

FIRE PROTECTION SERVICE AGREEMENT

Between

TOWN OF DURHAM

And

UNIVERSITY SYSTEM OF NEW HAMPSHIRE

This agreement is entered into this 19 day of April, 2016, with an effective date of January 1, 2016, by and between the **Town of Durham** ("Town"), a New Hampshire municipal corporation, and the **University System of New Hampshire** ("USNH"), a state supported university system established by the State of New Hampshire operating through its component institution, the **University of New Hampshire** ("UNH").

WHEREAS, the Town and UNH ("Parties") have agreed to work cooperatively for their collective well-being and future; and,

WHEREAS, the Town recognizes that UNH is part of the University System of New Hampshire, a tax-exempt entity under the laws of the State of New Hampshire, and further is aware of USNH Board of Trustee policy governing payments for municipal services; and,

WHEREAS, UNH acknowledges that Durham provides it with certain municipal services funded by property taxes for which the Town and its taxpayers should be fairly compensated; and,

WHEREAS, the Town acknowledges certain economic, educational, recreational, and cultural benefits of having the University as part of the Community; and,

WHEREAS, UNH acknowledges the importance of contributing to and sustaining an attractive and economically viable community; and,

WHEREAS, the Parties recognize the mutual benefits of professional Fire and Emergency Medical Service (EMS) Services,

NOW THEREFORE IN CONSIDERATION of the foregoing preamble and mutual covenants herein contained, the parties hereto agree as follows:

1. The Durham Fire Department, owned, operated, and managed by the Town, will provide fire protection services to UNH students, staff personnel and buildings located within the corporate boundaries of the Town.
2. The Town shall provide UNH a full range of professional fire protection services necessary for the safety of its property, students and employees and generally provided for the entire Town. These include administration, fire suppression, fire prevention, emergency medical response, and hazardous materials fire response.
3. In the prior agreement the sharing of expenses for the fire department was settled at 50% for each party. This reflected a good faith effort and the application of good judgement by both parties that

this fairly reflected the benefit enjoyed by the parties for having a professional fire department. Barring an unforeseen major change in the character or function of either party, it is the mutual agreement of the parties that the sharing of the costs at 50% for each party for the duration of this agreement continues to reflect the best judgment of the parties.

4. The Parties acknowledge the current lease for the property owned by UNH and occupied by the Fire Department extends to June 30, 2019. By mutual agreement, this lease is extended an additional six and one-half years to December 31, 2025, to run concurrent with this agreement. The amended lease is included as Attachment A to this agreement. The parties specifically acknowledge that this Fire Station and Ambulance Transport facility lease is fundamental to the ability of the Town to provide professional fire and EMS services under this agreement.
5. The Parties further recognize that, when and if the leased facility is no longer suitable for use to enable the Town to provide professional fire services under this agreement, construction of a new Durham Fire Station may then be required. In that event, and provided that UNH desires to continue a Fire Protection Service Agreement with the Town, the Parties agree to jointly fund planning, design and engineering and the construction of a new facility. Costs for such a facility shall be shared on a 50/50 basis.
 - a. Should it be mutually agreed that a new fire station is to be constructed the provisions of paragraph 10 apply in the event the Town chooses to finance the project through issuance of long-term debt.
6. As appropriate, the Durham Fire Chief and the UNH Executive Director for Public Safety or their designees will consult with one another regarding Fire Department detail assignments in support of events on the UNH campus. The UNH Executive Director of Public Safety will provide input regarding detail planning for UNH events which will be given full consideration by the Fire Chief.
7. In accordance with RSA 154:7, the Durham Fire Chief or his/her designee serves as the "Fire Officer in Charge" for Fire, Service Call and Other Emergencies and, per RSA 154:7.I (c) (3), the Fire Department is responsible for emergency medical services within the geographic boundaries of the Town of Durham including University property.
 - a. "Emergency Medical Service" is defined per RSA 153-A.2 (VI) as, "...the pre-hospital assessment and treatment of a sick or injured individual initiated at the scene of an incident and continued through the transport and transfer, if found appropriate, of the individual to a medical facility or other appropriate location in order to prevent loss of life or aggravation of physiological or psychological illness or injury."
 - b. The parties assign contract administration responsibility to the Fire Department for the management of the emergency medical transportation contract. This includes specific responsibility for oversight of the selected transportation company to ensure when they arrive at a scene they are properly equipped, personnel are properly trained and their performance of emergency medical service meets expectations as defined in the contract.
 - i. UNH will refer any issues regarding the transportation service to the Durham Fire Chief for resolution. Recognizing that UNH may be responding to the concerns from a parent or student, the Fire Chief will provide UNH with timely feedback on such resolution.
 - ii. The transportation service contract will include requirements for a common transportation billing rate schedule applicable to incidents within the geographic boundaries of Durham including the UNH campus.

