



# LONDONDERRY TOWN COUNCIL AGENDA

AUGUST 14, 2023 • 7:00 P.M. • MOOSE HILL COUNCIL CHAMBERS

John Farrell • Chair  
Chad Franz • Vice Chair  
Jim Butler • Councilor  
Ted Combes • Councilor  
Ron Dunn • Councilor

Michael Malaguti • Town Manager  
Kellie Caron • Assistant Town Manager | Director of Economic Development  
Justin Campo • Finance Director

**A. CALL TO ORDER**

**B. PUBLIC COMMENT**

1. Londonderry Fire Chief Darren O'Brien

**C. PUBLIC HEARINGS**

**D. NEW BUSINESS**

1. **Assessing Revaluation Update**  
(Steve Hamilton, Assessor)
2. **ARPA Request - Public Works Facility Master Plan Feasibility Study**  
(Dave Wholley, DPW Director; Weston & Sampson)
3. **Technical Amendments to Intermunicipal Agreement with Town of Derry for Wastewater Service**  
(Michael Malaguti, Town Manager)
4. **ARPA Request - LPD Dispatch Remodel Presentation**  
(Captain Patrick Cheetham, LPD)
3. **New Balance Payment In lieu of Taxes (PILOT) Agreement**  
(Michael Malaguti, Town Manager)

4. **Grant Extension - Town's Hazard Mitigation Plan**  
*(LFD Chief Darren O'Brien)*

**E. OLD BUSINESS**

**F. APPROVAL OF MINUTES**

July 10, 2023 Town Council Minutes

**G. APPOINTMENTS/REAPPOINTMENTS**

1. Utilities Committee Interview
2. Pickleball Interview (1 applicant for 1 alternate position)
3. Budget Committee Interviews (2 applicants for 1 position)

**H. OTHER BUSINESS**

1. Liaison Reports
2. Town Manager Report
3. Assistant Town Manager Report

**I. ADJOURNMENT**

**J. MEETING SCHEDULE**

1. Town Council Meeting 9/11/2023  
Moose Hill Council Chambers, 7:00 P.M.

## Town of Londonderry

### New Public Works Facility Master Plan Feasibility Study

#### EXHIBIT A – SCOPE OF WORK AND SCHEDULE

The purpose the following scope of work is to develop a master plan for a new public works facility. The scope involves assessing the needs of two existing operational sites, evaluating the suitability of consolidating operations, and evaluating the suitability of two sites to accommodate a new facility. Work may also include the feasibility of repurposing existing structures.

#### **TASK 1 - PROJECT START-UP**

- A. Attend a Kick-Off Meeting with Town officials to review the project goals, the scope of tasks to be undertaken, procedural protocols, and the nature and schedule of deliverables.
- B. Complete a review of all available existing published documents relating to the Project. Existing data to be reviewed will include plans of the existing Division work sites, any studies related to DPW operations or its facilities, Department organizational information, along with vehicle, equipment, and material inventory lists.
- C. Visit Division work sites to view how they are organized, how the work is accomplished, and how the facilities affect efficiency. Identify operational issues within the existing facilities and areas where consolidation may be possible to improve operations. We understand that there are two division work sites; Public Works operations on High Range Road, and the Transfer Station on Recovery Way.

#### **TASK 2 - NEEDS ASSESSMENT / FACILITY PROGRAMMING**

- A. Meet with DPW management to review the building and site program requirements for a new facility. Interviews shall be conducted and will focus on developing a detailed understanding of the day-to-day operations. The data obtained from this analysis will be used to identify the “near-term needs” (5 to 10 years) and the “long-term needs” (more than 10 years). Programming needs will be identified for all anticipated spaces. Some of the topics that may be discussed at these interviews are:
  - Existing building and site deficiencies
  - Description of the current day-to-day operations
  - Description of how typical emergency situations impact the Facility

- Vehicle, equipment, and material storage requirements
  - Public interaction with DPW at the Facility
  - Anticipated growth in service
  - Anticipated growth in vehicles, equipment, and materials
  - Future fleet electrification phasing considerations at the new site only
- B. Based on the results of the existing documentation review and staff interviews, prepare programming sketches for each major functional space to be incorporated into a new facility. These programming sketches will provide layouts for individual spaces illustrating layouts for desks, chairs, shelves, file cabinets, vehicles, equipment, and plows. The purpose of these sketches will be to validate the required size and functional capabilities.
- C. Identify all site components to be incorporated into a new facility including fueling, salt storage, bulk material storage, circulation, and parking. This may also include consolidating the transfer station operations.
- D. Prepare a Facility Space Needs Matrix which details each space required for the facility, including operational spaces and support spaces. The matrix will be organized by space type (e.g., offices, employee facilities, shops, vehicle storage, etc.), and will include factors to account for corridors, structure, and other non-usable square footage, and will yield a total proposed facility size.
- E. Review the programming sketches and matrix with the Town. Advise the Town about any potential opportunities to reduce or consolidate spaces that are not expected to impact operational efficiency, and the potential implications of reductions that would be expected to hinder DPW productivity.
- F. Identify core operations which require direct adjacencies.
- G. Incorporate comments from the Town into an updated DPW Facility Space Needs Matrix.
- H. Work with the Town to identify sustainability and renewable energy goals and identify key processes that can help the Town achieve these goals. Some items of consideration may include solar, electric vehicle charging stations, rainwater harvesting, and geothermal. Work completed as part of this task will include identifying potential funding sources (i.e. grants and incentives) that may be applicable for the Town and the Public Works project.

### **TASK 3 - BUILDING AND SITE PLANNING CONCEPT DESIGN**

- A. Prepare a draft zoning analysis for the site utilizing the current local zoning regulations (allowable use, setbacks, lot coverage, height, floor area ratio, etc.). The analysis shall identify all



dimensional restrictions as well as any special permits or variances required to meet the requirements of the zoning bylaws. This shall be done for two sites; High Range Road and Mammoth Road.

- B. Utilize the results of the previous phase to develop building and site alternatives on the Town's two sites (maximum of 3 alternatives per site). Building alternatives will be in the form of "block plans" that are assembled from the various groupings of space types (e.g., offices, employee facilities, etc.). Traffic flow patterns will separate residential traffic from heavy equipment and work areas where possible. Each alternative site plan will show the general layout of driveways, buildings, circulation, bulk material storage, and parking.
- C. Each of the alternatives will be reviewed with the Town and comments incorporated accordingly to create a single preferred alternative.
- D. Utilizing the preferred site alternative, create a conceptual level floor plan which will show all interior spaces and adjacencies.

#### **TASK 4 - CONCEPT-LEVEL DEVELOPMENT BUDGET**

- A. Prepare a conceptual development budget based on the preferred alternative. The estimate will be based on dollar per square foot value for each of the space types (e.g., offices, employee facilities, trade shops, vehicle maintenance, vehicle wash, etc.). These values will be derived from our in-house construction cost database, which includes the most recent DPW facility bidding experience. The cost estimate will include the preparation of a detailed conceptual level site to identify anticipated site development costs which are site specific. The cost estimate will also identify potential soft costs associated with the project, including design contingencies, construction contingencies, clerk-of-the-works services, printing of bid documents, architectural and engineering design fees, borrowing costs, inflation, and insurance during construction.

#### **TASK 5 - REPORT AND PRESENTATION OF CONCLUSIONS**

- A. Prepare a summary report that outlines the work completed as part of the study, with exhibits illustrating all of the completed tasks.
- B. Present the study recommendations to Town governing authorities and the community, as appropriate.

#### **TASK 6 - PREPARE PRESENTATION MATERIALS**

- A. Prepare presentation material and assist the Town with presenting the project to the appropriate Town committees, Town boards, and other interested parties. Presentation materials to include

colored conceptual building and site plans, conceptual 3D site modeling, and PowerPoint presentations and handouts.

## **SCHEDULE**

It is anticipated that Tasks 1 through 5 will be completed within 4 months of receiving authorization to proceed. It is anticipated that Task 6 will be completed on an as needed basis.

Town of Londonderry

New Public Works Facility Master Plan Feasibility Study

EXHIBIT B – FEE SCHEDULE

<u>Task and Description</u>	<u>Fee</u>
Task 1 - Project Start-Up	\$2,000
Task 2 - Needs Assessment / Facility Programming	\$20,000
Task 3 - Building and Site Planning Concept Design	\$25,000
Task 4 - Concept-Level Development Budget	\$5,000
Task 5 - Report and Presentation of Conclusions	\$7,000
Task 6 - Prepare Presentation Materials	\$5,500
<b>Total Fee</b>	<b>\$64,500</b>

**INTER-MUNICIPAL AGREEMENT BETWEEN  
THE TOWN OF DERRY AND  
THE TOWN OF LONDONDERRY FOR  
WASTEWATER SERVICE**

DATE: JULY 10,1981  
REVISED: MARCH 1991

**REVISED: 2021**  
**REVISED: 2023**



## **INTER-MUNICIPAL WASTEWATER AGREEMENT**

THIS INTER-MUNICIPAL WASTEWATER AGREEMENT ("Agreement"), made pursuant to RSA 53-A and entered into this the day of \_\_\_\_\_, 2021 by and between the Town of Derry, New Hampshire, a municipal corporation in the State of New Hampshire ("Derry"), and the Town of Londonderry, New Hampshire, a municipal corporation in the State of New Hampshire ("Londonderry") (collectively, the "Parties" and each a "Party"), for the purpose of providing wastewater service to Londonderry through the Derry System, for the mutual benefit of Derry and Londonderry thereby serving the public health and welfare of the people of the State of New Hampshire and enhancing the water quality of the Merrimack River and its tributaries.

