

**INTERLOCAL AGREEMENT FOR STORMWATER SERVICES  
BETWEEN THE CITY OF SOUTH BURLINGTON  
AND THE TOWN OF SHELBURNE**

THIS AGREEMENT ("Agreement") is made this 1<sup>st</sup> day of July, 2016 (the "Effective Date"), by and between the City of South Burlington, a Vermont municipality located in the County of Chittenden and State of Vermont ("City"), and the Town of Shelburne, a Vermont municipality located in the County of Chittenden and State of Vermont ("Town") This Agreement is an interlocal contract made under the provisions of 24 V.S.A. §§ 4901-4902.

**WHEREAS**, the Town requires the services of qualified professionals to provide services in the areas of stormwater management; and,

**WHEREAS**, the City, through its Department of Public Works Stormwater Services Division, represents that it has the expertise and is qualified to perform the stormwater management services required by the Town; and,

**WHEREAS**, the Selectboard of the Town and the City Council of the City have approved this Agreement and the expenses for the governmental services, activities and undertakings contemplated hereunder have been included in the municipal budgets of the City and Town under 17 V.S.A §2664 or comparable charter provisions; and,

**NOW THEREFORE**, in consideration of these promises and the mutual covenants herein set forth, it is agreed by the parties hereto, as follows:

**1. Services Provided by the City.**

From time to time, the Town and City may execute one or more statements of work, substantially in the form attached hereto as **Exhibit A** that describe the specific services to be performed by City (a "Statement of Work"). Each Statement of Work will form a part of this Agreement and will be subject to the terms and conditions of this Agreement. A Statement of Work may be amended only by written agreement of the parties.

**2. Performance of Services.**

The City will perform the services described in each Statement of Work in accordance with the terms and conditions set forth in each such Statement of Work and this Agreement. In the case of any inconsistency between this Agreement and a Statement of Work, this Agreement shall control.

**3. Standard of Performance.** The standard of care for all professional services performed or delivered by the City will be the skill and care used by practitioners of the stormwater profession practicing under similar circumstances at the same time and in the same region. The City makes no warranties, express or implied, under this Agreement or otherwise, in connection with the services performed or delivered by the City under this Agreement or any Statement of Work.

**4. Town Responsibilities.** The Town shall provide the City with all information available to the Town relevant to the City's work under this Agreement or any Statement of Work. The Town shall make decisions and perform other Town obligations in a timely manner so as not to delay the City's performance of services.

**5. Inspection.** The Town shall, at all times, have access to the plans, studies, data, diagrams, calculations, and other materials prepared or collected by the City pursuant to this Agreement (the "Instruments of Professional Service"). The City shall surrender upon demand any Instruments of Professional Service that have been prepared or developed or collected by the City pursuant to this Agreement.

**6. Delivery.** The City will deliver to the Town the deliverables, products, and other materials specified in a Statement of Work (the "Deliverables") in accordance with the delivery schedule and other terms and conditions set forth in the Statement of Work.

**7. Acceptance.** Following the City's delivery of each Deliverable, the Town will evaluate each Deliverable to confirm its conformance to the Statement of Work. If a Deliverable fails to conform to the Statement of Work, the Town will notify the City within ten (10) business days and, if applicable, specify the modifications that must be made to the Deliverable. Upon receipt of such notice, the City will modify the Deliverable to conform to the Statement of Work. If the Town finally rejects a Deliverable, the Town may terminate the applicable portion of the Statement of Work.

**8. Ownership.** The City agrees that the ownership of all Instruments of Professional Service and Deliverables shall become the property of the Town as they are prepared or developed. Intellectual property rights to any Instruments of Professional Service and Deliverable are reserved to the Town.

**9. Compensation.** As The City's compensation for the performance of services under this Agreement, the Town will pay the City the

fees specified in each Statement of Work in accordance with the terms set forth therein.

