

# FEASIBILITY STUDY: JOINT FIRE DISTRICT IN THE TOWN OF ATHOL AND THE TOWN OF ORANGE

## **I. Introduction**

The Montachusett Regional Planning Commission (MRPC) has been requested by the Massachusetts Department of Housing and Community Development (DHCD) through the District Local Technical Assistance (DLTA) Program to provide technical assistance to the Town of Athol, Massachusetts. The purpose of this effort is to study the feasibility of a joint fire district (the “fire district”) between the Town of Athol, Massachusetts and the Town of Orange, Massachusetts.

The study includes researching any similar feasibility studies or existing relevant models; analyzing existing resources within each Town (equipment, personnel, etc.); researching Massachusetts statutes and regulation and drafting of recommendations. The requested recommendations concern the logistics of establishing a fire district encompassing the two communities and issues such as equipment, personnel, storage and maintenance, dispatching, and management. The requested recommendations also concern any issues (e.g. liability, legislation, union contracts, retirement systems, etc.) that may be outside the scope of this initial effort.

The following is the response to MRPC providing an initial overview of the feasibility of creating the fire district. The study first provides profiles of the two towns, including demographic data. The study also provides overviews of the fire departments in the two Towns, including equipment and facility inventories, call histories and financial summaries.

The study next provides an overview of legal procedures by which firefighting organizations can be established under Massachusetts law. These procedures include mutual aid between established fire departments, creation of a fire district within a town, an intermunicipal

agreement between two or more towns and creation of a fire district between two or more towns by passage of a special act by the State Legislature.

The study next provides an analysis of how these procedures could be used to establish joint firefighting between the two Towns. Finally, the study discusses which procedure would be most appropriate to establish joint firefighting between the two Towns and makes recommendations for future action.

## **II. Town Information**

### **A. Town of Athol:**

Athol is located in north central Massachusetts, in Worcester County, bordered by New Salem and Orange on the west, Royalston on the north, Phillipston on the east and Petersham on the southeast. Athol is located between the Tully Mountains to the north and the Quabbin Reservoir to the south. Athol follows the Open Town Meeting-Board of Selectmen (5 members)-Town Manager form of government. The children of Athol are served by the Athol-Royalston Regional School District. Additionally, students may choose to attend the Montachusett Regional Vocational Technical School in Fitchburg.

Total area: 33.40  
Land area: 32.58 square miles  
Public Road miles: 111.30  
Population (2010): 11,584  
Population density per square mile: 356  
Housing units per square mile (2009): 148.11  
Income per capita (2010): \$17,345  
Average tax bill (2012): \$2,069  
Tax rate (2013): \$15.48  
Residential Property Assessed Value (2013): \$551,330,371  
Commercial Property Assessed Value (2013): \$48,521,011  
Industrial Property Assessed Value (2013): \$15,526,200  
Personal Property Assessed Value (2013): \$19,241,022  
Number of single family parcels: 3,399

Number of registered vehicles (2012): 9,839

B. Town of Orange:

Orange is located in north central Massachusetts, bordered by Warwick on the northwest, Royalston on the northeast, Athol on the east, New Salem on the south, and Wendell and Erving on the west. Orange is located within the eastern boundary of Franklin County. Orange has an open Town Meeting, Board of Selectmen (3 members), Town Administrator form of government. The Town was established in 1810, but settlers had been using the water power of the Millers River for manufacturing since the damming of the river in 1790. The community is made up of former sections of Athol, Warwick, Royston and a tract of land called Ervinshire. It was named for William, Prince of Orange. True to its industrial past, Orange was the site of the first automobile factory in the United States. Industrial products from Orange today include heavy machinery, precision tools, plastics and wood products. The Rodney Hunt Company, producing water control equipment, is one of the largest employers in Franklin County. Orange Airport Industrial Park provides a site for industrial expansion, while open lands offering camping and maple sugaring to visitors provide some rural character.

The Ralph.C. Mahar Regional School District serves the towns of New Salem, Orange, Petersham, and Wendell, grades 7-12.