WITNESSETH:

WHEREAS, the Town of Derry, through its Public Works Department, operates and maintains wastewater facilities, hereinafter known as the Derry Sewerage System (the "System"), and

WHEREAS, it is deemed in the best interest of the Parties that Londonderry obtain wastewater service through the System, and

WHEREAS, Derry and Londonderry have been parties to previous iterations of this Agreement since 1981 and see mutual benefits to extend and amend the terms and conditions of the Agreement, and

WHEREAS, Derry has agreed with the applicable Federal and State Agencies to negotiate with Londonderry to receive, treat, and dispose of Wastewaters from the Town of Londonderry through the System; and

WHEREAS, pursuant to RSA 149:I, Derry is authorized to negotiate and execute an agreement with Londonderry by which Derry will provide wastewater service to Londonderry, and

WHEREAS, Londonderry is authorized to negotiate and execute an agreement with Derry, as authorized by RSA 149:I, by which Derry will accept sanitary sewer from Londonderry,

NOW, THEREFORE, in consideration of the mutual undertakings, promises, benefits, and agreements herein contained, Derry and Londonderry covenant and agree as follows:

### **ARTICLE I - OBLIGATIONS OF THE PARTIES**

#### **1.1 DERRY TO PROVIDE WASTEWATER SERVICE**

Derry agrees to provide wastewater service to Londonderry subject to the conditions hereinafter provided. Derry shall accept into the System and shall treat and discharge to the Merrimack River, all wastewater received from Londonderry in accordance with municipal, State, and federal regulations. The Derry Public Works Department shall have exclusive jurisdiction and control over the System and shall be responsible to local, State, and federal authorities having

jurisdiction over said facilities.

## 1.2 LONDONDERRY TO PAY FOR SERVICE

In consideration of the wastewater service to be provided by Derry under the provision of this Agreement, Londonderry agrees to pay all charges as provided for in Article III of this Agreement and to comply with all other conditions of this Agreement.

## 1.3 LONDONDERRY USER CHARGE SYSTEM

Londonderry shall develop and maintain a system of user charges acceptable to the NH Department of Environmental Services and the United States Environmental Protection Agency.

## 1.4 DERRY FACILITIES

Derry shall provide all such wastewater facilities as are required to perform its obligation under the terms of this Agreement. Derry shall be responsible for land acquisition and for the design, construction, maintenance, repair, and operation of all wastewater facilities within its own geographic area.

## 1.5 LONDONDERRY FACILITIES

Londonderry shall provide such wastewater facilities as are required to collect and deliver its wastewater, from within the part of Londonderry to be serviced under this Agreement, through a specific portion Derry owned property in Londonderry and continuing through a specific portion of Derry geographic area to the point of interception with the Derry WWTF influent pumping station located immediately down stream of Londonderry Sewer manhole DL-1., as shown in Appendix A of this document. Londonderry shall be responsible for land acquisition and for the design, construction, maintenance, repair, and operation of all wastewater facilities within the geographic area of Londonderry, and the specific Derry areas referenced above and shown in Appendix A of this document, which is to be serviced by this Agreement.

## 1.6 LAWS AND ORDINANCES

Londonderry shall comply with, and strictly enforce, all federal, state and local laws, ordinances, rules, regulations, by-laws, permits and agreements relating to water pollution control in Londonderry and to wastewater characteristics, collection, treatment and disposal, as they apply to Londonderry's facilities and to the System. Londonderry shall be liable to Derry for any damage caused to the System resulting from a violation of any such law, ordinance, rule, regulation, by-law, permit or breach of this Agreement by it or any of its users.

Derry shall comply with, and strictly enforce, all federal, state, and local laws, ordinances, rules, regulations, by-laws, permits, and agreements relating to water pollution control in Derry, and to wastewater characteristics, collection, treatment, and disposal, as they apply to the System. Derry shall be liable to Londonderry for any damages caused to the Londonderry facilities resulting from a violation of any such law, ordinance, rule, regulation, by-law, permit, or breach of this Agreement by Derry or any of its users.

Derry shall adopt, and from time-to-time revise, a Sewer Use Ordinance and Discharge Permit System acceptable to the United States Environmental Protection Agency and the New Hampshire Department of Environmental Services. Londonderry shall adopt, and from time-to-time revise, a Sewer Use Ordinance and Discharge Permit System acceptable to Derry, the New Hampshire Department of Environmental Services, and the United States Environmental Protection Agency. Londonderry and its users shall not be subject to more stringent regulations than Derry users. Londonderry shall issue industrial wastewater discharge permits in accordance with applicable Federal, State, and local requirements, including any requirements set forth in Londonderry's approved pretreatment program.

#### 1.7 INSPECTION

It shall be the responsibility of Londonderry to establish and maintain a permit, inspection, monitoring, and sampling program to assure proper and adequate control of the discharge of wastewaters within its boundaries. If failure of Londonderry to properly and adequately control wastewaters caused to the System, then Derry, after 24 hours' notice, shall have the right to inspect, monitor and sample discharges contributory to the Derry WWTP. Londonderry shall cooperate with Derry in such an evaluation program.

#### 1.8 PERFORMANCE

No failure, or delay, in performance of any term of this Agreement by either Party, shall be deemed to be a breach thereof when such failure, or delay is occasioned by, or due to, any Act of God, strikes, lockouts, wars, riots, epidemics, explosions, sabotage, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise not within the control of the party claiming suspension; provided that no cause or contingency shall relieve Londonderry of its obligation to make payment for wastewater entering the Derry System, and provided further, that the Derry Public Works Department shall assume full responsibility for maintaining service in the absence of the above happening and to maintain standards of treatment, as established by the New Hampshire Department of Environmental Services, and the United States Environmental Protection Agency.

In the event of emergency, or unforeseen crisis, demanding, or seeming to demand, joint action by the Derry Town Administrator and the duly authorized representative of the Londonderry Town Council, of whatsoever nature, magnitude, cause, or probable effect, the Derry Public Works

Director and the duly authorized representative of the Town of Londonderry Town Council, are specifically empowered to take jointly whatever action may be called for, within the requirements of applicable federal and state regulations. Such action, or actions, shall be fully and promptly reported, by Derry, in writing, to the Chair of the Derry Town Council, the Londonderry Town Council and applicable federal and state agencies. In the event of disagreement as to the action needed to correct, to prevent, or to anticipate the emergency or crisis, or in the event no authorized member or representative of the Londonderry Town Council is available, the decision of the Derry Town Administrator shall be determining.

## 1.9 TEMPORARY DISCONTINUANCE

If the Derry Public Works Department must discontinue temporarily all or part of the service to Londonderry to maintain proper operation of the system, no claim for damages for such temporary discontinuance shall be made by Londonderry against Derry, or any of its duly authorized agents, provided that reasonable advanced notice of, and explanation for, such discontinuance shall be given to Londonderry, when possible.

## ARTICLE II - GENERAL PROVISIONS AND LIMITATIONS

### 2.1 LIMITATION ON FLOW AND CHARACTERISTICS

The net wastewater flow, biochemical oxygen demand (BOD) and total suspended solids content (TSS) from within Londonderry's service area, through the monitoring devices outlined in Paragraph 3.4 into the System, (see Paragraph 3.5) shall be subject to the following daily limitations:

Avg. daily maximum flow -	500,000 gallons/day
Avg. daily BOD -	300 mg/l
Avg. daily TSS -	370 mg/l

In the event of an exceedance of the BOD or TSS concentration limits above, the maximum allowable mass loading limit will be used to ultimately determine compliance. The maximum allowable mass loading limit shall be equal to the concentration-based limit listed above times Londonderry's purchased flow allocation.

The average daily quantities shall include both wastewater and infiltration. The average daily quantities will be calculated monthly or as required for control of total quantities.

Derry shall treat Londonderry as any other individual user, except for the items otherwise noted in this Agreement.

Derry shall accept wastewater from Londonderry in an amount not to exceed to 500,000 gallons per day (gpd). Requirements for BOD and TSS shall also be calculated on a per gallon per day



basis using the current or future approved NPDES permit in effect for the Derry at the time the calculation is made.

Derry shall allow a maximum average daily discharge not to exceed 500,000 GPD for Londonderry to enter the Derry Wastewater System for final treatment before discharge to the Merrimack River.

Derry will not reserve more than 500,000 gpd capacity for Londonderry, which shall include any amounts previously reserved under the temporary discharge from the EPA Tinkham Superfund site treatment facility. However, Derry may allow Londonderry to purchase capacity in excess of 500,000 gpd with the approval of the Derry Town Council should Derry, in its sole discretion, determine that additional capacity is available and not required by Derry in accordance with Derry's Wastewater Facility Plan or the Derry Master Plan as may be updated from time to time.

## 2.2 LIMITATIONS ON POLLUTANTS

Derry has enacted a Sewer Use Ordinance which limits the discharge of certain pollutants into the System. That ordinance may be revised from time to time as provided in Paragraph 1.7.

Londonderry will be responsible for compliance with the requirements of Derry's Industrial Pretreatment Program (IPP) at the last accessible point of sampling prior to entering the "System". Individual Londonderry users will be required to comply with Londonderry's Industrial Pretreatment Program. Derry will have the cooperation of Londonderry to access, if necessary, (jointly with Londonderry) individual Londonderry users to assure compliance with Derry's IPP program.

Londonderry shall be subject to the maximum limitations in the discharge of pollutants into the System, as outlined in Chapter 122 of the Code of the Town of Derry Article V: Use of Public Sewer

- A. No discharge shall contain waters or wastewaters containing toxic, poisonous or radioactive solids, liquids or gases in sufficient quantity, either independently or by interaction with other wastewaters, which may injure or interfere with any part or portion of the treatment works, constitute a hazard to humans or animals, or create any hazard in the receiving waters or the wastewater treatment plant.
- B. No toxic or poisonous substance shall be present in any quantities in excess of the following local limits in milligrams per liter:

Zinc, Total	0.8358 mg/l
Lead, Total	0.2640 mg/l
Cadmium, Total	0.091 mg/l
Chromium, Total	0.7068 mg/l

Nickel, Total	0.3450 mg/l
Cyanide, Total	0.0840 mg/l
Selenium, Total	0.0348 mg/l
Aluminum, Total	48.0 mg/l
Beryllium, Total	0.0098 mg/l
Cadmium, Total	0.0281 mg/l
Mercury, Total	0.0086 mg/l
Molybdenum, Total	0.0174 mg/l
Phenol	163 mg/l

- C. Discharges shall not exceed the following limits which are based on the Town of Derry's maximum allowable headworks loading:

Arsenic, Total	0.055 mg/l
Copper, Total	1.87 mg/l
Silver, Total	0.246 mg/l

- D. Screening Levels: Below is a list of acceptable maximum concentrations for certain chemicals. If one of these levels is exceeded, then the situation causing the excess contaminant will be reviewed. An engineering study may be required with implementation of any or all of the recommendations as deemed appropriate by Derry and at the expense of Londonderry.

acrylonitrile	1.19 mg/l
benzene	0.14 mg/l
chlorobenzene	0.31 mg/l
chloroform	0.41 mg/l
1,1-dichloroethane	2.29 mg/l
1,2 dichloropropane	3.60 mg/l
1,3-dichloropropene	0.08 mg/l
ethyl benzene	1.58 mg/l
formaldehyde	0.02 mg/l
hexachloroethane	0.09 mg/l
methylene chloride	2.06 mg/l
toluene	0.68 mg/l
1,2,4-trichlorobenzene	0.39 mg/l
1,1,1-trichloroethane	1.59 mg/l
trichlorofluoromethane	1.23 mg/l
vinyl chloride	0.004 mg/l

- E. The concentration limits shall control when a conflict arises between concentration limits and mass loading limits.

