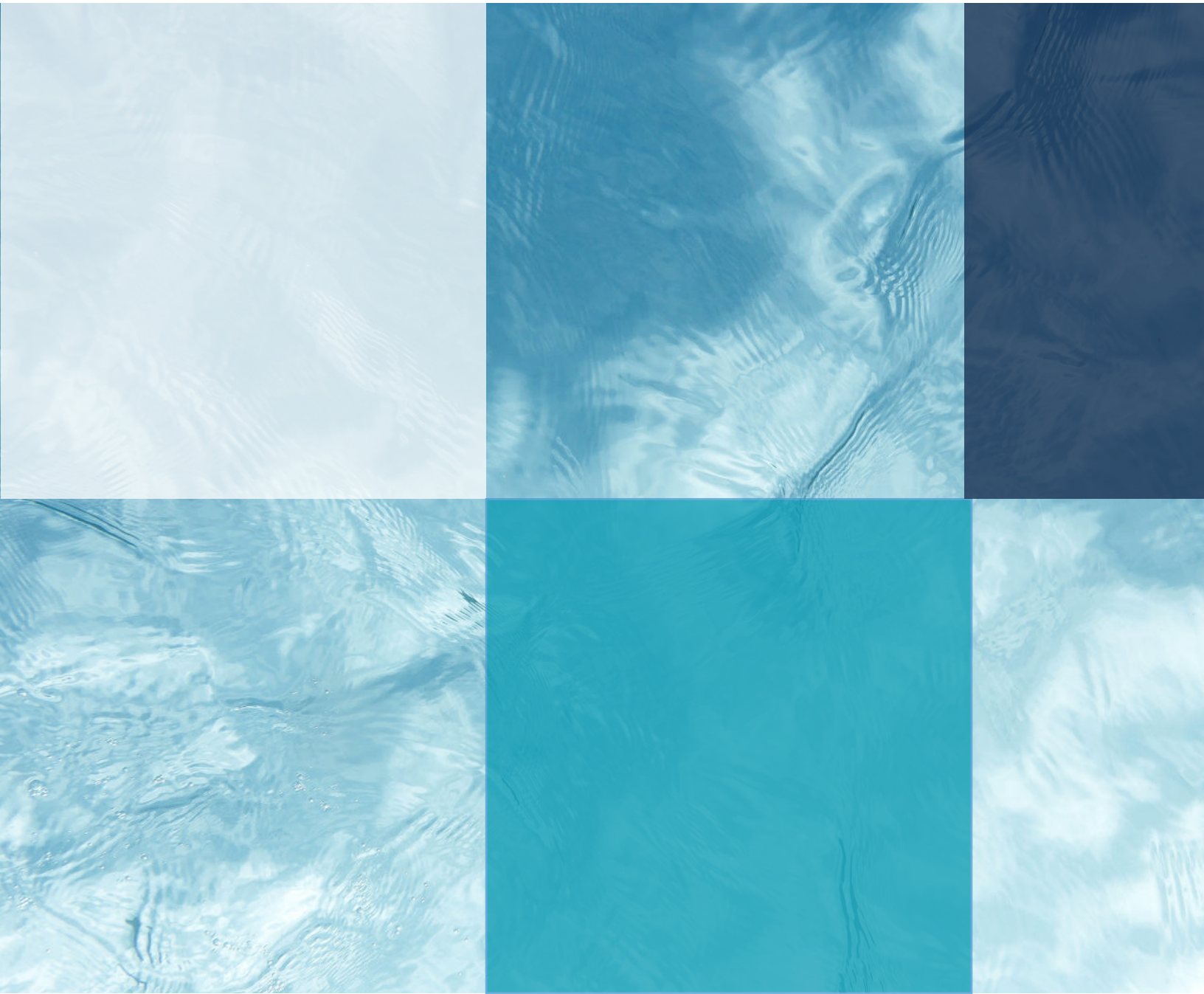


Crafting Interlocal Water and Wastewater Agreements



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Table of Contents

- Acknowledgements.....4
- About the EFC.....4
- Introduction..... 5
- Topics for Consideration..... 7
 - Ambiguities Related to Current and Future Service Areas..... 8
 - Annexation and Growth..... 8
 - Precisely Defined Key Usage Thresholds and Limits..... 9
 - Meter Maintenance and Ownership Responsibilities..... 10
 - Water Quality Concerns..... 11
 - Transferability of Wastewater Pretreatment Requirements
and Industrial Discharge Permits..... 12
 - Compliance of Wastewater Agreements with State
and Local Ordinances and Regulations..... 12
 - Water Pressure..... 13
 - Adequate Payment for Use of Capital..... 14
 - Changes to Capital Costs Associated with
Expanding Capacity Needs..... 17
 - Calculation and Modification of Commodity Charges..... 17
 - Consideration of Impact of Retail Rate
Increases on Wholesale Rates..... 18
 - Reselling Water or Capacity..... 20
 - Communicating and Handling Supply Interruptions
or Shortages..... 20
 - Transferability of Conservation Status, Measures,
and Emergency Reduction..... 20
 - Non-Revenue Water..... 24
 - Excessive Inflow and Infiltration..... 24
 - Variations Due to Emergencies..... 25
 - Ground Rules for Negotiating: Financial Mediation..... 25
 - Addressing Failure to Pay for Wastewater Systems..... 26
 - Looking Ahead—Leaving Open the Potential for Consolidation..... 27
- Conclusion..... 27
- Appendix: Examples and Sample Language..... 28

Acknowledgements

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About the EFC

The EFC is part of a network of university-based centers that work on environmental issues, including water resources, solid waste management, energy, and land conservation. The EFC partners with organizations across the United States to assist communities, provide training and policy analysis services, and disseminate tools and research on a variety of environmental finance and policy topics. The EFC is dedicated to enhancing the ability of governments to provide environmental programs and services in fair, effective, and financially sustainable ways.

Learn more at efc.sog.unc.edu.

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Introduction

In 2009, the Environmental Finance Center at the University of North Carolina at Chapel Hill (EFC) released a compilation of “tips” for those tasked with preparing or revising water interlocal agreements during a time in which water partnerships across the state were on the rise. Nearly a decade later, the trend has not only continued; it has increased.

Population shifts, flooding and drought, changes in industry water and wastewater needs, and the continuous move toward a reduction in overall water use has continued to create partnership opportunities for large and small systems across the state. For large urban systems anticipating future growth, increased and more economically attained water supply security may be accomplished through partnering with surrounding communities. Small town water and wastewater systems struggling with increasing costs of managing, upgrading, or repairing damage due to significant weather events are increasingly looking towards partnerships with other systems to increase access to revenue and manage costs. Systems that find themselves with excess capacity due to the loss of large industrial customers may view selling water or wastewater services to neighboring communities as the only realistic way of taking advantage of their capacity and plugging revenue holes. Additionally, general economic declines and natural occurrences such as flooding have continued to drive water and wastewater customers to relocate making their systems no longer financially sustainable without some type of partnership.

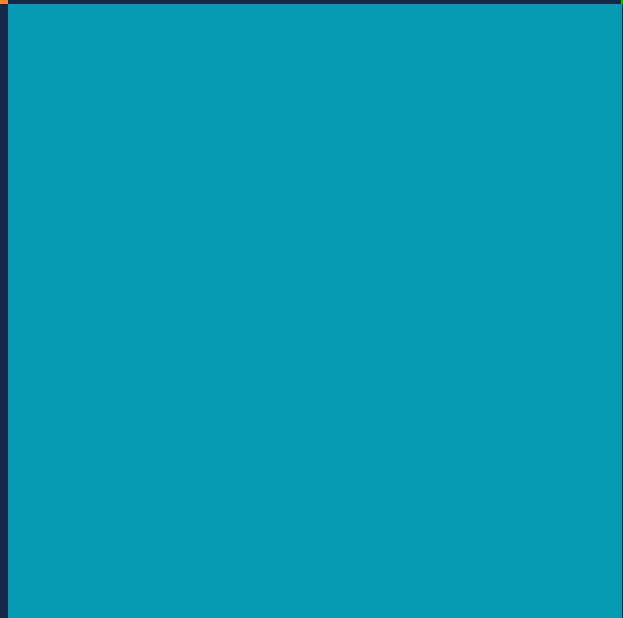
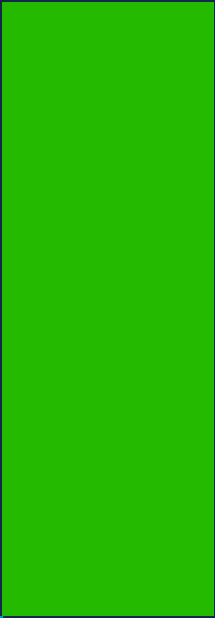
The number of models for creating water partnerships is as numerous as the number of reasons systems have for pursuing them. This guide is focused on the most common tool for creating water partnerships in North Carolina, which is an interlocal agreement. There are hundreds, if not thousands, of these agreements in place throughout the state, ranging from simple agreements intended to cover sale of water by Community A to Community B, to a complex series of individual agreements that when taken together can be used to create a consolidated regional utility model.

For the past 20 years, the EFC has provided direct assistance to communities developing partnerships through these agreements and has reviewed agreements from communities throughout the state. We have identified a collection of governance, financial, and technical issues that seemed to us to be integral to the success of these agreements. Where the issue in question was addressed improperly or ignored all together, there has been a greater likelihood of tension or problems between the partners. Many of these issues are not easy issues to address. In fact, the absence of clauses dealing with these issues is at times intentional, and is based on the understandable desire of the partners to avoid addressing an issue that could potentially jeopardize the entire agreement.

The first version of this guide focused almost exclusively on drinking water agreements. This new and updated document contains a number of additional topics and also addresses many specific issues that are unique to wastewater agreements. We know that many of these topics are challenging to address, but we believe they should at least be considered during the preparation of almost every interlocal agreement.

While we have attempted to address many of the crucial management issues we have encountered, there will always be additional issues that may arise. Additionally, while some of the topics are somewhat technical in nature, most of the topics in this document (and challenges we've encountered in our work) revolve around managerial, governance, and financial concerns.

Finally, this document is intended to identify key issues and provide ideas for consideration, but it is not intended to provide model contractual language, and—as is the case with any legal agreement—local governments will need to consult with their attorneys when drafting or modifying their interlocal water and wastewater agreements.



