



TOWN OF DURHAM

8 Newmarket Road

Durham, NH 03824

Tel: 603-868-5571

Fax: 603-868-1858

www.ci.durham.nh.us

NOTICE: Although members of the Town Council will be meeting in the Council chambers, the Council meetings are still available for members of the public to participate via Zoom or in person.

DURHAM TOWN COUNCIL

MONDAY, MARCH 6, 2023

DURHAM TOWN HALL – COUNCIL CHAMBERS

6:00 PM

IAW RSA 91-A:2 I: (a) Strategy or negotiations with respect to collective bargaining; and
(b) Consultation with legal counsel relative to the AFSCME Collective Bargaining Unit contracts.

NOTE: *This meeting is not open to the public.*

AGENDA

DURHAM TOWN COUNCIL

MONDAY, MARCH 6, 2023

DURHAM TOWN HALL – COUNCIL CHAMBERS

7:00 PM

NOTE: *The Town of Durham requires 48 hours notice if special communication aids are needed.*

- I. Call to Order
- II. Town Council grants permission for fewer than a majority of Councilors to participate remotely
- III. Roll Call of Members. Those members participating remotely state why it is not reasonably practical for them to attend the meeting in person
- IV. Approval of Agenda
- V. Special Announcements – Adoption of Resolution #2023-03 and Recognizing Outgoing Elected Officials for their Services to the Town of Durham.
- VI. Public Comments (*) – **Please state your name and address before speaking**
- VII. Approval of Minutes – February 20, 2023

VIII. Councilor and Town Administrator Roundtable

IX. Report from the UNH Student Senate External Affairs Chair or Designee

X. Unanimous Consent Agenda *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)*

A. Shall the Town Council, upon recommendation of the Administrator, Ratify the Collective Bargaining Agreement Between the Town of Durham and the American Federation of State, County and Municipal Employees Council 93, Local 863 (AFSCME - DPW) for the Period January 1, 2023 through December 31, 2025?

B. Shall the Durham Town Council, upon the recommendation of the Administrator, Waive the Deeding for the property located at 236 Mast Road, Map 210, Lot 9, with the terms of the attached Agreement?

C. Shall the Town Council, upon recommendation of the Administrator, Award the 2023 Road and Sidewalk Program to Continental Paving Inc. of Londonderry, NH in the Amount of \$780,792.12 and Authorize the Administrator to Sign the Associated Contract?

XI. Committee Appointments –

A. Shall the Town Council nominate resident David Steinberg for a three-year appointment by the NHDES Commissioner as a Durham Representative to the Lamprey River Local Advisory Committee?

XII. Presentation Items

A. Presentation by Attorney, Katherine Miller, of Donahue, Tucker & Ciandlla, PLLC, on Cable Franchise Renewal Proceedings Between the Town of Durham and Comcast/Xfinity, the Town's Current Cable Operator.

XIII. Unfinished Business

XIV. New Business

XV. Nonpublic Session (if required)

XVI. Extended Councilor and Town Administrator Roundtable (if required)

XVII. Adjourn (NLT 10:30 PM)

(*) *The public comment portion of the Council meeting is to allow members of the public to address matters of public concern regarding town government for up to 5 minutes. Obscene, violent, disruptive, disorderly comments, or those likely to induce violence, disruption or disorder are not permitted and will not be tolerated. Complaints regarding Town staff should be directed to the Administrator.*



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AGENDA ITEM: **# 7 TS**
DATE: **March 6, 2023**

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Council

AGENDA ITEM: APPROVE THE TOWN COUNCIL REVISED MEETING MINUTES FOR
FEBRUARY 20, 2023

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

Attached for the Council's review and approval are the minutes for the meeting held on February 20, 2023. Please call or email Karen Edwards with any grammatical/spelling changes prior to the meeting. Discussion at Monday evening's meeting should be limited only to substantive changes.

LEGAL AUTHORITY:

RSA 91-A:2 (II) specifies what must be contained in minutes of public meetings:

"Minutes of all such meetings, including names of members, persons appearing before the bodies or agencies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the public meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of anybody or agency, or any subordinate body thereof, without exception."

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby approve the Town Council meeting minutes for February 20, 2023 (as presented/as amended).



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AGENDA ITEM: **# 5** *TS*

DATE: March 6, 2023

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Council

AGENDA ITEM: SHALL THE DURHAM TOWN COUNCIL ADOPT RESOLUTION
#2023-03 RECOGNIZING OUTGOING ELECTED OFFICIALS FOR
THEIR SERVICES TO THE TOWN OF DURHAM?

PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Durham Town Council

AGENDA DESCRIPTION:

Attached is Resolution #2023-03 recognizing the services of Durham's elected officials whose terms will expire March 2023.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby adopt Resolution #2023-03 recognizing the elected officials listed below for their dedicated services and hard work on behalf of the Town.

<u>Elected Office</u>	<u>Name</u>	<u>Term</u>
Durham Town Council:	Katherine (Kitty) Marple	Mar 2020 – Mar 2023
	Sally Tobias	Mar 2020 – Mar 2023
	Sally Needell	Mar 2020 – Mar 2023
Library Board of Trustees:	Nancy Lambert	Mar 2020 – Mar 2023
	Robin Glasser	Mar 2020 – Mar 2023
	Marty Gooze	May 2022 – Mar 2023
Town Clerk	Lorrie Pitt	Mar 2020 – Mar 2023
Town Treasurer	Karl Van Asselt	Mar 2020 – Mar 2023
Trustee of Trust Funds	Bill Cote	Mar 2020 – Mar 2023

RESOLUTION #2023-03 OF DURHAM, NEW HAMPSHIRE

RECOGNIZING OUTGOING ELECTED OFFICIALS FOR THEIR DEDICATED SERVICES TO THE TOWN OF DURHAM

WHEREAS, the Town of Durham is fortunate to have a number of highly dedicated and civic-minded citizens who have served as elected officials and whose terms will shortly expire; and

WHEREAS, each of these public servants devoted many countless hours toward enacting changes for the betterment and enrichment of the Durham community; and

WHEREAS, the Durham Town Council wishes to recognize these citizens for their contributions while serving in these various capacities,

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire, does hereby adopt **Resolution #2023-03** expressing its appreciation to and recognizing the following Durham elected officials for their dedication, hard work, and commitment on behalf of the Town of Durham.

<u>Elected Office</u>	<u>Name</u>	<u>Term</u>
Durham Town Council:	Katherine Marple	Mar 2020 – Mar 2023
	Sally Needell	Mar 2020 – Mar 2023
	Sally Tobias	Mar 2020 – Mar 2023
Library Board of Trustees:	Nancy Lambert	Mar 2020 – Mar 2023
	Robin Glasser	Mar 2020 – Mar 2023
	Marty Gooze	May 2022 – Mar 2023
Town Clerk/Tax Collector	Lorrie Pitt	Mar 2020 – Mar 2023
Town Treasurer	Karl Van Asselt	Mar 2020 – Mar 2023
Trustee of Trust Funds	Bill Cote	Mar 2020 – Mar 2023

PASSED AND ADOPTED on this 6th day of March, 2023 by a majority vote of the Durham Town Council with _____ voting in favor, _____ opposing, and _____ abstaining.

Katherine Marple, Chair
Durham Town Council

ATTEST:

Lorrie Pitt, Town Clerk-Tax Collector



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AGENDA ITEM: **#10A** *TS*

DATE: March 6, 2023

COUNCIL COMMUNICATION

INITIATED BY:

Todd I. Selig, Administrator

AGENDA ITEM:

SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE ADMINISTRATOR AND THE BARGAINING TEAM, RATIFY THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE TOWN OF DURHAM AND THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES COUNCIL 93, LOCAL 863 (AFSCME - DPW) FOR THE PERIOD JANUARY 1, 2023 THROUGH DECEMBER 31, 2025?

CC PREPARED BY:

Gail Jablonski, Business Manager

Todd I. Selig, Administrator

PRESENTED BY:

Todd I. Selig, Administrator

AGENDA DESCRIPTION:

The town began the contract negotiation process in November 2022 with the AFSCME representing the seventeen Public Works employees covered by the contract. The bargaining team consisted of Town Attorney Joseph McKittrick, Business Manager Gail Jablonski, Administrator Todd Selig, and Public Works Director Richard Reine.

Attached for the Town Council's review is the new Collective Bargaining Agreement that will extend from January 1, 2023 to December 31, 2025, which denotes the negotiated changes to the current Agreement. Administrator Selig and the bargaining team recommends passage of the AFSCME Collective Bargaining Agreement as presented.

The negotiated changes can be found in the following Articles:

Article 16	Vacation Leave	Page 20
Article 18	Sick Leave Incentive	Page 22
Article 29	Uniforms	Page 34
Article 31	Educational Incentive Reimbursement	Page 36
Article 32	Wage Scale and Pay Plan	Page 37-39

Given that recent consumer price index increases at the national level are around 6.4%, down from over 8% in the fall, combined with increased competition for regional employers to attract quality employees, these changes noted herein are warranted.

LEGAL AUTHORITY:

RSA 273-A “Public Employee Labor Relations”

LEGAL OPINION:

The Town’s Labor Attorney, Joseph McKittrick, worked with the Administrator, Business Manager and Public Works Director in developing the new AFSCME Collective Bargaining Agreement.

FINANCIAL DETAILS:

The negotiated Cost of Living Adjustments are as follows:

2023	4%
2024	3%
2025	3%

In addition the per day differential for those employees placed on “standby” was increased from \$36.41 to \$40.00 effective January 1, 2023 and will increase to \$41.00 on January 1, 2025. The previous reference to “dual standby” has been eliminated.

The cost impact for the wage increases and associated benefits per year is as follows.

FUND	2023	2024	2025
GENERAL	\$ 34,250	\$ 26,000	\$ 27,250
WATER	\$ 4,700	\$ 2,800	\$ 3,200
WASTEWATER	\$ 13,500	\$ 9,900	\$ 10,500
TOTAL IMPACT	\$ 52,450	\$ 38,700	\$ 40,950

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby, upon recommendation of the Administrator and the Bargaining Team, ratify the Collective Bargaining Agreement between the Town of Durham and the American Federation of State, County and Municipal Employees Council 93, Local 863 (AFSCME) for the period January 1, 2023 through December 31, 2025.

AGREEMENT

This Agreement is made and entered into by the Town of Durham, New Hampshire, hereinafter called the TOWN, and the American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter called the UNION, representing the Employees of the Department of Public Works, Town of Durham, New Hampshire, who are members of the bargaining unit. THE PARTIES HERETO CONTRACT AND AGREE WITH EACH OTHER AS A RESULT OF COLLECTIVE BARGAINING AS FOLLOWS:

ARTICLE 1

RECOGNITION

1. Whenever used in this Agreement, the word "Employee" shall refer only to a person or persons actively and regularly engaged in the Department's work and enrolled in the regular payroll of the Department.
2. The Town hereby recognizes that the Union is the sole and exclusive representative of all employees of the Public Works Department who are members of the Bargaining Unit as defined by the Public Employees Labor Relations Board. It is recognized that it is the Town's obligation to contact the Unit Employee Representative for the purpose of negotiations and amendment to any provision of this Agreement.
3. The Town agrees to include the Permanent Part-time Maintenance Worker I position as part of the bargaining unit. That position will receive benefits on a pro rata basis equal to the percentage of full time work (i.e. a 3/4 position receives 3/4 benefits except for health insurance which is provided after thirty (30) hours). The employee in this position will receive pay for a holiday (if it falls on his/her work day) equal to the number of hours usually worked on that day.

ARTICLE 2

NONDISCRIMINATION

1. The Town will not discriminate in the hiring or the terms and conditions of employment against any employee covered by this Agreement because of membership in, or legitimate activity as required by this Agreement on behalf of the members of this Union, for the purposes of encouraging or discouraging membership in any employee organization.
2. The Union recognizes its responsibilities as the exclusive bargaining agent and agrees to represent all employees in the Bargaining Unit without discrimination, interference, restraint or coercion.
3. The provisions of this Agreement shall be applied equally to all employees in the Bargaining Unit without discrimination as to age, sex, marital status, race, color, creed, religion, national origin or political affiliation. The Union shall share equally with the Town the responsibility for applying these provisions of the Agreement.

ARTICLE 3

DUES CHECKOFF

1. The Town agrees to deduct the local dues from all employees who are covered by this Agreement and who are Union members, and to send said dues along with a statement indicating who has paid these dues to:

Diane Shannon, Business Manager
AFSCME Council 93
8 Beacon Street
Boston, Massachusetts 02108

The Union will keep the Town informed of the correct name and address of the Treasurer of Local 863, AFSCME.

2. This deduction of dues shall be made on a biweekly basis and shall be sent monthly to the AFSCME Council.
3. No deductions of dues will be made by the Town unless an authorization card, including the amount and signed by the employee, shall have been filed with the Town.
4. The Union shall notify the Town one (1) month prior to any change in the amount of dues to be deducted. The Union shall notify the Town on an annual basis of the amount of dues to be deducted.