### 2.3 SEWER CONSTRUCTION

The limitations contained in Sections 2.1 and 2.2 hereof are established to ensure that the size and capacity of the System are and will remain sufficient to serve the contemplated needs of Londonderry. Londonderry shall notify the Derry Department of Public Works (DPW) of all proposed substantial sewer construction and connections to the Londonderry facilities so that the Derry DPW will be able to coordinate the operation and maintenance of the System with the development of the Londonderry facilities.

Londonderry shall submit via the Derry Department of Public Works, all proposed sewer construction and connections to the New Hampshire Department of Environmental Services as required by NH DES, for its review and approval. Copies of all such submittals and subsequent approvals by the New Hampshire Department of Environmental Services, shall be sent to the Derry DPW.

### 2.4 INSPECTION OF FACILITIES AND RECORDS

Derry shall have the right to inspect all sewers, drains and wastewater facilities in Londonderry. Derry may inspect all financial and engineering records of the Londonderry wastewater facilities and drainage systems, upon 30 days' notice, during ordinary business hours. Londonderry shall have the right to inspect all sewers, drains and wastewater facilities in Derry upon 30 days' notice, during ordinary business hours. Londonderry may inspect all financial and engineering records of the Derry wastewater facilities and drainage systems, upon 30 days' notice, during ordinary business hours.

### 2.5 DEFECTIVE FACILITIES

The maintenance of proper facilities is required to assure that the limitations outlined in Paragraph 2.1 and 2.2 are not exceeded. If any of the Londonderry facilities, which contribute to the Derry System, is found to be in defective condition, and such condition adversely affects the operation of the System, or causes Londonderry to exceed the limitations set forth in Paragraph 2.1 and 2.2, or adversely affect the operations of the System, then Londonderry shall correct such defective condition without delay. The expression "defective condition" as used herein, shall mean any condition that is in violation of any state or federal standard or which causes the maximum limitations in the discharge of pollutants into the System, as provided in Paragraphs 2.1 and 2.2, to be exceeded.

## 2.6 INDUSTRIAL PRETREATMENT PROGRAM / PERMITS

Londonderry shall adopt and administer an Industrial Pretreatment Program meeting the requirements of the Federal Clean Water Act, as amended, 33 U.S.C. 1251, et seq., and the regulations of the U.S. Environmental Protection Agency promulgated pursuant thereto, and in particular 40 CFR Part 403, including compliance and enforcement activities.

As part of this section, Londonderry shall adopt and enforce a Sewer Use Ordinance which at least as restrictive as the Sewer Use Ordinance adopted by the Town of Derry and which requires immediate notification to the Derry WWTP Chief Operator and Deputy Director of Public Works in the event of a discharge resulting from of any slug or spill. Derry shall provide Londonderry with a copy of any amendment to Derry's Sewer Use Ordinance within 10 days of the enactment of any such amendment. If necessary, Londonderry shall within a reasonable time but no later than 120 days, amend its Sewer Use Ordinance to be as restrictive as Derry's.

Londonderry shall adopt and administer a discharge permit system for its commercial and industrial users. No significant industrial user or industrial user shall be permitted to discharge in the Londonderry facilities that contribute to the System without first obtaining the required permit. No such permit shall be issued by Londonderry until it determines from the application and from independent investigation that the applicant and the wastewater discharge of the applicant shall comply with the requirements of all Federal, State and Local laws, ordinances, rules, regulations, by-laws, permits, agreements and orders relating to water pollution control, to wastewater characteristics, collection, treatment and disposal, or that the wastewater will not be inimical to either the Londonderry facilities or the System. In no event shall any representative of Londonderry issue any permit which allows any user of the Londonderry facilities to discharge any wastewater not allowed to be discharged into the System. Copies of all permits so issued are to be maintained as a part of the records of Londonderry's facilities and shall be retained for a period or at least five (5) years or indefinitely for cases involving litigation.

## 2.7 TERM OF AGREEMENT: RENEWAL

The term of this Agreement shall be fifteen (15) years from the date that appears at the beginning of the Agreement. The Agreement shall be automatically renewed for successive renewal terms of five (5) years unless either Party shall elect to terminate the same by written notice to the other at least one year prior to the date of expiration of the original term or any renewal term.

## 2.8 DISPUTES, ARBITRATION:

Disputes, including but not limited to those related to supply of wastewater service, connection facilities, operation and maintenance, impairment of capacity, and charges and payment, shall be submitted to binding arbitration under the statutory provisions New Hampshire Revised Statutes Annotated Chapter 542. Derry and Londonderry shall submit disputes to arbitration through the American Arbitration Association or other mutually acceptable arbitration service. In the event



that Derry and Londonderry cannot agree on an arbitration service other than the American Arbitration Association, then arbitration shall proceed through the American Arbitration Association.

## 2.9 TERMINATION FOR BREACH OF AGREEMENT

In the event that Londonderry fails to comply with the terms or conditions of this Agreement, Derry shall give notice of said failure of compliance and Londonderry shall immediately and diligently proceed to cure the default. If Londonderry shall fail to respond with corrective methods or procedure to cure the default for thirty (30) days after said notice, Derry may elect to terminate the Agreement at any time on ninety (90) days written notice to Londonderry. Nothing herein shall be construed as limiting the right of Derry to proceed against Londonderry at law or in equity to enforce all provisions of the Agreement. In the event Derry elects to terminate the Agreement, Derry may by any lawful means at its command take action to terminate continued introduction of wastewater into the System from Londonderry. Until Londonderry's wastewater discharge to the System has been completely terminated, Londonderry shall be required to pay all wastewater charges provided for in Article III of this Agreement.

## 2.10 TERMINATION OR WITHDRAWAL

Except as provided in section 2.9 above, in the event that either Party fails to comply with the terms or conditions of this Agreement, said Agreement may be terminated at any time following ninety (90) days written notice by either party.

Should Londonderry decide to withdraw from the System, Londonderry shall discontinue all flows to the System not later than five (5) years after written notification to Derry.

## **ARTICLE III- COSTS AND CHARGES**

### 3.1 USER CHARGES – SEWER RENTS

Derry shall bill Londonderry, no less than quarterly, for all sewer discharged to the System as metered at Londonderry's Action Blvd. and Gilcreast Road stations at the same rate as any other individual Derry user. Such rates may, at the sole discretion of the Town of Derry, be revised from time to time to ensure adequate cost recovery for the operation, maintenance, and improvement of the Derry System.

### 3.2 BASIC PREMISES FOR FUTURE EXPANSION OF WASTEWATER SYSTEM

Basic premises regarding the intent of this Agreement are:

- A. Londonderry shall be considered as an individual user and subject to all user charges and connection fees as provided for in this agreement.

- B. Londonderry shall pay the total cost of those facilities within its own geographic area that are solely for its own use as shown in, Appendix A of this document.
- C. Londonderry shall pay the total cost of those facilities within Derry or any other town that are solely for Londonderry's use as shown in Appendix A of this document.
- D. Londonderry shall not be subject to any other additional costs or assessments for the expansion of the Derry Wastewater Treatment Plant not assessed to other existing individual Derry users.
- E. Any upgrades of the portion of the Derry wastewater effluent pipeline located in Londonderry will not be subject to additional demands by Londonderry, other than the normal State and local permits. Londonderry shall assist Derry in acquiring necessary easements and where necessitated by eminent domain proceedings will obtain those easements on behalf of Derry. Londonderry shall cooperate in the planning, design, and construction of the expansion or upgrading of the Facilities.

### 3.3 CAPITAL COSTS Wastewater Accessibility Fees

Londonderry shall pay to Derry, beginning July 31, 2021 and annually each July 31 thereafter, a wastewater accessibility fee for incremental capacity above its initial 200,000 GPD allocation up to its maximum allocation of 500,000 GPD. Such increments shall be 25,000 GPD per year as shown in the table below. If, however, in any given month, Londonderry shall exceed its allocated capacity for that year, Londonderry shall pay to Derry the prevailing wastewater accessibility fee charged to Derry customers for the difference between their allocated capacity and their actual metered flow for that month. Londonderry's allocated capacity shall be revised to reflect this additional purchased capacity. Londonderry shall continue to purchase, annually, 25,000 GPD of incremental capacity thereafter until the total 500,000 GPD is purchased.

<b>YEAR</b>	<b>ALLOCATED CAPACITY (MGD)</b>	<b>Incremental Capacity Subject to WWAF GPD</b>
2021	0.225	25,000 GPD
2022	0.250	25,000 GPD
2023	0.275	25,000 GPD
2024	0.300	25,000 GPD
2025	0.325	25,000 GPD
2026	0.350	25,000 GPD
2027	0.375	25,000 GPD
2028	0.400	25,000 GPD
2029	0.425	25,000 GPD
2030	0.450	25,000 GPD
2031	0.475	25,000 GPD

The allocated capacity is calculated as the average daily flow for any calendar month divided by the number of days in that calendar month. Allocated capacity to Londonderry under this Agreement is based on total sum of combined flows metered at Londonderry's Gilcreast Pump Station and Action Blvd. Pumping Station. Derry and Londonderry recognize that Derry services some Londonderry residents east of I-93 that discharge directly to the Derry sewer collection system. This discharge is grandfathered and not part of Londonderry's flow allocation under this Agreement. Any additional discharges proposed to directly enter Derry's sewer collection system will be permitted at the sole discretion of Derry and shall be considered flows subject to the allocations under this Agreement.