Topics for Consideration

A. Ambiguities Related to Current and Future Service Areas

What should be included in agreements?

When two or more service providers agree to buy or sell water services to one another, it is extremely important to remove as much ambiguity as possible about current and future service areas. Ideally, this can be done by defining the service area boundaries for each partner in a separate service area agreement prior to entering into a sales agreement. Alternatively, detailed information on service area boundaries can be included in the sales agreement itself. At a minimum, the sales agreement should include language that articulates which partner will have authority to serve any unserved area within close proximity to any of the partners, as well as language that clarifies the process for changing or expanding service areas in the future.

Why is it necessary?

Ambiguity concerning unserved areas can lead to problems ranging from competition to serve new growth to the implementation of uncoordinated and duplicative line extensions. Discussing and negotiating these boundaries can be difficult, and partners may be tempted to avoid addressing this issue, especially if at the time of entering into the agreement there does not appear to be debate over boundaries.

B. Annexation and Growth

Annexation law in North Carolina has changed since we originally published this guide in 2009. In fact, in 2011, the state legislature made significant changes to the involuntary annexation statutes, which now require voter approval for involuntary annexations. This change is summarized well in a blog post by Frayda Bluestein found here: <http://go.unc.edu/annexation-reform>. Local governments should consult the current state statutes and their staff attorneys in evaluating whether provisions in their existing agreements need to be modified to reflect such statutory changes.

Addressing anticipated or potential annexation is often a necessary component of water and wastewater service agreements, including bulk sale agreements. Annexation as it relates to water and wastewater agreements includes a number of challenging issues. Cities and towns may have diverse policies related to who is eligible to receive water and wastewater services, and the associated costs for services. While some municipality owned utilities may agree to provide water or wastewater service only to areas that agree to be annexed, others will provide such service to any entity asking for it, but may require that entity to pay a much higher price for the same service.

What should be included in agreements?

Annexation issues can and should be addressed at the same time service areas are defined and clarified, as is discussed above. In some situations, addressing

annexation requires additional language. Specifically, language should be included as to how and when annexation is anticipated to take place. Additionally, there should be language to clarify any costs associated with the annexation and how, if at all, annexation will affect the rates for water or wastewater for the annexed area.

Why is it necessary?

The ability to provide water and wastewater service is often intertwined with carrying out voluntary annexations and many municipalities are very wary of the impact a partnership agreement could have on their growth strategies. Additionally, disputes may arise as to the costs associated with the annexation, and the resulting impact of the annexation on other partnering entities. Along those lines, where an annexation plan or anticipated strategy is not addressed, there may be duplicated facilities by different service providers intended to serve the same area.

C. Precisely Defined Key Usage Thresholds and Limits

Agreements are often started during a time when the seller has excess capacity and the purchaser does not need all the water or wastewater capacity it purchases. For this reason, there is often a lack of urgency related to setting time defined or maximum thresholds in the contracts. However, clearly defining thresholds and limits is essential to a successful long-term agreement.

What should be included in agreements?

Agreements for the sale of both drinking water and wastewater services should identify maximum purchase amounts, including specifications as to whether the limit refers to an average over the billing period, or the actual amount over a 24 hour period (or other time period). Additionally, the agreement should identify what a contracting entity should do if a situation arises which requires exceeding the maximum limit, as well as a process for how, if at all, maximum limits can be modified in the future.

Define Key Usage Limits in Four Steps

- 1 Make agreements for both drinking water and wastewater.
- 2 Identify maximum purchase amount.
- 3 Define the time period the limit applies to.
- 4 Specify how to modify the maximum limit in the future.

Why is it necessary?

Ambiguities in maximum threshold thresholds and limits can lead to problems and disputes between contracting entities. For example, the contract might specify that the seller agrees to provide 200,000 gallons per day of drinking water or wastewater treatment to the purchaser without clarifying whether the limit refers to the average over the billing period or the actual purchase amount over one 24 hour period.

D. Meter Maintenance and Ownership Responsibilities

What should be included in agreements?

Meters, especially larger meters that typically separate water sellers from water purchasers, require maintenance and periodic replacement. All contracts should have basic language about ownership of the meters. There should also be specifics related to the types of meters, and any other equipment needed for use and/or location of such meters. Furthermore, there should be language that specifies who will read, maintain (including periodic calibration), and replace meters if necessary, and how any costs will be shared, if at all, among partners. When possible, the agreements can also include language for how water usage will be calculated in the event of a meter failure.

Four Meter Maintenance and Ownership Considerations

- 1 Include basic language about meter ownership.
- 2 Have specifics on meter types and other related equipment.
- 3 Know who will read, maintain, and replace the meters.
- 4 Show how costs will be shared and what to do if there is meter failure.

Why is it necessary?

Just as “fences” make good neighbors, in some respects “meters” make good water partners. Meters provide accountability and, in most cases, are what drives financial payments between partners. Large meters can be expensive and require routine testing and maintenance and it is important for these costs to be clearly assigned at the outset to avoid future confusion. Additionally, it is a good idea for the design of the metering station to be mutually agreed upon by both parties.

E. Water Quality Concerns

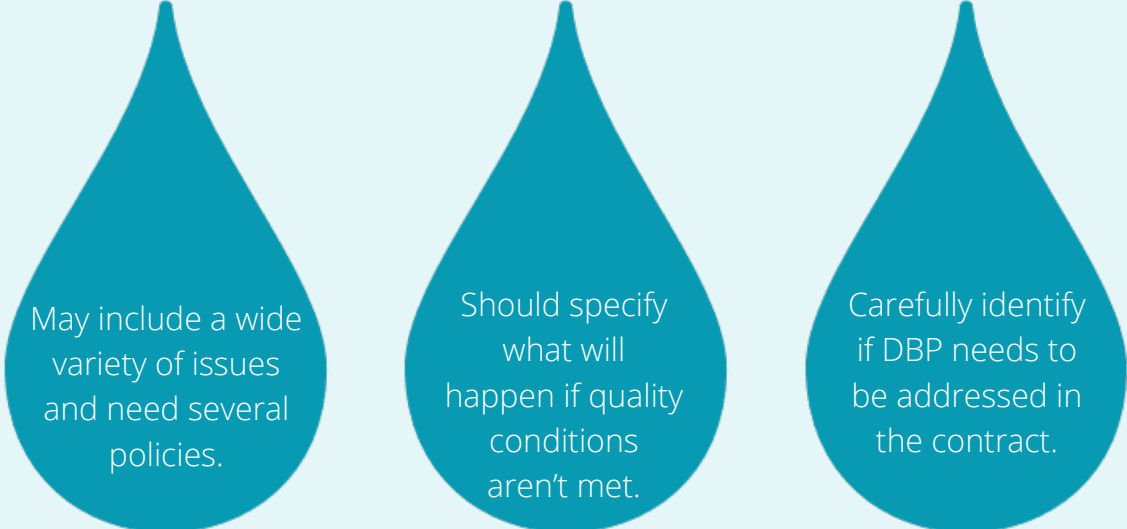
What should be included in agreements?

Water quality problems for water and wastewater systems can range from large scale issues that pose immediate threats to public health to small scale concerns related to taste and odor issues. At a minimum, all contracts should lay out a basic communication requirement between the purchaser and seller that articulates a process for how water quality concerns should be communicated. Given the variation in the types of problems, where possible, the agreement should include different policies to address different types of problems.

Many agreements state that the seller will be responsible for providing water that meets minimum standards to the purchaser, but do not specify what occurs if this condition is not met. Clarity should be included as to whether the purchaser is eligible for some type of refund or credit in the event that water quality conditions are not met, or that such an occurrence should be considered to be a basic risk that all purchasers have to accept.

Additionally, many systems should pay special attention to water quality problems that can develop within distribution systems such as the concentration of disinfection

Water Quality Concerns



May include a wide variety of issues and need several policies.

Should specify what will happen if quality conditions aren't met.

Carefully identify if DBP needs to be addressed in the contract.

by-products (DBPs). Anyone negotiating an agreement that covers the sale of water from a dense urban system to a sprawling rural system should carefully study the issue of DBP formation before entering into an agreement.

Why is it necessary?

Most contracts say that water will meet minimum criteria at the point of sale, yet the layout of many distribution systems may make it all but impossible for the water to make it to the final customer under compliance. Purchasers may find that, as time passes and regulations get more stringent, they are forced to carry out actions they did not account for when they first entered into the agreement. They might have to carry out significant water line flushing or construct supplemental treatment facilities. While it may not be the seller's legal responsibility, the health of the agreement ultimately depends on both parties understanding all of the implications of their agreement and including that understanding in the text.

F. Transferability of Wastewater Pretreatment Requirements and Industrial Discharge Permits

What should be included in agreements?

When a purchaser decides to purchase wastewater services from a seller, industrial customers in the purchaser's jurisdiction are likely to have to meet the same pretreatment and discharge requirements. If this is the case, this should be stated in the agreement as specifically as possible along with a clear description of the respective enforcement responsibilities of the buyer and seller.

G. Compliance of Wastewater Agreements with State and Local Ordinances and Regulations

What should be included in agreements?

Because wastewater agreements necessarily involve one entity receiving another's waste, then there have to be provisions addressing what wastes are permissible or prohibited. Likewise, local governments have local sewer use ordinances that have to be complied with both by their own customers, as well as any additional customers they may be adding on through an interlocal agreement. Finally, because wastewater outputs/discharges are regulated by state and federal regulations, the agreement must be crafted in a way that those regulations will remain in compliance.

For those reasons, entities should consider what the limits should be on what is considered acceptable waste. Additionally, there should be language requiring adoption of or compliance with the sewer use ordinance for the jurisdiction which will be treating the wastewater. Finally, methods for ensuring compliance with regulations and also how to handle situations when compliance is violated should all be considered and included in the agreement with as much specificity as possible.

H. Water Pressure

What should be included in agreements?

Water pressure standards go far beyond the comfort and convenience of residents. Water pressure has implications for use if the pressure is too low, and has the potential to cause harm to household plumbing if it is too high. Specifically, a minimum flow is required for combatting fires. Additionally, water velocity through pipes must stay within a certain range—high enough to avoid sediment fallout but low enough to prevent water ‘hammering’ in the pipes.