- iii. The parties recognize that as an institution of higher education UNH has specific obligations under various federal statutes including the Clery Act, Title IX and FERPA. In some instances, compliance with these obligations requires or involves the participation of emergency service providers. To facilitate compliance, at no cost UNH will provide periodic training of the transportation company personnel including paid staff and volunteers regarding their role in compliance with these requirements.
 - iv. In addition to requirements regarding transportation services, Durham will incorporate procedures for disseminating public information regarding incidents in the transportation contract that will ensure such information is fully coordinated with the parties.
- c. The Parties agree that McGregor Memorial Emergency Medical Service (McGregor) is currently the selected transport service pending a finalized contract between the Durham and McGregor.
- i. The parties mutually agree that a contract between Durham and McGregor should be finalized no later than July 1, 2016.
 - ii. McGregor allocates certain fixed costs (building lease, dispatch services and standby EMT personnel) to Durham, UNH, Madbury and Lee based on the number of responses to each community in the prior year. Billing for such fixed costs will be directly to each party. In support of such direct billing, the parties will expect McGregor to provide an annual budget showing anticipated revenue and expenses on a schedule consistent with the Durham budget preparation and approval cycle.
 - iii. McGregor may continue to use UNH Police Dispatch as their dispatch service. UNH will bill McGregor for this service
 - iv. McGregor may continue to sub-lease the ambulance building for the term of the Agreement unless the Parties agree to use another transport service or the Fire Department vacates the facility in accordance with the Terms of the Agreement.
- d. Any decision to terminate McGregor as the transport service or the selection of a successor transportation service will be a joint decision between the Parties,
- e. Notwithstanding the above, UNH retains the ability to arrange for standby ambulance service where required by NCAA rules for intercollegiate sports or for campus events. The UNH Executive Director for Public Safety or his/her designee will work with the Durham Fire Chief or his/her designee in coordinating event planning and such standby service. Should an incident occur where the Fire Department assumes "Fire Officer in Charge" responsibility, such standby ambulance service will be under the control and direction of the Fire Officer in Charge (except for standby ambulance services at NCAA-sanctioned events where such ambulance service must remain available at the sporting event unless needed to transport a participant.)
- i. UNH may, at its discretion and cost, arrange for standby ambulance service for campus events to supplement that arranged by the Fire Department if considered necessary and for other events where considered appropriate to supplement the standby service.
- f. The Parties acknowledge that McGregor provides unique opportunities for Town residents and UNH students and staff to obtain EMS training and certifications, and provides other benefits and services to the community and region that are outside what would be typical of a transportation service provider. The Parties agree that UNH may choose to formalize its relationship with McGregor regarding these additional services. Should UNH choose to do so, it will coordinate any such agreement with the provisions of the Durham contract for transport services.
8. The Parties agree to the continuation of a Joint Budget and Service Review Committee. The Committee will meet periodically to discuss fire protection service issues including EMS, review

and discuss the status of the Capital Reserve Fund and Fire Department budget proposals prior to their completion and formal presentation to the Town Administrator. The Town will be represented by two members to be designated by the Town Administrator. The University will be represented by two members to be designated by the President of the University. Committee members will have access to the Durham Fire Department budget and service call records with reasonable notice to the Town administration.