Total area: 36.00 square miles

Land area: 35.38 square miles

Public Road miles (2009): 103.53

Population (2012): 7821

Population density per square mile: 217

Housing units per square mile (2009): 93.41

Income per capita (2010): \$15,999

Average tax bill (2012): \$2,780

Tax rate (2013): \$18.80

Residential Property Assessed Value (2013): \$407,069,166

Commercial Property Assessed Value (2013): \$41,046,106

Industrial Property Assessed Value (2013): \$15,602,895

Personal Property Assessed Value (2013): \$14,514,240

Number of single family parcels: 2070

Number of registered vehicles (2012): 6,973

### **III. History of Regionalization efforts**

Newspaper accounts indicate that efforts to regionalize services between towns in the area have been largely unsuccessful to date. In September of 2011, the Athol Selectboard rejected a proposal for a joint building inspection/zoning department between the two Towns. In November of 2013, the Athol Selectboard voted not to participate in the creation of a cooperative building commissioner for the Towns of Athol, Barre, Hardwick, New Braintree and Petersham. Also in November of 2013, the New Salem Selectboard voted not to move forward with regionalizing the Town's animal control services, which regionalization would have included Athol and/or Orange. However, in November of 2013 the Athol Selectboard voted to sign a Community Innovation Challenge Grant application for funds to support the creation of a regionalized animal control program.

#### **IV. Fire Departments Profiles**

##### **A. Athol:**

The Athol Fire Department's operational budget was \$1,760,524 in fiscal year 2012. According to the Department's Report for 2011-2012, because of the failure to pass an override to secure proper staffing to handle non-emergency ambulance transfers, the Department continued to handle these calls with off duty personnel. The Report states that it is necessary to add more staff to ensure long term success and relieve the staff that are covering non-emergency transfers. The Report states that the Department has 18 full time staff members and 13 vehicles.

The Report also states that Fire Station #1 is in very poor condition and that funding to replace this building failed a few years ago. The Report notes that at least 60% of the fire and ambulance calls are in the downtown district and that if the downtown fire station property is sold, the Department will pursue the purchase and installation of a steel type of building to be added to the uptown station.

According to media reports, in April 2008 voters overwhelmingly defeated a ballot question seeking a debt exclusion for the cost of a proposed new downtown fire station. The Department had advocated for a downtown station to reduce response time to various parts of Town in the interest of increased public safety. The then existing approximately 115 year old downtown station remained functional and housed equipment, had electricity and heat and was the location of the Department's radio tower. Funding was required to make repairs and upgrades to keep the station habitable.

The Report also notes that the Department replaced the 1984 Engine 4 with a new 2012 KME pumper with a water capacity of 1000 gallons and a new set of "Jaws of Life" were purchased from the Bassett Donation account and mounted on this new pumper.

The Report also notes that there were 3,542 total calls for service in 2011-2012.

B. Orange:

According to its website, “the Orange Fire Department was established in 1833 with its first Chief Engineer, Rodney Hunt. The Orange Fire Department is a Combination Department consisting of ten full time employees (Fire Chief, (3) Shift Captains and (6) Firefighters) and on call officers and firefighters. The Department operates (3) Fire Engines, (1) Aerial Ladder, (1) Tender, and multiple support apparatus. In addition to proudly providing fire protection to the citizens of Orange. The department also provides Advanced Life Support to the town of Orange and also the towns of Erving, New Salem, Warwick, and Wendell. The Department operates four ambulances (3 class I, and 1 Class 5).”

The Orange Fire Department’s operating budget was \$1,063,317 in fiscal year 2012. Information provided by the Department states that the Department responded to a total of 1971 incidents in fiscal year 2012.

C. Compatibility of Athol and Orange Fire Departments:

The Chiefs of the two Departments both have told us that they believe a joint fire district would result in cost savings, increased level of service, improved response times and the meeting of national fire prevention standards. The Chiefs have informed us that the fire hazards in the two Towns are comparable, the two Departments’ radio systems are compatible and that the fire equipment of each Town would fit in the other Town’s existing stations. The Towns have similar downtown areas, building sizes in the Towns are similar and both Towns have historic mill complexes with associated housing.

## **V. Methods To Establish Joint Firefighting**

### **A. Mutual Aid:**

The two Towns already cooperate and have shared fire fighting experiences pursuant to a mutual aid agreement. One option available to the two Towns is to expand mutual aid services between the two Towns. This would be essentially an expansion of the status quo. Mutual Aid agreements work as follows.

Cities, towns and fire districts may authorize their respective fire departments to go to the aid of another city, town or fire district in the commonwealth or areas under federal jurisdiction, or in any adjoining state in extinguishing fires, or rendering emergency aid or performing any detail as ordered by the head of the fire department. M.G.L. c.48, Section 59A; 18A Mass. Prac., Municipal Law and Practice § 21.25 (5th ed.)

While performing their duties in extending such aid, the members of a fire department will have the same immunities and privileges as if performing the same within their respective cities, towns or districts. An ordinance, bylaw or vote may authorize the head of the fire department to extend such aid, subject to conditions and restrictions as may be prescribed. M.G.L. c.48, Section 59A; 18A Mass. Prac., Municipal Law and Practice § 21.25 (5th ed.).

