

Inter-Municipal Agreements: A Best Practice

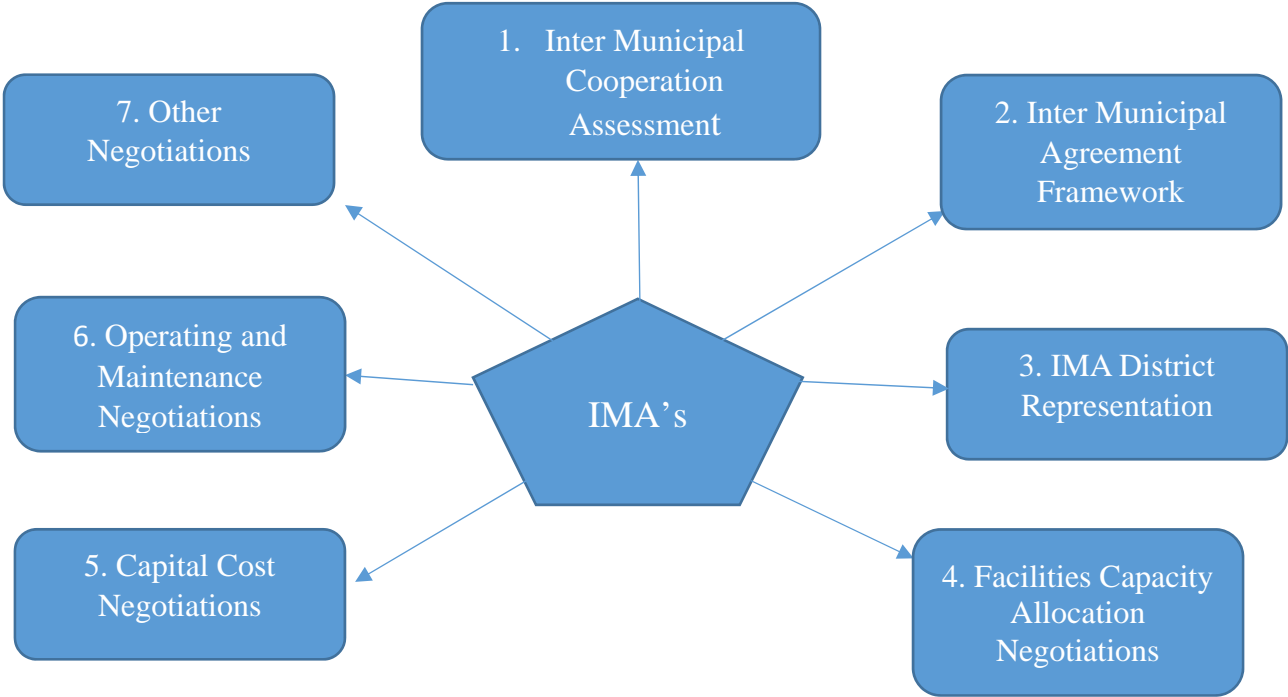
| Introduction | |
|---------------------|---|
| Purpose | <p>This guide will help you understand:</p> <ul style="list-style-type: none">• Inter-Municipal Co-Operations on Water Infrastructure project• The Basics of Inter-municipal Agreements (IMA's) for Water Infrastructure• Typical process for coming to agreements• Overcoming obstacles in IMA's negotiations |
| Target Audience | <p>This guidance is intended for community leaders that are considering a cooperative approach to solving water and/or sewer problems with one or more neighboring community. This guidance is also intended for planners, engineers, legal and financial advisors to use as a steppingstone to open communications that gives inter-municipal cooperation a chance at a successful outcome. It can also be used as a reference tool when existing IMA's must be amended or are up for renewal. To a certain extent, some of the issues presented in this guidance document can also be useful in structuring "intra" municipal agreements for drinking water and sewer service facilities.</p> |

