

INTERLOCAL AGREEMENT BETWEEN THE TOWNS OF
DURHAM AND MIDDLEFIELD

Approved in Durham at Special Town Meeting February 13, 2012
Approved in Middlefield at Special Town Meeting March 20, 2012

This INTERLOCAL AGREEMENT, entered into this 20 day of March by ²⁰¹² and between the TOWN OF DURHAM, a municipality having its territorial limits within the State of Connecticut, hereinafter called DURHAM, and the TOWN OF MIDDLEFIELD, a municipality also having its territorial limits within the State of Connecticut, hereinafter called MIDDLEFIELD,

WITNESSETH

Whereas Connecticut General Statutes Section 7-187 et seq grant to Durham and Middlefield the power and authority to establish by ordinance and regulation the means to carry out the duties, responsibilities and legal obligations of municipal government; and

Whereas Connecticut General Statutes Section 7-399(a)-7-339(I) inclusive grant to municipalities the authority to enter into interlocal agreements; and

Whereas Durham and Middlefield are tasked by the State with the responsibility for the disposing of solid waste created within their respective municipalities; and

Whereas Durham and Middlefield for 40 years have jointly been engaged in the disposing of solid waste through an Interlocal Advisory Board created by an Interlocal Agreement dated October 18, 1971; and

Whereas Durham and Middlefield desire to continue their contractual relationship to provide the residents and businesses of their municipalities with solid waste disposal services on land and at facilities owned by Durham and Middlefield know as the Durham/Middlefield Transfer Station and Recycling Center.

Now therefore, subject to the terms and conditions printed below, Durham and Middlefield agree:

ARTICLE I: (Authority; Effective Date; Territorial Limits; Duration; Withdrawal)

1-1. This Agreement is entered into pursuant to Sections 7-339(a)- 7-339(I) inclusive of the Connecticut General Statutes, as amended, the provisions of which Sections are incorporated herein by reference and which provisions shall prevail in case of any conflict with the terms of this Agreement.

1-2. The effective date of this Agreement shall coincide with that date on which the Agreement is ratified by both Towns, pursuant to Section 7-339(c).

1-3. The territorial limits of this Agreement shall be coterminous with the perimeter boundaries of the municipalities of Durham and Middlefield.

1-4. The duration of this Agreement shall not exceed twenty (20) years, or the useful life of

the Durham-Middlefield Transfer Station and Recycling Facility, whichever comes first, subject to the provisions of Section 1-5 and 1-7 which follow.

1-5. Durham or Middlefield may, by vote of its legislative body prior to June thirtieth in any year, elect to withdraw from this Agreement. Such withdrawal becomes effective no sooner than one year from date of receipt of a notice of withdrawal from the withdrawing municipality (the "Withdrawal Notice") and on the July 1 after the first anniversary of receipt of said Withdrawal Notice (the "Effective Date"). Such withdrawal shall not relieve the withdrawing municipality from any liability or obligation it incurred up to and through the Effective Date of such withdrawal.

1-6. The withdrawal of either Durham or Middlefield shall terminate this Agreement as of the Effective Date of withdrawal, as defined in Section 1-5 above.

1-7 Upon termination of this Agreement, any operating assets shall be distributed between the constituent municipalities in accordance with their proportionate shares for the year in which the agreement is terminated, as established by Article IV hereof and any capital assets shall be distributed between the constituent municipalities in the same ratio in which they were purchased. If one of the towns wishes to continue to operate the facility it will compensate the other municipality for its share of the assets based on the depreciated values as determined by the most recent audit. The amount may be paid over the remaining years of the agreement.

ARTICLE II: (Purposes)

The purposes of the Agreement are:

2-1. To furnish or provide for the joint use or benefit of Durham and Middlefield, services, personnel, facilities, equipment, or any other property or resources, for any one or more of the following purposes or uses:

- a. To provide for the residents and businesses of Durham and Middlefield management and other services including but not limited to personnel, facilities, equipment and any other property or resources needed to carry out collection and disposal of Mixed Municipal Solid Waste and Municipal Solid Waste and recyclables; and
- b. Construction, operation, maintenance and improvement of the Durham – Middlefield Transfer Station and Recycling Facility for disposal of such Mixed Municipal Solid Waste and Municipal Solid Waste and the processing of recyclables.

