



North American  
Development Bank

# **Manual for Drafters of Interlocal Agreements** for Utility and Other Services

*Texas*  
*New Mexico*  
*Arizona*  
*California*

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## **PREFACE**

This manual is the first in a series of occasional papers to be produced by the North American Development Bank on issues of importance to water, wastewater and municipal solid waste utilities in the U.S.-Mexico border region.

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# I. INTRODUCTION

This document is drafted for the purpose of providing assistance to small- and medium-sized border communities and governments in states bordering Mexico in the drafting of Interlocal Agreements for water, wastewater and other utility services. The assistance provided by this document is designed to reduce costs and prevent adhesion contracts or one-sided agreements for services that place smaller communities at a disadvantage with larger service providers.

Its use beyond the scope for which it was prepared is not recommended without consulting competent government or outside counsel. Users are also cautioned to check for changes in the laws of the governing state before negotiating and implementing Interlocal Agreements. Statutory changes may materially affect the performance terms of the Interlocal Agreement.

It is important to note that some jurisdictions use the term "Joint Powers Agreement" (New Mexico) to cover agreements between governments. The authors chose to use "Interlocal Agreement" throughout this document for consistency. The reader will find "Joint Powers Agreement" only in the New Mexico material as it relates to the state law that governs such agreements. There is no special meaning or difference in the definition of either term as used in the literature, statutes or this document.

## II. HOW TO USE THIS NOTEBOOK

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

The reader can ignore the state specific material that does not apply to his or her jurisdiction. Note, however, that New Mexico is the most restrictive state with respect to Interlocal Agreements entered into by local governments. The other three border states are expansive in their approach to cooperation between local governments. The statutes related to Interlocal Service Agreements for the four border states at the time this manual was drafted, are summarized in Section IV. However, it is advisable to review the state laws with counsel prior to negotiating an Interlocal Agreement, to check for possible changes.

Several effective methods of drafting a proposed Interlocal Agreement are supported by this manual. The user may simply take the model agreement and expand the elements to cover the services and provisions desired by the parties. The other example agreements may be useful in creating the language needed for a complete Interlocal Agreement. Alternately, the user may take a sample Interlocal Agreement from the appendix and adapt and modify the language to fit the circumstances of the parties. Finally, the user may draft the document from scratch using the check list provided for Interlocal Agreements and ignore the examples and model agreement. Each technique has merit and, with some effort expended at good draftmanship, can easily result in an effective Interlocal Agreement.

The document that the drafter produces using any of these techniques will be as detailed and comprehensive as the drafter is skilled in looking at all the possibilities that may occur between governments or communities. A detailed and very specific agreement may actually be less appropriate to govern the relationship between two communities than a general agreement covering basic requirements and implying good faith and fair dealing between the parties. The reputation of the entity with which the drafter is contracting is an important element to be determined by careful research. Trustworthy and fair communities and their governing bodies most likely may be relied upon to fairly interpret a general, less specific, Interlocal Agreement than a body that has a history of litigation or broken deals. The assessment of which type of Interlocal Agreement is appropriate for the drafter is left to the consensus of the community leaders.

### **III. ADVANTAGES AND DISADVANTAGES OF INTERLOCAL AGREEMENTS**

#### **ADVANTAGES**

Interlocal Agreements are principally designed to allow communities to coordinate utility service planning and take advantage of the economies of scale available to larger sewage and water treatment plants. Additionally, they allow smaller communities to obtain services that are well beyond their capital expenditure capabilities. This is particularly important when grants and low- or no-interest loans for infrastructure development are scarce.

In an ideal world the smaller community gains access to the infrastructure of the larger community so that it may sustain services without large tax increases and the use of large bonding capacity. The larger community benefits because bigger treatment plants are easier to run and keep within permit limits, the unit cost for treatment or unit of produced water is lower, and benefits and capital expenditures are more easily justified when the service area is larger.

Small communities also benefit from having fixed or, at least, definable costs for the period of the Interlocal Agreement. This will allow accurate budgeting for the smaller community and tax planning that controls surprise rate and tax increases for basic utility services.

Additionally, every community benefits from growth of infrastructure within its boundaries. Both the larger and smaller community have the infrastructure to service the community. As a side benefit of such availability, competition is lessened between adjacent communities to provide services, to the exclusion of the neighboring community, often with short- and long-term detrimental effects on both communities.

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

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

## DISADVANTAGES

Interlocal Agreements are certainly easy to conceptualize, but the devil is often in the details. How the larger community attempts to leverage its position, benefit its operations and cost accounting, and charge higher prices because of its size will be the true test of the value of an Interlocal Agreement to a smaller community. The smaller community should make every effort to carefully analyze both the cost of service and rate structure for the residents of the other party before entering into negotiations. The services of an experienced utility rate engineer or consultant may be of substantial value in maneuvering the negotiations to a fair middle ground.

Some large communities have a history of leveraging themselves against smaller communities on rates, charges, capital ownership, and other elements of the relationship between two communities. In such cases it may not be possible to reach a fair Interlocal Agreement with a larger community. The analysis of the value and cost of an Interlocal Agreement to the smaller community is probably best done by a utility consultant who would prepare a report on the equality of rates and structure between the two for presentation to the smaller community. The consultant can make sure the negotiations are not one-sided and will expose problems in the Interlocal Agreement structure.

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

## **IV. GOVERNING STATUTES OF BORDER STATES**

### **ARIZONA GOVERNING STATUTES**

#### **INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS**

##### **Intergovernmental agreements and contracts**

Arizona Code § 11-952 et seq. If authorized by their legislative or other governing bodies, two or more public agencies by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint cooperative action, except that if two or more school districts arrange to become contracting parties under the terms of this section, such contract shall first be approved by the state board of education.

##### **Agreements to specify certain information**

Arizona Code § 11-952 (B). Any such contract or agreement shall specify the following:

1. Its duration;
2. Its purpose or purposes;
3. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;
4. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
5. Any other necessary or proper matters.

##### **Agreement does not relieve agency of legal obligation**

Arizona Code § 11-952 (C). No agreement made pursuant to this article shall relieve any public agency of any obligation or responsibility imposed upon it by law.

##### **Agreement to be submitted to attorney**

Arizona Code § 11-952 (D). Except as provided in subsection E, every agreement or contract involving any public agency, board or commission made pursuant to this article shall, prior to its execution, be submitted to the attorney for each such public agency, board or commission, who shall determine

whether the said agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency, board or commission.

### **Federal agency agreement not submitted to federal attorney**

Arizona Code § 11-952 (E). A federal department or agency which is a party to an agreement or contract made pursuant to this article is not required to submit the agreement or contract to the attorney for the federal department or agency unless required by federal law.

### **File with secretary of state**

Arizona Code § 11-952 (F). Any agreement or contract submitted to the attorney general shall be filed with the secretary of state and shall become effective on the date provided in the agreement, but in no event prior to the date it is filed with the secretary of state. The secretary of state shall prepare a cross-index of the names of all public agencies which coordinate with the attorney general and secretary of state and file an agreement under this section.

### **File agreement with the secretary of state**

Arizona Code § 11-952 (G). Any agreement or contract submitted to any attorney other than the attorney general shall be filed with the secretary of state if the agreement affects more than one county and shall be filed with the county recorder if only one county is affected and shall become effective on the date provided in the agreement but in no event prior to the date it is filed with the proper officer.

### **Governing body pass ordinance approving agreement**

Arizona Code § 11-952 (H). Appropriate action by ordinance, resolution or otherwise pursuant to the laws applicable to the governing bodies of the participating agencies approving or extending the duration of the agreement or contract shall be necessary before any such agreement, contract or extension may be filed or become effective.

### **School district agreement extension**

Arizona Code § 11-952 (I). If a school district is a party to an agreement made pursuant to subsection A, the parties to such agreement may extend the duration of the agreement by notification to the proper officer with whom the agreement is filed pursuant to subsection F or G and the state board of education. Such agreement may be extended as many times as is desirable, but each extension may not exceed the duration of the previous agreement.

### **Payment for services**

Arizona Code § 11-952 (J). Payment for services under this section shall not be made unless pursuant to a fully approved written contract.

### **Personal liability for non-authorized expenditure**

Arizona Code § 11-952 (K). A person who authorizes payment of any monies in violation of this section is liable for the monies paid plus twenty per cent of such amount and legal interest from the date of payment.

### **Enter agreement with court approval**

Arizona Code § 11-952 (L). Notwithstanding any other provision of law, public agencies may enter into a contract or agreement pursuant to this section with the superior court, justice courts and police courts for related services and facilities of such courts for a term not to exceed ten years, with the approval of such contract or agreement by the presiding judge of the superior court in the county in which the court or courts which provide the facilities or services are located.

## **CALIFORNIA GOVERNING STATUTES**

### **JOINT EXERCISE OF POWERS**

#### **Definition public agency**

California Code §§ 6500 et seq. Allows public agencies to enter into joint agreements. Definition of public agency: includes but is not limited to the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, or regional transportation commission of this state or another state.

#### **Contents of agreement**

California Code § 6503. The agreements shall state the purpose of the agreement or the power to be exercised. They shall provide for the method by which the purpose will be accomplished or the manner in which the power will be exercised.

#### **Creation of a Separate Agency or Entity**

California Code § 6503.5. Whenever a joint powers agreement provides for the creation of an agency or entity which is separate from the parties to the agreement and is responsible for the administration of the agreement, such agency or entity shall, within 30 days after the effective date of the agreement or amendment thereto, cause a notice of the agreement or amendment to be prepared and filed with the Secretary of State. Such notice shall contain:

- (a) The name of each public agency which is a party to the agreement.
- (b) The date upon which the agreement became effective.
- (c) A statement of the purpose of the agreement or the power to be exercised.
- (d) A description of the amendment or amendments made to the agreement, if any.

