

# Town of Franklin

355 East Central Street  
Franklin, Massachusetts 02038-1352



Phone: (508) 520-4949  
[www.franklinma.gov](http://www.franklinma.gov)

OFFICE OF THE TOWN ADMINISTRATOR

April 9, 2021

**To:** Town Council  
**From:** Jamie Hellen, Town Administrator  
**RE: IMA with Town of Foxborough**

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The Fire Chief is asking for the Town Council to consider the acceptance of an intermunicipal agreement (IMA) with the Town of Foxborough to have the Foxborough Fire Department perform maintenance on our specialty emergency vehicles. Some highlight points of the agreement are:

- In accepting this agreement, the Town will save money and develop a great partnership with the Town of Foxborough;
- The Town saves \$30 an hour in labor costs;
- This agreement will replace our partnership with a private company who currently does the work and does not affect any current local work on town staff;
- This agreement is for specialized equipment only - fire engines and ladder trucks;
- All staff in Foxborough are certified EVT's;
- The Town of Norfolk and Wrentham also have similar agreements with Foxborough;
- Finally, this is a great time to enter into this agreement with the arrival of the two new engines this summer.

If you have any additional questions please feel free to ask and we look forward to the discussion next week.



**TOWN OF FRANKLIN**

**RESOLUTION 21-22**

**AUTHORIZATION FOR INTERMUNICIPAL AGREEMENT  
WITH THE TOWN OF FOXBOROUGH FOR THE TOWN OF  
FOXBOROUGH TO PROVIDE EMERGENCY MOTOR VEHICLE  
TECHNICIAN SERVICES**

**WHEREAS,** Franklin is in need of emergency motor vehicle technician services, and

**WHEREAS,** Town of Foxborough (hereinafter: "Foxborough") employs a person/persons as a/an emergency motor vehicle technician and is willing to make said person/persons available to Franklin to provide emergency motor vehicle technician services in consideration of Franklin's payment of compensation to Foxborough, and

**WHEREAS,** the proposed arrangement, which would be the subject of a written intermunicipal agreement between Franklin and Foxborough, a draft copy of which is attached hereto as "Exhibit 1", would benefit both governmental entities, and

**WHEREAS,** an intermunicipal agreement is governed by the provisions of G.L. Chapter 40, Section 4A which requires that each governmental entity authorize the agreement,

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Franklin hereby authorizes the Town Administrator pursuant to G.L. Chapter 40, Section 4A to negotiate and execute an intermunicipal agreement with the Town of Foxborough in substantially the form attached hereto as "Exhibit 1", which agreement will provide for Foxborough to provide emergency motor vehicle technician services to Franklin and to receive compensation therefor, provided that said agreement may contain provisions for its extension(s) and such other terms and conditions as the Town Administrator determines to be in the Town's best interest.

This Resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

**DATED:** \_\_\_\_\_, 2021

**VOTED:**

**UNANIMOUS:** \_\_\_\_\_

**A True Record Attest:**

**YES:** \_\_\_\_\_ **NO:** \_\_\_\_\_

**ABSTAIN:** \_\_\_\_\_

**ABSENT:** \_\_\_\_\_

**Nancy Danello  
Temporary Town Clerk**

\_\_\_\_\_  
**Glenn Jones, Clerk  
Franklin Town Council**

**INTERMUNICIPAL AGREEMENT**  
**For**  
**EMERGENCY MOTOR VEHICLE TECHNICIAN SERVICES**  
**BETWEEN THE TOWNS OF FOXBOROUGH & FRANKLIN**

THIS INTERMUNICIPAL AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_ day of April 2021 by and between the TOWN OF FOXBOROUGH ("Foxborough"), a municipal corporation organized under the laws of the Commonwealth of Massachusetts with a principal address of 40 South Street, Foxborough, MA 02035, acting by and through its Board of Selectmen and Town Manager, the TOWN OF FRANKLIN ("FRANKLIN"), a municipal corporation organized under the laws of the Commonwealth of Massachusetts with a principal address of 355 East Central St, Franklin, MA 02038 , acting by and through its Town Administrator, duly-authorized, with no personal liability to each of the aforementioned public officials (all Towns collectively referred to as "Towns" or "parties").

**WHEREAS**, Chapter 40, Section 4A of the General Laws, as amended, allows the chief executive officer/ Board of Selectmen of towns to enter into agreements with one or more other towns to jointly perform activities or undertakings which any one of them is authorized by law to perform; and,

**WHEREAS**, The Town of Foxborough has in its employ a duly certified Emergency Motor Vehicle Technician, related staffing and equipment to enable it to fulfill certain maintenance and repair functions at the Foxborough Fire Department facility with respect to specialized emergency response vehicles;

**WHEREAS**, the Town of FRANKLIN does not have such a certified Emergency Motor Vehicle Technician on staff and, accordingly, they desire to have the Town of Foxborough provide such emergency vehicle technician services to said FRANKLIN;

**WHEREAS**, the Towns have obtained authorization for this undertaking pursuant to M.G.L. c. 40, §4A by vote in the case of Foxborough, by its Board of Selectmen and, in the case of Franklin, by its Town Council, as attested to by certified copies thereof contained in Appendix A;

**WHEREAS**, the parties have agreed to establish a mechanism for compensating Foxborough for such emergency vehicle technician services; and

**WHEREAS**, the parties have agreed to establish a mechanism for addressing operational issues concerning the provision of such emergency vehicle technician services; and

**WHEREAS**, each Town agrees to absolve the other Town from liability exclusively

caused by one of its employees, as specified in this Agreement.