ARTICLE 4

MANAGERIAL RIGHTS/PRODUCTIVITY

1. Except as otherwise limited by an express provision of this Agreement, the Town shall continue to have the right to exercise complete control and discretion over its organization and technology, including but not limited to, the determination of the standards of services to be provided and standards of productivity and performance of its employees.
2. Delivery of services to the public in the most efficient, effective and productive manner is of paramount importance to the Town and the Union. Such achievement is recognized to be a goal of both parties as they perform their respective roles to meet their respective responsibilities.
3. It is acknowledged that during the negotiations, which resulted in the Agreement, the Union had the unlimited right and opportunity to make demands and proposals with respect to all proper subjects of collective bargaining. Therefore, for the life of this Agreement, this Agreement shall constitute the total Agreement between the parties. The fact that this Agreement has been reached and is binding on both parties shall not constitute a bar to the reopening or amending of the contract by mutual agreement of the Town and the Union.

ARTICLE 5

MANAGEMENT OF MEMBERSHIP

1. Each employee who, on the effective date of this Agreement, is a member of the Union, and each employee who becomes a member after the effective date shall continue his/her membership in the Union during the duration of the Agreement unless said employee exercises their rights as outlined in the AFSCME Council 93 Membership Application.
2. Membership in the Union is not a condition of employment.
3. All members of this Unit, as a condition of employment, shall possess a valid New Hampshire Commercial Driver's License – Class B. Members of the Wastewater Division are required to possess a "Tank Vehicle Endorsement."

ARTICLE 6

NO STRIKES

1. Neither the Union nor any employee shall engage in, induce, support, encourage or condone a strike, work stoppage, slowdown, or withholding of services by employees.
2. In the event of any work curtailment by the Union by its officers or agents, the Union shall immediately declare such work stoppage, picketing or other curtailment to be unauthorized in writing and advise said employees to stop said conduct and return to work. Copies of such written notices shall be immediately furnished to the Town. The Union shall do everything in its power to obtain the return to work from said employees.

ARTICLE 7

SENIORITY

1. Seniority shall be defined as continuous full-time employment by the Department of Public Works. No employee shall be considered to have any seniority rights until he or she has completed the ninety (90) day probationary period, at which time the employee will have accrued ninety (90) days seniority.
2. Nothing in this Article shall be construed to limit the Town's ability to hire, promote, demote, or discharge employees. The intent of this Article is to demonstrate the Town's and the Union's recognition of seniority, as defined in Section 3 below.
3. Seniority, as defined in Section 1 of this Article, shall be a consideration only in the following types of actions:
 - a. Vacation Pick
 - b. Promotion
 - c. Layoff
 - d. Demotion

Choices of dates for vacation shall be granted to employees based upon seniority, with the most senior employee having first choice, the second most senior employee having second choice, and so on. All other current rules governing vacation pick shall remain in effect for the duration of this Agreement. Vacation leave will continue to be granted in accordance with Departmental scheduling needs and workload considerations.

Where qualifications are equal, seniority shall be the determining factor in promotion, demotion and layoff. Questions regarding the application of seniority shall be subject to the Grievance Procedure. A decision of the Director of Public Works shall be subject to the Grievance Procedure.

Where qualifications are equal, seniority shall govern in the selection of employees for layoffs and transfers. Where all experience, skills and past performance levels, as determined by the Director of Public Works, are equal for two employees, the employee with less seniority shall be laid off first. A decision of the Director of Public Works shall be subject to the Grievance Procedure.

It is recognized by the Town that length of service in a classification sometimes has a direct influence on the skills and proficiency level of the incumbent. For this reason, the Town has an interest in promoting from within where such promotion is based upon competition and has clearly defined criteria built into the promotion process. Where skills, proficiency levels, and experience in that type of work are equivalent, as determined by the Director of Public Works after testing and evaluating all candidates, seniority should govern.

It is recognized by the Town and the Union that the Town must hire or promote the most qualified workers available, in order to protect the public interest. Such public interest

requires the hiring and promotion of highly qualified workers, regardless of where they received their training and/or experience.

The Town, in order to balance the needs of the public with the needs of the employees for fair treatment in the promotion process, assures the Union that each employee who applies for any promotion will be interviewed and given a practical test where appropriate. Inherent in this promotion process will be a set of criteria, which will be used objectively to determine relative skills and proficiency levels among all applicants.

4. The Department reserves and shall have the right to make transfers primarily on the basis of ability and performance of duty, but shall be governed by seniority where equal ability and performance of duty have been demonstrated.
5. Until an employee has served the ninety (90) day probationary period, it shall be deemed that he/she has no seniority status. He/she may be discharged or laid off with or without cause, and such discharge or layoff shall not be subject to the grievance procedure.
6. An employee shall not forfeit any seniority during absence caused by:
 - a. Illness resulting in total temporary disability due to his regular work with the Department, certified by an affidavit from the Worker's Compensation carrier;
 - b. Illness not the result of his/her misconduct, resulting in total temporary disability, certified by a physician's affidavit every three months; and
 - c. Maternity leave.
7. An employee shall lose his/her seniority for, but not limited to, the following reasons:
 - a. Discharge
 - b. Resignation
8. An employee who meets the qualifications and is promoted to a higher-level position shall be placed in a probationary status for that position not to exceed 30 days. The employee shall be periodically evaluated to determine if he/she is performing the job in satisfactory manner. If an employee decides that he/she does not wish to continue in said position, then he/she shall be reduced in status to the same classification, pay grade and pay step as he/she had obtained prior to the promotion.

ARTICLE 8

PROMOTIONS AND TRANSFERS

1. The Department reserves and shall have the right to make promotions and transfers.
2. Jobs to be filled through promotion or transfer shall be posted on department bulletin boards in which the vacancy occurs for a period of five (5) working days prior to advertisement to the public.
3. Vacancies in management positions which are excluded from the bargaining unit shall be posted on the department bulletin boards, provided, however, that appointment to these positions shall not be subject to the grievance procedure.
4. Wherever possible, promotions shall be made from the ranks of regular employees who are employed by the department in which the vacancy occurs.
5. Employees in the department where the vacancy occurs who are absent during the entire posting period shall be notified of the vacancy by Certified Mail and given the opportunity to apply for the position within the posting period.
6. Job posting shall include job specifications, rate of pay, job location, and also if it is a permanent job with a permanent rating.
7. Current employees seeking consideration for promotion or transfer shall provide an application listing all skills and experience not listed in their original application along with a letter specifying their interest in a particular vacancy.
8. The above procedure shall be followed in all permanent promotions and transfers.

ARTICLE 9

DISCIPLINARY PROCEDURES

1. All disciplinary action shall be applied in a fair manner and shall be consistent with the infraction for which disciplinary action is being applied. No employee shall be disciplined or discharged without just cause as defined to include the following:
 - a. Misconduct
 - b. Incompetency or inefficiency
 - c. Failure to perform assigned duties
 - d. Disobedience or insubordination
 - e. Intoxication, drinking alcoholic beverages, or use of illegal drugs while on duty
 - f. Conviction of a felony
 - g. Failure to observe rules and regulations
 - h. Incompatibility with other employees
 - i. Unauthorized absence from duty
2. All suspensions and discharges must be stated in writing with the reason(s) stated and a copy given to the employee and the Union at the time of suspension or discharge.
3. Disciplinary actions shall normally follow this order:
 - a. A verbal warning
 - b. A written warning
 - c. Suspension without pay
 - d. Discharge

Under extreme circumstances, a, b, & c may be waived and discharge made at the time of the infraction.

4. The service record of an employee, disciplined under the provisions of this Article, shall be expunged after a period of one (1) year if disciplined under Article 9, Section 3-a and/or 3-b, and after three (3) years if disciplined under Article 9, Section 3-c.

ARTICLE 10

GRIEVANCE PROCEDURE

1. The purpose of this procedure is to produce proper and equitable solutions of Grievances. All Grievances will be handled as provided in this Section.

The parties agree that such procedure shall be kept as informal and confidential as may be appropriate for the procedural level involved. Nothing in this Agreement shall prevent any employee from individually presenting any Grievance to his employer, without representation of the Union, provided that the adjustment is not inconsistent with the terms of this Agreement. Those Grievances reduced to writing and resolved without Union representation shall be documented and forwarded to the Union within ten (10) working days.

2. The following definitions shall apply for the purposes of this Agreement:

- a. Grievance shall mean a complaint by an employee that, as to such employee, the Town has interpreted and applied the Agreement in violation of a specific provision thereof.
- b. An aggrieved employee shall mean the employee making the complaint.

For purposes of this Article, “working days” shall mean Monday through Friday, exclusive of legal holidays.

3. A matter which is not specifically covered by this Agreement or which is reserved either by this Agreement or by common or statutory law to the employer is not subject to the arbitration procedure set forth in Article XV. Only Grievances, as defined above, may be arbitrated under the provisions of Article 11.
4. Since it is important that Grievances be processed as quickly as possible, the number of days indicated at each level shall be considered as maximum. The time limits specified may be extended only by prior written mutual agreement.
5. The processing of Grievances shall be undertaken in accordance with the following procedures:

A written Grievance must be made to the employee’s Department Head within five (5) working days of the action giving rise to the Grievance. The appeal must include the issue giving rise to the Grievance, the facts as the employees viewed them and the requested relief. The Department Head will respond to this appeal within five (5) working days. If the employee is not satisfied with the action to be taken by his/her Department Head, the employee may appeal the matter to the Town Administrator within five (5) working days to the Department Head’s decision.

The Town Administrator will, within seven (7) working days of the request, meet with the aggrieved employee and all involved parties, hear testimony and render a decision

within seven (7) working days of the hearing. The employee will be given a written confirmation of the Administrator's decision within five (5) working days of the time a decision is rendered.

If the Grievance has not been resolved to the satisfaction of the aggrieved employee, the Union may, by giving written notice to the Administrator within ten (10) working days after the conclusion of the meeting referred to in Level 2, submit the Grievance to Arbitration. Such notice shall be addressed in writing to the Administrator. The Arbitration shall be governed by the provisions of Article 11.

6. No Grievance shall be considered which is not presented within the time limits specified in Section 5a. If a Grievance is not, or if the action required to present the Grievance to the next higher level shall not have been taken within the specified time limits, the Grievance shall be deemed to have been waived and shall not, thereafter, be subject to the Grievance Procedure or the Arbitration Procedure set forth in Article 11, unless such individual settlement is not enforced.
7. All documents, communications and records dealing with the processing of a Grievance shall be filed separately from the personnel file of the participant.
8. No Grievance in process during the term of this Agreement shall lapse because of the termination of this Agreement. Any such Grievance shall be disposed of under the procedures provided by this Agreement.

ARTICLE 11

ARBITRATION

1. In the event that the Union elects to proceed to Arbitration, the Administrator or his designee and the Union will endeavor to agree upon a mutually acceptable Arbitrator and obtain a commitment from said Arbitrator to serve within twenty (20) working days. If the Parties are unable to agree upon an Arbitrator or to obtain a commitment to serve, the Grievance shall be referred to the American Arbitration Association by the Union no later than ten (10) working days after the deadline to mutually select an arbitrator set forth in Article 10. In such an event, the Arbitrator shall be selected in accordance with the rules of the American Arbitration Association, then applicable to voluntary labor Arbitrations. The matter must be heard, either by a mutually chosen arbitrator or by an arbitrator appointed by the AAA no later than four (4) months from the date of the initial grievance. That deadline may be waived by the parties by mutual written Agreement.
2. The Town and the Union agree that they will individually be responsible for their own costs, preparation and presentation. The Town and the Union further agree that they shall equally share in the compensation and the expenses of the Arbitrator.
3. The function of the Arbitrator is to determine the interpretation of specific provisions of this Agreement. There shall be no right in Arbitration to obtain and no Arbitrator shall have any power or authority to award or determine any change in, modification or alteration of, addition to, or detraction from any other provisions of this Agreement. The Arbitrator may or may not, make his award retroactive to the initial filing date of the Grievance as the equities of the case may require.
4. Each Grievance shall be separately processed at any Arbitration proceeding hereunder unless the Parties otherwise agree.
5. The Arbitrator shall furnish a written opinion specifying the reasons for his decision. The decision of the Arbitrator, if within the scope of his authority and power within this Agreement, shall be final and binding upon the Union and the Town and the aggrieved employee who initiated the Grievance.

ARTICLE 12

HOURS OF WORK

1. The normal workweek shall commence on Monday morning at 12:01 A.M. and shall end the following Sunday night at midnight.
2. The normal workday for the transfer station attendant shall be between the hours of 7:00 A.M. and 3:30 P.M. Tuesday through Saturday effective April 15, 2013.
3. The normal workday for all other employees shall be between the hours of 7:00 A.M. and 3:30 P.M. Monday through Friday, effective April 15, 2013.