During the course of rendering such mutual aid to another municipality, the municipality rendering aid will be responsible for its equipment, any damage thereto, and for personal injury sustained by a member of its department unless there is a written agreement to the contrary. M.G.L. c.48, Section 59A et seq; 18A Mass. Prac., Municipal Law and Practice § 21.25 (5th ed.); see also, M.G.L. c.32, Section 7(4)(a),(b).

B. In-Town Fire District:

The following is a summary of the Massachusetts General Law regarding establishment of an in-town fire district pursuant to M.G.L. c.48, Section 60 et seq. In our opinion this procedure is not available to establish one new fire district containing the two Towns because it applies to a fire district to be established within one town where there is currently no adequate fire department. The instant situation involves two towns where there are currently adequate fire departments but where improvements in efficiency and cost effectiveness are sought. Moreover, the procedures applicable to creating and operating such a district as set forth in the General Laws are cumbersome and difficult to accomplish. Accordingly, the option of resorting to tools made available by the General Laws would not be a feasible option to establish a two town fire district. Logic suggests however that it would be feasible to create two separate districts one in each town, using the tools already provided for in the general laws if the present fire service could be said to be inadequate. Then the two in town districts could become affiliated using one of the other options set forth in this report, such as some form of mutual aid.

A fire district may be established in any town having no adequate municipal fire department. M.G.L. c.48, Section 60 et seq; 18A Mass. Prac., Municipal Law and Practice § 21.29 (5th ed.) [compare M.G.L. c.41, Sections 99B-99K, designated and known as “[t]he regional police district law”, which permits two or more contiguous towns to establish a regional police district and organize a common police department to serve and protect the inhabitants of said towns]. In a town with a population of less than two thousand, the district must contain at least five hundred inhabitants. In other towns, the district must contain at least one thousand inhabitants. M.G.L. c.48, Section 60.



Unlike a true municipal corporation, a fire district in a Town does not have general powers to regulate the internal affairs of its defined area. It has only specific and limited responsibilities. Cohen v. Bd. of Water Comm'rs, Fire Dist. No. 1, S. Hadley, 411 Mass. 744, 747-48, 585 N.E.2d 737, 739-40 (1992). In Cohen, the Court stated that the fire district at issue was a quasi-municipal corporation. Id. The Court stated that

[l]ike a true municipal corporation (for example, an incorporated city or town), the District is 'a body corporate,' ... existing within definite geographic borders, and empowered by the State to carry out typically governmental or political functions. ... Unlike a true municipal corporation, it does not have general powers to regulate the internal affairs of its defined area; it has only specific and limited responsibilities for fire protection and the public water supply. ... To some extent, with its specialized public function, the District may be considered to be a municipal agency. ... Thus, fire districts are analogous, but not identical, to municipal corporations. ... Fire districts are entities of narrowly defined statutory powers. ... Like the powers of municipal corporations prior to the Home Rule Amendment, a fire district's powers are limited to those that are expressly granted by statute or necessarily implied by, or incident to, those express powers.

Cohen v. Bd. of Water Comm'rs, Fire Dist. No. 1, S. Hadley, 411 Mass. 744, 749-50, 585 N.E.2d 737, 741 (1992)

In order to establish a fire district in a town, a petition must be presented to the town meeting stating the limits of the proposed district and requesting the town to appropriate funds for the establishment and maintenance of a sufficient fire department for the reasonable protection of the inhabitants and property within those limits. If the town fails to take the requested action, the inhabitants of the proposed district may organize the district and establish a district fire department. M.G.L. c.48, Section 61.

On application of seven "freeholders", the town selectmen will call a meeting of the voters of the proposed district. If the selectmen refuse or neglect to call such meeting, it may be

called by a justice of the peace. M.G.L. c.48, Section 62. At such meeting, the voters may determine to establish a fire district, in which case they will choose a clerk, who must be sworn. M.G.L. c.48, Section 63. The meeting may vote to establish a fire department, to consist of a chief engineer and as many assistant engineers, enginemen, hosemen and hook and ladder men as it considers necessary, within the statutory limits. M.G.L. c.48, Section 64. The chief engineer and assistant engineers will be chosen for terms not exceeding three years, and they must be sworn to the faithful discharge of their duties. M.G.L. c.48, Section 65.

The officers of the in-town fire district consist of the clerk, the prudential committee, the moderator and the treasurer. The prudential committee, which functions in the district much as do selectmen in a town, is elected by the voters of the district, as is also the treasurer. M.G.L. c.48, Section 71. The moderator is chosen by ballot at each meeting, unless the district has voted to elect a moderator annually. M.G.L. c.48, Section 66.