| Inter-Municipal Agreements |
|---|
| <p>IMA's have been in place between Massachusetts communities for many years and in many communities for both drinking water and sewer facilities and their use. There are generally three (3) types of IMA's; namely formal written contracts, joint service(s) agreements; and service exchange announcements. This document focuses on formal written contracts, since the latter two types of IMA's are rarely used by water and sewer utilities.</p> <p>The Commonwealth demonstrated its support for and encouragement toward intercommunity agreements with the passage of Chapter 188 of the Acts of 2008. That Special Act, among other things, made it easier for municipalities to enter into IMA's by shifting the authority for town approval to the Board of Selectmen. This relaxing of requirements for local approvals still maintains all other requirements for IMA's, including financial safeguards and reporting. The provision does not apply to cities, where Mayoral and City Council approvals are required.</p> <p>There are both challenges and benefits relating to IMA's. Since the primary cost savings resulting from inter-municipal cooperation can be substantial that can often be the impetus for municipal governments to get together for their mutual benefit. Regulatory agency official encouragement and increased grants or other funding can also motivate local governments to work together toward common goals.</p> |

| Challenges to IMA's | Benefits of IMA's |
|--|---|
| <ul style="list-style-type: none"> • Timing/Scheduling of municipal planning activities do not coincide • Lack of Regional Scope in Municipal Infrastructure Planning • Community unwillingness to share essential water supplies and sewer treatment facilities with other towns • Limited system(s) capabilities; Limited expansion options; Unwillingness to expand systems • Inability to provide, and pay for, added uncommitted system capacity for growth • Isolated/distant facilities that aren't cost effective to connect and consolidate • Inter-basin Transfer issues • Inadequate/undersized transmission facilities for regional capacity needs • Water Management Act permitting issues • NPDES Permitting Issues • Groundwater Discharge Permitting Issues • Bordering Community disputes / disagreements • Poor experiences with past attempts at inter-municipal cooperation • Inter-town competition for economic development dependent upon water/sewer | <ul style="list-style-type: none"> • Economies of Scale in capital and annual operation and maintenance costs • Cost sharing resulting in lower costs for cooperating communities • Consolidated siting of facilities that are often a challenge and difficult to site • Cooperation with and Elimination of Redundancy in: <ul style="list-style-type: none"> - Operation and Maintenance - System monitoring and reporting - Permit Compliance - Administration - Budgeting and billing • Lower per unit treatment costs • Larger service area in which to find the best sites for regional facilities, often times resulting in lower costs • Centralized/consolidated operations |

| Implementing IMA's: The Core Framework |
|--|
| <p>The following framework should be followed to implement IMA's. This framework includes:</p> <ol style="list-style-type: none"> 1. Inter Municipal Cooperation Assessment, 2. IMA Framework, 3. IMA District Representation, 4. Agreement Negotiations – Facilities Capacity Considerations, 5. Agreement Negotiations – Capital Cost Considerations, 6. Agreement Negotiations – Operating and Maintenance; and 7. Negotiating Other Items. <p>Several IMA best practices are listed for each framework element.</p> |

Flow Chart: The Seven Core Elements of IMA's



1. Inter-municipal Cooperation Assessments

The first step in establishing IMA's is to determine if any inter-municipal cooperation opportunities exist. This is typically undertaken during the planning level or through a feasibility study for water resources. All Water Resources Management Planning documents typically include regional option evaluations, with a level-of-detail commensurate with the plan scope and viability of more obvious regional options. Oftentimes the evaluation of regional solutions is conducted by one municipality and any serious consideration for a regional solution can be short-circuited by that community or neighboring communities that have no interest in cooperating or collaborating with their neighbors. Integrated Water Resource Management Plans, Water Resource Management Plans and Comprehensive Wastewater Management Plans all typically include cooperative regional considerations as part of the alternatives analyses. In some cases, the lesser detailed investigations including Project Engineering Reports or Preliminary Engineering Reports will focus on limited study areas that could, with some creativity, involve shared municipal solutions.