2-2. To establish an Interlocal Advisory Board to establish programs and policies and to recommend future actions, programs and policies for cooperative or uniform action in any fields covered by the aforesaid purposes, for either Town, and from time to time to consult with and advise the appropriate officials of either Town with respect to such programs, policies or fields of activity.

2-3. To establish and maintain an office in either Town and hire employees, for the purpose of administering or assisting in any of the undertakings contemplated by the aforesaid purposes, or for the purpose of performing services for the aforesaid interlocal Advisory Board.

ARTICLE III: (Definitions)

As used in this Interlocal Agreement, unless a different meaning clearly appears from the context:

3-1. "Durham - Middlefield Transfer Station and Recycling Facility" shall mean the land jointly owned by the towns of Durham and Middlefield, located on the boundary of said Towns east of Cherry Hill Road and Route 147, known formerly as the "Aivano Site" and the "Scirpo Site" and more fully described on Schedule A attached hereto, and any other land specifically acquired for this purpose by either or both of the Towns and accepted for such purpose by the aforesaid Advisory Board.

3-2. "Constituent Municipality" shall mean Durham or Middlefield.

3-3. "Hazardous Waste" means any waste material which may pose a present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed, including (A) hazardous waste identified in accordance with Section 3001 of the federal Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.), (B) hazardous waste identified by regulation by the Department of Environmental Protection, and (C) polychlorinated biphenyls in concentrations greater than fifty parts per million, but does not mean by-product material, source material or special nuclear material, as defined in section 22a-151, or scrap tires.

3-4. "Mixed Municipal Solid Waste" means municipal solid waste that consists of mixtures of solid waste which have not been separated at the source of generation or processed into discrete homogeneous waste streams such as glass, paper, plastic, aluminum or tire waste streams provided such wastes shall not include any material required to be recycled pursuant to section 22a-241b of the Connecticut General Statutes.

3-5. "Municipal Solid Waste" means solid waste from residential, commercial and industrial sources, excluding solid waste consisting of significant quantities of hazardous waste as defined in section 22a-115 of the Connecticut General Statutes, land clearing debris, demolition debris, biomedical waste, sewage sludge and scrap metal.

3-6. "Solid Waste" means unwanted or discarded solid, liquid, or semisolid or contained gaseous material, including, but not limited to, demolition debris, material burned or otherwise processed at resource recovery facility or incinerator, material processing at a recycling facility and sludges or other residue from a water pollution abatement facility, water supply treatment plant or air pollution control facility.

3-7. "Recycling" means the processing of solid waste to reclaim materials there from.

3-8. "Recycling facility" means land and appurtenances thereon and structures where recycling is conducted, including but not limited to, an intermediate processing center as defined in section 22a-260 Connecticut General Statutes.

3-9. "Advisory Board" shall mean the Durham - Middlefield Interlocal Advisory Board, whose duties and powers are set forth in ARTICLE V hereof.

3-10. "Service Charges" shall mean rents, rates, fees or other charges for direct or indirect connection with or the use of services of the transfer station and recycling facility.

3-11. "Legislative Body" shall mean the "town meeting", as defined in Section 1-1 of the Connecticut General Statutes, as amended.

3-12. "Costs" shall mean all costs, or expenses, which are, or shall be incurred by the Advisory Board, or its employees and agents, under this Agreement, in connection with the receiving, obtaining, providing, or furnishing of services, personnel, facilities, equipment, other property or resources, or the performance of any of the functions or activities contemplated by this Agreement.

ARTICLE IV: (Provisions for payment for costs)

4-1. Durham and Middlefield shall pay their proportionate shares of the costs of capital expenditures and current expenses necessary in the establishment, operation and management of the Durham - Middlefield Transfer Station and Recycling Facility and also the costs for receiving, or obtaining services, personnel, facilities, equipment, other property or resources from one another. The costs and expenses of furnishing and providing the services, personnel, facilities, equipment, other property or resources shall be prorated between Durham and Middlefield based upon the estimated population of each town as of July 1 of the previous fiscal year as such population is estimated by the State of Connecticut, Department of Health or prorated as otherwise determined by the Advisory Board, which shall fix the date or dates of payment of such costs and expenses during each fiscal year. At such time as the Advisory Board may determine that there is an imbalance in the amount of mixed municipal solid waste and recyclables, commercial and industrial waste being generated, which is not reflected in the estimates of population, it shall modify the method of prorating costs to reflect an equitable distribution of said costs. The Advisory Board may provide such additional services as requested by a constituent municipality, provided the cost of such services is borne entirely by said municipality.