A fire district where official ballots are used may, at an annual meeting or at a special meeting called for the purpose, vote that official ballots shall thereafter be used in the district. If such vote is taken the election laws will thereupon apply. M.G.L. c.41, Sections 113-119. A district, having voted to use official ballots, may by a two-thirds vote, discontinue their use. M.G.L. c.41, Section 113.

Every district meeting is called pursuant to a warrant under the hands of the prudential committee with at least seven days' notice. The warrant must state the time and place of the meeting and the subjects to be acted upon. The prudential committee must insert in the warrant for the annual meeting any article petitioned for by ten voters of the district and in the warrant for a special meeting any article petitioned for by fifty voters, or by ten percent of the total number of voters in the district. A special meeting must be held within thirty days after the

receipt of a petition of one hundred voters in the district or twenty percent of the total number of voters in the district. M.G.L. c.48, Section 66.

A fire district in a town may adopt bylaws, rules and regulations, but none of these which imposes a penalty will be effective until it has been approved by the attorney general and has been published at least three times in a newspaper. M.G.L. c.48, Section 77.

A fire district in a town may hold real estate for the public use of its inhabitants. By its prudential committee, the district may let or lease, on such terms as the committee may determine, land, a public building, or part thereof. M.G.L. c.48, Section 77A.

An in-town fire district may vote to annex adjacent territory, if a majority of the voters of the territory petition for such annexation. The district may also, on petition of any person, with the assent of the town containing the district, exclude him or his property from the district. Such exclusion may be granted without the consent of the town if the petitioner or his estate is so situated as to be unable to benefit from any fire or water facilities owned by the district, or is so situated as to be more accessible to the facilities of another fire district. Such exclusion may not be granted, however, if the petitioner or his estate is so situated as to be able to benefit either from the fire facilities or the water facilities of the district. A petitioner who is aggrieved by the refusal of the district meeting to grant his petition for exclusion has a right of appeal to the superior court sitting in equity for the county in which the district is located. If the court finds the reason set forth by the petitioner in his petition for exclusion is within the intent of the statute, it will grant such exclusion. The grant of exclusion will exempt the petitioner and his estate from any tax levied by reason of any district appropriation made after the filing of his petition. M.G.L. c.48, Section 79.

A district has the same obligation to indemnify a fireman or a member of its fire department as does a city or town. M.G.L. c.41, Section 100.

A fire district is considered a municipal agency for the purpose of the state ethics law, and each part-time firefighter of the district and any person who performs professional services for the district on a part-time, intermittent or consultant basis will be considered a special municipal employee. M.G.L. c.48, Section 90.

Any laborer employed by an in-town fire district which has accepted the statutory section prior to January 1, 1946, who attains age sixty after having been employed by the district for twenty-five years and is physically or mentally incapacitated for labor, and any laborer employed by such district for not less than fifteen years who has become incapacitated by reason of injuries received in line of duty, may at his request and with the approval of the prudential committee, be retired on pension equal to one-half pay. A laborer attaining age sixty-five after twenty-five years' service will be retired on a similar pension. M.G.L. c.32, Section 78.

A fire district may raise money by taxation for the purchase of engines and other apparatus, for hydrant and water service, for the purchase of land, for the erection and maintenance of buildings, for the installation and maintenance of street lamps, for the payment of a proper charge of an insurance company for acting as surety on the official bond of any district officer, and for other incidental expenses of the district fire department. M.G.L. c.48, Section 69. A fire district may not incur liabilities in excess of its appropriations. M.G.L. c.44, Sections 31, 31B.

The clerk of an in-town fire district certifies to the assessors of the town all votes of the district authorizing interest on indebtedness to be added to taxes, and all sums of money voted to be raised, and these amounts are assessed upon the real and personal property within the district,

and are collected in the same manner as town taxes. When collected, these district taxes are paid over to the district treasurer. The town assessors, treasurer and collector have the same powers and duties relative to the assessment and collection of money voted to be raised by a fire district as they have and exercise relative to the assessment, collection and abatement of town taxes.

M.G.L. c.48, Section 73.

The in-town fire district must annually appropriate money for the salaries or compensation of the assessors and collector of taxes of the town, which shall be in addition to the salaries or compensation provided by the town and shall be in amounts not less than those determined by the prudential committee of the district and the selectmen of the town. If the committee and the selectmen cannot agree, the state commissioner of revenue will determine the amounts and the assessors will include such amounts in the aggregate amount assessed annually for district taxes. M.G.L. c.41, Section 108B.

An in-town fire district may incur debt for temporary loans in anticipation of the revenue of the fiscal year, and may issue notes to an amount not exceeding the receipts from certain taxes and payments made by the commonwealth in lieu of taxes of the preceding fiscal year. If the district has not been established for an entire fiscal year, the borrowing may be for such amount as is fixed by vote of the district. M.G.L. c.44, Section 4.