**THEREFORE**, for good and valuable consideration, including the mutual promises and benefits set forth below, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **TERM**

The term of this Agreement shall be three (3) years, commencing on April 1, 2021 and terminating on December 31, 2024, for the second and subsequent years, subject to appropriation by Franklin's legislative body.

2. **OBLIGATIONS OF FRANKLIN**

FRANKLIN shall be responsible for the delivery and retrieval of all vehicles, apparatus and equipment to receive service hereunder to the Town of Foxborough at 8 Chestnut St. Foxborough, MA 02035. Said Town shall specify, in writing, the nature of service requested, any applicable time restrictions, and, upon receipt of notification of the cost and charges attributable to said service from Foxborough, it shall remit payment thereof to Foxborough within the time period specified in Appendix B.

3. **OBLIGATIONS OF FOXBOROUGH**

The Town of Foxborough will provide to FRANKLIN, on an "as available" basis, the services of Foxborough's certified Emergency Motor Vehicle Technician for purposes of maintaining and/or repairing the emergency motor vehicles of the FRANKLIN Fire and EMS Department vehicles on an as needed, negotiated cost basis. Foxborough shall provide the subject services only to the extent that its existing or prospective staffing levels reasonably permit; it shall not be required to increase or supplement its personnel to accommodate the service demands of the Towns hereunder. The Foxborough Fire Chief shall have final authority to determine whether the Town has adequate capacity and resources to provide services upon any request therefor.

4. **PERSONNEL AND WARRANTIES**

**PERSONNEL:** For the purposes of this Agreement, Foxborough shall maintain in its employ a duly certified Emergency Motor Vehicle Technician and necessary support staff, who shall provide all services hereunder from the Foxborough Fire Department facility located at 8 Chestnut Street, unless the parties hereto expressly agree otherwise. Foxborough will perform the services requested under this Agreement in compliance with all applicable laws and regulations, and in a manner consistent with that degree of skill and care ordinarily exercised by emergency vehicle technicians currently practicing in the eastern Massachusetts under similar conditions.

**WARRANTIES:** Foxborough warrants that all work to be performed hereunder will be performed in a good and workmanlike manner and in strict conformity with this Agreement. Foxborough warrants all repairs and work furnished hereunder against defects in workmanship for one (1) year from the date of Franklin's acceptance of said work and will

provide the labor for any repairs required as a result of any such defect in workmanship at no cost to Franklin. Foxborough further warrants that, to its knowledge and upon reasonable inspection thereof, all parts and materials installed hereunder shall be merchantable; suitable for the purpose for which they are being used; of uniform quality and consistency, absent from known defects; and that they conform with any sample thereof which may have been presented by Foxborough to Franklin. Foxborough's warranty of parts and materials used in completion of the work shall apply only to the extent of part/material manufacturers' guarantees and/or warranties. Foxborough cannot assume responsibility for, and thus cannot further warrant or guarantee no-cost replacement of parts or materials which have failed prematurely solely due to latent manufacturer defect. Foxborough makes no other warranties or representations, express or implied, regarding the services provided hereunder.

**5. COMPENSATION BY FRANKLIN TO FOXBOROUGH**

The compensation to be paid by FRANKLIN to Foxborough for said services shall be determined, assessed, invoiced, and paid as provided in the Service Cost Schedule set forth in Appendix B. Any Foxborough employee performing work on a Franklin emergency vehicle shall continue to be an employee of Foxborough, and Foxborough shall continue to be solely responsible for that person's compensation and benefits. In no event shall this agreement be deemed to make any person performing said work an employee of the Town of Franklin or entitle him to receive any work-related compensation or benefits from the Town of Franklin.

**6. DISPUTE RESOLUTION**

No suit upon any claim or cause of action upon, or for damages upon, by reason of, or growing out of, this Agreement or its non-performance or faulty performance, shall be filed or maintainable by any party unless notice of such claim or cause of action be first given to the other party at its above-noted address not less than sixty (60) days prior to filing.

In the event any dispute of any kind should arise between the Towns concerning the construction of this Agreement or the breach thereof, such dispute may, if the parties agree in writing to do-so, be submitted to an arbitrator selected by the American Arbitration Association. The proceedings before said arbitrator shall be governed by the rules and regulations of said Association, and the award and determination of said arbitrator shall be binding and conclusive upon the Towns and they herewith agree to abide thereby. Any costs associated with arbitration shall be split evenly between the Towns. The Towns may also mutually agree in writing to use other forms of alternative dispute resolution, including mediation, to address disputes arising under this Agreement. Notwithstanding the above, the Towns reserve the right, either in law or equity, and without advance notice to file suit with a court of competent jurisdiction in the nature of specific performance or other proceeding to enforce or compel performance of any or all terms and conditions herein.