### 3.4 MONITORING DEVICES

Londonderry shall furnish and install monitoring devices, which shall be approved by the Derry prior to installation, as required to measure, sample and record wastewater flow and composition that enters the System, the cost of which shall be borne by Londonderry. Currently there are two (2) metered entry points from the Londonderry facilities to the System: 1. Gilcreast Pump Station and 2. Action Blvd. Pump Station. Monitoring devices shall be installed so that they can be read without access to the pumping station. Any access to the pumping stations shall require the presence of authorized representatives of Derry and of Londonderry.

### 3.5 MONITORING PROCEDURES

Wastewater flow from Londonderry into the System shall be continuously metered and recorded by Londonderry. All flows from Londonderry will be metered at the Londonderry metering and/or pumping stations noted above. prior to entering the System. Biochemical Oxygen Demand and Total Suspended Solids shall be determined by periodic composite sampling by Derry to an extent that will permit a reasonable monthly determination of the value of the Biochemical Oxygen Demand and Total Suspended Solids. Upon written request of Londonderry, there shall be a continuous composite sampling of Biochemical Oxygen Demand and Total Suspended Solids content. In such event, Londonderry shall pay Derry all additional costs resulting from such continuous composite sampling. If, during any period, the monitoring and/or sampling devices become inoperative, Londonderry agrees to accept an estimation of discharge based on past history for billing purposes.

### 3.6 BILLINGS

Except where otherwise stated in this Agreement, Londonderry shall be considered as an individual user for billing purposes and be subject to the same basis for billing as are all users of the Derry System and the same billing procedures.

All reasonable incidental costs, incurred by Derry associated with sampling and analysis (including

any engineering studies) of wastewater at the discharge point(s) into the System shall be billed to Londonderry. To facilitate discussion, Derry will notify Londonderry of its intent to conduct sampling, analysis, and possible engineering studies prior to conducting said work. Derry's invoice to Londonderry shall include a list of itemized costs with appropriate supporting backup and such invoice shall be paid by Londonderry in the next billing period.

### **3.7 RECORDS INSPECTION**

As provided in Paragraph 2.4, Londonderry may inspect, review, and copy any and all records maintained by Derry which relate to costs, rates or charges under this Agreement, following thirty days prior written request. Independent certified public accountants may act on behalf of Londonderry and at Londonderry's expense.

## **ARTICLE IV – JOINT MEETINGS**

Joint meetings between Derry and Londonderry relative to this Agreement may be called by either Town. The requesting Town shall give fourteen (14) days written notice to the other Town of all meetings. The Derry Public Works Director shall cause to be made, kept, and distributed to Londonderry a record of the minutes of each meeting. At a minimum, these meetings shall be scheduled every 5 years.

Derry shall review with Londonderry, at each meeting, all items relating to operation and maintenance of the System, as well as proposed expansions of either or both systems, and shall coordinate and cooperate in implementing reasonable methods and means suggested by Londonderry by which the cost of operating and maintaining the "System" may be reduced or its efficiency increased, consistent with the operation and maintenance standards required by Derry, the State, and federal authorities.

## **ARTICLE V - UNIFORM PROVISIONS**

The Parties hereto believe they have negotiated fairly an Agreement which allocates the benefits and costs of their respective water pollution abatement programs on an equitable basis. Derry agrees that it will not grant more favorable terms and/or conditions to any other municipality than are contained in the Agreement.

The Parties shall cooperate fully in fulfillment of this Agreement.

## **ARTICLE VI – LIABILITY INSURANCE**

During the term of this Agreement, Londonderry shall procure and maintain such public liability and property damage insurance as shall protect Derry and the Town of Londonderry for claims to damages for personal injury, including accidental death, and for property damage, which may arise from operations by Londonderry under this Agreement, or by its agents, servants, employees, or



licensees.

1. Such Insurance shall cover work and operations performed under this Agreement by the Town, its agents, servants, employees, or licensees, as well as failure to perform required work (e.g., clean the Town's collection system to avoid overflows or basement backups) subject to the terms and conditions of the Town's risk pool coverage including, but not limited to, the following features:
  - a. The Town of Derry shall be named as an additional insured covered party as limited to \$1,000,000 for each occurrence and \$2,000,000.00 general aggregate.
  - b. Cover operations including the official use of any and all motor vehicles in the Town of Londonderry.
  - c. Coverage for hazards, including but not limited to collapse of buildings, blasting, and damage to underground property, etc. as outlined in the terms and conditions of the Town's risk pool coverage.
  - d. Include coverage for products and completed operations hazard as outlined in the terms and conditions of the Town's risk pool coverage.
  - e. "Personal" injury coverage as outlined in the terms and conditions of the Town's risk pool coverage.
  - f. Coverage for property damage due to sanitary sewer overflows and/or backups into buildings and basements as outlined in the terms and conditions of the Town's risk pool coverage.
  - g. The Town of Derry shall carry like and reciprocal insurance coverage, risk pool coverage or self-insurance of at least the minimum amounts stipulated above, for claims arising from the acts or omissions of Town of Derry officials, employees, or agents.

#### **ARTICLE VII - REOPENING CLAUSE**

Upon written notification of either party, this Agreement may be reopened for amendments, corrections, or additions by mutual agreement of both parties.

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#### **ARTICLE VIII - DEFINITIONS**

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this

Agreement, shall have the meanings hereinafter designated.

1. Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g., mg/L).
2. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limitations promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) that apply to a specific category of users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.
3. Collection System. A system of pipes that carry wastewater.
4. Commercial User. A person who discharges wastewater from a premises used for financial gain, such as business or industrial use, but excluding residential uses and related accessory uses.
5. Industrial User (or User). A person who discharges industrial wastewater to the POTW.
6. Industrial Wastewater. Any wastewater from any non-domestic source that contains industrial waste, as distinct from sanitary sewage or unpolluted water.
7. May. Means permissive.
8. Medical / Infectious Waste. Means medical/infectious waste as defined by RSA 125-N:2, VIII.
9. MGD. Wastewater flow in millions of gallons per day.
10. NPDES Permit. The National Pollutant Discharge Elimination System Permit as issued by the United States Environmental Protection Agency.
11. Person: Any individual, partnership, co-partnership, firm, company, trust, estate, government entity, or any other legal entity, or their or its legal representatives, agents or assigns. This definition includes all federal state and local government entities.
12. Pharmaceutical Waste. Means a prescription drug, as defined by RSA 318:1, XVII, or a nonprescription or proprietary medicine, as defined by RSA 318:1, XVIII, that is no longer suitable for its intended purpose or is otherwise being discarded.
13. Pretreatment Standards or Standards. Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.
14. Publicly Owned Treatment Works or POTW. A “treatment works,” as defined by Section 212 of the Act (33 U.S.C. §1292) that is owned by a State or municipality (as defined by section 502(4) of the CWA). This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if these structures

convey wastewater to a POTW wastewater treatment facility. The term also means the municipality that has jurisdiction over discharges to and from such a treatment plant.

15. Radiological Waste. Means radioactive waste as regulated by RSA 125-F.
16. Representative. Any designated agent, group, or board given authority by the Town's elected body to act on behalf of the Town with the interests, duties, powers of said Town.
17. Residential. Buildings intended for providing full-time living accommodations as opposed to commercial or industrial establishments.
18. Sanitary Sewer. A public sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial facilities, and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.
19. Sewage or Wastewater. The spent water of a community, excluding unpolluted water. Any combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, governmental facilities, and institutions, whether treated or untreated that is contributed to the POTW.
20. Sewer. A pipe or conduit that carries wastewater, storm water, groundwater, subsurface water, or unpolluted water from any source.
21. Sewer Use Ordinance. A by-law regulating the use of public sewers and drains, public sewage disposal; the installation and connection of building sewers and garbage disposal units; the discharge of waters and wastewaters into the wastewater facilities; and providing penalties for violations thereof.
22. Shall. Means mandatory.
23. Significant Industrial User.
  - a. A user subject to categorical pretreatment standards under 40 CFR 403.8 and 40 CFR Chapter I, Subchapter N; or a user that:
    - i. discharges an average of ten thousand (10,000) gpd or more of process wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler blowdown wastewater);
    - ii. contributes a process waste stream that comprises five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
    - iii. discharges medical/infectious waste, pharmaceutical waste, or radiological waste, if such a discharge has been designated by the municipality as having a reasonable potential for adversely affection

the POTW's operation or performance or for violating any pretreatment standard or requirement; or

iv. is designated as such by the POTW on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

- b. It may be determined that an Industrial User subject to categorical Pretreatment Standards under §403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:
- i. The Industrial User has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
  - ii. The Industrial User annually submits the certification statement required in §403.12(q) together with any additional information necessary to support the certification statement; and
  - iii. The Industrial User never discharges any untreated concentrated wastewater.
- c. Upon determining that a user meeting the criteria in Subsection a.i. or a.ii. has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Town may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a Significant Industrial User.

24. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

25. Total Suspended Solids or TSS. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

26. Treatment Plant, Treatment Works, or Wastewater Treatment Facility. Any device or system used in the storage, treatment, equalization, recycling or reclamation of wastewater and/or wastewater sludges as defined herein.

27. Wastewater Service. The act of collecting and treating wastewater prior to its discharge to the Merrimack River.

IN WITNESS WHEREOF, the parties to this Agreement have caused this instrument to be signed in sextuplicate the day and year first above written.