4-2. The Advisory Board in each fiscal year, shall prepare an itemized budget of estimated expenditures and income for the next fiscal year, including estimated surpluses and capital reserves, which budget shall include the share for which each constituent municipality is responsible and which shall be submitted to the Boards of Selectmen on the date when all other municipal department budgets are due. Surpluses in excess of 5% of the prior fiscal year's approved budget shall be used to reduce the contributions of the constituent municipalities based on the percentage of contribution. Capital expenditures shall be in accordance with a capital improvements plan reviewed and approved at the Annual Budget Meeting. Proposed expenditures not consistent with the plan and the approved budget shall be approved by the Boards of Selectmen and Finance in both Towns.

4-3. Expenditures of the Advisory Board shall not exceed the funds allocated by the approved budget. The Advisory Board may, upon approval of the Boards of Selectmen and Boards of Finance of both Towns receive additional appropriations for necessary expenditures. The Advisory Board may transfer any unexpended balance of any item or items included in the budget to any other item or items.

4-4. The fiscal year of the Advisory Board shall begin on July 1, and end on June 30 in each fiscal year.

4-5. Should any municipality fail to appropriate the requested prorated share of the costs of operating the Transfer Station and Recycling Facility; the Advisory Board shall make appropriate reductions in service or take other actions which will reflect such budgetary decreases on a prorated basis.

4-6. To meet costs, (as defined above) and also including, without limitation, the costs of planning, engineering, acquisition, construction, maintenance and operation of the Transfer Station and Recycling Facility authorized by this Agreement, application may be made, pursuant to statute, ordinance and regulations, for any federal or state funds or assistance, or both, provided therefore under any federal or state laws.

4-7. Any grants-in-aids that may be received by the Advisory Board shall be prorated, where applicable, on the basis set forth in Section 4-1 of ARTICLE IV.

4-8. All rights and remedies granted by this Agreement for the collection and enforcement of charges shall be cumulative.

4-9. Except as provided in Section 4-3 of ARTICLE IV, notwithstanding any other provisions of this Agreement, the Advisory Board shall not commit itself or either town to expend funds above the amount of the approved budget.

4-10. The Advisory Board shall have the power to establish a reserve fund for capital and non-recurring expenditures.

ARTICLE V: (Interlocal Advisory Board)

5-1. This Interlocal Agreement shall be administered by an Advisory Board consisting of eight (8) members, four (4) members from each constituent municipality. Terms shall expire on the 30th of June. The terms of two members from each constituent municipality shall expire on June 30th in odd-numbered years; the terms of two members from each constituent municipality shall expire on June 30th in even-numbered years. Members currently serving on the Advisory Board shall continue to serve through the end of the terms for which they were elected. Beginning with the current members, the legislative body of each constituent municipality annually at least 30 days before the expiration of the terms of office of the Advisory Board members ending that year shall elect to the Advisory Board two members to serve for two years beginning on July 1st of that year. If a member of the Advisory Board shall for any reason be unable to complete his full term of office, the Advisory Board shall fill the vacancy until the next regular appointment of advisory board members; at such time the legislative body of each constituent municipality shall elect a successor to fill the vacancy for the unexpired portion of the term.

5-2. The first meeting in July of every fiscal year shall be known as the organizational meeting and at such meeting the members shall choose from its membership, a Chairman, Secretary, and a Treasurer and may then thereafter appoint any person or persons, or

employees, or officers, as it deems necessary or convenient, for the performance of the services, and/or for the transaction of the business of the Interlocal Agreement and the Interlocal Advisory Board. Appropriate rules and regulations for such continuance, or eligibility shall be drafted and administered by the Advisory Board, in conjunction with the constituent municipalities.

5-3. The Advisory Board may, from time to time, appoint such standing and special committees from its members or otherwise as in its judgment may be convenient and may define their powers and duties.