### **Accountability**

California Code § 6505. The agreement shall provide for strict accountability of all funds and report of all receipts and disbursements.

### **Agency to administer agreement**

California Code § 6506. The agency or entity provided by the agreement to administer or execute the agreement may be one or more of the parties to the agreement or a commission or board constituted pursuant to the agreement or a person, firm or corporation, including a nonprofit corporation, designated in the agreement. One or more of the parties may agree to provide all or a portion of the services to the other parties in the manner provided in the agreement. The parties may provide for the mutual exchange of services without payment of any consideration other than such services.

### **Administering agency is separate public entity**

California Code § 6507. For the purpose of this article, the agency is a public entity separate from the parties to the agreement.

### **Power of administering agency**

California Code § 6508. The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement.

### **Obligation of agency; contracts for separate responsibility**

California Code § 6508.1. If the agency is not one or more of the parties to the agreement but is a public entity, commission, or board constituted pursuant to the agreement, the debts, liabilities, and obligations of the agency shall be the debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise.

A party to the agreement may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the agency.

### **Restrictions on power of administering agency**

California Code § 6509. Such power is subject to the restrictions upon the manner of exercising the power of one of the contracting parties, which party shall be designated by the agreement.

### **Change in composition of agency created by joint powers agreement**

California Code § 6519. Notwithstanding any other provision of law, the State of California does hereby pledge to, and agree with, the holders of bonds issued by any agency or entity created by a joint exercise of powers agreement by and among two or more cities, counties, or cities and counties, that the state will not change the composition of the issuing agency or entity unless such change in composition is authorized by a majority vote of the body of such city, county, or city and county, or by majority vote of the qualified electors of each such city, county, or city and county.

“Change in Composition” as used in this section means the addition of any public agency or person to any agency or entity created by a joint exercise of powers agreement pursuant to this chapter, the deletion of any public agency from any such joint powers agency or entity, or the addition to, or deletion from, the governing body of any such joint powers agency, or entity of any public official of any member public agency or other public agency, or any other person.

#### **Authority for agreement with out of state agencies**

If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting agencies may be located outside this state.

It shall not be necessary that any power common to the contracting parties be exercisable by each such contracting party with respect to the geographical area in which such power is to be jointly exercised.

## **NEW MEXICO GOVERNING STATUTES**

### **JOINT EXERCISE OF POWERS**

#### **Authority to enter into agreements**

New Mexico Statutes Annotated § 11-1-1 et seq. allows two or more public agencies if authorized by their legislative or other governing bodies, by agreement, to jointly exercise any power common to the contracting parties, even though one or more of the contracting parties may be located outside the state.

#### **Approval of secretary of finance and administration required**

New Mexico Statutes 11-1-3. Nothing contained in the Joint Powers Agreements Act shall authorize any state officer, board, commission, department or any other state agency, institution or authority, or any county, municipality, public corporation or public district to make any agreement without the approval of the secretary of finance and administration as to the terms and conditions thereof.

#### **Joint powers agreements to be reported to state board of finance**

New Mexico Statutes 11-1-3. Joint Powers Agreements approved by the secretary of finance and administration shall be reported to the state board of finance at its next regularly scheduled public meeting. A list of approved agreements shall be filed with the office of the state board of finance and made a part of the minutes.

#### **Terms and conditions of joint agreements**

New Mexico Statutes 11-1-4(A). Every agreement executed by one or more public agencies shall clearly specify the purpose of the agreement or for any power which is to be exercised. The agreement shall provide for the method by which the purpose will be accomplished and the manner in which any power will be exercised under such an agreement.

New Mexico Statutes 11-1-4(B). The parties to the agreement may provide therein that:

- (1) contributions from the funds of the public agencies may be made for the purpose set forth in the agreement; or
- (2) payments of public funds may be made to defray cost of such agreement; or
- (3) advances of public funds of the public agencies be made for the purpose set forth in the agreement and that such advances be repaid as provided in such agreement.

New Mexico Statutes 11-1-4(C). The agreement may provide that funds be paid to and disbursed by the agency agreed upon by the public agencies under the terms of the agreement.

New Mexico Statutes 11-1-4(D). The agreement shall provide for strict accountability of all receipts and disbursements.

New Mexico Statutes 11-1-4(E). The agreement may be continued for a definite term or until rescinded or terminated, and may provide for the method by which it may be rescinded or terminated by any party.

New Mexico Statutes 11-1-4(F). The agreement shall provide for the disposition, division or distribution of any property acquired as the result of the joint exercise of powers, and shall further provide that after the completion of the agreement's purpose any surplus money on hand shall be returned in proportion to the contributions made.

New Mexico Statutes 11-1-4(G). If the purpose set forth in [the] agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide:

- (1) for the repayment or return to the parties of all or any part of any contributions, payments or advancements made by the parties of all or any part of any contributions, payments or advancements made by the parties pursuant to such agreement; and
- (2) for payment to the parties of any sum derived from the revenues of such facilities.

New Mexico Statutes 11-1-4(H). Payments, repayments or returns to a public agency shall be made at the time and in the manner specified in the agreement.

### **Powers of administering agency under agreement**

New Mexico Statutes 11-1-5(A). The agency provided by the agreement to administer or execute the agreement may be one of the parties to the agreement or a commission or board constituted pursuant to the agreement.

New Mexico Statutes 11-1-5(B). The administering agency under any such agreement shall be considered under the provisions of the Joint Powers Agreement Act as an entity separate from the parties pursuant to the agreement.

New Mexico Statutes 11-1-5(C). The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement,

subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies or such restrictions of any public agency participating which may be designated or incorporated in the agreement.

### **Privileges and immunities**

New Mexico Statutes 11-1-6. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Joint Powers Agreement Act.

### **Power to issue revenue bonds**

New Mexico Statutes 11-1-7. In addition to other powers, any agency, commission or board provided for by a joint powers agreement pursuant to the Joint Powers Agreement Act may issue revenue bonds to pay the cost and expenses of acquiring or constructing any structures, facilities or equipment necessary to effectuate the purposes of the agreement. Such authority shall be subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of this state.

## **TEXAS GOVERNING STATUTES**

### **INTERLOCAL COOPERATION CONTRACTS**

#### **Interlocal contracting authority**

Texas Code § 791-011 (a). A local government may contract or agree with another local government to perform governmental functions and services in accordance with this chapter.

#### **Parties may enter interlocal contracts**

Texas Code § 791-011 (b) A party to an interlocal contract may contract with a:

- (1) state agency;
- (2) similar agency of a state that borders this state;

#### **Interlocal contract purpose**

Texas Code § 791-011 (c). An interlocal contract may be to:

- (1) study the feasibility of the performance of a governmental function or service by an interlocal contract; or
- (2) provide a governmental function or service that each party to the contract is authorized to perform individually.

### **Interlocal agreements contents**

Texas Code § 791.001 (d). An interlocal contract must:

- (1) be authorized by the governing body of each party to the contract;
- (2) state the purpose, terms, rights, and duties of the contracting parties; and
- (3) specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

### **Payment must fairly compensate**

Texas Code § 791.011 (e). An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.

### **Renewal**

Texas Code § 791.011(f). An interlocal contract may be renewed annually.

### **Local law applicable**

Texas Code § 791.012. Local governments that are parties to an interlocal contract for the performance of a service may, in performing the service, apply the local law of a party as agreed by the parties.

### **Contract supervision**

Texas Code § 791.013. (a) The parties to an interlocal contract may create an administrative agency or designate an existing local government to supervise the performance of the contract.

Texas Code § 791.013. (b) the agency or designated local government may employ personnel, perform administrative activities, and provide administrative services necessary to perform the interlocal contract.

### **Approval requirement for counties**

Texas Code § 791.014 (a). Before beginning a project to construct, improve, or repair a building, road, or other facility under an interlocal contract, the commissioners court of a county must give specific written approval for the project.

Texas Code § 791-014 (b). The approval must:

- (1) be given in a document other than the interlocal contract;
- (2) describe the type of project to be undertaken; and
- (3) identify the project's location.

Texas Code § 791-014 (c). The county may not accept and another local government may not offer payment for a project undertaken without approval required by this section.

Texas Code § 791-014 (d). A county is liable to another local government for the amount paid by the local government to the county for a project requiring approval under this section if:

- (1) the county begins the project without approval required by this section; and
- (2) the local government makes the payment before the project is begun by the county.

### **Contracts for Water Supply and Wastewater Treatment Facilities**

Texas Code § 791-026. (a) A municipality, district, or river authority of this state may contract with another municipality, district, or river authority of this state to obtain or provide part or all of:

- (1) water supply or wastewater treatment facilities; or
- (2) a lease or operation of water supply facilities or wastewater treatment facilities.

Texas Code § 791-026. (b) The contract may provide that the municipality, district, or river authority obtaining one of the services may not obtain those services from a source other than a contracting party, except as provided by the contract.

Texas Code § 791-026. (c) If a contract includes a term described by Subsection (b), payments made under the contract are the paying party's operating expenses for its water supply system, wastewater treatment facility, or both.

Texas Code § 791-026. (d) The Contract may:

- (1) contain terms and extend for any period on which the parties agree;
- (2) require the purchaser to develop alternative or replacement supplies prior to the expiration date of the contract and may provide for enforcement of such terms by court order; and
- (3) provide that it will continue in effect until bonds specified by the contract and any refunding bonds issued to pay those bonds are paid.

Texas Code § 791-026. (e) Where a contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied.

Texas Code § 791-026. (f) Tax revenue may not be pledged to the payment of amounts agreed to be paid under the contract.

Texas Code § 791-026. (g) The powers granted by this section prevail over a limitation contained in another law.

