

Utility Partnership Resources: Interlocal Agreements and Consolidation Considerations

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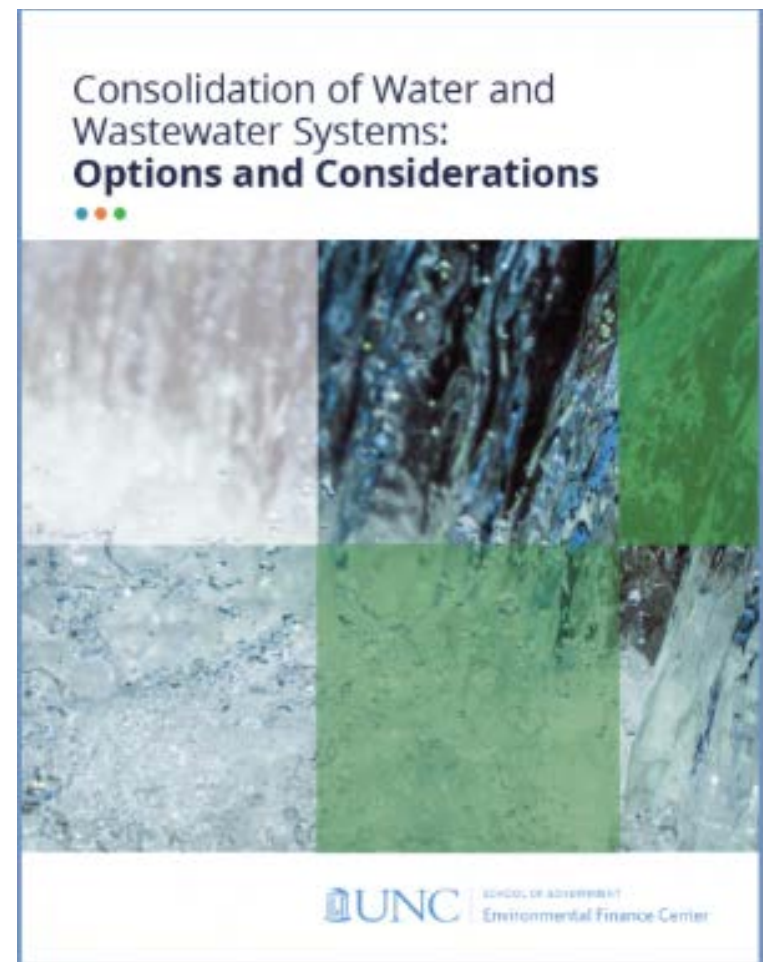


SCHOOL OF GOVERNMENT
Environmental Finance Center

www.efc.sog.unc.edu

Two EFC Resources

<https://efc.sog.unc.edu/project/utility-regionalization-and-consolidation>



Format of Resource Guides

- Potentially living/dynamic documents
- Focus on considerations
- Balancing examples and past practice with new approaches
 - I&I
 - Rate setting
- Framed in the positive but informed by examples of challenges and struggles

Interlocal Agreements

Article 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-460. Definitions.

The words defined in this section shall have the meanings indicated when used in this Part:

- (1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government.
- (2) "Unit," or "unit of local government" means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Part 4 of this Article, special district created under Article 43 of Chapter 105 of the General Statutes, or other local political subdivision, authority, or agency of local government. (1971, c. 698, s. 1; 1975, c. 821, s. 4; 1979, c. 774, s. 1; 1981, c. 641; 1995, c. 458, s. 3; 2009-527, s. 2(f).)

§ 160A-461. Interlocal cooperation authorized.

Any unit of local government in this State and any one or more other units of local government in this State or any other state (to the extent permitted by the laws of the other state) may enter into contracts or agreements with each other in order to execute any undertaking. The contracts and agreements shall be of reasonable duration, as determined by the participating units, and shall be ratified by resolution of the governing board of each unit spread upon its minutes. (1971, c. 698, s. 1.)

§ 160A-462. Joint agencies.

