

**CHITTENDEN COUNTY MS4 STORMWATER PROGRAM
MEMORANDUM OF UNDERSTANDING (MOU)
EFFECTIVE JULY 1, 2016**

Comment [DDD1]: This MOU should include a section in its body that sets forth the effective date.

Preamble

~~This Memorandum of Understanding (“MOU”) establishes an agreement among a group of Municipal Separate Storm Sewer Systems (“MS4s”) permittees and a Transportation Separate Storm Sewer System (“TS4”) permittee, hereinafter “M4s” and the Chittenden County Regional Planning Commission a CCRPC to operate an MS4 Stormwater Program (“Program”) that conforms with and satisfies the relevant requirements regarding both Minimum Control Measure One (“Public Outreach and Education”) and Minimum Control Measure Two (“Public Involvement and Participation”) of the Phase II NPDES Permit issued by the Vermont Department of Environmental Conservation (“VTDEC”) on December 2012 as established in General Permit 3-9014 (“MS4 Permit”) and as may be continued, renewed, amended or otherwise modified during the Period of this Memorandum.~~

Comment [DDD2]: This belongs in the first sentence.

Comment [DDD3]: I would be reluctant to use this term, which is not recognized by federal regulations, as far as I know. I realize the MOU uses it later, but that would not be hard to fix.

Comment [DDD4]: I suggest saying a regional planning commission here. Later it says the RPC shall function as the CCRPC.

~~Effective July 1, 2016, this MOU supersedes the following two previous MOUs:~~

Comment [DDD5]: Should specify that these prior MOUs shall be superseded as of the effective date of this MOU.

~~an MOU signed by the Chittenden County Regional Planning Commission and twelve Municipal Separate Storm Sewer Systems (“MS4s”) permittees effective March 10, 2013 through March 9, 2018 governing operation of a Regional Stormwater Education Program to satisfy the relevant requirements regarding Minimum Control Measure One (“Public Outreach and Education”) and~~

~~an MOU signed by the Chittenden County Regional Planning Commission and eleven Municipal Separate Storm Sewer Systems (“MS4s”) permittees effective July 2011 through June 2016 governing operation of a Regional Stormwater Public Involvement and Participation Program (“Program”) that conforms with and satisfies the relevant requirements regarding Minimum Control Measure Two (“Public Involvement and Participation”).~~

~~This Memorandum of Understanding (“MOU”) establishes an agreement among a group of Municipal Separate Storm Sewer Systems (“MS4s”) permittees, a Transportation Separate Storm Sewer System (“TS4”) permittee and a Lead Agency CCRPC to operate an MS4 Stormwater Program (“Program”) that conforms with and satisfies the relevant requirements regarding both Minimum Control Measure One (“Public Outreach and Education”) and Minimum Control Measure Two (“Public Involvement and Participation”) of the Phase II NPDES Permit issued by the Vermont Department of Environmental Conservation (“VTDEC”) in on December 2012 as established in General Permit 3-9014 (“MS4 Permit”) and as may be continued, renewed, amended or otherwise modified during the Period of this Memorandum.~~

Comment [DDD6]: This belongs in the first sentence.

Comment [DDD7]: I would be reluctant to use this term, which is not recognized by federal regulations, as far as I know. I realize the MOU uses it later, but that would not be hard to fix.

Comment [DDD8]: I suggest saying a regional planning commission here. Later it says the RPC shall function as the CCRPC.

1. Parties to the MOU – The parties to this agreement are:

a. ~~Members~~**Members** – the undersigned ~~municipal MS4s and non-traditional MS4s, and TS4s~~

Comment [DDD9]: Here again, I am not sure it is necessary or helpful to differentiate between different kinds of MS4s in this document.

a.
b. ~~Lead Agency~~**CCRPC**—the Chittenden County Regional Planning Commission (“CCRPC”), unless a majority of the Steering Committee favors a different ~~organization~~**lead agency****CCRPC** or the CCRPC no longer wishes to ~~be a party to this MOU~~**act as the Lead Agency****CCRPC** and withdraws its services pursuant to Section 8 below.