In reviewing regional considerations, the following factors should be evaluated:

- Targeted watershed management planning recommendations
- Assessment of available uncommitted drinking water and/or sewer system capacity in neighboring towns
- Future drinking water and/or sewer system capacity needs regardless of neighboring community needs
- Possible facility siting issues in all involved communities
- Duplication of facilities and/or excess system capacity that is not needed, allowing for consolidation of facilities and services
- Age, condition, capacity and effectiveness of current systems to meet water and sewer quantity and quality demands of the community
- Regulatory constraints on future use of facilities
- Feasibility of "fix it first" options to maximize use of existing facilities/systems

You should:

- Determine if more than one inter-municipal option is available to the community
- Evaluate all viable options for cost/benefit of the proposal as well as environmental benefits over the short and long-term
- Potential cost savings/environmental benefits can be used to promote cooperative efforts
- Consider concurrence with regional plans or area-wide management plans in such evaluations, as projects that are not consistent with such regional plans may make the project more challenging to get permitted or financed by state regulatory or funding agencies

Best Practices include:

- Assisting a neighboring community to address facility needs and/or rehabilitation that can create available capacity by completing needed system improvements or eliminating system deficiencies
- Working cooperatively in joint planning level investigations
- Considering offsets or trading of services to meet the needs of nearby communities
- Using regional planning agency staff to serve as facilitators toward intermunicipal cooperation
- Giving regional cooperation serious consideration beyond perfunctory and rudimentary inter-town communications to check out neighboring towns' needs/concerns
- Including inter-town communications and/or meetings in planning project work scope to give as much credence as possible to regional solutions and mutual aid
- Including citizen representatives and/or non-elected officials as participants

2. IMA's - Framework

The second step in establishing IMA's is developing the IMA Framework. IMA's can take several forms. There are three (3) basic forms of IMA's: formal contracts; joint service agreements; and service(s) exchange arrangements. This document will focus on formal contracts primarily related to water infrastructure facilities and services as the best practice. In addition to IMA's, the establishment of regional districts for water and/or sewer service and the agreements that are developed to describe the legal framework and responsibilities of district member communities (similar to IMA's) will also be discussed.

IMA's in Massachusetts are generally governed by Chapter 40, Section 4A of the MA General Laws (MGLs). Chapter 188 of the Acts of 2008 expedited the IMA negotiation and execution process for towns. However, the law does not simplify the process for cities to agree to and execute IMA's. In most cases, IMA's involve major community expenditures warranting borrowing for capital projects, which requires a two-thirds vote of town meeting or town/city council. As such, the need for town meeting or town/city council approvals cannot usually be obviated.

Essential elements of an IMA include:

1. Two or more recognized governmental units, such as a city, town, water or sewer district, water and sewer commission (under Chapter 40N; Section 25 of the MGLs) or a state agency
2. A description of services to be provided or to be performed jointly or on behalf of one or more of the governmental units by a legally authorized governmental unit.
3. Provision for a term of not more than 25 years
4. Authority for the governmental units to raise funds and borrow monies to meet the obligations under the IMA.
5. Provision for financial reporting and safeguards, including budgeting, record keeping and audits
6. Provision of guarantees for the governmental unit's future revenue stream from other participating municipalities, regardless of annual appropriations

Regional water and/or sewer districts are typically established through special legislation whereby a completely separate entity is established to own, operate, and maintain common facilities for sewer transmission, treatment and disposal; or drinking water supply, treatment and distribution. Recent examples of such newly formed districts include the Mattapoisett River Valley Water District that provides drinking water to the member towns of Fairhaven, Marion, Mattapoisett and Rochester, formed in 2004. On the sewer side, the MFN Regional Wastewater District involving the towns of Mansfield, Foxboro and Norton was formed to provide sewer treatment, effluent recharge and disposal in 2014. Those two districts have similar agreements between member towns that reference Chapter 40; Section 25 of the MGLs. In the case of the MFN Regional Wastewater District, the resultant district agreement between the three towns had its genesis in IMA's between Mansfield and Foxboro, and Mansfield and Norton.

