can cover an additional discretionary act that might be needed in the future. For example, it is possible to negotiate limitations on the conditions that are placed on a government to finance a project following approval of the Interlocal Agreement.

Although governments must also realize that there are numerous other caveats and pitfalls, these 10 frequently encountered issues should be at the top of every government's Interlocal Agreement checklist.

CREATION OF NEW ENTITY USING JOINT POWER AUTHORITY

The authority of communities to contract between themselves for municipal services (water, sewer, refuse collection, police and fire) is the first step in cooperative activities between two communities. The second step is the formation of a new agency that provides the services in question to both entities. The second step is farther along the road toward regionalization and treating the larger population in the community equally in terms of rates and services. We present the information on the formation of new entities because the next step beyond an Interlocal Agreement for utility services is the regionalization of such services.

JOINT POWER AUTHORITY CREATION OF A NEW AGENCY

A Joint Powers Authority or Agency is created by formal agreement. It is an independent agency that provides services under a separate governing board with separate and distinct powers. None of the participating agencies provides the service. Employees, fixed assets and land belong to the Joint Powers Authority and not to the parent agency. A transit authority funded by separate agencies, but managed independently, is an example of a Joint Powers Authority.

In creating a Joint Powers Authority the parent agencies agree to mutually abdicate their authority in a specific service area and grant their authority exclusively to a new entity. For example, under §6500 of the California Administrative Code, counties, cities, special districts and other public agencies are allowed to enter into agreements that create new and distinct authorities. These authorities lack the power to levy taxes, but they do have the ability to exact revenues through agreements with the member agencies. The new authorities have an independent operating board of directors or commission that has the powers inherent in all of the participating agencies. These participants create an independent agency that is solely responsible for the services it delivers.

As an example of such an authority, consider two public agencies, one currently providing sewage treatment services to city and county residents, the other having little or no sewage treatment capabilities. The two parties may agree to create a joint sewage treatment authority, wherein both parties contribute the necessary resources and the capital assets. Personnel may become employees of the new authority, and, with a new operating board, policies may be

independently set to create sewage treatment services for both jurisdictions. This is distinctly different from a Joint Powers Agreement, in which the initial provider of the service maintains the staff, property and policy discretion and enters into an agreement only with a second or third party to provide services under specific terms and conditions.

The creation of a new authority or agency requires restructuring of existing policy, including budgeting, personnel and decision-making. The demand to relinquish control is far greater than in the case of Joint Powers Agreements. The structural adaptation of the parent agencies is frequently more permanent in creating a Joint Powers Authority than in creating a Joint Powers Agreement.

STEPS REQUIRED TO CREATE JOINT POWERS AUTHORITY

The steps required to create a Joint Powers Authority as an independent governmental entity are much greater than that required of a typical Joint Powers Agreement. The creation of a new authority requires that specific organizational issues of the parent agencies be resolved prior to creating the new entity. The first issue to be resolved is the creation of an independent board. Creation of an independent board is provided for in the Joint Powers Authority agreement at the time the agency is created. The board is granted specific powers accompanying its designation as an independent public entity, separate and apart from the parent bodies. The purpose is stated within the agreement and includes whether or not the agency can acquire public property; whether it can construct, renovate or by contract have built public facilities; whether it can hire new staff or contractors; and whether some specific agency is designated as an administrative agency. In some cases this can be one of the parent agencies, and in rare cases it may be a third party designated as the administrator of the program. The powers of the authority can be general or specific. The term of the authority must be established. Provisions for how the board must meet and conduct business, provide notices to the public, document its actions, specify its quorum, and specify the officers and duties, all must be outlined before a Joint Powers Authority can be in effect. In addition, Joint Power Authority Agreements usually identify whether or not the Joint Powers Authority has the authority to incur debt.

Specific functions such as accounting, recording of documents and legal advice are usually separate sections of the agreement. Provision for the officers who provide those services or functions must also be included. In most cases, a Joint Powers Authority must provide for its ultimate disbandment and how the assets, both liquid and capital, will be distributed at the time the Joint Powers Authority is terminated.

If new employees are involved in the Joint Powers Authority or employees are transferred from an existing agency, then significant personnel and labor-relation activities must also be provided for in the Joint Powers Agreement or be developed shortly after the creation of the Joint Powers Authority in the form of personnel rules. These rules include whether or not the Joint Powers Authority is responsible wholly for retirement and workers' compensation, and whether or not other obligations associated with employment are the responsibility of one or more of the parent agencies. In addition to employees, if new facilities are required, or if facilities existing in one parent agency need to be transferred to another agency, then the Joint Powers Agreement may also specify conditions for the transfer of facilities and assets, conditions for the purchase and acquisition of assets, and ultimately conditions for the disposition of assets in the event the Joint Powers Authority is disbanded.

