

CITY OF ESSEX JUNCTION, VT**MUNICIPAL CODE****CHAPTER 19****ORDINANCE ESTABLISHING STORMWATER PERMIT TRANSFER AUTHORITY
FOR EXPIRED AND UNPERMITTED DISCHARGES TO IMPAIRED WATERWAYS****SECTION 1901. BACKGROUND**

- A. Adopted on July 22, 2014, as Chapter 19 in the City of Essex Junction Municipal Code, to establish and transfer responsibility for the State of Vermont issued Department of Environmental Conservation authorization to discharge permits under general stormwater permits and for unpermitted discharges to impaired waterways within the City of Essex Junction.
- B. The Vermont Agency of Natural Resources Department of Environmental Conservation (“DEC”) issues Authorization to Discharge Permits under General Permits for area or site-specific stormwater discharges to applicants, including municipalities, private parties, and shared stormwater systems involving both privately owned and publicly owned components.
- C. Valid stormwater system discharge permits have been issued by the DEC for projects in the non-impaired and impaired waterways within the City, and the City has accepted full responsibility for such permits when it involves public infrastructure.
- D. As of the adoption of Chapter 19 of the Municipal Code on July 22, 2014, valid stormwater system discharge permits have not been issued to expired stormwater permit holders in the impaired waterways due to the inability to legally authorize, under State law, renewal of the previously issued Authorization to Discharge Permits.
- E. Current responsibility for previously issued expired stormwater permits and valid stormwater system discharge permits in the impaired watersheds in the MS4 area varies widely. In some cases, there is a well-defined chain of responsibility from the “owner” of the original permit to the current permit holder. In other cases, permit responsibility is either poorly defined or non-existent notwithstanding that permit responsibility runs with the land. Some expired and valid (permit) discharges are defined in the original permit as directly to a stream or waterbody; in others, they are defined as being directed to or connected to a shared stormwater system.
- F. Pre-existing unpermitted stormwater discharges occur within the impaired and non-impaired waterways. These discharges were either never issued permits or the discharges occurred before DEC began issuing discharge permits. Pre-existing unpermitted stormwater discharges into impaired waterways shall obtain legal coverage under the MS4 general permit in the manner outlined in this Ordinance.
- G. The City of Essex Junction regulates stormwater discharges through its Municipal Code.

SECTION 1902. PURPOSE

- A. The City seeks to develop consistent policies and procedures for the determination of stormwater permit responsibility for both valid stormwater system discharge permits, and expired stormwater permits, and to establish minimum requirements for the transfer of expired and future new permit responsibility by and between the appropriate parties.
- B. The City's MS4 responsibility for the operation, repair, and maintenance of stormwater infrastructure extends only to public stormwater infrastructure and proportional shared responsibility on shared stormwater systems. The City may accept permit responsibility if determined by the appropriate legislative body to be in the City's best interest. Factors to be considered when determining whether acceptance of permit responsibility is in the City's "best interest" include, but are not limited to, whether improved water quality is not otherwise obtainable without additional City participation, potential cost savings to the City, or provision of land or easements for treatment or storage of stormwater for shared systems. The non-public contributing stormwater permittee shall be responsible for the operation, maintenance, repair, replacement, and upgrade of the non-public infrastructure unless the City determines that accepting some or all of this responsibility is in its best interests as defined above.

SECTION 1903. AUTHORITY

For purposes of this Ordinance, the "appropriate legislative body" for the City is the City Council.

SECTION 1904. DEFINITIONS

"Authorization to Discharge Permits" shall mean permits issued by the State of Vermont to discharge stormwater into receiving water bodies, which may or may not be valid permits at the time of adoption of this Ordinance.

"Best Management Practices" or "BMPs" shall mean any structural or non-structural site improvements recognized as the most effective and practical means to prevent and reduce stormwater volumes and flows to achieve water quality goals. BMPs include measures to prevent pollution and measures to mitigate pollution. BMPs include schedules of activities, prohibitions of practices, pollution prevention, education practices, natural resource protection, maintenance and operating procedures, management and treatment practices, and measures to control site runoff, spills, or leaks and reduce pollution.

"Expired stormwater permits" shall mean stormwater permits previously issued by the State of Vermont that are no longer current.