(a) Units agreeing to an undertaking may establish a joint agency charged with any or all of the responsibility for the undertaking. The units may confer on the joint agency any power, duty, right, or function needed for the execution of the undertaking, except that legal title to all real property necessary to the undertaking shall be held by the participating units individually, or jointly as tenants in common, in such manner



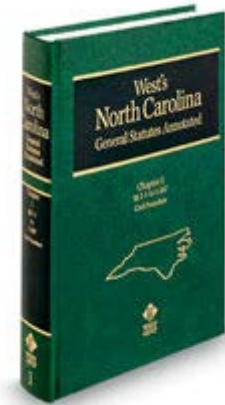
What is an Interlocal Agreement?

- Agreement between 2 or more political subdivisions
- In this state and other states
- To perform jointly or on behalf of each other
- Any “undertaking” the unit has the legal authority to perform
- Must be of “reasonable duration” (expenses and revenues agreements limited to 99 years)
- Board approval is required (by all boards that are parties to the agreement)

G.S. Chapter 160A, Article 20

Interlocal Agreement Limitations

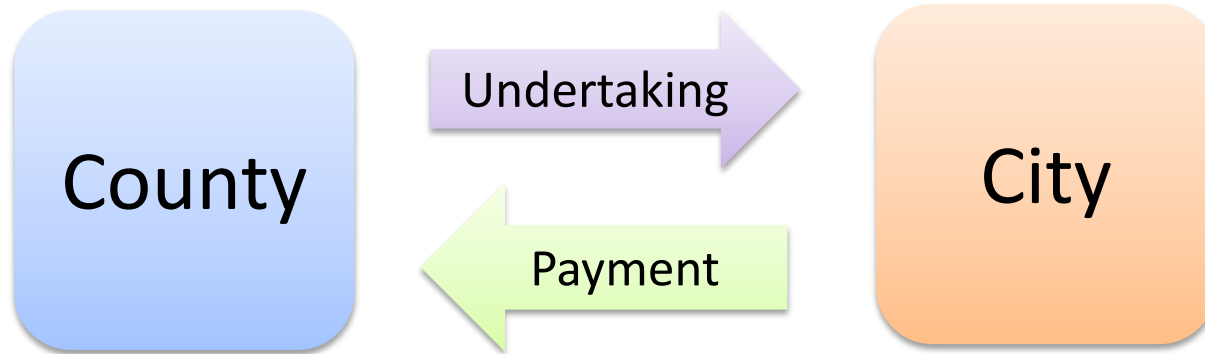
- Can only partner with other units of local government, **not state agencies or private entities**
- Can only exercise powers and authorities established elsewhere in **existing law**
- Does not supersede limitations imposed elsewhere in **existing law**