Agreements should address water pressure and velocity requirements, laying out specifics as to what level of pressure will be provided and how that level is defined. When desired, including a range (i.e. 40-60 psi) rather than one specific number may provide more flexibility in the contract. Additionally, there should be language allowing for unexpected drops or raises in pressure due to events which are outside of the control of the seller, such as supply line breaks or power failures.

Water Pressure Impacts Various Factors



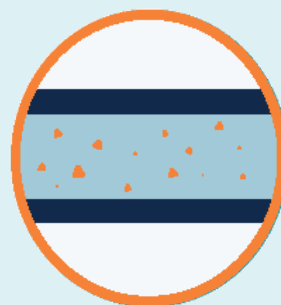
Indoor Plumbing

When water pressure is too low or high it can harm indoor plumbing.



Combatting Fires

A minimum water flow is required in order to combat fires.



Sediment Fallout

When water velocity is too low sediment fallout may occur.



Water ‘Hammering’

When water velocity is too high the pipes might experience water ‘hammering’.

I. Adequate Payment for Use of Capital

What should be included in agreements?

Bulk sales agreements contain an extremely diverse array of pricing structures. In some situations, such as short term emergency sales agreements, sales formulas may be as simple as a set unit price of \$3/1,000 gallons. In other situations, agreements may require more complex rate structures that include upfront payments, recurring fixed charges, variable fees, and surcharges.

Utilities entering into bulk sales agreements should consider the impact of the sale on both current capital and on future capital needs. Common methods of addressing capital costs include:

Rolling capital costs into the variable/commodity charge.

The ability to provide water and wastewater service is often intertwined with carrying out voluntary annexations and many municipalities are very wary of the impact a partnership agreement could have on their growth strategies. Additionally, disputes may arise as to the costs associated with the annexation, and the resulting impact of the annexation on other partnering entities. Along those lines, where an annexation plan or anticipated strategy is not addressed, there may be duplicated facilities by different service providers intended to serve the same area.

An upfront commodity charge.

Some suppliers prefer to recover all or a significant portion of the capital costs associated with an agreement up front in the form of a capacity fee. This method is especially common for long term agreements in which the purchaser is basically purchasing capacity.

A recurring capacity fee (annual or monthly).

Some agreements include a hybrid approach in which the purchaser agrees to pay some type of fixed payment each year in addition to the unit price they pay. The amount of the fixed payment is typically linked to the reserved capacity or actual maximum purchase over the year period, and is often calculated based on annual debt payment obligations of the seller.

A minimum purchase amount.

One of the simplest ways to assure that the seller receives revenue to cover the fixed costs associated with capital is to set up contracts that have commodity charges that include a portion linked to capital **and** a minimum purchase agreement. In this way, the seller is assured of a flow of revenue to cover basic capital costs.

Percentage of capital costs.

Some interlocal agreements are structured so that capital costs are not incorporated into prices or fees, but rather presented as an obligation for the purchaser to pay a portion of capital costs. These agreements can be very problematic if the language is not precise. For example, language such as “their share” of capital costs, or capital costs in proportion to usage should be avoided in favor of very specific instructions. For example, purchaser and seller agree to pay annual debt service for the water treatment plant in direct proportion to the total amount of water they used during the last year. Alternatively, the purchaser could pay the percent of debt service that equals the ratio of their maximum allowable purchase to the maximum capacity of the treatment plant. These two approaches could both be considered “their share” but could lead to very different financial obligations.

No capital costs.

On rare occasions, some agreements exclude the payment of capital costs. For example, the Greenville Utility Commission has developed interruptible service agreements with neighboring utilities. Under these agreements, there is no guarantee of capacity and the seller is using the agreements to recover actual variable costs with a modest mark up. The end result in this particular case is an agreement that provides purchasers with a very low cost water option and the seller with an important source of revenue

that ultimately lowers the costs to their existing customers. In another case, imagine a wastewater utility that has lost several large industrial customers and now their wastewater system is oversized and not operating well. This system is seeking partnerships primarily to increase the flow in their system—they have plenty of capacity and are willing to offer some of that capacity at no cost in exchange for the increased operational benefits they will receive.

Consider four different purchase scenarios as described below, each justifying a potentially different approach.

1. Purchaser uses a small percentage of seller's capital and their impact on future capital needs is negligible (e.g. Greenville Interruptible Sales Agreement).
2. Purchaser uses a significant percentage of current seller's capital, but has little impact on future capital needs (e.g. a facility with a lot of unused capacity agrees to sell a lot of water to another entity for a fixed period of time).
3. Purchaser uses a small percentage of current capital but has a large impact on future needs (i.e. purchaser has explosive growth and the seller is close to capacity)
4. Purchaser uses a large percentage of capital and has a large impact on future capital needs.

J. Changes to Capital Costs Associated with Expanding Capacity Needs

What should be included in agreements?

While the consideration above refers to adequate payment to cover capital costs based on existing capacity at the time the agreement is signed, there are also situations when capacity needs for either the purchaser or the seller may need to be expanded resulting in future capital costs that will have to be allocated to buyer and seller fairly. Entities should be aware of how they will handle future capital costs.

K. Calculation and Modification of Commodity Charges

What should be included in agreements?

Setting the initial commodity charge in a contract requires a mixture of accounting, business, and political skills. In fact, some contracts are little more than price agreements that state the cost of the service or supply at the time the contract is signed. While cost accounting is an important component of setting commodity charges, different cost assumptions can lead to radically different prices, so even the accounting portion of this exercise is open to negotiation. The number generated by an accounting spreadsheet may not be as important as whether the price being charged will enable the seller to meet basic business and political criteria. Additionally, the commodity charge depends on how capital costs are being addressed (as discussed above).

Commodity charges may vary depending on whether an entity is agreeing to provide a group of individual customers in another community with retail service or whether the entity is selling water to another utility at a bulk rate and that utility will in turn resell the services to their retail customers. The former is likely part of a consolidation arrangement and, in such a case, the retail customers normally also own capacity in the system and are guaranteed long-term service. For bulk purchasers, on the other hand, they often only receive a short-term capacity commitment and thus could argue for a lower rate than retail customers would be charged.

Addressing inside and outside rates also requires special attention. Some sellers will find it difficult to price the water they sell wholesale to outside customers at rates that are lower than what they sell to their inside retail customers, even if there is an economic or business rationale for doing so. In the end, this is a local decision that is likely to be politically charged but which should nevertheless be addressed when setting up or modifying an agreement. Unfortunately, some agreements have fallen apart over the

inside/outside rate discrepancies, which has resulted in harm to the inside customers.

The contract should also include language to cover notice requirements or any other processes related to when and how rates will be changed. If there will be a process for modifying rates in the future, the parties should contemplate what shall constitute reasons to justify modification

Why is it necessary?

Although there may be a temptation to link price increases to inflation (normally relying on Consumer Price Index (CPI) or other indexes), there is no guarantee that the costs related to providing water service will vary at the same rate as inflation—for many utilities, the cost of water provision has risen much faster than inflation due to construction increases and the need to add additional treatment systems to meet regulatory requirements. CPI adjusted contracts are especially problematic if the initial price of water is set below what the water actually costs to provide. Based on financial reports, many water systems do not price their water at a high enough rate to recover their costs. An alternative to CPI indexing is to index price increases based on the retail price increases. Bulk purchasers often view these indexes as protection against the temptation the seller might have to protect their retail customers from price increases by increasing the cost to bulk purchasers.

L. Consideration of Impact of Retail Rate Increases on Wholesale Rates

What should be included in agreements?

For systems opting to index price increases based on retail price increases, special attention should be given to considering what will happen to bulk rates if retail prices increase significantly in the future. This has become an issue over the last 10 years as new regulations and catching up with neglected infrastructure has led to retail water rates escalating much faster than inflation. Many legacy agreements were set up using retail price-based rates, without a cap, and when retail prices increased substantially, bulk rates which were calculated based on a multiplier of retail rates ended up much higher than expected. For example, it is conceivable that a contract was signed when a retail rate was as low as \$1 per 1,000 gallons and the original price of \$2 per 1,000 gallons for the wholesale rate was set with escalations matching future retail escalations. The buyer may not have imagined that 10 years later, the seller now charges \$7 per 1,000 gallons to retail, ending up with a \$14 per 1,000 gallon wholesale rate that may be difficult for the purchaser to pay and may no longer reflect the actual cost of the water.

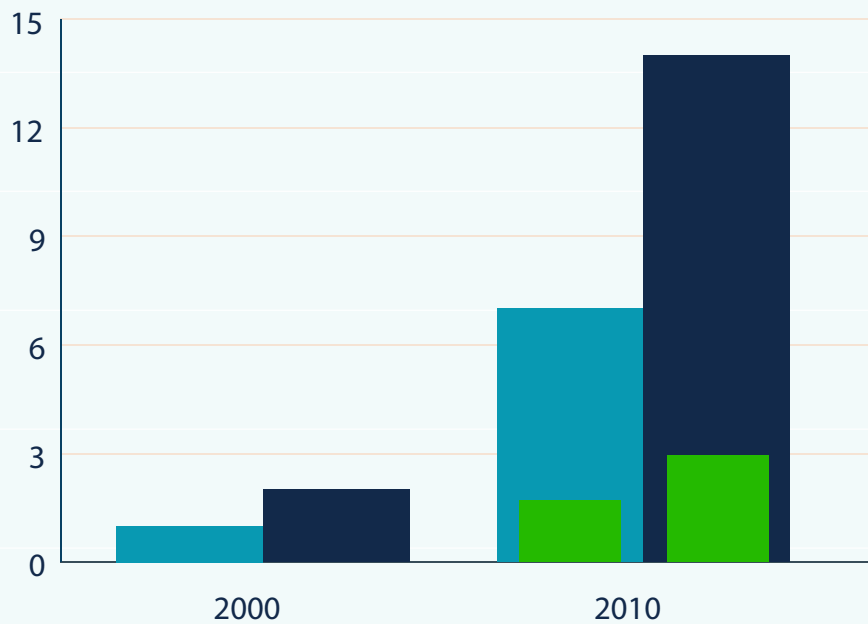
Thought should be given to the inclusion of a cap to minimize the risk of the situation described above. As an alternative, a provision could be included in the agreement to allow for purchasers to request a review of rates every set amount of years and allow for a modest rate adjustment.

