

Inter-municipal Agreement
Berkshire Public Health Alliance
Final Draft - 8.25.11

THIS AGREEMENT dated as of this _____ day of _____, 2011 (the “Agreement”) is entered into by and between the municipalities of (*Insert Names of Communities*), Massachusetts, (collectively the “Municipalities”) and the Berkshire Regional Planning Commission (hereinafter “BRPC”) a governmental unit as defined under M.G.L. c. 40, s.4A.

WHEREAS, M.G.L. c. 40, s. 4A, as amended, authorizes the chief executive officer of a city or town to enter into agreements with one or more municipalities and other governmental units to jointly perform services and share costs which any one of them is authorized to perform;

WHEREAS, Boards of Health of the Municipalities are mandated to prevent disease and enforce public health laws and regulations;

WHEREAS, Boards of Health of the Municipalities desire to equitably, efficiently and consistently promote, protect, and preserve the Public Health;

WHEREAS, Boards of Health of the Municipalities, wish to improve public health capacity and access to trained and experienced public health professionals in order to improve services and meet community needs;

WHEREAS, the Municipalities are seeking to create regional coordination within Berkshire County of public health services and programs; and

WHEREAS, each party to this Agreement has obtained authority to enter into this Agreement pursuant to M.G.L. c.40, s. 4A. The Municipalities have obtained authorization for this joint undertaking by vote of their Boards of Selectmen or City Council with the approval of the Mayor as attested to by certified copies thereof contained in Appendix A. In addition, the Board of Health of each Municipality has recommended approval of this Agreement.

NOW, THEREFORE, the parties, in mutual consideration of the covenants contained herein, intending to be legally bound thereby, agree under seal as follows:

1. Term. The term of this Agreement shall be five (5) years, commencing upon execution by the Parties. It shall renew automatically for up to a total term of twenty-five (25) years unless earlier terminated as set forth herein.

2. Governing Board. There shall be a governing board (hereafter “the Board”), comprised of two representatives from each Municipality. Each Municipality shall have one vote on the Board. One representative shall be appointed by the Board of Health who shall be a full voting member of the Board and whose term shall be as determined by the Board of Health. The second representative shall be an associate member who shall be appointed by the Municipality’s appointing authority and who shall sit on the Board as a full member and may vote only when the full member is not in attendance. The Board shall direct the establishment of policies, programs and procedures and approve an annual operating budget and fee schedule. The Board shall advise the Host Agency on the services and programs the Board has determined should be provided under this Agreement and shall support as necessary the implementation of such services and programs. The Board shall, by majority vote of its voting members, create and maintain rules and regulations that govern its operating practices.

3. Amendment. This Agreement may be amended only in writing when signed by all member Municipalities duly authorized thereunto.

4. Department. During the term of this Agreement, subject to funding, there shall be established a common health department known as the Berkshire Public Health Alliance (hereinafter the “Department”) which shall be administered and managed by a Host Agency as hereinafter provided. The Municipalities may share the services and the associated costs of services provided by the Department, as agreed to by the Board, subject to appropriation by each Municipality. Where appropriate, staff members performing services for a Municipality shall be appointed as agent(s) of that Municipality’s Board of Health. Notwithstanding any provisions of this Agreement, each Municipality shall maintain its local Board of Health, which shall retain its own legal authority and autonomy as provided by law.

5. Department Duties. The Department may perform all the duties of local Boards of Health authorized under Massachusetts law and as agreed to by the Municipalities through the Board.

6. Host Agency Duties. BRPC shall act as the Host Agency for the Department and shall provide staff, office space and equipment necessary for operations subject to availability of funds and annual vote of the Board to continue to engage BRPC as Host Agency. All staff shall be subject to the personnel policies and procedures of BRPC. The Host Agency shall have the following duties and authority:

- Prepare a proposed budget for review and approval by the Board
- Apply for, receive and manage grants subject to approval and acceptance by the Municipalities where required by law

- Enter into contracts for goods and services
- Create and manage programs and activities
- Receive gifts and donations
- Maintain accurate and comprehensive records of services performed
- Maintain records of costs incurred and reimbursements and contributions received
- Maintain a performance bond or insurance as required by law
- Perform annual audits
- Preparation of semi-annual financial statements and issuance of such statements to the Municipalities

In addition, the Host Agency may have the following duties and authority:

- Hire, manage and share staff, contractors, services, equipment and/or facilities

Prior to providing any services as Host Agent, BRPC shall provide the Board, for its approval, a schedule of fees and costs it shall be paid for services rendered.

7. Supermajority. A supermajority vote of two-thirds (2/3) of the voting members of the Board shall be required to approve the annual Department budget and all decisions or actions requiring the allocation of funds.

8. Grants. BRPC may apply on behalf of the Municipalities for grants to fund services of the Department. BRPC may also partner with a member Municipality or Non-Profit Organization to apply for grants on behalf of the Municipalities. The Municipalities shall cooperate with BRPC in completing any grant applications as necessary and shall seek to obtain authorization to be signatory where appropriate for any such grants. Each Municipality shall also cooperate in the implementation of grants accepted by the BRPC on behalf of the Municipalities to the extent allowed by law.

9. Fee Structure. Prior to the commencement of the first fiscal year of operations, and each year thereafter, the Board shall adopt a budget which may include costs for administrative overhead and for the provision of direct services. Commencing with the first fiscal year of operations the Board shall prepare a Public Health Services Fee Schedule. Each service fee shall include an allocation of costs for basic administration and overhead, if any. Each Municipality may choose an available shared service and shall be assessed a fee only for the actual services contracted for. Any such fees may be offset by grants or donations received by the Host Agency on behalf of the Municipalities. Assessments for fees that are not funded by grants, gifts or other Department or Municipal resources shall be presented to the Municipalities legislative bodies for appropriation.