3 Forms of Cooperation

On Behalf of Another

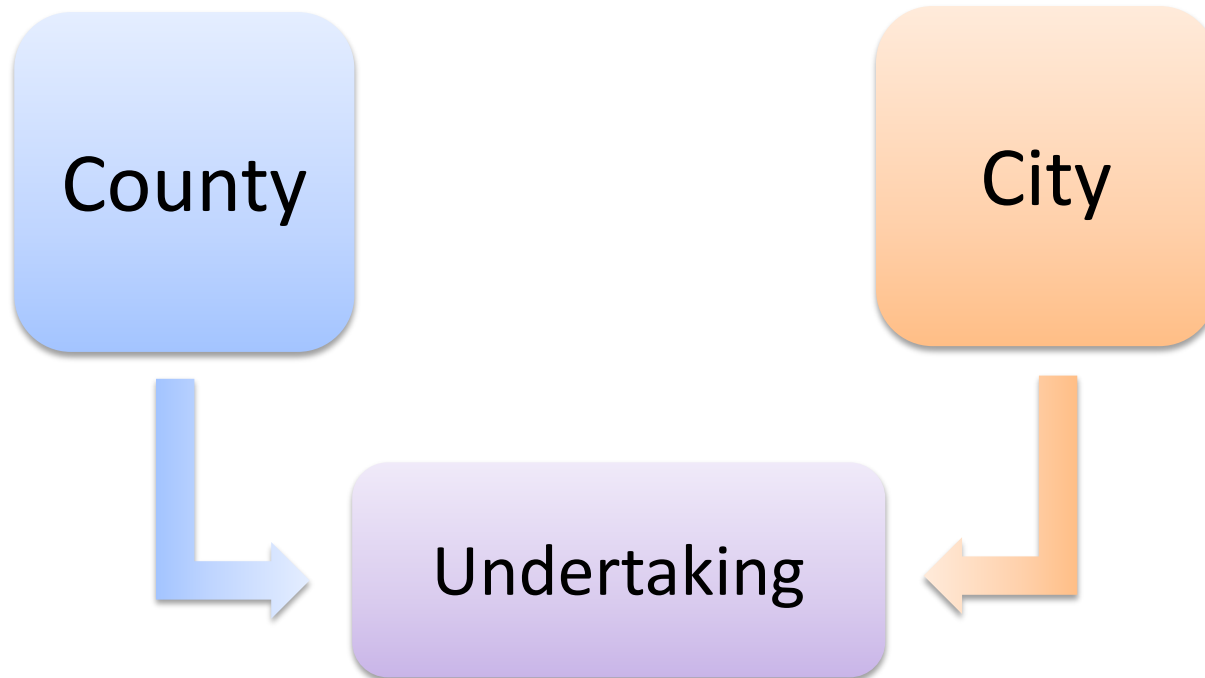
Retain independent legal authorities and one unit performs the undertaking for another



3 Forms of Cooperation

Jointly

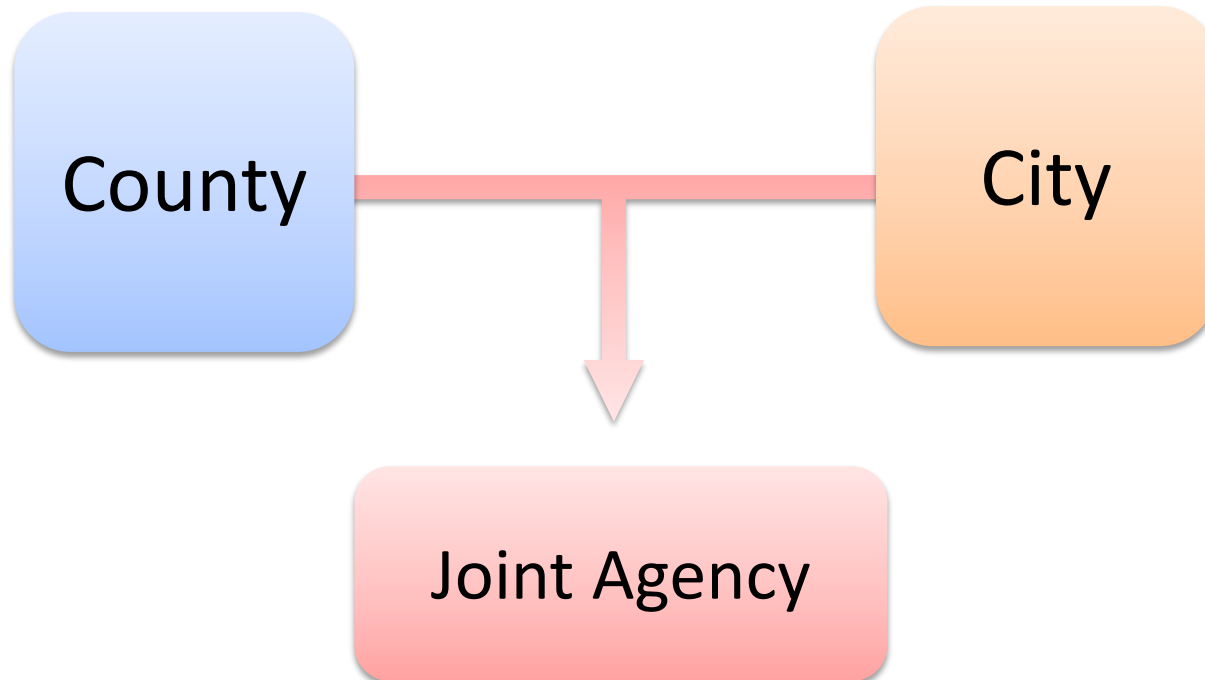
Retain independent legal authorities and agree to perform undertaking collaboratively