Whatever option is chosen, purchasers and sellers should consider the long-term impacts of any approach, and should provide avenues for modification and review to prevent unwanted consequences.

Indexing Price Based on Retail Price vs. Inflation

Special considerations should be made for retail prices that increase significantly over time and their impact on bulk rates. Especially, when a cap is not established.

■ Retail Price ■ Wholesale Price ■ Price with Inflation



EFC, Section L

M. Reselling Water or Capacity

What should be included in agreements?

Many water systems have interconnections with multiple other systems providing an opportunity for water to be bought and resold multiple times before it reaches the final user. If there is nothing in the agreement concerning the resale of water, then technical and financial constraints will govern whether and where water is resold. The main reasons why most sellers try to limit how their water is used relates to growth concerns—specifically where or how much growth may occur. To address such concerns, limitations on growth-related resale should be specifically addressed along with service area limits. This will allow for an open discussion about growth, which is increasingly necessary, particularly where there is fear that one community may be trying to control another’s growth through a water contract. Sometimes the concern related to where water is sold is secondary to how much the water is sold for. Given the tension regarding water rates, sellers sometimes seek assurance that the water they sell at a heavily discounted bulk rate will not be resold at a cut rate price. This issue of price is especially important if a municipality views its ability to provide lower water rates to its inside customers as part of its strategy for encouraging voluntary annexation.

If there is a robust dialogue and agreement related to growth and service area at the time the contract is drafted, the urgency and motivation to include these limits on reselling water or capacity is likely to be reduced.

Why is it necessary?

Consider the situation of a county with a water system that spends years developing a land use development plan to accommodate the future growth of their area. The county may not be willing to enter into a water contract without some guarantee that their own water will not be used by others to hinder implementation of their plans for growth.

N. Communicating and Handling Supply Interruptions or Shortages

What should be included in agreements?

There are many reasons why supply interruptions or shortages are likely to occur during the life of an agreement, some of which will be linked to emergencies, and others which may be related to more routine maintenance issues or to increased water demand. For this reason, language should be included to define how such interruptions or shortages

will be handled. Specifically, there should be language defining what notification process is required when interruptions of service occur both from the seller and the purchaser.

For interruptions that seller is aware of in advance, the contract should include notice requirements to provide purchaser with ample time to make accommodations as needed. For unexpected interruptions or shortages, there may be language requiring purchaser to provide seller with notice as soon as possible, so as to trigger the remediation process on the end of the seller.

Supply Interruption and Shortage Reasons



Emergencies



Routine
Maintenance



Increased
Water Demand

O. Transferability of Conservation Status, Measures, and Emergency Reduction

What should be included in agreements?

Drought and other emergency conditions can cause utilities to need to implement short term curtailment or conservation measures in order to reduce water use. Additionally, to help attain long-term supply needs, particularly in light of growth, a utility might implement certain long-term conservation measures. This can create a tension between partnering utilities to a water supply contract if the emergency conditions or conservation measures are not required by all entities.

This situation can be addressed by incorporating language that requires purchasers to follow the same water restrictions as the water sellers. Contracts may include specific language requiring the purchasing community to reduce water proportionally to the seller community, or to implement local ordinances consistent with the selling community ordinance.

Why is it necessary?

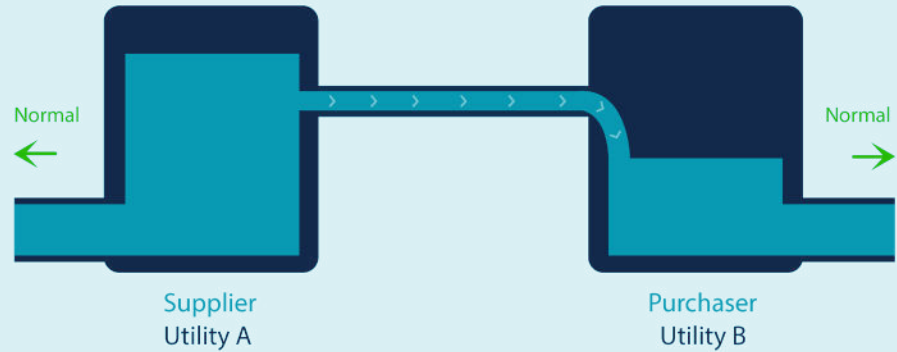
Imagine a situation where Utility A has a long-term agreement to sell water to Utility B, and both cities have car washes and utilize water for irrigation of community yards and parks. If Utility A decides to restrict water use only for its residents by limiting car washing and lawn watering, then residents from City A may be outraged that residents in City B still have green grass and have the ability to engage in car washing.

Transferability of Water Restrictions

In the event of a drought or other emergency conditions where water restriction is necessary, the purchasers should follow the same restrictions as the water supplier.

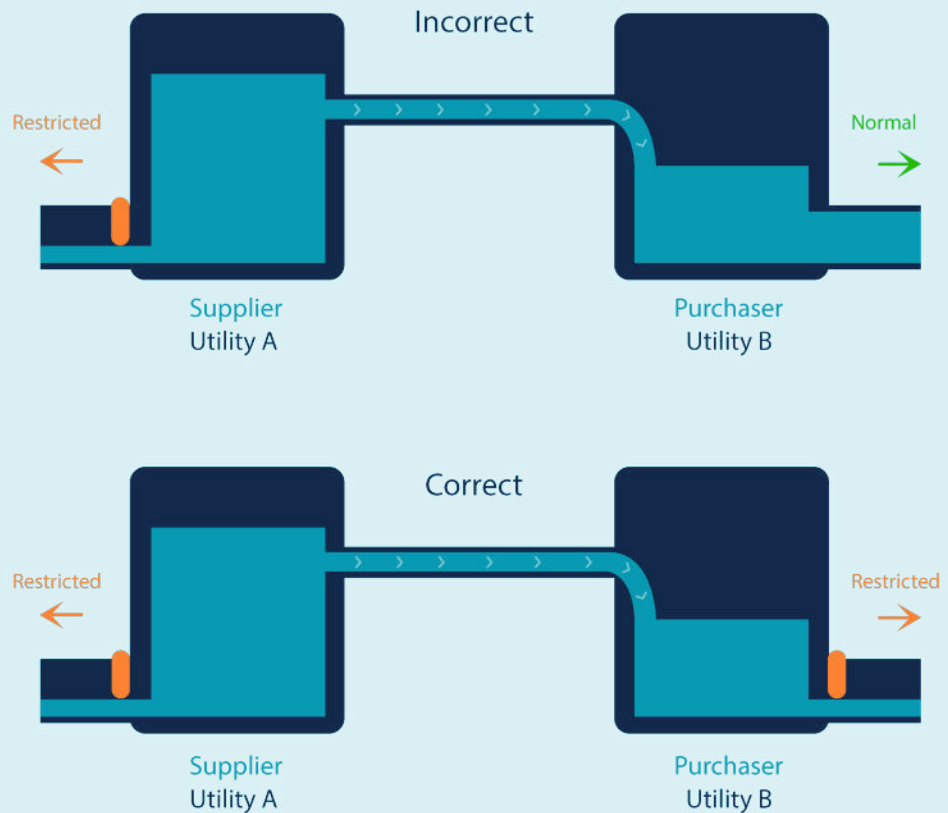
Normal Conditions

Water is being sold, purchased, and used normally.



Water Restriction Conditions

Water should be restricted for both the supplier and the purchaser.



P. Non-Revenue Water

What should be included in agreements?

A utility that buys a significant amount of water for resale to retail customers will always find that the amount of water they sell is less, sometimes significantly less, than what they purchase from their water provider. Likewise, a utility that collects wastewater from customers and sends it to another utility for treatment could end up sending large volumes of wastewater arising from inflow and infiltration particularly during rainy periods. For drinking water, this non-revenue water may be due to leaks and both authorized (firefighting) and unauthorized (water theft) unmetered uses. A utility that is retiring a well system or a small wastewater treatment plant in favor of signing a purchase agreement with another utility should take this into consideration when studying the financial impact of their new agreement.

These systems are sometimes surprised when they see the bill for water or wastewater purchases compared to what they bill their customers. Some agreements provide some relief for these situations, but many contracts require the purchaser to pay for every drop of water or wastewater that passes through the purchase connection/ meter. There are creative clauses in some contracts where the seller tries to create a financial incentive for the purchaser to minimize non-revenue water.

Q. Excessive Inflow and Infiltration

What should be included in agreements?

Inflow and infiltration (I&I) can be a big problem for wastewater interlocal agreements. If possible, partners should consider how to contract in language that will address how I&I should be handled. Particularly where there is a smaller system connecting to a larger system and aging infrastructure is involved, there is a concern that the smaller system will not have the ability to cover the costs of the excess I&I.

Some systems have tried to include language in agreements to address the I&I issue. For example, in the past the Water and Sewer Authority of Cabarrus County allowed its bulk purchasers of wastewater service to reduce their payments for excessive I&I if they could document that they invested an equivalent amount of funds in repairing the problem.

R. Variations Due to Emergencies

What should be included in agreements?

Contemplating what might need to happen in the event of an emergency is an important part of drafting interlocal agreements. Many agreements modify or suspend key contractual requirements during times of emergency. For clarity, a non-exclusive list of what constitutes an “emergency” may be included. If possible, contracts should specifically state any limits to what the seller can do or requirements for what the seller must do during an emergency. Entities should think through the maximum time period that service will be provided during an emergency, limited use requirements for any water provided during that time, any special costs associated with emergency water supply, and what alternative water source arrangements are appropriate during an emergency.

S. Ground Rules for Negotiating: Financial Mediation

What should be included in agreements?