**10. Invoices.** Invoices shall be submitted to the Town as often as monthly, but no more frequently. Electronic invoices delivered over email are acceptable provided that they are sent to both the Town Manager and Wastewater Superintendent. All invoices and correspondence shall reference the appropriate Statement of Work. Invoices are payable within thirty (30) days of the invoice date. The Town shall pay a finance charge of one and one half percent (1.5%) per month on any unpaid balance not received by the City within 30 days of the invoice date. All payments made by the Town should specify the invoice numbers being paid.

**11. Term.** This Agreement will commence on the Effective Date and, unless terminated earlier in accordance with the terms of this Agreement, will remain in force and effect for as long as the City is performing services pursuant to a Statement of Work.

**12. Termination.** This Agreement may be terminated in accordance with the following provisions:

a) Termination for Cause. If either party shall fail to fulfill any obligations under this Agreement, or if either party shall breach any of the terms of this Agreement, the other party shall have the right to terminate the Agreement by giving twenty (20) days' written notice.

b) Termination for Convenience. In addition, the Town may terminate this Agreement for its convenience by giving twenty (20) days' written notice to the City. In such case, the City shall be entitled to receive full compensation for all services performed hereunder prior to the date of termination.

**13. Relationship.** The City shall have responsibility for general supervision of City's agents and employees and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under this Agreement. The City shall be responsible for all costs and expenses incurred relative to the City and agents and employees of the City, in connection with this Agreement, including, without limitation, payment of salaries, fringe benefit contributions, payroll taxes, withholding taxes and other taxes or levies, office overhead expenses, travel expenses, telephone and other telecommunication expenses, and document reproduction expenses.

**14. Insurance.** The City shall agree to procure and maintain the following types and limits of insurance for the term of this contract.

Commercial General Liability Insurance including but not limited to Bodily Injury, Personal/Advertising Injury, Broad Form Property Damage, Products and Completed Operations Liability and Contractual Liability with limits of at least \$3,000,000<sup>[141]</sup> per occurrence and \$6,000,000 in the aggregate annually.

Commercial Auto Liability Insurance covering all Owned & Hired and Non-Owned vehicles, with limits of at least \$3,000,000<sup>[142]</sup> Combined Single Limit per occurrence.

Statutory Workers' Compensation Insurance and Employers Liability Insurance with a limit of at least \$1,000,000<sup>[143]</sup> each accident.

Before signing this contract and before work begins, the City shall provide the Town with a Certificate of Insurance showing evidence of all coverages required above and naming the Town as an Additional Covered Party (named insured).

**15. Indemnification.** The City shall, to the fullest extent permitted by the law, indemnify and hold harmless the Town, its officers, agents and employees, from liability for damages to third parties, together with costs and expenses, including attorney's fees<sup>[144]</sup>, incurred in defending claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of the City, its agents or employees, in the performance of the services to be provided under this Agreement.

The Town shall, to the fullest extent permitted by the law, indemnify and hold harmless the City, its officers, agents and employees, from liability for damages to third parties, together with costs and expenses, including attorney's fees<sup>[145]</sup>, incurred in defending claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of the Town, its agents, or employees, in performance under this Agreement.

Notwithstanding any contrary provision hereof, all of the rights and obligations of the parties under this Section 15 shall survive expiration or termination (for any reason) of the Agreement and remain in full force and effect.

**16. Right of Entry.** If the services to be performed under a Statement of Work require entry on property controlled by the Town, the Town hereby grants the City, and its agents and employees, the right to enter the property in order for the City to fulfill its obligations under the Statement of Work. If the services to be performed under a Statement of Work require entry on property which is not controlled by the Town, the Town agrees to obtain permission from the party controlling the property to allow City agents and employees entry on the property.

**17. Compliance.** The City shall comply with all applicable Federal, State and local laws in the performance of the services to be provided under this Agreement.

**18. Assignment.** The City shall not assign or transfer this Agreement, or any interest herein or obligation hereunder, directly or indirectly without the prior written consent of the Town. Any attempt to do so without the prior written consent of the Town shall be null and void. Approval or consent to assign or transfer any portion of the work shall in no way relieve the City of responsibility for the performance of that portion of the work so transferred.