3 Forms of Cooperation

Joint Agency

Confer independent legal authorities on joint agency to perform undertaking



Statutorily Required Agreement Provisions

1. Purpose
2. Duration
3. If joint agency formed-
composition,
organization & powers
4. Personnel
5. Financing methods,
including costs and
revenues allocation
6. Real property
ownership & disposal
7. Amendments
8. Termination
9. Other

G.S. 160A-464



But there is more to be considered...

<https://vimeo.com/digitalpmedia/review/372993470/18aeaef9a2>

Interlocal Agreements



Interlocal Agreement Considerations: Updated and Expanded

1. Defining Current and Future Service Areas
2. Annexation and Growth
3. Key Usage Thresholds
4. Meter Maintenance
5. Water Quality Concerns
6. Water Pressure
7. **Adequate Payment for Use of Capital**
8. Calculation and Modification of Commodity Charges
9. **Reselling Water or Capacity**
10. Handling Supply Interruptions and Shortages and Emergencies
11. Transferability of Conservation Status/Measures/Emergency Reduction
12. **Non-Revenue Water**

Interlocal Agreement Considerations: Newly Added

- 1. Pre-Audit Certificate Requirement**
- 2. Excessive Inflow and Infiltration**
3. Transferability of Wastewater Pretreatment Requirements/Industrial Discharge Permits
4. Compliance of Wastewater Permits with State/Local Ordinances and Regulations
- 5. Consideration of Impact of Retail Rate Increases on Wholesale Rates**
6. Ground Rules for Negotiating – “Financial Mediation”
- 7. Consideration of challenges in collecting payment for wastewater when water service is from a different provider**
- 8. Looking Ahead – Leaving Open the Potential for Consolidation**



Why so many considerations?

- Avoid unnecessary litigation
- Create more long-lasting contracts
- Reduce tensions by reducing ambiguities
- Look forward to changing regional needs
- Expect the unexpected



How to handle meter maintenance and ownership responsibilities

- Basic language about ownership of meters
- Specifics related to the types of meters, and any other equipment needed for use/location of such meters
- 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
- Language for how water usage will be calculated in the event of a meter failure



Sample contract language...

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)

How to comply with Pre-Audit Certificate Requirement

- A simple statement ensuring that the local government has authorized the payments that will be required by the interlocal agreement
- North Carolina law requires a pre-audit certificate when contracts with a local government are
 - (1) in writing and
 - (2) requires the payment of money within the fiscal year of which the agreement is signed.

Sample contract language...

Basic language as is written in the statutes to cover the pre-audit requirement:

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

(signature of finance officer).”

-N.C. Gen. Stat. §159-28(a)(1)

What about consolidation?



State eyes consolidation of aging rural water and sewer systems

A view above the sedimentation basins at the Orange Water and Sewer Authority, where the water is clarified as heavy particles settle. Photo by Gabe Rivin