TOWN OF DERRY

\_\_\_\_\_  
David Caron, Town Administrator

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Charles Foote, Chairperson  
Derry Town Council

\_\_\_\_\_  
Witness

TOWN OF LONDONDERRY

\_\_\_\_\_  
Michael Malaguti, Town Manager

\_\_\_\_\_  
Witness

\_\_\_\_\_  
John Farrell, Chairperson  
Londonderry Town Council

\_\_\_\_\_  
Witness



## TOWN OF LONDONDERRY

### **PAYMENT IN LIEU OF TAXATION AGREEMENT**

THIS PAYMENT IN LIEU OF TAXATION AGREEMENT (the "Agreement"), effective upon full execution (the "Effective Date") by and between the **TOWN OF LONDONDERRY**, a municipal corporation, with a business address of 268B Mammoth Road, Londonderry, New Hampshire, (hereinafter referred to as the "Town"), and **NEW BALANCE ATHLETICS, INC.**, a Massachusetts corporation, with a mailing address of 100 Guest Street, Boston, Massachusetts (hereinafter referred to as the "Taxpayer" or, together with the Town, the "Parties") and in resolution of any and all tax disputes that may exist, pursuant to New Hampshire RSA 162-A:24 and RSA 162-I:15, the Parties agree as follows:

#### RECITALS:

- A. The Taxpayer has entered into an Option Agreement dated March 3, 2023 (as amended, the "PSA"), to acquire certain real property with improvements (if any) located thereon, located at 55 Pettengill Road, Londonderry, New Hampshire (being an approximately 17.8127 acre portion of the approximately 21.8127 acre parcel known as Londonderry Tax Lot 014-049-3 which is being subdivided) (the "Property"). The Property will be issued a new Londonderry tax lot number following the subdivision.
- B. The Parties anticipate that the Property will be acquired by the New Hampshire Business Finance Authority (the "BFA") at a closing (the "Closing"). Promptly after Closing, BFA, as landlord, will lease the Property to Taxpayer, as tenant, for a term of ten (10) years pursuant to an Agreement of Lease (the "Lease").
- C. The Taxpayer has proposed a 102,418 square foot manufacturing facility on the Property (the "Project").
- D. In light of and subject to the future anticipated Closing, Town and Taxpayer desire to enter into a payment in lieu of taxes agreement pursuant to NH RSA 162-A:24 and RSA 162-I:15.

NOW THEREFORE, for valuable consideration, the Parties agree as follows:

1. **Separation of Value:** Subsequent to closing, for assessing purposes, the Property shall be separated so that the Taxpayer will receive an invoice for the value of the improvements (the "Improvement Value") and the value of the land (the "Land Value").
2. **Payment of Tax on Land Value:** Pursuant to RSA 162-A:24 and RSA 162-I:15, the

Taxpayer shall pay to the Town during the Term (as defined in Section 4 below) in lieu of any, and all, *ad valorem* real estate taxes otherwise payable under New Hampshire RSA Chapter 72, including all town, county, and local school district taxes, the equivalent of the municipal, local education, state education, and county tax on the Land Value, representing the Taxpayer's just share of the public expense thereon. The Land Value shall be subject to revaluation in the ordinary course during the Term.

3. **Payment of Tax on Improvement Value:** Subsequent to the Closing, pursuant to New Hampshire RSA 162-I:15 and RSA 162-A:24, Taxpayer shall pay to the Town during the Term (as defined in Section 4 below) in lieu of any, and all, *ad valorem* real estate taxes otherwise payable under New Hampshire RSA Chapter 72, including all town, county, and local school district taxes, the following amounts representing the Taxpayer's just share of the public expense on the Improvement Value, as follows:

A. Year 1 of the Term: In Year 1 of the Term:

- i. Taxpayer shall pay to the Town the equivalent of the state education and county tax on the Improvement Value without any reduction.
- ii. Taxpayer shall pay to the Town the equivalent of the local education and municipal tax on the Improvement Value, provided, however, that the tax on the increase in assessed value attributable to the construction of structures related to the Project shall be reduced by 5%. The Improvement Value shall be subject to revaluation in the ordinary course during each year of the Term.

B. Year 2 of the Term: In Year 1 of the Term:

- i. Taxpayer shall pay to the Town the equivalent of the state education and county tax on the Improvement Value without any reduction.
- ii. Taxpayer shall pay to the Town the equivalent of the local education and municipal tax on the Improvement Value, provided, however, that the tax on the increase in assessed value attributable to the construction of structures related to the Project shall be reduced by 10%.

C. Year 3 of the Term: In Year 3 of the Term:

- i. Taxpayer shall pay to the Town the equivalent of the state education and county tax on the Improvement Value without any reduction.
- ii. Taxpayer shall pay to the Town the equivalent of the local education and municipal tax on the Improvement Value, provided, however, that the tax on the increase in assessed value attributable to the construction of structures related to the Project shall be reduced

by 50%.

D. Year 4 of the Term: In Year 4 of the Term:

- i. Taxpayer shall pay to the Town the equivalent of the state education and county tax on the Improvement Value without any reduction.
- ii. Taxpayer shall pay to the Town the equivalent of the local education and municipal tax on the Improvement Value, provided, however, that the tax on the increase in assessed value attributable to the construction of structures related to the Project shall be reduced by 45%.

E. Year 5 of the Term: In Year 5 of the Term:

- i. Taxpayer shall pay to the Town the equivalent of the state education and county tax on the Improvement Value without any reduction.
- ii. Taxpayer shall pay to the Town the equivalent of the local education and municipal tax on the Improvement Value, provided, however, that the tax on the increase in assessed value attributable to the construction of structures related to the Project shall be reduced by 40%.

F. Year 6 of the Term: In Year 6 of the Term:

- i. Taxpayer shall pay to the Town the equivalent of the state education and county tax on the Improvement Value without any reduction.
- ii. Taxpayer shall pay to the Town the equivalent of the local education and municipal tax on the Improvement Value, provided, however, that the tax on the increase in assessed value attributable to the construction of structures related to the Project shall be reduced by 35%.

G. Year 7 of the Term: In Year 7 of the Term:

- i. Taxpayer shall pay to the Town the equivalent of the state education and county tax on the Improvement Value without any reduction.
- ii. Taxpayer shall pay to the Town the equivalent of the local education and municipal tax on the Improvement Value, provided, however, that the tax on the increase in assessed value attributable to the construction of structures related to the Project shall be reduced by 30%.

H. Year 8 of the Term: In Year 8 of the Term:

- i. Taxpayer shall pay to the Town the equivalent of the state education and county tax on the Improvement Value without any reduction.
- ii. Taxpayer shall pay to the Town the equivalent of the local education and municipal tax on the Improvement Value, provided, however, that the tax on the increase in assessed value attributable to the construction of structures related to the Project shall be reduced by 25%.

I. Year 9 of the Term: In Year 9 of the Term:

- i. Taxpayer shall pay to the Town the equivalent of the state education and county tax on the Improvement Value without any reduction.
- ii. Taxpayer shall pay to the Town the equivalent of the local education and municipal tax on the Improvement Value, provided, however, that the tax on the increase in assessed value attributable to the construction of structures related to the Project shall be reduced by 20%.

J. Year 10 of the Term: In Year 10 of the Term:

- i. Taxpayer shall pay to the Town the equivalent of the state education and county tax on the Improvement Value without any reduction.
- ii. Taxpayer shall pay to the Town the equivalent of the local education and municipal tax on the Improvement Value, provided, however, that the tax on the increase in assessed value attributable to the construction of structures related to the Project shall be reduced by 15%.

- 4. **Term:** Subject to § 8, below, this Agreement shall govern taxation of the Property for the tax year in which the Closing occurs, and for nine tax years immediately following that tax year (the "Term"). Two annual payments shall be made to the Town as set forth in RSA 76:15-a, provided that adjustment may later be made as necessary to reflect revaluations occurring during the Term.
- 5. **Covenant to Protect Public Benefit:** It is acknowledged that this Agreement affords the Taxpayer tax relief analogous to the tax relief available under the Town's Commercial and Industrial Tax Incentive Program (the "Program") based on a showing and finding of public benefit. The Taxpayer therefore agrees to execute a covenant to protect the public benefit as would be required under section 9 of the Program.
- 6. **Waiver:** The Taxpayer hereby waives any tax exemptions in connection with the

Improvement Value of the initial phase of the Project that may be applicable during the Term except as specifically referred to in this Agreement. Similarly, the Town waives any and all rights to assess, collect and/or enforce payment of any, and all, *ad valorem* real estate taxes otherwise payable under New Hampshire RSA Chapter 72, including all town, county, and local school district taxes in connection with the Property during the Term. Notwithstanding anything to the contrary contained in this Agreement, the Town reserves the right to collect land use change tax payable with respect to the Property.

7. **Future Phases:** It is acknowledged that the Taxpayer may propose additional phases of construction and expansion in the future. The tax relief afforded in Section 3 shall apply only to the Project, and future phase(s) shall require additional agreement(s) between the parties.
8. **Termination of Agreement:** Should Taxpayer or another taxable party acquire fee title to the Property any time prior to the expiration of the Term, this Agreement shall terminate and the Property shall become subject to real estate taxation pursuant to New Hampshire RSA Chapter 80. Based upon a finding of public benefit as reflected in the minutes of the August 14, 2023 meeting of the Londonderry Town Council, should Taxpayer or another taxable entity acquire fee title to the Property prior to the expiration of the Term, the Town Council shall grant tax relief under Londonderry's Commercial / Industrial Tax Incentive Program under RSA 72:81 so that the tax due equals the PILOT payments that would have been due under this Agreement.

**9. Warranties and Representations:**

A. Taxpayer represents and warrants to Town as follows:

- i. Valid Existence. Taxpayer is a corporation organized and validly existing under the laws of the Commonwealth of Massachusetts and is qualified to do business within the State of New Hampshire.
- ii. Due Authorization; No Violation. The execution, delivery and performance by the Taxpayer of the Agreement are within the Taxpayer's powers, have been duly authorized by all action necessary on the part of the Taxpayer and do not and will not contravene the Taxpayer's Articles of Organization or any law or legal or contractual restriction binding upon or affecting the Taxpayer.
- iii. Validity. This Agreement and the obligations contained herein are the legal, valid and binding obligations of the Taxpayer enforceable against the Taxpayer in accordance with its terms.



