

## Appendix 8A – Potential Collaboration Models

### INTERMUNICIPAL AGREEMENTS (IMA)

Intermunicipal agreements (IMA) are written agreements between or among municipalities to “perform... services, activities or undertakings” as authorized by law. The source of authority is M.G.L. c. 40 § 4A, which modified the authority necessary for towns to enter into IMAs from Town Meeting to the Board of Selectmen. These agreements allow towns to contract with each other, as well as with other units of government (which may be another town, a regional planning agency, or a water/sewer commission). Special legislation may be needed to authorize the membership of a county or state agency when they are a party to the IMA alongside one or more towns. IMAs can be established for a maximum of 25 years and its terms establish the maximum financial liability of the parties involved.

There are three main types of IMAs. Formal contracts are written agreements in which one town agrees to provide service to another local government for an agreed upon price, such as the sharing of personnel. In a joint-service agreement, two or more towns join to plan, finance and deliver service within the collective towns’ boundaries, such as public works or shared solid waste disposal districts. With service exchange arrangements, towns agree to lend services to one another without payment, i.e. mutual aid for emergency services/police/fire.

There are several components to a successful IMA. In addition to the purpose, terms of agreement, and method of amendment/termination, parties will need to specify the following:

- **Method of financing:** Towns may specify appropriation is subject to town meeting
- **Responsibilities:** Defines which parties have direction over and control of employees, recordkeeping, audit, performance bond requirements, schedules of shared employees, overtime and what happens if service is unavailable
- **Costs of services:** Describes how costs are allocated among parties, as well as how costs of capital and start-up are to be handled
- **Indemnification:** Identifies the liability of each party, including hold harmless clauses for personal or property damage arising out of the service
- **Insurance:** Identifies adequate insurance coverage as well as who assumes risk of loss
- **Alternative dispute resolution:** Identifies agreed upon sources of alternative dispute resolution including mediation and arbitration
- **Personnel:** Specifies who hires, directs and disciplines shared personnel
- **Property:** Describes how joint property is acquired and held

It is important to note that while an advantage to an IMA is that it may be entered into by the Board of Selectmen/Town Council rather than Town Meeting, the Town is bound by financial commitments made by an IMA. For this reason, it is still important to attain Town Meeting approval for any and all capital expenditures the IMA may require.



This option is amenable for use in shared watersheds Cape-wide. The intermunicipal agreement is ideal for creating contractual responsibility among Cape towns for watershed load allocation and for allocating responsibility for implementation and cost sharing of traditional and alternative technologies. It may also be used to detail which personnel from each town may manage waste treatment works and related facilities; delegate each town’s responsibilities and obligations to design and construct new works, and to operate and maintain new and existing works; to accept and utilize grants, or other funds from any source, for waste treatment management purposes; as well as specify the methods of financing to be used by each town.

#### EXAMPLE: INTERMUNICIPAL AGREEMENT

Attleboro and North Attleborough, Massachusetts implemented an intermunicipal agreement in order to facilitate the provision of sewer services to neighborhoods in the two communities. The Town and City have common borders, and the services were provided more efficiently by connecting neighborhoods in the Town to the City’s existing treatment facility and City neighborhoods to the Town’s facility. IMAs were chosen as a collaboration tool because it was mutually beneficial to both Attleboro and North Attleborough, and it allowed the towns to contract with each other for specific geographic areas.

Decisions are made through the Town of North Attleborough’s Board of Public Works and the City of Attleboro’s Mayor and Municipal Council. The cost of the sewerage project was apportioned to the ratepayers in the City and Town based on their contributions. Each town manages their treatment facility independently, though both entities can review and reject proposed changes to the other’s infrastructure. For more information, see Appendix 8A-1.

#### FEDERAL/MUNICIPAL PUBLIC/PUBLIC PARTNERSHIPS

Federal/Municipal Public/Public Partnerships are shared service agreements that authorize the Secretary of the Department of Defense to enter into intergovernmental support agreements with State and/or local governments for the procurement of installation support services. Partnerships between Joint Base Cape Cod, one or more towns, and/or Barnstable County are possible through Section 331 of the National Defense Authorization Act (United States Code 10, c. 137 §1226). The act requires that the partnership serves the best interest of the military and of the state or local governments, and provides a mutual benefit for the parties involved.

One advantage is that Section 331 allows in-kind exchanges between a military installation and a town in which no money is exchanged. This type of partnership may be useful, in the context of Waste Management Agency options, for example, because it could allow towns, the County and/or other Waste Management Agencies to enter into an agreement with the Department of Defense for services related to the existing wastewater treatment facility on Joint Base Cape Cod. Towns and/or the County may be able to utilize existing infrastructure and excess land on

Joint Base Cape Cod in exchange for town participation in the operation, maintenance, and potential capital investment in water and sewer facilities on the base.