5-4. The Advisory Board shall adopt By-Laws and resolutions for the purpose of carrying into effect any of the powers and duties herein given and given by Statute, which By-Laws shall contain provisions setting forth a procedure for awarding contracts or making purchases in excess of Five Thousand (\$5,000.00) Dollars, except for professional services such as engineering, survey, legal, accounting/auditing, which shall be acquired through a quality based selection process as specified in the bylaws.

5-5. The Advisory Board may appoint and employ such professional and technical advisors and experts and such other agents and employees as it may require and shall determine their qualifications, duties, and compensation.

5-6. The Advisory Board shall make provision for auditing its accounts in accordance with the municipal audit laws of the State of Connecticut and shall cause the Treasurer or any other officer to execute bonds to the Advisory Board, with surety, for the acceptance of the Advisory Board for the faithful performance of the duties of such officer. The cost of such bond shall be borne by the Advisory Board.

5-7. The Advisory Board shall submit an annual report by October 31st of each fiscal year to its constituent municipalities including fiscal information and description of activities and programs.

5-8. The majority of the entire membership, with not less than two members representing each constituent municipality, shall constitute a quorum and the time, place and manner of calling meetings and the holding thereof, including the manner of resolving the votes, shall be prescribed by the By-Laws of the Advisory Board.

5-9. No member, officer or employee of the Advisory Board shall acquire any interest, direct or indirect, in any operation or project undertaken or to be undertaken by the Advisory Board; nor directly or indirectly acquire any interest in any property involved in any such operation or Project; nor be involved directly, or indirectly, in any contract or proposed contract for materials or services to be furnished to or used by the Advisory Board, but neither the holding of any office or employment in the government of any municipality of the state or the owning of property within a constituent municipality shall be deemed a disqualification for membership in or employment by the Advisory Board. No employee of the Advisory Board shall serve on the Advisory Board.

5-10. The Advisory Board shall have the power to supervise and investigate any of its employees and to inquire into any charges preferred against any such employee, and for cause,

of which the Advisory Board shall be the sole judge, to remove or suspend any such employee.

5-11. The Advisory Board shall have the power of access to all records thereto pertaining and other evidence of any meeting of the Advisory Board or any committee thereof. The towns of Durham and Middlefield have the right at any time to have access to the books and records including but not limited to all of the statements or accounts and any other financial information as well as all contracts, order forms, invoices, minutes, and personnel files and any other records.

5-12. The members of the Advisory Board shall serve without compensation, but shall be reimbursed for expenses incurred during the performance of their duties, when authorized by the Advisory Board.

5-13. The office of the Advisory Board shall be located in a participating municipality designated by the Board. The constituent municipalities shall provide adequate space to house the records of the Advisory Board and to conduct regular or special meetings of the Advisory Board.

ARTICLE VI: (Powers of the Advisory Board)

In addition to the powers hereinabove set forth and in addition to any powers granted it by statute, or otherwise, the Advisory Board shall have, without limitation, the following powers to be exercised in the name of the constituent municipalities and for the purposes of this Interlocal Agreement. When exercising such powers in the names of the constituent municipalities, the Advisory Board shall act on their behalf as their agent:

6-1. Any and all powers legally and properly delegated to it by the constituent municipalities.

6-2. The power to incur and to pay costs and expenses necessary and expedient in carrying out the purposes of this Agreement and to maintain its own financial records of same.

6-3. The power to assess service charges to the municipalities of Durham and Middlefield, or other public or private entities and other facility users of the Durham – Middlefield Transfer Station and Recycling Facility, and provide for the establishment, enforcement and collection of such charges, including the power to impose such fines and penalties as it deems necessary, or advisable, to carry out its functions hereunder.

6-4. In the names of the towns of Durham and Middlefield, to acquire, hold, use and expend all revenue from service charges, town appropriations and other monies received.

6-5. In the names of the towns of Durham and Middlefield, to acquire, hold, use and dispose of personal property for the purposes of this Interlocal Agreement.

6-6. In the names of the towns of Durham and Middlefield, to accept gifts and grants of personal property, money or material, labor or supplies, for the purposes of this Interlocal Agreement and to make or perform such agreements and contracts as may be necessary or convenient in connection with procuring, accepting, or disposing of such grants or gifts.

6-7. To make and enforce by-laws and/or rules and regulations for the management and regulation of its business and affairs, for the use, maintenance, and operation of its projects and properties, including any fees to be charged for the use of the facilities, and to amend the same.