An in-town fire district may, by a two-thirds vote, authorize the incurring of debt for such of the purposes, for which cities and towns may borrow, as a fire district is authorized to expend money, and for the same period of time, in each instance, as is allowed the city or town. The district is limited in the amount of its borrowing by the same limitations imposed on towns. In borrowing within the debt limit, a district must first appropriate for the same purpose from available funds or from the current tax levy a sum equal to twenty-five cents on each one

thousand dollars of the assessed valuation of the district in the preceding year. M.G.L. c.44, Section 9.

An in-town fire district performs a public function, and the taxes which it has the power to impose are not special assessments. It follows, therefore, that a charitable corporation is exempt from such taxes. President of Williams College v. Inhabitants of Town of Williamstown, 219 Mass. 46, 47, 106 N.E. 687 (1914).

The fiscal year of an in-town fire district ends on June thirtieth, notwithstanding the provisions of any special law or district bylaw to the contrary. However, the district treasurer may, until July tenth, enter on his books all items for the payment of bills incurred and salaries and wages earned during the previous year, and expenditures for these purposes will be deemed to have been made as of the preceding June thirtieth. M.G.L. c.41, Section 120.

An in-town fire district may petition the director of accounts in the state department of revenue for an audit of its accounts or for the installation of an accounting system. The director is required to have an audit made of district accounts at least each two years. The commonwealth will be reimbursed by the district for installing such accounting system and for the cost of such audits. M.G.L. c.44, Sections 35-41.

It has been held that “[a] fire district is a territorial subdivision of the state, bounded and organized under the authority of the Legislature for the governmental purpose of providing protection against fire within its limits, maintaining street lights and other subsidiary matters. . . . [I]t is in substance a quasi municipal corporation of definitely restricted powers. Prout v. Pittsfield Fire District, 154 Mass. 450, 28 N. E. 679; see also, President of Williams College v. Inhabitants of Town of Williamstown, 219 Mass. 46, 47, 106 N.E. 687 (1914).

C. Intermunicipal Agreement:

A governmental unit may enter into an agreement with another governmental unit for joint fire, rescue and ambulance service for a period not exceeding twenty-five years. 18A Mass. Prac., Municipal Law and Practice § 21.19 (5th ed.). M.G.L. c.40, Section 4A states:

*[t]he chief executive officer of a city or town, or a board, committee or officer authorized by law to execute a contract in the name of a governmental unit may, on behalf of the unit, enter into an agreement with another governmental unit to perform jointly or for that unit's services, activities or undertakings which any of the contracting units is authorized by law to perform, if the agreement is authorized by the parties thereto, in a city by the city council with the approval of the mayor, in a town by the board of selectmen and in a district by the prudential committee .... Any such agreement shall be for such maximum term, not exceeding twenty-five years, and shall establish such maximum financial liability of the parties, as may be specified in the authorizing votes of the parties thereto. A governmental unit, when duly authorized to do so in accordance with the provisions of law applicable to it, may raise money by any lawful means, including the incurring of debt for purposes for which it may legally incur debt, to meet its obligations under such agreement. Notwithstanding any provisions of law or charter to the contrary, no governmental unit shall be exempt from liability for its obligations under an agreement lawfully entered into in accordance with this section. For the purposes of this section, a "governmental unit" shall mean a city, town or a regional school district, a district as defined in section 1A, a regional planning commission, however constituted, a regional transit authority established under chapter 161B, a water and sewer commission established under chapter 40N or by special law, a county, or a state agency as defined in section 1 of chapter 6A.*

*All agreements put into effect under this section shall provide sufficient financial safeguards for all participants, including, but not limited to: accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received; the performance of regular audits of such records; and provisions for officers responsible for the agreement to give appropriate performance bonds. The agreement shall also require that periodic financial statements be issued to all participants. Nothing in this section shall prohibit any agreement entered into between governmental units from containing procedures for*

*withdrawal of a governmental unit from said agreement. A decision to enter into an intermunicipal agreement under this section, or to join a regional entity, shall be solely subject to the approval process of the towns' elected bodies.*

*All bills and payrolls submitted for work done under any such agreement shall be plainly marked to indicate that the work was done under authority thereof. Any reimbursement for or contribution toward the cost of such work shall be made at such intervals as the agreement provides. The amount of reimbursement received under any such agreement by any governmental unit shall be credited on its books to the account of estimated receipts, but any funds received under the provisions of section fifty-three A of chapter forty-four for contribution toward the cost of such work may be expended in accordance with the said provisions. The equipment and employees of a governmental unit while engaged in performing any such service, activity or undertaking under such an agreement shall be deemed to be engaged in the service and employment of such unit, notwithstanding such service, activity or undertaking is being performed in or for another governmental unit or units.*