### **Case law interpretation**

The Interlocal Cooperation Act merely allows municipalities to enter into contracts with each other, but does not preclude water commission from altering wholesale waste water rate set by contract between two cities. Texas Water Com'n v. City of Fort Worth, 875 S.W. 2d 332, rehearing overruled, error denied, rehearing of writ of error overruled, (App. 3 Dist. 1994).

The provision in the Interlocal Cooperation Act that power to enter into contracts “prevails over a limitation in any other law” refers to other statutes and charters that might directly prohibit municipality from signing contract and does not preclude later legislative action regarding such contract. Texas Water Com’n v. City of Fort Worth, 875 S.W. 2d 332, rehiring overruled, error denied, rehiring of writ of error overruled, (App. 3 Dist. 1994).

## **AGREEMENTS BETWEEN BORDER MUNICIPALITIES**

### **Definitions**

Texas Code § 763.001. In this chapter:

- (1) “Adjoining municipality” means a municipality in an adjoining state that is contiguous to a border municipality.
- (2) “Border municipality” means a municipality in this state that borders the state line and that is separated from a municipality in an adjoining state only by the state line.

### **Agreement between municipalities**

Texas Code § 763.002. A border municipality may agree with an adjoining municipality to:

- (1) furnish to, or receive from, the adjoining municipality services or facilities;
- (2) jointly or cooperatively furnish a governmental service or facility; or
- (3) exercise any authority of the border municipality, to the extent that the adjoining municipality may cooperate or act jointly.

### **Powers and authority**

Texas Code § 771.003 Revisor’s Note (1). The source law authorizes an agency to “enter into and perform a written agreement or contract” with other agencies.

### **Terms of agreement or contract**

Texas Code § 763.003 (a). An agreement or contract authorized by this chapter must specify:

- (1) the purpose and duration of the agreement or contract;
- (2) the manner of financing the joint or cooperative undertaking and for establishing and maintaining a budget for the undertaking;
- (3) any financial arrangement under the agreement or contract in which one municipality agrees to furnish specified services or facilities to another municipality;
- (4) the precise organization, composition, nature, and powers of any separate legal or administrative entity created under the agreement or contract; and
- (5) appropriate methods of enforcement;

- (6) the methods for terminating the agreement or contract, in whole or in part, and for disposing of property on termination; and
- (7) any other necessary and proper matters.

Texas Code § 763.003 (b). A separate legal or administrative entity may not be created under an agreement or contract authorized by this chapter if the creation of the entity violates any other law.

Texas Code § 763.003 (c). If the agreement between the municipalities does not establish a separate entity to conduct the joint or cooperative undertaking, the agreement must provide for:

- (1) an administrator or joint board to administer the undertaking; and
- (2) the manner of acquiring, holding, and disposing of any property used in the undertaking.

Texas Code § 763.003 (d). If the agreement provides for a joint board, each municipality that is a party to the agreement must be represented.

### **Performance of public agency obligation**

Texas Code § 763.004 (a). An agreement under this chapter does not relieve a public agency of any legal obligation.

Texas Code § 763.004 (b). Actual and timely performance of a legal obligation of a public agency by an adjoining municipality or an entity created by an agreement or contract under this chapter may be offered in satisfaction of the obligation.

### **County filing required**

Texas Code § 763.005. An agreement under this chapter is not effective until a copy of the agreement is filed with the county clerk of the county in which the border municipality is located.

## **INTERAGENCY COOPERATION ACT**

### **Interagency cooperation act definitions**

Texas Code § 771.002 (1). Agency includes:

- (A) a department, board, bureau, commission, court, office, authority, council, or institution;
- (B) a university, college, or any service or part of a state institution of higher education; and
- (C) any statewide job or employment training program for disadvantaged youth that is substantially financed by federal funds and that was created by executive order not later than December 30, 1986.

Texas Code § 771.002 (2). "Resources" means materials and equipment.

Texas Code § 771.002 (3). "Services" means special or technical services, including the services of employees.

### **Exceptions to authority to contract**

Texas Code § 771.003 (a). A state agency may agree or contract with another state agency for the provision of necessary and authorized services and resources.

Texas Code § 771.003 (b). A state agency may not construct a highway, road, building, or other structure for another agency under this chapter, except that the State Department of Highways and Public Transportation may enter into an interagency agreement with a state college, university, or public junior college for the maintenance, improvement, relocation, or extension of existing on-campus streets, parking lots, and access-ways.

Texas Code § 771.003 (c). A state agency may not provide services or resources to another agency that are required by Article XVI, Section 21 of the Texas Constitution to be provided under a contract awarded to the lowest responsible bidder.

### **Contract requirements**

Texas Code § 771.004 (a). Before a state agency may provide or receive a service or resource under this chapter, the agency must have entered into a written agreement or contract that has been approved by the administrator of each agency that is a party to the agreement or contract.

Texas Code § 771.004 (b). The agreement must specify:

- (1) the kind and amount of services or resources to be provided;
- (2) the basis for computing reimbursable costs; and
- (3) the maximum cost during the period of the agreement or contract.

Texas Code § 771.004 (c). A written agreement or contract is not required:

- (1) in an emergency for the defense or safety of the civil population or in the planning and preparation for those emergencies;
- (2) in cooperative efforts, proposed by the governor, for the economic development of the state; or
- (3) in a situation in which the amount involved is less than \$5,000.

Texas Code § 771.004 (d). In an interagency exchange that is exempt from the requirements of a written agreement or contract, the agencies involved shall document the exchange through informal letters of agreement or memoranda.

### **Subcontracts of services and resources allowed**

Texas Code 771.006. A contract under this chapter may authorize an agency providing services and resources to subcontract and purchase the services and resources.

### **Reimbursement of costs**

Texas Code 771.007 (a). A state agency that receives services or resources under this chapter shall reimburse each state agency providing the services or resources the actual cost of providing the services or resources, or the nearest practicable estimate of that cost. Reimbursement is not required if the services or resources are provided:

- (1) for national defense or disaster relief; and
- (2) in cooperative efforts, proposed by the governor, to promote the economic development of the state.

Texas Code § 771.007 (b). A state agency that receives services or resources under this chapter may advance funds to the state agency providing the services or resources if the agency receiving the services or resources determines that the advance would facilitate the implementation of a federally funded program.

Texas Code § 771.007 (c). A state agency that receives services or resources under this chapter may advance funds to the state agency providing the services or resources if an advance is necessary to enable the providing agency to provide the services or resources. If an advance is made under this section, the agencies shall ensure after the services or resources are provided that the providing agency has received only sufficient funds to reimburse its total costs.

### **Reimbursement procedure**

Texas Code § 771.008 (a). An agency shall reimburse an agency for the services or resources provided with a voucher payable to the providing agency or electronically as prescribed by the uniform statewide accounting system. The voucher or electronic transfer must be drawn on the appropriation item or account of the receiving agency from which the agency would ordinarily make expenditures for similar services or resources. A receiving agency may authorize a providing agency to gain access to the receiving agency's appropriation items or accounts for reimbursement under this chapter.

### **Exceeding authority prohibited**

Texas Code § 771.010. A state agency may not enter into an agreement or contract that requires or permits the agency to exceed its duties and responsibilities or the limitations of its appropriated funds.

## **V. GUIDE TO FEASIBILITY STUDIES AND NEGOTIATING BUSINESS TERMS**

### **USE OF INTERLOCAL AGREEMENT FEASIBILITY STUDIES**

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

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

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

Public input should be considered at the initiation of the study process. This could be in the form of public hearings or through the appointment of citizen members to the study team.

The completed feasibility study serves as a plan to implement the joint service. It is the basis for policy decisions by the local governing bodies and an integral part of the interlocal agreement that puts the joint service into effect.

The following pages outline a feasibility study. Because it is a general guide, the outline covers greater detail than your study may require. Not every item applies to every study. Choose those elements that pertain to your study.

# OUTLINE OF AN INTERLOCAL AGREEMENT FEASIBILITY STUDY

## I. ESTABLISH A CLEAR GOAL FOR THE JOINT SERVICE

### A. Describe the service to be provided.

1. Identify what service is to be provided on a cooperative basis.
2. Clearly define what aspects of the service will remain the individual responsibilities of the participants.
3. State any particular requirements that must be addressed by the joint service.

### B. Clarify expectations about the joint Service.

1. What does your community hope to gain by participating in the joint program:
  1. Cost savings?
  2. Improved level of service?
  3. Establishment of a previously unavailable service?
  4. Greater efficiency of service operations?
2. Describe the criteria that will be used to measure the quality of services provided or the effectiveness of the joint service.

### C. Identify all potential participants

1. Have all local units that could benefit from the joint service been included in the study? If not, why not?
2. Will the establishment of a joint service inadvertently have an adverse effect on a non-participating community?

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

### A. Describe how the service is currently provided.

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

**B. Describe the level of service currently provided**

Identify the service and the level of service presently being provided by each participant. Use quantifiable measures whenever possible. For example, the number of residential trash pick-ups per truck per day, or the number of patrolmen per shift, etc.

**C. Does the service meet current needs?**

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

**D. What are the future service needs?**

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

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

**A. Determine the total cost for each local unit.**

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

**B. What is needed to meet minimum service levels?**

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

**C. What are the projected service costs?**

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

**IV. DESCRIBE AND ANALYZE THE PROPOSED JOINT SERVICE**

**A. Determine service levels required**

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

## **B. Fix responsibility for providing the service**

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

Identify with necessary detail, the following:

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

## **C. Identify potential problem areas**

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

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

### **A. Total cost of the proposed service structure**

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

**B. Cost of the service to each participant**

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

**VI. DEFINE SERVICE CRITERIA AND EVALUATE GOALS**

**A. Measure the service to each participant**

1. Describe the criteria to be used to measure the amount of service provided to each participant.
2. Describe the criteria to be used to measure the quality or effectiveness of the service program.