ARTICLE 13

OVERTIME/SHIFT DIFFERENTIAL

1. The Town shall compensate employees covered by this Agreement at time and one-half their base rate of pay for all hours worked in excess of 40 hours in any one workweek, or any hours worked in excess of eight (8) hours in any one workday.
2. In addition, the Town shall compensate employees at time and one-half their base rate of pay for all hours worked before 7:00 A.M., or after 3:30 P.M., except as follows:

When one week's notice is given by the Public Works Director as to a temporary change in the workday. When that notice is given, a fifty-cent (\$0.50) per hour differential shall be paid for those hours worked before 7:00 AM or after 3:30 PM.

It is expressly understood that this section pertains to temporary shift changes in the Public Works Department, and that the Town's ability to assign shifts and compensate employees through shift differentials is not otherwise altered.

3. EMERGENCY WORK: It shall be the duty of all able-bodied employees to make themselves available for work during the course of emergencies. An emergency shall be defined by the Director of Public Works and shall include but not be limited to the following:

Any natural or man-made condition which halts or hinders a public service or which endangers public safety.

Employees covered by this Agreement shall be paid double time for all work performed in excess of sixteen (16) consecutive hours as the result of snow or other emergencies as determined by the Public Works Director.

4. The parties agree that overtime work shall be assigned on a rotating basis, among all qualified employees.
5. No temporary employees, as defined by the Public Employees Labor Relations Board, shall be assigned to overtime work until all regular employees shall have had the opportunity for such assignment.
6. Any employee who is called back to work, having completed eight (8) hours of work that day, shall receive a minimum of three (3) hours pay at time and one-half their normal rate. Employees called to work two hours or more prior to their regular start time shall be entitled to three (3) hours of pay at time and one half their normal rate.
7. In the event that either party wishes to consider payment by the task rather than by the hour for duties performed, the parties agree to convene a labor management committee to discuss the concept and the administrative details which could be put into effect. If both parties agree, the Agreement may be amended to comply with the committee's recommendations.

8. Notwithstanding anything to the contrary above, the employee designated, as the “landfill attendant” shall be regularly scheduled for two (2) consecutive days off in each seven (7) day period.

ARTICLE 14

REST PERIODS AND CLEANUP TIME

The Town agrees to provide rest periods and cleanup time as mandated by State and Federal Law.

ARTICLE 15

HOLIDAYS

1. Employees shall be entitled to regular full pay for the following eleven (11) holidays:

- New Year's Day
- Civil Rights Day
- Memorial Day
- Independence Day
- Labor Day
- Indigenous Peoples' Day
- Veteran's Day
- Thanksgiving Day
- the Day after Thanksgiving Day
- Christmas Day
- the Day before or after Christmas Day

2. All work performed on a holiday shall be at the rate of time and one-half over and above the eight hours pay for the holiday, for all hours worked. This holiday pay shall apply only if the employee works the regular eight (8) hour day preceding and following the particular holiday, unless he or she is on scheduled vacation leave.

ARTICLE 16

VACATION LEAVE

1. For the purpose of this Section, one week shall be defined as five (5) working days or forty (40) working hours within five consecutive days.
2. Vacation leave without loss of pay shall be granted to Unit employees in the following manner:

<u>MONTHS OF FULL-TIME CONTINUOUS SERVICE</u>	<u>VACATION LEAVE</u>	<u>MAXIMUM ACCUMULATION</u>
0 through 60 36 months	8 hours/month	240 hours
61 37 through 120 72 months	12 hours/month	240 hours
121 73 months and above	14 hours/month	240 hours

3. Choice of vacation leave within the Department shall be allotted according to seniority; provided however, that any employee having more than two (2) weeks (eighty [80] hours) of vacation leave will be allotted only the first two (2) weeks (eighty [80] hours), according to his or her preference and seniority; additional vacation leave will be allotted at a time mutually agreeable to the employee and the Director of Public Works.
4. Employees shall request vacation leave at least two (2) weeks and no more than one (1) year in advance of the first day of the requested vacation. Approval shall be granted or denied within three (3) business days of the employee's submission. Two (2) vacation days per contract year may be scheduled with only a two (2) day advance notice provided that the employee receives departmental approval which shall not be denied except for staffing or other exigent circumstances.
5. When an employee terminates employment with the Department for any reason, he or she shall be compensated for all vacation leave earned, at the regular rate of pay, or as determined by law.

ARTICLE 17

SICK LEAVE

1. Employees will earn sick leave at a rate of 8 hours per month. New employees hired no later than the 10th of the month will receive credit for that initial month. Sick leave will be made available and credited for use on the first of each month. Employees scheduled to work less than 40 hours per week shall not earn sick leave.

2. Unused sick leave may be accumulated over the term of employment as follows:

<u>COMPLETED</u> <u>MONTHS</u>	<u>ACCRUAL RATE</u>	<u>MAXIMUM</u> <u>LEAVE ACCRUAL</u>
0 through 60 months	8 hours/month	380 hours
61 months of service and above	8 hours/month	*840 hours

*As of October 1, 2000, Daniel Driscoll has accumulated more than 840 hours of sick leave. He shall retain the amount accumulated as of October 01, 2000, but shall not accumulate any further (i.e. if either employee uses any hours of his accumulated sick leave, then he shall be allowed accumulation in the expended amount).

3. Employees who voluntarily terminate their employment with the Town with at least thirty (30) days notice shall receive payment for their accrued sick leave as follows:

0 through 60 months of service	Ten (10%) percent
61 through 120 months years of service	Fifteen (15%) percent
121 months of service and above	Twenty-Five (25%) percent

Employees who are involuntarily terminated, or who leave without the required thirty (30) days notice, shall forfeit all sick leave payments.

4. Verification of illness/disability from a medical doctor may be required by Department Heads at any time and shall be required for sick leave in excess of three (3) consecutive days.
5. Probationary employees will accrue sick leave but may not draw leave or sick pay for time off taken due to illness during their probationary period. Probationary employees who do not achieve permanent status shall forfeit any accrued sick leave.
6. Sick leave may be legitimately drawn in the event of the following: absences due to illness, injury or exposure to contagious diseases endangering the health of other employees when requested by the attending physician, medical and dental appointments, and care of immediate family members whose illness or condition requires the employee to remain at home (care beyond three days requires approval by Town Administrator). Employees must notify their supervisor of their intent to take sick leave no later than one (1) hour prior to the start of their workday.

ARTICLE 18

SICK LEAVE INCENTIVE

Any employee who utilizes one (1) day or less of sick leave in any six (6) month period (January to June, July to December) shall receive an amount equal to one day's pay **or an additional personal day**. Said payment shall be made within thirty (30) days of the end of the half-year.

ARTICLE 19

PERSONAL LEAVE

1. Personal leave shall be granted with pay similar to sick leave and is intended to afford the employee with the opportunity to address unanticipated events or emergencies of short duration.
2. Full-time employees are awarded personal days after completion of one (1) year of service and thereafter on the employee's anniversary date. Personal days off may be earned at a rate of one (1) day per year for those employees with less than six (6) years of service. Those employees having six (6) or more years of service will be entitled to three (3) days per year. Personal days must not be accumulated beyond twenty-four (24) hours and must be used within twelve (12) months of the time they are earned.
3. Employees must notify their supervisor of their intent to take personal leave no later than one (1) hour prior to the start of their workday.
4. There will be no payment of these benefits upon termination.

ARTICLE 20

BEREAVEMENT LEAVE

1. A period not to exceed three (3) consecutive work days shall be granted to regular full time employees covered by this Agreement upon the death of an immediate family member. For the purpose of this section, immediate family member shall mean spouse, domestic partner, child or stepchild, son-in-law or daughter-in-law, brother or sister, stepbrother or stepsister, parent or stepparent, guardian, parent-in-law, or any relative that had been permanently domiciled in the employee's household prior to death.
2. Regular full time employees covered by this Agreement shall be allowed one (1) day off with regular pay in the event of the death of the employee's brother-in-law, sister-in-law, aunt, uncle, grandparent, grandchild, or spouses grandparent. To be eligible for paid bereavement leave, the employee must attend the funeral of the deceased relative.
3. Under extenuating circumstances, the Town Administrator may grant extensions of bereavement leave for two (2) additional days with pay.

ARTICLE 21

FAMILY LEAVE

Qualified employees shall be granted up to twenty-six (26) weeks of unpaid leave in any twelve (12) month period for:

1. The birth and first year care of a child;
2. Adoption or foster placement of a child in the employee's home (use of a licensed adoption agency is not required, but foster placement requires State action rather than merely an informal arrangement to care for another person's child);
3. The care of a spouse, child or parent with a serious health condition; or
4. The serious health condition of the employee.

Employees must give thirty (30) days advance written notice to the Town of Durham of the need to take unpaid FMLA leave when it is foreseeable for the birth or placement of a child, for adoption or for planned medical treatment. When planning medical treatment, employees should consult with their Department Head and make reasonable efforts to schedule the leave so as not to unduly disrupt the Town's operation. This is subject to the approval of the healthcare provider. If employees fail to provide the Town with the thirty (30) day notice, the Town may deny the leave until thirty (30) days after the notice is provided.

When the leave is unforeseeable, employees must give notice as soon as practicable, but no later than two (2) working days. Notice should be given either in person or by phone when medical emergencies are involved, and may be given orally by the employee's spouse or other family member if the employee is unable to give the notice.

When the FMLA leave is for medical reasons, employee or employee's family, medical certification of a serious health condition may be requested. The Town of Durham at the Town's expense, may also request a second opinion.

If the opinions of the healthcare providers furnishing the first and second opinions differ, the Town may request the employee to obtain a final and binding third opinion at the Town's expense.

If the employee will be out longer than thirty (30) days for a serious health condition, for him/herself or a family member, a "recertification" of medical condition will be required to be submitted on a monthly basis.

If an employee is out on medical leave for him/herself, the employee must submit a "fitness-for-duty" certification before he/she will be reinstated for work.

Any FMLA leave for a birth or adoption/foster care placement in the employee's home must be concluded within the 12-month period beginning on the date of the birth or placement. An expectant mother is not required to wait until the actual birth of the child to qualify for FMLA leave. For foster placement or adoption, FMLA leave can begin before the actual placement of an adopted or foster care child in the home of the employee if the employee is required to attend counseling sessions, appear in Court, consult with an attorney or doctor, submit to a physical examination, or travel to pick up the child. When leave is taken because of a birth or placement of a child for adoption or foster care in the employee's home, an employee may NOT take leave intermittently or on a reduced leave schedule.

If an employee requests foreseeable intermittent leave or a reduced work schedule for planned medical treatment for the employee or a family member, the Town may temporarily transfer the employee to an available alternative position with equivalent pay and benefits. Benefits, which are earned such as vacation and sick leave, for example, may be proportionately reduced to reflect the employee's reduced working time.

An employee is entitled to reinstatement to an equivalent position with equivalent benefits, pay and other terms and conditions of employment when returning from FMLA leave. There is no right to return to the same position, only a right to have an equivalent position.

The Town of Durham may require reports from an employee on FMLA leave regarding the employee's status and intent to return to work in order that benefits may be continued.

An employee may elect to substitute all or part of accrued paid sick leave, earned time, or personal time for unpaid FMLA leave. If accrued time is not used, the employee will remain entitled to all of the paid leave, which is earned and accrued at the time of the FMLA leave. However, an employee may NOT accrue any additional benefits or paid earned, sick or other leave time during unpaid FMLA leave. Paid short-term disability leaves are considered medical leaves for the purposes of the FMLA Act. Such paid disability leaves would be counted in the twenty-six (26) weeks of leave permitted under the FMLA leave. It is the Town of Durham's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, based on information provided by the employee.

When an employee takes an FMLA leave, the employee's coverage of health insurance and life & disability insurance will remain the same as if the employee were still working his/her normal workweek. However, if the employee fails to return to work or returns to work and fails to stay thirty (30) calendar days, the employee shall reimburse the Town of Durham for all insurance premiums paid while on FMLA leave.

Benefits offered by the Town of Durham but paid for by the employee through payroll deduction, will cease unless the employee makes prior arrangement for payment with the Business Office.

ARTICLE 22

MILITARY AND CIVIC LEAVE

1. Military and Civic Duty leave shall be governed by existing laws.
2. **JURY DUTY:** An employee called as a juror will be paid the difference between the fee received for such service and the amount of straight time earnings lost by reason of such services. Satisfactory evidence of such service must be submitted to the employee's immediate supervisor.

Employees who are called to jury duty and are excused from jury duty for a day or days shall report to their regular work assignment. If any employee is excused from jury duty within three (3) hours prior to the end of his/her normal shift, he/she shall report to work.