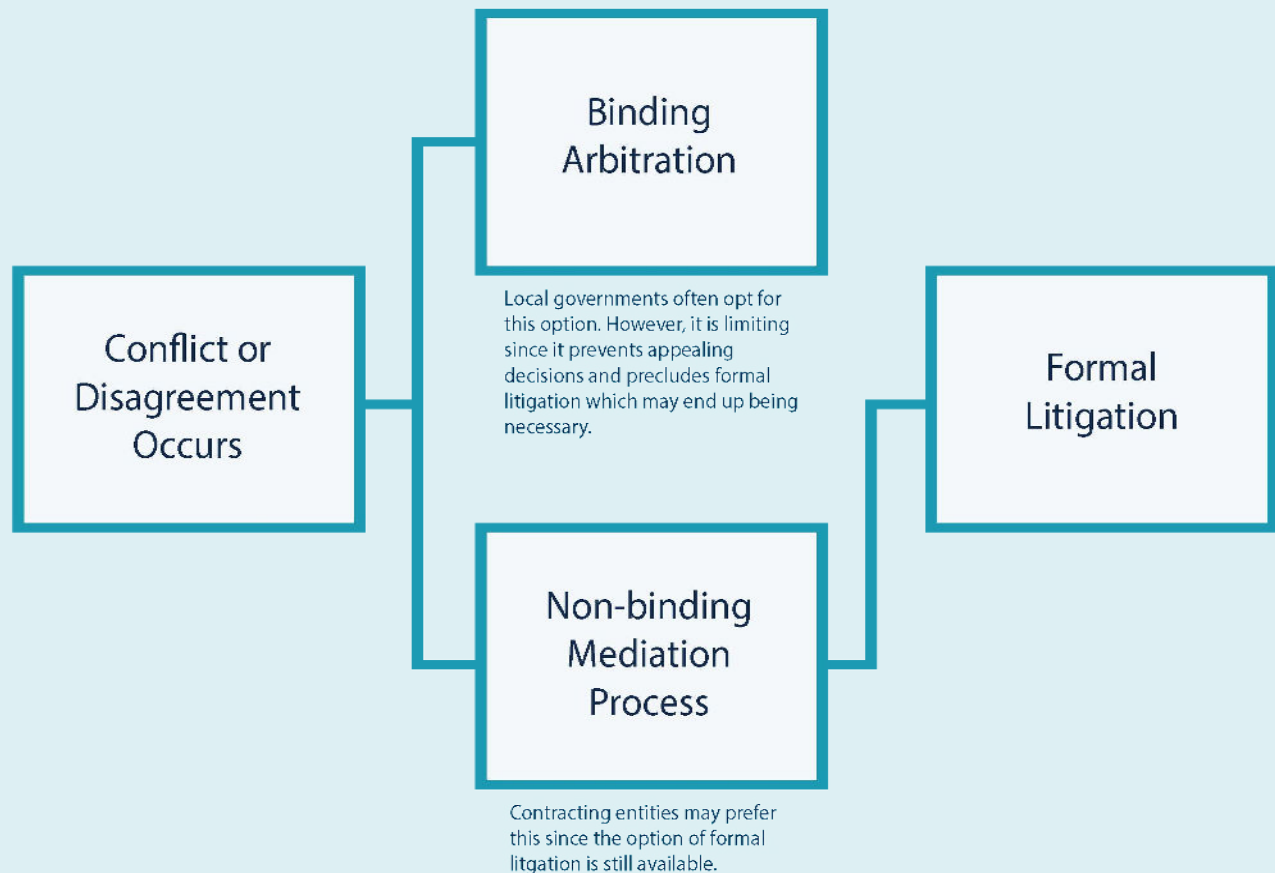
Regardless of how carefully an interlocal agreement may be contracted, there can still be conflict or disagreement, particularly when unanticipated needs or challenges arise. Parties to an agreement should anticipate the need to potentially negotiate at some point during the life of the agreement, and should build in language that lays out what process should be used.

Local governments may opt to voluntarily agree to binding arbitration, but may find that process limiting. Binding arbitration will prevent any participating entity from appealing the decision, and will also preclude the entities from an opportunity to move into formal litigation if the arbitration does not resolve an issue. Thus, contracting entities may instead choose to include language requiring a non-binding mediation process, which preserves the option for formal litigation if necessary.

Parties should also consider how they will handle confidentiality, and may want to include language that requires a neutral mediator.

Conflict or Disagreement Paths

Even with the best interlocal agreement, conflict or disagreement may still occur. Anticipate potential negotiation and build in the language that should be used.



T. Addressing Failure to Pay for Wastewater Systems

What should be included in agreements?

When there is nonpayment under a contractual arrangement for sale of water, the selling entity can shut off water to the purchaser until payment is received. However, wastewater service providers who do not also provide water service face a unique predicament, which is the inability to guarantee payment without that same shut-off option. As a result, agreements should include language that covers what the seller should do in the event that a purchaser of wastewater treatment services fails to pay.

U. Looking Ahead—Leaving Open the Potential for Consolidation

What should be included in agreements?

In some situations, utilities may be considering multiple partnership options and may weigh the advantages and disadvantages of full consolidation as opposed to retiring treatment facilities and relying on neighbors solely for treatment functions. Conventional wisdom often promotes a one step at a time approach—utilities consider an interlocal agreement as a stepping stone to a later consolidation agreement. This sentiment may be driven more by political necessity or reluctance to address the even larger list of considerations that must be addressed in full consolidation and less by economics.

In reality, many interlocal agreements end up being structured in a way that make future consolidation more challenging since there is less of an incentive for the seller of services to take on more responsibility if they already have access to significant revenues from the purchaser. For example, a utility earning significant revenue from treating the wastewater of their neighbor may have very little extra incentive to take over their neighbor's collection system and customers once a wholesale agreement is in place. If consolidation is a serious long-term option or objective, utilities should consider this at the outset of their negotiations. They may want to avoid an interlocal agreement altogether and go straight to consolidation, or perhaps build structural incentives into their interlocal agreement, such as requiring the purchaser to acquire the entire system in the future if certain predefined clauses are met.

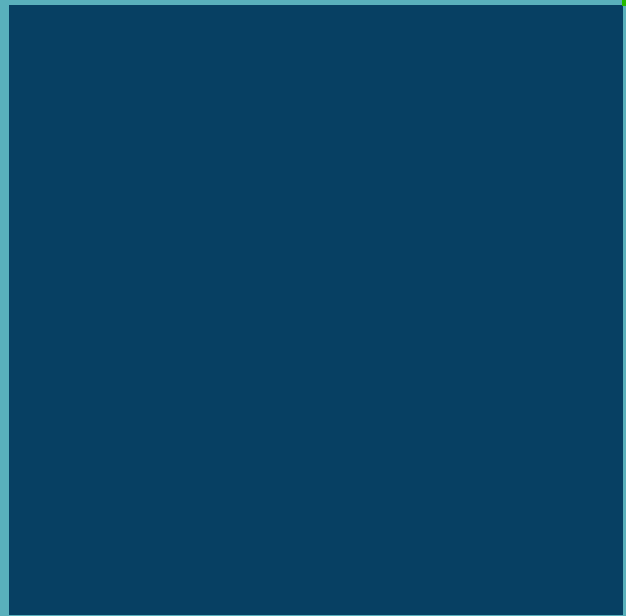
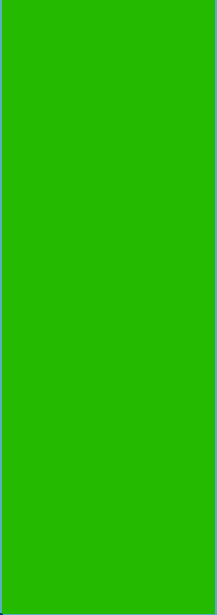


Conclusion

In practice, the EFC has seen interlocal agreements ranging from one page to over 30 pages. Longer is not always better, but the considerations laid out in this document are a good starting point for identifying the types of things that should be included when drafting a new agreement or redrafting an existing one. These are not just ideas that the EFC has come up with; rather, there have been real, contractual challenges that have arisen from most of these, and thus, this guide should be thought of as a helpful tool to reference when drafting an interlocal agreement. It should spawn discussion and consideration of provisions that may simplify contractual relations down the road for entities partnering through water and wastewater interlocal agreements.

Appendix

Examples and Sample Language



A. Ambiguities Related to Current and Future Service Areas:

Language defining service area boundaries:

“Because of the cost of the installation of such water systems as herein contemplated by both parties and in the interest of a reasonable rate being afforded to the consumers for such services, both parties agree not to invade the service area of the other party, as reflected upon Exhibit II, for the purpose of selling water, unless by mutual written consent of both parties. Where such extensions may be made by one party in the other party’s service area, the offending party shall abide by the prevailing policies and ordinances of the fended party as it relates to size, type and quality of water main installed. Further, the DISTRICT agrees that any water supply well constructed by the DISTRICT shall be constructed at least one mile from a CITY owned well or well site and at least one mile beyond the CITY’S Extraterritorial Zoning Jurisdiction boundary existing as of the construction of each well. However, the responsibility for extensions and ownership of water facilities within the DISTRICT boundary and/or the CITY’S Extraterritorial Jurisdiction shall not preclude, by special agreement, the DISTRICT and CITY making a special agreement for the extension of water mains herein, sharing the cost of making such extensions, and retaining and/or sharing in the ownership thereof.” (Clinton – Sampson, 8)

Language addressing unserved areas:

“Except as provided herein, water and sewer service to areas outside the existing Dobson Service Area shall be provided by the County either through the creation of Water and Sewer Districts or such other means as the County deems appropriate. If the County is unable or unwilling to provide an extension of service, the Town will have the option to make such extension of service, and utilize the County’s utility lines in providing municipal services to potential customers inside or outside the corporate limits of Dobson but within Surry County, such as in the case of a satellite annexation. If the Town makes such extension of services at its own expense, the utility lines and any user fees generated thereby shall inure to the Town.” (Surry – Dobson, 3)

B. Annexation and Growth:

Language addressing anticipated annexation:

“It is acknowledged by City and District that an area lies outside the perimeter of the corporate limits of the City of Dunn over which City, pursuant to N. C. Gen. Stat. §160A-360, exercises extraterritorial jurisdiction. City currently intends to annex into its corporate limits a portion of

said area as herein below described and as a result thereof would be responsible, among other things, for providing water service therein. In an effort to avoid duplication of facilities and in anticipation of such annexation, it is agreed between City and District that City, pursuant to this Agreement, will provide water services in said proposed annexation area.” (Dunn – Harnett, 3)

Language addressing purchase price and process for annexed area:

“That in the event the City annexes an area served by the Robeson County Water System, the City reserves the right to buy at a fair and equitable price, from the County, that portion of the Robeson County Water System that is annexed into the corporate limits of the City of Lumberton, North Carolina. The purchase price of the annexed portion of the Robeson County Water System shall be determined by a committee composed of representatives of the Robeson County Board of Commissioners and the City Council of the City of Lumberton, North Carolina; Said committee shall be appointed by the Chairman of the Robeson County Board of Commissioners and the Mayor of the City of Lumberton, North Carolina, respectively. The purchase price shall be sufficient to cover the pro-rata share of the bonded indebtedness that Robeson County will have with Farmers Home Administration on that particular section of the Robeson County Water System purchased by the City.” (Robeson – Lumberton, 175, FHA 442- 30 format)

“In the event that such extension of services is the result of a voluntary or involuntary contiguous or satellite annexation, the Town shall be entitled the right of conduit (connection to County lines to serve newly annexed areas) upon written request to County and upon certification that the areas sought to be served by way of conduit are subject to pending voluntary or involuntary contiguous or satellite annexation and provided that

(a) Dobson, at its sole expense, provides for such additional metering device acceptable to the County, and placed at a point acceptable to the County, or other procedure which will accurately measure the difference in treated water flow. The County shall not unreasonably withhold its approval to a metering device or point of placement.

