

**Gwynn Zakov**  
**4/7/2020**

**MUTUAL AID AGREEMENT FOR THE SHARING OF MUNICIPAL RESOURCES**

**I. INTRODUCTION AND PURPOSE**

The purpose of this Mutual Aid Agreement for the Sharing of Municipal Resources (this Agreement) is to ensure the continuation of necessary municipal resources in the event a municipality requests aid to assist in its provision of municipal resources. Such a request may seek the use of another municipality’s equipment, offices, meeting spaces, workspaces, employees, processes, consultation, and other services or property, or any combination of the above, and is not limited to this list of possible resources. By way of more specific example, and not limitation, the municipal parties hereto may engage the other or others for the provision of employees, equipment, or property for their respective clerk’s office, treasurer and accounting functions, law enforcement functions, fire protection functions, highway and transportation functions, the provision of water and wastewater services, trash disposal and recycling, parks and recreation services, and such other services, employees, or property as the parties shall agree to in writing part of this Agreement or in an Addendum or Exhibit to this Agreement.

In furtherance of this purpose, this Agreement provides a framework through which the municipal parties to this Agreement may assist one another in times of need. Each municipal party to this Agreement recognizes that it may need to call upon another party to assist in its own need to provide ongoing municipal services, to respond to catastrophes, emergencies, natural disasters, or the like. Each municipality further recognizes that non-emergency and emergency cooperation remains in the long-term interests of the parties, and therefore enters into this Agreement to ensure a consistent, coordinated and timely response in providing mutual aid. By signing below, each Municipal Party agrees to be bound by all the terms contained herein.

**II. PARTIES**

This Agreement is made by and between the following municipalities, having an address and place of business as set forth below:

- a. The **[insert municipality name here]**, in the County of \_\_\_\_\_.  
ADDRESS  
ADDRESS  
ADDRESS
  
- b. The **[insert municipality name here]**, in the County of \_\_\_\_\_.  
ADDRESS  
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III. LEGAL AUTHORITY

This Agreement is adopted under the authorities granted by 24 V.S.A. Ch. 121, 24 V.S.A. § 1937, 20 V.S.A. Ch. 175, as may be amended and as applicable.

IV. DEFINITIONS

- a. "Assistance" shall mean all acts of Assisting Municipality conducted for or on behalf of a Requesting Municipality, including but not limited to travel to and from the site of the emergency, incurring of Expenses and all activities conducted from the time employees of Assisting Municipality begin travel to the site of the emergency until travel from the site of the emergency to the headquarters of Assisting Municipality is complete.
- b. "Assisting Municipality" shall mean a Municipality which has determined to provide assistance as set forth in Section V, below, and which actually provides Assistance to a Requesting Municipality. Employees of Assisting Municipality shall at all times during Assistance continue to be employees of Assisting Municipality and shall not be deemed to be employees of Requesting Municipality for any purpose.
- c. "Expenses" shall include:
  - i. Labor Charges incurred by the Assisting Municipality; the cost of wages paid under then existing wage agreements, irrespective of whether the agreement is a collective bargaining agreement, personnel policy provision, individual labor agreement, or otherwise. The Assisting Municipality's labor charge shall not be greater than the equivalent of 40 straight time hours per employee per calendar day without prior written approval by a duly authorized representative of Requesting Municipality.
  - ii. Equipment Charges incurred by the Assisting Municipality, including, but not limited to hourly charges for hours traveled and worked, and will be in accordance with the attached Equipment Rates. Such charges may include depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, VOSHA costs and other costs incidental to operation.
  - iii. Lodging for requested employees not provided by the Requesting Municipality.
  - iv. All necessary meals, food, and drink not provided by the Requesting Municipality.

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- v. Any material used in the Assistance process not provided by the Requesting Municipality.
- vi. Any and all miscellaneous costs not included in subparts (c)(1) through (c)(5) not provided by the Requesting Municipality.
- d. “Excluded Expenses” shall mean all administrative and general, indirect labor, and overhead expenses incurred by the Assisting Municipality.
- e. “Requesting Municipality” shall mean a municipality which requests Assistance from another municipality.

### **V. REQUESTS FOR ASSISTANCE**

Any party to this Agreement shall contact the municipal manager of another party to request assistance under this Agreement; in the event a municipal manager is unavailable, a party shall next contact the chair of the legislative body; in the event the chair of the legislative body is unavailable, a party shall next contact the any member of the legislative body to request assistance. The parties expressly understand that any party requested to provide assistance shall not be obligated to do so until authorized by the municipal manager or a member of the legislative body (who, in the absence or inability to serve of the full legislative body, shall have authority to act hereunder without the concurrence of the full legislative body) as indicated above, and the decision to do so shall be in the sole discretion of the municipality to which the request has been made. Once a municipality assumes the responsibilities of the Assisting Municipality, it shall be obligated to provide Assistance in accordance with this Agreement. Notwithstanding the foregoing, the Assisting Municipality shall retain the authority to instruct its employees to return to its headquarters whenever management of Assisting Municipality deems it to be necessary or desirable. This Agreement is non-exclusive and nothing in this Agreement shall be construed as prohibiting a municipal party to this Agreement from directly arranging for Assistance on its own with other municipalities, outside the parameters of this Agreement.