ARTICLE 23

LEAVE OF ABSENCE

1. The Town agrees to allow the Union representative, the UER, and/or the aggrieved employee to meet to discuss and submit grievances, for up to one hour at the end of the assigned employee's shift, such employee to be paid at the employee's regular pay rate. However, in order for the involved employee to be paid, the Town must receive eight (8) hours notification of such a meeting.
2. Time lost by a representative of the Union on grievance settlements or negotiations shall be paid for by the Town as provided in RSA 273-A:11.
3. One employee elected as a delegate to either the AFSCME International Convention, N.H. Public Employees Convention, Council #93 or the New Hampshire State Labor Council Convention shall be allowed a leave of absence with pay not to exceed one (1) working day per year.

ARTICLE 24

LONGEVITY PAY

Longevity pay will be granted to all permanent full-time employees as a means of compensating such employees for long-term service to the Town. Such pay shall be paid by check by the end of the first payroll in December.

LENGTH OF SERVICE	
<u>(COMPLETED MONTHS)</u>	
121 through 168 months of service	\$ 500.00
169 through 228 months of service	\$ 750.00
229 months of service and above	\$1,000.00

No employee hired after December 31, 2015 will be eligible for longevity payments.

ARTICLE 25

INSURANCE BENEFITS

1. The Town agrees to continue health, hospitalization and major medical insurance for each employee under the Matthew Thornton Blue HMO program. The plan includes a Managed Care Program, a mail-in prescription program and Delta Dental Option 3 with the employee's choice to buy up to Delta Dental Option 1. Effective July 1, 2016 the Health Plan offered by the Town to all employees shall be Matthew Thornton Blue \$5 co-pay RX 10/20/45. The Town shall offer a High Deductible Health Insurance Plan.
2.
 - A. Effective July 1, 2019 the employee's share of the monthly premium for said health and dental insurance shall be twenty percent (20%).
 - B. Each employee may choose to participate in any other health insurance program offered by the Town and the Town will pay said premium only in an amount equal to its Matthew Thornton contribution.
 - C. Each employee may chose to participate in Delta Dental Option 1 provided that they pay the difference between the Option 3 and Option 1 plan, as well as the employee's share of the monthly Delta Dental Option 3 Plan.
3. Provided that an Employee can demonstrate to the satisfaction of the Town, that he/she has adequate health insurance from another source, that Employee may decline to be covered by the Town's plan and receive in its place an annual payment of forty-five percent (45%) of the Town's share of the premium payable by December 15, for each year he/she declines such coverage.

All new employees hired on or after January 1, 2016 who elect the buy-out provision will be reimbursed fifteen percent (15%) of the Town's share of the HMO Health and Dental without orthodontia insurance premium.
4. The Town will continue to purchase Life and Disability Insurance for the Bargaining unit employees in the amount of coverage currently in effect (\$50,000.00 Death Benefit).

The employees acknowledge that the Town has created a TOWN WIDE INSURANCE ADVISORY COMMITTEE comprised in part of Town Employees. The unit members agree to provide that Committee with representatives to participate in the various deliberations of the Committee with the express purpose of resolving coverage problems and exploring coverage and cost problems.
5. The Town shall provide all employees covered by this Agreement with a short-term disability insurance policy (which can be self-funded) which will provide sixty (60%) percent of the employee's base weekly wage up to a maximum of Seven Hundred Dollars (\$700.00) per week for up to twenty-six (26) week's disability. This program will be available immediately in the event of an employee's accident and after eight (8) consecutive days' absence for illness.

ARTICLE 26

WORKER'S COMPENSATION

All employees of the Public Works Department who become injured while in the performance of their duties shall receive Worker's Compensation while on leave. If the absence is caused by accident, compensable under Worker's Compensation, then the Town shall pay the difference between Worker's Compensation and the employee's regular pay during the employee's Worker's Compensation eligibility utilizing the employee's accumulated sick and vacation leave. The employee shall have the sole and exclusive right to decline this utilization of his/her accumulated sick and annual leave and receive only worker's compensation payments.

ARTICLE 27

LIABILITY

The Town recognizes that the employees covered by this Agreement are included among those Town employees held harmless and indemnified in accordance with the vote of the Town Meeting on March 15, 1979, pursuant to RSA 31:105.

ARTICLE 28

SAFETY

The Department shall continue to have the right to make and modify regulations for the safety and health of its employees during their hours of employment. Representatives of the Department and the Union may meet once in ninety (90) days at the request of either party to discuss such regulations.

ARTICLE 29

UNIFORMS

The Town shall provide the following clothing annually to permanent members of the bargaining unit. Clothing and clothing allowances are on a January 1 to December 31 annual basis.

5 pairs of pants

5 pairs of work shorts (Carhartt – Carpenter style, or similar, with approval of the town) to be worn April 15 – October 15 and subject to rules and regulations to be developed by the Town

5 long sleeved shirts*

5 tee shirts

1 jacket

Steel toed boots allowance (to include purchase of inner soles and laces) of \$300 per calendar year

Sweatshirt as needed (choice of three styles)*

Each employee shall receive the issuance of new articles as mentioned above when he/she returns to the Town, the article which is worn.

Rain Gear*

Hard Hat

Safety Glasses*

Safety Vest*

It is the responsibility of the employee to wear only and all the uniforms and equipment issued by the Town.

Mechanic's Tool Coverage

The Town agrees to insurance the mechanic's tools under the following terms and conditions.

Effective on the date of this Agreement, and on a yearly basis thereafter, the mechanic shall:

- Provide the Town with a complete inventory of his personal tools on site at the Durham Public Works Facility;
- Provide photographs of each tool along with its current cost.

The Town further agrees that it shall reimburse the mechanic for up to \$1,000.00 per year for the actual cost of the replacement of tools broken or damaged while in use for the Town, as well as the purchase of new tools, with prior approval of the Public Works Director or designee, that shall become a part of the mechanic's personal inventory.

*Denotes new language as of January 1, 2016.

ARTICLE 30

BULLETIN BOARDS

1. The Department shall provide space on bulletin boards for the posting of notices of the Department addressed to the employees and for notices of the Union addressed to its members and other members of the Bargaining Unit. No notices shall be posted in or around the Town property except on such boards and then only after approval by the Department as being suitable for posting. No Union notice shall be posted until it shall have been signed by the President or Secretary of the Union. Job openings shall be posted by the Town on Departmental bulletin boards.
2. All positions, promotions or transfers shall be posted on the Department bulletin boards for at least five (5) working days and any interested employee shall have the opportunity to apply for such position, promotion or transfer.

ARTICLE 31

EDUCATIONAL INCENTIVE REIMBURSEMENT

1. The Town recognizes the desirability of a career development program based upon the completion of work related training programs.
2. Toward that end, the Town agrees to reimburse employees for certain courses and training programs based upon, but not limited to, the following criteria:
 - a. The course must be related to work of the employee and have direct relevance to his tasks;
 - b. Employees will be chosen based upon demonstrated high job performance and experience with the Town;
 - c. The course must be of benefit both to the employee and to the Town;
 - d. Courses may not be attended during working hours;
 - e. A passing grade must be attained in order for the Town to pay for the course. Where the Town has paid in advance, failure to achieve a “C” will result in the cost being deducted from the employee’s accrued vacation leave;
 - f. Tuition, books and fees may not exceed ~~Four Hundred (\$400.00)~~ **Sixteen Hundred (\$1,600.00)** Dollars for any one (1) employee per year;
 - ~~g. The total cost of the program shall not exceed Thirteen Hundred and Fifty (\$1,350.00) Dollars per year; and~~
 - h. The Director of Public Works shall have the authority to approve or disapprove all education incentive reimbursements.
3. Approval for courses will be considered on the basis of relevancy of the course, number of employees applying, and funds available.
4. If a course is paid for in whole or in part through a Federal or State program, the Town will not reimburse for such amount in order to eliminate double payment for any course.

ARTICLE 32

WAGE SCALE AND PAY PLAN

The wage schedule shall be adjusted as follows:

2023 4% Across the Board
2024 3% Across the Board
2025 3% Across the Board

~~2020 2% Across the Board~~
~~2021 2% Across the Board plus Market Adjustments and Steps outlined below~~
~~2022 2% Across the Board plus Steps outlined below~~

~~2021 Market Adjustments~~
~~Job Groups III and IV Adjust Steps 4 through 9 by 1%~~
~~Job Groups Tradesman and V Adjust Steps 4 through 9 by 4%~~
~~Job Groups Tradesman and V Increase Percentage between steps to 2%~~

~~2021 Addition of Steps~~
~~Job Groups I, II, III and IV Add Step 10 at 1% over Step 9~~
~~Job Groups Tradesman and V Add step 10 at 2% over Step 9~~

~~2022 Addition of Steps~~
~~Job Groups I, II, III and IV Add Step 11 at 1% over Step 10~~
~~Job Groups Tradesman and V Add Step 11 at 2% over Step 10~~

1. Each new employee shall remain in the Step at which he/she was hired for six (6) months. Upon six (6) months satisfactory completion of work, if the employee has satisfied the minimum performance standards for the position, he/she then shall be advanced to the next Step in the Job Group. If promoted from one Job Group to another, he/she shall be placed in the Step in the higher Job Group which will effect a raise in his/her hourly rate at least equivalent to the difference between Step 1 and Step 2 or the higher Job Group.

Movement on the salary schedule shall be annually based upon the employee's anniversary date of hire and satisfactory work performance.

2. STANDBY:

Effective January 1, 2023 employees who are assigned/volunteer to provide standby services on any basis (be it "regular" or "intermittent") shall receive ~~Thirty Five Dollars (\$35.00)~~ **Forty Dollars (\$40.00)** per day differential.

Effective January 1, 2025 employees who are assigned/volunteer to provide standby

services on any basis (be it “regular” or “intermittent”) shall receive Forty-One Dollars (\$41.00) per day differential.

~~Effective January 1, 2020 employees who are assigned/volunteer to provide standby services for two or more departments (dual standby) shall receive Fifty Dollars (\$50.00) per day differential.~~

~~Effective January 1, 2021 standby pay will be increased 2% to \$35.70 and \$51.00 for Dual Standby.~~

~~Effective January 1, 2022 standby pay will be increased 2% to \$36.41 and \$52.02 for Dual Standby.~~

The Town reserves the right to determine which employees shall be on standby and the number of employees on standby at any one time.

3. PLUS RATES: Effective on the execution of this agreement, any employee who is required by the Town to assume the responsibilities of a position in a higher job group (either within or without this Union) for eight (8) consecutive hours or more in one work day, shall be compensated at the appropriate step in that higher job group or position.

2023											
4% COLA											
JOB GROUP	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9	STEP 10	STEP 11
I		19.48	19.67	19.87	20.06	20.27	20.48	20.68	20.89	21.10	21.31
II	20.37	20.85	21.07	21.27	21.47	21.70	21.92	22.13	22.36	22.58	22.81
III	21.98	22.52	22.74	23.20	23.44	23.67	23.91	24.15	24.39	24.63	24.88
IV	23.65	24.40	24.65	25.13	25.38	25.64	25.89	26.15	26.42	26.68	26.95
TRADESMAN	25.36	26.30	26.57	27.88	28.44	29.00	29.58	30.18	30.78	31.40	32.02
V	27.08	28.20	28.47	29.89	30.49	31.10	31.72	32.36	33.00	33.66	34.34

2024											
3% COLA											
JOB GROUP	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9	STEP 10	STEP 11
I		20.06	20.26	20.47	20.66	20.88	21.09	21.30	21.52	21.73	21.95
II	20.98	21.48	21.70	21.91	22.11	22.35	22.58	22.79	23.03	23.26	23.49
III	22.64	23.20	23.42	23.90	24.14	24.38	24.63	24.87	25.12	25.37	25.63
IV	24.36	25.13	25.39	25.88	26.14	26.41	26.67	26.93	27.21	27.48	27.76
TRADESMAN	26.12	27.09	27.37	28.72	29.29	29.87	30.47	31.09	31.70	32.34	32.98
V	27.89	29.05	29.32	30.79	31.40	32.03	32.67	33.33	33.99	34.67	35.37

2025											
3% COLA											
JOB GROUP	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9	STEP 10	STEP 11
I		20.66	20.87	21.08	21.28	21.51	21.72	21.94	22.17	22.38	22.61
II	21.61	22.12	22.35	22.57	22.77	23.02	23.26	23.47	23.72	23.96	24.19
III	23.32	23.90	24.12	24.62	24.86	25.11	25.37	25.62	25.87	26.13	26.40
IV	25.09	25.88	26.15	26.66	26.92	27.20	27.47	27.74	28.03	28.30	28.59
TRADESMAN	26.90	27.90	28.19	29.58	30.17	30.77	31.38	32.02	32.65	33.31	33.97
V	28.73	29.92	30.20	31.71	32.34	32.99	33.65	34.33	35.01	35.71	36.43

ARTICLE 33

SAVING CLAUSE

In the event that any Article, Section or portion of this Agreement be in violation of State law or Town ordinance or be found to be unlawful and unenforceable by any Court of competent jurisdiction, or have the effect of loss to the Town of funds made available through Federal law, rule or regulation, then such specific Article, Section or portion shall be amended to the extent necessary to conform with such law, rule or regulation, but the remainder of this Agreement shall continue in full force and effect.