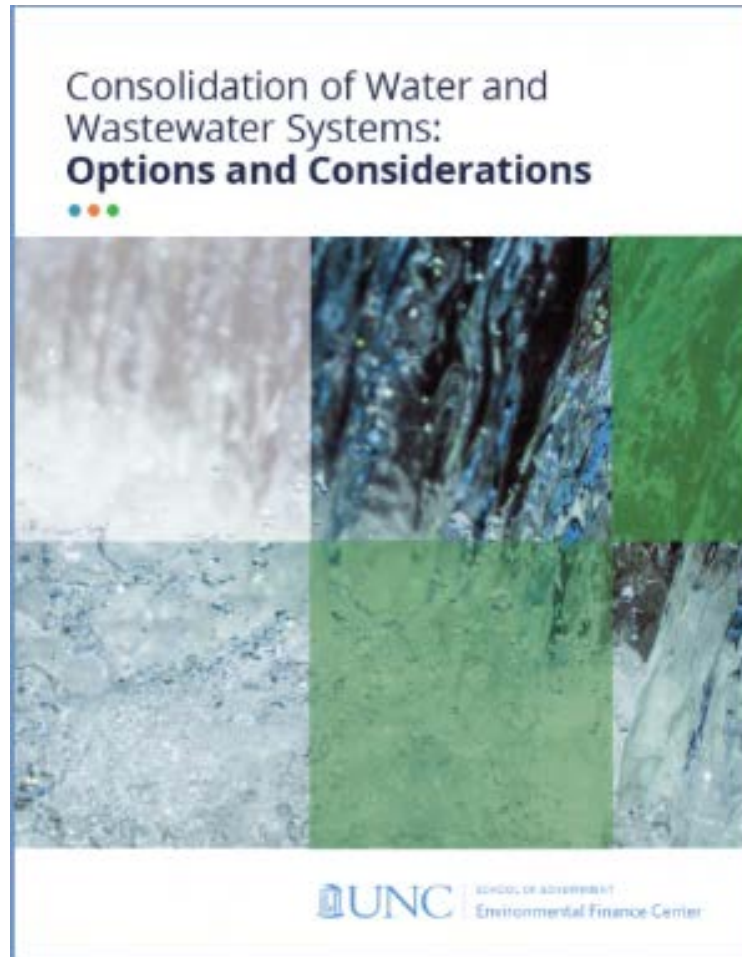
March 26, 2019 by [Greg Barnes](#)

There are nearly 2,000 community water systems in North Carolina, 538 of which are owned by local governments. Of those, 382 local governments own both the water and sewer systems. Rates for customers differ widely between communities.



Median residential water and wastewater monthly bills at 5,000 gallons/ month, by river basin. Map courtesy: [2018 North Carolina Water & Wastewater Rates Report](#), UNC School of Government Environmental Finance Center

Consolidation Considerations



Forms of Consolidation

- **Direct Acquisition** - one higher-capacity utility absorbing another in its entirety.
- **Joint Merger** - two or more utilities often, but not necessarily, of similar capacity consolidating to become a new entity that is jointly owned by the participating utilities.
- **Balanced Merger** - hybrid of the other two types and involves two or more utilities consolidating and creating a governance structure that is designed to allow for participation by the previously existing utilities in future decision-making.
- **Consolidation of Governance/Operations/Mgmt**

Existing models in NC

1.1 Single municipality operating as a regional utility

Model At A Glance

- Multipurpose local government utility model with far reaching authority
- Governed by city council
- Prevalence in NC: Common, 10 to 15²
- Primary Authorizing Statutes: G.S. § 160A, Article 16

Pro

Can integrate general city management, planning, and economic development with utility operations

Con

Can be difficult to balance obligations to city residents with needs of customers outside city limits

Existing models in NC

1.4 Water and Sewer Authority

Model At A Glance

- A special purpose unit of government focusing on water services
- Can be used to consolidate all utility operations or a portion of operations such as water supply and treatment
- Governed by an appointed board
- Prevalence in NC: Approximately 15
- Primary Authorizing Statutes: G.S. § 162A, Article 1

Pro

Permits a range of governing board options

Con

Cannot use taxes or issue general obligation bonds

Consolidation Considerations



Why is this important?
Sets the stage for all that follows

Assessing the Feasibility of Consolidation Options

- Setting the stage with a task force
- Legal Counsel
- Soliciting Input from Customers and Community
- Arranging Engineering, Facilitation and Planning Assistance
- Transparent Financial Analysis and Potential Future Scenarios

Consolidation Considerations



Why is this important?

Water system assets are often the most valuable thing a government owns.