"Flow Restoration Plan(s)" shall mean a stream flow plan required by the State of Vermont designed to implement stormwater runoff controls producing runoff characteristics that return stream flows to compliant, stable flow conditions as required to meet the water-quality based Total Maximum Daily Load ("TMDL") requirements for a particular impaired waterway.

"Impaired waterways" means rivers, lakes, or streams that do not meet one or more water-quality standards, and therefore, are considered too polluted for their intended uses.

"Municipal Separate Storm Sewer System" and "MS4" shall mean a collection system or conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs,

gutters, ditches, manmade channels, or storm drains): (i) owned or operated by the City of Essex Junction or another designated MS4 entity that discharges to surface waters or groundwater; (ii) designed or used for collecting or conveying or discharging stormwater and groundwater entering the system; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR, Section 122.2.

“National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit” shall mean a permit issued by the Environmental Protection Agency or the State of Vermont under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

“Non-impaired waterways” shall mean rivers, lakes, or streams that currently meet the designated water-quality standards for the waterbody.

“Non-public contributing stormwater permittee” shall mean a current stormwater permit holder, including homeowner associations and any successors or assigns, of either a valid or expired stormwater permit that is not a public entity.

“Non-public stormwater infrastructure” shall mean stormwater infrastructure not owned, operated, or maintained by the City.

“Non- Structural BMPs” BMPs that use natural measures involving site characteristics to reduce the volume of stormwater or eliminate the source of the pollutant.

“Parcel” and “Property” shall mean any lot, subdivided piece of land, unit of land, any subset of land, land owned in common, or a condominium unit or condominium association in the City of Essex Junction that could legally be sold as a separate entity as of January first of the year the fee is based on, and has a separate parcel identification number, map identification number or is identified as a separate parcel. Included in this definition are all roadways owned by the City, the State, and the Federal Government.

“Private stormwater system owner” shall mean the non-public owner of a stormwater system, including homeowner associations and any successors or assigns, consisting of, but not limited to, culverts, pipes, catch basins, treatment ponds, treatment devices, and/or stormwater infiltration systems.

“Public stormwater infrastructure” shall mean stormwater infrastructure such as, but not limited to, sewers, drains, culverts, pipes, catch basins, treatment ponds, treatment devices, and/or stormwater infiltration systems, all of which are under City ownership or within City easements, and which infrastructure has been accepted by the City as a component of the City stormwater system.

“Residual Designation Authority (RDA)” shall mean the authority granted to the United States Environmental Protection Agency and delegated to the State of Vermont to issue a permit directly to a party or parties discharging stormwater to a waterbody that has a TMDL and where discharges are contributing to water quality violations.

“Shared stormwater system” shall mean a stormwater system such as, but not limited to, culverts, pipes, catch basins, treatment ponds, treatment devices, sewers, drains, and/or stormwater infiltration systems that consist of both public and non-public stormwater infrastructure.

“Stormwater” shall mean any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

"**Structural**" BMPs are devices engineered and constructed to provide treatment and temporary storage of stormwater runoff.

"**Undeveloped Property**" shall mean any property that exists in a natural state.

"**Unpermitted stormwater discharges**" means a system discharging stormwater to a stream or watercourse that has never been issued any type of authorization to discharge stormwater by either the City or the State of Vermont.

"**Valid stormwater system**" shall mean a system that has been issued a stormwater permit by the City or the State of Vermont that is current concerning the issuance and expiration dates of the permit.

SECTION 1905. NPDES PHASE 2 MS4 REQUIREMENT FOR EXPIRED AUTHORIZATION TO DISCHARGE PERMITS

- A. The Vermont Agency of Natural Resources (VANR) Authorization to Discharge Permit Number 7024-9014 issued to the City under NPDES MS4 General Permit 3-9014 requires the City to submit to the Secretary of VANR a plan for addressing expired stormwater permits discharging to the MS4 permittee's system, which was accomplished through the proposed adoption of this Ordinance.
- B. A compliance date of October 2015 is set within the Authorization to Discharge Permits for verification of the condition of all public and non-public stormwater infrastructure identified in and approved under each original expired permit that was met.
- C. On expired permits within the impaired waterways or with regard to discharges that have no permits in the impaired waterways, it is the intent of the VANR to either have these permits ultimately come under the umbrella of the City MS4 Permit or issue Residual Designation Authority (RDA) permits directly to each permittee or party responsible for the stormwater discharge not covered under the MS4 umbrella permit.

