

PRIVATIZATION ISSUES DECISION-MAKER CHECKLIST

A HIGH-LEVEL FRAMEWORK FOR LOCAL WATER LEADERS



INTRODUCTION

Publicly owned water systems provide drinking water to roughly 88% of people in the U.S. The rate at which publicly owned systems are transferred to private ownership has remained relatively flat since the 1990s, with remunicipalization on the uptick in the late 2010s. However, questions about the privatization of water systems still arise on a regular basis, and the COVID-19 pandemic may have increased private sector interest in utilities.

This private sector involvement can come in various forms: (1) an outright sale of a public water utility to an investor owned utility (IOU), or (2) different types of public-private partnerships that involve aspects of privatization but fall short of an outright sale. Determining whether one of these public-private partnerships would benefit a public utility can be a daunting, complex task.

To help with this evaluation, the **Privatization Issues Decision-maker Checklist** is designed to be high-level decision-making framework on:

- how to identify the type of public-private partnership that is best suited to meeting a public water utility's needs without selling the utility to an IOU, and
- best practices for evaluating such service arrangements.

More details about the benefits of public water utilities, privatization, and everything in between can be found in the [Benefits of Public Water Systems](#) module of the Tap into Resilience Toolkit.

"This issue is at the heart of the quandary for the public official: if a municipality decides to privatize, how can public officials ensure that, in case of failure, they can gain sufficient control of the operation to restore service? On the other hand, if a municipality decides to operate the facilities itself, how can the public official ensure that the public's money is being well spent?"

~Privatization of Water Services in the United States: An Assessment of Issues and Experience

CHOOSING A PUBLIC-PRIVATE PARTNERSHIP

There are a range of partnerships available to water utilities, and the precise meaning of "public-private partnership" is often a source of confusion. This term is used to describe a variety of arrangements between governments and private sector organizations from full

privatization of formerly public municipal water providers, to outsourcing, grants, leases, asset sales, and others.

Understanding these types of partnerships and their nuances is an important first step to evaluating whether a specific partnership can best meet a public water system's needs. The most common types of partnerships formed in the water sector are described below:

- **Concession Lease Agreement:** An agreement in which a private entity takes over the operations and maintenance of an existing water system and receives the right to collect revenues associated with the water system in exchange for an upfront fee to the governmental entity. These agreements also typically include the utility's repayment of the upfront fee over the term of the contract plus interest just as a loan would be repaid. Because the public utility still owns the system, concession lease agreements can be written to ensure that the municipality sets and approves the utility rates; however, the public entity may have less control over the costs incurred and revenues received.
- **Public-Private Partnership (P3):** An agreement where a private entity agrees to design, build/repair, finance, operate, and/or maintain a new water system or expand or renovate an existing facility. In exchange, the private party is given the right to collect a share of utility revenues or is paid "availability payments," i.e., regular payments at an agreed amount, to recoup the cost of the project plus profit.
- **Community-Based Public-Private Partnership (CBP3):** An agreement similar to a P3 between a local government and a private entity but that specifically relates to private implementation and integration of green infrastructure into stormwater management programs.
- **Water System & Community Group Partnership:** A collaboration between a public water system and one or more local community groups to extend and supplement limited utility capacity and/or technical expertise, ensure public engagement, and advance greater water equity.
- **Public-Public Partnership (PUP):** A collaboration between two or more public water utilities to improve performance by leveraging shared capacities, pooling resources and buying power, and providing technical expertise without an expectation of profit-making.

In determining whether to enter into any of these arrangements, local water leaders and utility staff will want to evaluate a number of factors, including whether their particular capacity challenge lends itself best to a partnership with a non-profit entity, IOU, consulting firm or other public agency. While not an exhaustive list, several key considerations are outlined on the next page.

PARTNERSHIP CONSIDERATIONS

1. What is state of the water system and future needs?
2. What are the utility's current and future funding and financing options to meet those needs?
3. Have the costs of a P3 been compared with a publicly operated system? With CBP3s, Water System & Community Group Partnerships, or PUPs?
4. Are there neighboring public utilities that may be well-suited to pool resources, buying power, and technical expertise?
5. Are there state or local laws that govern the potential partnership?
6. Is there fair risk allocation? I.e., are risks allocated to the party best suited to assume them given technical expertise and the possibility to mitigate the risk at least cost?
7. Will the arrangement ensure that rates are affordable? Or is it likely to require an increase in rates that may be challenging for the community to bear?
8. Would the potential partner advance conservation and water use efficiency measures?
9. How would public oversight and accountability of the partnership's endeavors be ensured?
10. What is the potential partner's capacity for, or assurance of, public outreach and education?
11. How will hard-to-reach populations be served by the partnership?
12. What would the length of the agreement be?
13. What is the proposed payment structure?
14. Would there be workforce protections, e.g., compensation and benefits?