### **VI. OBLIGATIONS OF REQUESTING MUNICIPALITY**

In connection with emergency assistance, a Requesting Municipality shall have the following obligations with regard to the Assisting Municipality:

- a. To provide its best estimate of the type and amount of equipment needed, the number and types of employees requested, and the estimated duration of the Assistance;
- b. To provide Assisting Municipality accurate directions to where Assisting Municipality employees will report for assignment, and the name, title and telephone number of the representative of Requesting Municipality that will direct employees of Assisting Municipality;

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- c. To designate a person to work with each employee or group of employees of Assisting Municipality who is familiar with Requesting Municipality's systems or methods of work, and who has direct access to Requesting Municipality's computer networks or communication system;
- d. To provide a description of the Requesting Municipality's systems or operational plan, applicable standard operating procedures, standing directives, and other useful information, as applicable;
- e. To release all employees of Assisting Municipality once Assistance is no longer necessary or desirable;
- f. Promptly reimburse Expenses incurred by Assisting Municipality, but no later than forty-five days after receipt of an invoice;
- g. Maintain insurance in amounts and coverages typically maintained for municipal operations of similar size providing service in the state of Vermont, and as may be required by applicable law. Insurances shall include Commercial General Liability, Workers' Compensation/Employer's Liability, Automobile Liability, and such other coverages as may reasonably be requested by Assisting Municipality, which proof of such insurance shall be provided upon request by Assisting Municipality; and
- h. In addition, and if necessary in the circumstances as determined by Assisting Municipality, Requesting Municipality must also provide employees of Assisting Municipalities with meals whenever possible, but in any event three meals a day at reasonable intervals; suitable lodging, which shall include warm and dry sleeping quarters with bathroom facilities; and Requesting Municipality shall employ good workplace practices in all operating procedures and in the use of employees and equipment of Assisting Municipality, and where applicable, comply with all relevant VOSHA regulations and requirements.

## **VII. OBLIGATIONS OF ASSISTING MUNICIPALITY**

Assisting Municipality shall do the following:

- a. Maintain all time sheets and work records for its employees providing Assistance. At a minimum, the time sheet shall include the names of the Requesting Municipality and the Assisting Municipality, the names and job titles or classifications of all personnel from the Assisting Municipality, the dates worked and number of hours for each date delineated in no greater than half-hour increments including travel time to and from job site, the names or descriptions or identifying numbers of all equipment

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used by the Assisting Municipality, as well as the applicable rate for use of such equipment. In the absence of any adopted rates for the use of such equipment, the Assisting Municipality shall charge the municipal rates set forth under State of Vermont guidelines, and in the absence of any State of Vermont guidelines, the Assisting Municipality shall charge the rates set forth in the FEMA Schedule of Equipment Rates.

- b. Assisting Municipality shall submit an invoice for Expenses to Requesting Municipality within thirty days after Assistance has been terminated. At a minimum, the invoice shall include the names of the Requesting Municipality and the Assisting Municipality, contact information for the Assisting Municipality, all time sheets associated with such assistance, all Expenses as defined in Section IV (c), the section of any wage agreement used in calculating wages due hereunder, any other Expenses as defined in Section IV(c), and the date the invoice is due.
- c. Assisting Municipality shall adhere to its own applicable personnel policies or labor agreements in connection with its provision of Assistance hereunder.
- d. Assisting Municipality shall maintain insurance in amounts and coverages typically maintained for municipal operations of similar size in the State of Vermont, unless other amounts shall be agreed to. Insurances shall include Commercial General Liability, Workers' Compensation/Employer's Liability, Automobile Liability, and such other coverages as shall be agreed to in writing. Proof of such insurance shall be provided upon request by the Requesting Municipality.

### VIII. JOINT RESPONSIBILITIES

It shall be the responsibility of each Participating Municipality to do the following:

- a. Identify potential hazards that could affect the Participating Municipalities and their personnel;
- b. Conduct joint planning, intelligence sharing and threat assessment development with other Participating Municipalities, and conduct a joint meeting and training at least biennially;
- c. Identify and inventory the current services, equipment, supplies, personnel and other resources related to planning, prevention, mitigation, response and recovery activities of the Participating Municipality; and
- d. Adopt and put into practice a jointly-agreed standardized incident management system.