2. ~~MS4 Subcommittee~~ **Steering Committee**

Comment [DDD10]: It makes no sense to speak of a Steering Committee if there is no committee under which the Steering Committee functions. What you seem to want to say is steering committee.

a. ~~Subcommittee~~**Steering Committee**—~~The MS4 Subcommittee~~**Steering Committee is a Subcommittee**~~Steering Committee of CCRPC’s Clean Water Advisory Committee.~~

b.a. **Composition** – The voting ~~Members~~**Members** of the ~~Subcommittee~~**Steering Committee** shall consist of one representative from the signatory ~~MS4s and TS4~~**members** to this Agreement. Another MS4 may request to join this MOU if approved by a 2/3rds vote of the ~~Members~~**Members**. The voting ~~Members~~**Members** shall be appointed either by the governing body of their municipality at a publicly warned meeting or if a ~~member~~**Member** representing an MS4 ~~non-municipal agency~~ or a ~~TS4~~**TS4 non-municipal agency** via a process consistent with their policies.

b.b. **Duties** – The voting ~~Members~~**Members** of the ~~Subcommittee~~**Steering Committee** shall advise the ~~Lead Agency~~**CCRPC** on the development and performance of Program Services and on matters bearing on the administration of this agreement.

b.c. **Organization of Meetings** – The Steering Committee ~~will~~**shall** endeavor to meet on a quarterly basis at minimum. The agenda for meetings and draft meeting minutes ~~will~~**shall** be posted on the website of the Program and/or the website of the Chittenden County Regional Planning Commission in a manner compliant with the current requirements of the Vermont Open Meetings Law.

Comment [DDD11]: Shall should be changed to shall throughout to be consistent and because shall works better than shall in contracts.

3. ~~Lead Agency~~**Chittenden County Regional Planning Commission (CCRPC)**

- a. **Duties** – The ~~Lead Agency~~**CCRPC**:
1. shall provide services in terms of administering this MOU and agreements with contractors (including executing contracts, receiving and disbursing funds, and monitoring the provision of services) on behalf of the ~~Members~~**MS4s**;
 2. may also provide other services contributing to the operation ~~of the deliverables~~ of this Program (including, but not limited to, social media management, public relations, grant writing, etc.) as directed by the ~~Subcommittee~~**Steering Committee**; and at a level consistent with each year’s Program Budget as described in Section 6.b below;

3. shall provide a quarterly budget report detailing expenses incurred and payments received to the Subcommittee Steering Committee;
4. shall pay subcontractor and vendors for charges consistent with the relevant contract as needed using funds from the budget of the Stormwater Program as defined below in Section 6;
5. may reimburse itself for personnel or other expenses for charges consistent with its duties as needed using funds from the budget of the Stormwater Program;
6. shall consult with the Subcommittee Steering Committee prior to authorizing any subcontractor activities or charges outside the scope of work, and.
7. shall notify the Subcommittee Steering Committee when 75% of the budget (as defined in Section 6 below) for an individual category of expenses is reached (e.g. subcontractors, lead agency CCRPC fees, advertising, etc). When these levels are reached, subsequent payments or reimbursements by the Lead Agency CCRPC shall be reviewed and approved by the Subcommittee Steering Committee chair(s) prior to action.

- b. **Compensation** – The Members agree to compensate the Lead Agency CCRPC for the actual costs of performing duties defined in Section 3.a. Compensation for duties shall not exceed ten (10%) percent of the Program Budget as specified in Section 6.b below without prior approval of a majority of the Subcommittee Steering Committee.
- b. **Invoices** – The Lead Agency CCRPC will invoice the Program as needed to cover personnel charges, mileage reimbursement and other direct expenses necessary to perform its duties. Personnel charges for Lead Agency CCRPC staff shall be calculated at a rate of salary plus fringe. The Lead Agency CCRPC shall not charge the Program an Indirect Rate. As noted above the Lead Agency CCRPC may reimburse itself for charges consistent with its duties as needed using funds from the budget of the Stormwater Program;

Comment [DDD12]: This needs to be defined. It would also be useful to establish an MLA for the CCRPC, either in this agreement or more practically, in a yearly budget for reimbursing the CCRPC established by the Steering Committee. I do not recommend giving the CCRPC a blank check.

4. **Selection of Primary and Sub-Contractors** –

- a. The Lead Agency CCRPC, in consultation with the Subcommittee Steering Committee, shall competitively bid for contract(s) for Program Services that collectively satisfy the requirements for Minimum Control Measure One (“Public Outreach and Education”) and Minimum Control Measure Two (“Public Involvement and Participation”) of the Phase II NPDES Permit then in effect.
- b. All contracts shall be awarded based on qualifications, price, and the ability of the entity to provide services that meet the relevant MS4/TS4

Permit requirements. The selection of contractors ~~will~~shall be done using the procurement policy of the ~~Lead AgencyCCRPC~~ in compliance with state and federal procurement laws and procedures.

