

LIFE SAFETY SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement") dated February 23, 2004 by and between the Town of Plymouth, a municipal corporation organized and existing under the laws of the State of New Hampshire, with an office and place of business at 6 Post Office Square, Plymouth, New Hampshire 03264 (the "Town"), and Plymouth State University, a non profit Corporation organized and existing under the laws of the State of New Hampshire with an office and place of business at 17 High Street, Plymouth, New Hampshire 03264 (the "University")

Whereas, the Town and the University have agreed to work cooperatively for their collective well-being and future;

Whereas, the Town recognizes that the University is tax-exempt under the laws of the State of New Hampshire;

Whereas, the Town recognizes that, unless and until the NH Legislature requires the State of New Hampshire to compensate the Town for public safety costs incurred because of the presence of the University in the Town, the University has no legal requirement outside of this agreement to pay any money to the Town to offset public safety costs. The Town further recognizes that despite the unequal bargaining power of the parties, the University is assisting the Town by contributing to the Town's public safety costs.

Whereas, the University recognizes that the Town is obligated to provide life safety services to the citizens of the Town and that there are significant costs for the Town to deliver those services;

Whereas, the Town acknowledges the economic, cultural, and social value of having the University as part of the community;

Whereas, the University understands and agrees that students who live on the University campus are the direct responsibility of the University;

Whereas, the Town acknowledges its direct responsibility for citizen safety and protection to all persons and property within the boundaries of the Town; and

Whereas, the Town recognizes USNH Board of Trustee policy BOTIII.D concerning payment for municipal services.

NOW THEREFORE IN CONSIDERATION of the mutual covenants, agreements and other consideration of the parties described herein, covenant and agree as follows:

1. The University will pay the Town its fair share of the costs for **dispatch services** for as long as the University continues to subscribe to the service. The University's fair share

is based on the number of calls handled for the University as a percentage of the cost to the Town to provide dispatch services.

2. The University will continue its current practice for payment of **ambulance services**. The University currently reimburses the Town for each ambulance service response provided on-campus for which there is no payment to the Town. If the Town does not receive payment for an on-campus ambulance response within six months from the time of service, the University will reimburse the Town for the cost of that ambulance response and the University will bill and collect the charge from the student.

3. In recognition of the special equipment needs of the **fire department** for service to the University and its buildings, the University will make an annual payment as follows:

Deleted:

Deleted:

a. The University will pay the Town an amount to cover operating costs of the fire department equal to 28% of the fire department annual budget.

b. The University will pay the Town \$70,000 per year towards fire department capital expenditures. The Town and University acknowledge that, during the term of this Agreement, the Town intends to incur capital expenditures for the fire department to purchase property and construct a new building to house the fire department and that any such building may also house other Town departments. During the term of this Agreement, the Town also expects to create a capital reserve account to replace the ladder truck but the Town does not expect to purchase the truck until after termination of the first term of this Agreement. The dollar amount under this section is calculated with a long-term view (20-25 years) of capital and is inclusive of the university's current share of all of the above capital assets. Capital expenditures under this paragraph do not include ambulance replacement, dispatch equipment or single pieces of equipment that cost less than \$10,000.

4. The University will pay the Town for providing fire department plan review of campus projects expected to cost \$1,000,000 (one million dollars) or more at an hourly rate (based upon salary and benefits divided by the average hourly week) when the University desires a fire and life safety compliance review. The cost of the review will be mutually discussed and estimated prior to conducting the plan review. It is understood that fire and life safety plan reviews for projects costing less than \$1,000,000 will be conducted as part of the annual fire department operating budget.

5. The University will further support the Town in the following ways:
 - a. The University will reimburse the Town for the cost of creating and maintaining a full-time code enforcement officer. This officer will be an employee of the fire department and her/his job description is shown in attachment "A". The cost of this position for salary, overtime, benefits, and other associated costs is calculated at \$50,000 for FY2004. Any future increases for this position will be reimbursed to the Town by the University and will be based on the average pay increase and increases to other associated costs for all fire department employees.
 - b. The University and Town believe that a cause of the social problems on campus and in Town is the direct result of the misuse of alcohol and drugs, including underage drinking and the illegal sale of alcohol to minors. To help with this problem, the University will pay \$50,000 to the Town beginning FY 2004 to support the prosecutor's office. Increases in the future years will be limited to the average pay increase for other municipal employees.
 - c. The University will reimburse the Town for expenses incurred for extraordinary, one-time services as a result of large gatherings of on-campus students in off-campus settings, such as after the Red Sox loss in October 2003. The Town and the University shall make every effort, in planning appropriate deployment of forces and measures to be taken in anticipation of such gatherings, to agree in advance on the relative cost sharing between the parties.