B. Town represents and warrants to Taxpayer as follows:

- i. Valid Existence. The Town is validly organized and existing as a public body corporate and agency of the State of New Hampshire.
- ii. Due Authorization; No Violation. The execution, delivery and performance by the Town of this Agreement are within the Town's powers, have been duly authorized by all action necessary on the part of the Town and do not and will not contravene any law or legal or contractual restriction binding upon or affecting the Town.
- iii. Validity. This Agreement and the obligations contained herein are the legal, valid and binding obligations of the Town enforceable against the Town in accordance with its terms.

**10. Notices.** Any notice to be provided under this Agreement shall be in writing and shall be deemed to have been given when delivered personally or by certified mail at the following addresses:

For the Town: Town of Londonderry  
268B Mammoth Road  
Londonderry, NH 03867  
Attn: Michael Malaguti, Town Manager  
Copy to Assessing Department

For Taxpayer: New Balance Athletics, Inc.  
c/o NB Development Group  
221 North Beacon Street  
Boston, MA 02135  
Attention: President

with a copy to:

New Balance Athletics, Inc.  
100 Guest Street  
Boston, MA 02135  
Attention: General Counsel

In the event of a change in address of any party listed above, the responsible signatory shall give the other Party prompt written notice of such change of address, which shall be effective upon receipt.

## 11. Miscellaneous.

A. Governing Law. New Hampshire law shall apply in construing and interpreting this Agreement. In the event any court having jurisdiction shall hold any term of this Agreement, or the application of any such term, invalid, the other terms of this Agreement and their application shall not be affected thereby and shall remain in full force and effect, provided that the remaining terms continue to preserve the essential economic terms of this Agreement.

B. Entire Agreement. The terms and provisions contained in this Agreement constitute the final Agreement between the Parties with respect to this Agreement and supersede all previous communications, representations or agreements, either verbal or written. No modification or amendment to this Agreement shall be valid unless it is in writing and signed by both Parties hereto.

C. Assignment. Taxpayer shall have the right to assign this Agreement to any (i) permitted assignee of the Lease which is an Affiliate of Taxpayer so long as Taxpayer provides written notice to the Town of any such assignment not less than ten (10) days prior to such assignment taking effect, or (ii) permitted assignee of the Lease which is not an Affiliate of Taxpayer so long as Town provides advanced written consent to such assignment, which consent shall not be unreasonably withheld, conditioned, or delayed and shall not be withheld with respect to any assignee approved by landlord or otherwise permitted under the Lease. For purposes of this Section 7(C), "Affiliate" shall mean any person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Taxpayer.

D. Successors. All covenants, agreements, terms and conditions contained in this Agreement shall apply to and be binding upon the Parties, their permitted assigns and successors.

E. Headings. Section titles or subject headings in this Agreement are for the purpose of reference and convenience only and are not intended to affect the meaning of the contents or scope of this Agreement.

F. Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original instrument, but all of such counterparts together will constitute but one Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement.

For the Town:

\_\_\_\_\_  
By: \_\_\_\_\_, duly authorized  
Title: \_\_\_\_\_

For the Taxpayer:

\_\_\_\_\_  
By: \_\_\_\_\_, duly authorized  
Title: \_\_\_\_\_

\_\_\_\_\_  
[SIGNATURE PAGE TO PAYMENT IN LIEU OF TAXATION AGREEMENT]

### **COVENANT TO PROTECT PUBLIC BENEFIT**

NEW BALANCE ATHLETICS, INC., a Massachusetts corporation, with a mailing address of 100 Guest Street, Boston, Massachusetts \_\_\_\_ (“Grantor”), for itself, its successors, and assigns, for consideration of tax relief granted under a certain Payment in Lieu of Taxation Agreement (“PILOT Agreement”) between the Town of Londonderry’s Construction Commercial and Industrial Tax Incentive Program, grants to the TOWN OF LONDONDERRY, having a mailing address of 268B Mammoth Road, Londonderry, New Hampshire 03053 (“Grantee”) the following covenants for the duration of the PILOT Agreement upon a certain tract or parcel of land known as Tax Map and Lot 104-049-3 in the Town of Londonderry, together with all structures and improvements thereon (“Property”). Grantee is granting this Covenant to Protect Public Benefit (this “Covenant”) in its capacity as tenant of, with an option to purchase, the Property.

The Grantee agrees that the Grantor’s improvement of the Property with and use of an approximately 102,418 square foot manufacturing facility (the “Qualifying Structure”) provides a demonstrated public benefit as follows:

- It enhances the economic vitality of the Town;
- It promotes development of municipal centers, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B;
- It increases commercial and industrial activity in the Town, including job creation; and/or
- It increases the Town’s commercial or industrial tax base.

The terms of the Covenant hereby granted with respect to the above-described Property are to be coextensive with the tax relief period under the PILOT Agreement and are as follows:

1. **Maintenance of the Qualifying Structure.** Subject to paragraph 2, below, the Grantor provides assurances that that the Qualifying Structure shall be maintained and used in a manner that continues the public benefit for which the tax relief was granted and shall, during the term of the Pilot Agreement maintain the Qualifying Structure in good condition and repair, reasonable wear and tear, taking by eminent domain and damage by fire or casualty excepted.
2. **Required insurance, use of insurance proceeds.** The Grantor is required to obtain and maintain sufficient and appropriate casualty insurance, as well as flood insurance if appropriate. If the Grantor has not begun the process of restoration, rebuilding, or demolition of the Qualifying Structure within one year following damage or destruction, and such failure continues for more than thirty (30) days following notice from Grantee of such failure (which thirty (30) day period shall be extended for such period of time as may be reasonably necessary for Grantor to effect the cure as long as Grantor commences efforts within such thirty (30) day period and exercised commercially reasonable efforts to continue effecting such cure through completion), the Grantor shall be subject to the termination of the tax relief under the PILOT Agreement after notice and an opportunity to be heard.
3. **Recording.** The Grantee shall record this Covenant with the Rockingham County Registry of deeds at the expense of the Grantor. This Covenant shall be a burden upon the property and bind all transferees and assignees of the Property.
4. **Enforcement.** If, during the term of the Pilot Agreement, the Grantor shall fail to comply in all material respects with its obligations under this Covenant:
  - a. When a breach of this Covenant comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach. The Grantor shall have 30 days after receipt of such notice to undertake those actions, including commencing restoration, which are reasonably calculated to cure the conditions constituting said breach and to notify the Grantee thereof (which thirty (30) day period shall be extended for such period of time as may be reasonably necessary for Grantor to effect the cure as long as Grantor commences efforts within such thirty (30) day period and exercised commercially reasonable efforts to continue effecting such cure through completion).
  - b. If the Grantor fails to take such curative action, the Grantor shall, upon 30 days' additional notice, be subject to the termination of the tax relief under the PILOT Agreement after notice and an opportunity to be heard. If, following such notice and an opportunity to be heard, a determination is made by Grantee to terminate Grantor's tax relief under the PILOT Agreement, the PILOT Agreement shall be terminated by notice from Grantee to Grantor and the Property shall from and after the date of such termination become subject to real estate taxation pursuant to New Hampshire RSA Chapter 80 without further payments under the PILOT



Agreement (with a per diem proration in the event that any such termination occurs in the middle of a tax year).

- 5. Notices.** Any notice to be provided under this Agreement shall be in writing and shall be deemed to have been given when delivered personally or by certified mail at the following addresses:

For the Grantor: Town of Londonderry  
268B Mammoth Road  
Londonderry, NH 03867  
Attn: Michael Malaguti, Town Manager  
Copy to Assessing Department

For Grantee: New Balance Athletics, Inc.  
c/o NB Development Group  
221 North Beacon Street  
Boston, MA 02135  
Attention: President

with a copy to:

New Balance Athletics, Inc.  
100 Guest Street  
Boston, MA 02135  
Attention: General Counsel

- 6. Termination of Covenant.** This Covenant shall expire, be automatically released and have no further force or effect upon the earlier of (i) the tenth (10<sup>th</sup>) anniversary of the date hereof or (ii) the earlier termination of Grantor's tax relief under the PILOT Agreement. This expiration, release and termination shall be automatic and require no further action by Grantee or Grantor; however, upon the request of Grantor, Grantee shall execute and deliver a recordable instrument confirming such expiration, release and termination and discharging this Covenant of record.

By accepting this Covenant and entering into the PILOT Agreement, Grantee acknowledges and agrees to the term hereof.

Meaning and intending to grant this Covenant upon the same property described and identified in a certain warranty deed of \_\_\_\_ (current owner) to \_\_\_\_ (BFA?) dated \_\_\_\_\_ and recorded at Book \_\_\_\_, Page \_\_\_\_ in the Rockingham County Registry of Deeds.

Exempt from transfer tax under RSA 78-B:2, I. Exempt from LCHIP surcharge under RSA 478:17-g, II(a).

Dated as of this \_\_\_\_ day of \_\_\_\_\_, 2023.

**NEW BALANCE ATHLETICS, INC.**

\_\_\_\_\_  
By its duly authorized \_\_\_\_\_

STATE/Commonwealth of \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared \_\_\_\_\_, New Balance Athletic, Inc.'s duly authorized \_\_\_\_\_, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that s/he executed the same as his/her free act and deed for the purposes therein contained.

\_\_\_\_\_  
Notarial official  
My commission expires: \_\_\_\_\_



New Hampshire Department of Safety  
Division of Homeland Security and Emergency Management  
Grant Agreement Amendment Checklist

**Pre-Disaster Mitigation FFY 2019**

Applicant: Town of Londonderry Grant Amount: \$12,500.25  
Project: Local Hazard Mitigation Plan Update

All steps below are required to be completed in their entirety.  
If any items are not completed properly, the Grant Agreement Amendment will not be processed.

**Complete and return this checklist and all Grant Agreement Amendment documents  
as soon as possible to:  
nh.hm@doh.nh.gov**

**OR**

**NH DOS/HSEM Attn: State Hazard Mitigation Officer, 33 Hazen Drive, Concord NH, 03305**

**Grant Agreement**

**Grantee signors complete the following:**

- ☐ Subrecipient Signatures

Have a **majority** of the Select Board sign Page 1 of the Grant Agreement Amendment form.