The advantages of this option are:

- (a) Speed of accomplishment. An intermunicipal agreement (“IMA”) can be put together quickly and only needs approval of the respective Boards of Selectmen;
- (b) Sunsetting. An IMA is not permanent and instead must end or be renewed. An IMA can provide for shorter periods of operation within the maximum of 25 years allowed by statute, allowing testing and experimentation over a shorter “trial” period so the towns can “try” the combined fire operations for a short time to see “how well it works”, and then renew or modify as needed.;
- (c) Flexibility. The two Towns can provide in an IMA such terms, conditions and procedure that would work for the Towns.

The disadvantages are:

- (a) No institutional permanence. IMAs are of limited duration;



(b) No independence. The combined operations would not be independent from the Towns' governmental structure, so there wouldn't normally be any buffer or protection from the ebb and flow of the usual local political considerations. The two fire departments would still depend upon the financial and political support of the two towns.

(c) No freestanding governmental unit. An IMA is not the tool to use to create a new stand alone governmental entity. Instead the creation of a "body corporate and politic" is best done by the General Court.

(d) Civil Service. An IMA can't repeal or modify the civil service status of the employees of the two towns.

Additional Communities. We note that, as quoted above, M.G.L. c.40, Section 4A states: *"[n]othing in this section shall prohibit any agreement entered into between governmental units from containing procedures for withdrawal of a governmental unit from said agreement. A decision to enter into an intermunicipal agreement under this section, or to join a regional entity, shall be solely subject to the approval process of the towns' elected bodies...."* In our opinion, an IMA could include provisions to allow additional communities to join the fire district after it is established. For example, IMA's sometimes provide for an advisory committee comprised of one designee from each community. A provision for admitting additional communities to the fire district by vote of the advisory committee, subject to approval by the new town's Board of Selectmen, could be included in an IMA.

Financing. In our opinion, an IMA could include provisions for the payment of membership fees by the participating communities. Also, we note that M.G.L. c.40, Section 4A states that "[a] governmental unit, when duly authorized to do so in accordance with the provisions of law applicable to it, may raise money by any lawful means, including the incurring

of debt for purposes for which it may legally incur debt, to meet its obligations under ... [an intermunicipal agreement].”

D. Special Act:

A joint fire district between all or part of two towns can be established by passage of a special act by the State Legislature. Fire districts have frequently been created by special acts. Occasionally, the fire district so created includes territory in two or more towns. 18A Mass. Prac., Municipal Law and Practice § 21.29 (5th ed.). Examples of fire districts created by special acts are: the Great Barrington Fire District (Acts of 1902, Chapter 439); Fire District Number One, Town of South Hadley (Act of 1872, Chapter 114); Montague Center Fire District, (Acts of 1941, Chapter 431); Centerville-Osterville-Marston Mills Fire District (see, Acts of 1993, Chapter 259).

As an example, the Centerville-Osterville-Marstons Mills Fire-Rescue and Emergency Services is a full-time department operating with fire-rescue stations in the villages of Osterville, Marstons Mills and the Headquarters Station in Centerville.

The Department was formed in 1926, building fire stations in the villages of Centerville and Osterville with one 1925 Maxim for each village. Marstons Mills became part of the District in 1956 and a fire station was built there during 1974-1975.

The District encompasses approximately 26 square miles, 8 miles of open ocean with many bays and inlets. The District has a population of approximately 28,000 year round residents and a summer population of over 40,000 in June, July and August.

The Department consists of four shifts of 12 Firefighter EMT's and Paramedics with a minimum assignment of a shift commander and three Firefighters at the Headquarters station and

three Firefighters assigned to each station in Osterville and Marstons Mills. All stations operate an Advanced Life Support Ambulance.

The Department operates four engines, one 100' Quint Aerial Ladder, one Brushbreaker and one forestry vehicle. Each station has a small boat for water rescue and the District keeps a 22' Boston Whaler Fire-Rescue boat at the Osterville boat basin from April to December. The District also operates a 15 member Dive Team and Dive Truck.

The Department operates with its own Communications Center with four uniformed Civilian Dispatchers and they also dispatch for the Cotuit Fire Department. The Department has two Fire Prevention Officers, one EMS Officer and one full-time mechanic all of whom work Monday through Friday days along with a Fire Chief and Deputy Fire Chief.

The Department responded to 4,033 calls in 2011 with 2,846 ambulance related calls.