6. The University System of New Hampshire Board of Trustees, through the UNH Chancellor, delegates to the President of Plymouth State University the responsibility to ensure for the safety and security of the University. Police Officers are employed for the purpose of law enforcement and security of the students, faculty, staff, and visitors.

The Town of Plymouth, New Hampshire, by and through the Board of Selectmen and with the approval of its Chief of Police, agrees to provide police appointments to designated members of Plymouth State University Police Department provided that such members have complied with all relevant administrative rules and regulations of the New Hampshire Police Standards and Training Council and have passed all of the requirements for appointment required by the Town, and are accepted and continue to be acceptable in all aspects including training. All persons so appointed shall have the same police powers consistent with other standard police officer appointments made by the Town of Plymouth, New Hampshire Board of Selectmen. Said grant of law enforcement authority confers no right of employment with the Town.

It is understood that the Town of Plymouth, New Hampshire and Plymouth State University each recognize that the citizens of the Town of Plymouth should not be burdened with providing law enforcement services to the University community without adequate compensation. Therefore, Plymouth State University agrees to assume the responsibility of law enforcement on all University property within the Town of Plymouth, New Hampshire, subject to the oversight of the Town's Police Chief. Plymouth State University recognizes that pursuant to New Hampshire statute the Town of Plymouth Chief of Police is the chief law enforcement officer within the Town of Plymouth. The Town recognizes that the President of Plymouth State University is the Chief Executive Officer at the University and is charged with the management of all University employees, including those of the University Police Department.

a. Appointment of Police Officers for Plymouth State University

The Town of Plymouth, New Hampshire shall, upon request of the Plymouth State University Chief Law Enforcement Officer, or in his/her absence his/her designee, provide police appointments to those persons so designated to serve as police officers for the Plymouth State University Police Department. All persons whose names submitted for appointment shall be subject to and conform to all relevant administrative rules and regulations of the New Hampshire Police Standards and Training Council and those of the Town.

The Town of Plymouth Chief of Police shall have the right to immediately suspend, the Town's grant of appointment pending a hearing and may reinstate or permanently terminate the police appointment, after notice and hearing, of any Plymouth State University police officer, except that said termination shall only be for reasons which are neither arbitrary or capricious and only after a presentation of reasons to the Chief Law Enforcement Officer for Plymouth State University. However, the decision of the Town's police chief shall be final and binding upon the University. The University shall promptly notify the Town's Chief of Police upon the University's discipline of or termination of employment of a Plymouth State University Police Officer.

b. Police Authority

Generally, and by virtue of their police appointments by the Town of Plymouth Board of Selectmen, Plymouth State University police officers shall have law enforcement authority within the Town of Plymouth without limitation, except as herein provided or as otherwise proscribed by law.

c. Exercise of Police Authority/Plymouth State University

The Plymouth State University Police Department shall have primary responsibility for law enforcement, including the investigation and prosecution of offenses that may arise therefrom, on Plymouth State University properties. Plymouth State University police officers shall refrain from exercising their law enforcement authority on non-University ways and properties except when violations of law occur in their presence, when in pursuit of a law violator or suspected law violator for an offense committed on a University way or property,

when conducting an investigation for an offense that was committed or may have been committed on a University way or property, when requested to do so by a Plymouth Police Department official, or in all other situations when the safety and/or welfare of the public requires immediate law enforcement action.

d. Exercise of Police Authority/Town of Plymouth

Police Officers employed by the Plymouth Police Department shall defer from exercising their law enforcement authority on Plymouth State University ways and properties except when violations of law occur in their presence, when in pursuit of a law violator or suspected law violator, when conducting criminal investigations, when requested to do so by a University Police official, when the Plymouth Police Chief decides that it is in the best interest of justice to do so or in all other situations when the safety and/or welfare of the public requires immediate law enforcement action. When appropriate the Town Police Chief will consult with the Plymouth State University Police Chief or other appropriate University official before taking action on campus. The terms expressed herein shall not be interpreted as limiting in any way the statutory authority of the Plymouth Police Department or any of its officers.

e. Special Details

Necessary traffic control or direction that may be required upon ways maintained by the Town of Plymouth arising prior to, during, or immediately following an event sponsored by or held at Plymouth State University facilities shall be the responsibility of the Plymouth State University unless Plymouth State University specifically requests the Plymouth Police Department to assume said traffic responsibilities.