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### **IX. LIMITATIONS**

A Participating Municipality may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction. In the event of a response hereunder, the Assisting Municipality's personnel shall continue to be under the command and control of the Assisting Municipality, to include standard operating procedures and medical protocols, but shall be under the Requesting Municipality's operational control. Assets and equipment of the Assisting Municipality shall remain under its ultimate control, but shall be under the Requesting Municipality's operational control during the time of any response hereunder.

### **X. TERM**

This Agreement shall continue in force and effect until such time as one of the Parties withdraws its participation, upon no less than ten (10) days' written notice.

### **XI. INDEMNIFICATION**

To the extent permitted by law, and except to the extent of Assisting Party's gross negligence or intentional misconduct, Requesting Party shall indemnify, defend and hold harmless the Assisting Party, its officers, employees, and agents ("Indemnitees") from and against any and all claims, demands, suits, liability, causes of action, fines, penalties, court costs, losses, damages and expenses ("Covered Losses"), including such claims asserted by third parties, arising out of, or resulting from, occasioned by or in connection with the rendering of Assistance under this Agreement or the performance or non-performance of its obligations under this Agreement, on account of any damages, loss or destruction of property or personal injury, including death, to any person or persons, which result from facilitating or furnishing Assistance pursuant to this Agreement ("Covered Claims"). Under no circumstances shall Indemnitees be entitled to special, indirect, punitive, or consequential damages, lost profits or business interruption damages whether in contract, tort, warranty, strict liability or otherwise. For removal of doubt, payments in connection with workers' compensation or disability or pension benefits, or increases in such costs, whether due to increases in premiums as a result of a Claim or contributions, are not included in Covered Losses, and each Municipal Party's employees shall be construed as employees of the actual employer and not of the Requesting Municipality. Any claim for attorney's fees shall be excluded hereunder.

An Indemnitee shall promptly notify Requesting Municipality in writing of any Covered Claim for which it seeks indemnification hereunder, and in no case, more than fifteen (15) days after Indemnitee receives notice of such Covered Claim. The Requesting Municipality shall have no liability for failing to provide indemnification for any Claim for which it has not received notice. Notwithstanding the foregoing, the Indemnitee shall have the right, at any time, to participate in or assume control of the defense of the Covered Claim with counsel of its choice, which counsel must be reasonably acceptable to Requesting Municipality. Requesting Municipality agrees to fully cooperate with Indemnitee. If Indemnitee assumes control of any third-party

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Covered Claim, Requesting Municipality shall have the right to participate in the defense at its own expense. If Indemnitee does not assume control or otherwise participate in the defense of the Covered Claim, Indemnitee shall be bound by the results obtained by Requesting Municipality. If Indemnitee assumes defense of a third-party Covered Claim, then in no event shall Requesting Municipality admit any liability with respect to, or settle, compromise or discharge, any such third-party Covered Claim without Indemnitee's prior written consent.

**XII. APPLICABLE LAW**

This Agreement is adopted under the laws of the State of Vermont and shall be interpreted, governed by, and construed in accordance with the laws of the State of Vermont, without regard to conflict of laws rules of another state.

**XIII. FORUM, DISPUTE RESOLUTION**

Any and all disputes, claims, or controversies arising out of or relating in any way to this Agreement, may be submitted to a formal mediation using a mediator, to whom the Parties mutually agree in writing, or, if no such agreement is possible, a mediator appointed by the American Arbitration Association. Mediation must commence within any applicable statute of limitations, and shall be deemed to commence when a Party notifies the agreed-upon mediator, in writing, of its request for mediation, the subject of the dispute, its agreement to pay any mediation fees, and the relief requested. Mediation shall be deemed to be in the nature of settlement negotiations and any dispute not otherwise satisfactorily resolved shall be subject to mandatory, final and binding arbitration. Either Party may initiate arbitration with respect to the matters submitted to mediation by notifying the other Party, in writing and within ten days after the mediation is concluded, of its demand for arbitration. Unless otherwise agreed by the Parties, the mediator shall be disqualified from serving as arbitrator in the case. Except as otherwise agreed in writing by the Parties or as required by applicable law, any mediation and arbitration shall be conducted in Burlington, Vermont. Similar to a judge or jury, an arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, however the scope and rules of arbitration differ, and review is limited. In the event the Parties elect not to mediate, arbitration shall be the sole and exclusive forum for resolution of the dispute, claim or controversy, and the award shall be in writing, state the reasons for the award, and be final and binding. Judgment thereon may then be entered in any court of competent jurisdiction.