9. The Parties agree to the following overall schedule for preparation and review of the Fire Department capital and operational budgets:
 - a. The Town shall prepare a ten (10) year Capital Improvement Plan (CIP) which outlines future capital improvements to the Fire Department, and a proposed operating budget for the ensuing year for presentation to the Joint Budget and Service Review Committee by August 15 of each year.
 - b. The Committee shall review the CIP and proposed budget prior to September 15th of each year and forward their recommendations to the Town Administrator and UNH Vice President for Finance and Administration (UNH VPFA).
 - c. The Town Administrator and UNH VPFA shall confer with each other and either endorse or amend the proposed operating budget and CIP by October 15th of each year. If they do not agree on the entirety of the budgets and CIP, the areas of disagreement shall be noted in writing and presented to the Town Council and UNH with the budget documents on October 31st of each year.
 - d. The Town Council will review and endorse or amend the operating and capital budgets and adopt them by December 31st of each year.
 - e. Should the Town Council fail to adopt a capital and operating budget by the last workday of the year, the budget as recommended by the Town Administrator shall be adopted as required by section 5.4 of the Town Charter.
10. For any capital expense funded by the Town through long-term debt, the cost share of the debt payments will be based on the cost share in effect at the time the capital expenditure for such expense is approved and will remain at that cost share until the debt is retired. Provided UNH concurred in the capital expense through the process provided in paragraph 9, UNH agrees that, unless otherwise mutually acceptable, it is obligated to pay its share of such debt payments until the debt is retired so long as the facility funded by the debt continues to be used as a fire station. UNH will continue to make such debt payments even if UNH decides unilaterally to discontinue this agreement.
11. The Town shall forward a copy of the Durham Fire Department's approved calendar year budget to UNH by January 15th of each year. Any subsequent reduction in the Fire Department's budget shall result in a refund to UNH of its proportionate share of the reduction. Any subsequent need to increase the Durham Fire Department's budget shall be presented to the Joint Budget and Service Review Committee for review. If the Committee concurs, the Town Administrator and the UNH VPFA will be advised of the increase and, subject to their concurrence, the increase will be presented to the Council for consideration. If the Committee does not concur, their concerns will be presented to the Administrator and VPFA for resolution and presentation to the Council. The Town agrees to notify UNH at least fifteen (15) days in advance of any proposed action by the Town Council to increase the annual Fire Department operating budget beyond that originally

approved by the Durham Town Council. UNH will be obligated to make an additional payment of its proportionate share of an approved increase. If an increase is approved over the objections of UNH or without consultation, UNH is obligated to pay no more than a proportionate share of a 3% increase.

12. The parties agree that the Town will bill UNH in advance on a quarterly basis for its agreed upon cost share less one quarter of the prior year revenues that are directly related to the Fire Department operations such as grants, special details, alarm fines, and permits. The Town agrees to provide the appropriate billing (30) days prior to the payment due date unless otherwise mutually agreed upon by the parties.
13. The Town will maintain a Capital Reserve Fund for equipment and vehicles and unanticipated and/or emergency costs. Fire Department operating budget funds remaining unexpended and unencumbered at the end of the Town's Fiscal Year shall be placed in the Capital Reserve Fund (the Fund), except that the amount placed into the Fund in any one year shall not exceed two and one half percent (2.5%) of that year's annual operating budget. Any amount in excess of two and one half percent (2.5%) will be returned to the parties in proportion to their contribution to the operating budget for that year. Any withdrawal from the Fund will be presented to and mutually agreed upon by the Joint Budget and Service Review Committee prior to such withdrawal.
 - a. The Parties agree to review annually the financial records of the Capital Reserve Fund held by the Trustees of the Trust Funds to verify accuracy with regard to the record keeping and the cost sharing formula. On or before April 1st of each year, the previous year's annual reports filed with the State of New Hampshire on behalf of the Trustees of the Trust Funds will be forwarded to the Joint Budget and Service Review Committee.
14. This Agreement shall be construed under and in accordance with the laws of the State of New Hampshire.
15. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives and successors.
16. The above action by UNH is predicated on continuation of its current tax and regulatory status, and UNH reserves the right to cease payments if any change to that status occurs in the next Legislative session or in any subsequent session.
17. If one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
18. The term of this Agreement is in effect for ten (10) years from January 1, 2016. The Town and University enter into this agreement understanding that changes may occur over the life of the agreement. To the extent possible, the terms and conditions of this agreement anticipate reasonably foreseeable growth and development. However, in the event that either the University or Town experience changes that materially affect the overall equity of fairness of this agreement, or if relevant new information becomes available, the affected party may initiate and the other party agrees to participate in a discussion of amended terms and conditions to this agreement so as to preserve equity and fairness in the allocation of cost and responsibility. Any modification of amendment shall be made by written mutual agreement and shall become effective only when