The Plymouth State University Police Department will coordinate operational plans with the Town of Plymouth Police Department when major events that have an impact upon the Plymouth community are anticipated.

f. Reporting of Campus Crimes and Arrests to the Town of Plymouth

It is recognized that the Plymouth State University Police Department houses, maintains and operates a law enforcement computer system also utilized by the Plymouth Police Department. All Plymouth State University crime and arrest data is available 24 hours a day for review by the Town of Plymouth Police Department.

The Town of Plymouth Police Department agrees to provide access to its record system so that the Plymouth State University Police Department can correlate crime and arrest data as may be necessary to fulfill the University's requirement to report under the Federal Campus Crime and Cleary acts.

g. Mutual Aid Agreements

Only the Plymouth Police Department, being a "town or city" police agency, may enter into Mutual Aid Agreements as defined by RSA 105:13. It is therefore understood that any agreement the Plymouth Police Department has with another town or city extends to all sworn members of the Plymouth State University Police Department.

The Plymouth State University Police Department may request of the Plymouth Police Chief that other agreements be entered into in cases where such assistance of a specific community is desired, and whereas such an agreement does not already exist. Any such agreement must include language to the effect that the cooperating Town will assume all responsibility of any kind for the participating Plymouth State University Police officers.

As these documents change frequently due to changing police administrations, an annual list of all current Mutual Aid Agreements shall be prepared by the Plymouth Police Department and sent to the University Police Department.

h. Plymouth State University Police Department Policies and Procedures

The Plymouth State University Police Department desires to maintain an agency that is committed to excellence and will as a condition precedent to the continuation of this agreement, obtain and maintain accreditation status at least equal to that of the Plymouth police Department within two years by using the New Hampshire Accreditation step system.

The Plymouth State University Police Department may author and maintain policies and procedures for all situations and practices that do not imply the use of their sworn police appointment, understanding that many tasks are security functions that do not imply the use of their sworn authority. In instances where situations and practices imply the use of their sworn police appointments, the Plymouth State University Police Department shall not maintain a policy or procedure that conflicts with the policy or procedure of the Plymouth Police Department or the appointing authority. Examples of topic areas considered to imply the use of police appointments include, but are not limited to, Laws of Arrest, Use of Force, Vehicular Pursuits, and Authorized Weapon Systems.

i. Police Training of Plymouth State University Police Department Members

As required by law, the Plymouth State University Police Department agrees to comply with all administrative rules and regulations of the New Hampshire Police Standards and Training Council. Additionally, Plymouth State University will also comply with any and all rules and regulations pertaining to police training that are promulgated by the Town. Records of compliance shall be kept at the University Police Department and copies shall be provided to the Chief of the Plymouth Police Department upon request.

j. Insurance Requirements and Indemnification of the Town of Plymouth for actions of the Plymouth State University Police Officers

(1) Plymouth State University agrees to carry general liability insurance for members of the Plymouth State University Police Department with minimum limits of Two Million Dollars (\$2,000,000) as the single limit for each occurrence of bodily injury, personal injury and property damage, with a Four Million Dollars (\$4,000,000) umbrella policy. The policy shall be written on an occurrence made basis and name the Town as an additional insured.

Certificates of insurance shall be obtained by the University and shall be provided annually to the Town. The University shall immediately advise the Town of any claim or litigation that may result in liability to the Town. For any and all causes of action resulting from, arising out of, or relating to the Town's grant of law enforcement authority to a University officer, the University's insurance coverage shall be primary insurance as respects the Town, its officers, officials or employees and any insurance or self insurance maintained by the Town, its officers, officials or employees shall be in excess of, and not contribute with the University's insurance.

(2) Plymouth State University shall completely and fully indemnify and hold harmless the Town of Plymouth and its respective officers, boards, commissions, employees, agents and contractors (hereinafter referred to as "TOWN Indemnitees") against any and all causes of action resulting from, arising out of, or relating to the Town's grant of law enforcement authority to a University officer without regard to the nature or location or the acts or omissions alleged to have caused the injury or damages which may include, but are not limited to negligent hiring, retention, training, discipline and any other acts or omissions on the part of any University Police Officer while acting in their official capacity or otherwise, regardless of where said acts may allegedly occur within or outside the Town of Plymouth and regardless of whether the act or omission was authorized and the University Police Department's failure to comply with any Federal, State or local statute, ordinance or regulation. Specifically by agreeing to fully and completely indemnify the Town Indemnitees, the University is agreeing not only to satisfy any judgments or settlements against the Town as the result of any action brought against the Town resulting from, arising out of, or relating to the Town's grant of law enforcement authority to a University officer, but also to pay for any and all expenses reasonably incurred by the Town Indemnitees including but not limited to reasonable attorney's fees, reasonable costs of defense and preparation of the Town's employees and any other reasonable costs. The University specifically agrees that the Town retains the right to use its own attorneys to defend any claim if it so chooses or to protect its interest. This indemnification provision shall survive the termination of this Agreement as related to causes of action accruing during the term of this Agreement.