SECTION 1906. CLASSIFICATION OF STORMWATER SYSTEMS WITHIN THE CITY AS RELATES TO AUTHORIZATION TO DISCHARGE PERMITS

Due to the complexity and variety of existing permit "ownership" and types of permits, the City has classified all valid stormwater system discharge permits and all expired stormwater permits into one of the following four types for purposes of determining permit responsibility:

1. **Type 1 Stormwater System** consists of a system of stormwater infrastructure that is entirely on public land (public rights of way, municipally-owned property, or on public stormwater easements) and owned by the City, including residential subdivisions or groups of houses with no non-public stormwater infrastructure, such as privately-owned catch basins or privately-owned stormwater pipelines connected into stormwater systems on public land (excluding private underdrain systems). For purposes of this Ordinance, a "private underdrain system" is stormwater infrastructure serving individual private lots or buildings from the private lot or building to the point of interconnection with public stormwater infrastructure.

- a. Examples of Type 1 stormwater systems include:
 - I. Public buildings such as municipal offices, police stations, fire stations, municipal highway garage complexes, schools, or other educational facilities with no on-site stormwater infrastructure (other than underdrains connected with public stormwater infrastructure) that do not discharge directly into a stream, and/or similar facilities.
 - II. Residential subdivisions with valid or expired permits in the City. Those residential subdivisions presently identified by the City as meeting the Type 1 criterion are listed in Table 1 in the Appendix to this Ordinance. Table 1 may be revised by the City, acting through its Municipal Manager or their designee(s) as such additional systems are identified.
 - b. Type 1 stormwater systems do not include any private lot, residential subdivision, or groups of housing covered under an expired stormwater permit that has non-public stormwater infrastructure such as catch basins and pipelines (excluding private underdrain systems) connected to public stormwater infrastructure.
2. **Type 2 Stormwater System** consists of a system of stormwater infrastructure that is entirely contained on private property, discharges directly or indirectly to a stream or other recognized water body and is not directly connected by piping to a Type 1 or Type 3 stormwater system.
- a. Examples of Type 2 stormwater systems include:
 - I. Private residential, commercial, or industrial systems that retain all stormwater flows onsite as originally designed and have valid or expired permits for such discharge, and private residential, commercial, or industrial systems that discharge some or all of their stormwater flows to a stream or other recognized water body.
 - II. Select stormwater systems in the City. Those private residential, commercial, or industrial systems presently identified by the City as meeting the Type 2 criterion are listed in Table 1 in the Appendix to this Ordinance. Table 1 may be revised by the City, acting through its Municipal Manager or their designee(s) as such additional systems are identified.
3. **Type 3 Stormwater System** consists of a shared stormwater system covered under either valid and/or expired stormwater permits that combines stormwater flow from both public and non-public stormwater infrastructure before discharging stormwater directly or indirectly into a stream, swale, or other method of water conveyance to waters of the State.
- a. Examples of Type 3 stormwater systems include:
 - I. Non-public stormwater infrastructure systems that discharge directly to public stormwater infrastructure; public stormwater infrastructure systems that discharge to non-public stormwater infrastructure; public and non-public infrastructure systems that discharge to a common stormwater pond or open swale on public or private property or an outfall pipe leading to a stream, swale or other conveyance to a recognized water body; other systems that combine stormwater flow from both public and non-public stormwater infrastructure; prior valid stormwater

permits involving both public and non-public components covered under one issued permit with responsibility defined in the permit between public and non-public contributors to a stormwater system.

- II. Those combined public-private systems in the City presently identified by the City as meeting the Type 3 criterion are listed in Table 1 in the Appendix to this Ordinance. Table 1 may be revised by the City, acting through its Municipal Manager or their designee(s) as such additional systems are identified.

4. **Type 4 Stormwater System**

- a. Any other type of stormwater system not covered under Types 1 through 3.
- b. Unique stormwater systems with valid or expired stormwater permits not included in Types 1 through 3 have not been identified as of the date of adoption of this Ordinance. This category is reserved for such systems.
- c. Stormwater systems involving both City and Vermont Agency of Transportation (VTRANS) infrastructure.
- d. Those combined public-private systems in the City that are identified by the City as meeting the Type 4 criterion will be listed in Table 1 in the Appendix to this Ordinance created by the City, acting through its Municipal Manager. Table 1 may be revised by the City, acting through its Municipal Manager or their designee(s) as additional systems are identified.