- c. Contracts shall generally be 1 to 5 years in length and ~~shall include~~, but not be limited to, a specified Maximum Limiting Amount, language specifying the right of the ~~Lead AgencyCCRPC~~ and/or the ~~SubcommitteeSteering Committee~~ to a) cancel a contract if services are not being adequately provided; b) to specify that payments to contractors shall be made only for services rendered and c) and allow a contract extension if desired.
- d. Contracting for services under this MOU ~~will~~shall comply with the Fair Employment Practices and Americans with Disabilities Act: the Steering Committee agree to comply with the requirement of Title 21 V.S.A Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. The ~~Lead AgencyCCRPC~~ and the ~~SubcommitteeSteering Committee~~ shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990 that qualified individuals with disabilities receive equitable access to the services, programs and activities provided by the ~~SubcommitteeSteering Committee~~ under this MOU. This provision ~~will~~shall also be included in all contracts and subcontracts executed under this MOU involving state or federal funds.
- e. The ~~Lead AgencyCCRPC~~ and the ~~SubcommitteeSteering Committee~~ recognize the important contribution and vital impact which small businesses have on the state's economy. In this regard, the ~~Lead AgencyCCRPC~~ and the ~~SubcommitteeSteering Committee~~ ~~will~~shall ensure a free and open bidding process that affords all businesses equal access and opportunity to compete. The ~~Lead AgencyCCRPC~~ and the Steering Committee also recognize the existence of businesses owned by minorities and women and ~~will~~shall make a good faith effort to encourage these firms to compete for contracts involving state or federal funds.

Comment [DDD13]: Contracts should also include an MLA.

5. **Program Services** – The ~~SubcommitteeSteering Committee~~, assisted by the ~~Lead AgencyCCRPC~~ and contractors, ~~will~~shall implement a unified Program that satisfies the relevant annual requirements of Minimum Control Measure One (“Public Education and Outreach”) of the Phase II NPDES Permit and the relevant requirements of Minimum Control Measure Two (“Public Involvement and Participation”) of the MS4 Permit.

The Program Content for each Program Year ~~will~~shall be as defined in documents as approved writing by a majority of the ~~SubcommitteeSteering Committee~~. ~~These documents will~~shallThe Program Content shall address the implementation of the following deliverables:

- a. **Public Education and Outreach**—Elements ~~will~~shall include, at a minimum: 1) operation of the Program’s website, www.smartwaterways.org or its equivalent, and 2) advertisements in various media.
- b. **Public Involvement and Participation**—Elements ~~will~~shall include, at a minimum: 1) operation of the Program’s website www.ccstreamteam.org or its equivalent; 2) the hosting and/or organization of workshops, projects and other events to engage the public; and 3) the recruitment of volunteers to support projects, promote events and/or engage the public.
- c. **End of MS4 permit year annual reporting** - Elements ~~will~~shall include preparation of a narrative report 25 business days prior to the ~~Members~~Members’ reporting deadline to VTDEC.

6. **Program Dues, Budget, Costs, and Payments**

a. **Dues**

- 1. For State Fiscal Year, FY17, July 2016-June 2017, the annual dues for each of the undersigned ~~Members~~Members shall be \$5,500.
- 2. For the following fiscal years, the annual dues amount to be assessed shall be set by a 2/3rds majority by October 15th of the prior year. In the absence of agreement, the dues shall remain at \$5,500.
- 3. The ~~Lead Agency~~CCRPC shall invoice each ~~Mm~~member on or about July 1st of each year with payment due 30 days later.

b. **Program Budget**

- 1. The annual Program Budget shall consist of the sum of the annual payments for each Program Year made by ~~Members~~Members plus any other funds available to the Program by majority vote of the ~~Subcommittee~~Steering Committee as specified in Section 6.c below.
- 2. Prior to the start of each Program Year, the ~~Subcommittee~~Steering Committee shall adopt a Program Budget governing expenditures for the subsequent program year. Budget categories shall include, but not be limited to: ~~Lead Agency~~CCRPC Duties, Contractual Services and Expenses.
- 3. Once the Program Year starts, a majority of the ~~Subcommittee~~Steering Committee may amend the budget as needed, for example to reflect any surplus or deficits from the prior Program Year, receipt of new sources of funds, or a desired change in the Program.