k. Mutual Understanding

Plymouth State University and the Town of Plymouth agree that the primary duty and obligation of each of their respective law enforcement agencies is to provide professional law enforcement protection services within their primary geographical areas as herein above defined, and further that each shall comply, where practicable, with requests for assistance from the other. It is understood by each party to this agreement that honoring such requests for assistance are voluntary, but in no instance shall such assistance be unreasonably withheld.

The parties agree that consistency and uniformity of criminal law enforcement within the entire Plymouth community is of paramount importance in spite of the fact that there are two separate police departments operating within the community. Accordingly the Town of Plymouth and Plymouth State University recognize, affirm, and agree that their approach to criminal law enforcement will not be altered or abridged by virtue of the fact that the University population is primarily students, faculty, and staff of Plymouth State University, or as a result of the fact that the Plymouth State University police may provide additional services of a security or other nature to the campus residents and the University administration beyond what a municipal police officer might normally provide.

7. The Town Administrator and the University's Vice President for Financial Affairs will meet in January of each year to determine the annual cost of this Agreement for the University. A follow-up meeting will occur after Town Meeting to finalize the payment.

8. Should legislation be enacted that requires the University to pay property or other local taxes, or to make payments in lieu of taxes in any form or to have such payments made on behalf of the University, this agreement shall terminate upon the commencement of such tax or payment in lieu of the tax obligations.

9. The Town agrees to appoint two representatives with voting rights from the University to the Town's advisory budget committee. Representatives for the University will be chosen by

the University President in consultation with the Chair of the Board of Selectmen and each University representative shall reside in the Town of Plymouth.

10. This agreement shall not give rise to a partnership, agency or other relationship between the parties, except as otherwise provided herein. This Agreement does not establish an employee-employer relationship between the Town and University. Neither party shall represent itself to be the agent, employee, partner, or joint venture of the other party and may not obligate the other party or otherwise cause the party to be liable under a contract or otherwise.

11. Notices. Any notices in connection with this Agreement must be sent to each party at the addresses set forth on the first page of this Agreement, or in the event of a change of address or fax number, then to such other address or fax number as to which notice of the change is given. Such notices will be effective (a) on the delivery date if delivered personally to the party; (b) on the delivery date if delivered by a commercial overnight carrier with written verification of receipt; (c) five (5) business days after the mailing date, whether or not received, if sent by US mail, return receipt requested; and (d) on the delivery date if transmitted by confirmed facsimile.

Town: Board of Selectmen
Town of Plymouth
6 Post Office Square
Plymouth, NH 03264

University: Plymouth State University
President Donald Wharton
17 High Street
Plymouth, NH 03264

12. This Agreement is not intended to be a third party beneficiary contract or to confer any rights on any person other than the parties to this agreement.

13. Should a court of competent jurisdiction deem any portion of this agreement void, then all remaining parts hereof shall remain in effect.

14. This Agreement may not be assigned by the University without the prior written consent of the Town and any purported assignment in violation of this provision shall be null and void.

15. This Agreement constitutes the entire agreement and understanding between the parties regarding the subject matter hereof, and merges all prior discussions, proposals, and agreements between them relating thereto. No waiver, modification or amendment to this Agreement shall be valid unless in writing and signed by the parties hereto.

16. No failure or delay on the part of either party in the exercise of any right, power or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

17. **Dispute Resolution and Governing Law.** This agreement will be governed by, and construed in accordance with the laws of the state of New Hampshire.

18. The terms of this Agreement shall remain in full force and effect from July 1, 2003 until June 30, 2010.

John H. Tucker Date
Chair, Board of Selectmen

Donald P. Wharton Date
President Plymouth State University

Paul SanSoucie Date
Selectman

Edward R. MacKay Date
Vice Chancellor for USNH

Quentin Blaine Date
Selectman