#### EXAMPLE: FEDERAL/MUNICIPAL PUBLIC/PUBLIC PARTNERSHIPS

In Nevada, the City of North Las Vegas and the Air Force entered into a Federal/Municipal Public/Public Partnership with two main benefits. The Air Force was seeking to exchange underutilized assets in excess land, and the City of North Las Vegas needed land to build a water reclamation facility. In exchange for leasing property, the Air Force received an in-kind consideration in the form of a fitness center and water supply infrastructure. This Public/Public Partnership was chosen because it was mutually beneficial to the Air Force and the City, achieved a common purpose, and enabled the city to build a 25 million gallon per day facility, with the ability to expand by double for future growth.

Decisions related to the partnership were made by the Strategic Asset Utilization Division (CIU), which negotiates agreements for the Air Force, and the Mayor of the City of North Las Vegas. No money was exchanged between the two entities, as the excess land was an in-kind benefit that was exchanged for the use of a fitness center and onsite infrastructure. The City of North Las Vegas built the facilities in accordance with the lease agreement. For more information, see Appendix 8A-2.

#### INDEPENDENT WATER AND SEWER DISTRICTS

Independent water and sewer districts are public instruments that enable one or more towns to establish and maintain water and/or sewer systems. The authority for these districts is M.G.L. c. 40N §§ 1-25, with §25 specifically allowing municipalities to form a regional water and sewer district.

The districts are formed when a special unpaid district planning board for two or more towns is formed to study its advisability and define how it will operate (such as setting its construction and operating costs and recommending methods of financing), then issuing a report. Once the board drafts an agreement, it may submit the proposed agreement for town-meeting vote. This agreement should include the number and composition method of selection of members of the board, the municipalities that are to be within the district, the method of apportioning expenses, and terms by which each town is admitted or separated from the district. The agreement also should include a detailed procedure for the preparation and adoption of the district's budget.

A regional water/sewer district has bonding authority but also requires a majority vote at Town Meeting to establish itself and operate.



As a Waste Management Agency option, this would be well utilized in discreet areas of Cape Cod where it has been determined that sewerage is the clear choice by a town or group of towns to manage nitrogen.

### EXAMPLE: INDEPENDENT WATER AND SEWER DISTRICTS

The Greater Lawrence Sanitary District was established in Massachusetts and New Hampshire based on recommendations in a 1963 report on Merrimack River pollution. The five member communities are Lawrence, Methuen, Andover, North Andover, and Salem, NH. The Town Meeting and City Councils for each of the five member towns approve the Sanitary District, and there is an annual assessment to member communities (not just users). The District also has full bonding powers. There is a seven-member commission appointed on a population basis by member communities. For more information, see Appendix 8A-3.

### WATER POLLUTION ABATEMENT DISTRICTS (WPAD)

As mentioned above, water pollution abatement districts (WPADs) are designated or mandated by MassDEP for one or more towns (or designated parts within those towns) established for the “prompt and efficient abatement of water pollution.”

The districts are either proposed by the town or by MassDEP; if it is the latter, a town must take a vote at Town Meeting within 90 days of the nomination. If the town meeting votes against the establishment of a WPAD, MassDEP may hold a hearing with the Water Resources Commission if it finds that the creation of a district is “necessary for the prompt and efficient abatement of water pollution.”

Once created, each district is its own independent entity administered by a “district commission.” Representatives of the town may comprise the WPAD, but MassDEP may mandate that their agency appoint members (with approval of the Water Resources Commission). The executive director must be a registered professional engineer.

After its creation, the district has one year to present an abatement plan to MassDEP (or a lesser time as established by MassDEP) that contains the source of pollution, the means by which to abate it, and proposed projects for the solution. Once formed, the WPAD may only be dissolved by an Act of the Legislature.

The source of authority for WPADs is the Massachusetts Clean Waters Act (M.G.L. c. 21, §§28-30, 32, 35, 36). The Act enables towns to:

- Adopt bylaws/regulations
- Acquire, dispose of and encumber real/personal property (including eminent domain powers)
- Construct, operate and maintain water pollution abatement facilities

- Apportion assessments on the member municipalities
- Issue bonds and notes and raise revenues to carry out the purposes of the district

Member municipalities may then impose assessments on residents, corporations and other users in the district. If a town fails to pay its share, the state may pay it for them out of other funds appropriated to that town.

#### EXAMPLE: WATER POLLUTION ABATEMENT DISTRICT

As early as 1900, the Blackstone River in Massachusetts was recognized for its toxicity related to the textile mills and metal and woodworking industries along its banks. The Upper Blackstone Water Pollution Abatement District was created by the Massachusetts General Court through an emergency law in 1968 for the immediate preservation of public safety and welfare. Current District members include Auburn, Cherry Valley Sewer District, Holden, Millbury, Rutland, West Boylston, and Worcester. The District also serves portions of Oxford, Paxton, Shrewsbury, and Sutton. The District was created to enable these cities and towns to form a sewer district.

The decision makers are the City Council members in Worcester, and Town Meeting makes decisions for participating towns. The cost is apportioned among the cities and towns on the bases of their contributions to the flow entering the District’s facilities. The District is governed by a Board comprised of one member from each participating city and town. For more information, see Appendix 8A-4.