**B. Does the proposed interlocal service meet the established goals?**

Examples:

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

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

**A. Economic feasibility**

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

**B. Operational and administrative feasibility**

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

## NEGOTIATING BUSINESS TERMS

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

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

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

It is important to realize that these negotiations are not just bargaining sessions, but are also opportunities for the exchange of information. It is essential that the parties disclose important information in a timely fashion, so that the parties generate the information necessary to make an accurate evaluation of the agreement early in the process. As part of this information exchange, each party should assess the other parties' risks and positions in relation to such factors as the market, financing, statutory obligations, and *pro forma* financial assumptions, and evaluate and verify this data independently.

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

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

## OUTLINE OF NEGOTIATION POINTS

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

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

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

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

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

- c. **Cite Specific Terms Agreed To.** It is important to state that the parties agree to their respective roles in the project. With long-term projects the respective roles of the parties to the original agreement may be forgotten or change over the period of the agreement. In addition, the actual parties may change over time. And finally, the position and power of the parties may change over a long period of time. Stating what the parties agree to perform in the agreement may avert future litigation.

The \_\_\_\_\_ is desirous of operating a wastewater facility and agrees that the County act as fiscal agent and construction grant administrator for the \_\_\_\_\_ Wastewater Facility Project to be located in \_\_\_\_\_.

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

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

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

- d. **Ownership & Management.** State ownership and management of the project facilities and name the responsible parties and/or lead agencies.

The County and the \_\_\_\_\_ have entered into a grant agreement that awards to the county ownership and management responsibilities and responsibility to act as fiscal agent and construction grant administrator for Colonias wastewater projects in \_\_\_\_\_ County for the State of \_\_\_\_\_ (or Federal Agency).

The County will own and manage the Wastewater Facility.

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

The County has the authority under \_\_\_\_\_ Statutes Section \_\_\_\_\_ *et seq.* and \_\_\_\_\_ to construct, operate and maintain water and wastewater systems and enter into agreements in the unincorporated areas of the County; \_\_\_\_\_ Water Co-op under authority of the Sanitary Projects Act of the laws of the State of \_\_\_\_\_, is authorized to construct, operate and maintain a wastewater system in \_\_\_\_\_ County; County and \_\_\_\_\_ Water Co-op, under the powers authorized by \_\_\_\_\_ *et seq.*, (Interlocal Agreement Act) enter into this mutually beneficial Agreement and further agree to cooperate in the administration of delinquent wastewater accounts, mandatory connections, general discharge prohibitions, and enforcement of ordinances, which protects the owner, operators and wastewater treatment facility in the County of \_\_\_\_\_.

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

Federal (or state) appropriations have been made to the \_\_\_\_\_ to fund the construction of wastewater facilities, including the design and construction of wastewater collection and treatment systems in communities designated as Colonias in the \_\_\_\_\_.

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

The County will adopt ordinances requiring mandatory sewer connections of the \_\_\_\_\_ water customers to the County wastewater collection system and establishing general discharge prohibitions of toxic substances making it illegal to dump chemicals and substances that interfere with operations of the wastewater treatment facility.

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

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

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

After the first year of project completion, \_\_\_\_\_ will charge an administrative fee of \$250,000 dollars for the County, for all new connections to the system up to the maximum connections the system is designed for.

All agreement(s) reached by the parties prior to entering the Interlocal Agreement should be referenced and attached as an addendum to the final Interlocal Agreement. Remember that a deal gone wrong can be a very difficult situation to untangle. If the deal does not "feel right" initially, proceed with further caution.

## **VI. IMPLEMENTING INTERLOCAL SERVICES**

### **IMPLEMENTING INTERLOCAL SERVICES: WORKING TOGETHER**

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

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

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

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

### **QUESTIONS TO BE ANSWERED**

#### **LEGAL CONSIDERATIONS**

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

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

### **COST CONSIDERATIONS**

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

1. What are the personnel, operating and capital costs of the service to be provided?
2. What provisions should be made to accommodate inflationary costs?
3. If costs paid by the recipient(s) do not cover actual costs, what method can be used for adjustment?
4. What administrative costs should be part of the "cost of services?"
5. Should overhead costs include depreciation of assets, rent, utilities and liability insurance?
6. What is an acceptable method of determining costs and payments?
7. Will the costs be affected by additional participants?
8. Is it really cost-effective to join with other governmental units to provide the service?
9. If costs are higher than present, is the service level improved sufficiently to justify the joint effort?

### **PUBLIC REACTION AND POLICY ISSUES CONSIDERATIONS**

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

1. How will you deal with the residents who object to services being provided by a different agency?

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

## **ASSESSING RESOURCE CONSIDERATIONS**

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

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

## **STEPS IN EXECUTING AND IMPLEMENTING AN INTERLOCAL AGREEMENT**

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

1. Begin negotiations between the parties considering the joint venture to identify the terms and conditions of the agreement.

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

## **PARTS OF AN INTERLOCAL AGREEMENT**

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

- 1. Nature of the arrangement**
  - a. Description of parties involved
  - b. Explanation of need for agreement
  - c. Citation of legal authority
  - d. Definition of terms
- 2. Exact nature and extent of services to be performed**
  - a. Measurable performance standards
  - b. Specific assignment of responsibility
- 3. Service charges or formula**
  - a. Start-up and in-kind contributions
  - b. Salaries and employee benefits
  - c. Depreciation of equipment
  - d. Overhead

- e. Office supplies
- f. Clerical work (support services)
- g. Capital expenditures
- h. Cost modification procedures

**4. Administration**

- a. Unit(s) responsible for services
- b. Control over responsible units
- c. Citizen inquiries and insight into future changes in the agreement and complaint resolution
- d. Addition of new participants
- e. Liability issues and responsibility

**5. Fiscal procedures**

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

**6. Staffing and personnel**

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

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

**8. Monitoring and evaluation—evaluation schedule**

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

## CHECKLIST FOR DRAFTING INTERLOCAL AGREEMENTS

- DEFINITIONS.** All technical terms to be used in the Interlocal Agreement should be precisely defined in a "table" of definitions. The agreement should also include all terms that have been defined in any applicable statute or ordinance.
- PARTIES.** The agreement should name all parties to the agreement, together with their capacity to enter into the agreement. Public entities should recite their authority to enter into Interlocal Agreements.
- RELATIONSHIP OF THE PARTIES.** The relationship between the parties to the agreement should be stated clearly. Typically, the statement will specify that the relationship is authorized by the Interlocal Agreement statute.
- PROPERTY.** The subject matter of the agreement should be clearly and thoroughly identified. An attachment specifically describing property or describing the subject matter of the agreement in detail should be provided and incorporated into the agreement by reference.
- AUTHORIZATION.** The state and local government legislation under which the parties are enabled and authorized to enter into this agreement should be cited. This is particularly important in the event a state agency is a party. The resolution or ordinance by which the agreement has been approved by the local government body should be cited.
- INTENT OF THE PARTIES.** The intent of the parties to be bound by the terms of the agreement should be clearly stated.
- RECITATION OF CONTRACTUAL TERMS.** The parties should specifically recite the duties each party agrees to bear. Because an Interlocal Agreement is treated as a special form of agreement, the terms of the duties and obligations each party is to receive from and provide to the other should be stated clearly. It is especially critical that the terms exhibit the agreement as consistent with—or as an exercise of—the Interlocal Agreement statute.
- NOTICE AND HEARINGS (or other form of public participation).** The date upon which any statutorily required public hearing was held should be noted, as well as all relevant findings resulting from such hearing. All other pertinent notice and hearing requirements should be recited.
- APPLICABLE REGULATIONS.** The agreement should contain a precise statement of all regulations to which the project will be subject. The agreement should specify precisely which regulations will apply to the project regardless of future changes, or those which might be affected by the agreement. The statement should make it clear that regulations not specifically so identified will not be affected by the terms of the agreement, and will be subject to enforcement and change under the same criteria that would apply if no agreement were in effect.

- APPROVAL AND PERMIT REQUIREMENTS.** As far as possible at the time the agreement is written, the parties should specify all discretionary approvals and permits which will have to be obtained before the agreement can proceed. Permits and approvals obtained prior to the execution of the agreement should be specified. Any and all conditions precedent to the obtaining of permits and approvals should be listed.
  
- DEDICATIONS AND RESERVATIONS.** The agreement should provide, where appropriate, a statement of all reservations or dedications of land for public purposes as are required pursuant to laws, ordinances, resolutions, rules, or policies in effect at the time of entering into the agreement. The agreement should also state all reservations or dedications that are permitted under existing laws at the time the agreement is entered, and to which the parties have agreed.
  
- DURATION OF THE AGREEMENT.** The agreement must usually provide for a termination date. It may also specify project commencement and completion dates, either for the project as a whole, or for its various phases. The agreement should specify that the termination date can be extended by mutual agreement, and that commencement and completion dates may also be extended at the discretion of the parties.
  
- AMENDMENTS, CANCELLATIONS OR TERMINATION.** The agreement should recite the conditions under which the agreement can be amended, cancelled or otherwise terminated. In particular, the agreement should note that the parties may only terminate the agreement under circumstances spelled out in the Interlocal Agreement.
  
- PERIODIC REVIEW.** The agreement should provide for periodic reviews of the project in order to determine compliance with the terms of the agreement. The party responsible for performing such reviews should be identified and specific times for such reviews should be stated. A procedure should be developed and specified for dealing with situations in which minor and major noncompliance is discovered.
  
- PROGRESS REPORTS.** If the parties agree, the agreement should specify that progress reports be made available to the parties at specified intervals, or upon completion of specified phases of the project, or at whatever time periods the parties choose.
  
- REMEDIES.** Remedies for breach on the part of either party should be provided. Specific remedies for specific breaches should be stated, if possible. The agreement should include a statement clarifying whether remedies stated in the agreement are to be exclusive, or whether other statutory or common law remedies will also be available.
  