6-8. To do and perform any act or thing authorized by this Agreement under, through or by means of its own officers, or agents, or employees, or by contracts with any person.

6-9. In the names of the towns of Durham and Middlefield, to enter into any and all contracts, execute any and all instruments, and do and perform, any and all acts and things necessary, convenient, or desirable, and to carry out any power expressly given the Advisory Board in this Agreement.

6-10. In the names of the towns of Durham and Middlefield, to enter into all necessary contracts and agreements with the state and federal governments or any agency thereof, necessary or incidental to its projects. All contracts or agreements shall be reviewed by the Boards of Selectmen.

6-11. In the names of the towns of Durham and Middlefield, to obtain assistance from the State and federal governments in the forms of loans, advances, grants subsidies, and otherwise, directly or indirectly, for the construction or operation, or both, of any of its projects, and to make application therefore. All contracts or agreements shall be reviewed and approved by the Boards of Selectmen and when necessary the Boards of Finance.

6-12. In the names of the towns of Durham and Middlefield, to carry out as a federal project or state project, the construction, operation and maintenance of any project herein authorized, accept or use any federal or state funds, or assistance, or both, provided therefore under any applicable state or federal law, rule, or regulation.

6-13. In the names of the towns of Durham and Middlefield, to acquire equipment, construct roads and/or cause roads to be built, erect fences and structures, etc. as needed to dispose of mixed municipal solid waste and recyclables from the constituent municipalities.

6-14. To prepare and recommend ordinances to legislative bodies of the constituent municipalities to govern the collection of mixed municipal solid waste and recyclables.

6-15. In the names of the towns of Durham and Middlefield, to establish licensing procedures and fees for private collection of mixed municipal solid waste and recyclables, such fees to be turned over to the Advisory Board and to impose and collect such fines and/or penalties as it deems fit and proper to secure the effective carrying out of the licensing procedures and collection of fees.

6-16. In the names of the towns of Durham and Middlefield, to enter into contracts with any private or public entity for the processing of mixed municipal solid waste and recyclables materials or for the purpose of maintaining and operating a Transfer Station and Recycling Facility.

6-17. To establish and revise rules and regulations for the supervision, management, control, operation and use of its facilities, including rules and regulations prohibiting or regulating disposal of any mixed municipal waste, bulky waste and recyclable materials which will adversely affect any part or process of the refuse disposal operation.

6-18. To establish such rules and regulations as are necessary to insure that no municipality, or person, corporate or otherwise, shall cause to be deposited directly, or indirectly, into the Transfer Station and Recycling Facility, any matter or thing which in the opinion of the Advisory Board is, or may be, injurious to the health of employees, or anyone contracted by the Advisory Board and engaged in maintaining the Transfer Station and Recycling Facility operation, or which may contribute to pollution, or otherwise adversely affect the public health, safety, or welfare.

6-19. In addition to the foregoing powers and in addition to the powers granted to it both by statute and by ordinance and by law, the Advisory Board shall have all powers necessary or convenient to carry out the purposes set forth in this Agreement.

6-20. Whenever the phrase "in the names of Durham and Middlefield" appears in this Agreement, it shall be construed to mean that no authority is conferred upon the Advisory Board to enter into any contracts or contractual relationships that are intended to bind either or both municipalities without the prior consent of the respective municipality's Board of Selectmen and when necessary Board of Finance.

ARTICLE VII (Miscellaneous Provisions)

7-1. AMENDMENTS: The Advisory Board, subject to any contract provisions by which it may be legally bound, may resolve to amend this Interlocal Agreement, only by a two-thirds vote of its entire membership. Said amendment shall then be submitted by the Advisory Board for ratification to the legislative body of each constituent municipality. Said amendments shall become effective when ratified by each constituent municipality.

7-2. ARBITRATION: All disputes between the parties to this Agreement shall be first mediated and if not resolved, arbitrated. Either party can ask for mediation in which case arbitration of the dispute shall be deferred until the mediator determines an impasse has been reached. Arbitration may be done under the auspices of a private alternative dispute resolution organization located within Middlesex or Hartford Counties and all costs and expenses of the arbitration shall be awarded by the arbitrator. All decisions of the arbitrator shall be binding and final and not subject to appeal to the courts of Connecticut. All expenses of mediation shall be borne equally by the parties.