Valuing the Physical Assets of the Systems

- Book Value
- Cash Flow Value
- Arranging Engineering, Facilitation and Planning Assistance
- Transparent Financial Analysis and Potential Future Scenarios

Consolidation Considerations



Why is this important?
Prevents unwanted surprises

Addressing Outstanding Obligations and Responsibilities

- Debt
- Staffing Considerations

Consolidation Considerations



Why is this important?
Governance will impact every aspect of service provision

Board Representation for Utility

- Number of board seats
- Rationale for assigning board seats
- Number of utilities on the board
- Rate setting process
- How should/can the board be modified if there is growth/change?

Consolidation Considerations



Why is this important?
Some disagreements
are inevitable

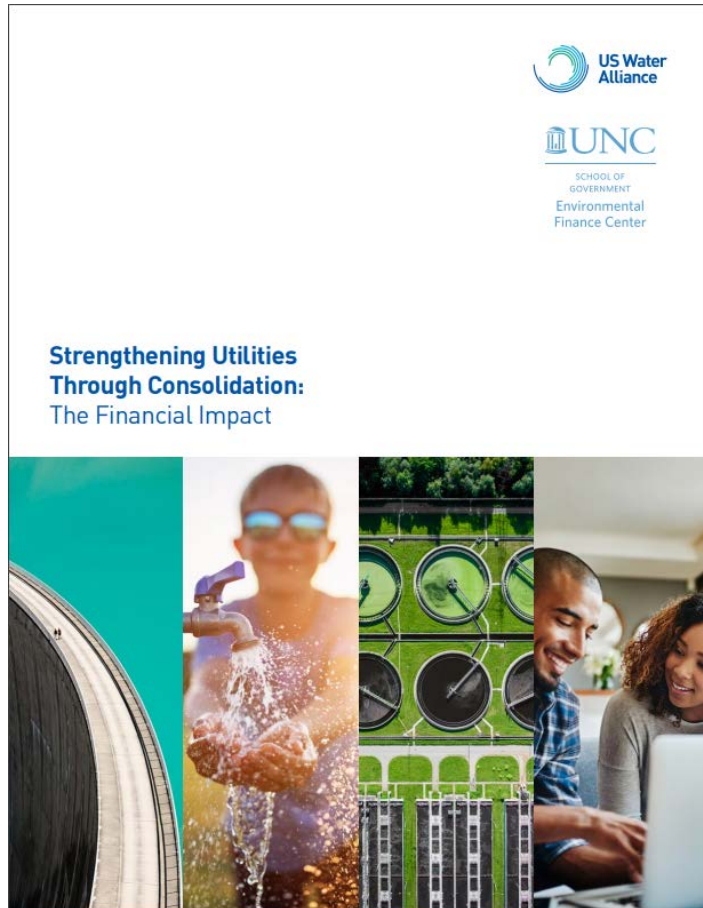
Resolving Disputes

- Binding Arbitration
- Non-binding Mediation

“The [consolidation] document does not provide a single road map for communities considering moving toward a more consolidated service model because there isn’t a single road map – water and wastewater systems and communities differ in important ways. The appropriate path will depend on *local conditions...*”



Another resource...



- This report examines the experiences of eight communities who consolidated utility service in different ways and for different reasons.
- Provides insight about what financial impacts communities might expect through consolidation.

Financial Benefits...

Table 1
Observed Financial Benefits and Related Case Studies

Financial Benefit	Related Cases
Economies of scale and efficiencies	Iowa Regional Utilities Association, page 30 City of Raleigh, page 21 Hampton Roads Sanitation District, page 25
Increased access to lower cost capital	City of Raleigh, page 21 Logan Todd Commission, page 33 Town of Colusa, page 18
Lower or equal customer rates	Central Arkansas Water, page 11 City of Raleigh, page 21
Revenue stability	City of Raleigh, page 21 New Jersey American Water, page 46
Reduced exposure to regulatory penalties	Citizens Energy, page 14 City of Raleigh, page 21 Hampton Roads Sanitation District, page 25
Improved planning and risk management	City of Raleigh, page 21 Central Arkansas Water, page 11 Hampton Roads Sanitation District, page 25
Increased opportunities for economic development	Logan Todd Commission, page 33



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