(b) Dobson shall assure delivery of treated water to the County upon the terms of this Agreement without diminished flow except in the case of emergencies as provided herein.

Any subsequent annexation by the Town of areas served by County's distribution system or by a District created by the County would result in either: (1) compensation by the Town to the District or County for such investment, or (2) provide for the District or the County to continue operating such distribution system(s) consistent with the terms of this agreement. Compensation for acquisition of improvements by Town as a result of annexation would be determined by a jointly selected third party auditor, or by such other method that is mutually agreed upon.” (Surry – Dobson, 3-4)

C. Precisely Defined Key Usage Thresholds and Limits:

Basic language providing maximum threshold limit for water:

“City agrees to sell to County at the Point of Delivery during the term of this Contract or any renewal or extension thereof potable treated drinking water in such quantity as may be required by County not to exceed 25,000 gallons per in a single calendar day.” (Bertie – County Water District IV, 5)

Basic language providing maximum discharge rates for wastewater:

“There shall not be an instantaneous rate of wastewater discharge exceeding 2.5 times the volume of right to treat calculated as a 24-hour period. For initial purchase of 450,000 GPD the instantaneous rate may not exceed 782 GPM. Instantaneous discharge rates may occur over any length of time during a 24-hour period, but flow rates that will not exceed a 24-hour duration.

Claremont shall construct necessary infrastructure that would allow for transmittal to Hickory an average daily flow up to 800,000 gpd either by gravity flows or by use of a pump station and force main alone or in conjunction with a gravity line.” (Claremont – Hickory, 10)

Language providing maximum threshold and process in event of emergency:

“The maximum daily amount of water furnished by the Town to the Water District is not to exceed 58,125 gallons per day. In the event of the daily maximum water quantity being exceeded due to a breakage in a Water District water line or other emergency, the Water District is obligated to immediately contact the Town’s utility personnel and inform that such maximum daily amount will be exceeded.” (White Lake – Bladen, 2)

Language providing various maximum threshold limits and water quality requirement:

“(Quality and Quantity) To furnish the Purchaser at the point of delivery hereinafter specified, during the term of this Contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the State in such quantity as may be required by the Purchaser, not to exceed the following maximum demands:

- a. Maximum instantaneous rate of 2100 gallons per minute (3 million gallons per day).
- b. Maximum daily demand of 1.6 million gallons.
- c. Maximum monthly usage of 42 million gallons. “ (Anson – Richmond, 42)

“(Quality and Quantity) To furnish at the point of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the State of North Carolina in such quantity as may be required by the Purchaser, not to exceed 7,500,000 gallons per month.” (Black Creek – Southwest District, 1)

D. Meter Maintenance and Ownership Responsibilities:

Basic language related to ownership and maintenance of equipment:

“Purchaser agrees in lieu of connection fee, purchaser will furnish and install metering equipment, including a meter house or pit and required devices of standard type for properly measured quantity of water delivered to purchaser, when purchaser makes connection to seller’s system.”(Northampton–Warren, 2, RD 442-30 format)

“County shall construct, operate and maintain at its sole expense (as part of the County Project) at the Brunswick County / Columbus County line (herein “the Point of Delivery”) the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the County and shall calibrate such meter every five (5) years or whenever requested by the City based on data acquired by the City demonstrating that the meter is not reading properly.” (Columbus – County Water District IV, 4)

“The Applicant shall install and maintain, at Applicant’s expense, a water meter and all necessary waterlines to the metered point located at Highway NC 8 at the Stokes/ Forsyth County line. The Applicant shall be responsible for connecting waterlines to the metered point with the approval of the Commission. The point of connection shall be under the authority and control of the Commission” (Winston Salem-Stokes, 1)

Language addressing ownership, maintenance responsibilities, and contingency plan in event of failed meters or inaccuracies of readings:

“Continuous recording devices with flow totalizing capability shall be provided, owned, and maintained, by Union to monitor allocated capacities defined herein. Both parties agree to calibrate using a certified third party such metering equipment at a frequency of at least once every six (6) months. Either party may request additional calibrations at their expense. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous readings at any meter disclosed by test to be inaccurate shall be corrected for the six (6) months previous to the test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water during such period shall be deemed to

be the amount of water delivered in the corresponding period immediately prior to the failure, unless both parties agree upon a different amount. Backup metering devices, when available, maintained by either party shall be considered in establishing the amount of water delivered. The metering equipment shall be checked and read monthly and written record of all readings shall be available to either party upon request.” (Union – Monroe, 14)

“That the existing metering system owned and maintained by DUNN shall remain in use and shall remain the property of DUNN. It shall be the responsibility of DUNN to calibrate the metering equipment whenever requested by BENSON, but no more frequently than once every twelve months; a meter registering not more than 2% above or below the test results shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test in accordance with the percentage of inaccuracy found by such test. If any meter fails to register for any period of time, the amount of water furnished for such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless DUNN and BENSON shall agree upon a different amount. The metering equipment shall be read monthly by DUNN according to DUNN’s prevailing meter reading schedule. An Official of BENSON shall have access to the meter for the purpose of verifying its reading at any reasonable time, upon request” (Dunn – Benson, 4)

Basic language related to ownership and maintenance and including agreement to share meter costs equally:

“COMMISSION will maintain the water meter(s). The meter(s) will be tested annually to maintain a mid-scale accuracy of greater than ninety-eight percent (98%) of the actual flow. Should the meter test with less accuracy, then the bills for a three (3) month period prior to the test will be adjusted proportionately. The cost of meter testing and maintenance should be borne equally by both parties” (Greenville Commission-Winterville, 6)

E. Water Quality Concerns:

Basic language requiring water to meet a minimum quality standard:

“The water delivered into the other system will meet the Primary and Secondary Water Quality Standards as established by the State of North Carolina” (Winterville – Greenville, 5)

Language specifying a shift of water quality responsibility beyond point of delivery:

“It is distinctly understood and agreed by both parties hereto that the CITY’S obligation as to the bacteriological quality of water furnished only applies to the point of delivery. The DISTRICT shall be solely responsible for the bacteriological quality of water beyond the point of delivery.” (Clinton – Sampson, 7)

Language defining joint responsibility for water quality compliance:

“Monroe and Union agree to operate their respective water distribution systems from the points of delivery on to their users in such a manner as at no time to place the other party in jeopardy of failing to meet any water quality standard or other regulatory requirement. Monroe and Union each agree to notify the other as promptly as possible of all emergencies and other conditions which may directly or indirectly affect the quantity or quality of the treated water delivered were under.” (Union – Monroe, 20)

Language including language indemnifying the seller for any water quality issues beyond the metered point:

“The Commission hereby acknowledges that Applicant is purchasing this water for resale to its customers. The commission makes no warranty, expressed or implied, as to the quality of water beyond the metered point. The Applicant agrees to indemnify and hold harmless the Commission from and against any and all losses, cost, claims, damages, and expenses, including but not limited to reasonable attorney’s fees, which the Commission may incur in any manner arising out of or connected with the quality of water beyond the metered point” (Winston Salem- Stokes, 3)

F. Transferability of Wastewater Pretreatment Requirements/ Industrial Discharge Permits:

Basic language requiring purchaser to assist in having its industrial customers comply with seller’s Pretreatment Ordinance:

“Claremont shall be required to support and aid in enforcement of the Pretreatment Ordinance. In order to assist, Claremont will have access to any records of sampling and further will be provided results of testing and sampling industrial users. Claremont shall also have the option, but not the obligation, to perform internal testing and sampling.

Hickory shall carry out all industrial waste permitting processes as required by State and Federal regulations and shall monitor the industrial users and shall enforce the provisions of the area wide sewer use ordinance to same extent as users within the City of Hickory corporate limits.