#### DISTRICT OF CRITICAL PLANNING CONCERN (DCPC)

A District of Critical Planning Concern (DCPC) is a designation given to a critical area on Cape Cod by the Cape Cod Commission when the area requires protection through a coordinated set of regulations. DCPCs are possible through the Cape Cod Commission Act (c. 716 of Acts of 1989), and they allow protective regulations to be drafted and enacted Cape-wide. The Districts may be nominated by the County Commissioners, Assembly of Delegates, or any board of Selectmen, Planning Board, Historical Commission, or Board of Health within the proposed DCPC area. Once a DCPC is created by vote of the Cape Cod Commission and the Assembly of Delegates, implementing regulations may be passed locally by Boards of Health, Boards of Selectmen, or similar bodies to regulate the impacted resource.

#### EXAMPLE: DISTRICT OF CRITICAL PLANNING CONCERN

The Fertilizer Management DCPC was established in 2013 to institute local control and regulation of fertilizer application Cape wide, and all 15 towns were part of the designation. For more information, see Appendix 8A-5.



## REGIONAL HEALTH DISTRICTS

Regional Health Districts, or Regional Boards of Health, are collaboration tools used among one or more towns with all the powers and duties of Boards of Health/Health Departments of a town, including their wastewater regulatory power.

A district may form by votes of two or more Boards of Health and their respective Town Meeting to delegate part or all of its regional authority to the regional board. Town Meeting vote is required to establish the district; once formed, a town within the district must belong for at least three years before it may withdraw. The current source of authority for a Regional Health District is M.G.L. c. 111 §27B.

A Regional Board of Health has a director of health, a treasurer and staff. Each town has at least one member on the Board for a three-year term. The budget is established each December, and then town assessors include the amount in tax levies each year. The Board may adopt any method for valuation, including using the state valuation and population as determined by the Secretary of the Commonwealth. The Board may order its treasurer to pay the town’s share of costs and expenses of the District. The District is entitled to reimbursement from the Commonwealth for “initial capital outlays,” though this is subject to appropriation and requires matching funds from towns. No compensation for Board members is allowed aside from expenses. The District has power to contract, sue and be sued, receive and expend funds, receive grants, and other powers, as necessary, to act as an “independent entity of government”.

This Waste Management structure could be used in a shared watershed where there is a need to jointly regulate Title 5 systems across town borders in order to protect public health.

### EXAMPLE: REGIONAL HEALTH DISTRICT

The Quabbin Regional Health District was formed in response to issues occurring in Belchertown, Ware and Pelham, MA. These issues included a hazardous landfill, lack of oversight and inconsistency in providing required public health services, citizen complaints, septic issues, and concerns from the Massachusetts Department of Public Health and the Massachusetts Department of Environmental Protection around the communities’ inability to address state mandates.

The District was a joint effort by the towns to provide their communities with quality public health professionals and services in response to these problems. It was established by a Town Meeting vote in Belchertown, Ware and Pelham, and all three towns jointly pay for and manage their District. For more information, see Appendix 8A-6.

## OTHER POTENTIAL MODELS

To the extent that the existing tools described above cannot fulfill the needs of a community to effectively carry out the requirements of the Section 208 Plan Update, other options exist. One is the ability, through the legislature, to create new tools. One is an independent public authority.

A new tool created by the legislature could provide for financing mechanisms that do not require a town meeting vote. To the extent towns need legislative solutions to move forward on water quality solutions, this option may be explored.

### INDEPENDENT PUBLIC AUTHORITIES

Independent public authorities are separate legislative entities that can plan, build, finance, own and operate certain wastewater collection, treatment, disposal and septage management assets and programs. The entity may also:

- Research, develop, own and operate non-traditional wastewater treatment assets and programs,
- Provide services for residential wastewater systems,
- Plan and protect drinking water resources through protection plans and policies, and
- Develop and enforce policies and procedures governing customer metering, billing, and collection systems

All fifteen towns of Cape Cod could belong to an independent public authority. The towns could continue to operate local wastewater treatment facilities within town boundaries. While not specifically recommended, this option must be included in a full discussion of options for managing nutrients to achieve water quality goals in the region.

These entities may operate through a Board of Directors and an Advisory Board, and they could operate stormwater management plans consistent with drinking water protection plans and policies and operate local metering and customer billing systems.

#### **Example: Independent Public Authorities**

The Federal District Court in Massachusetts ruled that the wastewater discharging into Boston Harbor was in violation of the 1972 Federal Clean Water Act requirements. The Court ordered the Massachusetts Water Resources Authority (MWRA) to develop and implement a program to provide treatment of its wastewater, as required by law. Accordingly, the MWRA undertook a program of improvements to the wastewater collection and treatment facilities serving the metropolitan Boston area.

The MWRA was established in 1984 to assume the responsibilities of the Metropolitan District Commission’s Water and Sewer Division. It has its own powers to issue bonds and assessments to pay expenses and it is managed by a Board of Directors who act on behalf of the independent authority. For more information, see Appendix 8A-7.