**19. Changes and Amendments.** Changes, modifications, or amendments in the terms, conditions, and fees of this Agreement or any Statement of Work shall be written and signed by the duly authorized representatives of the Town and the City.

**20. Notices.** Notices and other communications are to be delivered to:

For the Town:

Christopher Robinson  
Water Quality Superintendent  
Town of Shelburne  
53 Turtle Lane  
Shelburne, VT 05482

For the City:

Thomas J. DiPietro Jr.  
Deputy Director of Public Works  
City of South Burlington  
575 Dorset Street  
South Burlington, VT 05403

**21. Governing Law, Jurisdiction, Severability.** This Agreement and any and all issues arising hereunder or relating hereto shall be

governed and construed according to the laws of the State of Vermont without reference to principles of conflicts of laws. The Courts of the State of Vermont shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement. In the event that one or more components of this Agreement is deemed by a court of competent jurisdiction to be unenforceable, then it is the intention of the parties that such component be stricken, and the rest and remainder of the Agreement be enforced in accordance with the plain meaning of the language of the Agreement as if the stricken component had not ever been a part hereof.

**22. Entire Agreement.** This Agreement, together with the Statements of Work, constitute the final, complete and exclusive Agreement of the parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter.

**23. Construction.** This Agreement has been reviewed by the City and the Town and their respective legal counsel and the terms and provisions hereof have been negotiated by both parties and this Agreement shall not be construed for or against the City or the Town. This Agreement shall not create any relationship of agency, partnership, or joint venture. No provision contained in this Agreement shall create or confer any benefit with or rights to any third parties nor give to third parties any claim or right of action beyond such as may legally exist in the absence of any such provision.

**24. Force Majeure.** The City shall not be liable for any delay or failure to perform services when such delays or failures are caused by circumstances beyond the City's reasonable control, including without limitation, acts of God, acts and/or omissions of federal, state, and local governmental authorities and regulatory agencies, strikes, riots, civil unrest, and war. For delays caused by the Town or circumstances beyond the reasonable control of the City, the City shall be given a reasonable time extension.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first written above.

CITY OF SOUTH BURLINGTON  
SOUTH BURLINGTON, VERMONT

Witness: Colin Joyce BY: Kevin Dorn  
KEVIN DORN, CITY MANAGER AND DULY  
AUTHORIZED REPRESENTATIVE

DATE: 6/30/16

Town of Shelburne

Witness: Susan L. Mancoske BY: Joe Colangelo  
JOE COLANGELO, TOWN MANAGER AND DULY  
AUTHORIZED REPRESENTATIVE

DATE: 28-June-2016

**EXHIBIT A  
STATEMENT OF WORK**

This Statement of Work Number \_\_\_\_\_ is issued under and subject to all the terms and conditions of the **AGREEMENT FOR STORMWATER SERVICES** dated as of \_\_\_\_\_, 2016 between the City of South Burlington ("City") and Town of Shelburne ("Town")

**1. Description of Services.**

**2. Payment Terms.** [Use if City will be paid on the completion of milestones].

Description of Milestones	Milestone Payments	Milestone Completion Dates

**OR**

**2. Payment Terms.** [Use if City will be paid on an hourly basis]

Hourly Consulting Rate: \$ \_\_\_\_\_

Maximum Number of Hours: \_\_\_\_\_

Maximum Consulting Fee: \$ \_\_\_\_\_

Start Date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

**3. Other Terms (Scope of Work related).**

Agreed as of \_\_\_\_\_, 2016.

CITY OF SOUTH BURLINGTON

SOUTH BURLINGTON, VERMONT

Witness: \_\_\_\_\_

BY: \_\_\_\_\_

THOMAS J. DIPIETRO JR.

DEPUTY DIRECTOR OF PUBLIC WORKS

DATE: \_\_\_\_\_

TOWN OF SHELBURNE

SHELBURNE, VERMONT

Witness: \_\_\_\_\_

BY: \_\_\_\_\_

CHRISTOPHER ROBINSON

WATER QUALITY SUPERINTENDENT

DATE: \_\_\_\_\_