7-3. INDEMNIFICATION: Each constituent municipality shall obtain indemnification of itself and the officials, officers or employees hereunder, to the extent required by CGS Sec. 7-101a by means of insurance or otherwise against any losses, damages, or liabilities arising out of the receiving, obtaining, furnishing, or providing of services, personnel, facilities, equipment, or any other property, or resources, pursuant to this Agreement.

7-4. SEPARABILITY: If any provision, Section, Article or clause of this Interlocal Agreement, or the application of any such provisions, Section, Article or clause, to any person, or circumstances, shall for any reason be held invalid, the remainder of this Interlocal Agreement shall not be affected thereby and the application of such provision, Section, Article, or clause to persons, or circumstances, other than those as to which it shall have been held invalid, shall not be affected thereby.

SCHEDULE A

DURHAM-MIDDLEFIELD TRANSFER STATION AND RECYCLING FACILITY

First Parcel

A certain piece or parcel of land located on the Easterly side of Cherry Hill Road partly in the Town of Middlefield and partly in the Town of Durham, within the County of Middlesex and State of Connecticut, containing twenty-two (22) acres, more or less, and bounded and described as follows:

NORTHERLY by land formerly of Vincent Szpakowski, now believed to be of Sebastian and Kathleen Scirpo;

EASTERLY by land of the Town of Middlefield, and land of Elsie Gastler, Charles Gastler and Margaret Hicks, partly by each;

SOUTHERLY by land of Elsie Gastler, Charles Gastler and Margaret Hicks, and land of Woodrow Dills, partly by each; and

WESTERLY by land of formerly of Vincent Szpakowski, now of Lazor, Daigle and Kane, and Cherry Hill Road, partly by each.

Second Parcel

All that certain piece or parcel of land, together with any improvements thereon, in the Town of Middlefield, County of Middlesex, and State of Connecticut, on the Southwesterly side of Old Indian Trail, and shown and designated as lot "3 – 2.954 Acres" on a map entitled "Property of Sebastian & Kathleen J. Scirpo Cherry Hill Road, Middlefield, Connecticut Boundary Survey and Plan of Subdivision David B. Mylchreest Consulting Engineer Civil – Structural – Survey Laurel Grove Rd. Middletown, Conn. Date: Dec. 1980 Scale: 1"=40' Drawing No 1 of 1 File No 8037 Rev. 7-10-81 Rev.2-11-81" which map is on file in the Middlefield Land Records as Map file2, Map No. 155.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

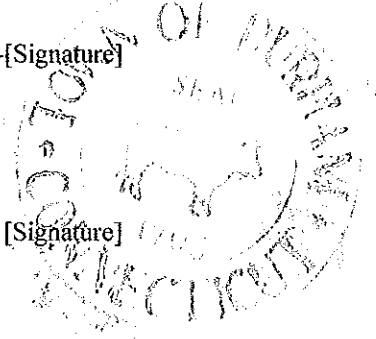
WITNESS

TOWN OF DURHAM

Beth Moncata [Signature]
Beth Moncata
Alvin C. Forast-Willett [Signature]
Alvin C. Forast-Willett

Laura L. Francis [Signature]
Laura L. Francis
First Selectman

Kim Jarvis [Signature]
(Keeper of the Seal)



SEAL

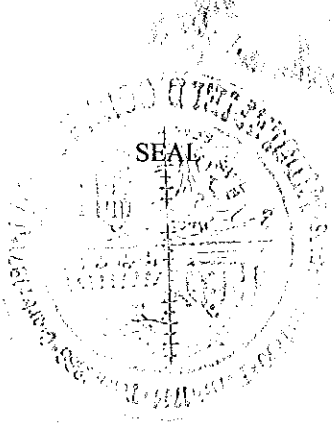
WITNESS

TOWN OF MIDDLEFIELD

Beth Moncata [Signature]
Beth Moncata
Alvin C. Forast-Willett [Signature]
Alvin C. Forast-Willett

Jon A. Brayshaw [Signature]
Jon A. Brayshaw
First Selectman

Donna M. Golub [Signature]
(Keeper of the Seal) Donna M. Golub



Received for Record at Town of Durham, CT
On 04/11/2012 At 10:24:26 am

Kim Jarvis
Alvin C. Forast-Willett