Massachusetts Law provides three (3) mechanisms to establish such districts:

1. General State Law
2. Special (Session) Acts of the state legislature
3. Municipal Home Rule Authority

Under the Massachusetts Clean Water Act, the Massachusetts Department of Environmental Protection (MassDEP) is authorized to propose the establishment of water pollution abatement districts consisting of one or more cities or towns. Similar to an IMA arrangement, this regional entity is independent, administered by a district commission, and can, with MassDEP's assistance, be formed without a

special act of the legislature. This option is rarely, if ever, used. It should also be noted that MassDEP rarely, if ever, gets involved with communities seeking to sign an IMA, since most of the issues being negotiated are for the communities to decide. In the unusual event that an IMA negotiation process becomes protracted or gets close to being abandoned, MassDEP could work to get the parties back to the negotiations if it is obvious that regional cooperation is the best option for both communities.

State law also authorizes municipalities to enter into IMA's to jointly perform a service that a municipality is authorized to do individually or to allow one municipality to perform as a service for another.

The preferred and more common route to establish a regional district is through a Special Act of the state legislature. Typically, the municipal legislative body (town meeting or city council) must approve a home rule petition before it can be acted on by the legislature. The regional district approval process typically requires active roles by all involved towns and their executive branch, legal counsel, and state legislators, not to mention coordination with MassDEP and other state agencies. Involved municipality approvals should typically be solicited concurrently to provide clear direction to the state legislative bodies with regard to consistent definition of district boundaries, jurisdictions, and authority.

Best practices for establishing the legal mechanism for an IMA or regional district, include:

- Determining whether an IMA or regional district approach is preferred, with the user communities working in concert with the owner community on the preferred arrangement
- Coordinating with applicable state agencies and local representatives and state senators to co-sponsor the Special Act(s), in the event that a regional district approach is preferred
- Developing consensus as to the Section of the MGLs that the IMA or district agreement will be established under

3. IMA/District Representation

The third step in developing IMA's is to form the district. Once it is determined that intermunicipal cooperation is beneficial to the involved municipalities and the form of the agreement is decided, the negotiation phase can begin in earnest. The level of representation by member municipalities on a regional district commission needs to be established. In some cases, the level of representation can become a negotiable issue. The level of "control" based on vommission membership can become an issue within a district, oftentimes loosely based on the relative flow contribution or use assigned to the community. In districts where each community seeks to have equal say, an equal number of representatives from each community can often be established.

The number of representatives from each community can vary depending upon involved community preferences, but generally does not exceed three. In some districts, representation is by residents/elected officials of the community, while in others, professional staff (i.e. DPW Director, Town Manager, Town Engineer, etc.) can serve as district officials, with those commissioners appointed by city and/or town elected officials. In some districts, like the South Essex Sewerage District, board membership includes a chairperson who is appointed by the Governor of the Commonwealth.

Clearly the first step towards a mutually acceptable district commission is agreement on its authority/representation. The key is to have district officials who recognize their role in serving the district as a whole, while also looking out for the interests of the community that each district official represents. This first step sets the tone for future district-wide decision making on many issues.

In those instances when "user" communities execute an IMA with the "owner" community (i.e. the community that owns the water supply/treatment facility or sewer treatment and disposal facility), there is typically no representation, when it comes to determining "regional system" issues. In those cases, the IMA must establish a solid, clearly understood framework for the future of all involved communities.