**ACKNOWLEDGEMENT OF ARBITRATION: THE PARTIES TO THIS AGREEMENT UNDERSTAND THAT IT CONTAINS AN AGREEMENT TO ARBITRATE. AFTER SIGNING THIS DOCUMENT, BOTH PARTIES UNDERSTAND THAT THEY WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE WHICH IS COVERED BY THE ARBITRATION AGREEMENT, UNLESS IT INVOLVES A QUESTION OF CONSTITUTIONAL OR CIVIL RIGHTS LAW. INSTEAD, BOTH PARTIES AGREE TO SUBMIT ANY SUCH DISPUTE TO AN IMPARTIAL**

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**ARBITRATOR. ANY SUCH DISPUTE SHALL BE FILED ON AN INDIVIDUAL BASIS, WITH ANY DISPUTE FROM DIFFERENT PARTICIPANTS TO BE HEARD IN DIFFERENT PROCEEDINGS.**

**XIV. SEVERABILITY**

All the provisions of this Participation Agreement shall be considered as separate terms and conditions. In the event that any provision hereof is determined to be invalid, prohibited, or unenforceable by a court or other body of competent jurisdiction, this Participation Agreement shall be construed as if such invalid, prohibited, or unenforceable provision had been more narrowly drawn so as not to be invalid, prohibited, or unenforceable. Notwithstanding the foregoing two sentences, in the event that any of the provisions of this Participation Agreement should be determined to be invalid, prohibited or unenforceable, the validity, legality and enforceability of the remaining provisions contained in this Participation Agreement shall not in any way be affected or impaired thereby.

**XV. ASSIGNMENT**

Neither party may assign its interest in this Agreement without the prior written consent of the other.

**XVI. NO WAIVER**

No failure to exercise, and no delay in exercising any right, power, or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power, or remedy which the Parties hereto may have, nor shall any such delay be construed to be a waiver of any of such rights, powers, or remedies, or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any party hereunder be deemed a waiver of any default or breach subsequently occurring.

**XVII. NOTICE**

Any required notice or other communication to be given hereunder shall be in writing and mailed, certified with return receipt requested, or e-mailed, or sent by facsimile, or sent by nationally recognized overnight courier (e.g., Federal Express) to such party at the address or number set forth below:

**If to Town:** *insert TOWN name here*  
Attn: Selectboard Chair  
ADDRESS  
ADDRESS

**If to City:** *insert CITY name here*  
Attn: City Council President  
ADDRESS



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ADDRESS

With copies to:

RECIPIENT  
ADDRESS  
ADDRESS

**XVIII. JOINT DRAFTING**

The Parties agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either party but shall be construed in a neutral manner.

**XIX. ENTIRE AGREEMENT**

This Agreement embodies the entire agreement and understanding between the Parties relating to the subject matter hereof and there are no covenants, promises, agreements, conditions or understandings, oral or written, except as herein set forth.

**XX. RECORDING**

The Parties hereto agree that any party may record this Agreement in the land records of either Municipality without further consent from the other Parties.

**XXI. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

**XXII. REVIEW BY THE VERMONT ATTORNEY GENERAL'S OFFICE**

The municipal parties hereto may, but shall not be required to, submit this Agreement to the Vermont Attorney General for a determination that it is in proper form and compatible with the laws of the State of Vermont prior to approval by the legislative bodies of the municipal parties; the Attorney General shall notify the legislative body of the same within thirty days, and, in the event the Attorney General shall fail to so respond within said thirty days, the legislative body may approve the Agreement, all pursuant to 24 V.S.A. § 4901(c).

**XXIII. AGREEMENT AND COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of the Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having

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attached to it one or more signature pages. By signing below, each Municipal Party agrees and acknowledges that the foregoing terms and conditions shall apply to any request and rendering of Assistance, as of the date written below. This Agreement supersedes any previous agreements.

**SIGNATURES ON FOLLOWING PAGE**

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IN WITNESS WHEREOF, the Municipal Parties hereunto set their hands and seals as of the date set forth above.

**[If a town, insert TOWN name here]**

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

By: \_\_\_\_\_

Name:

Selectboard Chair and Duly Authorized Agent

STATE OF VERMONT

COUNTY OF \_\_\_\_\_

At \_\_\_\_\_, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared \_\_\_\_\_, Selectboard Chair and Duly Authorized Agent of the **[insert town name here]**, and she/he acknowledged this instrument, by her/him subscribed, to be her/his free act and deed, and the free act and deed of the **[insert town name here]**.

Before me, \_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

**[If a city, insert CITY name here]**

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

By: \_\_\_\_\_

Name:

City Council President and Duly Authorized Agent

STATE OF VERMONT

COUNTY OF \_\_\_\_\_

At \_\_\_\_\_, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared \_\_\_\_\_, City Council President and Duly Authorized Agent of the **[insert city name here]**, and she/he acknowledged this instrument, by her/him subscribed, to be her/his free act and deed, and the free act and deed of the **[insert city name here]**.

Before me, \_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_