Advantages of a special act fire district:

(a) Permanance. The creation by statute adds the element of relative permanence to the District;

(b) Independence. A statutory fire district can operate independently of town governments, directly sending tax bills, having its own prudential committee separately elected and having its own district wide town meetings for legislative actions to appropriate funds for operation of the district.

Disadvantages of a special act fire district:

(a) Time. Creation of a fire district by special act would require approval through the time consuming legislative process applicable to the State Legislature.

(b) Local approval. As noted below, a two town special act does not require that the two

towns to follow the Massachusetts Constitutional procedure for Home Rule Petitions to the General Court. However, having local assent via Town Meeting approvals from both constituent towns is a favorable condition for enactment. In our opinion, it is likely the General Court would require acceptance of the special act locally by some manner that could be the Board of Selectmen, or Town Meeting or ballot question to be voted upon by the two Towns.

Additional Communities. In our opinion a special act could include provisions to allow additional communities to join the fire district after it is established. For example, a special act could provide for an advisory committee comprised of one designee from each community. A provision for admitting additional communities to the fire district by vote of the advisory committee and approval by the new town's Board of Selectmen could be included in the special act.

Financing. In our opinion, a special act could include financing provisions similar to an in-town fire district. A special act could include provisions for the raising of money by taxation for the purchase of engines and other apparatus, for hydrant and water service, for the purchase of land, for the erection and maintenance of buildings and for other expenses of the district fire department. Taxes could be assessed upon the real and personal property within the district, and collected in the same manner as town taxes.

#### Labor Issues

The labor complications to creation of a district depend upon the means used and the details incorporated into those means. Here is an overview:

Pursuant to the expanded mutual aid option, there would be the least complication from labor issues, as the town and the firefighting/rescue employees continues to operate as in the same manner as they have been operating.

Pursuant to the Intermunicipal Agreement option, there would be a range of issues, at the very least bargaining issues as to the impacts on employees. But the IMA route is flexible enough such that the IMA can be designed to minimize such impacts by retaining employees as employees of their respective towns of origin. Retirement, health insurance and benefits could be designated to be attributed to the Town of origin of the employees. To the extent an IMA takes on the aspects of creating something akin to a new operating unit of government, then the labor issues described below for statutory fire district may arise.

A statutory fire district brings with it the most complicated labor issues.

The special act is the tool to use to create a new governmental unit, so the special act as part of its text could be expected to address the transfer of existing employees from the employment by the Towns to employment by the new district. While the two fire departments are represented by the same international union, at present there are two separate “local” units of that union to be consolidated into one merged local.

If a joint fire district were created by special act, it is expected that the new fire district would become the new employer. This could create issues with the unions in which the employees of the two Departments are currently members. Both departments are unionized. To the extent a new governmental unit is created, new collective bargaining agreements would have to be negotiated for the new employer.

As noted above, Athol is located in Worcester County and operates its own stand alone retirement system, while Orange is located in Franklin County where it is part of the Franklin County Retirement System. Athol participates in civil service for Fire Department employees, while Orange does not. The special Act could be expected to define which retirement system, Athol’s or Worcester’s or Franklin’s would apply to a new governmental unit.. Similarly, where

some of the employees are covered by civil service and others not (one town's Fire Department employees are civil service the other not), then in a combined district the special Act can resolve the civil service status of the combined entity.

In contrast, if a new governmental unit was not created, then a policy choice would need to be made regarding which department would be the "lead department" in the new joint fire district, which would determine the identity of the department employees for whom employees would work or be "assigned", so that retirement issues could be resolved by the rule that the retirement system in operation for the lead department becomes the applicable retirement system for the combined entity; similarly the lead department's civil service status can be used to decide the policy question of whether and to what extent civil service applies. In the case where no new governmental entity was created, all impacts on employees would have to be collectively bargained with "impact bargaining", but where a new governmental unit is created, entirely new agreements have to be negotiated for a new employer.

## **VI. Methods of Governance of Fire District**

Fire district governance generally employs a model of a prudential committee, clerk-treasurer and moderator. District meetings are called by the prudential committee pursuant to a warrant with at least seven days notice. The following are three examples.

### **A. In-Town Fire District:**

The officers of an in-town fire district consist of the clerk, the prudential committee, the moderator and the treasurer. M.G.L. c.48, Section 60 et seq. The prudential committee, which functions in the district much as do selectmen in a town, is elected by the voters of the district, as is also the treasurer. M.G.L. c.48, Section 71. The moderator is chosen by ballot at each meeting,

unless the district has voted to elect a moderator annually. M.G.L. c.48, Section 66. The specifics of governance of an in-town fire district are set forth above in Section V.B.