signed by both parties. Either party may terminate this agreement by giving written notice to the other party one year in advance of when the termination is to take effect.

In Witness Thereof, the parties have executed this Agreement as of the day and year indicated above.

TOWN OF DURHAM

Jessie Berry Todd Selig 3/22/16
Witness Todd Selig Date
Town Administrator

UNIVERSITY SYSTEM OF NEW HAMPSHIRE

Jan Richard Catherine Provencher 4/19/2016
Witness Catherine Provencher Date
Vice Chancellor and Treasurer
University System of New Hampshire

UNIVERSITY OF NEW HAMPSHIRE

Jan Richard Christopher Clement 4/6/2016
Witness Christopher Clement Date
Vice President for Finance
and Administration
University of New Hampshire

SECOND AMENDMENT OF LEASE AGREEMENT

This second Amendment is entered into this ____ day of _____ 2016 by and between the **University of New Hampshire (UNH)**, a component of the **University System of New Hampshire (USNH)**, and the **Town of Durham (Town)**, a New Hampshire municipal corporation.

WHEREAS, UNH and the Town have previously entered into a Fire Protection Service Agreement dated May 5, 1989 in which UNH leases certain property to the Town for the exclusive operation of its fire department and amended that lease in 2005, and,

WHEREAS, the parties wish to extend the term of that Lease Agreement and have the terms and conditions of that agreement remain otherwise the same.

NOW THEREFORE IN CONSIDERATION of the foregoing and the mutual covenants herein contained, the parties hereto agree as follows:

The Lease Agreement dated July 1, 1989, as amended is further amended as follows:

Paragraph 3 of the amended Lease Agreement is amended to read:

“The term of this lease shall be extended from June 30, 2019 to December 31, 2025 , unless sooner terminated in accordance with the provisions hereof. The terms of this lease apply to space occupied by the Durham Fire Department in the UNH Service Building and space occupied by the ambulance service in a separate building adjacent to the Fire Department. UNH will continue to charge the Durham Fire Department an annual rate for the Net Assignable Square Footage (NASF) being occupied at the rate then in effect for other core campus educational and administrative space, excluding the allocation for Repairs and Renovations, and being charged by UNH Facilities to other building occupants. The rate for UNH FY16 is \$18.62/NASF. This annual rental rate shall be inclusive of housekeeping services, energy and utilities and the general maintenance of the facility. Should the rate charged by UNH for core campus space increase at more than 3% annually, the annual increase charged for the space leased to the Fire Department will be limited to no more than three percent (3%) annually”

Paragraph 15 of the lease agreement is amended to read:

“The Town or University may terminate this lease at any time by mutual agreement.”

In Witness Thereof, the parties have executed this Agreement as of the day and year indicated above.

TOWN OF DURHAM

Jessie Berry Todd Selig 3/22/16
Witness Town Administrator Date

UNIVERSITY SYSTEM OF NEW HAMPSHIRE

Jean Richard Catherine Provencher 4/19/2016
Witness Vice Chancellor and Treasurer Date
University System of New Hampshire

UNIVERSITY OF NEW HAMPSHIRE

Jean Richard Christopher Clement 4/6/2016
Witness Vice President for Finance Date
and Administration
University of New Hampshire