In the event of violation of such regulations by users, Hickory shall enforce the Pretreatment ordinance to the same extent as the users located within the City of Hickory. All surcharges or fees levied by Hickory to an industry for violations of the City of Hickory Pretreatment ordinance shall be the sole responsibility of the violating industry. In the event of a violation of such regulations, Hickory shall notify Claremont

of the violation and need for enforcement in accordance with the Sewer Use Ordinance. During the period Hickory maintains such records, they shall be made available to Claremont during normal business hours as needed in the sole discretion of Claremont for the operation of the Claremont Utility System.” (Claremont – Hickory, 3)

G. Compliance of Wastewater Agreements with State and Local Ordinances/Regulations:

Language Providing Admissible Wastes to be Accepted for Wastewater Treatment:

“Discharges into the Fairmont wastewater system shall, to the extent possible, consist only of sewage, properly shredded garbage, and other waste, as allowed by the Fairmont Sewer Use Ordinance, attached and incorporated herein as “Attachment E,” free from the prohibited constituents herein listed in BOD, suspended solids, dissolved sulfides, and pH as hereinafter provided.” (Fairmont – Boardman, Fair Bluff, Cerro Gordo, 10)

H. Water Pressure:

Language requiring seller to provide purchaser with water meeting certain pressure requirements, with allowances for variations out of seller’s control, and with indemnity language for failure to meet pressure requirements:

“To furnish the County, at the points of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable treated water, satisfying applicable purity standards of the North Carolina Division of Environmental Health at an approximately constant, normal gravity pressure, based upon an elevated storage level of 795 feet above sea level, subject to reductions or failures of pressure of supply due to main supply line breaks, power failures, floods, fire and the use of water to fight fire, earthquakes, and other causes beyond the Town’s control for such reasonable period of time as may be necessary to restore normal service. It is understood, however, that the Town shall not be liable to any person, firm, or corporation for any claim arising from its failure to provide water to the County under the terms hereof” (Chatham– Siler, 1)

“The Town agrees that water will be furnished at reasonably constant pressures estimated to be not less than 40 pounds per square inch and delivered through existing mains and bulk water meters. Town shall be responsible for water pressure to the point of delivery to the master meter. Thereafter County shall be responsible for water pressure and delivery which may result in needed pumps, tanks and/or additional hardware. Emergency failures of pressure or supply due to (mail) supply line breaks, power failures, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the Town from this provision for such

reasonable period of time as may be necessary to restore service.” (Surry – Dobson, pp. 5)

Language placing the cost of any need for greater pressure than agreed upon amount on the purchaser:

“That water will be furnished at a reasonably constant pressure calculated at 40 psi from an existing eight-inch main supply at a point located If a greater pressure than that normally available at the point of delivery is required by the Purchaser, the cost of providing such greater pressure shall be borne by the Purchaser. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire or use of water to fight fire, earthquake or other catastrophe shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service.” (Stantonburg – Southeast Water District, 1-2)

“That water will be furnished at a reasonably constant pressure calculated at 45 to 50 PSI from an existing 12” supply main at points located on Exhibit I attached hereto and made a part hereof, and designated as Meter Point A and Meter Point B. If a greater pressure than that normally available at the point of delivery is required by the DISTRICT, the cost of providing such greater pressure shall be born by the DISTRICT: emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire, and use of water to fight fire, earthquake, or other catastrophe, shall excuse the CITY from this provision for such reasonable period of time as may be necessary to restore service.” (Clinton – Sampson, 3)

I. Adequate Payment for Use of Capital for Bulk Sales Agreements:

Language reflecting minimum purchase requirements:

“Town will bill the County Monthly for the actual amount of water sold and delivered to it at the then applicable rate; provided however, the Town will bill and County will pay for a minimum quantity of 500,000 gallons per month regardless of whether or not the County actually uses such quantity.” (Chatham - Siler City, 1)

“To furnish the COUNTY at the point of delivery hereinafter specified during the term of this Contract or any renewal or extension hereof, potable treated water meeting applicable purity standards of the rules governing public water supplies, in such quantity as may be required by the COUNTY not to exceed a monthly average of 450,000 gallons per day; provided however, that the COUNTY shall purchase a minimum quantity of 100,000 GPD.” (Nash-Rocky Mount, 2)

“Effective July 1, 2008, the minimum daily volume shall be one million four hundred thousand (1,400,000) gallons per day.” (Halifax – Roanoke, 1)

J. Changes to Capital Costs Associated with Expanding Capacity Needs:

Language defining process and notice requirements in the event modification to or expansion of system is needed:

“It is recognized that the Dobson water and sewer plants have the following levels of current usage and capacity:

	Current Usage	Capacity
Water	0.9 mgd	1.5 mgd
Sewer	0.2 mgd	.35 mgd

It is also acknowledged that under DENR guidelines, planning must commence for an expansion of capacity when current usage reaches 80% of capacity, or 280,000 gd, for the sewer plant.

Therefore, the County acknowledges and accepts responsibility with the Town to undertake a Section 201 Wastewater Facility Needs Study. The County will pay 80% of the cost of the study up to \$80,000 with the Town of Dobson paying 20% up to \$20,000. The County will fully participate financially in its proportionate share of the cost to develop such added capacity when needed.” (Surry – Dobson, pp. 6)

“COMMISSION and WINTERVILLE agree that if one party to this Agreement requires any modification or improvement to the water system of the other party, the requesting party must give at least six (6) months’ written notice of such requirement” (Greenville Commission – Winterville, 7)

“The Parties to this Agreement shall review the capacity of water treatment and transmission facilities and make recommendations concerning the need to expand said facilities. Monroe and Union agree to consult and work together in connection with any expansion of facilities. In the event that both parties agree to jointly expand the facilities, then any additional capacity shall be allocated between the Monroe and Union based upon their respective financial contributions to the expansion. No party shall be entitled to use any of the allocated capacity of the other party, whether original capacity jointly expanded capacity or singly expanded capacity, without the express written consent of the other party.” (Union – Monroe, 15)

Language reflecting process for refund of debt service:

“At the occurrence of such capital improvements, should Monroe issue long-term debt to finance, in whole or part, its water and sewer utility capital improvement program, Monroe agrees to negotiate with Union the terms and conditions of

financing Union’s share of the capital improvements to the WWTP, conveyance, and disposal facilities providing allocated capacity to Union.” (Union – Monroe, 11)

“Murphy will establish a capital reserve fund out of interconnect receipts dedicated to capital costs associated with the interconnection water line and appurtenances. The amount to be established at the annual meeting...Andrews will establish a capital reserve fund out of interconnect receipts dedicated to capital costs associated with the interconnection water line and appurtenances. The amount to be established at the annual meeting” (Murphy- Andrews, 2-3)

“Union shall immediately refund to Monroe all debt service payment made to Union by Monroe pursuant to Exhibit 6. Union’s refund of debt service payments shall include interest at a rate of 4.6% per annum calculated from the receipt of each debt service payment to the date the refund is made to Monroe based on an actual/actual day count.” (Union Monroe, 13)

K. Calculation and Modification of Commodity Charges:

Language reflecting a percentage based variation for bulk purchasers and notice requirement for rate changes:

“As a bulk purchaser of water, the County agrees to pay Town an amount equal to 150% of rates as stated for Town’s consumer rates in the attached Town Water Rates, (Exhibit A), for all water sold and delivered pursuant to this agreement, subject to changes in said rate, as hereinafter, set forth. The Town agrees to provide the County at least 90 days-notice prior to a rate change.” (Chatham County –Siler, pp. 1)

Language reflecting pricing structure including a base rate, tiered rate, and a process for determining maximum rate proportional to inside/outside rates:

“To pay the City not later than the past due date posted on the statement for water furnished, which said past due date shall be at least 10 days but not more than 20 days after the date of statement for water delivered in accordance with the following scheduled rates.

1. \$200.00 for the first 100,000 gallons which amount shall also be the minimum rate per month.
2. \$0.90 per 1,000 gallons for water in excess of 100,000 gallons, subject to (3) below.
3. Water rates charged by the CITY to the DISTRICT shall be no greater than the prevailing lowest wholesale rate charged by the municipality to its “outside” customers, but in no event shall the rate exceed two (2) times the prevailing lowest wholesale rate charged by the municipality to its “in-town” customers. In exchange therefore, and in

order to minimize the potential for competition between the DISTRICT and the CITY for a particular customer or group of customers, the DISTRICT will establish rates that are equal to or greater than the rate charged by the CITY for a corresponding volume used by the same classification of user.” (Clinton – Sampson, 4)¹

Language including a base rate charge and an additional monthly charge to cover capital expenses, and providing a process for modification of both charges:

“City shall sell water to County at a rate equal to \$2.75 per 1,000 gallons of water (the “Base Charge”), this figure being the amount charged by City to its customers for water used in excess of the minimum charge, plus an additional sum of \$400.00 per month (the “Additional Charge”). The Additional Charge of \$400.00 per month is the figure calculated by City to provide for recovery of its capital costs, fixed operating and maintenance costs and administrative costs. Provided that the minimum monthly charges to County shall not be less than \$850.00. Provided, further, City shall have the right to adjust the Base Charge and the Additional Charge at the beginning of each new fiscal year provided that City gives County 30 days notice of such new charges and written justification for any increase in such charges.” (Columbus – County Water District IV, 6-7)

Language tying bulk rates to City’s “inside” residential rates with a reduction for volume:

“Treatment Rate shall be calculated by taking a 10% reduction of the current City of Hickory Inside Residential Rate, as may be adjusted from time to time by City of Hickory City Council, for up to 450,000 gallons per day of wastewater right to treat purchased. The initial treatment rate based on this calculation for right to treat of 450,000 GPD shall be \$2.76 per 1000 gallons.

Treatment Rate shall be calculated as 15% reduction in the current Inside Residential Rate, as may be adjusted from time to time by City of Hickory City Council, for wastewater right to treat purchased exceeding 450,000 gallons per day.” (Claremont – Hickory, 5)

L. Impact of Retail Rate Increases on Wholesale Rates:

Sample Language:

Sample language coming soon. Check back at go.unc.edu/regionalization for updates.

If you have included language for this consideration in your community’s own work and wish to share, contact Erin Riggs at riggs@sog.unc.edu.

¹ In addition to service area boundaries, some utilities will deal with competition concerns by creating specific pricing clauses such as this one.