The Joint Powers Agreement also has to establish budgetary guidelines and rules for policy-making prior to the creation of the Joint Powers Authority. While specific rules related to budgeting may vary, two major categories can be identified. In most cases, the Joint Powers Authority has the ability to adopt its budget independently. Once adopted, that budget may be transmitted to the parent agencies within a specific time frame and under certain conditions. The parent agencies are often responsible for their share of a specified contribution to the Joint Powers Authority. The shares may be developed through formulas that reflect agency size, number of constituents served, financial contributions or just simply political weight.

When a Joint Powers Authority is given significant financial and policy- making independence, the design of the board of directors becomes a critical decision in the formation of the Joint Powers Agreement. Boards are usually created with a one-agency, one-vote structure or they utilize some form of weighted voting that allows one or more of the agencies a more significant say in the policy and budget outcomes. It is through the creation of the board that an agency's share of the budget or influence on policy-making is determined.

Financing authorities that are aimed at financing a specific project, such as a regional sewage treatment plant, illustrate the use of Joint Powers Authorities for the specific purpose of jointly financing debt. In these cases, the projects themselves are specified within the Joint Powers Agreement and the Joint Powers Authority is restricted to undertaking that project alone. In these cases, the Authority usually expires at the time that the term of the indebtedness ends. These types

of Joint Powers Authorities may include some restrictions on members which prevent them from being able to pull out of the agreement until the terms of the indebtedness are completed. When the Joint Powers Authority has a broader function, usually the terms of the Joint Powers Agreement are more generally defined.

The above issues all need to be resolved before a Joint Powers Authority is created. Because significant financial obligations can be incurred and because important policy areas can now be transferred to a Joint Powers Authority, significant autonomy and independence is lost by the parent agencies. The creation of a Joint Powers Authority, therefore, may be preceded by months of deliberation, negotiation and planning. Once adopted, the initial implementation phase may take months to put in place. Due to the significant investment of resources required to put a Joint Powers Authority in place, few agencies consider the use of a Joint Powers Authority lightly.

Appendix A

Model Interlocal Agreement

This Agreement is entered into on this _____ day of _____ 200__, between _____ and _____.

WITNESSTH:

WHEREAS, the _____ and _____ have identified a continuing need for _____ assistance to meet sewage treatment needs within the _____ and desires to contract with the _____ for certain _____ and _____ services within the _____ areas: and

WHEREAS, the _____ and _____ have the authority to enter into this agreement pursuant to _____, or any other the interlocal /Joint Powers Agreement Act; and

NOW THEREFORE, in consideration of the terms and conditions contained herein, the _____ and the _____ agree as follows:

“ City” means _____

“Town” means _____

“Sewage/Water Treatment Works” means _____

The _____ shall provide the _____ for processing and billing any sewage/water treatment connection application received by the _____ on or after _____, 200__. As the agent of the _____, the _____ shall process to completion any sewage/water applications for which it received a connection application and accompanying fee prior to _____, 200__, pursuant to the Interlocal Agreement between the parties dated _____, 200__. The _____ shall supply the _____ with a list of such applications that were accepted on or before _____, 200__.

Approximately one year from the date of this agreement, the _____ and the _____ shall meet to review the status of the listed connection applications and determine whether or not the responsibility for continued

processing of the applications should be transferred to the _____. Any requested applications shall be made to, and administered by the _____.

The _____ agrees to compensate the _____ for staff time spent processing sewage/water connection applications for applications within the service area after the service area was finalized, _____, 200 _____. This compensation is for staff time not already compensated through the previously agreed upon connection fees received by the _____ including public hearings, meetings, and all consultations with the _____ requested by the _____, such as staff meetings, telephone conferences and site visits (in accordance with _____ ordinance).

The _____ shall bill the _____ for these services at the following hourly rates based on the current salaries of the various staff positions on a per hourly basis to include direct and indirect costs.

The _____ shall document in an itemized bill the number of hours spent by staff conducting business on behalf of the _____. Within thirty (30) days of receipt of the itemized bill, the _____ shall remit payment to the _____.