- ENFORCEMENT.** The agreement should specify that it shall be enforceable, unless lawfully terminated or cancelled by any party to the agreement or any party's successor in interest, notwithstanding any subsequent changes in any applicable law adopted by the parties, that alters or amends the laws, ordinances, resolutions, rules or policies frozen by the agreement, except as noted above.

- HOLD HARMLESS CLAUSE.** If the parties so agree, the agreement should contain a clause whereby the parties hold each other and their agents harmless from liability for damages, injury, or death, that may arise from the direct or indirect operations of the parties in carrying out the terms of the agreement.
- INSURANCE BONDS.** Any insurance coverage required and/or secured by either party to the agreement, and affecting any aspect of the project, should be specified. Existing performance bonds should be listed in detail, as well as bonds not yet obtained but required as conditions precedent for final approval of the agreement. Applicable ordinances relating to bond requirements should be cited.
- SEVERABILITY CLAUSE.** The agreement should include a clause specifying that the provisions of the agreement are severable, if the parties so agree. Any limitations upon the severability of any particular clause or clauses should be clearly stated.
- MERGER CLAUSE.** A merger clause or other statement should be provided specifying that the terms of the agreement as stated in the written document are both a final and complete expression of the parties' intentions.
- STATEMENTS OF INCORPORATION BY REFERENCE.** All documents related to the agreement or otherwise attached or appended thereto should be expressly stated to be incorporated into the agreement by reference. These might include lists of conditions, schedules of completion for public facilities, imposition of dedications, impact fees, and development plans and specifications.
- COOPERATION.** The agreement should include a statement of the extent to which the parties will cooperate in their efforts to carry out the terms of the agreement.
- SUBSIDIARY OR COLLATERAL AGREEMENTS.** If the governments have obtained additional agreements relating to the project from any nonparty agencies or persons, such agreements and the parties thereto should be specified.
- CONFLICT OF LAWS.** Procedures should be specified for dealing with situations in which the parties to the agreement are in different countries or in different states. Choice of law provisions should be stated in the agreement specifying which law governs the terms and conditions of the agreement and whether the law preempts or otherwise affects local laws.

## TEN STEPS TO A MORE EFFECTIVE INTERLOCAL AGREEMENT

The state of California first recorded the use of an Interlocal Agreement in 1913. Within the last few years, however, other states have begun to realize the value of Interlocal Agreements.

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

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

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

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

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

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

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

**STEP SIX:** Be reasonable when negotiating the terms of an agreement. The more one agency requests from the other entity to the agreement, the less comfortable the local jurisdiction feels. Prepare a reasonable estimate of the costs needed to develop a project and then add

a buffer to allow for contingencies. Rely on a well-drafted *force majeure* provision to give you an allowance for additional expenses that may be encountered.

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

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

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

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

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

## CREATION OF NEW ENTITY USING JOINT POWER AUTHORITY

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

## **JOINT POWER AUTHORITY CREATION OF A NEW AGENCY**

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

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

As an example of such an authority, consider two public agencies, one currently providing sewage treatment services to city and county residents, the other having little or no sewage treatment capabilities. The two parties may agree to create a joint sewage treatment authority, wherein both parties contribute the necessary resources and the capital assets. Personnel may become employees of the new authority, and, with a new operating board, policies may be independently set to create sewage treatment services for both jurisdictions. This is distinctly different from a Joint Powers Agreement, in which the initial provider of the service maintains the staff, property and policy discretion and enters into an agreement only with a second or third party to provide services under specific terms and conditions.

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

## **STEPS REQUIRED TO CREATE JOINT POWERS AUTHORITY**

The steps required to create a Joint Powers Authority as an independent governmental entity are much greater than that required of a typical Joint Powers Agreement. The creation of a new authority requires that specific organizational issues of the parent agencies be resolved prior to creating the new entity. The first issue to be resolved is the creation of an independent board. Creation of an independent board is provided for in the Joint Powers Authority agreement at the time the agency is created. The board is granted specific powers accompanying its designation as an independent public entity, separate and apart from the parent bodies. The purpose is stated within the agreement and includes whether or not the agency can acquire public property; whether it can construct, renovate or by contract have built public facilities; whether it can hire new staff or contractors; and whether some specific agency is designated as an administrative agency. In some cases this can be one of the

parent agencies, and in rare cases it may be a third party designated as the administrator of the program.

The powers of the authority can be general or specific. The term of the authority must be established. Provisions for how the board must meet and conduct business, provide notices to the public, document its actions, specify its quorum, and specify the officers and duties, all must be outlined before a Joint Powers Authority can be in effect. In addition, Joint Power Authority Agreements usually identify whether or not the Joint Powers Authority has the authority to incur debt.

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

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

The Joint Powers Agreement also has to establish budgetary guidelines and rules for policy-making prior to the creation of the Joint Powers Authority. While specific rules related to budgeting may vary, two major categories can be identified. In most cases, the Joint Powers Authority has the ability to adopt its budget independently. Once adopted, that budget may be transmitted to the parent agencies within a specific time frame and under certain conditions. The parent agencies are often responsible for their share of a specified contribution to the Joint Powers Authority. The shares may be developed through formulas that reflect agency size, number of constituents served, financial contributions or just simply political weight. When a Joint Powers Authority is given significant financial and policy-making independence, the design of the board of directors becomes a critical decision in the formation of the Joint Powers Agreement. Boards are usually created with a one-agency, one-vote structure or they utilize some form of weighted voting that allows one or more of the agencies a more significant say in the policy and budget outcomes. It is through the creation of the board that an agency's share of the budget or influence on policy-making is determined.

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

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

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

## VII. MODEL INTERLOCAL AGREEMENT

### ELEMENTS OF MODEL INTERLOCAL AGREEMENT

|                                      |   |
|--------------------------------------|---|
| a) Description of parties involved   | This Agreement is entered into on this _____ day of _____, 199____, between _____ and _____.  |
| b) Explanation of need for agreement | <p style="text-align: center;"><b>WITNESSETH:</b></p> <p>WHEREAS, the _____ and _____ have identified a continuing need for _____ assistance to meet sewage treatment needs within the _____ and desires to contract with the _____ for certain _____, _____, and _____ services within the _____ area; and</p> |
| c) Citation of legal authority       | <p>WHEREAS, the _____ and _____ have authority to enter into this Agreement pursuant to _____, the Interlocal / Joint Powers Agreement Act; and</p>   |
| d) Definition of terms               | <p>NOW THEREFORE, in consideration of the terms and conditions contained herein, the _____ and _____ agree as follows:</p> <p>"City" means _____.</p>   |

e) Exact nature and extent of services to be performed and specific assignment of responsibility

"County" means \_\_\_\_\_.

"City Sewage Treatment Works" means \_\_\_\_\_.

The \_\_\_\_\_ shall provide the \_\_\_\_\_ for processing and billing any sewage treatment hook-up application received by the \_\_\_\_\_ on or after \_\_\_\_\_, 199\_\_\_. As the agent of the \_\_\_\_\_, the \_\_\_\_\_ shall process to completion any sewage hook-up applications for which it received a hook-up application and accompanying fee prior to \_\_\_\_\_, 199\_\_\_, pursuant to the Interlocal Agreement between the parties dated \_\_\_\_\_, 199\_\_\_. The \_\_\_\_\_ shall supply the \_\_\_\_\_ with a list of such applications that were accepted on or before \_\_\_\_\_, 199\_\_\_. Approximately one year from the date of this agreement, the \_\_\_\_\_ and the \_\_\_\_\_ shall meet to review the status of the listed hook-up applications and determine whether or not the responsibility for continued processing of the applications should be transferred to the \_\_\_\_\_. Any requested applications shall be made to, and administered by, the \_\_\_\_\_.

f) Service charges or formula, start-up and in-kind contributions

The \_\_\_\_\_ agrees to compensate the \_\_\_\_\_ for staff time spent processing sewage hook-up applications for applications within the Annexation area after the annexation was finalized, \_\_\_\_\_, 199\_\_\_. This compensation is for staff time not already compensated through master plan hook-up fees received by the \_\_\_\_\_ including public hearings and meetings, and all consultations with the \_\_\_\_\_, requested by the \_\_\_\_\_, such as staff meetings, telephone conferences and site visits (in accordance with \_\_\_\_\_ ordinance).

**g) Salaries and employee benefits, depreciation of equipment, overhead, office supplies, and cost modification procedures**

The \_\_\_\_\_ shall bill the \_\_\_\_\_ for these services at the following hourly rates based on the current salaries of public works department staff Coordinator (\$\_\_\_\_\_/hr) + (15% indirect costs and overhead); Clerical (\$\_\_\_\_\_/hr) + 15% (indirect costs and overhead).

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

**h) Bill collection and collection responsibility**

**OBLIGATIONS:** The \_\_\_\_\_ will do the following:

A. Cooperate with the \_\_\_\_\_ to provide information to potential system customers concerning sewage hook-up fees, connection charges, and utility rates and deposits for each connection;

B. Process sewage hook-up applications at \_\_\_\_\_ or as otherwise arranged, and accept as wastewater customers all qualified applicants, who comply with \_\_\_\_\_ utility customer requirements such as the payment of deposits and delinquent account balances owing the \_\_\_\_\_ or the \_\_\_\_\_;

C. Assess and collect the entire amount of the \_\_\_\_\_ sewage hook-up fee, which fee is presently \$1,500.00 per residential connection, from all system customers who do not qualify for grant funding for this fee and for all other \_\_\_\_\_ system connection charges which might be grant funded prior to connection to the system.