4. In the event that costs are less than anticipated or that grants or other funding sources become available, a majority of the voting ~~Members~~Members of the ~~Subcommittee~~Steering Committee may decide to reduce each ~~Member~~Member's payment by an equal amount or to credit the following Program Year assessment to each ~~Member~~Member.
- b. **Maximum Annual Costs and Payments** – Except as otherwise provided for in this section, each ~~Member~~Member that is a party to this MOU shall within 30 days of receipt of an invoice make a single annual dues payment as noted in 6.a. above.
- c. **Other Funds** – Any funds made available to the Program shall be dedicated to reducing the annual costs of each ~~Member~~Member participating in the Program, except as a majority of the voting ~~Members~~Members of the ~~Subcommittee~~Steering Committee may decide.
- d. **Excess Funds** – Any funds remaining at the end of a Program Year shall be carried over to the next Program Year, unless a majority of the voting ~~Members~~Members of the ~~Subcommittee~~Steering Committee decides otherwise.
7. **Contracts Required** – All ~~Lead Agency~~CCRPC contracts with Contractors to provide Program Services shall be conditioned upon approval by a majority of the voting ~~Members~~Members of the ~~Subcommittee~~Steering Committee and consistent with Section 4 above.
8. **Termination of ~~Lead Agency~~CCRPC**
The CCRPC on its own or the ~~Subcommittee~~Steering Committee by a majority vote of its full ~~Members~~Membership, may elect to terminate the Agreement for ~~Lead Agency~~CCRPC Services by providing 90 days written notice to the other party.
9. **Termination** – This MOU shall become null and void with no further obligation of the parties if:
- a. 2/3rds of the voting ~~Members~~Members of the ~~Subcommittee~~Steering Committee vote to end participation
- or
- ~~c. b.~~ VTDEC determines that the Program outlined in this MOU does not meet the relevant requirements for Minimum Control Measure One (“Public Education and Outreach”) or Minimum Control Measure Two (“Public Involvement and Participation”) and the parties to this MOU are unable to craft a Program to satisfy VTDEC.
- In the event of termination, any funds remaining in the budget after payment of obligations to vendors, shall be reimbursed to the Members with each Member receiving a 1/12th share.

Comment [DDD14]: A section needs to be added to provide for reimbursement of unspent funds in the event of termination. Also, another section needs to establish the term of the MOU, or state that it continues indefinitely unless and until terminated by a majority vote of the members, or something like that.

10. **Withdrawal of Member**

A Member may only withdrawal from participation at the end of a state fiscal year. If a Member wishes to withdrawal from participation it shall provide at least 90 days' notice.

11. **EFFECTIVE DATE AND LENGTH OF AGREEMENT.**

The effective date of this Agreement shall be July 1, 2016 and shall terminate on June 30, 2021 unless extended by writing by mutual agreement of the Parties.

12. **Amendment** – Unless a specific section of this MOU provides otherwise, this MOU may be amended only upon action of 2/3rds of all of the Members.

13. **Counterparts** – This MOU may be executed in multiple counterparts, each of which is deemed an original and all of which constitute one and the same document. Each such counterpart may be a facsimile or PDF copy and such facsimile or PDF copy shall be deemed an original.

Signature of CCRPC

Charles Baker, Executive Director
Chittenden County Regional Planning Commission

Date

Signatures of Members

Gene Richards, Director of Aviation
The Burlington International Airport

Date

Chapin Spencer, Director of Public Works
The City of Burlington Department of Public Works

Date

Bryan K. Osborne, Director of Public Works
The Town of Colchester

Date

Dennis E. Lutz, PE, Public Works Director
The Town of Essex

Date

James Jutras, Water Quality Superintendent
The Village of Essex Junction

Date

Donna Barlow Casey, Town Manager
The Town of Milton

Date

Joe Colangelo, Town Manager
The Town of Shelburne

Date

Kevin Dorn, City Manager
The City of South Burlington

Date

Chris Cole, Secretary of Transportation
Vermont Agency of Transportation

Date

Linda Seavey, Director, Campus Planning Services
The University of Vermont

Date

Richard McGuire, Town Manager
The Town of Williston

Date

Katherine R. Decarreau, City Manager
The City of Winooski

Date