OBLIGATIONS: The _____ will do the following:

- A. Cooperate with the _____ to provide information to potential system customers concerning sewage/water connection fees, connection charges, and utility rates and deposits for each connection;
- B. Process sewage/water connection applications at _____ or as otherwise arranged, and accept as water/wastewater customers all qualified applicants, who comply with _____ utility customer requirements such as payments of deposits and delinquent account balances owing the _____ or the _____;
- C. Assess and collect the entire amount of the _____ water/sewage connection fee, which fee is presently \$ _____ per residential connection, from all system customers who do not qualify for grant funding for this fee and for all other _____ system connection charges that might be grant funded prior to connection to the system

D. Bill customers, who connect to the system in accordance with the _____ then current water/wastewater rates for single family residences, which rate is presently \$ _____ per month, or for other applicable rates for commercial or multi-family residential connections;

E. Collect and otherwise process monthly billings and handle customer inquiries.

OBLIGATIONS: The _____ will do the following:

A. Grant to the _____ exclusive right to process water/sewer hook-up fees at Utility Offices or as otherwise arranged, and accept as water/wastewater customers all qualified applicants;

B. Adopt and thereafter enforce an Ordinance prohibiting the discharge or introduction of hazardous materials, and which discharge or introduction violates _____ ordinances, into any sanitary sewer or potable water system owned and or operated and maintained by the _____ outside the _____ limits. Said ordinance shall adopt any appurtenant ordinances and any subsequent revisions to it:

C. Assist system customers for so long as grant funding is available to apply for and receive grant funding to pay for applicable _____ water/sewer connection and other connection charges.

If taxes are used in lieu of revenue, payment between the parties hereto for services provided for in the agreement shall be that commencing in fiscal year 200__, pay to the _____ 100% of the amount of money generated by the _____ water/wastewater utility as applied to the assessed valuation of the assessable property as shown on a plat of the service area. Said payments shall be made quarterly as collected each year so long as this agreement shall be in effect.

As a condition of accepting the responsibility of processing applications and billing utility customers the _____ shall be authorized to;

A. Disconnect or refuse to reconnect utility service for any of the following reasons:

- (i) failure to meet the applicable provisions of _____ or _____ ordinances;
- (ii) violation of the regulations pertaining to utility service;
- (iii) nonpayment of utility bills;

- (iv) tampering with any meter, seal, or other equipment controlling or regulating the supply of utility service;
 - (v) willful or negligent waste of utility service due to improper or imperfect pipes, fixtures, appliances or otherwise on the customer's side of the system;
 - (vi) theft or diversion and/or use of utility service without payment;
 - (vii) vacancy of service premises
- B. To decline or cease to furnish utility service to any person or customer who may be in debt to the _____ for any reason except for property taxes and special assessments;
- C. To file a utility lien on the service property;
- D. To pursue any other collection remedies in accordance with applicable law.

This agreement may be terminated without cause by either party on written notification of one hundred eighty (180 days) to the other party. In the event of termination, the _____ will contract with a third party acceptable to the _____ to assume billing and [processing of applications for utility connections. If the _____ is unable to hire a mutually acceptable third party to bill and process applications, then the _____ shall take over billing and processing responsibilities prior to the expiration of the one hundred eighty (180) day period.

The _____ shall indemnify and hold the _____ harmless from any claim for personal injury or property damage including attorney fees resulting from the negligence of the _____. Its employees or agents under this agreement. In the event that the _____, its employees or agents were also negligent, then the _____ is relieved of its obligation to defend the _____, and the obligation to indemnify and hold harmless is limited to the amount representing the comparative share of negligence as between the _____ and the _____.

By entering into this agreement, neither party waves sovereign immunity defenses or any other limitation of liability. No provision of this agreement is intended to modify or waive any provision of the _____ Tort Claims Act as amended.

A. The _____ provides insurance coverage for its liability exposure through a public liability fund (self-insured or otherwise). So long as the agreement is in effect, the _____ will maintain an adequate level of funding to cover its liabilities under the _____ Tort Claims Act.

B. The _____ provides insurance coverage for its liability exposure through a public liability fund (self-insured or otherwise). So long as the agreement is in effect, the _____ will maintain an adequate level of funding to cover its liabilities under the _____ Tort Claims Act.

This agreement shall not be amended except by written instrument executed by the parties.

This agreement contains the entire understanding between the parties concerning the subject matter hereof. No prior understandings, whether verbal or written, between the parties or their agents are enforceable unless included in this agreement.

The _____ and the _____ agree that all disputes or disagreement arising under this agreement that are not resolved at the staff level by the parties in conjunction with assistance from the _____ and the _____ who shall meet jointly to attempt to resolve such dispute, within thirty (30) days each party shall appoint a representative who together shall, within fifteen (15) days, meet and agree to the appointment of an arbitrator who shall proceed to arbitrate the dispute. Such arbitrator's decision shall be binding and final.

The parties agree that no employee of the _____ shall have any personal, financial, or beneficial interest whatsoever in the services or project described herein and the _____ further agree(s) not to hire or contract for the services of any employee or officer of the _____ that would be a violation of the Revised Applicable Code, Chapter _____, Article _____.

Executed on the date first written above.

Signatories to agreement below: