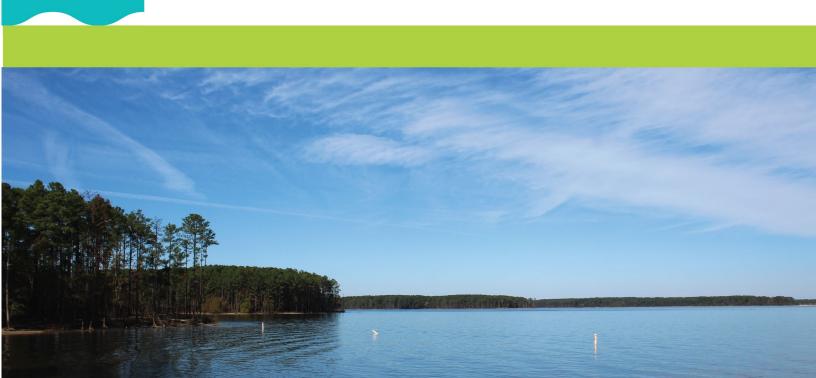


# Governance Foundations and Alternatives

Raftelis Financial Consultants



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- B. Collaborative Governance Workshop
- C. Foundation Workshop
- D. Governance Alternatives Workshop
- E. Continued Governance Alternatives Discussion
- F. Governance Re-Start Workshop
- G. Draft Interlocal Agreement & Entitlements to Capacity

# **Background and Purpose**

The project objective is to evaluate and recommend a governance structure for the Western Intake Partners, which includes the City of Durham, Chatham County, Orange Water and Sewer Authority (OWASA), and Town of Pittsboro.

# **Scope of Work**

Raftelis Financial Consultants (Raftelis) conducted eight workshops and working group sessions starting in Fall 2021 to evaluate governance structures and develop a legal instrument for the Western Intake Partnership. Table 1 describes the tasks and associated documents outlined in the scope of work for Raftelis.

Table 1 | Task Summary

Initial Contract Tasks	Description	Attachment Reference
Task 1: Project Kick- Off and Management	Raftelis conducted a kick-off event, developed a project charter, discussed data needs, and initiated communication with WIP Management Team.	A. Kick-Off Meeting & Project Charter
Task 2: Collaborative Governance	Raftelis established operating principles and guidelines for cooperation in the interim period prior to the formal governance structure.	B. Collaborative Governance Workshop
Task 3: Foundation Workshop	Raftelis gathered input from the Partners to formulate the foundational elements and core objectives for the Partnership's governance structure.	C. Foundation Workshop
Task 4: Governance Alternatives Workshop	Raftelis conducted a workshop on the cooperative models that may be suitable for consideration based on the Economic Feasibility Analysis (see Task 5). Each cooperative model was discussed in detail including benefits and limitations with a goal of starting to prioritize the most viable options for further examination, including Interlocal agreement, Joint Agency, and Water Authority.	D. Governance Alternatives Workshop
Task 5: Update Financial and Economic Feasibility	Development of long-term financial projections and economic evaluation criteria to assess the financial and rate impacts of the WIP capital investments on each member jurisdiction. Raftelis met	N/A

<b>Initial Contract Tasks</b>	Description	Attachment Reference
	with each Partner individually and	
	presented the results to the WIP	
	Management Team in February 2022.	
Tasks 6-7: Develop	Raftelis facilitated WIP Management Team	E. Continued
Decision Criteria and	discussion and utilized the input to	Governance Alternatives
Implementation	evaluate each governance model using	Discussion
Planning Details for	decision criteria.	
Preferred Governance		
Alternatives; Facilitate Decision Process		
Task 8-10: Refine	Raftelis in consultation with the WIP	F. Governance Re-Start
Implementation and	Management Team and each Partner's	Workshop
Planning Details for	legal representation, developed a legal	WORSHOP
Recommended	instrument for the interlocal agreement	G. Draft Interlocal
Governance Structure;	governance structure. Raftelis refined and	Agreement &
Develop Legal	expanded the initial implementation and	Entitlements to Capacity
Instrument; Ongoing	planning details, including developing a	
Communication	memorandum of understanding (MOU)	
Support	prior to developing the legal instrument	
	(Task 9).	
	Raftelis first developed a memorandum of	
	understanding (MOU) for the Partners.	
	Developing the Interlocal Agreement involved various focused, working group	
	meetings starting in November 2022	
	continuing through 2024.	
	- tonamanig tinough Lot 1.	
	Raftelis is providing ongoing	
	communication support to each WIP	
	jurisdiction's governing body as the	
	interlocal agreement is presented to each	
	Partners' governing bodies.	

As of July 2024, negotiations are continuing between Chatham County, Durham and OWASA on the terms of a Western Intake Partnership ILA to design and construct the Jordan Lake water supply facilities. A negotiated agreement is anticipated to be executed by the end of 2024.

# **Exhibits**

- A. Kick-Off Meeting & Project Charter
- B. Collaborative Governance Workshop
- C. Foundation Workshop
- D. Governance Alternatives Workshop
- E. Continued Governance Alternatives Discussion
- F. Governance Re-Start Workshop
- G. Draft Interlocal Agreement & Entitlements to Capacity



# Kick-Off Meeting & Project Charter

Agenda & Summary

September 8, 2021

Project Charter updated October 19, 2021



WESTERN INTAKE PARTNERSHIP

# Governance Project Charter





# Introduction

### Task 1 – Kick-Off Meeting

On September 8, 2021, representatives from the Western Intake Partnership participated in a project kickoff workshop, led by Raftelis, to initiate the process to identify and implement a governance model for the joint project. The agenda for the meeting is included below:

### **AGENDA**

- 1. Welcome and Introductions
- 2. Project Overview
  - a. Project understanding
  - b. Scope review
  - c. High-level schedule
- 3. Project Charter
  - a. Goals of the project
  - b. Critical success factors
  - c. Key Participants and stakeholders
  - d. Boundaries
  - e. More detailed scheduling, based on high-level scheduling previously shared
- 4. Group/individual meetings and other logistics
- 5. Review and discuss data request
- 6. Adjourn

The results of the kickoff workshop are presented in this summary report.

# Project Charter

The Western Intake Partnership has committed to develop a proposed governance structure for the ownership and operation of a new Jordan Lake water supply. This charter contains the guiding principles for the process and expresses requirements for success. The project charter builds upon the work already done by WIP members through the branding and strategic communications plan, which identified mission, vision, purpose, and core values for the partnership.

**Commitment**: The partners and the consultants commit to this charter and to the communication and development of recommendations for Western Intake Partnership governance

### **PARTICIPANTS**

To begin the discussion of the Project Charter, the participants discussed who would be involved throughout the process. A consensus developed through the discussion that both water utility staff and representatives from other departments or bodies within each organization would need to be included. At an appropriate level of involvement, the following stakeholders should all provide input or participate in the process:

	9
J	WIP Management Team members or representatives
J	Various water utility staff as needed
J	Finance and budget staff as needed
J	Representatives from the Manager's Office (or equivalent)
J	Legal or Attorney's Office staff as needed
J	Governing boards will be informed along the way and involved when appropriate
J	City of Raleigh representatives when appropriate

### **PROJECT GOALS**

The participants articulated their key goals for the governance process. Discussion included the need for building trust through the process, ensuring the project does not overly affect customers, and that decision making is equitable between the organizations. The process should result in a structure that:

941	nzations. The process should result in a stracture that.
	Determines a structure for the ownership and operation of a new Jordan Lake
	water supply
	Be allowable under State of North Carolina law
	Can meet the long-term financial stewardship goals of the partners and the region
	and minimize the impact on customers
	Is equitable in the decision making for the facility
	Creates a long-term partnership
J	Builds trust in the partner organizations and the Western Intake Partnership itself

# **CRITICAL SUCCESS FACTORS**

With these goals in mind, participants discussed the activities that must be done exceptionally well to accomplish the goals of the project. Discussion included the importance of clear and transparent communication, responsiveness, and the need to

have an open mind during discussion of alternatives. The following represent the critical success factors identified by the group:

- Open and honest communication, ensure those involved are willing to share even if it might be uncomfortable.
- Consistent participation and engagement in the process.
- Updates and information for the political bodies to ensure their buy in at the end of the process.
- Responsiveness to requests.
- Meeting deadlines and communicating if a deadline cannot be met.
- Willingness to consider a range of alternatives that might meet the needs of the partnership.

### BOUNDARIES

Participants also discussed the boundaries of the project, or the constraints that they and the project team will be under. Discussion included the staff time needed, ability to get buy in from governing bodies, and need for any result to be legally allowable.

This project will demand substantial time and resources. Key boundaries for this effort include: Ongoing communication between WIP partners, governing bodies, and the project team; Scheduling with project team members to ensure there is not an impact to their utility operations; and ensuring the ultimate structure is allocable in North Carolina.

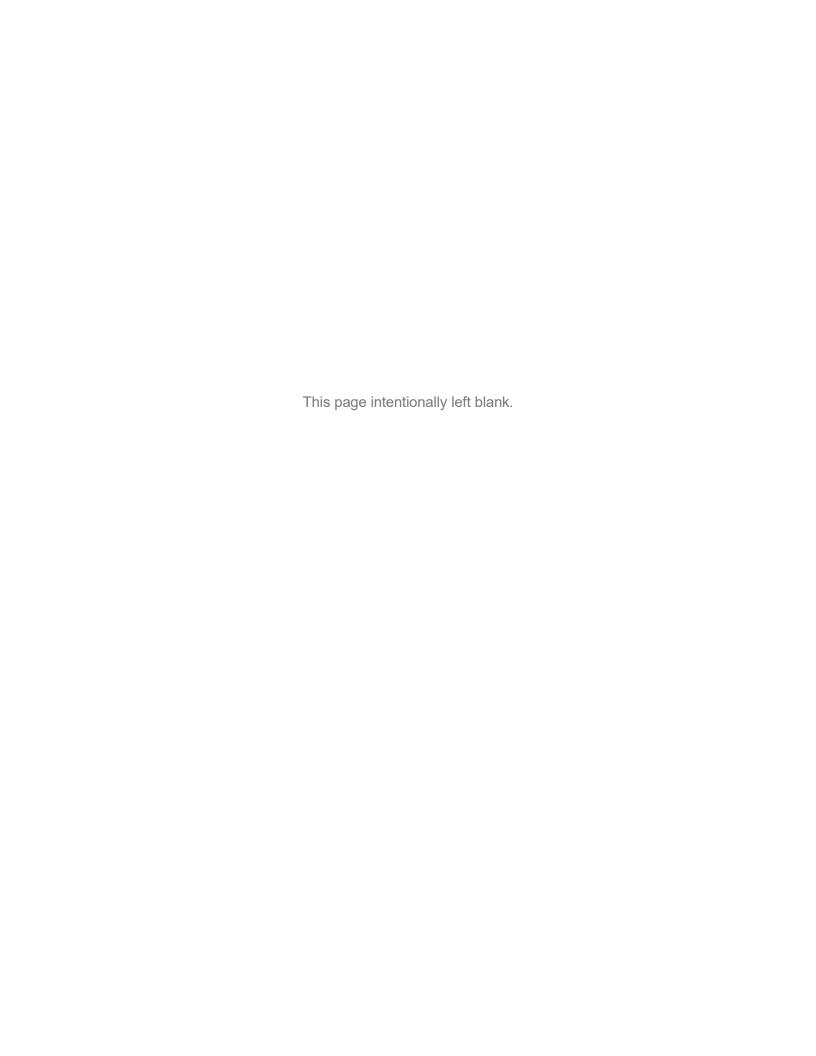
# **SCHEDULE**

TASKS	PROPOSED DATES
Kick-off Workshop	September 8
Collaborative Governance Workshop	October 6
Foundation Workshop	October 20
Governance Alternatives Workshop	November
Financial and Economic Feasibility Update	September – March
Develop Preferred Governance Model	November – May
Ongoing Communication Support	May – TBD
Ongoing Implementation Support	May – TBD



**BART KREPS** bkreps@raftelis.com | 704.936.4438







# Collaborative Governance Workshop

Agenda & Summary

October 6, 2021



# **MEMO**

Date: October 1, 2021

To: Western Intake Partnership Members

From: Bart Kreps, Vice President, Raftelis

Re: Collaborative Governance Workshop Preparation

My colleagues, Catherine Carter, Doug Bean, Jenn Tavantzis, and I look forward to being with you on October 6th to establish guidelines for cooperation to address the interim period before the formal governance structure can be established for the Western Intake Partnership (WIP).

This memorandum serves several purposes:

- Clarify the goals and purpose of the workshop
- Identify what needs to be done to prepare for the session
- Share the agenda

# **Logistics**

Location: Compliance Services Training Room

City of Durham 6605 Farrington Road Durham, NC 27517

Wednesday, October 6 from 1:00 PM to 4:30 PM

# **Workshop Goals**

- Establish a strong foundation for effective collaboration
- Discuss collaboration best practices and how they might apply to the WIP
- Create a defined set of operating principles
- Consider the operating context for the WIP through a discussion of trends

# **Preparation**

Several agenda items will benefit from preparation. Please spend a few minutes reviewing these prompts and prepare to participate in the retreat.

### **Collaborating Together**

Workshop participants will be asked to share their thoughts on "Collaborating Together" in response to the following questions:

- What does good partnership and governance look like to you?
- What values are important to you in the Western Intake Partnership?
- What is important to remember when your position is the prevailing decision, and what is important to remember when your position is not the prevailing decision?
- What type of relationship do you hope to have with your colleagues on the management team?
- What do you hope this group will be known for?

### **Norms**

- Listen with respect
  - Let others finish before you start talking
  - Be attentive to the speaker
  - Disagree agreeably
- Be...
  - o BOLD
  - Positive and realistic
  - Candid and honest
  - Patient and self-aware
  - Engaged and fully present
- Strive for consensus
  - Look for opportunities to agree
  - Remember the power of "if" and "and"
- Have fun!

# **Agenda**

Wednesday, October 6, 2021; 1:00 PM to 4:30 PM

### **Introductions and Context**

- Welcome and introductions
- Agenda review
- Review project charter

# **Collaborating Together**

Each workshop participant will be asked to share their individual thoughts on what it means to collaborate well together within the Western Intake Partnership.

# 10 Habits of Highly Effective Boards

This presentation explores effective governance concepts, including the context for governing bodies to be effective, the habits that these groups focus on, warning signs for potential problems. We will then debrief on the presentation materials and apply the content to the WIP.

# **Develop Operating Principles**

Building on the conversation in the prior segments, we will articulate and develop operating principles for the WIP moving forward.

# **Environmental Trends**

To explore the context that the WIP exists within, and to begin to set the stage for subsequent work, we will have focused conversation around trends and external factors that may impact the WIP. These trends will cover political, regulatory, environmental, community engagement, growth and development, financial, regional collaboration, and risk management concepts.

# Parting Thoughts/Adjourn

As the session comes to a close, each participant will be asked to share a parting thought on how they feel about the work done thus far.

# Western Intake Partnership

**Collaborative Governance** 

October 6, 2021





### **Task 2: Collaborative Governance**

The Western Intake Partnership (WIP), held a Collaborative Governance Workshop on October 6, 2021. The workshop was planned and facilitated by Raftelis.

### Meeting agenda:

Introductions and content
 Collaborating together
 Habits of highly effective boards
 Developing operating principles
 Environmental and operating trends
 Parting thoughts/adjourn

### Workshop goals included:

Establishing a strong foundation for effective collaboration
 Discussing collaboration best practices and how they might apply to the WIP
 Creating a defined set of operating principles
 Considering the operating context for the WIP through a discussion of trends

At the workshop attendees participated in variety of exercises focused on collaboration and defined a set of operating principles to guide future interactions. The Project Charter for the WIP Governance Study is included as Appendix A, and the slide deck for the Collaborative Governance Workshop is included as Appendix B.

# **Collaborating Together**

Workshop participants were asked to explore a series of questions about what it means to collaborate together. Participants responded to one or more of the following questions.

- What does good partnership and governance look like to you?
- What values are important to you in the Western Intake Partnership?
- What is important to remember when your position is the prevailing decision, and what is important to remember when your position is not the prevailing decision?
- What type of relationship do you hope to have with your colleagues on the management team?
- What do you hope this group will be known for?

The responses have been transcribed within the following table.

Collaborating Together – Questions	Responses
What does good partnership and governance look like to you?	<ul> <li>A good partnership is one that's fair, with good communication. Looking at it from a finance lens, the partnership needs to make sense for all parties and be fair for all parties.</li> <li>Be willing to discuss, back up, and be open to talking things through and questions about how you're coming to conclusions</li> <li>Compromise. This group's been in formation for a long time. We're good at listening to each other's situations, and as a group we need to work together to adapt to needs as different situations come up. We need to be able to talk about each other's financial situations, flaws, strengths, everything, and work together honestly based on that.</li> <li>Good governance requires being structurally ready to engage in and resolve issues, especially external issues.</li> <li>Open, honest communication and a common goal that we keep in mind.</li> <li>Compromise! We can anticipate conflict, and that there are more healthy ways to resolve than others. If you anticipate and have a mechanism to resolve, that's good for the ultimate decision</li> <li>It looks like level setting, identifying common goals, sharing those goals and building interest. It also means a commitment to work collectively and collaboratively toward a common good.</li> </ul>

Collaborating Together – Questions	Responses
What values are important to you in the Western Intake Partnership?	Financial stewardship, transparency Focus on environmental stewardship- this is a huge resource that will benefit the area for years to come.  Jordan Lake isn't only there for water supply, but a also as a place for recreational use. Some people make a living there. We need to think about current and future issues.  Everyone to be careful in commitments we make, think about them, and then I expect you're going to do what you say you're going to do. Whatever we come up with, another thing that occurs to me is that we need to make sure it's fair in govrnance in a way that accommodates change. It's entirely possible that any one of the partners is going to have a change in needed capacity over time. How do we come up with a governance structure that can recognize that and be flexible over time?  Respecting people and communication I want the quietest person in the room feel safe sharing a conflicting opinion. Open, honest communication and a common goal to keep in mind. Ultimately we're responsible for protecting public health and the environment. How do thse decisions help us ensure that we're doing that?  I like the comments about being able to anticipate change and do it fairly and equitably. We can use this as an opportunity to build relationships, as they're the bedrock of partnerships. Trust
What is important to remember when your position is the prevailing decision, and what is important to remember when your position is not the prevailing decision?	<ul> <li>We can recognize that even if the outcome is not the absolute best outcome for you as the party, it might still be beneficial to you. Individual groups can benefit without getting everything on your wish list – this isn't a zero sum game.</li> <li>Whichever decision is made, the decision IS made, and we need to do the best that we can for the community within that decision – can't undermine things that we don't get our way on.</li> <li>Open communication, knowing where you're coming from and what you're bringing to the table</li> </ul>

Collaborating Together – Questions	Responses
What type of relationship do you hope to have with your colleagues on the management team?	An open relationship with colleauges, where no opinion is a bad opinion. This isn't about making rash decisions. This project outlives a lot of people's careers, so it can't be about individuals, but rather the future of the region. JL not only there for water supply, but a bit place for recreational use. Some people make a living there. Think about current and future issues.  Develop respect for another. We're not all the same size, we don't all have the same resources, and we don't have the same ability to get boards to act. There might be some tension, so we need to maintain respect.  Be patient with one another and respectful of one another. If this gets built out it will be pretty challenging, so patience and respect will be necessary.  Would like to have fun, would like to look forward to meetings, enjoy time, and enjoy working with people.  Trust. We started working together more than a year ago for part of the current situation and the partnership has been worked on for seven years or more, so this group has already built up a foundation of collaboration and respect. Build on that and sustain it, move forward.
What do you hope this group will be known for?	<ul> <li>When people talk about us, they'll say they did a lot and made great decisions.</li> <li>We want to be the benchmark for collaboration and progress for meeting region's needs for years to come. And known for the fact that we got there working together.</li> </ul>

# **Collaborating Together Debrief**

Participants were asked what themes they heard from each other. Those themes included:

- Keeping the greater good at the forefront
- Sustainability and stewardship
- Fairness/Equity/Trust

Participants were also asked what they felt would challenge them. Responses included:

- Coming up with a model that will adapt to changing capacity needs.
- Changing of board structures, management shifts
- The nature of the long-term project. Some of us will not be working when this gets put in place, and we want to be proud of what we have accomplished.

# **Operating Principles**

Workshop participants divided into two groups to have discussions related to operating principles. The following sections capture the discussion related to each of the discussion prompts.

# **Decision-Making**

# When decisions need to be made, who should participate in the decision-making process?

- Consultants should moderate or serve in advisory capacity, but not decide or vote
- This is a good opportunity for each group to confirm what internal decision-making processes are
- For each individual entity, we need to work internally to make decisions and then bring those back to the WIP group
- We had lots of discussion regarding the dynamic between us and our governing bodies.

  Ultimately, the governing bodies are the decision makers, but we want maximum participation at the staff level
- Staff members should be brought in, as appropriate, as technical experts

# What should participation in the decision-making process look like for different participants? (Members, staff, consultants, etc.)

- The Management Team (as defined in the agreement). As far as this part of the project is concerned, those roles are already explicit. For how we're going to operate in the meantime, we'll continue to operate under the roles and expectations that have been documented already.
- Elected boards make ultimate decisions, which has come up as we've gone through these projects/entered into agreements. The governing bodies are probably a step removed at this point in the process, but later will be involved.
- What distinction should there be between financial and non-financial participation?
  - o The WIP benefits from groups that are not participating financially, but would oppose a situation where a non-financial participant casts a deciding vote. Those groups are here to help as much as they can and maybe participate in a different way at a later point.
- Relates to openness and trust we need to be able to tell non-financial participants to take a step back if their position has financial implications for the group.

### How should representation be handled?

- There is already a structure established, with a plan to follow it until it doesn't work anymore.
- We need to have a designated representative and alternate for all participation.
- The designated representative of individual organizations will work to ensure cohesion among members of the same organization.

# What level of agreement should be required to move forward? (Majority? Consensus?)

	J	We will	continue	to	try to	reach	consensus
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If consensus isn't possible, we'll rely on majority. In that case, respectfully disagree and move forward.

### Does any group have veto power?

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- Finance or legal (but we should never get there)
- If we're striving for consensus, we shouldn't need to exercise veto power

### **Communication**

What are the expectations for sharing information between members? Should everyone be included in all communication? If not everyone, who should be?

- Open communication should be assumed, and then designated by topic.
- If information needs to be shared broadly (depending on the topic), that is appropriate.
- It is the person engaging's responsibility to figure out what should be shared and how to get information where it needs to go, but everyone should be aware of potential holes.

Who speaks for the WIP as an entity? What are the expectations for sharing information with your respective governing bodies? Is there one WIP message, or is each group responsible for messaging as they find appropriate?

- Having a consistent message is very important. It shouldn't matter who speaks as long as we're all saying the same thing.
- If a Board member asks a question, our response needs to be "let me get back with the group and I'll get back with you"
  - o Be okay with just saying "good question, I'll get back to you." No opining! If it does happen, let the group know so we can do damage control.
  - During meetings, we should establish a message on where we are, what happened, what's next. Otherwise, and for one-off questions, the expectation is to get feedback from group
    - O Have talking points may be part of the communications plan or something to put together.
- We already some key messages, but things will come up that require new or modified messaging.

  Timing and coordination can be challenging when Board schedules are a little different. To the extent possible, let's make sure that each of us is giving the same presentation in a similar timeframe.
- Ensure that our internal communications groups work together on messaging as well.
- Use image/brand for the WIP wherever possible

# **Logistics and Meeting Norms**

# When decisions are made, who takes action? (Members? Member utility staff? Consultants?)

This will depend on the nature of the decisions, but mostly likely staff.

### Who should direct the consultant team?

Syd is the main point person so there's one voice. Other members of the Management Team may direct through Syd.

# What expectations do you have for meeting materials? (e.g., agenda timelines, summary deliverables)

- We like the format of today's meeting
- Agendas should be provided ahead of time to ensure that the right people are present
- As part of summaries, it would be good to see talking points so we can go back and say what happened
  - o Should be concise, bullet points, etc.
- Helpful to plan ahead by holding dates and time blocks and then releasing dates as necessary
- Generally, a week for deliverables, then another week for feedback is appropriate

# **Next Steps**

- Review the contents of this summary report
- Prepare for the Foundation Workshop on October 20
- Continue to work on fulfilling data requests

# **Appendix A: Project Charter**

The Western Intake Partnership has committed to develop a proposed governance structure for the ownership and operation of a new Jordan Lake water supply. This charter contains the guiding principles for the process and expresses requirements for success

**Commitment**: The partners and the consultants commit to this charter and to the communication and development of recommendations for Western Intake Partnership governance.

# **Participants**

To begin the discussion of the Project Charter, the participants discussed who would be involved throughout the process. At an appropriate level of involvement, the following stakeholders should all provide input or participate in the process:

	WII	P Mana	gemei	nt Tear	n membe	ers c	or representatives
1	77			4	cc	1 1	

- Various water utility staff as needed
- Finance and budget staff as needed
- Representatives from the Manager's Office (or equivalent)
- Legal or Attorney's Office staff as needed
- Governing boards will be informed along the way and involved when appropriate
- City of Raleigh representatives when appropriate

# **Project Goals**

The participants articulated their key goals for the governance process. The process should result in a structure that:

- Determines a structure for the ownership and operation of a new Jordan Lake water supply
- Be allowable under State of North Carolina law
- Can meet the long-term financial stewardship goals of the partners and the region and minimize the impact on customers
- Is equitable in the decision making for the facility
- Creates a long-term partnership
- Builds trust in the partner organizations and the Western Intake Partnership itself

# **Critical Success Factors**

With these goals in mind, participants identified the following as activities that must be done exceptionally well:

- Create a space for open, honest, and (if necessary) uncomfortable conversation
- Consistent participation and engagement in the process
- Updates and information for the political bodies to ensure their buy in at the end of the process
- Responsiveness to requests

- Meeting deadlines and communicating if a deadline cannot be met
  - Willingness to consider a range of alternatives that might meet the needs of the partnership

# **Boundaries**

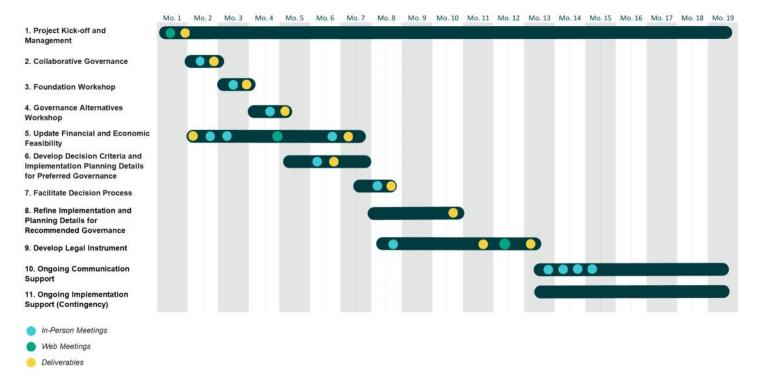
This project will demand substantial time and resources. Key boundaries for this effort include ongoing communication between WIP partners, governing bodies, and the project team; scheduling with project team members to ensure there is not an impact to their utility operations; and ensuring the ultimate structure is allowable in North Carolina.

# **Schedule**

TASKS	PROPOSED DATES		
Kick-off Workshop	September 8		
Collaborative Governance Workshop	October 6		
Foundation Workshop	October 20		
Governance Alternatives Workshop	November		
Financial and Economic Feasibility Update	September – March		
Develop Preferred Governance Model	November – May		
Ongoing Communication Support	May – TBD		
Ongoing Implementation Support	May – TBD		

# **Project Timeline**

The following graphic captures the project timeline.



# **Appendix B**

# Western Intake Partnership

**Collaborative Governance Workshop** 

October 6, 2021





1

# Agenda 1. Introductions and Context 2. Collaborating Together 3. Habits of Highly Effective Boards 4. Development of Operating Principles 5. Environmental and Operating Trends 6. Parting Thoughts/Adjourn

# **Workshop Goals**

- Establish a strong foundation for effective collaboration
- Discuss collaboration best practices and how they might apply to the WIP
- Create a defined set of operating principles
- Consider the operating context for the WIP through a discussion of trends

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# Context: The Project Charter

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# The Project Charter

### **Participants**

To begin the discussion of the Project Charter, the participants discussed who would be involved throughout the process. At an appropriate level of involvement, the following stakeholders should all provide input or participate in the process:

- WIP Management Team members or representatives
- Various water utility staff as needed
- Finance and budget staff as needed
- Representatives from the Manager's Office (or equivalent)
- Legal or Attorney's Office staff as needed
- Governing boards will be informed along the way and involved when appropriate
- City of Raleigh representatives when appropriate

5

# **Project Charter**

### **Project Goals**

The participants articulated their key goals for the governance process. The process should result in a structure that:

- Determines a structure for the ownership and operation of a new Jordan Lake water supply
- Be allowable under State of North Carolina law
- Can meet the long-term financial stewardship goals of the partners and the region and minimize the impact on customers
- Is equitable in the decision making for the facility
- > Creates a long-term partnership
- › Builds trust in the partner organizations and the Western Intake Partnership itself

### **Critical Success Factors**

With these goals in mind, participants identified the following as activities that must be done exceptionally well:

- Create a space for open, honest, and (if necessary) uncomfortable conversation
- Consistent participation and engagement in the process
- Updates and information for the political bodies to ensure their buy in at the end of the process
- Responsiveness to requests
- Meeting deadlines and communicating if a deadline cannot be met
- Willingness to consider a range of alternatives that might meet the needs of the partnership

# **Project Charter**

**Schedule** 

TASKS	PROPOSED DATES			
Kick-off Workshop	September 8			
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Develop Preferred Governance Model	November – May			
Ongoing Communication Support	May – TBD			
Ongoing Implementation Support	May – TBD			

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# Collaborating Together



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# **Collaborating Together: Questions**

- What does good partnership and governance look like to you?
- What values are important to you in the Western Intake Partnership?
- What is important to remember when your position is the prevailing decision, and what is important to remember when your position is not the prevailing decision?
- What type of relationship do you hope to have with your colleagues on the management team?
- What do you hope this group will be known for?

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# Habits of Highly Effective Boards



# **Habits of Highly Effective Boards**

Think and act strategically

- Set vision
- Address long-term issues that impact the vision

Understand and demonstrate the values of teams and teamwork

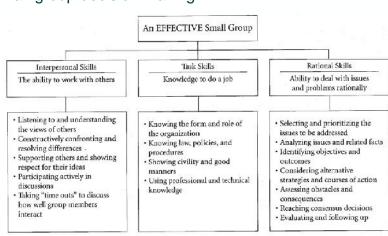
- Clear sense of purpose
- Synergy amongst members

11

11

# **Habits of Highly Effective Boards (cont.)**

· Master small-group decision making



# **Habits of Highly Effective Boards (cont.)**

- Clearly define roles and relationships
  - > Function specific responsibilities related to the role
  - > Performance how the individual in the role carries out the function
  - > Set expectations and feedback around relationships
- Establish and abide by Board-Staff partnership
  - > Boards define the needs to be met and the desired outcomes
  - > Staff defines the means to achieve the outcomes
- Systematically assess implementation activities
  - > Incorporate feedback and new data for continuous improvement

13

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# **Habits of Highly Effective Boards (cont.)**



Allocate time and energy appropriately



Set clear rules and procedures for meetings



Incorporate a valid assessment of stakeholder concerns



Practice continuous personal development as a leader

# **Operating Principles**

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#### **Developing Operating Principles**

- Based on:
  - Project Goals (from the Charter)
  - > Collaborating Together exercise
  - > Habits of Highly Effective Boards
- · Categories of Operating Principles:
  - Decision-making
  - Communications
  - Meetings/Logistics

#### **Decision-Making Prompt Questions**

When decisions need to be made, who should participate in the decisionmaking process?

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• What should participation in the decision-making process look like for different participants? (Members, staff, consultants, etc.)

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#### **Decision-Making Prompt Questions (cont.)**

• How should representation be handled?

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• What level of agreement should be required to move forward? (Majority? Consensus?)

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• Does any group have veto power?

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#### **Communication Prompt Questions**

- What are the expectations for sharing information between members? Should everyone be included in all communication? If not everyone, who should be?
- Who speaks for the WIP as an entity? Is there a designated person from each organization, or can anyone represent the partnership?

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#### **Communication Prompt Questions (cont.)**

What are the expectations for sharing information with your respective governing bodies?

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• Is there one WIP message, or is each group responsible for messaging as they find appropriate?

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• How does the strategic communications project tie into this one?

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#### **Logistics and Meeting Norms Prompt Questions**

 When decisions are made, who takes action? (Members? Member utility staff? Consultants?)

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Who should direct the consultant team?

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 What expectations do you have for meeting materials? (e.g., agenda timelines, summary deliverables)

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#### **Logistics and Meeting Norms Prompt Questions**

• What do you (individually) need from your colleagues for this to be a positive and productive experience?

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 What are you (individually) willing to give to other members to make the WIP successful?

>

# **Environmental and Operating Trends**



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#### **Population Growth and Development**

Increases, decreases, and changes in community demographics and service needs

- What is the current situation in your service area?
- How might this trend impact the WIP?
- What can/should the WIP do in response to this trend?

#### **Political Environment**

National, state, local impacts

- What is the current situation in your service area?
- How might this trend impact the WIP?
- What can/should the WIP do in response to this trend?

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### **Regulations**Changing and challenging

- What is the current situation in your service area?
- How might this trend impact the WIP?
- What can/should the WIP do in response to this trend?

#### **Public Engagement**

Increased access and expectations; changing modes; interest group advocacy

- What is the current situation in your service area?
- How might this trend impact the WIP?
- What can/should the WIP do in response to this trend?

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#### **Environmental Impacts**

Watershed protection, sustainability, conservation, and preservation

- What is the current situation in your service area?
- How might this trend impact the WIP?
- What can/should the WIP do in response to this trend?

#### **Financial Considerations**

Capital and operational requirements, resources

- What is the current situation in your service area?
- How might this trend impact the WIP?
- What can/should the WIP do in response to this trend?

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#### **Regional Collaboration**

Outside partnerships/interests, impacts

- What is the current situation in your service area?
- How might this trend impact the WIP?
- What can/should the WIP do in response to this trend?

#### **Increased Risk Profile**

Natural or man-made disasters

- What is the current situation in your service area?
- How might this trend impact the WIP?
- What can/should the WIP do in response to this trend?

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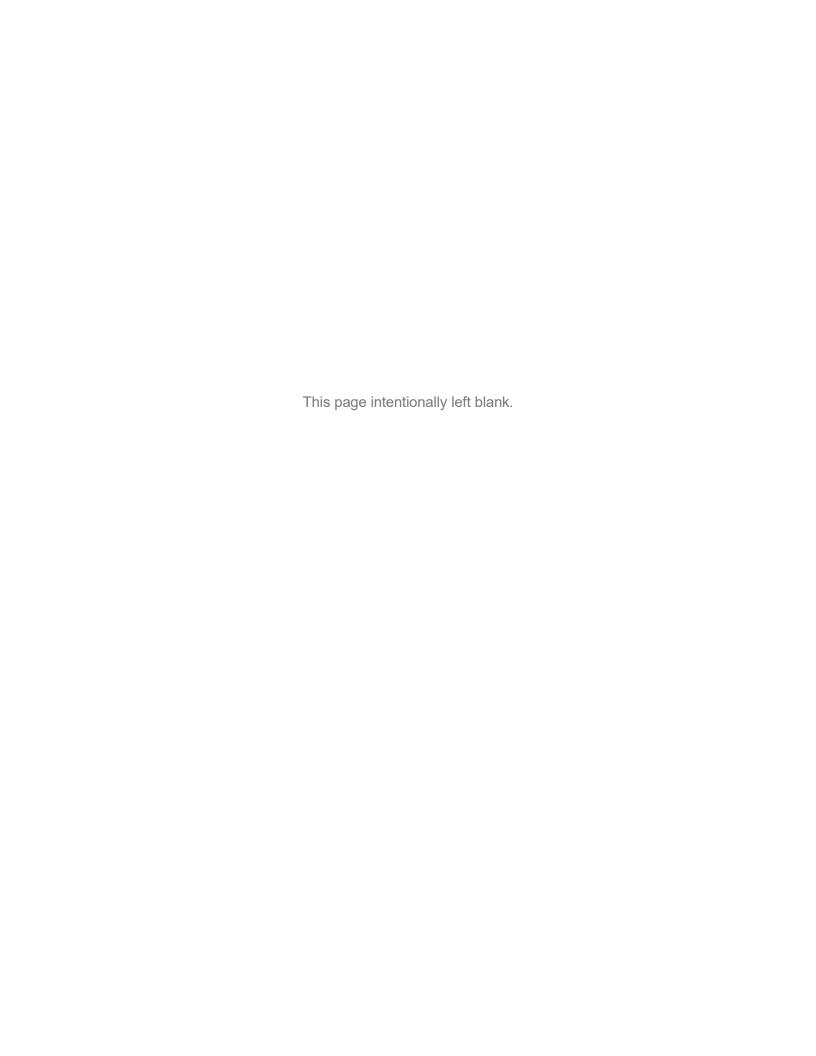
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## Wrap-up



#### **Next Steps**

- Review Draft Operating Principles and Workshop Summary
- Foundation Workshop October 20
- Data Request Follow-ups





## Western Intake Partnership

**Foundation Workshop** 

October 20, 2021





### The Western Intake Partnership (WIP), held a Foundation Workshop on October 20, 2021. The retreat was planned and facilitated by Raftelis.

#### Workshop goals included:

- Consider the operating context for the WIP through a discussion of trends
- Review the WIP's key Strengths, Opportunities, Aspirations, and Results
- Revisit and, as necessary, update the WIP's strategic framework (vision, mission, purpose, and values)
- Discuss OWASA's alternatives for access to Jordan Lake

The strategic framework is included as Appendix A, and the slide deck used to discuss OWASA's alternatives is included as Appendix B.

## **Environmental and Operating Trends**

To explore the context that the WIP exists within, and to begin to set the stage for subsequent work, workshop participants had focused conversation around trends and external factors that may ultimately impact the WIP. These trends covered political, regulatory, environmental, community engagement, growth and development, financial, regional collaboration, and risk management concepts. For each trend, participants clarified the current situation for each service area and identified any trend-related potential impacts for the WIP.

#### **Trend 1: Population Growth and Development**

#### Current situation

- Pittsboro is seeing a transition from rural to urban and the need to balance that growth with ongoing maintenance.
- Durham has seen steady and high growth, including lots of denser redevelopment downtown, rather than in the more suburban areas. The City is also dealing with issues of gentrification as it replaces old infrastructure.
- For OWASA, single family houses are being replaced with multifamily and mixed use development. There is an overall increase in demand, but increasing efficiency has moderated the increase, as compared to the growth of the population.
- Chatham has seen slow and steady growth, but not exponential. The County has seen different uses than in the past, with more multifamily and mixed use development. The County's major hindrance to growth is lack of sewer. There is a need for small providers to provide sewer service to neighborhoods and mixed use developments.

#### Impact to WIP

- There is higher demand, but also a risk of overbuilding capacity versus what's actually needed. There's a smaller risk related to underbuilding capacity, as there are multiple ways to manage each partner's demand.
- We have the ability to share capacity within the partnership. There are a lot of interconnections, so we need to make good use of them.

#### Other comments

• There is a sentiment that "if you don't build it they won't come" – it's helpful that the WIP vision is about meeting community needs rather than managing growth.

#### **Trend 2: Political Environment**

#### Current situation

• For Durham and Chapel Hill/Carrboro, the communities identify as environmentally progressive and have a focus on affordable housing. For Pittsboro and Chatham County, it's a little uncertain because of the changing/growing population.

- Political resistance to the WIP comes from an anti-growth perspective.
- Projected growth in Pittsboro will lead to that City being the political power in Chatham County, and the attitude of that coalition is uncertain.

#### Impact to WIP

- Communication will be an important way to stay on top of the politics.
- Would it be possible to have a political champion from each jurisdiction and identify a person to be an advocate?
  - Further discussion generated a consensus that designated champions would not serve the partners well. Empowering an individual politician might make the WIP politically charged and could sour the project for other politicians.
- Regionalization is a political norm. In Chatham County, interlocal agreements are part of the consent agenda. It helps with political trends to have a base of regionalization and partnerships that norm makes the politics easier.

#### Other comments

- Pittsboro is reactive to issues, especially when it comes to water. Water quality may not be an issue.
- There is significant polarization. Some folks think the fringes are active and vocal, which makes it harder to communicate and get correct information out to the public. We need to get on top of the messaging and ensure the partnership sets the narrative.

#### **Trend 3: Regulations**

#### Current situation

- Major regulatory concerns include PFAS, plumbing code changes, and the Lead and Copper Rule.
  - There is agreement that partners are all concerned and monitoring the Lead and Copper Rule update process.
- There are also new Jordan Lake rules expected from the State, which will impact the partners individually and the WIP.
- Emerging contaminants are also an issue, both the ones that we know about and the ones that might be coming. Utilities find contaminants all the time, without knowing what they are or what to do about them.

#### Impact to WIP

- The length of this project, when it goes online, will impact what treatment capabilities the plant will need, which in turn will impact how expensive the project will be.
- Eventually, partners may be able to use reclaimed water or do "potable reuse." If potable reuse becomes legal to sell, it could decrease the demand for potable water.
- Plumbing codes could increase the risk related to the project because, if they increase efficiency standards, it could lead to lower water demand.

#### Other comments

• The partners are taking proactive steps to address cyber security and emerging contaminants, like PFAS, as needed.

#### **Trend 4: Public Engagement**

#### Current situation

- Lots of options for modes of communication and messaging. The number one way we communicate is through our bills. For the purposes of billing our communication is good, but using that for communicating about other things has left gaps.
- OWASA has heard from customers that they like email for non-emergency communications.
- There are community questions about water quality and quantity in Jordan Lake.
- Chatham/OWASA/Durham have different community memories of drought, and that collective memory impacts the willingness and lengths each organization can go to prepare for future shortage.
- In Pittsboro, there are interest and advocacy groups that engage consistently with the Board and staff on water issues. There's also a lot of public engagement downtown, and while there may not be the same water demand downtown, reliability is really important to the business community.
- There's a need to be broad in who we reach out to and communicate with.

#### Impact to WIP

• The partner organizations are in a similar "media shed," so there can be some alignment in messaging and communication. Some have started doing shared messaging in drought communications, but could be built upon for the WIP.

#### Other comments

- We're seeing an increase in residents/customers that speak different languages, and also in aging populations. We need to develop a strategy to communicate to those two groups.
- We need to plan for translation, which may go be beyond English/Spanish depending on the community. We need to plan what will reach the most people and how to reach everyone else; it can't be a one-sized fits all communication strategy due to access, preferences, and language.
- In Chatham County, there are also gaps in internet service in areas, so digital communication methods are not great for reaching the whole community.
- Communication should be about how the WIP is part of a larger regional solution. It can't just be Durham doing this itself, but rather that we're working as part of the larger triangle watershed partnership. It's about developing regional solutions to water needs, which is an important message for the public.
- We need to communicate in one voice across the different agencies.
- We need to connect the local issues with the region and share how the utilities in the triangle are working together.
- There will be a need for consistent communication from the partners about water quality, no matter where the question comes from or how the organizations receive it. For example, when we know we'll get questions about water quality through our billing departments, provide common answers to share across all utilities.
  - We had some practice with this related to the pandemic and flushing; we were doing consistent communication on CDC guidelines, so the partners can build on that work.
  - It's complicated to explain that, just because there's an allocation for Jordan Lake doesn't mean an individual house is getting water from there. There will be a need for consistency in how we talk about that.

#### **Trend 5: Environmental Impacts**

#### Current situation

- Each jurisdiction has land conservation programs and a real commitment to environmental management.
  - Durham has a program for purchasing properties around water supplies and participates in regional watershed conservation.
  - OWASA has programs to protect its reservoirs and purchases land and conservation easements, and Chapel Hill and Carrboro have sustainability programs.
  - Pittsboro has created agrarian buffers and watershed overlays, as well as stream buffers.
- Partners will need to manage community assumptions that the WIP will be fueling growth in the region, rather that the reality that the WIP is a response to the region's growth.
- In OWASA, Cane Creek and University Lake are perceived to be higher quality than Jordan Lake, though the data does not bear that perception out.

#### Impact to WIP

- Watershed protection efforts for Jordan Lake will impact the WIP, because it is such a huge watershed roughly 1,500 square miles.
- There is a potential risk that community perception of water quality in Jordan Lake, as compared to their current source, could challenge the project.
- We need to highlight the water demand management strategies in place.

#### Other comments

- Watershed protection should be considered from the financial standpoint as well.
  - How will the WIP participate with Jordan Lake watershed protection versus the individual organizations?
  - How does the money get to watershed protection down the road?
  - Will the WIP participate as an entity itself or leave that to individual partners? The WIP participating wouldn't mean the other organizations wouldn't have to.
- How should WIP participate in regional efforts?
- Later, there will be decisions for this group around how far WIP should take energy management sustainability efforts.

#### **Trend 6: Financial Considerations**

#### Current situation

- There is a lot of rate sensitivity, which increases the focus on affordability and balancing sustainability long-term with rate increases.
- Who should pay for the development, current or future rate payers?

#### Impacts to WIP

• Questions around willingness to pay and participate. The partners have different priorities in terms of when the capacity is needed - some may not need it now, but could in the future.

- We need to incorporate flexibility into the cost, especially for smaller systems. How should environmental protection fees be factored in?
- What should the organization pay for versus individual utilities?

#### Other comments

- Stranded assets for each individual partner should be considered as both risks and opportunities. There might be a menu of options under consideration by different utilities in terms of how capital investment will be impacted by when and how the WIP is implemented.
- As a group, there's pooled revenue and pooled risk, which may be more appealing for bond financing and grant opportunities.

#### **Trend 7: Regional Collaboration**

#### Current situation

- There is a huge amount of collaboration currently, and the WIP is one example. All partners participate in the Triangle Water Partnership, urban water consortium, etc. We have an alphabet soup of regional collaboration. The only thing we do as individual systems is manage our operations, and we're all involved in each other's systems at times.
- Individual partners have other partnerships, for example OWASA and UNC or Pittsboro and Sanford.

#### Impact to WIP

- Current partnerships could serve as models for the WIP.
- We're stronger as a region than as individual jurisdictions or systems. We just need to figure out ways to leverage the partnership to support the WIP.

#### Other comments

- A challenge is that we all have disparate resources, so it'll be challenging to keep us all together and rowing in the same direction.
- A challenge to leveraging existing partnerships in the WIP might be the public knowledge of the regional collaboration. The public may not be aware of our regional work, so we'll need to educate customers and stakeholders.

#### **Trend 8: Increased Risk Profile**

#### Current situation

- We already have large number of interconnections between systems. For example, Durham has nine interconnections.
- We are seeing an increasing number of threats, such as cybersecurity and impacts from climate change.

#### Impact to WIP

- We have an increased need for better forecasting and to better manage Jordan Lake.
- The WIP needs to be more proactive with planning and look to increase or improve interconnections.
- There will be a need for robust asset management and use of data.
- The partnership should build in resilience and develop a risk and resilience assessment.

• We will need good onsite security because of the remote location of the WIP facility.

#### Other comments

- Upstream pollution and emerging contaminants are a risk because of the large watershed.
- We need to prepare for the risk of contamination of both the lake and need to evacuate the plant.
  - o Pittsboro and Chatham County have to do some of this scenario planning now.
- When we think about insurance policies for the WIP, what are the risk management things that should be considered? What are the financial instruments to mitigate risk?

#### **Environmental and Operating Trends Debrief**

Participants were asked whether there were any additional trends or risks that had not been discussed. Comments included:

- The General Assembly if it takes an interest in the project, it could have an opinion that impacts operations and the project.
- Workforce trends we may all be struggling with workforce right now and we're not sure how it's going to look in the next few years. Retirements, recruitment issues, etc.
- Technology and automation as the plant technology increases, fewer staff resources will be needed to operate the plants.
- Utility payments during COVID delinquency rates can impact revenues or the operating budget, and we have to manage the operational impacts of the shortfalls.
- Supply chain issues the cost of supplies is going up, and it's harder to get contractors to come in.

## SOAR and the Strategic Framework

#### **Aspirations**

Participants considered what they would like for the WIP to be known for, and what would make them proud of the organization in five years. After polling, the group's most compelling aspirations were to be:

- An award-winning, world renowned example of regional collaboration
- Fiscally responsible, with strong access to grant funding
- Trusted for excellent water
- Known for a resilient, sustainable, and state of the art facility
- Known for good governance and the diversity of partners at the table

With these aspirations in mind, the participants affirmed the WIP's vision, to be:

A partnership committed to supporting our community and its needs.

#### **Strengths**

Participants considered the strengths that they would like the WIP to leverage into the future. After polling, the top strengths included:

- Existing relationships, and the commitment to collaboration and long-standing regional partnerships
- Support of governing bodies, the State, and City/County management
- Expertise among partners
- Geographic location within the Triangle
- Commitment and ability to proactively planning

With these strengths in mind, and the vision set for the WIP's desired future state, participants affirmed the rest of the strategic framework:

**Mission:** To continue to provide reliable, high-quality drinking water to the Triangle region.

**Purpose:** To be a key partner in sustaining the Triangle region's quality of life.

#### Values:

Quality: Access to safe water is essential. Your health is our primary focus.

*Sustainability:* Water is a finite resource. From spending responsibly to protecting the environment, we are committed to doing what's best for our community.

Transparency: You can rely on us to keep you informed, every step of the way.

*Equity*: We believe that everyone deserves equal access to quality water, and we're dedicated to serving our communities with care and compassion.

*Partnership:* The best solutions are born of inclusion and collaboration. We're dedicated to working together to provide you the best service possible.

#### **Opportunities**

Participants were asked to consider the opportunities that they believed that the WIP should be prepared to pursue. Top opportunities included:

- Understanding individual member needs and customizing how members participate in WIP based on those needs. Building in flexibility to meet future demand changes and growth.
- Considering the latest technology in the facility.
- Building a facility that benefits the whole region.
- Incorporating sustainable elements into plant design/operations.
- Taking advantage of regional resources, i.e. universities, high schools, etc.
- Building community understanding and support.

#### **Results**

Finally, participants were asked to share the outcomes that they hoped that the WIP would achieve. These desired results included:

- The facility being built and in service, early and under budget
- Meeting the long range water demand needs of the community
- Customers not noticing a difference in service
- No negative downstream effects both in terms of water and future/time stakeholder impacts; positive impacts upstream
- 100% compliance with drinking water standards

## OWASA Alternatives Discussion

Greg Charaklis from UNC and Reed Palmer from Hazen and Sawyer, presented a series of alternatives related to OWASA's future water supply and participation in the Western Intake Partnership. Alternatives included a fixed capacity sharing agreement, a uniform rate capacity sharing agreement, an option contract, and a longer-term option for OWASA to join the WIP as a partner in a future phase.

After the presentation, participants debriefed on the alternatives. This discussion included the following:

- It may be more helpful for OWASA to tease out priorities, rather than the Board picking a single option. That way there's some flexibility if they come back to WIP partners and the preferred option isn't feasible.
  - OWASA staff want the Board to commit to something, because they need to know the information for budget planning and communicating with the partners.
- For the uniform rate capacity sharing agreement, there would need to be some sort of governing authority in place.
- Chatham County is planning to be a partner right now but may want to consider some of the alternatives presented by OWASA.
- Financing structures will impact the alternatives and how costs are allocated long-term.
- Durham expressed concern about how much their share might grow beyond what their needs are and how much the project impacts their other capital programs, because fronting the full bill could impact other CIP needs.
- These alternatives increase the political risk for Durham.
- OWASA staff said there were two schools of thought when the ideas were brought to the Board it seemed to like the alternatives options but was concerned about the cost.

### **Parting Thoughts**

Participants were asked to share a parting thought on the session and the work accomplished. These included:

- I feel good about workshop.
- I appreciate being involved.
- We had fun today.
- I appreciate continuity of the two workshops.
- Thumbs up!
- We kept it moving.
- Everyone has been on the same page, has been great.
- This was very helpful, nice to see everyone again.
- I like seeing that everyone wants the same things and are like-minded.
- I enjoyed the trends analysis, learning about partners.
- We do this work in the beginning so that, when we get going, we can be effective. This foundational work is important. We go slow to go fast.
- This went well.
- We covered a lot of content, learned new things, and covered everything.
- Really important step, appropriate to name it "foundation".

## Appendix A: Strategic Framework

**Vision:** A partnership committed to supporting our community and its needs.

Mission: To continue to provide reliable, high-quality drinking water to the Triangle region.

**Purpose:** To be a key partner in sustaining the Triangle region's quality of life.

#### Values:

Quality: Access to safe water is essential. Your health is our primary focus.

*Sustainability:* Water is a finite resource. From spending responsibly to protecting the environment, we are committed to doing what's best for our community.

Transparency: You can rely on us to keep you informed, every step of the way.

*Equity*: We believe that everyone deserves equal access to quality water, and we're dedicated to serving our communities with care and compassion.

*Partnership:* The best solutions are born of inclusion and collaboration. We're dedicated to working together to provide you the best service possible.

## **Appendix B: OWASA Alternative Slides**

# Long-Range Water Supply Plan: Alternative Agreements to Reliably Access OWASA's Allocation of Water in Jordan Lake

Western Intake Partners Meeting

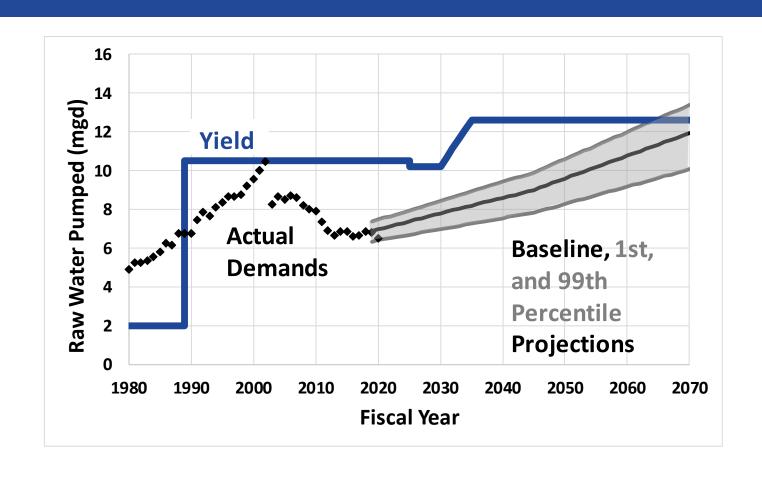
October 20, 2021





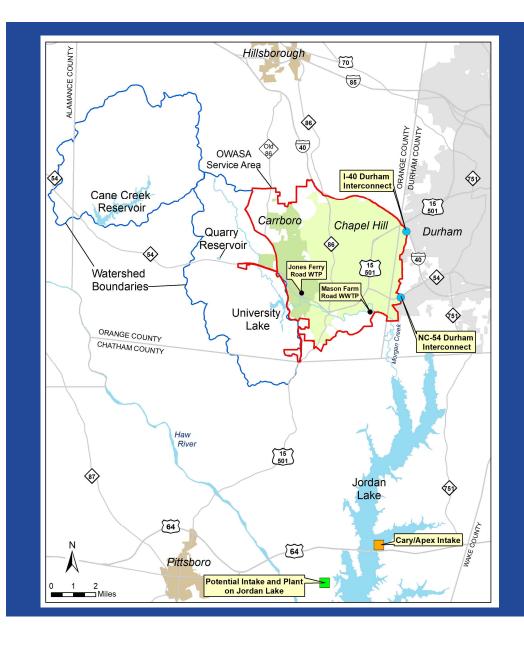
Carrboro-Chapel Hill's not-for-profit public service agency delivering high quality water, wastewater, and reclaimed water services.

## Our Water Supply Meets Demands Under Most Conditions



### Our Water Supply Risk is Low

- Our predecessors set us up well
  - Supply
  - Conservation
- Cane Creek Reservoir has small watershed relative to its storage
- Long refill times following drought
- Our main vulnerability is extended drought



#### **Jordan Lake Alternatives**

Continue with Mutual Aid: Status Quo

New Type of Agreement Options to Access Jordan Lake Allocation

Full Partner in Western Intake: Full allocation in Phase II of WTP

**Discussing Today** 

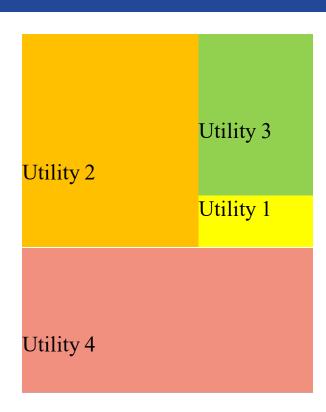
## Potential Agreement Alternatives

- I. Fixed Capacity Sharing Agreement
- 2. Uniform Rate Capacity Sharing Agreement
- 3. Option Contract
- 4. Long-Term Option to Join WIP as Partner in Future Phase

Can combine agreement types (e.g., alternatives 3 and 4)

### Alternative I: Fixed Capacity Agreement

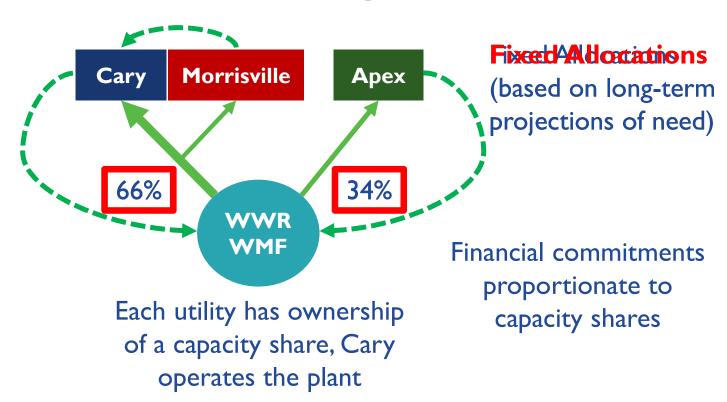
- OWASA partner in WIP, but at low flow rate
- All capacity is reserved at the outset of the project
- Each partner pays based on its share of capacity in the project



## Alternative I: Fixed Capacity Agreement

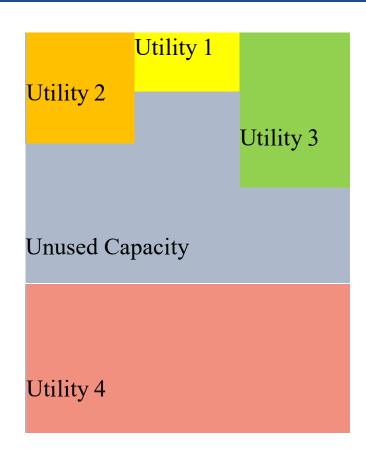
Advantages	Disadvantages
<ul> <li>Guarantees OWASA access to supply at any time</li> <li>Simple agreement design</li> <li>Each Partner's share is secure</li> </ul>	<ul> <li>May pay for capacity not needed</li> <li>If a Partner grows faster than anticipated, may not be able to acquire additional capacity</li> </ul>

## Fixed Allocation: Western Wake Wastewater Management Facility



## Alternative 2: Uniform Rate Agreement

- OWASA partner in WIP, but at low flow rate
- All partners pay the same volumetric rate (\$/1000 gal)
- Rate is determined by dividing the annual costs by the volume of water produced
- This rate distributes the costs of unused capacity to partners



## Alternative 2: Uniform Rate Agreement

Advantages	Disadvantages
<ul> <li>Guarantees OWASA access to supply</li> <li>Could increase capacity in future years</li> <li>Participant pays for volume of water it uses</li> <li>Subsidizes small, fast growing partner in early years</li> </ul>	<ul> <li>If another Partner grows faster, ability to acquire additional capacity may be limited</li> <li>If a Partner grows slower than anticipated, other Partners would subsidize their planned capacity</li> </ul>

# Uniform Rate Agreement – Tampa Bay Water Authority Example

- TBW manages supply and treatment infrastructure, wholesales water at uniform rate
- Rate set annually to recover costs based on expected member demands

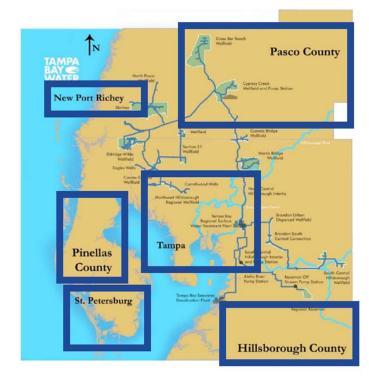


Figure 1: Tampa Bay Water Facilities

# Uniform Rate Agreement – Tampa Bay Water Authority Example

- Tampa is large, growing slowly
- Hillsborough County is small but rapidly expanding

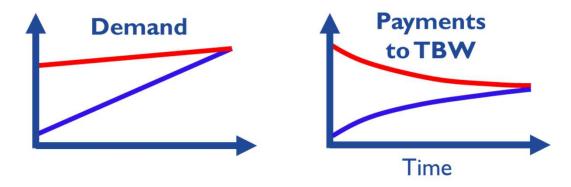




Figure 1: Tampa Bay Water Facilities

# **Alternative 3: Option Contract**

- Option Fee upfront fee (one-time or annual)
- Exercise Fee volumetric fee charged each time OWASA accesses its allocation (\$ per 1000 gallons)

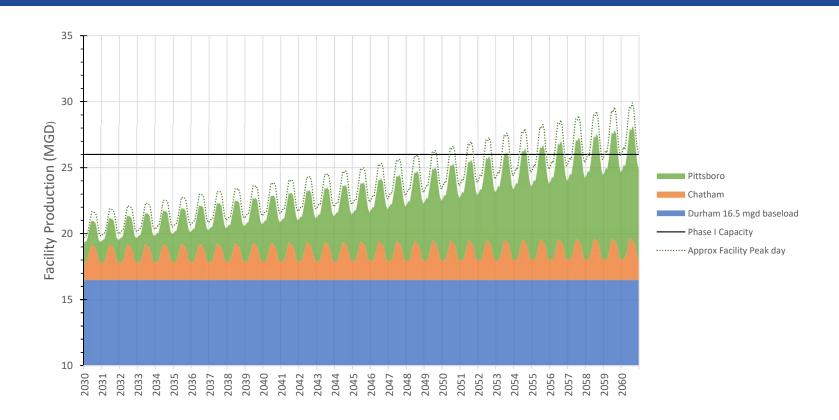
Pricing often involves tradeoff between higher option fee and lower exercise fee, or vice versa

Examples in the Western U.S., typically Ag-to-Urban transfers

# **Alternative 3: Option Contract**

- Most similar to mutual aid agreement, but
  - Includes option fee
  - Objective is to guarantee access to Jordan Lake under specified conditions (e.g., drought)
  - Key consideration is defining conditions that result in a water transfer (i.e. an "exercise" of the option)
- OWASA purchases no capacity in WIP facility or conveyance

# Option Contracts Take Advantage of Unused Capacity



# **Alternative 3: Option Contract**

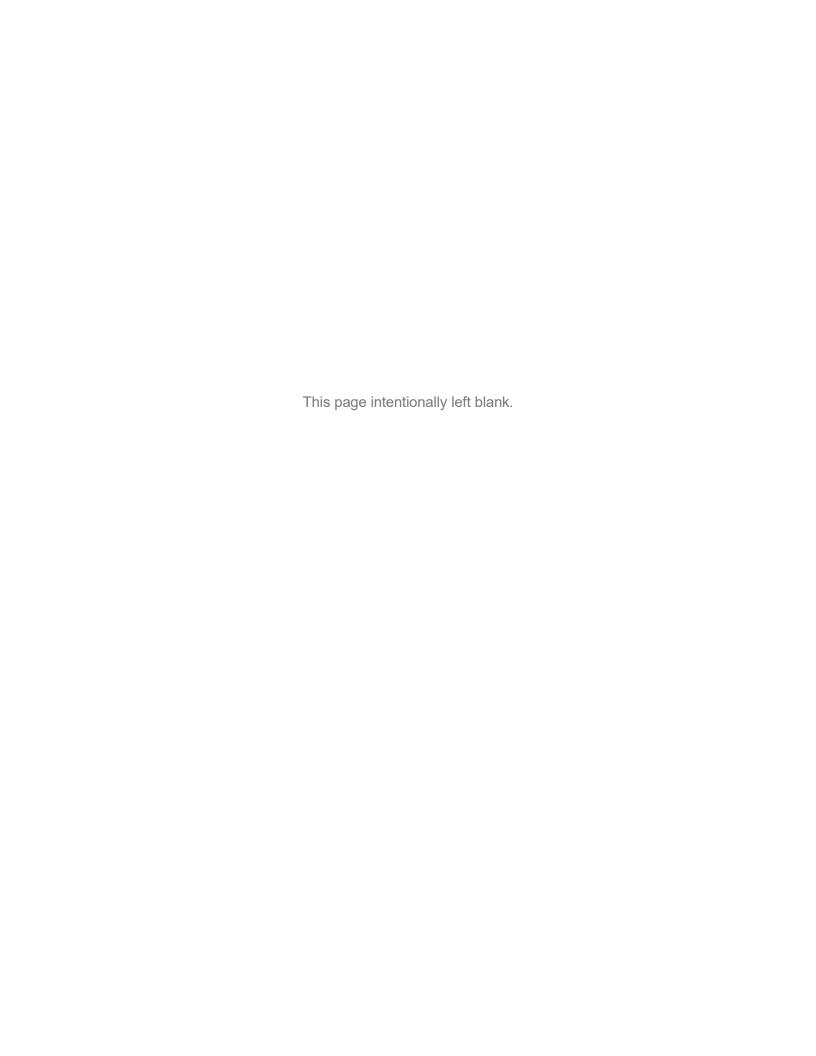
Advantages	Disadvantages
<ul> <li>No investment in infrastructure that OWASA would use infrequently</li> </ul>	<ul> <li>OWASA is unlikely to have guaranteed access to transfers at all times</li> </ul>
Helps OWASA meet reliability goals	
<ul> <li>Provides revenue to other WIP partners</li> </ul>	

# Alternative 4: Long-Term Option to Buy Into Future Phase

- OWASA does not participate in WTP capacity in Phase I
- Instead, it seeks a long-term option to participate in Phase 2 (around 2050)
- Option fee

# Alternative 4: Long-Term Option to Buy Into Phase 2 of WIP

Advantages	Disadvantages
<ul> <li>Relatively small commitment of funds by OWASA, but supplies revenue to other partners</li> <li>Potential to combine this with Alternative 3 (Option Contract)</li> </ul>	• If OWASA opts not to participate in phase 2 of project, it would likely forfeit option payments





# Western Intake Partnership

**Governance Alternatives Workshop** 

November 17, 2021





The Western Intake Partnership (WIP), held a Governance Alternatives Work session on November 17, 2021. The session was planned and facilitated by Raftelis.

Work session goals included:

- Consider potential governance structure and cooperative model alternatives for the WIP, generally within the categories of services provided on behalf of another, services provided jointly, and creation of a joint agency.
- Identify the benefits and limitations of each type of agreement
- Identify the questions and information needs that participants have prior to prioritizing alternatives

The governance alternatives summary materials are included as Appendix A, and the slide deck used to discuss governance alternatives is included as Appendix B.

### **Participants**

Kent Jackson, Town of Pittsboro Sydney Miller, City of Durham Ruth Rouse, OWASA Todd Taylor, OWASA Chris Summerlin, Chatham County Dan LaMontagne, Chatham County Vicki Westbrook, City of Durham Heidi Hackett, City of Durham Don Greeley, City of Durham Jeff Adkins, HDR Annie Huang, HDR Kim Colson, HDR Steve Broan, HDR Evan Kirk, UNC School of Government Erin Riggs, UNC School of Government Catherine Carter, Raftelis Doug Bean, Raftelis Bart Kreps, Raftelis

# High-level Governance Alternatives

After a presentation from the University of North Carolina School of Local Government and Raftelis, participants were given the opportunity to discuss each of the three categories of governance alternatives in the context of the WIP. Participants were asked to consider:

- What are the advantages of this governance structure for the WIP? For individual members?
- What are the disadvantages of this governance structure for the WIP? For individual members?
- What additional information would help you to fully consider options associated with this type of governance structure? Do you have any other questions?

The following sections provide a high-level overview of each type of governance structure, followed by the notes from each small-group discussions.

#### On Behalf of Another

The most prevalent forms of cooperation among water and wastewater utilities are emergency connections and bulk or wholesale purchase. The relationship is provider/customer based with one entity purchasing services or excess capacity on a contract basis. Under these arrangements each entity retains independent legal authority, and one unit performs the undertaking. Contracts primarily address technical issues, such as minimum or maximum purchase amounts, quality of product, and financial considerations. Formal governance provisions are not usually found in these arrangements beyond information sharing and communication protocols. This is because in most of these arrangements, the customer or purchaser is an intermittent or minority user of the service. More robust governance provisions are not usually included since the primary goal of the purchaser is a reliable service at a reasonable cost and it is the responsibility of the owner-operator to provide both.

#### Advantages

- o Members are familiar with this type of cooperation
- o Simple, cost-effective
- o Takes different levels of resources into account (HR, IT, Budget, Finance)
- o Terms of service are clearly laid out
- o Criteria for rate-setting is clearly laid out up front
- o Periodic reexamination of terms
- o For the others, only concerned with the bulk water rate
- o Easier to add a new wholesale customer (that has a Jordan Lake allocation)
- o If larger entity has better credit, it may be helpful for smaller entities

#### Disadvantages

- Lack of clarity of agreement
- Lack of representation
- o Periodic reexamination of terms
- o Perceived lack of control (e.g., staffing, growth)
- Additional information needed/questions

- Examples of successful agreements
  - How specific issues are handled (e.g., leaks)
  - Advisory Boards
  - Implementation of water shortage plans
- Maintaining transparency
- o Testimonials
- Best practices for making this successful
- o Any examples of one model changing to another

### **Jointly**

When utilities see the benefits and need for a partnership in the provision of services, they will often perform the undertaking collaboratively while retaining their legal independence and authority. These arrangements are usually established through Interlocal Agreements and provide a more formalized governance structure. Ownership, operations, and support functions are retained by one entity, but based on the desire to have more involvement, these agreements often call for committees or boards representing both parties to act in an advisory role. The responsibilities of these boards vary and can include anything from periodic meetings in a strictly advisory capacity to a more formalized board with some or many formal responsibilities. In either case, the final responsibility stays with the legal owner's governing body, taking into consideration any advice or input from the advisory board. Governance structures found in this model are usually formed when the parties want to have more involvement in decision making and be seen as more equal in their interests.

#### Advantages

- o Potential cost savings (no HR, IT, etc.) over joint agency
- Separate board constituted from each member's board
- o Members are familiar with ILAs
- Responsible for setting bulk water rates for finished water
- Uses existing staff/expertise
- Each member retains some control

#### Disadvantages

- Most difficult to wrap my brain around
- Potential conflicts
- o Potentially, each member retains ownership of its share of the assets
- o Potentially makes O&M more complicated
- o Members could make politically controversial appointments to the Board
- o Customers aware of different retail rates
- Additional information needed/questions
  - Would partners need to be participating financially up front?
  - o Who owns the assets? How is that decision made?
  - o What are the best practices?

### **Joint Agency**

New local government utility entities are sometimes formed when the parties involved wish to confer independent legal authorities on a joint agency to perform an undertaking. There are two primary reasons why a separate authority is formed to perform services instead of utilizing the "On Behalf of Another" or "Jointly" models. The first and most prevalent reason is to recognize the increased size and scope of the

operation. General local government boards have a wide variety of public policy issues to address regularly. Often the size and scope of public utilities grows due to an expanding service area, additional regional partners, additional or complex facilities, and expanding environmental regulations. In these instances, it is difficult for a general local government board to spend the time needed to understand such a large and complex business. An independent public entity, such as an authority, is solely focused on, and responsible for the operations of the utility. The second reason for forming an independent entity is due to parochialism. Parties to a regional initiative may allow local considerations to get in the way of working collaboratively and a separate independent body removes this hinderance.

#### Advantages

- o Unified voice
- o Governing body only focuses on water no competing priorities
- More permanent (no 99-year cap) organizational stability isn't susceptible to changes in political environment
- All needs taken care of (all members could be representative)
- o Easier to ensure equitable representation
- No retail customer service

#### Disadvantages

- o More internal costs to set up (have own HR, IT, etc.) which means that the potential for rates to be higher
- o No control over land use, stormwater
- Perceived loss of political control
- o Longer to set up
- What if one community grows fast and needs capacity, but the joint agency isn't ready to expand?
- o Will need its own support services (IT, HR, Finance)
- o Not as great economies of scale as would be if Durham were the agent

#### • What more information

- o Do the individual Jordan Lake allocations combine to be owned by the joint agency?
- o Does the model require financial commitment from each member up front?
- o Could other entities join at a future date?
- o How much do you have to add to get a Board representative?
- o How does representation on the Board change with share of water/plant use?
- o Does facility location affect the choice of model?
- o How can the model adapt to who's growing? (If one community grows fast early and another grows fast in the future when the first community is no longer growing?)

### **Debrief**

Other, general questions and comments included:

- Does the governance model affect the cost of alternatives?
- How should the assumption of risk for initial participants be addressed in the long-term?
- Should we have an interim model and then some kind of a trigger to shift to a different model? (e.g., a shift from on behalf of another to an authority model?)
- Should there be some kind of compensation for previous investments made?
- Could we see best practices for each of these models?

# Appendix A

#### **Introduction to Governance Structures**

Successful regional collaborative initiatives are dependent on two factors. The first is an agreement on technical aspects, such as ownership, finances, flows, etc. The second is a governance structure that provides a framework for decision making and collaboration. Without close attention to governance, the relationship between participating organizations can negatively impact the technical aspects of any partnership. Adopting a structured, transparent, and appropriate governance model will ensure positive working relationships between the staff and governmental bodies and allow for more time and energy to be spent on long-term operational health.

In 2018, Jeff Hughes and Norma Houston from the School of Government at the University of North Carolina at Chapel Hill presented the findings of their research on Regionalism and Cooperation Options to the NC General Assembly Committee to Study Rates and Transfers/Public Enterprises. The research showed widespread use of regional cooperative models for the provision of water and wastewater services in North Carolina. These models were adopted to capitalize on economies of scale and improve environmental impacts through regional planning. While there were numerous governance models and provisions that set the legal and operating framework for governance, the authors concluded that all fell into three general categories:

- On Behalf of Another One organization provides the service on behalf of another or a group
- **Jointly** All organization provide the service together
- **Joint Agency** A new organization is formed to provide service

Within each category of governance structure there are numerous modifications to fit specific community needs. All are designed to ensure transparency and a working spirit of collaboration that leads to a cooperative relationship benefiting the operations and the community. Following is an overview of the three categories, including specific permutations within each category.

#### On Behalf of Another

The most prevalent forms of cooperation among water and wastewater utilities are emergency connections and bulk or wholesale purchase. The relationship is provider/customer based with one entity purchasing services or excess capacity on a contract basis. Under these arrangements each entity retains independent legal authority, and one unit performs the undertaking. Contracts primarily address technical issues, such as minimum or maximum purchase amounts, quality of product, and financial considerations. Formal governance provisions are not usually found in these arrangements beyond information sharing and communication protocols. This is because in most of these arrangements, the customer or purchaser is an intermittent or minority user of the service. More robust governance provisions are not usually included since the primary goal of the purchaser is a reliable service at a reasonable cost and it is the responsibility of the owner-operator to provide both.

#### **Jointly**

When utilities see the benefits and need for a partnership in the provision of services, they will often perform the undertaking collaboratively while retaining their legal independence and authority. These arrangements are usually established through Interlocal Agreements and provide a more formalized governance structure. Ownership, operations, and support functions are retained by one entity, but based on the desire to have more involvement, these agreements often call for committees or boards representing both parties to act in an advisory role. The responsibilities of these boards vary and can include anything from periodic meetings in a strictly advisory capacity to a more formalized board with some or many formal responsibilities. In either case, the final responsibility stays with the legal owner's governing body, taking into consideration any advice or input from the advisory board. Governance structures found in this model are usually formed when the parties want to have more involvement in decision making and be seen as more equal in their interests.

#### **Joint Agency**

New local government utility entities are sometimes formed when the parties involved wish to confer independent legal authorities on a joint agency to perform an undertaking. There are two primary reasons why a separate authority is formed to perform services instead of utilizing the "On Behalf of Another" or "Jointly" models. The first and most prevalent reason is to recognize the increased size and scope of the operation. General local government boards have a wide variety of public policy issues to address regularly. Often the size and scope of public utilities grows due to an expanding service area, additional regional partners, additional or complex facilities, and expanding environmental regulations. In these instances, it is difficult for a general local government board to spend the time needed to understand such a large and complex business. An independent public entity, such as an authority, is solely focused on, and responsible for the operations of the utility. The second reason for forming an independent entity is due to parochialism. Parties to a regional initiative may allow local considerations to get in the way of working collaboratively and a separate independent body removes this hinderance.

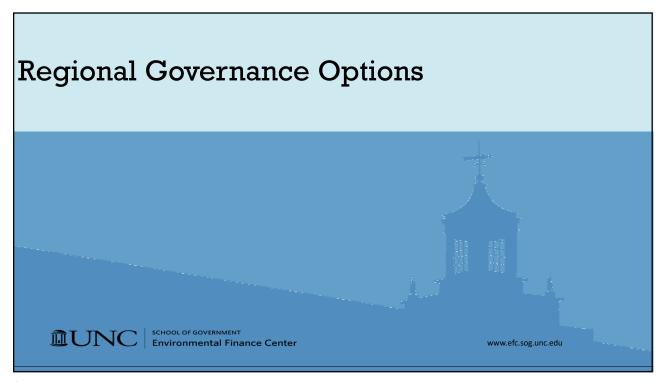
#### **Example Governance Models**

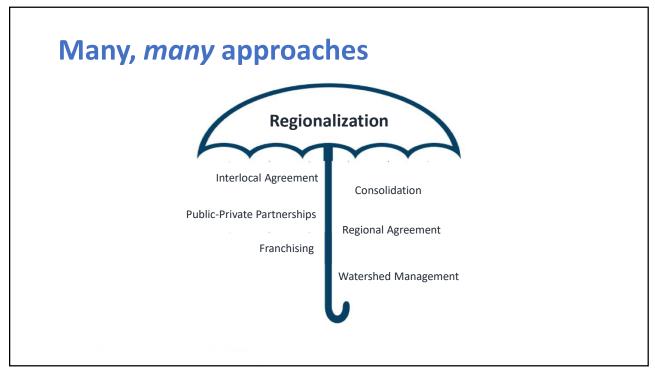
Governance models exist on a spectrum, and models have permutations that sometimes don't fit neatly in one category or another. The following table discusses governance models that are generally associated with each of the three categories. Examples are in the order of moving from "On Behalf of Another" to "Jointly" to "Joint Agency."

**Table 1: Example Governance Models** 

Example Governance Model	Description
Contract relationship without governance provisions	This would put WIP members in a buyer and seller relationship established in a contract.  There is no involvement on the part of the buyer in the operations and the limited contract language on the relationship only speaks to communications when appropriate. The model assigns all the responsibility of operations to the seller, and none is assumed by the purchaser of the service.
Contract provisions specifying additional involvement	Contract relationship can be expanded to include how parties will share information about operations, interaction with elected bodies and the public, and performance. While this language can improve information sharing it is not a governance model, rather a promise to communicate model.
Joint Staff Management	A more formalized organization could be established with a management team made up staff from WIP members. This group would meet no less then bimonthly and have specified responsibilities. Items such as operating reports, financial performance, annual capital and operating budgets, and contracts would be specified as being the responsibility of this group. Language could also be added to allow or call for joint technical committees that may include finance, performance, or capital. The governing body would remain seller, but the joint team would be required to consider, recommend, and in some instances decide issues.
Advisory Committee	A citizens advisory committee would increase the level of participation by all members and serve to provide valuable, informed input to both the WIP. An advisory committee would be jointly appointed by member organization and be composed of citizens with specific backgrounds and knowledge that would be beneficial in their roles (i.e., financial, engineering, construction, environmental). The committee would be specifically advisory to staff and to the governing boards with no final authority on issues. While being restricted to an advisory role, specific issues would be required to be reviewed by them, such as the annual operating and capital budgets, operating performance, and financial reports. Regular meetings and reporting to governing bodies would also be established.
Utility Board	Building on the Advisory Committee, a more robust and formalized set of responsibilities could be assigned to a resident board. While not having the legal responsibility for establishing a budget, issuing debt, or establishing rates the board could have some limited responsibility beyond strictly advisory. The board could be authorized to enter into agreements within specified limits, establish rules and regulations, sit in joint session with other governing bodies, make recommendations on fees and charges, or approve or disapprove staff requests for action that are not required to be made by the governing board.
Plant Authority	A new local government entity could be established under the statutes of the State of North Carolina to assume all responsibilities for the operation of the WIP. This model would remove the members from responsibility of operating WIP. Some involvement could be retained in the makeup of the new governing board (i.e., appointment authority, membership to include some or no elected officials, and other provisions allowed in authorizing legislation). The Authority could assume ownership of all the assets or lease the assets from the current owners. Similarly, the Authority could hire employees or could contract with other organizations for employee services.
Privatization	Asset sales with private ownership and operations of public utilities usually take place when there are financial or environmental crises. This is not the case in the WIP so there is no reason to discuss or consider this option

# **Appendix B**





# **Key Financial Benefits**

- \*Can vary by situation and model
- Economies of scale/operating efficiencies
- Increased access to capital
- Revenue stability
- Improved planning and risk management
- Increased opportunities for economic development
- Reduction in rate discrepancies among nearby communities

3

# Principle Tools for Establishing More Regionalized (Local Government) Systems in NC

- Wholesale water/wastewater sales/purchase contracts (can be done through interlocal agreement)
  - Widespread across the state
- Interlocal agreements
  - Regional utilities (Charlotte Water, Two Rivers Water, Salisbury Rowan Utilities..)
- New local government entities
  - Water and Sewer Authority
  - Metropolitan Districts
  - Sanitary Districts

## **Interlocal Agreements**

Article 20.
Interlocal Cooperation.
Part 1. Joint Exercise of Powers

#### § 160A-460. Definitions.

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

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

#### § 160A-461. Interlocal cooperation authorized.

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

#### § 160A-462. Joint agencies.

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

5

## What is an Interlocal Agreement?

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

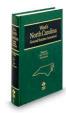
G.S. Chapter 160A, Article 20

# **Interlocal Agreement limitations**

 Can only partner with other units of local government, not state agencies or private entities



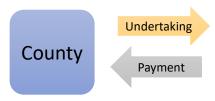
- Can only exercise powers and authorities established elsewhere in existing law
- Does not supersede limitations imposed elsewhere in existing law



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### On Behalf of Another

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



City

# Single Municipality Operating as a Regional Utility

- Multipurpose local government utility model with far reaching authority
- Governed by City Council
- Prevalence in NC: Common, 10-15
- Primary Authorizing Statutes: G.S. § 160A, Article 16

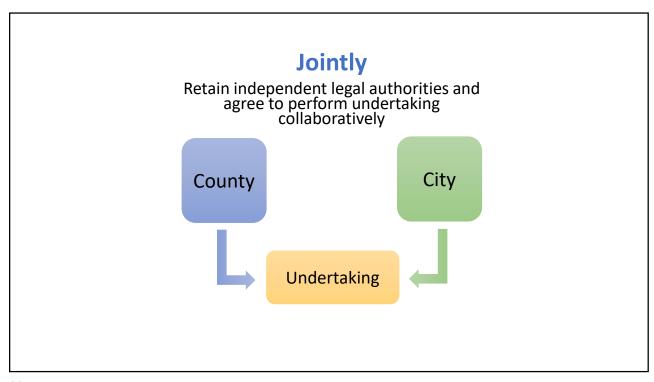
Pro
Can integrate general city
management, planning, and
economic development with utility
operations

Customers that live outside city limits may feel like they do not have a voice in utility management since they do not vote for a utility

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### Charlotte Water example

- City of Charlotte's water utility (Charlotte Water) provides water and wastewater services throughout the entire Mecklenburg County metro area, which includes six other towns.
- Charlotte Water owns the water and wastewater assets
- Charlotte city council maintains ultimate legal responsibility and authority for the utility,
- A series of agreements stipulates a number of consensus-supported governance conditions related to service expansion and rates
- "Advisory" Board- one representative from each of the six towns (not elected official), and the remainder were based on expertise



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## **Joint Management Agency Model**

- Creates a multi-utility shared governance structure
- A statutory defined type of inter-local agreement
- Prevalence in NC: Limited, likely less than 5
- Primary Authorizing Statutes: G.S. § 160A-460, § 160A-466

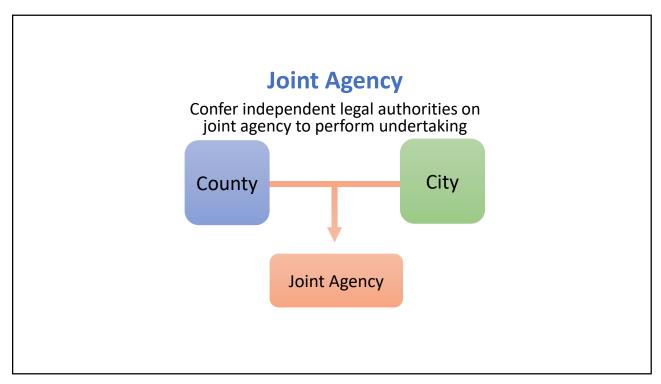
Allows for more integrated join management

Joint management agencies cannot own assets (assets must be owned by one of the participating utilities)

## Winston-Salem/Forsyth County

- The Winston-Salem/Forsyth County joint consolidation agreement established a Commission for dealing with water/sewer projects.
- Provisions of the Agreement:
  - The formation of the City/County Utility Commission
  - The facilities are owned by the City
  - The City pays the utility debt of the County
  - The City provides water and sewer services to the consolidated areas
  - Utilities operate on an enterprise fund

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## **Water and Sewer Authority Model**

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

Pro Permits a range of governing board options

<u>Con</u> Cannot use taxes or issue general obligation bonds

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# Water and Sewer Authorities - board seat variation

- Cape Fear Public Utility Authority county encompasses entire utility base so in a way they are all represented through that. Board is 11 seats, with 4 of those being elected officials.
- Neuse Water and Sewer Authority active metered accounts is the basis for board representation, so it is one of the only in the state where the board composition may change if population shifts.
- Another justification for board seats is how many assets were contributed at the formation of the Authority (or subsequently as it expanded) – such is the case for Tuckaseigee Water and Sewer Authority and ONWASA where more seats were given to the bigger asset contributors

### Other NC Regional Models

- Single county government Harnett County (125k)
- Metropolitan Water District and Metropolitan Sewerage District special purpose unit of gov/less than 5 in NC
- Sanitary District public health focused
- Private Nonprofit Associations/Water Cooperatives Davidson Water (50k connections)
- Investor-Owned Utilities Aqua NC (reg by NCUC)

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So...where do we go from here?



# Statutorily Required Agreement Provisions for an Interlocal Agreement

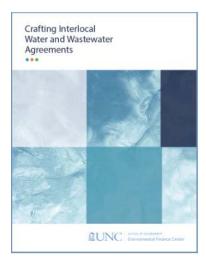
- 1. Purpose
- 2. Duration
- 3. If joint agency formed-composition, organization & powers
- 4. Personnel
- Financing methods, including costs and revenues allocation

- 6. Real property ownership & disposal
- 7. Amendments
- 8. Termination
- 9. Other

G.S. 160A-464

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# Interlocal Agreement guide



## **Practical Considerations for Regional Utilities**

Finances

How are costs calculated?
When are payments due?
How will charges be modified?
How will rates be set and by whom?
How will debt be handled?

Personnel/Governance

What is the governance structure?
Who appoints/hires?
How will personnel costs be allocated?

Contracts

Who will write specs and award the contract?
Who enforces performance and handles contract disputes and termination?

Accountability & Risk
 Who monitors compliance?
 Who assumes risk?

 Water/Sewer Governance, Rates, and Operations Issues

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# Specific Governance Considerations for Regional Utilities

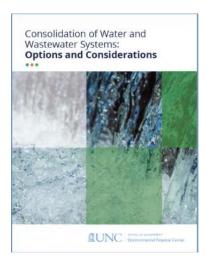
- Governing body structure
  - Elected
  - Appointed governance body
  - · Appointed advisory body
- Rate setting
  - · Annual adjustments
  - Service area and customer class rates
- Capital investment decisions
- Service extension policies and decisions
- General utility and customer policies

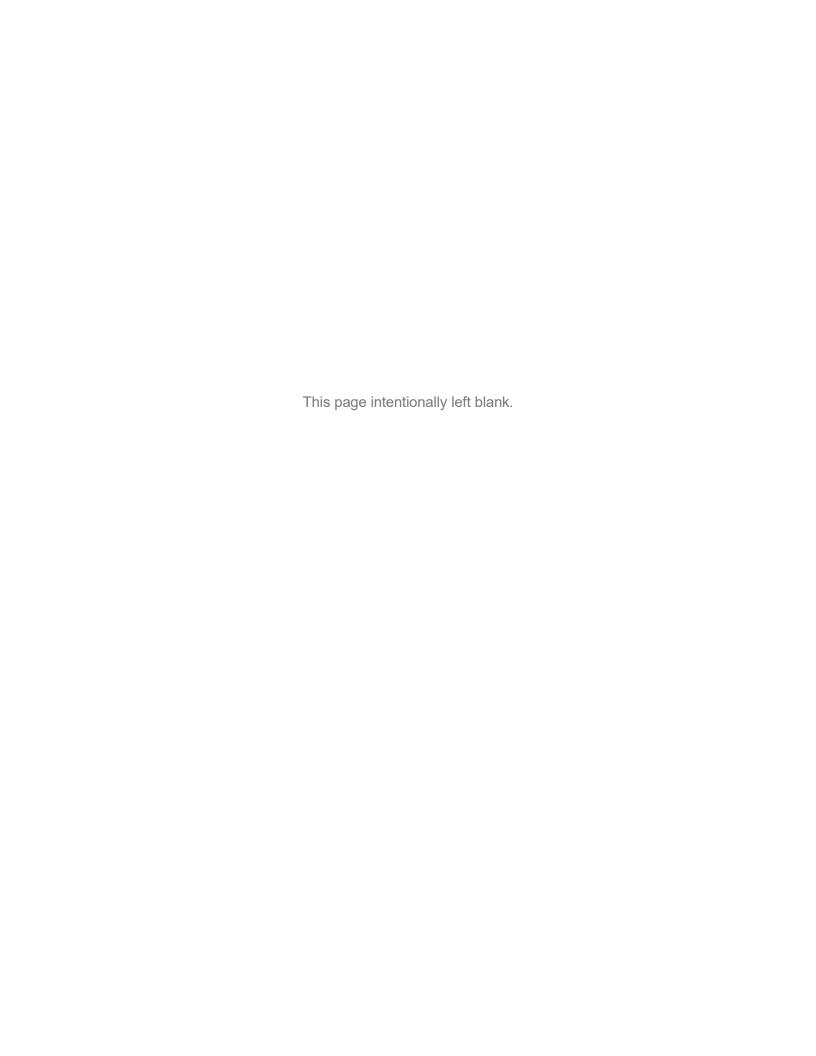
# Specific Governance Considerations for Regional Utilities

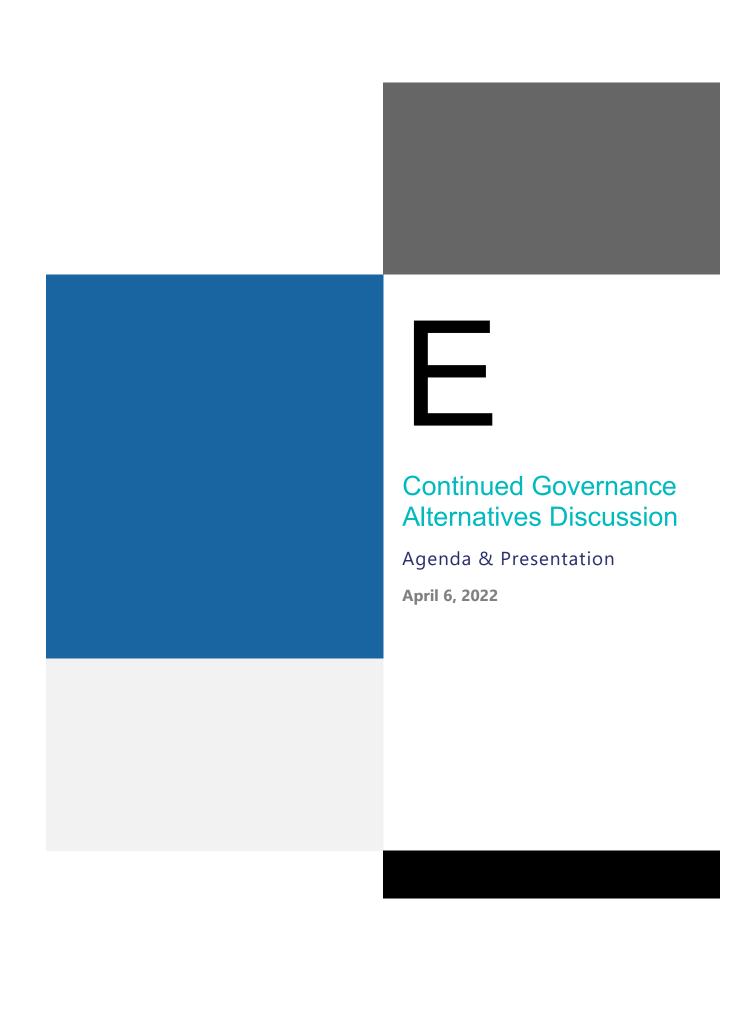
- Authority Board
  - Appointed by member utilities
  - Established in by-laws
  - Wide range of practices
  - Elected officials vs. staff vs. general public
  - Number of seats
- Sanitary District Boards
  - · Generally elected
  - Number of members
- Interlocal Agreement Governance Provision
  - Advisory Boards

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### **Consolidation Considerations**









# **MEMO**

Date: April 1, 2022

To: Western Intake Partnership Members

From: Bart Kreps, Vice President, Raftelis

Re: Continued Governance Alternatives Discussion

We look forward to being with you on April 6th to continue to discuss the foundation for effective governance for the Western Intake Partnership (WIP).

This memorandum serves several purposes:

- Clarify the goals and purpose of the workshop
- Identify what needs to be done to prepare for the session
- Share the agenda

### **Logistics**

Location: Compliance Services Training Room

City of Durham 6605 Farrington Road Durham, NC 27517

Wednesday, April 6 from 1:00 PM to 4:00 PM

### **Workshop Goals**

- Review the elements of the draft Memorandum of Understanding (MOU) and propose edits, changes, and/or other concepts to consider
- Discuss next steps for each partner organization
- Discuss the project's next tasks and timeline related to governance

### **Preparation**

Spend a few minutes reviewing the attached draft MOU and prepare to participate in the retreat.

#### Norms

- Listen with respect
  - Let others finish before you start talking
  - Be attentive to the speaker
  - Disagree agreeably
- Be...
  - o BOLD
  - Positive and realistic
  - Candid and honest
  - Patient and self-aware
  - Engaged and fully present
- Strive for consensus
  - Look for opportunities to agree
  - Remember the power of "if" and "and"
- Have fun!

#### **AGENDA**

#### **Introductions and Context**

- Welcome and introductions
- Agenda review
- Review Project Progress to Date

### **Review the Draft MOU**

Participants will walk through each of the sections of the draft Memorandum of Understanding to provide clarifications, modifications, and concepts to consider. Raftelis will note the additions and provide an updated version of the MOU after the session.

### **Project Next Steps**

We will debrief next steps for both partner organizations and the overall governance work. This will include a discussion of schedule and timeline.

### Parting Thoughts/Adjourn

As the session comes to a close, each participant will be asked to share a parting thought on how they feel about the work done thus far.

# Western Intake Partnership

**Governance Alternatives Discussion - Continued** 

**April 6, 2021** 





# Agenda

- 1. Introductions and Context
- 2. Review the Draft MOU
- 3. Project Next Steps
- 4. Parting Thoughts/Adjourn

#### **Workshop Goals**

- Review the elements of the draft Memorandum of Understanding (MOU) and propose edits, changes, and/or other concepts to consider
- Discuss next steps for each partner organization
- Discuss the project's next tasks and timeline related to governance

# Review the Draft MOU



#### **Instructions**

- Memo sections are around the room on flip chart paper
- Each person has a pad of sticky notes
- Please rotate between stations and share your thoughts/comments/ questions on each section
- We'll come back as a large group to debrief

#### Introduction

The Management Team (MT) of the Western Intake Partnership (WIP) reached agreement on a governance structure as a key initial step in its collaborative effort to ensure sufficient water resources in the region. This Memorandum of Understanding (MOU) outlines the MT's agreed upon principles, which will ultimately be incorporated into an Interlocal Agreement (ILA) and presented to the participants' governing bodies for formal approval.

## **Introduction – Questions, Comments**

## **Project Background**

- The Western Intake Partnership (WIP) is a joint initiative among the City of Durham, Chatham County, and the Town of Pittsboro. The origins of the partnership date to the 1980s, when Jordan Lake reached its full capacity, and the North Carolina Division of Water Resources began the process of allocating a portion of the water for municipal supply. The organizations began working in earnest in 2012 to pursue the construction of an intake and treatment facility on the western side of Jordan Lake. These facilities will allow the members of the WIP to access their Jordan Lake allocations and meet future water supply needs. The final allocation for the Jordan Lake water supply was completed in 2017 and the three partners have a total allocation of 35.5% of the Lake's water supply storage volume, estimated to yield 35.5 million gallons per day (MGD).
- In 2014, the WIP completed a feasibility study that identified the most favorable options to meet water supply needs both for individual members and the partnership as a whole. Following that study, in 2018, the WIP worked with Raftelis on an economic feasibility study to assess the collective benefits of the intake and treatment facilities, as well as the individual impacts to each organization. The economic feasibility study also recommended a timeline; beginning construction by 2025 enables the treatment and related facilities to be online by 2031.
- In June 2019, the organizations signed a Memorandum of Agreement (MOA) to pursue planning and design of the intake and treatment facility that would allow access to their respective allocations. According to the agreement, the activities and management of the WIP are guided by the MT, which consists of one representative from each organization. However, the City of Durham is the designated Lead Agency, responsible for executing the direction of the MT and acting as the contracting entity for the WIP, with the other partners reimbursing the City for their shares of the cost.

#### Project Background – Questions, Comments

- OWASA to what extent is it important to capture OWASA's participation/ background?
  - Needs/interests are unique within the group, but OWASA has been involved for a long time – will be coming to the table; facility will be built to ultimately incorporate OWASA's needs.
  - Would want to develop an ILA with Durham separately, using this as a model
  - Definitely needs to be captured in Background section, with a caveat that we don't know how OWASA will be incorporated in this or other ILAs in the distant future.
  - Define different roles in the Background section? Define Tier 1 (immediate capacity needs) and Tier 2 (longer-term capacity needs)? Phased approach?
- Sections
  - > Separate section on OWASA, given different needs?
  - General ILA with specific addendums to the ILA based on individual customer needs

#### Governance

An initial MT activity was to explore the various governance structures that may be utilized to own and operate the proposed facilities. Broadly, the governance review included establishing project goals, identifying principles of effective collaboration, updating the economic analysis, identifying and evaluating formal governance structures, and selecting the option that best meets participant needs.

Building on the June 2019 MOA and the results of the governance workshops, the MT has agreed to move forward with the following governance structures and principles, which will eventually form the basis of a formal Interlocal Agreement.

# **Governance – Questions, Comments**



#### **Ownership**

Under the proposed governance model, the Western Intake facilities will be owned by the City of Durham. The MT has agreed that Durham is best positioned to deliver the infrastructure investment while mitigating the collective risks of the WIP. Durham has agreed to design and construct the WIP facilities with consideration for both existing and future capacity needs, but it will do so without placing an inordinate amount of risk on the City and its ratepayers. For Chatham County and the Town of Pittsboro, a wholesale relationship wherein Durham provides potable water services maximizes flexibility to address incremental capacity needs on an ongoing or periodic basis.

#### Ownership – Questions, Comments

- Will Chatham and Pittsboro be part owners as owners of capacity?
  - Impact on system development fees
  - Need to own the capacity and can be included in SDFs be shareholders (and also wholesale customers)
- Range of financing options?

#### **Wholesale Customers**

Other WIP members may elect to be wholesale customers and pay for a proportionate share of raw water supply, treatment, conveyance, operating and maintenance (O&M) and capital costs as agreed to in an ILA. The ILA will specify all terms and conditions for the purveyance of wholesale potable water services, such as requirements for levels of service, water quality, pricing, administration, accounting, transparency, and dispute resolution. Terms and provisions identified within ILAs between Durham and other WIP members will be substantially similar, while allowing flexibility to address the specific characteristics of the wholesale provider/purchaser arrangement.

## Wholesale Customers – Questions, Comments

- Individual ILAs discussed in Background
- How will non-WIP members be addressed (how does OWASA fit in?)
- Can anyone else buy water from the WIP, or only shareholders
- Do we need to spell out that buyers need to be allocation holders?
  - Might not need to be addressed in the MOU (referencing state rules)

## **Project Financing**

Under this proposal, the initial financing for the WIP raw water, treatment, and transmission infrastructure will be provided by the City of Durham. The City of Durham maintains a strong credit rating and is able to secure a favorable cost of capital. However, the MT has agreed that all WIP members will examine and pursue, if appropriate, alternative forms of capital financing including funding that may be available through the Infrastructure Investment and Jobs Act and North Carolina Drinking Water State Revolving Fund. ILAs between Durham and other WIP members will provide flexibility for use of alternative forms of capital financing with proceeds available as a form of payment for upfront capital investment.

#### **Project Financing – Questions, Comments**

- Durham is the up-front financier base case, but we'll explore other options
- Some funding decisions will be years down the road; do we need something that recognizes that we're at a point in time
- Grant resolution language related, but separate
- Needs to be flexible and put in the best position to attract advantageous financing – language should be flexible enough to accommodate potential changes.

#### **Operations and Maintenance**

The City of Durham will manage and implement the day-today operations of the WIP facilities. Durham will operate the WIP facilities in an efficient and economical manner, maintain the assets in good repair and in sound operating condition, and comply with all regulatory requirements and water quality standards. The standard of care employed by Durham to operate the WIP facilities will be equivalent to the standards applied to other water infrastructure assets owned by Durham. Durham will secure all necessary permits, licenses, and authorizations necessary to operate the WIP facilities and deliver potable water to the other WIP members.

# Operations and Maintenance – Questions, Comments

- Accountability to deliver and meet the needs of the partners; managing partner needs to be accountable
- Water quality standards must be met
- Careful with "all"

## **Initial Capacity**

Through the Interlocal Agreement, the City of Durham and other WIP members will formalize a methodology for reserving raw water supply, treatment, and transmission capacity in the WIP facilities. The reserved capacity will be held exclusively for the purchasing entity with initial pricing based on the final construction cost of the WIP facilities. The proportionate allocation of final construction costs will be based on the amount of capacity reserved, the type of asset, the total capacity available, and the beneficiaries of the specific asset. Capacity reservation will represent a contractual obligation, such that the related cost can be accounted for by the purchasing entity as an intangible asset. Future system development fees assessed by the City of Durham, Chatham County, or the Town of Pittsboro will include only costs associated with each the capacity allocated to each entity.

#### **Initial Capacity – Questions, Comments**

- Determining capacity amounts likely will be more addressed in the ILA
  - Increments of capacity, allotments
- Development fees
  - Some language is included to guard against double charging
  - Each entity would recover the treatment costs
- Taking into account contributions of partners thus far
- Process for requesting/updating capacity
  - Likely addressed in the ILA; trigger points for needing more capacity; processes for changes
    - Could acknowledge that it would be addressed in the ILA

## **Pricing and Rate Methodology**

As proposed, the initial financing for the WIP raw water, treatment, and transmission infrastructure will be provided by the City of Durham. However, should alternate forms of cost-effective capital become available to other WIP members, the ILA will provide an option for making an upfront payment (in-part or in-full) for the wholesale purchaser's initial capacity request. If the City of Durham serves as the financier (in-part or in-full), the related cost for initial capacity reservation will be amortized as a component of the rate structure.

Although the specific details of the rate structure will be identified in the ILA, wholesale rates are typically calculated in one of two ways, by using the cash basis or utility basis. Both approaches are endorsed by the American Water Works Association in its Manual M1, Principles of Water Rates, Fees, and Charges and cost recovery includes both operating and capital costs. The difference in the approaches is the composition of capital costs. Under the cash basis, capital costs consist of debt service (principal and interest) and rate financed capital (also commonly known as pay-as-you-go, or PAYGO, capital). Alternatively, capital costs under the utility basis include depreciation and a return on rate base, which is the book value of the WIP assets. Depreciation recovers the cost of the WIP capital investments over their useful lives. The return on rate base is designed to recover Durham's cost of capital and a "return" as compensation for ownership and related risk. In this case, the risk absorbed by the City of Durham relates predominantly to initially designing and constructing the facilities such that future expansions for additional capacity can be accommodated as economically as possible.

Both the cash approach and utility approach have strengths and weaknesses and can be more or less appropriate depending on the specific characteristics of the wholesale arrangement, upfront financing alternatives, etc. Under both approaches various additional options can be considered related to both the operating and capital components of the rate structure. For example, operating costs are typically recovered based on proportionate use of the system (flow) while capital costs are recovered proportionately based on reserved capacity. In some cases, it can be appropriate to also recover a portion of operating costs that are fixed in nature based on reserved capacity rather than flow. These and other provisions will be identified in the ILA.

# **Pricing and Rate Methodology – Questions and Comments**

- How will this affect rates?
  - If someone were to pay up-front, that portion of the costs would be covered, but still responsible for O&M and however we decide to eventually capture rehabilitation costs
- Trigger points, timelines for capacity address through the ILA
- Unique, in that we're building an asset from scratch how does the rate structure handle this?
  - One methodology for all participants
  - Discussion of emergency use?
- Elevate this section to be less specific establish basic premises

#### **Future Capacity**

In the rate methodologies described in the previous section, normal capital improvements, such as equipment, replacement of equipment, or repairs to structures or equipment, would be recovered through either the PAYGO capital or depreciation components of the rate structure. It is also possible that additional capital improvements will be needed to address changing regulatory requirements, and these costs would be recovered proportionately through the capital components of the rate structure. If a jurisdiction desires additional reserved capacity in the WIP facilities, the City of Durham will determine whether the capacity is available or if improvements to the facilities are needed to accommodate the request. If no improvements are needed, Durham and the requesting jurisdiction will negotiate a specific price and method of payment and the requesting entity's reserved capacity and the allocation of costs amongst the WIP will be adjusted accordingly consistent with the rate methodology. If improvements are needed, the jurisdiction(s) requesting the expansion will pay all capital costs. All WIP members agree to work collaboratively to sequence system expansions in the most cost-effective manner.

#### Future Capacity – Questions, Comments

- Formula to make capacity determinations
  - What happens when groups exceed capacity reservations?
  - Whomever is driving the need for the capacity would be responsible for paying for the additional capacity
  - Have to be accurate about reserving capacity
- Facility costs better idea in 2023; how much does everyone want?
- Need to work through sequencing plant expansions efficiently in the ILA
- Eventually work towards a shared ownership state? (difference in rights of partners vs. wholesale customers for future capacity)

#### **Governing Structure**

Durham will be the owner/operator and participants will be wholesale customers with reserved capacity. An interlocal agreement will be the instrument used to establish the terms of the arrangement between the owner and the other participants. Given the WIP's long and successful history of collaboration, an Advisory Committee, comprised of one representative from each of the participants, will be established to provide a mechanism for receiving information on financial, rate, operations, and regulatory performance of the facilities. The current MT may serve as the Advisory Committee until such time as the ILA is finalized. Initially, the Committee should meet no less than quarterly with at least one meeting during the budget preparation and rate setting timeframe, allowing participants to be informed and provide feedback on these issues. Meetings may be conducted with less frequency (but at least annually) once service provisions have been established.

#### Governing Structure – Questions, Comments

- Does an advisory favor the owner?
- How do we recognize the greater risk for Durham while still involving the partners?
- Should the advisory be limited to participants? (not appointed by elected officials, etc.)
  - Managers appoint participants
  - > Technical vs. public participation
    - Maybe a separate citizen's advisory group
    - May need public participation to provide input before rate increases go back to respective boards/elected officials
      - This is one input for retail rates
  - > Participation depends on the authority of the group (preference to be vague at this point and be more specific in the ILA)
- Spectrum: Advisory Informed Advisory (some level of approval required for specific situations) Approval
- Need to be very clear in the ILA about how rates are set; what would happen with deviations (if large rate increases, reapproval by governing bodies); mechanisms for amending the rate structure methodology; need for audit; etc.
- Timing and Transparency (Advisory committee should add to transparency)

# Agreement to the Memorandum of Understanding

The members of the Management Team of the Western Intake Project agree to:

- Continue to collaborate and work toward achieving the goals of the project as expressed in the Project Charter;
- Reaffirm the Vision, Mission, and purposes that guide the project; and
- Move forward with the governance structure and principles expressed in this
  Memorandum of Understanding, which will serve as the foundation of an Interlocal
  Agreement to formally establish terms of future relationships.

April \_\_\_\_, 2022

Durham

Pittsboro

Chatham County



# **Agreement – Questions, Comments**

# Project Next Steps

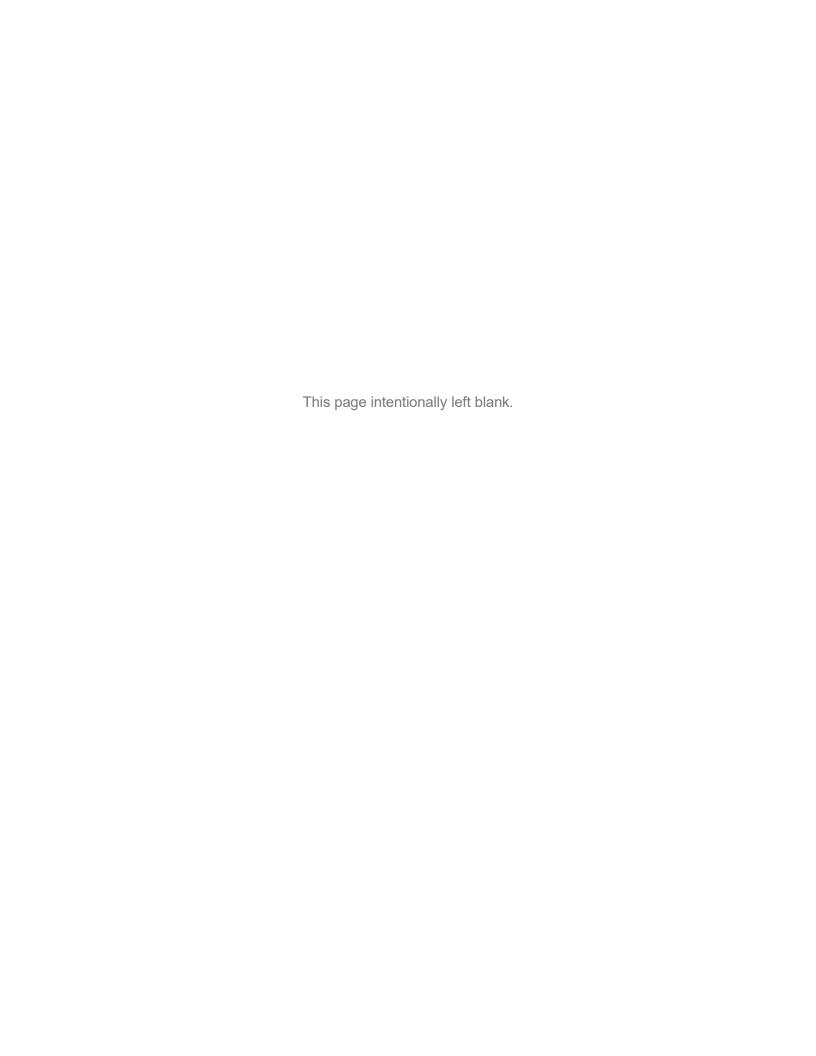


#### **Project Next Steps**

- Raftelis to provide clean copy of MOU
- Establish working groups
  - Financial Considerations
  - Capacity
  - Advisory
  - Other
- Begin to draft ILA
- What information do you need to communicate with your respective organizations and governing bodies?

## What do you need?

- Coordinate across participants
  - Durham needs to have discussions with CMO and City Council pre-MOU
    - Timing: Meet with CMO's office in June/July; Council in August
  - Others as early as June to elected officials with updates, MOU, next steps, but coordinating with Durham
  - MOUs to attorneys ASAP





# Western Intake Partnership

**Re-Start Workshop** 

September 22, 2022





#### Overview

The Western Intake Partnership (WIP) held a workshop on September 22, 2022. The workshop was planned and facilitated by Raftelis.

#### Meeting agenda:

- Introductions and content
- Partner status updates
- Memorandum of Understanding (MOU)
- Focus groups
- Parting thoughts/adjourn

#### Workshop goals included:

- Re-engage WIP Management Team (MT) in governance study
- Partner updates
- Review governance MOU and suggested changes
- Finalize MOU
- Identify focus groups, participants, and timeline

At the workshop attendees provided general updates on each Partner's current status, feedback on the most recent version of the MOU, and input on focus group categories and participants.

#### **Partner Updates**

Each Partner was asked to provide a brief update on any significant activities since our last workshop in April.

**Chatham County (County)** – The County is experiencing considerable economic activity and growth as a result of several planned investments. Of note, a large semi-conductor manufacturing company is planning to build a production facility that is expected to bring approximately \$5.0 billion in investment, along with 1,800 jobs over the next five years. Sanford, Siler City, Asheboro, and Ramseur are looking at their future utility needs.

City of Durham (City) – City management was briefed on the WIP project and governance structure. The response from City management was favorable and they were supportive of continuing with the effort. It was determined that it was not necessary to update City Council until the structure is more defined and details are available. The City also reiterated its support for all Partners and the WIP collectively to examine and, if possible, secure alternative forms of financing such that Partners could make upfront investments in the WIP facilities.

**Oranage Water and Sewer Authority (OWASA)** – OWASA indicated they are now a full partner in the WIP. The OWASA Board has been briefed on the ongoing activities and they are comfortable with Durham acting as the Lead Agency, and are interested in the how decision making will be structured.

**Town of Pittsboro (Town)** – The Town has engaged in conversation with the City of Sandford, NC on a potential merger of its utilities. A study on the potential merger is ongoing with preliminary results expected at the first of next year. These preliminary results should provide an indication on the Town's potential water supply needs from the WIP. The Town also has a new interim Town Manager (Hazen Blodgett).

#### Memorandum of Understanding

The most recent version of the Governance MOU was distributed to the Partners in advance of the workshop. The MOU is designed only to provide an outline of the MT's agreed upon principles, which will ultimately be incorporated into Inter-Local Agreements (ILAs). During the workshop there was considerable discussion of the principles in the MOU that raised detailed questions that merit more targeted discussion.

The Partners, therefore, expressed a desire to simplify the MOU. A more simplified MOU would provide a better opportunity to gain consensus around the guiding principles and move more detailed discussions to formulate ILA's to the focus groups.

Action item – Raftelis to update and simplify the MOU.

#### **Focus Groups**

The three focus groups identified initially to support development of the ILAs include Financial, Capacity, and Advisory. Elements to be discussed in each group include, but are not limited to:

#### Financial

- Rate methodology and structure
- Financing and initial capacity
- Capital planning and funding
- Financing future capacity
- Accounting and billing

#### Capacity

- Initial capacity needs
- Triggers for buying additional capacity
- Requesting changes to capacity allocations
- Future capacity
- Planning and coordination

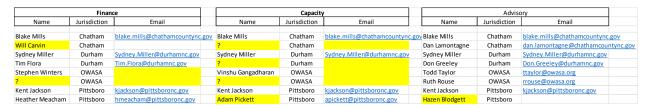
#### <u>Advisory</u>

- Membership
- Structure and rules of procedures
- Roles and responsibilities
- Dispute resolution

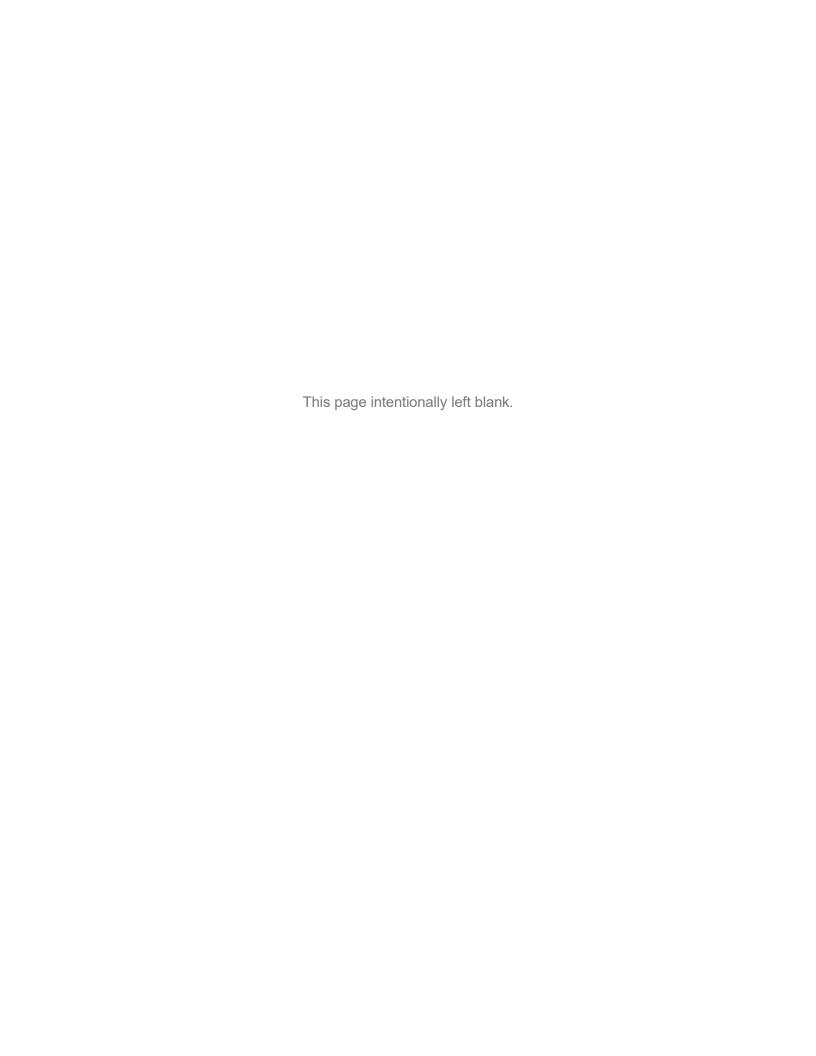
#### Other provisions

Participants discussed the potential for an additional focus group on various technical issues such as, for example, determining where the point of connection between WIP facilities and Partner facilities will be; how metering will be addressesd; and how decisions on future projects will be determined. It was determined that some of these technical issues may be better addressed through other ongoing Partner initiatives focusing more on design/engineering elements of the WIP facilities. However, since there may be some overlap, at least at a high level, with elements discussed in the three focus groups, these types of specific issues will be identified as necessary, and the most appropriate path for discussion will be determined.

The table below (also provided in Excel with this correspondence) identifies the members of each focus group. Please update the Excel file as appropriate.



The initial focus group meetings will be done in person. Subsequent meetings may be done virtually. In general, meetings will be conducted monthly (as necessary) with work completed in 3-4 months such that ILAs "straw mans" can be provided to legal support.





Draft Interlocal Agreement & Entitlements to Capacity

June 27, 2024

# INTERLOCAL AGREEMENT FOR THE FINANCING, OWNERSHIP, OPERATION, AND GOVERNANCE OF THE WESTERN INTAKE PARTNERSHIP FACILITIES

BY AND BETWEEN

CITY OF DURHAM, NORTH CAROLINA

**AND** 

CHATHAM COUNTY, NORTH CAROLINA

AND

TOWN OF PITTSBORO, NORTH CAROLINA

AND

ORANGE WATER AND SEWER AUTHORITY

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# **EXHIBITS**

EXHIBIT A	Design of the Western Intake Partnership Regional Water Facilities
EXHIBIT B	Allocation of Fixed and Variable Costs
EXHIBIT C	Transmission Lines, Interconnection Points, and Points of Delivery

# INTERLOCAL AGREEMENT FOR THE FINANCING, OWNERSHIP, OPERATION, AND GOVERNANCE OF THE WESTERN INTAKE PARTNERSHIP REGIONAL WATER TREATMENT FACILITIES

This INTERLOCAL AGREEMENT FOR THE FINANCING, OWNERSHIP, OPERATION, AND GOVERNANCE OF THE WESTERN INTAKE PARTNERSHIP FACILITIES, made and entered into this the \_\_\_\_ day of \_\_\_\_\_ 2023 (the "Agreement"), by and among Chatham County, a municipal corporation organized and existing under the laws of North Carolina, the City of Durham ("Durham"), a municipal corporation organized and existing under the laws of North Carolina, the Town of Pittsboro ("Pittsboro"), a municipal corporation organized and existing under the laws of North Carolina, and the Orange Water and Sewer Authority ("OWASA"), a public water and sewer authority duly created and existing under Chapter 162A, Article 1 of the North Carolina General Statutes.

#### RECITALS

WHEREAS, Chatham County, Durham, Pittsboro, and OWASA are owners and operators of certain public enterprises within their respective services areas, including water treatment and water distribution facilities; and

WHEREAS, N.C.G.S. § 160A-461 authorizes units of local government to enter into interlocal agreements with each other to execute any undertaking and allows the participating units to determine the reasonable duration of the agreements; and

WHEREAS, N.C.G.S. § 160A-462 authorizes units of local government executing an undertaking to establish a joint agency charged with any or all of the responsibility for the undertaking; and

WHEREAS, Chatham County, Durham, Pittsboro, and OWASA (the "Parties") were all founding members of the Jordan Lake Partnership; and

WHEREAS, Chatham County, Durham, Pittsboro, and OWASA were each granted allocations of water supply storage in B. Everett Jordan Reservoir ("Jordan Lake") by working cooperatively in the Jordan Lake Partnership; and

WHEREAS, Chatham County, Durham, Pittsboro, and OWASA have been working cooperatively since 2012 as the Western Intake Partnership ("WIP") to plan for the design, permitting construction and operation of facilities on the western side of Jordan Lake to obtain access to their Jordan Lake allocations, under a plan in which such parties will share the costs of such planning, permitting, design, construction and operation in accordance with their allocations to use and actual use of the facilities as hereinafter provided; and

WHEREAS, Chatham County, Durham, Pittsboro, and OWASA desire to design, permit, construct, own, manage, and operate treatment facilities on the western side of Jordan Lake to meet the water supply needs of the members of the Jordan Lake Western Intake Partnership and receive the allocations of Finished Water from the facilities, which the treatment facility and associated water supply and transmission facilities will be known collectively as the Western Intake Partnership Facilities ("WIP Facilities");

WHEREAS, Durham and OWASA will jointly own the assets of the Raw Water and transmission Facilities; and

WHEREAS, Durham, Pittsboro, and Chatham County will own capacity in the WIP Facilities to produce Finished Water; and

WHEREAS, OWASA will not own capacity in the WIP Facilities to produce Finished Water; and

WHEREAS, Durham will own any asset or capacity in the Facilities not otherwise specified;

WHEREAS, Durham has agreed to be the Lead Agency; and

WHEREAS, Chatham County, Durham, Pittsboro, and OWASA intend to maintain this collaborate approach through the governance of the WIP Facilities, including financing, ownership, and management; and

WHEREAS, the Parties agree to the formation of a Management Committee that will receive information on the WIP FACILITIES and provide input to the Lead Agency on matters impacting financial, capacity, or operational matters; and

WHEREAS, the Management Committee will continue to be guided by principles of stewardship of the public interest in this common water supply, collaboration, sustainability, mutual and collective benefit, shared responsibility, equal representation, and financial stability;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and promises to pay contained herein, it is agreed by the Partners as follows:

#### **DEFINITIONS**

In addition to the capitalized terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings unless some other meaning is plainly intended:

<u>Annual Budget</u> means the estimated annual budget for the WIP Facilities to be created and maintained by the Lead Agency.

<u>Annual Reconciliation</u> means the payment made at the end of the fiscal year to adjust for any difference between the estimated and paid cost and the Current Expenses determined using financial metrics that become known only at the end of the fiscal year.

<u>Annual Reconciliation Analysis</u> means the analysis performed by the Lead Agency that is based on the Annual Accounting and that allows the Parties to perform the Annual Reconciliation.

<u>Capital Cost(s)</u> means the total estimated cost to be paid for the construction of the WIP Facilities and includes all costs properly allocable to the capital account for the WIP Facilities, including future expansion or upgrade, in accordance with generally accepted accounting principles, including the following:

- i. Obligations incurred for labor, materials, and services provided by contractors, builders and materialmen in connection with the construction, acquisition, and equipping of the Facilities;
- ii. The cost of acquiring by purchase or by eminent domain, including the amount of any award or final judgment in any proceeding to acquire by eminent domain, such land, structures and improvements, property, property rights, rights-of-way, franchises, easements, and other interests in land as may be deemed necessary or convenient in connection with such construction or operations of the Facilities;
- iii. Expenses of administration properly chargeable to such construction or acquisition; legal, architectural and engineering expenses and fees; fees and expenses of consultants; premiums of insurance in connection with construction; and all other items of expense not elsewhere specified that are incident to the construction or acquisition of the Facilities and the placing of the same in operation;
- iv. Preliminary engineering, environmental permitting, and governance consultation;
- v. Design costs for the Facilities;
- vi. Expenses of obtaining permits for construction and operation of the Facilities, including permits from the required State and federal agencies necessary to withdraw, treat, and convey water to the Points of Delivery;
- vii. Normal Capital Improvements including all structures, equipment, replacements of equipment, or repairs to structures or equipment;
- viii. Regulatory Capital Improvements including all structures, equipment, replacement of equipment, or repairs to structures or equipment necessary to address regulatory requirements mandated by any Federal, State, and/or local agencies

<u>Capital Cost Allocation</u> means the cost to be paid by each Partner for Capital Costs of the WIP Facilities proportionate to the Party's Purchased Capacity and/or Reserved Capacity.

<u>Capital Cost Budget</u> means the Capital Cost plus a reasonable contingency cost percentage or a fixed amount as recommended by the Lead Agency.

<u>Capital Improvements</u> shall have the same meaning as used in generally accepted accounting principles.

<u>Capital Improvement Plan</u> means the five-year Capital Improvement Plan for the WIP Facilities to be created and maintained by the Lead Agency.

Operation and Maintenance Reserve means an amount of funds held in reserve needed to satisfy an estimate of 180 days of Current Expenses.

#### Construction Management Agreement [To discuss if necessary]

<u>Current Expenses</u> means the expenses incurred by the Lead Agency for the administration, management, operation, maintenance, and repair of the WIP Facilities as determined in accordance with generally accepted accounting principles, including, but not limited to:

- i. All ordinary and usual expense of operation, maintenance, and repair, which may include expenses not annually recurring,
- ii. Direct administrative expenses,
- iii. Salaries and other compensation,
- iv. Operating lease payments,
- v. Payments to any pension or retirement plan or plans properly chargeable to the Facilities,
- vi. Insurance premiums and expenses,
- vii. Legal, engineering, and architectural expenses relating to the operation, maintenance, or repair of the Facilities,
- viii. Costs for contracts with service providers such as engineers or attorneys for the development or updates to this Agreement or other agreements related to the Facilities,
- ix. Any other similar type of current expenses required to be paid with respect to the Facilities.

<u>Distribution System</u> means the system owned and maintained by each Party once water passes from the Point(s) of Delivery into the Parties' respective systems.

<u>Emergency</u> means an event outside of the control of the Parties that causes a Party to temporarily require more capacity than its Maximum Daily Capacity Allocation or that decreases the capacity available to any or all Parties.

<u>Excess Capacity</u> means the capacity that is neither a Partner's Reserved Capacity or Purchased Capacity and that the Lead Agency so designates as "excess."

<u>Financing Costs</u> means all principal and interest payments on debt obligations used to design, construct, expand, or upgrade the WIP Facilities used by Lead Agency to finance either the Lead Agency's or a Partner's proportionate share of Reserved Capacity.

<u>Finished Water</u> means the water that is introduced into the distribution system of a public water system after treatment and is intended for distribution and consumption.

<u>Fixed Current Expenses</u> means that portion of the Current Expenses of the WIP Facilities for a given period of time that would remain constant regardless of the quantity, quality, or characteristics of the water supplied or conveyed during that period. Examples of Fixed Current Expenses include, but are not limited to, administrative expenses, salaries and other compensation, operating lease payments, insurance premiums and expenses and fees, and expenses incurred in maintaining and submitting reports for permits after their initial issuance for operation of the WIP Facilities.

<u>Force Majeure</u> has the meaning set out in Article 8, Section 9.

<u>Interconnection Point(s)</u> means the points at which two Parties' respective Distribution Systems may be connected as shown on Exhibit C.

<u>Lead Agency</u> means the City of Durham with the roles and responsibilities set out in Article 4, Section 5 in addition to the other roles and responsibilities specifically listed throughout this Agreement.

<u>Major Modification</u> means an intentional increase in Rated Capacity and does not include upgrade modifications or modifications done to increase efficiency that result in incidental increases in capacity.

<u>Management Committee</u> consists of representatives of the Partners having an Ownership or Reserved Capacity and includes future partners not yet party to this Agreement.

<u>Maximum Daily Capacity Allocation</u> means the Maximum Daily Demand expressed in MGD in the WIP Facilities that is available to a Party and corresponds to proportion of capacity created by that Partner's Capital Cost Allocation.

<u>Maximum Daily Demand</u> means the maximum amount of water use during any 24-hour period during a given fiscal year.

Maximum Usage Warning Limit means 80% of a Party's Maximum Daily Capacity Allocation.

MGD means million gallons per day.

Ownership means the act of owning part of the WIP Facilities, whether through Purchased Capacity or Reserved Capacity, which act carries with it the rights and responsibilities set out in this Agreement.

<u>Parties</u> means Chatham County, the City of Durham, the Town of Pittsboro, and Orange Water and Sewer Authority.

<u>Partners</u> means Chatham County, the Town of Pittsboro, and Orange Water and Sewer Authority.

Point of Delivery is Partner-specific and is shown in Exhibit C.

<u>Purchased Capacity</u> means ownership by one of the Partners of the WIP Facilities as a joint Tenant-in-Common through an initial lump sum payment for certain capital costs required for construction

of the WIP Facilities, and such ownership includes all real property interests (including easements), personal property, and capacity.

#### Rated Capacity [To be determined]

<u>Raw Water</u> means water that is withdrawn from Jordan Lake and conveyed through a pump station and transmission pipeline to the WIP Facilities for treatment; treatment of Raw Water is required prior to distribution and consumption of this water.

Reserved Capacity means ownership of capacity in the WIP Facilities only.

<u>Transmission Line(s)</u> means the water pipeline(s) built to transmit water from the WIP Facilities to the Point(s) of Delivery.

<u>Usage Warning Limit Plan</u> means the plan of action that a party is required to create and provide to the Management Committee when it uses 80% of its Maximum Daily Capacity Allocation for two consecutive months to ensure that party does not reach its Maximum Daily Capacity Allocation without a plan or alternative source of water.

<u>Variable Current Expenses</u> means that portion of the Current Expenses of the WIP Facilities for a given period of time that varies based on the quantity, quality, or characteristics of the water withdrawn, treated, or conveyed during that period. Examples of Variable Current Expenses include, but are not limited to, electricity and chemical costs.

OWASA Variable Water Rate means the fixed amount to be charged OWASA for Finished Water that, when paid, satisfies its responsibility for its proportionate share of Capital Costs, Financing Costs, Variable Current Expenses, Fixed Current Expenses, and Operation and Maintenance Reserve Requirements for Finished Water only.

#### OWNERSHIP, FINANCING, AND CAPACITY ENTITLEMENTS

- 1. <u>Ownership</u>. Parties with Purchased Capacity shall own the WIP Facilities as Tenants-in-Common according to their proportion of Ownership Share.
- 2. <u>Capital Cost Allocation</u>. Durham, as Lead Agency, will finance the total Capital Cost. Each and every Party other than the Lead Agency that will own Purchased Capacity will execute a separate agreement with the Lead Agency defining the method and timing of the payment for Capital Cost Allocations (the "Capital Cost Allocation Agreement") unless such method and timing is addressed in this section [may be combined into a Construction Management Agreement]).
  - a. <u>Reserved Capacity Payment</u>. Each Partner who owns Reserved Capacity will make periodic payments to the Lead Agency to satisfy its Capital Cost Allocation for that Reserved Capacity. Each of those payments will be due thirty (30) days prior to the date or dates of the Lead Agency's debt service payments on any debt issued by the Lead Agency for the construction of the WIP Facilities. The Lead Agency will have the right to refinance the debt and recalculate payments of any Partner who is making periodic payments to satisfy its Capital Cost Allocation.
  - b. <u>Purchased Capacity</u>. Once a Partner has paid to the Lead Agency its Capital Cost Allocation in full, that Partner's Ownership will take the form of Purchased Capacity.
  - c. <u>Excess Capacity</u>. Durham, as Lead Agency, may designate any or all of its Purchased Capacity or any other capacity that it obtains from a Partner through sale, lease, or other acquisition, as Excess Capacity.
- 3. Covenants Regarding Federal Income Tax Treatment. The Parties acknowledge that each Party may finance a portion of its share of the costs of the WIP Facilities with obligations the interest on which is not included in the gross income of the owners thereof for purposes of federal income taxation. Each of the Parties covenants with the other that it will not take any action with respect to its ownership interest in the WIP Facilities and its use of the capacity thereof that would jeopardize the federal income tax treatment of interest on obligations or any other issues to finance its share of costs of the WIP Facilities. Each of the Partners agree to provide to all other Partners such certifications and other instruments as may be reasonably requested to evidence compliance with this covenant in connection with the issuance by any other debt or similar obligation for such costs.
- 4. <u>Entitlement to Capacity</u>. Generally, each Party is entitled to a percentage of Raw Water supply, water treatment, and Finished Water transmission in the WIP Facilities that is equal to its Maximum Daily Capacity Allocations shown in Table 1. While components of the Facilities have specific design capacities as shown in Table 1, if the Lead Agency ever determines that actual capacity is different from the capacity shown in Table 1, then the actual capacity will control and Purchased Capacity or Reserved Capacity will be applied to the actual capacity. In such case, this Agreement will be amended with a revised Table 1 showing the revised capacities. The allocations

in Table 1 are not binding on future expansions or Major Modifications except as otherwise provided in this Agreement.

Table 1: Entitlements to Capacity by Partner for Initial Facilities

		Chatham Co.		Durham		OWASA		Pittsboro		
Capacity Basis (MDD)	Facility Component	MGD	%	MGD	%	MGD	%	MGD	%	Total WIP Capacity
Raw Wate	r Supply	l	<u> </u>		1		1		1	
2070	Raw Water Intake	3.9	9.7%	16.5	40.8%	7	17.3%	13	32.2%	40.4
2070	Intake Piping	3.9	9.7%	16.5	40.8%	7	17.3%	13	32.2%	40.4
2050	Raw Water PS	3.5	13.4%	16.5	63.0%	0.5	1.9%	5.7	21.8%	26.2
2050	Raw Water PS Piping	3.9	9.7%	16.5	40.8%	7	17.3%	13	32.2%	40.4
Water Tre	atment									
2050	Regional WTF (Phase 1)	3.5	13.4%	16.5	63.0%	0.5	1.9%	5.7	21.8%	26.2
Finished V	Finished Water Transmission									
2070	North Segment 1	3.9	14.2%	16.5	60.2%	7	25.5%	0	0.0%	27.4
2070	North Segment 2	0	0.0%	16.5	70.2%	7	29.8%	0	0.0%	23.5
2070	Western Segment	0	0.0%	0	0.0%	0	0.0%	13	100%	13
2050	Finished Water Booster PSs	Cost sł	nare estab	olished by	y initial ca	apacities				

- 5. <u>Sale or Lease of Ownership or Capacity</u>. The Parties may sell or lease any part of their share of Maximum Daily Capacity Allocation (MGD) pursuant to the provisions of this section.
  - a. <u>Sale</u>. Capacity may be sold on terms mutually acceptable to the Parties involved, and approved by the Lead Agency (such approval shall not be unreasonably withheld), and only on conditions that the buyer assumes all financial responsibilities to the Lead Agency that flow from the transfer. Upon the sale, this Agreement must be amended to reflect the sale.
  - b. <u>Lease</u>. The Parties may temporarily lease any part of their share of Maximum Daily Capacity Allocation (MGD) to any other Party. Any parties to a lease under this section must sign a separate agreement stating the capacity to be

leased and the period of the lease. The parties to the lease must inform the Lead Agency and provide a copy of the lease agreement.

- c. <u>Sales and Leases Limited to Parties</u>. Except as otherwise allowed in this Agreement, sales or leases of capacity may only be executed among the Parties and not with any party or entity not a party to this Agreement.
- d. Addition of New Partners. Local governments that have a Jordan Lake water supply storage allocation may become a partner under this Agreement where the following requirements have been met: (1) there is Excess Capacity sufficient for the new party's allocation; (2) the Lead Agency consents to the addition of the new party; (3) the Management Committee approves of the addition of the new party (such approval shall not be unreasonably withheld); (4) this Agreement is amended to reflect the new party's Ownership; and (5) the new party reimburses the Parties for their proportionate share of Capital Cost required to construct the WIP Facilities.
- 6. <u>Recalculation of Capacity</u>. If Ownership or capacity or both is bought, sold, or leased, each Party's Maximum Daily Capacity Allocation will be recalculated. These reallocations will be considered during the Annual Reconciliation process described in Article 5, Section 1(e).
- 7. <u>Consequences of Exceeding Capacity</u>. All Parties recognize the need to avoid a situation in which the Parties' use of water from the WIP Facilities exceeds the WIP FACILITIES's capacity. The Parties also recognize the need to respect the ability of any one Party to draw its Maximum Daily Capacity Allocation. The Parties resolve to work collaboratively to resolve imbalances in capacity. The following are procedures to address a situation where, despite the Parties' collaboration, or due to an emergency, any Partner exceeds its Maximum Daily Capacity Allocation.
  - a. <u>Plan to Avoid Exceeding Capacity</u>. If a exceeds their Maximum Daily Capacity Allocation on an average daily basis during two (2) consecutive billing cycles within any 12-month period, the Party must create and provide to the Management Committee a Maximum Usage Warning Limit Plan that will detail that Party's plan for purchasing or leasing additional capacity or plan for using an alternative water source in the event the Party reaches its Maximum Daily Capacity Allocation.
  - b. <u>If There Is Excess Capacity in the WIP Facilities</u>. If a Party exceeds its Maximum Daily Capacity Allocation and there exists Excess Capacity, then:
    - i. <u>Payment</u>. During any monthly billing cycle in which the average daily delivery to a Party exceeds their Maximum Daily Capacity Allocation, as defined in Table 1 (and any additional temporary capacity described in Article 2, Section 5), the additional allocation of costs to that Party will be captured through use of the Annual Reconciliation Analysis (see Section Article 5, Section 1(e)).
    - ii. <u>Consecutive Months</u>. If a Party exceeds their Maximum Daily Capacity Allocation on an average daily basis during two (2) consecutive billing cycles within any 12-month period, the Party's Maximum Daily Capacity

Allocation will be automatically increased by a multiple of 250,000 gallons per day greater than or equal to the average of the highest two consecutive months during the same 12-month period and this Agreement must be amended.

- c. <u>If There Is No Excess Capacity in the WIP Facilities</u>. If a Party exceeds its Maximum Daily Capacity Allocation and there is no Excess Capacity in the WIP FACILITIES such that the Party's use more than its Maximum Daily Capacity Allocation causes the maximum daily demands on the WIP Facilities to exceed its total capacity, the Lead Agency has the right to limit Finished Water to the Party exceeding capacity but only as much as is reasonably necessary to prevent the Parties from collectively exceeding WIP Facilities capacity.
- d. <u>Exceeding Capacity as a Result of an Emergency</u>. If the Party has exceeded capacity as a result of an Emergency, section 7(a)(ii) will not apply, and the Party's Maximum Daily Capacity Allocation will not increase unless it is otherwise requested by the Party.

#### CAPITAL IMPROVEMENTS AND FUTURE EXPANSION

- 1. <u>Capital Improvements</u>. The Lead Agency will be responsible for the management of all permitting, design, construction, acquisition, and installation of the Capital Improvements and will endeavor to minimize disruptions in the operation of the WIP Facilities. There are four types of potential Capital Improvements:
  - a. Expansion of Facility or Facilities and Major Modifications. At least once annually, the Management Committee will review capacity needs of the Parties and provide a review of and comments on any expansion or Major Modification planned by the Lead Agency. When an expansion or Major Modification that is initiated by the Lead Agency for all Parties results in an expansion of capacity for all Parties, the costs of such expansion or Major Modification and any increase in capacity will be allocated to the Parties based on their proportionate share of capacity stated in Article 2, Section 4, Table 1, and any resulting increase in capacity of WIP Facilities shall be allocated in accordance with each Party's Ownership and require an amendment to this Agreement.
  - b. <u>Partner-Requested Capital Improvements, Expansions and Major Modifications</u>. Any Party may request an expansion of one or more of the facilities or Major Modification and decide to proceed with an expansion or Major Modification on its own. The Party requesting the expansion or Major Modification shall be responsible for all costs and liability incurred in development plans, specifications, and Capital Costs. Upon completion of the requested expansion or Major Modification, the requesting Party will own the increase in capacity resulting from the expansion or Major Modification.
  - c. The Lead Agency may undertake anticipated and unanticipated Capital Improvements that, in the opinion of the Lead Agency, are necessary to maintain or improve regulatory compliance, operational functions, or design capacity. Costs for Capital Improvements will be borne by the Parties according to each Party's Purchased Capacity share or Reserved Capacity share. Any resulting increase in capacity of WIP FACILITIES shall be allocated in accordance with each Party's Ownership.
    - i. <u>Anticipated Annual Capital Improvements.</u> The Lead Agency will provide a Capital Improvement budget estimate to the Partners in March of every year. At the end of each fiscal year, there will be an Annual Reconciliation for the cost of annual capital improvements. The Partners will pay interest on any amounts paid more than sixty (60) days after the invoice is sent, unless any Partner's share of the capital improvement cost is greater than one million dollars (\$1,000,000), in which case the Partners will agree on a reasonable payment schedule to accommodate necessary financing. The Partners will pay interest for any amounts owed at the rate set in the North Carolina Department of State Treasurer's Short Term Investment Fund (STIF) as of the date the Annual Reconciliation is being calculated.
    - ii. <u>Unanticipated Capital Improvements</u>. The Lead Agency will notify the Partners of the need for an unanticipated Capital Improvement within five (5)

business days of a reasonable determination of such need. The Lead Agency will tell Partners the estimated cost of the unanticipated capital improvement within a reasonable time of estimating such cost. The Partners will pay interest on any amounts paid more than sixty (60) days after the invoice is sent, unless any Partner's share of the Capital Improvement cost is greater than five hundred thousand dollars (\$500,000), in which case the Partners will agree on a reasonable payment schedule to accommodate necessary financing. The interest rate will be the same rate set in the North Carolina Department of State Treasurer's Short Term Investment Fund (STIF) at the time of the invoice as of the date the invoice is being calculated.

- 2. <u>Five-Year Capital Improvement Plans</u>. The Lead Agency will establish and provide to Partners a proposed WIP Facilities Five-Year Capital Improvement Plan by March 1<sup>st</sup> of each year.
- 3. <u>Annual Budget</u>. After receiving an estimated use from each Partner, the Lead Agency will establish and provide to Partners an estimated WIP Facilities Annual Budget that includes reasonable estimates of Capital Costs, Financing Costs, Operation and Maintenance Reserve Requirements and Current Expenses for the upcoming fiscal year.

#### **OPERATIONS**

- 1. <u>Day-to-Day Operations</u>. The Lead Agency shall be solely responsible for and entitled to manage and implement the day-to-day operations of the WIP Facilities. The Lead Agency will operate the WIP Facilities in an efficient and economical manner, maintain the properties constituting the WIP Facilities in good repair and in sound operating condition for so long as the same are necessary for the operation of the WIP Facilities, and comply with all valid laws, acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body that are applicable to the WIP Facilities. In carrying out this obligation, the standard for quality and costs that the Lead Agency applies will be comparable to the standards for quality and costs the Lead Agency applies to its other utility assets that are not jointly owned, and the Lead Agency will use due diligence in carrying out the operation of the WIP Facilities. No other warranties, whether express or implied, are made with regards to the Lead Agency's operations of the WIP Facilities.
- 2. <u>Finished Water Delivery.</u> The Lead Agency will operate the WIP Facilities so that it is able to deliver Finished Water meeting the requirements of this Agreement to the Point(s) of Delivery. In carrying out such operations, the Lead Agency will not interrupt or suspend water treatment services except in cases of crisis, extreme emergency, Force Majeure, or court order. In the event of such crisis, extreme emergency, or Force Majeure, the Lead Agency may operate the WIP Facilities in the manner it determines is best for the protection of the public health, safety and welfare, and for the protection of the environment. The Lead Agency will inform the Partners as soon as reasonably possible regarding any situations or actions that could affect the flow of Finished Water to the Point(s) of Delivery. The Partners will immediately inform the Lead Agency regarding any situation or actions that could affect the flow of Finished Water to the Lead Agency's system.
- 3. Meter(s). WIP Facilities will include a water meter and all necessary waterlines to the metered point for each Party. The Lead Agency will be responsible for the cost of metering equipment. The metered point for each Party is the "Point of Delivery." The Lead Agency will inspect, test, and maintain the meter(s) at the Point(s) of Delivery. These meters will be read and the information transmitted to the Parties. Parties agree to calibrate the meter(s) using a third party at a frequency of at least once every twelve (12) months. Any Party may request additional calibrations at their expense. A meter registering less than two percent (2%) of a variance of the test result shall be deemed to be accurate.
  - a. <u>Consequences of Inaccurate Meter Reading.</u> The previous readings at any meter disclosed by a test to be inaccurate will be corrected for all months following the last accurate test and before and including the inaccurate test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water passing through the Point of Delivery during such period will be deemed to be as follows: if the period of failure occurs in the first year of the Term of this Agreement, the amount of water shall be deemed to be the amount delivered in the corresponding period immediately prior to the failure; if the period of failure occurs after the first year of the Term of this Agreement, the amount of water shall be deemed to be the amount delivered in the same period of the prior year; or a different amount agreed to by the Parties.

- 4. <u>Inspection Rights</u>. Each Partner will have the right to inspect any or all of the WIP Facilities at a time convenient to the Partner and the Lead Agency but in no event more than twenty (20) days after providing the Lead Agency of the request for inspection. This right is not limitless, and the Lead Agency has a right to stop an inspection where such inspection interferes with the continued ability of the WIP Facilities to reasonably and prudently provide Finished Water.
- 5. <u>Duties of Durham as Lead Agency</u>. In addition to the other provisions of this Agreement, Durham, in its role as Lead Agency, agrees with respect to the WIP Facilities that it will:
  - a. manage, operate and maintain the WIP Facilities;
  - b. provide all administrative and executive management of the WIP Facilities;
  - c. manage planning, designing, permitting and constructing improvements, modifications and expansions of the WIP Facilities;
  - d. account for revenue and expenditures, track costs for the planning, permitting, design, construction, maintenance and operation of the WIP Facilities, allocate such revenues and expenditures between the Parties in accordance with this Agreement, report such allocations to the Partners, and invoice the Partners for their share of the costs;
  - e. determine the scope for, solicit proposals from, and contract with and pay service providers to perform work for the planning, permitting, design, construction, maintenance, and operation of the WIP Facilities;
  - f. stay abreast of regulatory issues and changes, and new and updated technology;
  - g. obtain permits for the WIP Facilities and manage compliance with regulatory requirements; and
  - h. establish such record keeping and accounting systems as shall be necessary to enable it, as near as shall be practicable, to account properly for all Capital Costs, Financing Costs, Operation and Maintenance Reserves, and Current Expenses of the Facilities, and, as near as shall be practicable, to properly identify and categorize the Current Expenses of the Facilities as Fixed Current Expenses and Variable Current Expenses.
- 6. <u>Duties of the Partners</u>. The Partners shall cooperate with the Lead Agency in carrying out its duties as Lead Agency and will endeavor to act in the best mutual interests of the Parties as partners in this undertaking.
- 7. <u>Water Distribution Systems</u>. Each Party is solely responsible for management of its own Distribution System once water passes from the Point(s) of Delivery into the Parties' respective Distribution Systems, including, but not limited to, management of water quality, permit compliance, and billing customers for water use.

#### PAYMENT OF COSTS, INSURANCE, AND AUDIT

- 1. <u>Payment of Costs.</u> It is the intent of the Parties to allocate the Capital Costs, Financing Costs, Operation and Maintenance Reserves, and Fixed Current Expenses of the WIP Facilities based on the Parties' Purchased Capacity and/or Reserved Capacity in the WIP Facilities, except where otherwise described. It is the intent of the Parties to allocate the Variable Current Expenses of the WIP Facilities based on the proportionate (measured) use of the WIP Facilities. Each Partner will pay to the Lead Agency its relative share of each cost outlined in this Agreement, including the Capital Cost Allocation, Financing Costs, the Variable Current Expenses, the Fixed Current Expenses, and any Annual Reconciliation, when applicable.
  - a. <u>Allocation of Costs, Rate Structure, and Payments</u>. On or around February 1<sup>st</sup> of each fiscal year, each Partner will provide to the Lead Agency an estimate of the amount of water it expects to draw from the WIP Facilities over the next fiscal year. On or around March 1st of each fiscal year, the Lead Agency will provide the Partners an Annual Budget. that includes reasonable estimates of Capital Costs, Financing Costs, Operation and Maintenance Reserve Requirements and Current Expenses for the upcoming fiscal year. Current Expenses will be allocated between Variable Current Expenses and Fixed Current Expenses.
  - b. <u>Variable Current Expenses.</u> On a monthly basis, the Parties will pay their proportion of variable operations and maintenance costs for the WIP Facilities based on the volume of water passing through the relevant Point of Delivery, unless otherwise provided in this Agreement.
  - c. <u>Fixed Current Expenses</u>. Starting from month in which the Lead Agency obtains financing for the WIP Facilities, and on a monthly basis thereafter, the Parties will pay their proportion of fixed operations and maintenance for the WIP Facilities according to their Purchased Capacity and/or Reserved Capacity share.
  - d. <u>Capital Costs, Financing Costs, and Operation and Maintenance Reserves</u>. Starting from month in which the Lead Agency obtains financing for the WIP FACILITIES, and on a monthly basis thereafter, the Parties will pay their proportion of Capital Costs, Financing Costs (if applicable) and Operation and Maintenance Reserves for the WIP Facilities based on their Purchased Capacity and/or Reserved Capacity share.
  - e. <u>Annual Reconciliation</u>. The Parties will reconcile actual amounts of Capital Costs, Variable Current Expenses and Fixed Current Expenses for the WIP Facilities incurred during the year and amounts the Parties paid for Capital Costs, Variable Current Expenses and Fixed Current Expenses during the year, excluding any due or paid interest. In order to reconcile any differences, the Lead Agency will conduct an Annual Reconciliation Analysis within months of receiving the Annual Audit. Any difference owed to or from any Party as a result of the Annual Audit will be 60 days after the Annual Audit required in subsection 6 is complete.

- f. Payment. Each Partner will make payment to the Lead Agency within thirty (30) days from the date that the Lead Agency provides an invoice to the Partner. If the Partner disagrees with any expense allocated to it, the Partner may notify the Lead Agency of the disagreement and request a review. The Partner shall make timely payment to the Lead Agency even if the disagreement has not been resolved. If the Partner had a valid disagreement, the difference between what was paid and what should have been paid will be reconciled during the Annual Reconciliation.
- 2. Payment for Finished Water Costs Specific to OWASA. Each year at OWASA's option, its Capital Cost Allocation, Financing Costs, Operation and Maintenance Reserve Requirements, and Current Expenses related to Finished Water may be converted into a uniform rate per unit based on estimated billable demand for the upcoming Fiscal Year, referred to as the OWASA Variable Water Rate. Any additional monies received from OWASA for the sale of treated water only will be credited proportionately to Parties that have Ownership in the WIP FACILITIES.
- 3. Operation and Maintenance Reserve Requirement. In order to fulfill its Operation and Maintenance Reserve Requirement, each Partner shall set up and maintain a deposit account with the Lead Agency and will maintain in that deposit account funds to pay for 180 days' costs for Article 5, Section 1 (the "Deposit Account"). In the event a Partner fails to pay the Lead Agency within thirty (30) days of the applicable payment deadline for any payment due according to this Agreement, the Lead Agency has the right to immediately draw the Deposit Account for amounts overdue. The Lead Agency shall not have a right to draw on the Deposit Account for any other reason absent further agreement from the Deposit Account holder. If the Lead Agency draws on any Deposit Account, that Deposit Account must be replenished by the account holder within ten (10) days from the date the Lead Agency makes a draw. Deposit Accounts will be set up and funded within thirty (30) days of start of service. Each Partner will enter into a separate agreement with the Lead Agency that allows the Lead Agency to draw on the Deposit Account.
- 4. <u>Billing</u>. The Lead Agency will invoice the Partners monthly for their share of the Capital Costs, Financing Costs and Fixed Current Expenses, as estimated in the Annual Budget and Variable Current Expenses based on the volume of water passing through the relevant Point of Delivery.
- 5. <u>Insurance</u>. The Lead Agency will maintain insurance coverage, which may include self-insurance, on the WIP Facilities of the type and quantity as a prudent Lead Agency would maintain in the same or similar circumstances. The Lead Agency will name each Partner as an additional insured to any insurance policy for the WIP Facilities and provide a certificate of insurance to each Partner in July of each year.
- 6. <u>Annual Audit</u>. The Lead Agency will arrange for an independent accounting firm, which may be the independent accounting firm that audits the books and records of the Lead Agency, to review the books and records for the WIP Facilities and provide a report that shall indicate whether the Capital Costs and Fixed Current Expenses and Variable Current Expenses allocated to each Party during the prior fiscal year are in accordance with generally accepted accounting principles.

#### MANAGEMENT COMMITTEE

- 1. Organization of the Management Committee. A Management Committee is hereby formed for the purpose of receiving information about the WIP Facilities and providing input to the Lead Agency on issues impacting financial, capacity, or operational matters. Each Party owning Purchased Capacity or Reserved Capacity will commit two representatives to serve on the Management Committee: the director of utilities, or a designee, and a utility staff member appointed by the director of utilities. If a local government not party to this Agreement becomes a Partner in the future, that Partner will also commit two representatives to serve on the Management Committee in accordance with this section. The Management Committee will be organized as follows:
  - a. <u>Meetings of the Management Committee</u>. The Management Committee shall meet at least once quarterly, with additional meetings as determined necessary by the Management Committee in its discretion.
  - b. <u>Management Committee Bylaws</u>. The Management Committee shall adopt bylaws that guide the time, place, and conduct of all meetings.
  - c. <u>Management Committee Meeting Minutes</u>. The meetings will be subject to applicable open meetings requirements of the State of North Carolina and the City of Durham. The Lead Agency will be responsible for managing all Management Committee meetings, including creating agendas, and taking, keeping, and distributing the meeting minutes of the Management Committee.
- 2. <u>Roles and Duties of the Management Committee</u>. The Management Committee will meet to do the following:
  - a. receive from the Lead Agency and review the Management Committee Status Reports;
    - b. keep all Parties informed of the Management Committee Status Reports;
  - c. receive from the Lead Agency, review, and provide input on the Annual Budget and the Five-Year Capital Improvement Plan;
  - d. receive from the Lead Agency and review information concerning major regulatory changes and provide input on same;
  - e. receive from the Lead Agency information on Capacity usage, hear and receive information from the Parties regarding their Capacity needs, and monitor Capacity in order to provide its analysis of current and future Capacity needs and a schedule for meeting those needs;
  - f. solicit public input on any issues that the Management Committee believes would benefit from public participation;

- g. appoint ad hoc subcommittees to address any issues that would benefit from more intense review by technical staff; and
- h. at the option of the Parties, provide input and objective advice regarding any dispute that may arise between any and all Parties, which objective advice will not be binding on any Party or tribunal, nor will it limit any right the Parties have in law or in equity.
- 3. <u>Duties of Lead Agency with Respect to the Management Committee</u>. Durham as Lead Agency will:
  - a. submit to the Management Committee reports and data on the status of the WIP Facilities, which reports and data shall include annual financial performance, debt refinancing, Annual Reconciliation calculations, WIP Facilities operations, regulatory compliance, regulatory changes, Jordan Lake allocations and conditions, actual water usage, and other information that the Management Committee requests in fulfilling its role (altogether, the "Management Committee Status Reports");
  - b. keep the Partners informed of the status of construction, management, maintenance, and operations, and work in accordance with input from the Management Committee on issues impacting financial, capacity, or operational matters as outlined in this Agreement; and
  - c. present major regulatory changes that require new or enhanced treatment processes to the Management Committee for their review and input.

#### **MUTUAL AID**

1. <u>Mutual Aid among the Parties</u>. During Emergencies, the Parties agree to provide water to any other Party upon request, on a mutual aid basis, at one or more of the Interconnection Points shown in Exhibit C, as long as providing such water supply will not infringe upon the providing Party's ability to meet the water demands of its own customers. For billing and payment purposes, at the sole discretion of the providing Party, any water provided at the Interconnection Points may be counted as water entering the receiving Party's Distribution System from Facilities, and deducted from the amount delivered from Facilities to the providing Party's system at the Points of Delivery. The ownership and maintenance responsibilities of the Interconnection Points shall be shared jointly by the Parties based upon their respective Purchased Capacity shares and Reserved Capacity shares as provided in Article 2, Section 4, Table 1.

#### **GENERAL TERMS**

- 1. Term. The Term of this Agreement is ninety-nine (99) years from the date of the last execution by any Party. This term does not apply to any Party's Ownership in the WIP Facilities. At the end of the Term, each Party will have the option to renew this Agreement for the period of ninety-nine (99) years under revised provisions mutually agreed on by the Partners. This option arises at the end of each Term. The decision of any one Party to not renew does not impact the ability of the other Party(ies) to renew. A Party may indicate its intention to exercise the option to renew this Agreement so long as that Party owns some portion of the WIP Facilities by (1) providing written notice to the Management Committee in the manner prescribed in Article 9, Section 18 herein; or (2) by paying the invoice for costs that become due following the expiration of the previous term.
- 2. <u>Interest</u>. Interest shall be charged on any unpaid balance on a Partner's invoice or bill at the rate set in the North Carolina Department of State Treasurer's Short Term Investment Fund (STIF). Interest will begin with the second monthly invoice (that is, approximately 60 days after) following the month in which the unpaid amount was billed.
- 3. <u>No Obligation to Levy Taxes</u>. Nothing in this Agreement obligates the Parties to levy taxes.
- 4. <u>Other Interim Agreements</u>. During the design and construction of the WIP Facilities, some or all of the Parties may enter into additional agreements for the construction or financing of water facilities and purchase of water.
- 5. <u>Changes in the Law</u>. In the event that there is a change in North Carolina law that impacts this Agreement, the Parties agree to review the Agreement and may mutually consent to amend this Agreement accordingly. The Parties are aware of a potential clarification to N.C. Gen. Stat. 162A-200 et seq., and the Parties acknowledge that this Agreement has been drafted to be consistent with that potential clarification. In the event the potential clarification to N.C. Gen. Stat. 162A-200 et seq is not entered into law, the Parties agree to negotiate in good faith to amend any and all impacted provisions consistent with existing law.
- 6. <u>Disposition of Property at Termination</u>. Upon termination of this Agreement by any Party, all real property of the terminating Party reverts to Lead Agency.
- 7. <u>Method of Termination</u>. This Agreement may be terminated only by the mutual consent of all Parties participating in this Agreement at the time of Termination.
- 8. <u>Disposition of Property at Expiration</u>. As long as any Party still owns shares in the WIP Facilities, the Parties agree that they will negotiate extensions or a new agreement.
- 9. <u>Force Majeure</u>. It shall not be considered a breach of this Agreement or an event of default and Parties shall not be responsible for an inability to perform or for any delays, damages, costs, expenses, liabilities, or other consequences that may arise as a result of Force Majeure. In order to avail itself of this provision, a Party must take reasonable actions to remedy

the consequences of the Force Majeure event. The impacted Party shall give notice of the Force Majeure event to all other Parties as soon as practicable but in no case more than forty-eight (48) hours after the Party's performance has been impacted, stating the period of time the occurrence is expected to continue. Upon request of any Party, the Parties shall meet to discuss the causes of the Force Majeure event and the period of time the occurrence is expected to continue. A Force Majeure is defined as any event arising from causes beyond the reasonable control of the Parties. Temporary or partial failures to deliver water shall be remedied with all possible dispatch but shall not constitute a breach or an event of default so long as such remedy is diligently being pursued.

- 10. <u>Default</u>. From and after the completion of the Project, and upon the WIP Facilities being put into service, any one or more of the following events shall constitute an event of Default under this Agreement.
  - a. <u>Party's Failure to Make Payment(s)</u>. The failure of a Party to make payment of any amount due hereunder, which failure shall have continued for a period of thirty (30) days after receipt of written notice from the Lead Agency that the Party has failed to make timely payments as required by this Agreement, shall constitute an event of default on the part of a Party which fails to pay.
  - b. Party's Failure to Perform Any Obligation. Except in Force Majeure situations, the failure of any Party to perform any of its obligations under this Agreement (except as noted in Section \_\_\_\_\_), if such failure continues for a period of thirty (30) days after receipt by the defaulting Party of written notice of such failure (the "Default Notice"), shall constitute an event of default. It shall not be considered an event of Default if the Default is of a nature that cannot be cured within thirty (30) days and the defaulting Party has commenced action reasonably designed to cure the Default within the thirty (30) day notice period; provided, however, the Default shall be cured within sixty (60) days of the date the Default Notice was received by the defaulting Party.
  - c. <u>Consequence of Party's Default</u>: If a Party Defaults, and the Default has not been cured, the other Party or Parties may, at their option, pursue any and all rights they have in law and equity including, without limitation, specific performance and the recovery of monetary damages.
- 11. Resolution Process. If a dispute arises among any or all of the Parties, the impacted Parties agree to first use good faith efforts to resolve the dispute. Where good faith efforts to negotiate do not resolve the dispute, the Parties agree to mediate the dispute prior to filing a lawsuit. In the event that mediation does not resolve the dispute, all Parties have the right to file a lawsuit with venue in \_\_\_\_\_\_ or the United States District Court for the Middle District of North Carolina.

#### **MISCELLANEOUS**

- 1. <u>Joint Undertaking; No Joint Venture</u>. Nothing in this Agreement shall be construed to establish a joint venture, partnership, or any other relationship among the Parties other than the relationship contemplated for entry into an Interlocal Agreement pursuant to G.S. § 160A-461.
- 2. <u>No Abrogation of Sovereign Immunity</u>. Nothing in this Agreement shall be construed as an abrogation of any Party's sovereign immunity.
- 3. <u>Prohibition on Assignment</u>. No Party shall sell, assign, or transfer this Agreement, or any part thereof, except as allowed by Article 2, Section 5 of this Agreement.
- 4. <u>Amendments</u>. The provisions of this Agreement may be amended at any time upon mutual written agreement of the governing boards of all Parties.
- 5. <u>Administrative Amendments</u>. Notwithstanding Article 9, Section 4, minor amendments to this Agreement may be made upon the request of any Party and agreed to by all Parties' respective City, Town, County or Director, or their designee, without public notice or a public hearing where (1) the Management Committee confirms in writing that such change is a minor amendment of this Agreement; and (2) such minor amendment substantially conforms with the material terms of this Agreement. Administrative Amendments must still be reduced to writing and signed.
- 6. <u>Breach.</u> In the event of breach of this Agreement, the Parties shall be entitled to all such legal or equitable remedy as may be available, including specific performance.
- 7. <u>Severability</u>. If any of the provisions of this Agreement are held invalid, illegal, void or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.
- 8. <u>No Third-Party Beneficiaries</u>. There are no third-party beneficiaries to this Agreement.
- 9. <u>Entire Agreement</u>. This Agreement constitutes the entire agreement and understanding between the Parties, and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements, and agreements heretofore entered into among the Parties with respect to the matters contained herein are merged in this Agreement.
- 10. <u>No Oral Amendments</u>. This Agreement may not be changed orally, but only by a written document approved by the governing boards of all Parties.
- 11. <u>No Waiver</u>. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the Party against whom it is sought to be enforced. Mere inaction or failure to pursue a default shall not be deemed a waiver.
- 12. <u>Benefits to Successors and Assigns</u>. The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns,

provided the assignment has been approved by all relevant Parties as determined by the nature of the assignment.

- 13. <u>Applicable Law</u>. The provisions of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina.
- 14. <u>Headings</u>. The headings contained in this Agreement are solely for the convenience of the Parties and do not constitute a part of this Agreement and shall not be used to construe or interpret any provisions hereof.
- 15. <u>Joint Effort of All Parties</u>. This Agreement shall be considered for all purposes as having been prepared by the joint efforts of the Parties and shall not be construed against any Party or the other as a result of preparation, substitution, submission, or event of negotiation.
- 16. <u>Execution in Counterparts</u>. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, and the Parties hereto may execute this Agreement by signing any such counterpart.
- 17. <u>Incorporation by Reference</u>. Exhibits A- are incorporated in this Agreement by reference.
- 18. <u>Notice</u>. Notice shall be given in writing directed to the people listed below, as amended and updated from time to time. For emergencies, Parties should contact operational officials first; for contract issues, Parties should contact attorneys first; for administrative issues, Parties should contact managers or finance directors. All Parties shall endeavor to keep accurate cell phone numbers available to all other Parties.

City/Town/County Manager/Director, or the equivalent
Public Works Director, or the equivalent
Utilities and Engineering Director, or the equivalent
City/Town/County Attorney, General Counsel or the equivalent
Finance Director, or the equivalent

IN WITNESS WHEREOF, the City of Durham has caused this instrument to be executed by its Mayor, attested by its Clerk and its municipal seal to be affixed, all by authority of its governing board, first duly given. Orange Water and Sewer Authority has caused this instrument to be executed by its Director, attested by its Clerk and its municipal seal to be affixed, all by authority of its governing board, first duly given. Chatham County has caused this instrument to be executed by its Mayor, attested by its Clerk and its municipal seal to be affixed, all by authority of its governing board, first duly given. The Town of Pittsboro has caused this instrument to be executed by its Mayor, attested by its Clerk and its municipal seal to be affixed, all by authority of its governing board, first duly given.

	City of Durham
	(seal)
	By: Elaine O'Neal
Attest:	
City Clerk	
This instrument has been preaudited in the and Fiscal Control Act.	manner required by the Local Government Budget
By:	
[signatures continued on next page]	

	Orange Water and Sewer Authority
	(seal)
	By: Chair, OWASA Board of Directors
Attest:	
By:	
This instrument has been preaudited in the mand Fiscal Control Act.	nanner required by the Local Government Budget
By:	
[signatures continued on next page]	

# **Chatham County**

	(seal)
	By: Chair, Chatham County Board of Commissioners
Attest:	
County Clerk	
This instrument has been preaudited and Fiscal Control Act.	in the manner required by the Local Government Budget
By:	
[signatures continued on next page	e]

# **Town of Pittsboro**

	(seal)
	By: Mayor Cindy Perry
Attest:	
Town Clerk	
This instrument has been preaudited in the manner required by the and Fiscal Control Act.	Local Government Budget
By:	