ARTICLE 34

DURATION

This Agreement shall be effective as of January 01, 2023 and shall continue in full force and effect until December 31, 2025 (three contractual years).

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be signed by their duly authorized officers and/or representatives this _____ day of _____, 20_____.

FOR THE TOWN OF DURHAM,
NEW HAMPSHIRE

FOR THE AFSCME COUNCIL 93,
LOCAL 863

Todd Selig, Town Administrator

Thomas Macaione, Negotiating Team

Nicholas Bennion, Negotiating Team

Michael McCrillis, Negotiating Team



TOWN OF DURHAM

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AGENDA ITEM: **# 10B** *TS*

DATE: March 6, 2023

COUNCIL COMMUNICATION

INITIATED BY: Lorrie Pitt, Town Clerk/Tax Collector

AGENDA ITEM: SHALL THE DURHAM TOWN COUNCIL, UPON RECOMMENDATION OF THE ADMINISTRATOR, WAIVE THE DEEDING FOR THE PROPERTY LOCATED AT 236 MAST ROAD, MAP 210, LOT 9, WITH THE TERMS OF THE ATTACHED AGREEMENT?

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

The property located at 236 Mast Road, Map 210, Lot 9, owned by Genevieve M. Barton, Deboarh Pevear and Tina Tapley has been in lien status for many years. The process of Deeding was begun by the Tax Collector in November of 2022. The owners of the property have made an agreement with the Town to pay \$2,000 the first of each month for 24 months to forgo the deeding. A Deed Waiver has, therefore, been requested.

LEGAL AUTHORITY:

New Hampshire Revised Statutes Annotated (RSA) 80:76 II, II-a, III, Collection of Taxes.

LEGAL OPINION:

Attorney Laura Spector-Morgan assisted the Town by crafting the Agreement included.

FINANCIAL DETAILS:

A payment of \$2,000 will be paid by the owners at the first of the month for 24 months to redeem the liens that have been recorded and to pay the approximate 2023 and 2024 taxes.

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council, upon recommendation of the Administrator, Waives the Deeding for the property located at 236 Mast Road, Map 210, Lot 9 with the terms of the attached Agreement.

DEED WAIVER

The property located at **236 Mast Road** Map & Lot: **210-9-0-0-0** owned by **Genevieve M. Barton, Deborah Pevear, and Tina Tapley** is due to be deeded to the Town of Durham for non-payment of 2018 and 2019 taxes.

The Town of Durham hereby notifies the Tax Collector that they will not accept the Tax Collector's deed because "in the judgement acceptance and ownership of the real estate would subject the municipality to undesirable obligations or liability risks" per RSA 80:38 II-a.

Durham Town Council

Date:_____

AGREEMENT

AGREEMENT made this 24 day of February, 2023 by and between the Town of Durham, a municipal corporation duly organized under the laws of the State of New Hampshire with a mailing address of 8 Newmarket Road, Durham, NH 03824 (TOWN), and Genevieve Barton, Deborah Pevear, and Tina Tapley, owners of property at 236 Mast Road in Durham, who have a mailing address of 25 High Street, Stratham, NH 03885 (TAXPAYER).

WITNESSETH

1. Premises: TAXPAYER is the owner of a parcels of property in the Town of Durham located at 236 Mast Road identified in the town's tax maps as Map Lot 210-9-0-0-0.
2. Taxes: As of February 13, 2023 TAXPAYER owes TOWN taxes and interest for tax years 2019-2022, in the amounts shown on Exhibit A, totaling \$33,291.25. Additional taxes continue to be assessed in the approximate amount of \$5,750 per year.

Liens have been recorded at the Strafford Registry of Deeds regarding the past due taxes referenced above at Book 5060, Page 610; Book 4950, Page 438; Book 4806, Page 946 and Book 4681, Page 190.
3. Tax Deed: Pursuant to RSA 80:76, the TOWN may take the above referenced property by tax deed. The town agrees to forestall any such action, provided that the payments referenced below are made in a timely manner.
4. Required Payments: TAXPAYER shall pay \$2,000 on the first of each month for a period of 24 months, beginning on March 1, 2023. This will enable TAXPAYER to both redeem the liens which have been recorded and pay the approximate 2023 and 2024 taxes.
5. Contingencies: This Agreement is contingent upon TAXPAYER making all payments in a timely manner. In addition, this Agreement is contingent on TAXPAYER timely paying all real estate taxes that become due between the date of execution of this agreement and the final payment.

Time is of the essence with regard to these payments, and failure of TAXPAYER to make all payments on time shall constitute a default on his/her part and shall result in his forfeiting any and all rights under this Agreement.

6. Default and Liquidated Damages: Should TAXPAYER fail to make payments in a timely manner, the TOWN shall have the right to initiate proceedings to take the property by tax deed. Should the TOWN do so, all payments made under this agreement, less a \$1,000 administrative fee, shall be returned to TAXPAYER pursuant to RSA 80:71.

7. Prior Statements: All representations, statements, and agreements heretofore made between the parties hereto are merged in this Agreement, which alone fully and completely expresses their respective obligations, and this Agreement is entered into by each party after opportunity for investigation, neither party relying on any statements or representations not embodied in this Agreement, made by the other or on his behalf.

8. Construction of Agreement: This Agreement, executed in duplicate, shall be construed as a New Hampshire contract.

9. Waiver: The waiver by any party of any breach of any provision of this Agreement shall not operate as, or be construed as a waiver of any subsequent breach thereof.

10. Severability: Should any provision of this Agreement or any portion of any provision of this Agreement be held invalid or unenforceable according to law, the remaining portions hereof shall not be effected thereby but shall continue in full force and effect.

WITNESS our hands this 27 day of February, 2023.

TOWN OF DURHAM

By: _____
Todd Selig, Administrator
Duly Authorized

GENEVIEVE BARTON

Genevieve Barton 2/27/23

DEBORAH PEVEAR

Deborah Pevear 2/27/23

TINA TAPLEY

Tina Tapley 2/27/23

PROPERTY TAX DEEDING

To: Todd I. Selig, Town Administrator/ Town Council

Subject: Proposed Deeding for 236 Mast Road

Dated: December 7, 2022

The property located at 236 Mast Road, Durham, Parcel 210-9-0-0-0 is Owned by Genevieve M. Barton, Deborah Pevear & Tina Tapley.

This property has been in Lien status for many years, previously owned by Genevieve M. Barton, Genevieve has continually made a payment agreement to make payment to get the oldest liens paid, so not to deed the property.

In July of this year Genevieve added her two daughters to the deed, Deborah Pevear & Tina Tapley, Deborah Pevear is residing at the house at this time.

With the payment plan the 2017 Property Tax, which was Liated, on 8/31/18, was paid in full on December 4, 2022.

Run: 2/13/23
12:03PM

Property Bills Listing

Page: 1
fdesk

Town of Durham

8 Newmarket Rd
Durham, NH 03824

603-868-5577

Summary of Account by Property

Interest Calculated as of: 2/13/2023

BARTON, GENEVIEVE M & PEVEAR, DEBORAH
TAPLEY TINA
25 HIGH STREET
STRATHAM, NH 03885

Map Lot: 210-9-0-0-0
PID: 210-9-0-0-0
Alt ID: 13-6-6
Location: 236 MAST ROAD

Bill #	Bill Dt	Due Dt	Type	Year	Orig Amt	Rem Amt	Costs	Penalty	Int to Dt	Rate	PerDiem	Amt Due
85519	8/19/19	8/19/19	TAXL	2018	5,735.42	4,189.03	13.15	0.00	2,631.83	18.00	2.0658	6,834.01
90513	8/31/20	8/31/20	TAXL	2019	5,688.94	5,688.94	18.00	0.00	1,955.16	14.00	2.1821	7,662.10
95501	8/26/21	8/26/21	TAXL	2020	5,723.13	5,723.13	20.00	0.00	1,176.63	14.00	2.1952	6,919.76
105317	8/23/22	8/23/22	TAXL	2021	5,760.07	5,760.07	20.00	0.00	384.42	14.00	2.2093	6,164.49
104419	5/26/22	7/01/22	TAX1	2022	2,664.00	2,664.00	0.00	0.00	132.55	8.00	0.5838	2,796.55
106971	11/18/22	12/19/22	TAX2	2022	2,879.00	2,879.00	0.00	0.00	35.34	8.00	0.6310	2,914.34
Property Tax Totals						26,904.17	71.15	0.00	6,315.93		9.8673	33,291.25

Town of Durham
8 Newmarket Rd
Durham, NH 03824

Statement Date: 2/01/2023

Phone: 603-868-5577

NOTICE OF TAX DELINQUENCIES AND UNREDEEMED TAX LIENS

BARTON, GENEVIEVE M & PEVEAR, DEBORAH
TAPLEY TINA
25 HIGH STREET
STRATHAM, NH 03885

236 MAST ROAD

Property ID: 210-9-0-0-0

Map Lot Unit: 210-9-0-0-0

According to my records the following tax accounts / tax liens remain unpaid:

Description and Year			Bill #	Tax Due	Due Date	Interest Rate
TAX1	2022	Standard Bill Format	104,419	2,664.00	7/01/2022	8.00 % Per Yr
TAX2	2022	Standard Bill Format	106,971	2,879.00	12/19/2022	8.00 % Per Yr

The tax due amounts together with interest must be paid in full no later than August 21, 2023 on lienable items to prevent further action by the tax lien process.

*****IMPORTANT*****

Please contact the Tax Collector's Office for the correct interest computation and/or costs due prior to final payment.

Description and Year			Bill #	Tax Due	Due Date	Interest Rate
TAXL	2018	Automatic -- Tax Lien for 2018	85,519	4,189.03	8/19/2019	18.00 % Per Yr
TAXL	2019	Automatic -- Property Tax &/or	90,513	5,688.94	8/31/2020	14.00 % Per Yr
TAXL	2020	Automatic -- 2020 Property Tax	95,501	5,723.13	8/26/2021	14.00 % Per Yr
TAXL	2021	Automatic -- PROPERTY TAX/WS	105,317	5,760.07	8/23/2022	14.00 % Per Yr

PLEASE NOTE: If you are currently in bankruptcy and subject to the protections of the Automatic Stay provisions of Section 362(a) of the Bankruptcy Code, then the language on this notice is hereby modified as follows:

(a) By sending this notice, the Town is not attempting to collect any delinquent tax debt from property owner(s) in bankruptcy and the notice should not be interpreted as requiring payment. The notice is a requirement of New Hampshire law in order for the Town to perfect its statutory lien.

(b) The Tax Collector of Town may not increase the rate of interest where the Court has set such rate without seeking appropriate Bankruptcy Court approval.

(c) The provisions of the federal bankruptcy law may affect the rights of the municipality under state law as long as the assessed property owner is in bankruptcy. A tax collector's deed can not and will not be issued without appropriate bankruptcy Court approval.

Please seek legal counsel if you have any questions concerning this bankruptcy section of the Notice of Tax Delinquencies and Unredeemed Tax Liens. The tax collector's office can not provide legal advice.

Lorrie L. Pitt/Tax Collector for the Town of Durham

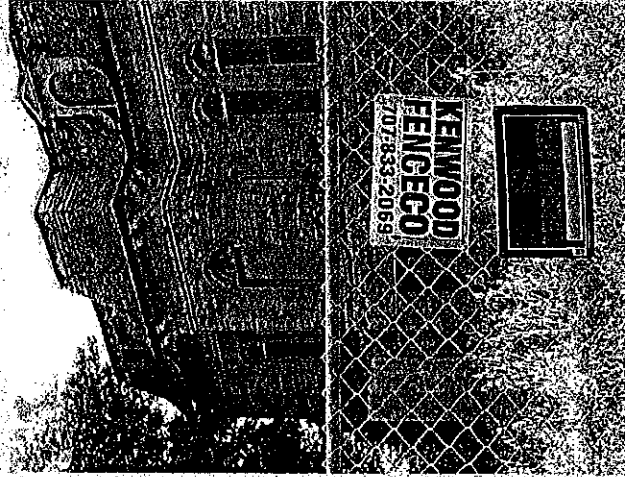
When Not To Deed

RSA 80:76 II, II-a, III

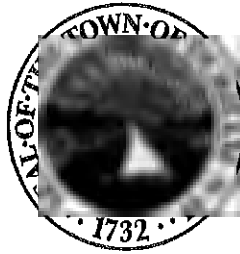
The governing body of the municipality has notified the collector by deed waiver that it shall not accept the deed because:

- acceptance would subject the municipality to potential liability due to environmental impairment of the real estate involved.
- acceptance and ownership of the real estate would subject the municipality to obligations under real estate covenants; obligations to tenants, or for any other reason that would be contrary to the public interest.

Such a decision shall not be made solely for the benefit of a taxpayer.



Lorrie L. Pitt
Town Clerk-Tax Collector
Office. 603.868.5577
Fax. 603.868.1858
Email. lpitt@ci.durham.nh.us



Town Office
8 Newmarket Road
Durham, New Hampshire
03824-2898

October 28, 2022

Genevieve M. Barton
Deborah Pevear
Tina Tapley
25 High Street
Stratham, NH 03885

Dear Genevieve, Deborah and Tina,

I am notifying you that in the coming month we will be starting the process of deeding. In order not to deed the 2018 Lien, 2019 Lien and the 2020 Lien these three liens would all need to be paid in full. We will be sending out deeding notices in the next couple of weeks, we will also go before our Town Council to request that they waive the deeding process, because you have been on a payment plan.

It will be up to the Governing Body to make the decision to go forward with the deed or waive it for this year. I have attached a copy of the RSA that talks about the deed waiver.

I know you have been trying to get caught up, but I should have started this process every year, once a lien is two years old the Tax Collector shall move forward with the deeding process according to state statute.

I am happy to help and support you in anyway I can, but I am retiring next year so I have to make sure I leave my records in good standing also.

Please let me know if you have any questions, and if I can help in any way.

Thanks,

Lorrie Pitt, Tax Collector



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

AGENDA ITEM: **#10C** TS

DATE: March 6, 2023

COUNCIL COMMUNICATION

INITIATED BY: Durham Public Works

AGENDA ITEM: SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE ADMINISTRATOR, AWARD THE 2023 ROAD AND SIDEWALK PROGRAM TO CONTINENTAL PAVING INC. OF LONDONDERRY, NH IN THE AMOUNT OF \$780,792.12 AND AUTHORIZE THE ADMINISTRATOR TO SIGN THE ASSOCIATED CONTRACT?

PREPARED BY: Richard Reine M.S.C.E., CA, Public Works Director
April Talon, P.E. Town Engineer
Sam Hewitt, Assistant Public Works Director

CC: Todd Selig, Administrator
Gail Jablonski, Business Manager

PRESENTED BY: Richard Reine, M.S.C.E., CA, Public Works Director

AGENDA DESCRIPTION:

The Town of Durham Public Works Department has developed the proposed 2023 Road and Sidewalk Program and corresponding contract amendment with Continental Paving, as depicted in the attached Figure 2. The program consists of roadway reclamation, milling and paving of approximately 3,860 feet of roadway on Emerson Road and replacement of 2,498 feet of existing sidewalk. Curbing on Emerson Road consists of both bituminous asphalt (*adjacent to the sidewalk on the northerly side*) with a short section (~ 100 feet) of sloped granite edging which will be replaced in kind. This roadway construction improvement follows the previously approved Emerson Road Water Main Replacement Project which reconstructs and replaces approximately 2,500 lineal feet of deteriorating water main, valves, hydrants and appurtenances between Madbury Road and the western entrance of Little Hale Road.

Also included within this year's Road Program scope is the paving of the parking lot at the Durham Public Works campus. The Public Works team will prepare this project for paving by replacing drainage structures and removing existing pavement. A targeted

mill and fill program is planned for several roadways including Durham Point Road, Wiswall Road, and Bagdad Road. This pavement preservation approach allows for targeted sections of roadways that are exhibiting significant distresses to be milled and paved to extend the longevity of their service life prior to full roadway paving occurring. A mill and fill funding plan totaling \$71,500 has been developed for the 2023 construction year.



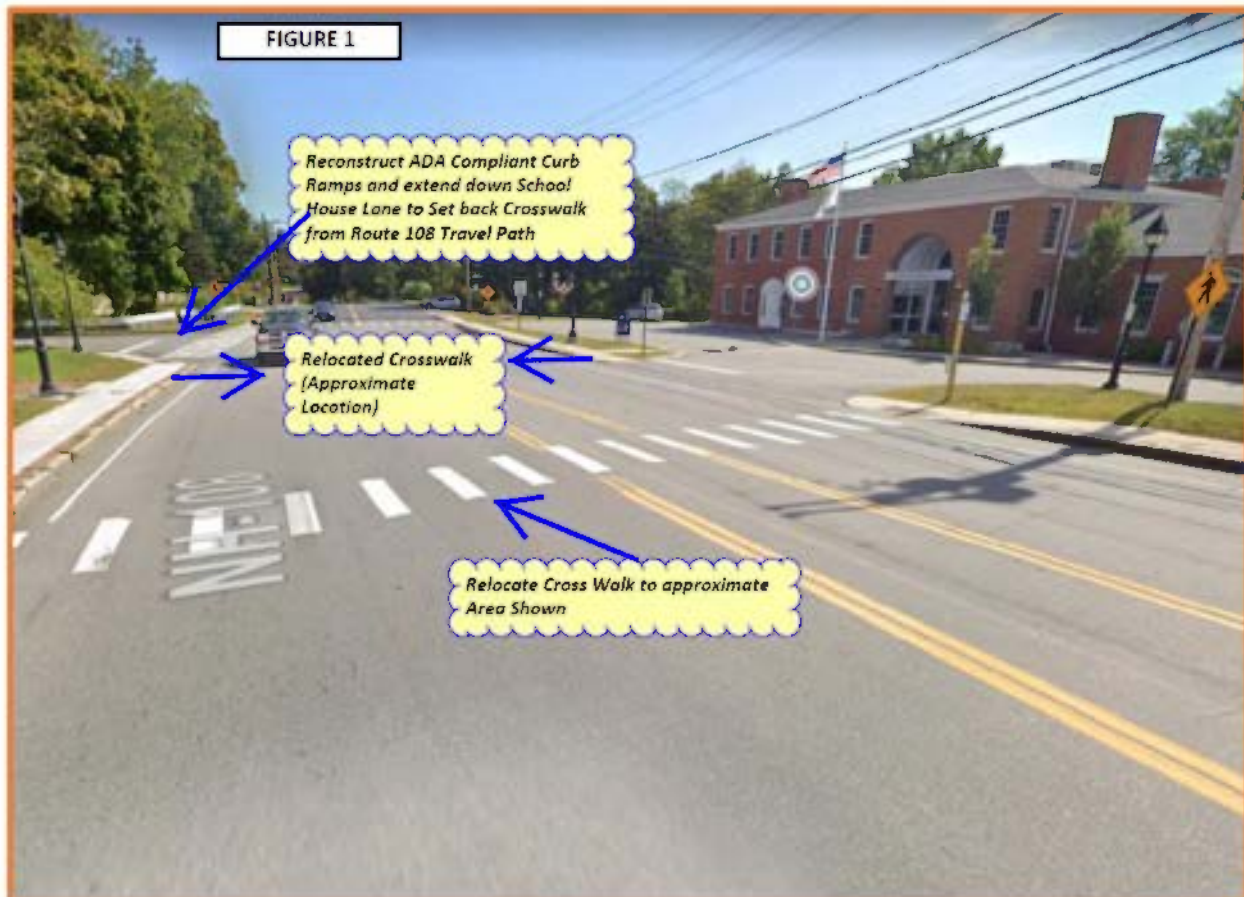
Durham Public Works Parking Lot showing pavement failures throughout

The sidewalk portion of this year's program includes the reconstruction of 920 lineal feet of concrete sidewalks with deteriorating brick banding on Main Street and Newmarket Road, from Smith Park Lane to Mill Pond Road, inclusive of ADA accessible curb ramps. The sidewalks currently have non-compliant accessible ramps, areas of failed and overturned curbing, dislodged bricks with upheaved and deteriorated concrete panels. The project will remove the existing concrete and brick banded sidewalks and replace with new concrete panels eliminating the failed brick banding while also removing and resetting the existing vertical granite curbing. This proposed sidewalk replacement is similar to the sidewalk reconstruction which was completed last construction season on the northerly side of Main Street and Dover Road and the easterly side of Newmarket Road, between Main Street and Schoolhouse Lane.



Main Street near Newmarket Road Intersection – concrete sidewalk replacement with removal of brick banding and improvements for ADA compliance

Following discussions with NHDOT District 6 and the NHDOT Traffic Bureau, which provided guidance around allowable construction retrofits on this State-owned roadway, improvements to crosswalks in the vicinity of the Town Hall are planned as shown in Figure 1 below.



Proposed improvements include 1) the relocation of the “flagged” crosswalk to a location providing improved sight distance 2) improvements to the School House Lane and Route 108 (Newmarket Road) intersection and accessible curb ramps and 3) accommodations for future pedestrian crosswalk enhancements, including lighting and potential Rectangular Rapid Flashing Beacons (RRFB), as shown in the photo below. The existing pedestrian crosswalk located between School House Lane and connecting to an accessible curb ramp adjacent to Mill Pond Road will remain in place. Please note, given the volatility of the petroleum, concrete and steel market, the overall road and sidewalk program scope is subject to modification to ensure the overall project budget is not exceeded.



Rectangular
Rapid Flashing
Beacons (RRFB)

Consistent with prior years, the Town of Durham has included planned pavement improvements for roadways owned and maintained within the University of New Hampshire (UNH) campus as a part of this proposed contract award. The total is included within this requested authorization. These roadways include College Road, McDaniel Drive, Field House Rear Drive and Spinney Lane each of which will receive a shim and overlay treatment. The value of this work is contained within the Town’s capital improvement plan and funded by the University and estimated at a cost of \$131,250. This scope is also subject to change to ensure overall UNH budget is not exceeded.

Work is scheduled to commence late spring/summer timeframe, as weather and conditions allow. Durham Public Works will schedule a neighborhood project meeting on Emerson Road to be attended by the Director, Assistant Director, Town Engineer, and Project Contractor following invitations to project abutters.

Continental Paving has provided roadway and sidewalk paving services to the Town of Durham for the past 12 years and has consistently performed in an outstanding manner while providing extremely competitive pricing and the highest level of workmanship, project coordination and materials. Unlike the majority of paving contractor’s in the region, Continental has their own asphalt plant, equipment and personnel to perform essentially 100% of the project scope. This eliminates the reliance on subcontractors, which would have the potential to cause delays and lesser quality paving materials. In previous contracts, Durham Public Works elected not to include an asphalt escalator/de-escalator clause and fared very well, saving over \$43,000 dollars last

construction season alone. However, due to the continued volatility of the oil market which impacts the pricing of liquid asphalt, we are recommending the inclusion of an asphalt escalator/de-escalator within the 2023 contract. This will protect the Town and Continental against price fluctuations which would result in a significantly higher base price offered by Continental as they factor in their upside risk. The asphalt escalator/de-escalator is a widely accepted mechanism used in most state and local road projects. The Asphalt Weekly Monitor™ published by Poten and Partners is used as an index with price adjustments, based on weekly quantities of asphalt in-place, using the Southern Maine/New Hampshire PG 64-28 asphalt binder category with increases or decreases applied to monthly invoices as the published liquid asphalt price changes.

Continental has agreed to offer a very competitive 2023 base price of \$86.43 per ton for hot mix asphalt in-place for the 2023 Road Program contract with a liquid asphalt base price of \$665 per ton. Notwithstanding this very competitive price, Durham Public Works verified current pricing being awarded on recent projects in the region. Two examples include NHDOT District 5 and the City of Nashua. The NHDOT project involves over 30,000 tons of hot mix asphalt in-place, compared to approximately 3,000 tons for the Town of Durham Project. Continental was awarded the NHDOT project at a cost of \$88.68 per ton. The City of Nashua contract value was approximately \$3 million dollars with an asphalt price of \$89.30 per ton. In the event liquid asphalt pricing increases beyond the \$665 per ton, base rate, Durham Public Works will scale back on the targeted mill and fill program described above and allocate the required funds toward the increased paving costs and contingency.

Following identification of Emerson Road as a candidate roadway, Durham Public Works completed a subsurface exploration program and subsequent geotechnical engineering evaluation. The purpose of the subsurface exploration program was to:

- Assess the nature, consistency and relative density of the soils encountered at the site.
- Provide soil samples for visual classification and perform standard penetration testing.
- Assess the thickness and conditions of the existing pavement structure and subgrade soils encountered at the test boring locations.
- Assess the thickness and condition of the existing asphalt pavements.
- Assess the depth to groundwater, if encountered.

Based on these explorations, it was found that the pavement distresses observed on Emerson Road can be attributed to multiple factors including, varying degrees of insufficient roadway base course and sub-base course thicknesses along with the presence of clayey silt subgrade and seasonal weakening of that subgrade. It was evident from the investigation that the existing asphalt pavements in the test areas are exhibiting symptoms of minor to very-severe distresses resulting from a combination of

thermal and age-related shrinkage, repair patches and subgrade fatigue. The recommended treatment for each of these roads is a reclaim and pave. Reclamation is the process of pulverizing and blending layers of asphalt and existing road base material in place on the roadway in order to provide an adequate base and consistent material upon which to place and support a new surface of asphalt.



Emerson Road at Edgewood Road approach - watermain break trench patches alligator cracking, and raveling.



Emerson Road at western entrance to Littlehale Road - Severe Alligator Cracking and Rutting, Delamination and Base Failure

Public Works Staff, the Business Office and the Administrator recommend awarding the 2023 Road Resurfacing contract to Continental Paving Inc. of Londonderry, NH in a total amount of \$780,792.12, inclusive of both Town and UNH Roadways and Town sidewalks . As noted, Continental Paving has successfully completed several paving programs for the Town over the past 15 years including the last 12 annual road program contracts.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

ACCOUNT	TITLE	BUDGETED	EXPENSED/ ENCUMBERED TO DATE	BALANCE	REQUESTED
07-2381-801-36-000	2023 Road Program	\$490,000	\$0	\$490,000	\$490,000
07-2281-801-36-000	2022 Road Program	\$450,000	\$408,699.88	\$41,300.12	\$41,300.12
07-2183-801-36-000	2021 Road Program	\$435,000	\$403,993.81	\$31,006.19	\$31,006.19
07-2382-801-36-000	2023 Sidewalk Program	\$84,500	\$0	\$84,500	\$84,500
07-1782-801-36-000	2017 Sidewalk Program	\$40,000.00	\$37,264.19	\$2,735.81	\$2,735.81
07-2383-801-36-000	2023 UNH Road Program	\$131,250	\$0	\$131,250	\$131,250
TOTAL					\$780,792.12

SUGGESTED ACTION OR RECOMMENDATIONS:

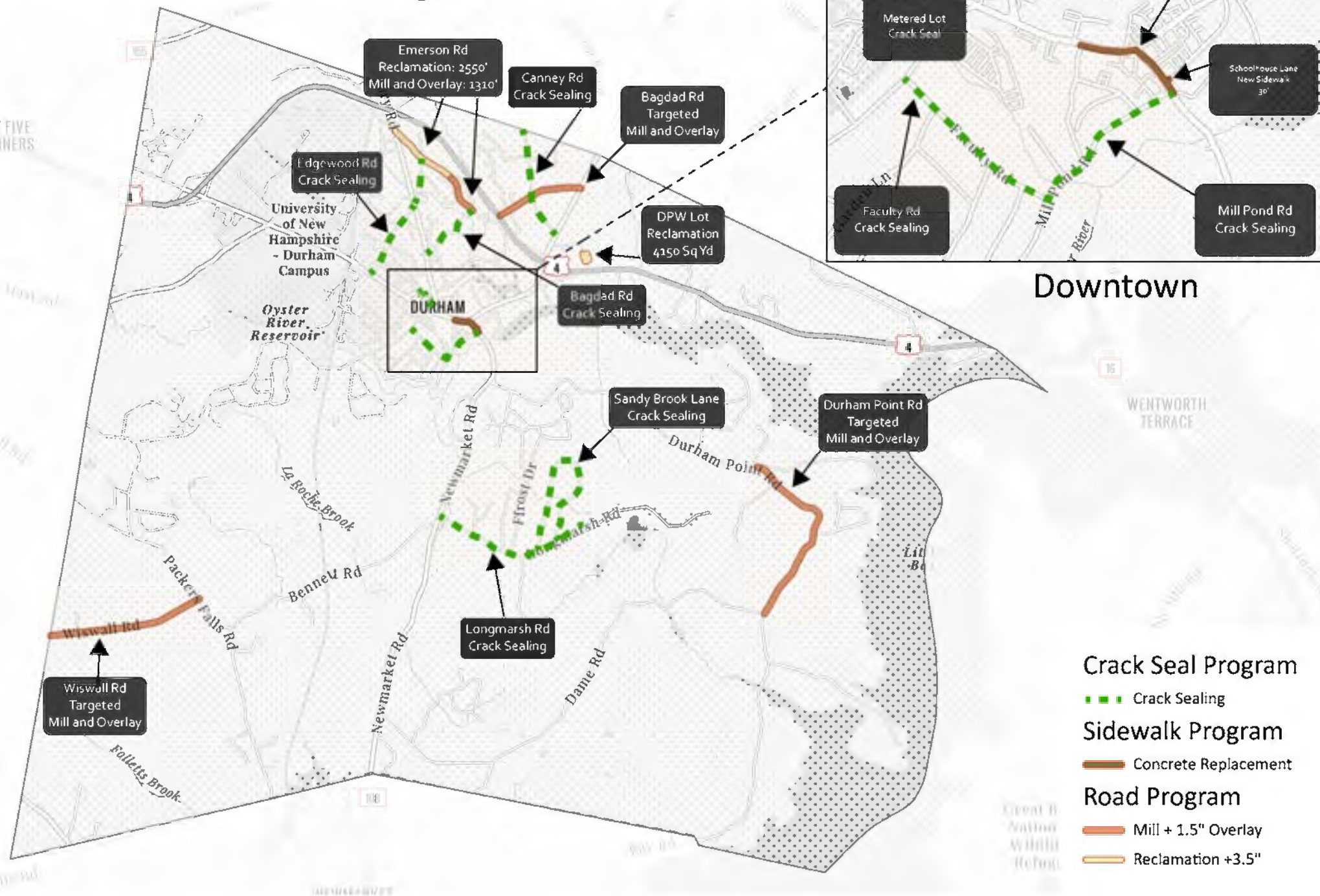
MOTION:

The Durham Town Council does hereby, upon recommendation from the Administrator, award the 2023 Road and Sidewalk Program totaling \$780,792.12 to Continental Paving, Inc. of Londonderry, NH and authorizes the Administrator to sign said contract.



Durham Public Works 2023 Road and Sidewalk Program Overview

Figure 2





TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

AGENDA ITEM: **# 11A** *TS*

DATE: March 6, 2023

COUNCIL COMMUNICATION

INITIATED BY: David Steinberg, 271 Packers Falls Road

AGENDA ITEM: SHALL THE TOWN COUNCIL NOMINATE RESIDENT DAVID STEINBERG FOR A THREE-YEAR APPOINTMENT BY THE NHDES COMMISSIONER AS A DURHAM REPRESENTATIVE TO THE LAMPREY RIVER LOCAL ADVISORY COMMITTEE?

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

In 2019, the state House of Representatives passed House Bill 228 which changed the appointing body for local river management advisory committee members from the Commissioner of the Department of Environmental Services to the Department of Environmental Services Rivers Management Advisory Committee, upon the recommendation of the Town Council. The term is for three (3) years from the time the appointment is made by the Advisory Committee.

Attached for the Council's information is a Local River Management Advisory Committee nominee form completed submitted by Mr. Steinberg which must be submitted to the NHDES Commissioner.

The duties of the local advisory committee under RSA 483:8-a include:

1. To advise the commissioner, the advisory committee, the municipalities through which the designated river or segment flows, and municipalities within tributary drainage areas on matters pertaining to the management of the river or segment and tributary drainage areas. Municipal officials, boards, and agencies shall inform such committees of actions which they are considering in managing and regulating activities within designated river corridors.
2. To consider and comment on any federal, state, or local governmental plans to approve, license, fund or construct facilities that would alter the resource values and characteristics for which the river or segment is designated.

Re: Appoint David Steinberg to the Lamprey River Local Advisory Committee

3. To develop or assist in the development and adoption of local river corridor management plans under RSA 483:10. The local planning board, or, in the absence of a planning board, the local governing body, may adopt such plans pursuant to RSA 675:6 as an adjunct to the local master plan adopted under RSA 674:4. No such plan shall have any regulatory effect unless implemented through properly adopted ordinances.
4. To report biennially to the advisory committee and the commissioner, and annually to municipalities on the status of compliance with federal and state laws and regulations, local ordinances, and plans relevant to the designated river or segment, its corridor, and tributary drainage areas.

LEGAL AUTHORITY:

New Hampshire Revised Statutes Annotated (RSA) 483:8-a, New Hampshire Rivers Management and Protection Program (RMPP).

Section 11.1(G) “Administrative Committees” of the Durham Town Charter.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby nominate resident David Steinberg for a three-year appointment by the NHDES Commissioner as a Durham Representative to the Lamprey River Local Advisory Committee.



LOCAL RIVER MANAGEMENT ADVISORY COMMITTEE NOMINEE FORM



New Hampshire Rivers Management and Protection Program

RSA 483:8-a

Please complete both sides of this form and email to riversprogram@des.nh.gov. Please type "NOMINEE FORM" and nominee's name in the subject line. Forms can also be sent by mail to: Rivers Coordinator, NHDES, 29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095. For questions please contact the Rivers Coordinator at 271-2959.

Nominee Information

Nominee Name: <u>David Steinberg</u>		Date: <u>01/30/23</u>
Street Address: <u>271 Packers Falls Road</u>		
Town: <u>Durham</u>		Zip Code: <u>03824</u>
Phone (home):	Phone (cell): <u>215-262-0214</u>	Phone (work):
Email: <u>steinbds@gmail.com</u>		

Nomination Information

Type of Appointment -	<input checked="" type="checkbox"/> New Appointment	<input type="checkbox"/> Reappointment
River Name: <u>Lamprey</u>		
Type of Representation -	Municipality: <u>Durham</u>	Other:
Please state your interest(s) in serving on the Local River Management Advisory Committee:		
<input type="checkbox"/> Local Government	<input checked="" type="checkbox"/> Conservation	<input type="checkbox"/> Agriculture
<input type="checkbox"/> Business	<input checked="" type="checkbox"/> Recreation	<input checked="" type="checkbox"/> Riparian Landowners
<input type="checkbox"/> Other, please specify: _____		

Board of Selectmen or Authorized Signature(s) – REQUIRED (e-signature acceptable)

Name:	Title:
Name:	Title:
Name:	Title:
<p><i>Note: By statute, the Commissioner of NHDES appoints the Local River Management Advisory Committee (LAC) members for each Designated River from nominees submitted by the local governing bodies through which the Designated River flows (RSA 483:8-a)</i></p>	

(603) 271-2959 riversprogram@des.nh.gov
PO Box 95, Concord, NH 03302-0095
www.des.nh.gov

Additional Information

Please include a short description of your relevant background knowledge of local river-related issues or general river management and protection:

DES has a doctorate in biology (Duke 2015) & is a lecturer in ecology at the University of New Hampshire, where he teaches an issue surrounding land management and conducts research of wetland communities with undergraduate students.

Most Local Advisory Committees engage in a variety of activities. Reviewing those activities listed below, please check those that are of most interest to you:

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> Grant Writing | <input checked="" type="checkbox"/> Public Education | <input type="checkbox"/> Committee Administration |
| <input type="checkbox"/> Event Organization | <input type="checkbox"/> Public Relations | <input checked="" type="checkbox"/> Management Plan Preparation/Implementation |
| <input type="checkbox"/> Other, please specify: _____ | | |

Most Local Advisory Committees meet monthly. In some cases they may meet more frequently to complete specific tasks, while in other cases your attendance may not be required at all meetings. Please check one of the boxes below to indicate your availability to attend regularly scheduled meetings:

- ☒ I can attend monthly meetings on most weeknights
- ☐ I can attend monthly meetings only if scheduled on a specific weeknight
- ☐ I can only attend a limited number of monthly meetings
- ☐ I cannot attend monthly meetings, but am willing to complete tasks on behalf of the Committee

For NHDES Office Use Only

LAC Chair and Nominee have been contacted regarding nomination on (date):

LAC Member List and Contacts Database updated (date):

RMPP Staff recommends appointment to Commissioner -

☐ Approve

RMPP staff:

Date:

Appointment letter and information packet sent on (date):

Appointment confirmation sent to municipality and LAC Chair on (date):

(603) 271-2959 riversprogram@des.nh.gov
 PO Box 95, Concord, NH 03302-0095
www.des.nh.gov



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

AGENDA ITEM: **# 12A** *TS*

DATE: March 6, 2023

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator

AGENDA ITEM: **PRESENTATION BY ATTORNEY, KATHERINE MILLER, OF DONAHUE, TUCKER & CIANDLLA, PLLC, ON CABLE FRANCHISE RENEWAL PROCEEDINGS BETWEEN THE TOWN OF DURHAM AND COMCAST/XFINITY, THE TOWN'S CURRENT CABLE OPERATOR.**

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Katherine Miller, DTC Law Offices

AGENDA DESCRIPTION:

On September 19, 2022, the Town of Durham received formal notification, (attached), from its cable provider Comcast regarding the commencement of the cable franchise renewal process between the Town of Durham and Comcast. The current franchise agreement expires on June 5, 2025.

The Administrator has executed a "Special Counsel Representation Agreement" with Donahue, Tucker, and Ciandella Law Offices (DTC Lawyers) which will once again represent and assist the Town during its upcoming discussions with Comcast. Attorney Katherine Miller will assist the Town in developing a set of priorities for the renewal negotiations, drafting proposals for renewal of the franchise with Comcast, or amendment, if the Town determines that is the preferable route, and conducting any public hearings on the proposal for renewal or amendment of the cable television franchise.