10. Employees. An employee of any one Municipality, a party to this Agreement, who performs services, pursuant to this Agreement on behalf of another Municipality, a party to this Agreement, shall be deemed to remain an employee of the employee's hiring Municipality

and shall retain all accrued benefits and shall be subject to standard personnel practices of such Municipality. The Host Agency may contract with Municipal employees for contract services subject to the requirements of their existing municipal contracts, collective bargaining agreements and the Massachusetts Conflict of Interest Law, M.G.L. c. 268A.

11. Indemnification. Each party to this Agreement shall be liable for the acts and omissions of its own employees and not for the employees of any other party in the performance of their obligations under this Agreement to the extent provided by the Massachusetts Tort Claims Act, M.G.L. c. 258, except to the extent that such employees are acting upon the direction of another party, in which case the directing party shall be liable for the acts and omissions of those employees. By entering into this Agreement, none of the parties have waived any governmental immunity or limitation of damages, which may be extended to them by operation of law. The Municipalities and the Host Agency shall hold each other harmless from any and all claims related to employment or employee benefits, collectively bargained or otherwise, made by persons under their employ. Each Party shall indemnify and hold harmless the other parties to this Agreement from and against any claim arising from or in connection with the performance of this Agreement, to the extent the indemnifier would otherwise be liable under a direct claim pursuant to M.G.L. c.258 including, without limitation, any claim of liability, loss, damages, costs and expenses for personal injury or damage to real or personal property by reason of any negligent act or omission or intentional misconduct.

12. Municipal Withdrawal or Termination. Any Municipality may withdraw from and terminate its participation in this Agreement upon the provision of at least one (1) year's prior written notice to the other Municipalities and BRPC. In addition, a supermajority vote of two-thirds (2/3) of the voting members of the Board may terminate the participation in this Agreement of another Municipality for cause with ninety (90) days written notice. No such termination shall affect any obligation of indemnification or contractual obligation that may have arisen hereunder prior to such termination. If all party Municipalities vote simultaneously to terminate this Agreement, the required notice to BRPC or any other Host Agency shall be sixty (60) days. The Municipalities shall equitably adjust any payments made or due relating to the unexpired portion of the Term following such termination. Upon such termination, the terminating Municipality shall be solely responsible for the provision of public health services for the benefit of that Municipality. Upon such termination, the Board shall prepare full statements of outstanding unpaid financial obligations under this Agreement and present the same to the terminating Municipality for payment within sixty (60) days thereafter. Termination or withdrawal by one or more of the Municipalities shall not invalidate this Agreement for the remaining Municipalities.

13. Host Agency Withdrawal or Termination. The Host Agency may withdraw and terminate its participation in this Agreement upon the provision of one (1) year's prior written

notice to the Board and member Municipalities. In addition, a supermajority vote of two-thirds (2/3) of the voting members of the Board may terminate the relationship with the Host Agency for cause or convenience. Upon termination for cause, the Board shall provide sixty (60) days written notice to the Host Agency. If termination is for convenience, the Board shall provide one (1) year's written notice to the Host Agency. The Host Agency shall continue to provide services until the date of termination or withdrawal, unless otherwise agreed to by the Board and the Host Agency, and shall be paid for services rendered up until the date of termination or withdrawal minus any costs for damages incurred by the Municipalities resulting from the Host Agency's default under this Agreement. Upon termination or withdrawal, the Host Agency shall deliver to the Board copies of all files and documents, without cost to the Municipalities, relating to the services provided by the Host Agency during the term of this Agreement.

14. Assignment. None of the Municipalities or BRPC shall assign or transfer any of its rights or interests in or to this Agreement, or delegate any of its obligations hereunder, without the prior written consent of the other Municipalities and BRPC.

15. Severability. If any provision of this Agreement is held by a court of appropriate jurisdiction to be invalid, illegal or unenforceable, or if any such term is so held when applied to any particular circumstance, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, or affect the application of such provision to any other circumstances, and the remaining provisions hereof shall not be affected and shall remain in full force and effect.

16. Waiver. The obligations and conditions set forth in this Agreement may be waived only in writing signed by all Municipalities, a party to this Agreement, waiving such obligation or condition. Forbearance by a Municipality shall not be construed as a waiver, nor limit the remedies that would otherwise be available to that Municipality under this Agreement or applicable law. No waiver of any breach or default shall constitute or be deemed evidence of a waiver of any subsequent breach or default.

17. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

18. Headings. The paragraph headings herein are for convenience only, are no part of this Agreement and shall not affect the interpretation of this Agreement.

19. Notices. Any notice permitted or required hereunder to be given or served on any Municipality shall be in writing signed in the name of or on behalf of the Municipality giving or serving the same. Notice shall be deemed to have been received at the time of actual receipt of

any hand delivery or three (3) business days after the date of any properly addressed notice sent by mail as set forth below:

Town of
_____ (contact name)
_____ (address)

Town of
_____ (contact name)
_____ (address)

Town of
_____ (contact name)
_____ (address)

City of

Host Agency:

20. Complete Agreement. This Agreement constitutes the complete basic agreement between the Municipalities and BRPC concerning the subject matter hereof, superseding all prior agreements and understandings. Additional agreements or understandings between the Municipalities concerning the subject matter hereof may be made from time to time, but shall be in writing.

WITNESS OUR HANDS AND SEALS as of the first date written above.

TOWN OF
By its Board of Selectmen

TOWN OF
By its Board of Selectmen

CITY OF
By the City Council and Approval of Mayor

BERKSHIRE REGIONAL PLANNING
COMMISSION
By its Executive Director

FINAL DRAFT