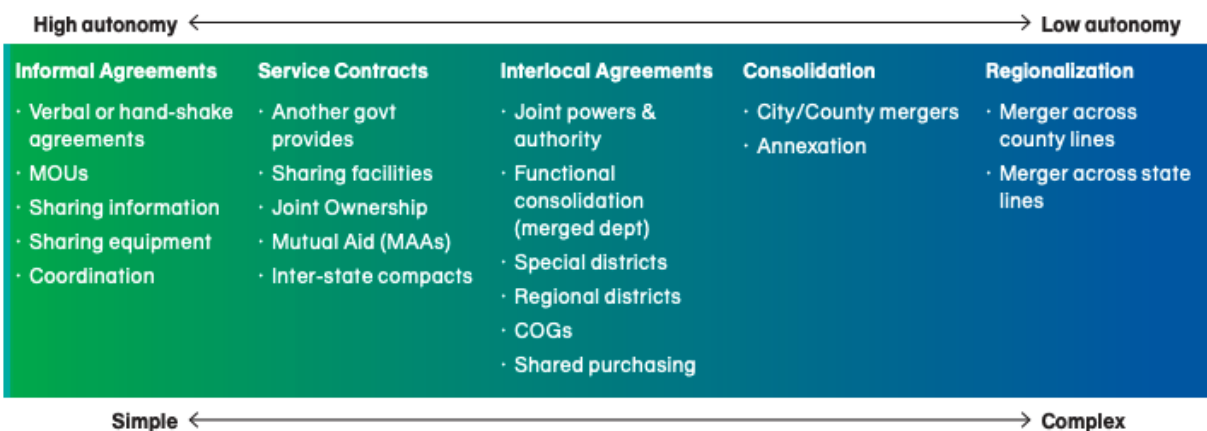
To learn more about partnership types and evaluating how to match them to public water system needs, explore these resources:

- [Building Capacity Through Partnerships](#)
- [A Guide to Understanding and Evaluating P3s in the Water Sector](#)
- [Public Procurement Practice: Public-Private Partnership Facilities and Infrastructure](#)
- [Governance Options, and Opportunities, for Public Clean Water Agencies in a COVID-19 World](#)
- [Public-Private Partnerships: What Local Government Managers Need to Know](#)
- [Public-public partnerships \(PUPs\) in Water](#)
- [To P3 or not to P3](#)
- [Financing Green Infrastructure - Is a Community-Based Public-Private Partnerships \(CBP3\) Right for You?](#)
- [Stormwater Community Based Public-Private Partnership Feasibility Assessment](#)

- [Community Based Public-Private Partnerships and Alternate Market-Based Tools for Integrated Green Stormwater Infrastructure](#)
- [Privatization of Water Services in the United States: An Assessment of Issues and Experience](#)

BEST PRACTICES FOR SERVICE ARRANGEMENTS

As with partnerships, there are a range of service arrangements available to public water utilities. These agreements are often best employed for discrete types of project implementation that do not involve a transfer of ownership or decision making authority, e.g., street cleaning, meter reading, billing, laboratory services, landscaping, green infrastructure operations and maintenance, water use efficiency installations, turf replacements, etc. Further examples of options are below.



Source: *Maintaining Green Infrastructure through Shared Services*. 2020. Daylight and the Metropolitan Planning Council for OAI, Inc.

When entering into service arrangements, there are questions local leaders and utility staff will want to consider to ensure they're following best practices. Key issues are outlined below.

SERVICE ARRANGEMENT CONSIDERATIONS

1. Has there been a thorough needs assessment to define the scope of the services required?
2. Has the utility's capacity to implement been assessed?
3. Has the cost of utility implementation vs. private implementation been assessed?
4. Does cost comparison include non-financial criteria, e.g., affordability, job quality, transparency?
5. Has the range of service delivery arrangements been reviewed to ensure optimized efficiency and quality?

6. Was the contract the result of a competitive bidding/procurement process?
7. Is the contract tailored to a discrete project or program?
8. Does the contract clearly define the specific roles and responsibilities of each party?
9. Does the contract include measurable performance standards?
10. Does the contract include contractor monitoring and reporting requirements and accountabilities?
11. Does the contract specify how disputes will be resolved in the event performance standards are not met?
12. Does the contract ensure a smooth transition and transfer of assets and/or obligations at the end of the contract?

For more information about best practices on private service arrangements, check out these resources.

- [Privatization of Water Services in the United States: An Assessment of Issues and Experience](#)
- [Guidelines for Performance-Based Contracts between Water Utilities and Municipalities](#)
- [A Guide to Understanding and Evaluating P3s in the Water Sector](#)
- [Regulatory Implications of Water and Wastewater Utility Privatization](#)
- [At A Crossroads: Is Now the Time for Water Utilities to Rethink Procurement and Delivery of Capital Projects?](#)
- [Maintaining Green Infrastructure through Shared Services](#)
- [Building Capacity Through Partnerships](#)
- [Green Infrastructure Operations and Maintenance Implementation Framework](#)