Re: Presentation From Attorney Katherine Miller, DTC Law Office, on the Town's
Cable Franchise Agreement Renewal Process with Comcast

As part of the cable franchise renewal proceedings between the Town of Durham and Comcast/Xfinity, the current cable operator, Attorney Miller will attend Monday evening's meeting to explain the process and any relevant aspects of cable television and telecommunications law to the Town Council.

LEGAL AUTHORITY:

Cable Communications Policy Act of 1984.

LEGAL OPINION:

The Town has engaged the services of Attorney Katherine Miller of Donahue, Tucker, and Ciandella Law Offices (DTC Lawyers) to assist in the negotiation process for renewal of the Town's cable services with Comcast.

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

Receive presentation from Attorney Katherine Miller, of Donahue, Tucker & Ciandlla, PLLC Cable Franchise Renewal Proceedings Between the Town of Durham and Comcast/Xfinity, the Town's Current Cable Operator.

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MEMORANDUM

To: Durham Town Council and Town Administrator
From: Katherine B. Miller, Esq.
Re: Options for Renewal of Cable TV Franchise with Comcast
Date: March 1, 2023

Introduction

This memo provides a brief overview of the options for the Council in renewing the cable TV franchise with Comcast, as well as what has changed since the 2018 Amendment to the Franchise Agreement. Depending on the number of changes desired, the Council has the option of doing an Amendment or a new Franchise Agreement. There has been a change in Federal Communications Commission rules on free cable services provided to communities since the Amendment. There has also been a big change in Durham: in 2021, the Council granted a competitive cable TV franchise to Atlantic Broadband, now re-branded as “Breezeline.” This will give Durham residents a second option for cable TV service provider. Additionally, Comcast is now agreeing to gradually introduce high definition (“HD”) local access channels.

Beginning the Renewal Process

The current Franchise Agreement was executed on June 6, 2013, for a five-year term, and amended in 2018 for another seven years. The current expiration date is June 5, 2025. The Town is in the renewal “window,” which opens three years before the expiration of the franchise. Comcast informed the Town, with a letter dated September 19, 2022, that it wants to renew the franchise. In order to protect its legal rights, the Council must undertake a process to ascertain the cable related needs and interests of the community within six months of that letter, on or before **March 19, 2023**. The renewal is on the Agenda for the Council’s meeting of March 6th, and discussion of the initiation of the renewal process and ascertaining the cable related needs and interests of the community will meet the requirement to protect the Town’s legal rights.

As the next step in the renewal process, I recommend that the Town send to Comcast a set of targeted questions to audit the company’s compliance with the requirements of the current cable TV franchise, as amended. If there are issues of non-compliance, this is the time to address them. I will work with the Town Administrator and Town staff to identify the issues to raise.

Competitive Cable TV Provider

New Hampshire law requires that the franchise agreements for two or more cable TV providers in the same community must include essentially the same burdens and benefits for each company. The Breezeline Franchise Agreement was modelled on the existing Comcast Franchise Agreement, so they are not far apart. Comcast may seek in the renewal negotiations to bring its Franchise Agreement into complete alignment with Breezeline's Franchise Agreement. This would probably suit the Town well, as many of the "boiler plate" terms in the Breezeline Franchise Agreement are as good as or better than the current Comcast Franchise Agreement, as amended. However, we proceed, we will work to preserve any benefits in the current Comcast Franchise Agreement with the Town and gain new benefits

Options for the Amendment or New Franchise Agreement

- The Town has long sought at least one High Definition ("HD") channel for its local access programs. Comcast is beginning to roll them out. Helpfully, the Breezeline Franchise Agreement provides for one channel in HD (the one the Town will use), one in Standard Definition ("SD") (the one the schools will use) and the option for a third. Comcast will most likely agree to provide one channel for Town use in HD, in about eighteen months from the date of the new Franchise Agreement or Amendment. We will need to negotiate regarding Comcast's equipment charges, which the company generally requires the cable TV subscribers to pay, through an additional charge on their bills. Breezeline is not passing its costs for HD equipment on to Durham subscribers.
- Expanding service to unserved areas has been another priority of the Council for many rounds of negotiations with Comcast. The Mast Road Extension area lacks service, but the poles are at capacity and Comcast would need to pay to have the poles replaced, and to move all the current attachers to those poles to the new poles. It has not been willing to shoulder that cost. We will continue to look for solutions. It is possible that Breezeline's construction of its cable TV system may, ironically, have opened up opportunities for Comcast to expand into areas Breezeline will now serve.
- We generally recommend a ten-year renewal term or amendment, to ensure that Comcast remains in the Town providing cable TV services in that format for that length of time. Eventually, Comcast, Breezeline and other cable TV providers will want to drop the requirements of their cable TV franchises, and to operate solely as internet service providers, who are subject to less regulation. The ten-year term would lock the company in for that time, at a minimum.
- Some residences in Durham receive cable service from the cable systems in surrounding communities, not Comcast's cable system in Durham. We have addressed that in past Franchise Agreements with Comcast and would retain the requirement that Comcast carry the Durham local access channels in the channel line-up for those neighboring communities, so that all Durham residents, regardless of where their cable service comes from, will continue to be able to watch the Durham local access channels.
- Comcast pays to the Town 4% of its gross revenue from the operation of the cable TV system in the Town in the form of franchise fees. The Town may receive up to 5%, and I recommend that the Town increase that percentage at this time. As more subscribers drop cable TV and switch to watching streaming services online only, cable TV revenues will

decline. Increasing the percentage can address that at least in part, and maintain the current revenue stream to the Town.

- The FCC ruled in 2019 that the total funds and the value of services provided without charge to a community cannot exceed 5% of the cable TV operator's gross revenue in that community. Town facilities and public schools in Durham currently receive free cable TV services at the basic tier rate. If Comcast chooses to implement the FCC's 2019 order (which it has not done to date), it will offset against the franchise fee payment the marginal cost to Comcast to provide those free services. It will notify the Town before it implements the FCC order, and the Town can then either cancel the free cable services, or receive a slightly smaller amount of franchise fees.

Items *Not* Subject to Negotiation with Comcast

- Internet or phone service. The Council only has jurisdiction over the cable services provided by Comcast in the Town, in spite of the fact that internet and phone services are delivered to many Durham residents over the same cable system as TV programming is delivered. The Town negotiated hard in the past for free high speed internet service to all municipal facilities that are staffed, but Comcast flatly refused. Comcast provides free internet service to schools and libraries, at the level of a single, residential account.

Conclusion

I look forward to discussing these options with the Town Council at the meeting on March 6, 2023.

https://townofdurham-my.sharepoint.com/personal/kedwards_ci_durham_nh_us/Documents/Town Council Meetings/Attachment Information/2023/030623 TC/Memo on Options for Renewal of Cable TV Franchise with Comcast.docx



Comcast Cable
676 Island Pond Road
Manchester, NH 03109
603-695-1400
www.comcastcorporation.com

9/19/2022

VIA UPS and email ndadmin@newdurhamnh.us

Town of Durham
Town Council
8 Newmarket Road
Durham, NH 03824

Subject: COMMENCEMENT OF FRANCHISE RENEWAL PROCESS

Dear Chair and Members of the Select Board:

Comcast appreciates the opportunity to provide our products and services to the citizens of the Town of Durham. We provide the high quality cable television and other services the Town of Durham and its residents demand, and we hope to continue providing those services to our Town of Durham subscribers for many years to come. Therefore, we are taking this step to ensure the renewal of our franchise with you.

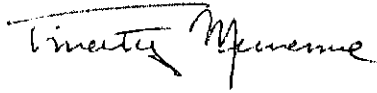
The Cable Communications Policy Act of 1984 ("the 1984 Cable Act") encourages franchisors and cable operators to reach renewal agreements at any time through an informal process of discussion. However, Section 626 of the 1984 Cable Act also provides for commencement of a formal renewal procedure. To preserve our statutory rights to this formal procedure, this letter is our official notice to you invoking that provision so the parties can use the formal renewal procedure should informal discussions result in an impasse.

This letter is not intended to introduce a new formality into our discussions, nor is that the intention of the 1984 Cable Act. In fact, we prefer to reach a mutually satisfactory agreement through informal negotiations, thus making many of the 1984 Cable Act's formal procedures unnecessary.

Jay Somers will be in contact with you soon to arrange a meeting to discuss informally negotiating a renewal agreement. Please also feel free to contact Jay at 617-279-7675 at any time if you have any questions. Comcast looks forward to meeting with the Town and continuing the relationship that, we believe, has benefited both the community and the residents of the Town of Durham.

Sincerely,



A handwritten signature in black ink, appearing to read "Timothy Murnane". The signature is fluid and cursive, with a horizontal line above the first part of the name.

Timothy Murnane
Vice President, Government and Regulatory Affairs

TM/cam
Attachment

cc: Jay Somers– Comcast Government & Regulatory Affairs
Cable Advisory Board
Town Manager

FIRST AMENDMENT TO JUNE 6, 2013

RENEWAL CABLE TELEVISION FRANCHISE AGREEMENT

BETWEEN THE TOWN OF DURHAM, NEW HAMPSHIRE, AND

COMCAST OF MAINE/ NEW HAMPSHIRE, INC.

WHEREAS, Comcast of Maine/ New Hampshire, Inc. (hereinafter "Franchisee"), is the duly authorized holder of a Renewal Cable Television Franchise to operate a cable television system in the Town of Durham, New Hampshire (hereinafter the "Town") pursuant to NH RSA 53-C, as amended, said Renewal Franchise having commenced on June 6th, 2013;

WHEREAS, Franchisee and the Town wish to amend the Renewal Cable Television Franchise Agreement;

WHEREAS, Section 10.4 of the Renewal Cable Television Franchise Agreement authorizes amendment by written agreement following publication of the proposed amendment in a manner consistent with NH RSA Chapter 43;

WHEREAS, the Town Council of the Town of Durham as Franchising Authority (hereinafter "Franchising Authority") is authorized to amend the Renewal Cable Television Franchise Agreement pursuant to RSA 53-C;

NOW THEREFORE, after due and full consideration, the Franchising Authority and Franchisee agree that the Renewal Cable Television Franchise Agreement is hereby amended as follows:

FIRST: Section 2.2, Term: is deleted and a new Section 2.2 inserted therefore:

The term of this non-exclusive Renewal Franchise shall be for a period of twelve (12) years and shall commence on June 6, 2013 following the expiration of the current Franchise, and shall expire at midnight on June 5, 2025.

SECOND: New sub-Section 6.2(d) shall be added as follows:

(d) Franchisee will provide a fiber link from Town Hall, 8 Newmarket Road, Durham, NH, to the Police Department, 86 Dover Road, Durham, NH, to facilitate PEG origination/return capacity in the Town. Installation to be completed by the end of the first quarter, 2019, subject to force majeure. During the term of this Renewal Franchise, the Franchising Authority shall contribute a total of \$25,800, which shall be deducted from the Franchise Fee collected in accordance with Section 9.4 of this Renewal Franchise during years 5 and 6 (2018-2019), of the Term, to be applied towards construction of the fiber link from the Town Hall to the Police Department, as outlined above. Collection costs shall be limited to those discussed in these paragraphs and under no circumstances shall Franchisee pass through additional costs to subscribers for compliance with this section.

THIRD: Section 9.4(a) of Section 9: FRANCHISE FEES is deleted, and the following new Section 9.4(a) in in is inserted in its place, as follows:

On the Effective Date, Franchisee shall pay a Franchise Fee to the Town, equal to four percent (4%) of Franchisee's Gross Annual Revenue. At the option of the Franchising Authority, by vote of the Town Council at a public meeting, the Franchising Authority may increase the Franchise Fees by no more than one percent (1%) of the Franchisee's Gross Annual Revenues annually, not to exceed five percent (5%) of the Franchisee's Gross Annual Revenues in total. Such increased Franchise Fee shall be implemented within ninety (90) days after each such written notice from the Town Council. During years 5 and 6 (2018 and 2019) of the term of this Renewal Franchise, the Franchisee shall deduct \$12,900.00 annually from the Franchise Fee payment, for a total of \$25,800. during the term of this Renewal Franchise to be applied towards construction of the fiber line between the Town Hall and the Police Department, as outlined in Section 6.2(d), above, of this Renewal Franchise.

In all other respects, the Renewal Cable Television Franchise Agreement is not amended and remains in full effect.

WITNESS OUR HANDS AND OFFICAL SEAL, this 3 day of JUN, 2018.

TOWN OF DURHAM

BY: 

Todd Selig, Town Administrator
Duly Authorized

COMCAST OF MAINE/NEW HAMPSHIRE, INC.

BY: 

Tracy L. Pitcher
Sr. Vice President
Greater Boston Region