M. Reselling Water or Capacity:

Language requiring approval before providing water service to out-of-town customers:

“The Town’s water customer service area includes all areas within its corporate limits and those out-of-town customers identified in Appendix “C”; Town of White Lake Out-of-Town Water Service Area Customers. Appendix “C” is hereby made a part of this contract. The Water district may not provide water service to any areas within the Town’s corporate limits nor provide water service to those out-of-town customers identified in Appendix “C” of this contract, without first receiving approval of the Town.” – (Whitelake – Bladen, 5-6)

Language with minimum rate requirements related to service area:

“The COUNTY shall not, during the term of this Contract, sell water to its customers at an amount less than the “outside rate” charged by the CITY to its customers located outside the corporate limits without the written consent of the CITY. The COUNTY shall submit its rate schedule for determination of compliance upon the adoption of a rate schedule and any subsequent modification thereof. The CITY shall notify the COUNTY of changes in its rate schedule so that the COUNTY may adjust its rates accordingly.” (Nash-Rocky Mount, 4)

“Water rates charged by the CIY to the DISTRICT shall be no greater than the prevailing lowest wholesale rate charged by the municipality to its “outside” customers. But in no event shall the rate exceed two (2) times the prevailing lowest wholesale rate charged by the municipality to its “in-town” customers. In exchange therefore, and in order the minimize the potential for competition between the DISTRICT and the CITY for a particular customer or group of customers, the DISTRICT will establish rates that are equal to or greater than the rate charged by the CITY for a corresponding volume used by the same classification of user.” (Clinton – Sampson County Water and Sewer District, 4)

N. Communicating and Handling Supply Interruptions or Shortages:

“Union agrees to notify Monroe as soon as possible of any interruption or diminution of its services under this Agreement. Said service interruption shall be remedied with all possible dispatch and service diminution to Monroe shall be no greater than to any other user of the Catawba River WTP, recognizing that future expanded water supply capacity in Union’s system may come from other water supply sources. High water demand on the Union system shall not be cause for service interruption or diminution, so long as Monroe is not exceeding its allocated capacity. Union warrants and agrees that delivery of water allocated capacity to Monroe shall have first right over other Union customers. Upon reasonable notice, Union shall allow inspection of those physical facilities

which are the subject of this Agreement by representatives of Monroe. Notice shall be deemed reasonable if not less than two (2) business days. (Union – Monroe, 13)

“City’s ability to provide water to County is subject to it receiving water from Brunswick County pursuant to that contract between Brunswick County and City described hereinabove. If for any reason, Brunswick County fails to provide water to City, then City shall be relieved of any obligation to provide water to County under the terms of this contract. In the event the supply of water available to City is reduced by County below the amount specified in that contract between City and Brunswick County as described hereinabove, then City shall be authorized to provide water first to customers within the City limits of City and then and only then will excess water be made available to County under the terms of this contract. Temporary or partial failures to deliver water shall be remedied by City with all possible dispatch.” (Columbus – County Water District IV, 8)

“Ramseur undertakes to use reasonable care and diligence to provide uninterrupted service as provided herein, but reserves the right at any time to temporarily interrupt service for reasons of force majeure and maintenance purposes. Ramseur shall give notice to Franklinville not less than forty-eight (48) hours in advance of any such service interruption, except that in emergencies, it shall give notice that is reasonable under the particular circumstances. No adjustment shall be made to the Monthly billing charge in the event of emergency or maintenance service interruption. No adjustment shall be made to the Municipal Bulk Rate Charge set forth herein in the event of emergency or maintenance service interruption.” (Ramseur-Franklinville, 6-7)

O. Transferability of Conservation Status/ Measures/Emergency Reduction

Basic language requiring customers of purchaser and seller to have water reduced proportionally/equally:

“In the event of an extended shortage of water, or the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser’s consumers shall be reduced or diminished in the same ration or proportion as the supply to Seller’s consumers is reduced or diminished.” (Ellenboro – Forest City, 4, FHA 442-30 format)

“In the event COMMISSION declares water use restrictions in accordance with COMMISSION’s Utility Regulations, Terms and Conditions of Service, Part C, Section 21.0 Water Emergency Management,, WINTERVILLE agrees, with regard to any water delivery to WINTERVILLE by COMMISSION pursuant to this Agreement, to implement water use restrictions equal to those implemented by COMMISSION within twenty-four (24) hours of notification to WINTERVILLE by COMMISSION.”(Greenville Commission-Winterville, 5)

“In the event that Andrews has to institute any mandatory or voluntary

water conservation efforts while supplying water to Murphy, Murphy will institute the same conservation efforts” (Murphy- Andrews, 2)

“In the event of implementation of water restrictions by Ramseur (due to drought), Franklinville will work in conjunction with Ramseur to impose appropriate water restrictions on the same basis as restrictions are required of Ramseur’s other customers.” (Ramseur-Franklinville, 7)

Language requiring purchaser community to adopt a water conservation ordinance consistent with the seller community’s ordinance:

“The County shall adopt a water conservation ordinance in accordance with the Town of Siler City Ordinance (Exhibit B). The County shall enforce said ordinance on all County water customers who are served with water provided by the Town of Siler City. The County shall enforce the ordinance according to the various stages as enacted by the Siler City Town Board of Commissioners” (Chatham – Siler City, 3)

Language defining a minimum daily volume during periods of conservation:

“During periods of State of North Carolina and/or Federal and/or Roanoke Rapids Sanitary District mandatory conservation restrictions the minimum daily volume shall be one million one hundred thousand (1,100,000) gallons per day.” (Halifax – Roanoke, 1)

P. Non-Revenue Water:

Language allowing for loss factor when calculating rates based on production and consumption:

“For water produced, each party’s monthly record for water production is multiplied by an adjustment factor, said adjustment factor to account for water treatment and additional expenses associated with running booster pump stations to aid in the transmission of water (costs not typically associated with water production). A sum of the weighted adjusted production by each party is made and a weighted percentage of production for each party is calculated. The weighted adjusted total production is then multiplied by the unit price for water production, herein established as \$0.60 per 1,000 gallons, to compute an amount which represents total payment for water purchase. Each party’s weighted percentage of production is applied against the total payment to determine the amount to be received by the respective parties.

For water consumption, each party’s monthly total is identified in a single column and summed. The previously determined total monthly production is divided by the total

consumption in order to compute a loss factor which accounts for all water which is not used by consumers (leaks, line flushing, fire protection, etc.) Each party's individual total for consumption is multiplied by the loss factor to determine a factored water consumption which, when summed for all parties, will be equal to the previously determined total water production sum. The factored water consumption by each party is then multiplied by the established unit cost for water (\$0.60 per 1,000 gallons) to compute an amount which reflects payment to be made by each party for water purchased." (Bertie – District IV, 3)

Q. Excessive Inflow and Infiltration:

Sample Language:

Sample language coming soon. Check back at go.unc.edu/regionalization for updates.

If you have included language for this consideration in your community's own work and wish to share, contact Erin Riggs at riggs@sog.unc.edu.

R. Variations Due to Emergencies:

Language defining time period and cost for emergency water supply:

"If it becomes necessary for Murphy to supply water to Andrews in the event of a water emergency or in the event that fire flow protection to water system customers cannot be maintained, Murphy will sell water to Andrews for a period of 45 days at the cast cost of production for the Murphy Water Department" (Murphy – Andrews, 2)

"Should either party have an emergency need for water supply the other party shall provide assistance to the maximum extent possible so long as providing this emergency supply does not impact the ability to serve the users of the supplying system. In the event that an emergency supply of water is initiated, the party receiving the emergency supply shall use all available means to remedy the supply emergency with all due dispatch. Cost for said emergency water supply shall be the lowest per thousand gallon rate as defined in the respective prevailing fee schedule available to Monroe customers for service to Union or Union customers for service to Monroe." (Union – Monroe, 15-16)

Language defining what constitutes an “emergency” and allowing for alternate water sources:

“Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire, and use of water to fight fire, earthquake or other catastrophe shall excuse City from the provisions of this Section for such reasonable period of time as may be necessary to restore services. In such event, District shall have the right to obtain its supply of water from alternate sources until service is restored.” (Dunn- Harnett, pp. 10)

“Emergency Supply of Water: In the event of a failure or other emergency within the water system of one party, and the other system having excess water available, the non-failing system will provide water to the failed system to the maximum extent feasible; provided, however, that each party’s obligation under this Agreement shall not limit or restrict that party’s ability to meet the water supply needs of its constituents and provide for the safety, health and welfare of persons and property within its jurisdiction at any point in time, or require production of potable water in excess of any permit issued to it by the North Carolina Department of Environment and Natural Resources (NCDENR) or any of NCDENR’s divisions (all of which shall be determined by the supplying party in its sole discretion). For the purposes of this Agreement, “emergency” is defined as a situation or set of facts that would lead a reasonable person to conclude that the condition of a party’s water treatment or water distribution system presents an immediate or imminent threat to public health or safety. In the event of an emergency, the party in need of water shall promptly take all necessary and available steps to alleviate the emergency. A situation which lasts a period of greater than thirty (30) days shall no longer be considered an “emergency”, and the provision of water subsequently shall require further discussions as to the length of time and amount of water which will be needed, and an agreement as to the scope and timing of remedial measures which will be taken to end the emergency” (ASU – Boone, 1-2)

S. Ground Rules for Negotiating: Financial Mediation:

Language requiring non-binding mediation process with neutral arbiter:

“Disputes regarding the provisions of this contract, whether pertaining to the schedule of rates, or to other matters governed by this contract, shall be referred by both parties hereto to the North Carolina Rural Water Association in order that the Association may review any arguments and evidence the parties may have concerning said dispute, and make a rate recommendation as to a fair and proper resolution of said dispute. Recommendations made by the Association shall not be binding upon either party, but both parties to this contract acknowledge by this provision their willingness and desire to use the services of the Association to resolve any conflicts that may arise hereunder.” (Handy Sanitary District – Denton, 5)

T. Collecting Payment for Wastewater When Water is from a Different Service Provider

Language providing remedy for failure to pay for wastewater customer:

“Should BOARDMAN, FAIR BLUFF or CERRO GORDO fail to pay all charges when due under this Agreement, FAIRMONT shall terminate services to the non-paying party effective thirty (30) days from the date of non-payment. Any uncured breach may subject non-paying party to non-binding mediation. If no agreement is reached in mediation, any of the parties may compel action or seek relief before the appropriate court of law in the State of North Carolina. The costs and reasonable attorney’s fees of such action shall be recoverable from the non-prevailing party.” (Fairmont – Boardman, Fair Bluff, Cerro Gordo, 21)

Language including a high interest rate to be added to late payments:

“The Town of Hobgood further agrees that all payments are due on the 30th of the month following the closing month of the bill. The Town of Hobgood agrees that payments not received by Scotland Neck by the 30th of the following months shall be charged interest at the rate of 8% per year until such time that the payment is received. The Town of Hobgood further agrees that should any invoice or billing amount be in dispute, that it will pay the full amount of the billing on time.” (Hobgood – Scotland Neck, 3)

U. Looking Ahead—Leaving Open the Potential for Consolidation

Example Language:

Sample language coming soon. Check back at go.unc.edu/regionalization for updates.

If you have included language for this consideration in your community’s own work and wish to share, contact Erin Riggs at riggs@sog.unc.edu.

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