B. Centerville-Osterville-Marston Mills Fire District:

The Centerville-Osterville-Marston Mills Fire District (Acts of 1993, Chapter 259) provides a similar model of governance of a fire district. The officers of this district consist of a prudential committee comprised of three members, a board of fire commissioners comprised of three members, a board of water commissioners comprised of three members and a moderator, all of whom are elected by ballot and serve for terms of three years or until their successors are chosen and qualified. The prudential committee is the chief executive officer of the district and exercises general management responsibility over district affairs. In addition, the prudential committee appoints a clerk/treasurer. The board of fire commissioners appoints a fire chief and deputy fire chief. The board of water commissioners appoints a water superintendent and assistant water superintendent. Meetings of the District are called pursuant to a warrant issued by the prudential committee.

C. Dartmouth Fire Districts:

There are three independent fire districts in the Town of Dartmouth, Massachusetts. Dartmouth's three fire districts are autonomous local units, serving the Town of Dartmouth, but entirely separate from the Town. Voters within each district elect their own Prudential Committee. The position of Fire Chief is appointed by the Prudential Committee. Annual meetings allow voters to approve general policy, budget, and capital outlay. The District is financed by property taxes levied by the Fire District meetings.

## **VII. Analysis**

The Chiefs of the Departments have informed us that intermunicipal agreements proposed between the two Towns have not worked historically. The Chiefs believe that passage of a special act would be necessary to establish a joint fire district between the two Towns. The Fire Chiefs believe that the joint district should be open-ended to allow other towns to join once the district is established. Our analysis indicates that the passage of a special act is a legally feasible option for the Towns.

As noted above, Massachusetts law provides very specific requirements for the creation of an in-town fire district. See, M.G.L. c.48, Section 60 et seq; 18A Mass. Prac., Municipal Law and Practice § 21.29 (5th ed.). Also as noted above, our research indicates that fire districts have frequently been created by special acts. Occasionally, the fire district so created is comprised of territory in two or more towns. *Id.* In our legal opinion, creation of a fire district between the two Towns by intermunicipal agreement or by special act would allow the rules applicable to the district to be customized to fit the specific requirements of the two Towns. Creation of a fire district by intermunicipal agreement is a feasible option and has the advantage of requiring only the approval of the Boards of Selectmen in each of the Towns, while creation of a fire district by special act would require approval through the time consuming legislative process applicable the State Legislature.

The longer time period needed for approval of a special act rather than an intermunicipal agreement could result in increased costs associated with perfecting the language of the special act and negotiating with the legislature to secure its passage. However, a specific consolidation plan, including without limitation provisions for centralized dispatching, equipment and facilities



such as fire stations and the district headquarters must be developed through consultation with the Towns' fire departments before an estimate of costs can be formulated.

A two town special act does not require that the two towns follow the Massachusetts Constitutional procedure for Home Rule Petitions to the General Court. The home rule petition method is applicable to laws that apply to only one town. Therefore the necessary legislation could be requested by any legislator. However, having local assent via Town Meeting approvals from both constituent towns is a favorable condition for enactment. In any event, it is our experience that most likely the General Court would require acceptance of the special act locally by some manner that could be the Board of Selectmen, or Town Meeting or ballot question to be voted upon by the two Towns.

### **VIII. Recommendations and Conclusion**

We recommend that further study be conducted to determine the specific legal rules that would be advisable to apply specifically to a fire district between these two Towns. That study should include careful review of the rules applicable to existing fire districts to determine whether such rules could provide a model for a joint fire district in the two Towns. If the choice is to regionalize, then regional school districts and regional fire districts enabling legislation, intermunicipal agreements and operating rules should also be reviewed as possible models for the organization of this specific district. Such further study should also address without limitation the following issues that are beyond the scope of this initial overview:

Where would the district headquarters be located? [The Chiefs have mentioned land located off of Route 202.]

Would funding be available from the Commonwealth of Massachusetts to help establish the district? [The State-funded Community Innovation Challenge Grant (“CICG”) program established by Governor Patrick in 2012 “encourages and incentivizes regionalization based upon the belief that the most crucial and visible interactions between government and citizens occur locally.”]

How will 911 calls in the district be processed and responded to? [In-house, or contracted out?]

Who would be the Chief of the new district? [This is related to which department would act as the lead-department.]

Should employees of the new district be subject to civil service? [As noted above, Athol currently participates in civil service, while Orange does not.]

We hope this overview is helpful. Thank you for the opportunity to participate.

Respectfully submitted

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Paul DeRensis, Esq.  
John Richard Hucksam, Esq.  
Deutsch Williams Brooks DeRensis & Holland PC  
One Design Center Place  
Boston, MA 02210

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