Typically, the "owner" community is also the "host" community where the water supply or sewer treatment facilities are located. These communities typically have extended themselves financially as the central point of a facility sized to serve more than that community's needs. That initial financial commitment can often be made based on regional planning studies/river basin planning studies or a series of coordinated individual municipal studies. In any event, initial system needs and projected needs over an established planning period (usually 20 years) serve as the basis for the relative ownership of regional facilities. Once again system capacity ownership doesn't translate into "say" or a seat at the decision-making table. The "owner" community that typically acts first to build water supply/treatment or sewer treatment facilities and extends itself to pay for the facility has earned the right to control most aspects of the facility and to be responsible for proper operation and maintenance. The roles and responsibilities of "user" communities who may "partner" with capacity commitments, typically have limited influence based on the IMA terms. Where district representation is based on capacity owned (or population served), protocols and procedures for increasing (or decreasing) membership should be considered.

Best Practices for IMA/District Representation Include:

- Deciding if an "owner-user" relationship is appropriate
- Establishing representation when communities decide to be "partners" in the formation of a district
- Deciding on the district governance with the number and qualifications of board members established
- Naming/electing board members should be included in concurrent enabling home rule petitions/legislation

4. Agreement Negotiations/Facilities Capacity Allocations

The fourth step in establishing IMA's is negotiating facilities' capacity allocations. This is the most important, and oftentimes the lengthiest, step in inter-governmental cooperation. Virtually any disputable issue can introduce delays in the negotiation process, and, on occasion, result in the parties not reaching an agreement. Once again, it is important that municipalities put their agendas, needs (and wants) on the table for discussion early in the regional cooperation/collaboration process.

Typically, communities can easily agree on "formulas" for assigning projects costs for capital and operation and maintenance expenditures. However, even the relative allocation of capacities, and timing of municipal facility construction and services (i.e. water/sewer service areas) need to be understood and actively agreed upon by all parties. The level of initial and future facility needs and the staging of owner/regional district facility construction to meet those needs are typically factored into the equation/formulas.

As some towns move through the water resources planning process, capacity requirements (and the timing of same), can change markedly. Such capacity changes can be completely under the control of the municipality, if that municipality is mostly developed. In some cases unanticipated private developments (or projected/anticipated development that gets delayed, postponed or cancelled) can also dramatically change sewer capacity requirements. As such, municipalities need to develop reasonable capacity needs projections that are adequate and include some room for growth, but do not exaggerate their collective needs, which could result in a larger-than-needed project.

The above issues are not as critical when municipalities collaborate in sharing drinking water supplies/treatment facilities. Relative allocation of water supply capacities among "member" municipalities can be set recognizable limitations in the supplies available based on technical and regulatory limitations.

Best Practices Include:

- Establishing reasonable existing and future capacity/supply needs
- Anticipating changes in those capacity/supply needs and provide for re-allocation or preliminary design changes prior to final commitments
- Providing for capacity/supply volumes that serve as a "contingency" for all involved communities without impacting permit approvals due to exaggerated growth factors, if needed

5. Agreement Negotiations/Capital Cost Considerations

The fifth step in developing IMA's is to negotiate capital cost considerations. Typically the capital cost of facilities paid by each community is based on the built system capacity allocated to each community. This is, perhaps, the easiest of all allocation formulas where each community's allocation divided by total system/design flow or capacity is applied to the total "regional" capital cost share. It may be appropriate to identify "special cost considerations" to account for conditions or impacts on one or more communities that do not apply to all communities. These can include:

1. Prior capital investments for facilities to be used by "new" communities
2. Land or other asset contributions to the "Regional Project", possible including:
 - a. Well supplies and Zone 1 (and Zone 2) protected areas
 - b. Existing Treatment Facilities, portions of which will be used by other communities in the region
 - c. Effluent disposal/recharge facilities including back-up sites purchased to meet future needs of all communities
 - d. Impacts associated with facility siting, including possible adjacent or nearby property value impacts
3. Other difficult-to-quantify facility siting impacts
4. Transmission/distribution facilities that are needed by some, but not all, involved communities

The above items can often be taken into account by applying an actual percentage of system design basis to specific facilities, which in some cases can be significant and in other cases negligible or non-existent. Techniques to account for special cost considerations can include:

- PILOTs (Payments in lieu of taxes)
- HCFs (Host community fees)
- Impact fees/Special assessments
- Base facility cost and future facility cost allocations

In determining proportionate costs to communities in an IMA, the methodology used most often is a percentage of use on capacity assigned to each community. These proportions are usually based on average day use (or demand) for water supplies or treatment facilities. For other facilities costs, maximum day flow (or demand) and even peak flow (or demand) can be used, as appropriate. The above flow/demand/cost allocations typically provide for the most equitable cost sharing of capital expenditures. In some agreements where "upsizing" of a facility or facilities is required, the use of "incremental costs" above the baseline owner/host community cost, could be considered for use. Such an approach typically does not provide a monetary benefit to the owner/host municipality, and therefore, is not a common practice.

Another item that can sometimes be factored into cost allocations is when grants or other revenue sources are involved. In some cases, such funding can be limited to specific portions of capital projects effecting proportionate cost shares. This and other cost allocation formulas are best described and understood through the use of example calculations attached to IMA's or regional district agreements.

Best Practices for Addressing Capital Costs Include:

- Identifying prior community facility and/or capital contributions and financial and non-financial impacts that are not equivalent across all member communities (Prior community investments in facility construction or equipment that will continue to be used and that are not fully depreciated and collection/transmission facilities that are only used by some member communities are just a few such examples)
- Determining the basis (and payment for) capital cost investments by specific municipalities
- Developing consensus for the applicability, use, and basis for present impacts and commitments, and use of previously committed project assets

6. Agreement Negotiations/Annual Cost Considerations - O&M Expenses

The sixth step in establishing IMA's is to negotiate operation and maintenance (O&M) expenditures. In earlier IMA's, little thought was given to fairly allocating annual O&M expenses to participating communities in regional systems or shared municipal water and sewer systems. Capital costs were typically allocated based on percentage ownership and O&M costs were based solely on the volume of drinking water used by each community or the volume of sewer treated. However, there has been a trend over the past few decades wherein annual O&M expenditures have been allocated through other methodologies. Those methods include breaking out annual fixed (or semi-fixed) costs from those cost items that are "flow-variable".

In most IMA's/regional agreements fixed (or semi-fixed) costs are allocated to communities based on capacity owned or allocated. These are typically annual costs that would be expended regardless of actual flow or use. Staff costs, equipment maintenance costs, capital improvements, equipment replacement, etc., typically are considered as fixed costs. Conversely, electricity and other energy costs, chemicals, sludge handling and disposal, etc. typically vary with actual flow or use. As such, these costs are assessed to each community based on the actual water used or sewage treated. It should be noted that depending upon the district/regional facility, the cost factors incurred under each category can vary widely. The allocations established can sometimes be set to "equalize" certain cost factors or provide an allocation formula that offsets other cost factors. Regardless, the community representatives should agree on criteria to be used and how certain costs will be distributed among its participants.

Often communities can sell portions of their system capacity/ownership/allocation to other "outside" communities. While certain restrictions may stipulate that capacity must be offered "internally" before selling system ownership or capacity to new communities, this can be an opportunity to charge higher costs to "outsiders". Such a surcharge can be assessed to capital and/or annual O&M expenses.

Best Practices for Allocating O&M Costs to Involved Municipalities Include:

- Developing a detailed chart of accounts for use in developing annual O&M budgets
- Using the chart of accounts for tracking all expenditures
- Determining if different cost allocation bases will be used for fixed costs and flow-variable costs
- Dividing the chart of accounts into flow-variable and fixed cost items
- Prepare a draft/example O&M budget using the chart of accounts, and together with actual capacity allocations and assumed usage provide an attached example to clearly depict how future O&M costs will be distributed
- Tracking actual fixed and flow-variable expenditures quarterly and calculate cost allocations based on actual flows, if appropriate
- If tracking actual fixed and flow-variable expenditures is not a viable option, use budgeted costs adjusted later based on recorded actual quarterly flows/use
- Agreeing on the billing methodology including use of budgeted vs. actual flow/usage
- Providing for "truing up" annual billings at the end of the fiscal year by using actual flows and actual expenditures and adjusting the cost up or down as appropriate
- Including a "miscellaneous" category or contingency account to allow for unexpected large expenditures that could not have been anticipated during the budgeting process
- Considering using a "reserve" account for a safety factor or to build up capital or operating reserves on an annual basis for unexpected equipment repairs, rentals, replacement and/or increased staff needs to deal with extremes in weather and high or low flow or use volumes
- Providing for separate tracking and accounting of services or products that are used by the municipality for its own utilities and for the regional entity
- Separate identifiers or account numbers should be used if possible, or calculated percentages of use should be applied accordingly

7. Negotiating Other Terms and Conditions

The last step in developing IMA's is to negotiate other terms and conditions. These include the length of the agreement (Term), budgeting procedures, budgeting and accounting processes, and general terms and conditions. Each is highlighted below.

A. Term

Under Massachusetts law, the maximum term for an IMA is 25 years. With most regional districts or IMA's, terminating such an IMA or regional agreement for water and/or sewer systems after 25 years is not a reasonable option. In addition, despite best attempts to clearly state all agreement provisions, an interim review of the IMA is often desired. Such interim reviews every five to ten years are programmed in IMA's. Those reviews and any resultant changes can be conducted by professional staff for each municipality or by the principals responsible for executing the IMA/regional agreement.

Best Management Practices for Agreement Terms Include:

- Provisions to extend the agreement well beyond an initial 25 year term
- Provisions for agreement termination that include owners onerous requirements of the party proposing termination including continuation of certain fixed cost payments by the terminating party
- Provisions for routine review of the Agreement at established intervals (i.e. every 5 or 10 years)
- Procedures to modify the IMA at any time, upon mutual agreement

B. Budgeting Procedures

Municipal budgeting for cities and towns with their own water and/or sewer enterprise funds can be challenging and time consuming. Meeting with boards of selectmen, finance committees/advisory committees, and capital improvement committees, etc. can take weeks or months to arrive at budgets that are acceptable to all reviewing parties. The introduction of another layer of budget preparation and review can leave even less time to deal effectively with "local" budgets, especially when a district or neighboring towns must be depended upon to provide their budget figures in a timely manner. Regional districts and owner communities involved in an IMA must be held to strict timeframes for draft budget preparation, budget review, and budget approval to allow municipalities enough time to generate their annual budgets.

Best Practices for Budgeting Schedules include:

- Determining the budgeting submission and approval processes and timing for all involved communities
- Setting a schedule for regional district or IMA community's budgets that allows for draft budgets and final budgets to be coordinated with all communities, factoring in the timing for all community approvals

C. Budgeting and Accounting Processes

Inevitably, the "owner" town in an IMA will be using some of the same staff, equipment and supplies for its own drinking water facilities (or sewer collection system) that are employed in operating and maintaining the regional or shared system. Presuming that a detailed chart of accounts is used for tracking all regional costs, sufficient records of the regional vs local costs must be maintained. These could be as basic as an assumed percentage of the time allotted for each employee or as detailed as daily time sheets/reports for each individual.

Where only treatment services are being provided to the regional system, there could typically be a complete separation of duties. However, when other services, such as landscaping, snow plowing,

general building maintenance, etc. are provided by owner town employees who also work on the regional system, the cost for their time, equipment and materials used must be accounted for separately.

Similarly, when the same engineering consultants and/or legal counsel are used for both local and regional entities, the contracts for the work (if any) and hours expended by them need to be tracked and accounted for separately. This can be more complicated when those same consultants and legal advisors serve in the same role for both entities. Details must be provided when those individual town agents attend regional district meetings on behalf of the municipality and regional entity.