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

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

**i) Administration, units responsible for services, control over responsible units, liability issues, and responsibility and addition of new participants.**

**OBLIGATIONS:** The \_\_\_\_\_ will do the following:

A. Grant to the \_\_\_\_\_ exclusive right to process sewer hook-up fees at City Hall or as otherwise arranged, and accept as wastewater customers all qualified applicants;

B. Adopt and thereafter enforce an Ordinance prohibiting the discharge of hazardous materials, which discharge violates \_\_\_\_\_ ordinances, into any sanitary sewer system owned and/or operated and maintained by the \_\_\_\_\_ outside the \_\_\_\_\_ limits. Said ordinance shall adopt the \_\_\_\_\_ industrial liquid waste ordinance and any subsequent revisions to it;

C. Assist system customers for so long as grant funding is available to apply for and receive grant funding to pay for applicable \_\_\_\_\_ sewer hook-up fees and other wastewater connection charges.

**j) Fiscal procedures, budgets, distribution of revenues, and manner and time of payments**

Payment between the parties hereto for services provided for in the agreement shall be that commencing in the fiscal year 199\_\_\_\_, pay to the \_\_\_\_\_ 100% of the amount of money generated by the \_\_\_\_\_ sewage utility department as applied to the assessed valuation of the assessable property as shown on the Plat in Exhibit "A" attached hereto. Said payments shall be made quarterly as collected each year so long as this agreement shall be effect.

**k) Procedures for customer non-payment and control over billing procedures**

As a condition of accepting the responsibility of processing applications and billing wastewater customers the \_\_\_\_\_ shall be authorized to:

A. To disconnect or refuse to reconnect wastewater utility service for any of the following reasons:

(i) failure to meet the applicable provision of \_\_\_\_\_ or \_\_\_\_\_ ordinances;

(ii) violation of the regulations pertaining to utility service;

(iii) nonpayment of wastewater utility bills;

(iv) tampering with any meter, seal, or other equipment controlling or regulating the supply of wastewater utility service;

(v) willful or negligent waste of wastewater service due to improper or imperfect pipes, fixtures, appliances or otherwise on the customer's side of the system;

(vi) theft or diversion and/or use of wastewater utility service without payment;

(vii) vacancy of service premises

B. To decline or cease to furnish utility service to any person or customer who may be in debt to the \_\_\_\_\_ for any reason except for property taxes and special assessments;

C. To file a utility lien on the service property;

D. To pursue any other collection remedies in accordance with applicable law.

**l) Termination of agreement, notice of termination and third-party takeover responsibilities**

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

m) Indemnification agreement

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

n) Liability limitation

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

o) Insurance coverage

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

B. The \_\_\_\_\_ provides coverage for its liability exposure through a local public body liability fund. So long as this agreement is in effect, the v will continue participating in that fund to insure its liabilities under the \_\_\_\_\_ Tort Claims Act.

p) Amendments

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

q) Scope of agreement

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

r) Resolution of disputes

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

s) Conflict of interest

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

**EXECUTED** on the date first written above.

CITY OF \_\_\_\_\_  
\_\_\_\_\_

By:  
Mayor

APPROVED BY:  
\_\_\_\_\_

CITY ATTORNEY

COUNTY OF \_\_\_\_\_  
\_\_\_\_\_

By:  
Chairman of County Commission

APPROVED BY:  
\_\_\_\_\_

County Attorney

## MODEL INTERLOCAL AGREEMENT

This Agreement is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, between \_\_\_\_\_ and \_\_\_\_\_.

### WITNESSETH:

WHEREAS, the \_\_\_\_\_ and \_\_\_\_\_ have identified a continuing need for \_\_\_\_\_ assistance to meet sewage treatment needs within the \_\_\_\_\_ and desires to contract with the \_\_\_\_\_ for certain \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ services within the \_\_\_\_\_ area; and

WHEREAS, the \_\_\_\_\_ and \_\_\_\_\_ have authority to enter into this Agreement pursuant to \_\_\_\_\_, the Interlocal /Joint Powers Agreement Act; and

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

"City" means \_\_\_\_\_.

"County" means \_\_\_\_\_.

"City Sewage Treatment Works" means \_\_\_\_\_.

The \_\_\_\_\_ shall provide the \_\_\_\_\_ for processing and billing any sewage treatment hook-up application received by the \_\_\_\_\_ on or after \_\_\_\_\_, 199\_\_\_\_. As the agent of the \_\_\_\_\_, the \_\_\_\_\_ shall process to completion any sewage hook-up applications for which it received a hook-up application and accompanying fee prior to \_\_\_\_\_, 199\_\_\_\_, pursuant to the Interlocal Agreement between the parties dated \_\_\_\_\_, 199\_\_\_\_. The \_\_\_\_\_ shall supply the \_\_\_\_\_ with a list of such applications that were accepted on or before \_\_\_\_\_, 199\_\_\_\_. Approximately one year from the date of this agreement, the \_\_\_\_\_ and the \_\_\_\_\_ shall meet to review the status of the listed hook-up applications and

determine whether or not the responsibility for continued processing of the applications should be transferred to the \_\_\_\_\_. Any requested applications shall be made to, and administered by the \_\_\_\_\_.

The \_\_\_\_\_ agrees to compensate the \_\_\_\_\_ for staff time spent processing sewage hook-up applications for applications within the Annexation area after the annexation was finalized, \_\_\_\_\_, 199\_\_\_\_. This compensation is for staff time not already compensated through master plan hook-up fees received by the \_\_\_\_\_ including public hearings and meetings, and all consultations with the \_\_\_\_\_, requested by the \_\_\_\_\_, such as staff meetings, telephone conferences and site visits (in accordance with \_\_\_\_\_ ordinance).

The \_\_\_\_\_ shall bill the \_\_\_\_\_ for these services at the following hourly rates based on the current salaries of public works department staff Coordinator (\$\_\_\_\_\_/hr) + (15% indirect costs and overhead); Clerical (\$\_\_\_\_\_/hr) + 15% (indirect costs and overhead).

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

**OBLIGATIONS:** The \_\_\_\_\_ will do the following:

A. Cooperate with the \_\_\_\_\_ to provide information to potential system customers concerning sewage hook-up fees, connection charges, and utility rates and deposits for each connection;

B. Process sewage hook-up applications at \_\_\_\_\_ or as otherwise arranged, and accept as wastewater customers all qualified applicants, who comply with \_\_\_\_\_ utility customer requirements such as the payment of deposits and delinquent account balances owing the \_\_\_\_\_ or the \_\_\_\_\_;

C. Assess and collect the entire amount of the \_\_\_\_\_ sewage hook-up fee, which fee is presently \$1,500.00 per residential connection, from all system customers who do not qualify for grant funding for this fee and for all other \_\_\_\_\_ system connection charges which might be grant funded prior to connection to the system.

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

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

**OBLIGATIONS:** The \_\_\_\_\_ will do the following:

A. Grant to the \_\_\_\_\_ exclusive right to process sewer hook-up fees at City Hall or as otherwise arranged, and accept as wastewater customers all qualified applicants;

B. Adopt and thereafter enforce an Ordinance prohibiting the discharge of hazardous materials, which discharge violates \_\_\_\_\_ ordinances, into any sanitary sewer system owned and/or operated and maintained by the \_\_\_\_\_ outside the \_\_\_\_\_ limits. Said ordinance shall adopt the \_\_\_\_\_ industrial liquid waste ordinance and any subsequent revisions to it;

C. Assist system customers for so long as grant funding is available to apply for and receive grant funding to pay for applicable \_\_\_\_\_ sewer hook-up fees and other wastewater connection charges.

Payment between the parties hereto for services provided for in the agreement shall be that commencing in the fiscal year 199\_\_\_\_, pay to the \_\_\_\_\_ 100% of the amount of money generated by the \_\_\_\_\_ sewage utility department as applied to the assessed valuation of the assessable property as shown on the Plat in Exhibit "A" attached hereto. Said payments shall be made quarterly as collected each year so long as this agreement shall be effect.

As a condition of accepting the responsibility of processing applications and billing wastewater customers the \_\_\_\_\_ shall be authorized to:

A. To disconnect or refuse to reconnect wastewater utility service for any of the following reasons:

- (i) failure to meet the applicable provision of \_\_\_\_\_ or \_\_\_\_\_ ordinances;
- (ii) violation of the regulations pertaining to utility service;
- (iii) nonpayment of wastewater utility bills;

(iv) tampering with any meter, seal, or other equipment controlling or regulating the supply of wastewater utility service;

(v) willful or negligent waste of wastewater service due to improper or imperfect pipes, fixtures, appliances or otherwise on the customer's side of the system;

(vi) theft or diversion and/or use of wastewater utility service without payment;

(vii) vacancy of service premises

B. To decline or cease to furnish utility service to any person or customer who may be in debt to the \_\_\_\_\_ for any reason except for property taxes and special assessments;

C. To file a utility lien on the service property;

D. To pursue any other collection remedies in accordance with applicable law.

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

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

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

A. The \_\_\_\_\_ provides insurance coverage for its liability exposure through a self-insured public liability fund. So long as the agreement is in effect, the

\_\_\_\_\_ will maintain an adequate level of funding in that fund to cover its liabilities under the \_\_\_\_\_ Tort Claims Act.

- B. The \_\_\_\_\_ provides coverage for its liability exposure through a local public body liability fund. So long as this agreement is in effect, the v will continue participating in that fund to insure its liabilities under the \_\_\_\_\_ Tort Claims Act.