**7. SEVERABILITY**

If any provision contained herein is determined by a court of competent jurisdiction to be unenforceable, for any reason, or beyond the scope of the statutory provisions of Chapter 40, § 4A of the General Laws, as amended, then it is the intention of the parties that the remaining provisions hereof shall continue in full force and effect.

**8. ANNUAL STATEMENT**

Each Town shall keep accurate records of services performed, costs incurred and payments, reimbursements and contributions made and received under the terms of this Agreement and shall provide same to the other Town(s) upon request. An annual financial statement reflecting this information shall be made available by each Town on or before October 1 of the following fiscal year.

**9. MAXIMUM FINANCIAL LIABILITY**

The maximum extent of each Town's financial liability in connection with this Agreement shall not exceed the amount validly appropriated by, or available to, each said Town for said purpose.

**10. LIABILITY**

Pursuant to MGL c. 40, s. 4A, each party shall be liable only for the acts and omissions of its own employees and not for the employees of any other agency in the performance of this Agreement to the extent provided by the Massachusetts Tort Claims Act, M.G.L. c. 258. By entering into this Agreement, none of the parties has waived any governmental immunity or limitation of damages which may be afforded to it by operation of law.

**11. AMENDMENT**

No officer, official, agent, or employee of either Town shall have the power to amend, modify or alter this Agreement or waive any of its provisions or to bind either Town by making any promise or representation not contained herein. Any modification to this Agreement shall be by a written amendment duly authorized by each Town. Said amendment shall be executed in the same manner as this Agreement is executed.

**12. ASSIGNMENT**

This duties and obligations established by this Agreement shall not be assigned or transferred by either Town without the express written consent of the other Town, said consent to be made with the same formalities as are required for the execution of this Agreement.

**13. GOVERNING LAW**

This Agreement and all rights of the parties hereunder shall be governed by the laws of the Commonwealth of Massachusetts.

**14. INDEMNIFICATION**

The respective Towns shall hold each other harmless from any and all claims related to employment or employee benefits, to the extent permitted by law, collectively bargained or otherwise, made by persons under their employ prior to the commencement of operations under the Agreement and arising from the establishment hereof. 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, G.L. c. 258. By entering into this Agreement, no Town/ party hereto has waived any governmental immunity or limitation of damages which may be afforded to it by operation of law.

**15. TERMINATION**

Either Town, in the case of Foxborough, by a vote of its Board of Selectmen, and in the case of Franklin, by a vote of its Town Council, may withdraw from and terminate its participation in this Agreement provided it gives not less than ten (10) days advance written notice to the other Towns of its intent to terminate as of a stated date certain. Such termination shall take effect on the date following the termination date specified in said notification. Such termination shall not relieve the terminating Town from any obligations of maintenance, repair, payment or indemnification that may have arisen hereunder prior to such termination, nor from any financial obligations that may extend beyond the termination date. Upon such termination, Foxborough shall prepare a full statement of outstanding unpaid financial obligations under this Agreement and present the same Franklin for payment within thirty (30) days thereafter. Foxborough shall complete any remaining maintenance or repair services on vehicles in its possession at the time of termination.

**16. WAIVER**

The obligations and conditions set forth in this Agreement may be waived only by a writing signed Foxborough and Franklin waiving such obligation or condition. Forbearance by a Town shall not be construed as a waiver, nor limit the remedies that would otherwise be available to that Town 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. HEADINGS**

The paragraph headings herein are used for convenience only, are not part of this Agreement and shall not affect the interpretation of this Agreement.

**18. 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, upon the date of verified delivery by courier of package delivery service, or three (3) business days after the date of any properly addressed notice sent by mail as set forth below:

**For: Town of Foxborough**

*William G. Keegan, Jr.  
Town Manager  
40 South Street  
Foxborough, MA 02035*

**For: Town of FRANKLIN**

*Jamie Hellen  
Town Administrator  
355 East Central St  
Franklin, MA 02038*

**20. COMPLETE AGREEMENT**

This Agreement constitutes the entire agreement between Foxborough and Franklin concerning the subject matter hereof, superseding all prior agreements and understandings. Any other agreements or understandings made or offered, whether oral or written, between the Towns concerning the subject matter hereof that are not contained in this Agreement and its amendments are hereby declared invalid.

Witness the duly authorized signatures of the parties:

**Town of FOXBOROUGH**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Town of FRANKLIN**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



**APPENDIX A**  
(VOTES OF BOARDS OF SELECTMEN)

**APPENDIX B**

(COMPENSATION FOR SERVICES)

A. Fee Schedule: See the attached schedule entitled “Foxborough Fire & Rescue, Motor Squad Preventative Maintenance Offerings” for Franklin Fire. Foxborough Fire has a repair rate of \$95 per hour for unscheduled and general repairs. The fee schedule shall and repair rate shall have an escalator of 2% commencing on January 1 2022 and 2% January 1 2023 applied to all rates.

B. Invoice Procedure: Invoices shall be generated and sent at the completion of all service or repair and shall have net 30 day terms.