- ☐ Name and Title of Subrecipient Signor  
Print names and titles of the signors
- ☐ Initial and date **each page of the Grant Agreement Amendment.**

**Notary Public or Justice of the Peace complete the following:**

Notarization is not required.

**Additional Required Documents**

- ☐ Certificate of Vote/Authority for Signature (i.e., if town manager or someone other than Board members sign the Grant Agreement Amendment).

\*\*\*Meeting Minutes are NOT required\*\*\*

Pre-Disaster Mitigation (PDM) Program – CFDA #97.047  
Grant Agreement Amendment  
Extension of Performance Period

**Town of Londonderry (Subrecipient)**

It is hereby agreed that the grant agreement (PO#1078536) approved by the Governor & Council on March 3, 2021, item #59, between the Town of Londonderry as "Subrecipient" and the Department of Safety, Division of Homeland Security & Emergency Management as "State" to update the community's Local Hazard Mitigation Plan is amended as follows:

1. GENERAL PROVISIONS, Section 1.7, Completion Date;

Change the project completion date from May 29, 2023 to May 29, 2024.

2. EXHIBIT A, Scope of Work and Project Review and Conditions, Number 1;

Delete item three (3) in its entirety and replace with:

"The Subrecipient" agrees that the period of performance ends on May 29, 2024 and by that date the aforementioned hazard mitigation plan must be completed and have received formal approval by New Hampshire Homeland Security and Emergency Management (HSEM). All completed invoices must be sent to "the State" by June 29, 2024, thirty (30) days after the period of performance ends.

4. All other provisions of the grant agreement, approved by the Governor & Council on March 3, 2021, item #59, shall remain in full force and effect.

EFFECTIVE DATE OF THE AMENDMENT: This Amendment shall be effective upon its approval by the Department of Safety Business Office. If approval is withheld, this document shall become null and void, with no further obligation or recourse to either party. IN WITNESS WHEREOF, the parties have hereunto set their hands:

**Town of Londonderry (Subrecipient)**

By (signature): \_\_\_\_\_

By (signature): \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By (signature): \_\_\_\_\_

By (signature): \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Subrecipient Initials \_\_\_\_\_

Date \_\_\_\_\_

Approval by State of New Hampshire, acting through its Department of Safety:

By (signature): \_\_\_\_\_  
Director of Administration

Subrecipient Initials \_\_\_\_\_

Date \_\_\_\_\_

**Londonderry Town Council Minutes**  
**Monday, July 10, 2023**  
**7:00 PM**  
**Moose Hill Council Chambers**

**Meeting Link:** <http://173.166.17.35/CablecastPublicSite/show/12303?channel=4>

**Attendance:** Present: Chairman John Farrell; Vice Chairman Chad Franz; Councilors Jim Butler, Ted Combes, and Ron Dunn; Town Manager Michael Malaguti; Assistant Town Manager Kellie Caron.

**CALL TO ORDER**

Chairman Farrell called the Town Council meeting to order at 7:00 PM. The Pledge was led by Chairman Farrell. This was followed by a moment of silence led by Chairman Farrell for all of those who serve us both here and abroad.

**PUBLIC COMMENT**

Chairman Farrell welcomed up Londonderry Town Clerk, Sherry Farrell, and Clerk Debbie Desrochers to present the Rabies Clinic check to the Londonderry High School Band. This money will go to the band for their trip to London. Serge Beaulieu, Band Director, was not present at the time.

Stephen Lee, Julie Lee, and Larry Casey with the Londonderry Arts Council presented an update on the 2023 Londonderry Concerts on the Common series. Casey also gave an update on things that the Arts Council is working on. Lee stated that average attendance for outside concerts is around five-hundred. Lee thanked the Council and administration for all that they do to support Concerts on the Common.

Serge Beaulieu entered the meeting. Sherry Farrell presented the Rabies Clinic check to Beaulieu.

Chairman Farrell stated that public comment will be held to three minutes per speaker and public comment will be open for about twenty minutes.

**Name:** Mark Oswald and Pollyann Winslow

**Address:** 11 Verdi Lane and 4 Hearthstone Drive, Londonderry, NH

Winslow and Oswald asked the Council for continued support for the Londonderry Leadership program. Oswald stated that this program is important for residents to know how we govern as a community. Oswald thanked the Council and School Board for their continued support, and all of



the departments. Chairman Farrell stated that they will continue to support it. Chairman Farrell stated that the Town Manager has continued to have conversations with Oswald and Winslow and asked for a little breathing space so he can get his staff up and running.

**Name:** Chief Darren O'Brien, Londonderry Fire Department

Chief O'Brien updated the Council regarding a question brought up a few months ago about the apparatus that the department has that contains the firefighting foam with PFAS. Chief O'Brien stated that he has contacted a cleanup company to see what the estimate would be to get the systems flushed and be able to replace it with the new green foam that's out there. It will be somewhere around thirty-thousand dollars. Chief O'Brien stated that he did receive word from the State Fire Marshalls Office and the state is now going to move forward with the reclaiming of all of the foam that these fire departments have.

**Name:** Richard Belinsky

**Address:** 148 Mammoth Rd, Londonderry, NH

Belinsky shared information that came from the town regarding the Lions Hall. Belinsky stated that the Lions Club owes the town eighty thousand dollars that the Lions expended-on repairs for the Lions Hall. Belinsky stated that per the lease that they originally signed in 1972, they owe one hundred percent. They are responsible for all maintenance and repairs, inside and outside. That is why they got it for one dollar a year. Belinsky stated that he also found out from a Lions member that the have eighty thousand dollars sitting in an account, as well as sixteen thousand dollars in donations from Home Depot and Bensons for repairs on the building that they didn't use. Belinsky asked what the town is going to do to get the taxpayers money back. Belinsky stated that he understands it's a town building, but they had a lease. Belinsky stated that the last lease wasn't even signed, so they were in there with an unsigned lease. Belinsky stated that he would like some answers coming up. Chairman Farrell let Belinsky know his time has expired. Belinsky reminded the Council that they didn't vote in their rules after the election.

**Name:** Brian Mead

**Address:** 555 Mammoth Road, Londonderry, NH

Mead stated that with the proposal of two apartment buildings going in at the Mammoth Road and Page Road intersection, he wanted to bring the dangers of that intersection to the Councils attention. Mead shared the history of the dangers of the intersection from Traffic Safety Committee meeting minutes. Mead stated that he proposes the road to be a dead-end road with a gate. Chairman Farrell stated that usually they would ask the Town Manager to direct the police department and the fire department to come back to the Council with additional information around the accidents, and see what we can do to address it. Chairman Farrell stated that Mammoth Road is a state road so we can only do so much. Town Manager Malaguti stated that the Grenier Road and Rockingham Road intersection is state controlled. Any changes made needs to be run by DOT. Malaguti stated that progress has been made, and will continue to be made.

84 **Name:** Jonathan Esposito

85 **Address:** 5 Shelley Dr, Londonderry, NH

86 Esposito stated that he would like to address how public comment is being conducted. Esposito  
87 stated that a prior citizen was cut off. Esposito stated that according to the Town Charter, the  
88 Council has to vote on the Council rules within ten days of the election at their reorganization  
89 meeting. Esposito stated that no rules were voted on. Chairman Farrell stated that with regards to  
90 the rules, both gentlemen are wrong. The rules for the Council stand as they are. They are wrong  
91 about the Charter.

92  
93 **Name:** Ray Breslin

94 **Address:** 3 Gary Drive, Londonderry, NH

95 Breslin stated that in regards to the Woodmont Common Agreement and the town, the agreement  
96 has been modified a few times. Breslin stated that his concern on this is the water and sewer.  
97 Breslin stated that we need to look at the rest of the town and how the town will handle water and  
98 sewer.

99  
100 **Name:** Representative Wayne MacDonald

101 **Address:** 11 Dickey Street, Londonderry, NH

102 MacDonald talked about the state budget that just passed.

103  
104 **Name:** Ann Chiampa

105 **Address:** 28 Wedgewood Drive, Londonderry, NH

106 Chiampa stated that as a member of the Planning Board, she voted against the rezoning due to the  
107 traffic and accidents on that corner. Chiampa passed packets around to the Council, a page from  
108 Willy's Book of Nutfield. Chiampa discussed the old meeting house.

109  
110 **Name:** Tom Estey

111 **Address:** 9 Old Nashua Road, Londonderry, NH

112 Estey stated that section 3.2 of the Charter, Organizational Meeting, states that the Council needs  
113 to meet within ten calendar days following the election and adopting the rules. Chairman Farrell  
114 stated that Council has already spoken to the attorney and the Council meeting can be run at the  
115 discretion of the Chair.

116  
117 **Name:** Marge Badois

118 **Address:** 189 Litchfield Road, Londonderry, NH

119 Badois stated that she is with the Conservation Commission and the commission took no formal  
120 position on the Woodmont pump station, but they did recommend that it not be placed within the  
121 wetland buffer. The conditional use permit was approved over the Conservation Commissions  
122 recommendation. Badois stated that there is no map in the agenda on where it is located.

**Name:** Deb Desrochers

**Address:** 25 Royal Lane, Londonderry, NH

Desrochers read a letter into the record about the incident that took place at Town Hall a few weeks ago when members of the public came in and recorded employees. Desrochers discussed how professional employee's at Town Hall are and how employee's go out of their way for residents.

**Chairman Farrell closed public comment.**

**PUBLIC HEARING**

Motion to open Public Hearing made by Vice Chairman Franz and seconded by Councilor Combes.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0

Chairman Farrell introduced Resolution #2023-13, Scobie Pond boat launch grant acceptance, presented by Town Manager Malaguti. Malaguti stated that Mike Speltz from the Conservation Commission has been working with him on it. Malaguti stated that there is a boat launch right now, but it is not in good condition. This state funding will allow for the upgrade of town and city boat launches. The grant requires a twenty-five percent match from the municipality. Malaguti went over the details of the dock the town is looking at and the quote that was given. A grant application has been submitted. In order to get an award, the Council has to accept the funding and agree the municipality will accept it. The town match would come from the Conservation Fund, which is not taxpayer money. Badois stated that this dock provides good fishing as well. All the motor boats that are on the pond are residents who live there as there isn't a very good launch.