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

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

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

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

**EXECUTED** on the date first written above.

CITY OF \_\_\_\_\_

\_\_\_\_\_  
By:  
Mayor

APPROVED BY:

\_\_\_\_\_  
City Attorney

COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
By: Chairman Of County Commission

APPROVED BY:

\_\_\_\_\_  
County Attorney

**APPENDIX:  
EXAMPLES OF INTERLOCAL AGREEMENTS**

**CITY OF VANCOUVER-CLARK COUNTY  
COOPERATIVE AGREEMENT FOR THE PROVISION OF SERVICES IN  
THE VANCOUVER URBAN GROWTH AREA**

**WHEREAS**, SSB 5038 require that counties take the lead in developing interlocal service agreements that define service roles, responsibilities, transition plans and financial agreements and

**WHEREAS**, the Clark County Comprehensive Growth Management Plan defines boundaries for urban growth areas and encourages that cities expand to these boundaries through annexations, and states that cities shall be responsible for urban services while the county retains responsibilities for regional services and local service in rural, unincorporated Clark County, and

**WHEREAS**, the City of Vancouver may experience financial difficulties when moving into newly annexed areas and matching their current service levels immediately upon annexing, and Clark County is experiencing financial difficulties in funding regional services such as Juvenile Detention, and Jails while at the same time trying to fund local urban services and

**WHEREAS**, the City and the County believe that transition must ensure continuous service delivery, while not diminishing service levels within the City, nor in the remaining unincorporated County, and

**WHEREAS**, the City and the County value the contribution our employees have made to the community and desire to protect our investment in human resources, and

**WHEREAS**, the City and the County value the involvement of the Community in decisions that will effect them.

NOW THEREFORE, THE CITY OF VANCOUVER AND CLARK COUNTY AGREE AS FOLLOWS:

## Extent of Annexation

I. The City of Vancouver should move their boundaries as fast as practicable to the full extent of the Vancouver Urban Growth Boundary, consistent with the City and County Comprehensive Plan, and specifically that:

A. The City Council should move forward to annex the areas of Mill Plain, Cascade Park and Evergreen by January 1, 1997.

B. The City Council should accept 10% petitions for the remainder of the Vancouver Water and Sewer Service area.

C. The City of Vancouver should develop annexation information as an alternative to incorporation of the northwest urban growth area including, Hazel Dell, Salmon Creek, Felida areas.

## Governance

II. The City of Vancouver and Clark County believe that it is in the best interest of the community to incorporate the urban growth areas under the City of Vancouver.

## Short Term Service Agreements

III. The City of Vancouver and Clark County will work together to develop short term Service Agreements that ensure uninterrupted delivery of services in any annexed area within the urban growth area. Specifically;

A. The County agrees to provide resources including staff, equipment and facilities to the City upon the effective date of an annexation to ensure continuous delivery of services at the current county service level, or higher if agreed to within a specific *Service Agreement*.

B. The provision of County resources for initial service delivery in an annexed area shall be in effect through a contract for such services, or through a transfer of ownership and employment, or through a combination of both.

C. Said agreements shall specify current costs and service levels, a method for dealing with inflation, establishing performance standards, and resolving the sharing or transfer of assets during or at the end of the contract period, said agreements to be adopted by resolution of the Board of Commissioners and City Council no later than November 1, 1996.

D. Service agreements shall ensure transfer of employees to the employment of either the City or County during or at the end of the term of the agreement. Conditions of employment will be guided by the Resolution for Transfer of Personnel included as attachment #A.

E. Service Agreements will be for an initial period January 1, 1997, or the effective date of annexation, whichever is later, and terminate on January 1, 2000, unless superseded by a new agreement.

## Long Term Service Delivery

IV. During the annexation process, the County and the City of Vancouver will work together to seek opportunities for joint efforts or the combining of operations, to achieve greater efficiency and effectiveness in service provision, and towards that end agree:

A. To establish specific transition goals for local services in the urban growth area, by November 1, 1996

B. The process for developing transition proposals and the final service plan will be directed by a temporary Policy Group consisting of the Mayor and City Manager, Chair of the Board of Commissioners and County Administrator, the Sheriff and Police Chief, and designated staff.

C. That the Final Long Term Transition Agreements for each service area covered by Short Term Service Agreements will be adopted by the City Council and the Board of Commissioners during the term of this agreement, but in no case later than January 1, 2000.

## Financing Services

V. The City and County agree, that given current service standards and with current funding levels and taxing policies, that there is insufficient collective financial capacity to maintain services and meet capital needs in the urban growth area without implementing one or more of the following options.

A. Implement cost reductions to maintain services at their current levels, or

B. Restructure services so that cost-efficiencies are created in order to maintain current standards, or

C. Eliminate selected services in order to maintain others at current levels, or

D. Find and enact new or additional revenue sources not now exercised by the City or the County, or

E. Modify the standards and service levels of selected services, or

F. Some combination of all the above.

VI. The City of Vancouver and Clark County agree that the service and financial analysis, planning and agreements shall be done collaboratively, before annexation ordinances are proposed to the Council and, that the result of the planning and analysis should be annexation proposals which are balanced (revenues and service costs), and financially viable for both jurisdictions. Annexations conducted consistent with this agreement should be financially viable because of the following:

A. The City will gain revenue at a higher level than the County due to taxing authority and structure, and

B. The initial cost to the City for “initial state” services is assumed to be lower than the cost of the higher current service levels in the City, and

C. The City may increase service levels and costs as revenues are available and as departments are able to “staff up” to deliver at the higher level, or as *Long Term Service Plans* are implemented, and

D. The County either reduces their budget for urban services in the area, or receives offsetting revenue from the City for those services, and therefore can concentrate budget resources on regional services.

VII. The City and the County agree to negotiate in good faith to develop a long term financial agreement that include the following elements:

A. The method for determining fair costs for contracting of services between either jurisdiction.

B. An agreement to a specific schedule of City and County capital projects and to seamless funding of those projects (e.g. parks or transportation grants, as well as impact fees are transferred to the City as the annexations occur).

C. An agreement for transfer of specific assets to the City to support the annexation, e.g., equipment currently owned by the County in East Precinct, when those

assets will no longer be equipment currently owned by the County in East Precinct, when those assets will no longer be required to service an area for the County.

D. A methodology for cost sharing of consolidated services, regardless of which jurisdiction manages the service.

E. An understanding of the City's mandated financial obligations for regional services such as jails and courts, and agreement on how such obligations will be fulfilled.

F. Addition of, or continuation of specific special revenue to the region for specific services, e.g. revenue sharing for Child Abuse Intervention Center.

G. Said financial agreement to be adopted by the City Council and Board of Commissioners no later than November 1, 1996.

## Mutual Support

VIII. The County and the City will mutually support and encourage the fulfillment of this agreement by:

- A. Establishing policy consistent with this service agreement.
- B. Contributing staff and other resources for public presentations.
- C. Releasing public statements consistent with this service agreement.
- D. Supporting specific annexations in front of the Boundary Review Board.
- E. Assigning lead staff to develop an internal and external communications strategy and oversee implementation of the communications program.

## Resolution of Disputes

IX. The City and the County agree that all disputes or disagreements arising under this agreement which are not resolved at the staff level by the parties in conjunction with assistance from the City Manager and County Administrator shall be formally filed with the City Council and County Commissioners who shall meet jointly to attempt to resolve

such dispute. Should the City Council and County Commissioners be unable to resolve a dispute within thirty days each party shall appoint a representative who together shall within 15 days meet and agree to the appointment of an arbitrator who shall proceed to arbitrate the dispute. Such arbitrator's decision shall be binding and final.

Dated this 9<sup>th</sup> day of April, 1996.

CITY OF VANCOUVER, a municipal corporation

---

Royce Pollard, Mayor  
City of Vancouver

H. Kent Shorthill, City Clerk  
By: Judith Hoggart, Deputy

Approved as to form:

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Ted Gathe, City Attorney

Clark County

---

Dave Sturdevent, Chair  
Board of County Commissioners

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Louise Richards  
Clerk to the Board

Approved as to form:

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Curt Wyrick, Chief Deputy Prosecutor

## INTERLOCAL AGREEMENT

THIS AGREEMENT, is made and entered into this 16<sup>th</sup> day of December, 1985 by and between the CITY OF LAS VEGAS, a municipal corporation, (hereinafter called "City"), and the COUNTY OF CLARK, a political subdivision of the State of Nevada (hereinafter called "County").

### WITNESSETH:

WHEREAS, the County owns and operate the County Jail known as the Clark County Detention Center at 330 South Casino Center, Las Vegas, Nevada; and

WHEREAS, the City has in the past and expects to continue to cause to be housed City prisoners in the Clark County Detention Center; and

WHEREAS, disputes have arisen between the parties as to monies owed between the parties for the construction, operating and housing of City prisoners in the Clark County Detention Center; and

WHEREAS, the parties desire to settle all said disputes including those matters in issue in Case No. A218182 and also to provide for the temporary holding or confinement of City prisoners in the Clark County Detention Center.

NOW, THEREFORE, in consideration of the mutual convenience and conditions hereinafter set forth, the parties agree as follows:

1. A "City prisoner" means a person booked, temporarily held, or confined on account of a charge for a violation of a City ordinance or on account of a hold imposed by the City. A "County prisoner" means a person who the Clark County Sheriff is legally obligated to receive and who is booked, temporarily held, or confined on account of any felony or gross misdemeanor charge or booked, temporarily held, or confined on account of a hold imposed by any governmental agency other than the City or confined solely on account of a charge for a violation of a State misdemeanor statute or a County ordinance. If a person is simultaneously being held solely for both the violation of a City ordinance or on account of a hold imposed by the City and for the violation of a State misdemeanor statute or a County ordinance, regardless of the number of each, then such person shall be counted as half a City prisoner and half a County prisoner.

2. "Clark County Jail" means the Clark County Detention Facility.

3. The County hereby agrees to permit the City to cause to be booked, temporarily held or confined prisoners in the Clark County Detention Facility subject to the reasonable decisions of the Clark County Sheriff in his capacity as custodian of the Clark County Jail.

4. The City hereby agrees to permit the County upon request of the County to cause to be held or confined County prisoners in the City detention facility located at 3100 Stewart Avenue, Las Vegas, Nevada.

5. The City will pay forthwith the sum of \$171,384.81 to the county for full payment of the account due for the fiscal year 1984-85 for City prisoners held in the Clark County detention facilities.