A system of checks and balances wherein an independent review (or possibly even an end-of-year audit) may be justified if the shared duties and expenditures are significant.

The Best Management Practices for Budgeting and Accounting Processes Would Include:

- Providing for adequate tracking of staff who are assigned duties both for the regional entity and owner municipality
- When rotating personnel shifts are used in operating pumping stations, metering stations, etc. some of which are regional and some that are local, time and cost allocation or tracking procedures that are acceptable to all parties need to be developed
- Indirect costs assigned to the regional district or shared IMA facilities operations should be a subset of that assigned to the water and/or sewer system
- Formulas or procedures for determining shares of indirect costs assigned to an enterprise fund must be developed and described, possibly using an example calculation in the IMA
- Purchasing of supplies and equipment that are used by both the regional and owner municipality should reflect separate, clearly defined identifiers, possibly even separate invoicing
- End-of-year statements should be made available to “user” municipalities to demonstrate allocation of shared staff, equipment, materials, and services
- Procedures for annual reviews or audits should be included in the IMA or regional district agreement(s)

D. General Terms and Conditions

All IMA’s or regional district agreements should include standard terms and conditions. Some agreements provide much greater detail of responsibilities of the parties when there are outside reviewing agencies involved based on their interventions or legal requirements and activities, that could be part of an Administrative Consent Order (ACO); or possibly an ACO-P (which includes a penalty provision). In those cases, responsibilities of additional third parties or regional entities should be clearly spelled out.

In some cases “user communities” or communities that are part of a regional district could be named as “Co-Permittees” under a NPDES Permit or other similar permit. In that case, the required actions of each entity and remedies for inaction must be spelled out in the IMA/regional district agreement.

Refer to Attachment 1 for a checklist of the terms and conditions for an IMA.

The following is a check list of terms and conditions for an IMA as presented by the Massachusetts Department of Revenue at a previous municipal law seminar: These terms and conditions are more typically used for all IMA's in Massachusetts. As such, the following checklist is, in itself, a Best Management Practice.

Terms and Conditions of An Inter-Municipal Agreement Between Towns

I. General Terms:

- A. State the names of each participating city and town
- B. Identify the effective date and term of agreement
- C. State the general purpose of the agreement
- D. State that costs will be shared
- E. State how municipalities may terminate participation (required)
- F. State how the agreement may be amended
- G. Acknowledge acceptance of liability under agreement
- H. Include a severability clause; identify applicable laws
- I. Provide addresses for official notices

II. Operations Terms and Conditions

- A. Describe services to be provided
- B. Identify personnel or department to perform services
- C. Establish reporting relationship and successorship in shared department
- D. Specify where shared services, personnel or department will be located
- E. Establish lines of communication among participating municipalities
- F. Describe dispute resolution process

III. Finance Terms and Conditions

- A. Identify salaries, wages and benefits to be shared
- B. Identify operating expenses to be shared
- C. Address sharing of capital cost incurred prior to and after agreement date
- D. Describe how each participant approves the shared budget

E. Describe how shared costs will be allocated

F. Describe payment methodology

G. Specify insurance and indemnification requirements

IV. Provisions for Financial Safeguards Required by c.40,s.4A

A. The OWNER town must maintain accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received

B. The OWNER town must arrange for the performance of annual audits of such records, which audits can be part of the OWNER town's annual, independent audit of its financial statements

C. The OWNER town must ensure that all officers or staff responsible for carrying out terms and conditions of this AGREEMENT shall give appropriate performance bonds

D. The OWNER town must provide the PARTIES with monthly expenditure reports and quarterly revenue reports and any other information reasonably requested by NON-OWNER town to present a complete picture of the financial condition of the shared department, function or position

E. The PARTIES otherwise must comply with all other provisions of M.G.L.c.40,s.4A

V. Signatures

A. Provide lines for signatures, titles, and date of a city mayor and each city councilor, town board of selectmen, elected water and/or sewer commission, and/or district prudential committee.