**Name:** Ann Chiampa

**Address:** 28 Wedgewood Drive, Londonderry, NH

Chiampa asked if the residents in the area will be contacted about this. Chairman Farrell stated that there is only one entry point.

Motion to approve Resolution #2023-13 and accept the unanticipated revenue made by Vice Chairman Franz, and seconded by Councilor Combes.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0

Motion to close Public Hearing made by Vice Chairman Franz, and seconded by Councilor Combes.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0.

## **NEW BUSINESS**

### **Proposed Funding Agreement with Pillsbury Realty (Woodmont Commons) for Completion of Pillsbury Pump Station Sewer Infrastructure Project**

Town Manager, Michael Malaguti, and Assistant Town Manager and Economic Development Director, Kellie Caron, presented. Malaguti stated that he briefed the Council over the last month on this matter. Malaguti stated that there is a lack of sewer capacity to build out the Woodmont area. This has been a concern for a number of years. This is paid for my user fees. Malaguti stated that this is requiring a full environmental study at the federal level.

Ari Pollack, Gallagher Callahan & Gartrell, has been representing Pillsbury Realty for many years. Pillsbury is the developer for Woodmont. Pollack stated that what was referenced earlier was the permitting related to the water supply booster station, adjacent to Michael's Way. That did have an impact on a wetland buffer. It was approved by the Planning Board. Pollack stated that to his knowledge the pump station, which is proposed on the north side of Pillsbury Road, has not had any permitting done, besides some conceptual designs, and that would all be required. Pollack stated that he would like to address why Woodmont has moved slow. Some reasons are market based and financial reasons, as well as physical. Sewer is a big issue as well.

Motion to approve the funding agreement for signature made by Vice Chairman Franz, and seconded by Councilor Butler.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0.

### **ARPA Request Lions Hall Conceptual Request**

Director of Public Works, Dave Wholley, presented. See attached presentation. Wholley stated that they are not going to change the appearance in any way, but maybe a new layout of the parking lot. This is more of a general layout and we are looking to bring back some of the glamor and preserve the building. Wholley stated this request is for \$18,750.00 to work with Weston & Sampson. Take it out of ARPA Funding.

The Council gave consensus to move forward.

### **Pickelball Interviews**

Chairman Farrell moved pickleball interviews forward. There are two alternate, and two full-time positions open.

The Council interviewed Steve Spaziana, and Margo Spaziani, of 12 Gary Drive; and Brian Samolyk, 25 Moulton Drive.

Motion to approve Brian Samolyk and Steve Spaziana as full-time members, and Margo Spaziana as an alternate member, made by Councilor Combes. Seconded by Vice Chairman Combes.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0.

**Order #2023-06 – An Order Relative to Licensing of a Junkyard Pursuant to RSA 236 (Murray’s Auto)**

Assistant Building Inspector, Brad Anderson, presented. Anderson stated that an inspection of 55 Hall Road was done on June 5<sup>th</sup>. Chairman Farrell stated that there is no public comment on either Order.

Councilor Dunn asked about a car that was parked out front of the business.

Richard Belinsky tried to speak up, after he was asked not to, and was escorted out of the meeting.

Councilor Dunn stated that there is a state RSA. Town Manager Malaguti asked Councilor Dunn what RSA he was looking at, so that we can make sure we are complying.

Chairman Farrell announced that the Council will take a brief five-minute break to review the RSA.

**Order #2023-07 – An Order Relative to Licensing of a Junkyard Pursuant to RSA 236 (S&S Metals)**

Assistant Building Inspector, Brad Anderson, presented. Anderson stated that the inspection was done on June 5<sup>th</sup>.

Motion to approve Order #2023-06 and Order #2023-07 made by Vice Chairman Franz, and seconded by Councilor Butler.

Councilor Dunn asked for clarification on the few issues brought up before we vote. Are there vehicles that are allowed to be parked outside of the property and is he allowed to have an auction, because it was in the Londonderry Time’s as an auction. Town Manager Malaguti stated that there is a letter dated November 23, 2021 addressed to an abutter. It addresses most of the issues, the vehicles issue. Vehicles are not permitted to be parked outside in general. Town Manager Malaguti stated that he drove by twice and he did not witness this, but he doesn’t doubt the resident’s complaint. Town Manager Malaguti addressed some of the other concerns. Auctions are not permitted, Town Manager Malaguti stated. If someone has evidence, he encourages that person to report it to the Code Enforcement Office. Malaguti stated that going forward, there will be no more thirty-day warnings to cure the violation. The town will commence enforcement action, and violations will be tracked and presented to the Town Council. Councilor Dunn stated that there was an auction that took place on May 28<sup>th</sup> at 8:15 AM and it was a Subaru. Chairman Farrell asked if the auction took place online. Councilor Dunn stated that he doesn’t know, but he has a picture of the ad.



John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0. Order #2023-06 and #2023-07 pass.

**Order #2023-08 – An Order Relative to the Withdrawal of Recreation Department Capital Reserve Funds**

**Order #2023-09 – An Order Relative to the Withdrawal of Cable Equipment Capital Reserve Funds**

**Resolution #2023-12 – A Resolution Relative to the Acceptance of Unanticipated Revenue Under RSA 31:95-b for Rabies Clinic, Bode Equipment Donation & HealthTrust Wellness Program**

Chairman Farrell asked if Finance Director Campo could address both of the Orders and Resolution together. Campo stated that Order #2023-08 is requesting five thousand out of the fund to help purchase a diesel mower. Four bids were received and the town is going with TurfPro.

Campo stated that Order #2023-09 is for the School Districts annual request. There is a list of expenses they will be using this on.

Campo stated that Resolution #2023-12 is to accept unanticipated revenue from the Rabies Clinic; Bode Equipment donated five hundred dollars to the police department; and HealthTrust gives the town, police, fire, and the town five hundred dollars for maintaining healthy habits around town.

Motion to approve Order #2023-08, Order #2023-09, and Resolution #2023-12, made by Vice Chairman Franz, and seconded by Councilor Combes.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0. Order #2023-08, Order #2023-09, and Resolution #2023-12 pass.

**Order #2023-10 – An Order Relative to the Expenditure of Roadway Maintenance Trust Funds**

Director of Engineering and Environmental Services, John Trottier, presented. This is for repairs and improvements to various town roads. Councilor Combes asked which roads. The roads include the following:

Portions of South Road, from Gilcreast Road to Kendall Pond Road  
Portions of Harvey Road  
Portions of High Range Road  
Portions of Shasta, from Mammoth Road to High Range Road  
Sunrise Drive, which was reconstructed this past spring  
Portions of Otterson Road  
Some roads within the Kings  
Hillside Ave, from the town lie to Londonderry Road  
Webster Road

Each one comes with a different cost.

Motion to approve Order #2023-10 made by Vice Chairman Franz, and seconded by Councilor Combes.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0. Order #2023-10 passes.

**Order #2023-11 – An Order Relative to the Distribution of Fire Department Capital Reserve Funds**

Battalion Chief Bruce Hallowell presented. Hallowell stated that this is for some new gear.

Motion to approve Order #2023-11 made by Vice Chairman Franz, and seconded by Councilor Combes.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0. Order #2023-11 passes.

**Assessing Department 2023 Revaluation Project Analysis/Preliminary Report**

Steve Hamilton, Town Assessor, and Adrienne Summers, Assistant Assessor, presented. Hamilton stated that every town has to do a revaluation every five years. Last time we did one in Londonderry was 2021. The Town Council has determined that it is appropriate to do them every two years now. We need to be able to bring properties to market value. Hamilton went over the revaluation process and how Londonderry will move forward. This is all property.

**Resolution #2023-14 – A Resolution Relative to Establishing the Londonderry Community Response Team Program**

Town Manager Malaguti presented. Al Sypek approached him to formalize this team so if something were to happen to a member of ALERT, they would be covered under our insurance.

Motion to approve Resolution #2023-14 made by Vice Chairman Franz, and seconded by Councilor Combes.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0. Resolution #2023-14 passes. The Council thanked the ALERT team for all that they do.

**Discussion on Proposed Conservation Easement (Map 17, Lot 10)**

Town Manager Malaguti presented with Marge Badois, Chair of Conservation Commission. Malaguti stated that there has been a lot of discussion about development in the north end of town. Malaguti stated that one of the remaining undeveloped areas is map 17, lot 10, part of the Merrill Farm area. It is mostly forested and there is some wet to the right side of the property. The

Conservation Commission voted to recommend to the Council to enter into an agreement to purchase a conservation easement on this land and that is what is on offer. Malaguti went over the proposal.

Ken Merrill, 585 Mammoth Road, co-owner of the Merrill Farm. Merrill wants to work together to preserve the parcel. It's a small parcel.

**Ordinance #2023-03 – An Ordinance Relative to the Rezoning of 556 Mammoth Road, Map 16, Lot 236**

Public hearing is scheduled for August 14<sup>th</sup>.

Motion to waive the first reading on Ordinance #2023-03 made by Vice Chairman Franz, and seconded by Councilor Butler.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0.

**APPROVAL OF MINUTES**

Motion to approve the Town Council minutes from June 5<sup>th</sup> made by Vice Chairman Franz, second by Councilor Combes.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

Chair votes 5-0-0.

Motion to approve the Special Town Council minutes from June 21, 2023 made by Vice Chairman Franz, seconded by Councilor Combes.

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

388

389 Chair votes 5-0-0.

390

391 **LIAISON REPORTS**

392

393 Council members gave their liaison reports.

394

395 **TOWN MANAGER & ASSISTANT TOWN MANAGER REPORT**

396

397 Town Manager Malaguti gave the Council his Town Manager report. Assistant Town Manager  
398 Caron gave the Council her update.

399

400 **ADJOURNMENT**

401

402 **Motion:** Vice Chairman Franz

403 **Second:** Councilor Dunn

404

John Farrell	Yes
Chad Franz	Yes
Jim Butler	Yes
Ted Combes	Yes
Ron Dunn	Yes

405

406 Chair votes 5-0-0.

407

408 Minutes taken by Kirby Brown on 7/10/2023

409 Minutes typed by Kirby Brown on 7/17/2023

410