6. The City will pay the County within thirty (30) days after billing by the County the balance due for holding City prisoners in the County Jail for the period of July 1, 1985, through October 31, 1985. Such billing shall be based on the following billable charges:

- a. Booking: \$25.42 for initial processing and holding for a period of up to seven hours per City Prisoner;
- b. First Day: \$56.29, in addition to the booking charge, for any period in excess of seven hours, and up to the first 24 hours following initial booking per City prisoner; and
- c. Subsequent Days: \$56.29 per day for any part of each successive 24-hour period per City prisoner.

7. The City will make payments to the County for City prisoners held in the Clark County Detention Facility from November 1, 1985 through June 30, 1986, on the following basis:

- a. Booking: \$69.20 for initial processing and holding for a period of up to 10 hours per City prisoner; and
- b. Subsequently: \$48.74 for any part of each successive 24-hour period Commencing after 10 hours per City prisoner.

For future fiscal years, the rates shall be adjusted on the basis of the budget adopted for the Clark County Jail and as allocated to the booking and housing functions as determined by the Clark County Detention Center and County Manager's Office.

8. For any County prisoner held in a City detention facility, the County will make payments to the City in accordance with the rates set forth in paragraph 7.

9. The City will make all payments referred to in paragraphs 6 and 7 above within thirty (30) days after billing therefor by the County and County shall commence billing therefor on the 15<sup>th</sup> day of January, 1986 and the 15<sup>th</sup> day of each month thereafter.

10. The City and County will forthwith enter into a Stipulation and Order For

Dismissal with Prejudice, each party to bear their own costs in Case No. A218182, a copy of which is attached hereto as Exhibit "A".

11. The parties hereto may terminate that portion of this Agreement providing for the continuous holding of City prisoners in the Clark County Detention Facility by either party with or without cause upon ninety (90) days' prior written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

COUNTY OF CLARK

By \_\_\_\_\_  
THALIA M. DONDERO, Chairman

1/7/86  
ATTEST:

Board of County Commissioners

\_\_\_\_\_  
LORETTA BOWMAN, County Clerk

CITY OF LAS VEGAS

By \_\_\_\_\_  
WILLIAM H. BRIARE, Mayor

ATTEST:

\_\_\_\_\_  
CAROL ANN HAWLEY, City Clerk

APPROVED AS TO LEGALITY ONLY:

ROBERT J. MILLER  
DISTRICT ATTORNEY

GEORGE F. OGILVIE  
CITY ATTORNEY

By \_\_\_\_\_  
Deputy District Attorney

By \_\_\_\_\_  
Deputy City Attorney

## INTERLOCAL AGREEMENT

THIS AGREEMENT, is made and enter into this 16<sup>th</sup> day of December, 1985, by and between the CITY OF LAS VEGAS, a political subdivision of the State of Nevada, (hereinafter called "City"), and the COUNTY OF CLARK, a political subdivision of the State of Nevada (hereinafter called "County").

### WITNESSETH:

WHEREAS, on July 6, 1985, the City of Las Vegas and the City of North Las Vegas filed suit in the United States District Court for the District of Nevada against Clark County, the State of Nevada, and U.S. Environmental Protection Agency regarding water quality and wastewater treatment issues, case number CV-LV-78-117 RDF; and

WHEREAS, on March 15, 1979, a Consent Decree was entered in that case as a resolution of the dispute among the parties; and

WHEREAS, on August 18, 1982, the City Council and the Board of County Commissioners approved a proposed Amended Consent Decree in that case; and

WHEREAS, on April 6, 1981, the City of Las Vegas filed a second suit in the United States District Court regarding wastewater treatment issues, case number CV-LV-81-159 RDF; and

WHEREAS, on November 23, 1983, the United States District Court dismissed the City's Second Amended Complaint in that litigation; and

WHEREAS, on May 29, 1985, the United States Court of Appeals for the Ninth Circuit upheld the District Court's action; and

WHEREAS, the City of Las Vegas and Clark County desire to conclude all legal action in case numbers CV-LV-78-117 RDF and CV-LV-81-159 RDF and desire to remove any remaining federal court involvement in the Ls Vegas Valley wastewater controversy so that Clark County and the City of Las Vegas can resolve disputes among themselves through interlocal agreements.

NOW, THEREFORE, the parties agrees as follows:

1. The stipulation attached hereto as Exhibit "A" regarding CV-LV-81-159 RDF is hereby approved and counsel are direct to execute it and to work together and with the other parties in that case to obtain the necessary approvals and signatures on the attached stipulation and to submit it for approval by the Court.

2. Neither the County nor the City will pursue or attempt to further litigate Case No. CV-LV-78-117, as it relates in any way to the rights or obligations of the other party.

3. Neither party County nor the City will assert or otherwise claim any right, duty or obligation insofar as it affects the other based upon the Consent Decree entered in CV-LV-78-117 on March 15, 1979, nor upon the proposed Amended Consent Decree after the date of execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year above written.

COUNTY OF CLARK

By \_\_\_\_\_  
THALIA M. DONDERO, Chairman

1/7/86  
ATTEST:

Board of County Commissioners

\_\_\_\_\_  
LORETTA BOWMAN, County Clerk

CITY OF LAS VEGAS

By \_\_\_\_\_  
WILLIAM H. BRIARE, Mayor

ATTEST;

\_\_\_\_\_  
CAROL ANN HAWLEY, City Clerk

APPROVED AS TO LEGALITY ONLY:

ROBERT J. MILLER  
DISTRICT ATTORNEY

GEORGE F. OGILVIE  
CITY ATTORNEY

By \_\_\_\_\_  
Deputy District Attorney

By \_\_\_\_\_

**JOINT RESOLUTION  
OF THE CLARK COUNTY BOARD OF COMMISSIONERS  
AND THE LAS VEGAS CITY COUNCIL**

**(ESTABLISHING A JOINT POSITION ON BOUNDARY EXPANSION,  
GOVERNMENTAL JURISDICTION AND SERVICE DUPLICATION)**

WHEREAS, Nevada Revised Statutes 268.570 through 268.608 inclusive establish procedures for the adjustment of municipal boundaries in Clark County, and;

WHEREAS, Nevada Revised Statutes 269.500 through 269.625 inclusive establish procedures for the creation and adjustment of unincorporated town boundaries to accommodate continued growth; and

WHEREAS, both the City of Las Vegas and Clark County have made long term financial commitments related to various urban services on the basis of the continued existence of the revenue anticipated from each from of government; and

WHEREAS, increased coordination and a recognition of jurisdictional rights can result in a better management of taxpayer dollars through the elimination of disputes regarding the role of each jurisdiction in the growth of the Las Vegas Valley; and

WHEREAS, the interests of the citizens of Clark County can best be served by a cooperative approach to inter-governmental relations and a unified effort by Clark County and the cities within Clark County to achieve desired legislative action by the Nevada Legislature.

NOW, THEREFORE, BE IT RESOLVED by the Clark County Board of commissioners and the Las Vegas City Council that:

1. It is mutually agreed that the boundary adjustment procedures established by existing statutes for both cities and unincorporated towns are acceptable.
2. Under these statutes it is mutually understood that either party may reasonably adjust its urban government boundaries to ensure orderly development and the associated revenues necessary to meet the needs of the growing Las Vegas Valley.
3. No repeal of or amendment to the boundary adjustment provisions of the annexation or unincorporated town statutes will be introduced or supported by either party except by an agreement approved by the Board of County Commissioners and the Las Vegas City Council endorsing any such repeal or amendment, nor shall either party promote the introduction of legislation or support legislation for merger or consolidation of the City and the County, or any portions or functions of either, except by an agreement approved by the Board of

County Commissioners and the Las Vegas City Council.

4. No repeal of or amendment to any of the existing statutes governing the jurisdiction, powers, functions, authority, makeup or membership of the following governmental boards will be introduced or supported by either party except by an agreement approved by the Board of County Commissioners and the Las Vegas City Council endorsing any such repeal or amendment: McCarran International Airport (Clark County Commission), Las Vegas Valley Water District, Regional Transportation Commission, Clark County Flood Control District, any General Improvement District (NRS Ch. 318), Clark County Health District, Metropolitan Police Committee on Fiscal Affairs, Las Vegas-Clark County Library District, Las Vegas Convention and Visitors Authority, or any other regional board in Clark County, Nevada.

5. Members of the Board of County Commissioners and Las Vegas City Council will continue to meet and continue good faith discussions of the subjects addressed in paragraphs 3 and 4 of this resolution, and will work to develop future agreements referenced in those paragraphs as appropriate to meet the needs of the City and County.

6. Clark County and the City of Las Vegas will work together and with the other cities in Clark County to present to our local legislators a unified legislative program to address the needs of the people of Southern Nevada and their local governmental entities for the 1987 legislative session and each subsequent session.

7. The issue of duplication of services can best be resolved by the local resolution of issues through interlocal agreements which maintain the self-governing autonomy of each party while ensuring the provision of services to the public at the least cost to the taxpayer.

8. This resolution shall become effective upon adoption by both the Board of County Commissioners and the City of Las Vegas.

9. This resolution shall be effective for a period of 6 years unless jointly amended by both parties. Prior to the expiration of 6 years the parties will strive to reach a similar agreement on these and related issues for the period beyond the term of this resolution.

PASSED, ADOPTED AND APPROVED this 16<sup>th</sup> day of December, 1985.

CLARK COUNTY, NEVADA

By \_\_\_\_\_  
Thalia M. Dondero, Chairman  
Board of County Commissioners

ATTEST:

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**LORETTA BOWMAN, County Clerk**

CITY OF LAS VEGAS

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William H. Briare, Mayor  
Las Vegas City Council

ATTEST:

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**CAROL ANN HAWLERY, City Clerk**