SECTION 1907. METHODOLOGY FOR ESTABLISHMENT OF PERMIT RESPONSIBILITY FOR EACH TYPE OF STORMWATER SYSTEM

A. Type 1 Stormwater Systems

1. The City accepts responsibility for all valid Type 1 stormwater system permits in the non-impaired waterways, all expired Type 1 stormwater system permits in the impaired waterways, and all future Type 1 stormwater system permits. These permits are consolidated under the City's NPDES MS4 General Permit 3-9014.
2. The City accepts responsibility for the operation, maintenance, repair, replacement, and upgrade of all public stormwater infrastructure included in Type 1 stormwater systems, except for private underdrain systems and overland stormwater flow systems from private lands such as driveways, open swales, and vegetated land. Such private underdrain systems and overland flow systems shall remain the responsibility of the property owner.
3. Acceptance of stormwater permit responsibility by the City does not relieve individual property owner(s) or housing and/or homeowner association(s), or any successor(s) and assign(s), from compliance with other sections of the City's stormwater ordinance or State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best stormwater management practices as defined in adopted regulations or ordinances.

B. Type 2 Stormwater Systems

1. The City shall have no responsibility for the operation, maintenance, repair, replacement, or upgrade of non-public stormwater infrastructure identified in a valid or expired stormwater permit, or non-public stormwater infrastructure added subsequent to the original version of a valid or expired permit, to meet an approved Flow Restoration Plan (FRP) unless it is determined by the appropriate legislative body, in its sole discretion, to be in the City's best interests, as defined in Section 1907(B) above, to accept some or all of this responsibility.
2. The City may accept MS4 permit responsibility for valid or expired Type 2 stormwater system permits if requested by the current private stormwater system owner provided the following conditions are satisfied:
 - a. The private stormwater system owner under an original valid or expired permit enters into a written agreement with the City, which includes, at a minimum, the requirements set forth in section 1907(B)(2)(b), below. A form of the Type 2 Stormwater System Agreement is provided in Appendix B of this Ordinance. If the private stormwater system owner has not entered into a written agreement with the City, the City will request the State to use its RDA to require permit compliance by the holder of the expired Type 2 stormwater permit.
 - b. The written agreement specified in section 1907(B)(2)(a) by and between the City and a private stormwater system owner shall, at a minimum, require the following:
 - i. All applicable permit fees, including initial fees and all future renewal fees, if any such fees are required, shall be paid by the Type 2 private stormwater system owner.
 - ii. The Type 2 private stormwater system owner shall allow the City to hire a professional engineer, at no cost to the City of the Type 2 stormwater permit, to inspect and certify that the Type 2 non-public stormwater infrastructure complies with the infrastructure requirements as contained in the expired permit. Alternatively, the current holder of the expired non-public stormwater permit may hire a professional engineer, acceptable to the City, to perform the necessary inspection and certification. Future inspections that occur after the initial certification inspection of Type 2 non-public stormwater infrastructure shall be conducted by the City at no charge to the private stormwater system owner.
 - iii. The Type 2 non-public contributing stormwater permittee shall correct any deficiencies noted as a result of the engineer's inspection at their own expense
 - iv. The Type 2 non-public contributing stormwater system permittee shall be responsible for permanent maintenance, repair, replacement, and upgrade, if necessary, of all elements covered under the Type 2 stormwater system permit. The City shall conduct annual system compliance inspections to verify the condition and maintenance of the

- Type 2 stormwater system and report findings, and the responsible party identified under the Type 2 stormwater system permit.
- v. The Type 2 non-public contributing stormwater system permittee shall sweep clean all paved private roadways or parking lots at least twice per year and clean out all private catch basins whenever the depth of deposited material exceeds 50% of the depth of the catch basin sump or enter into an agreement with the City to perform the services for a fee.
 - vi. The failure of the Type 2 non-public contributing stormwater system permittee to perform the required actions under b. iv. and v. shall be deemed a violation of this Ordinance and shall subject the non-public contributing stormwater system permittee to penalties under Chapter 20 of the Municipal Code. The City has the right but not the obligation to take the necessary actions to ensure that the required maintenance is performed and otherwise correct any violation of this Ordinance.
 - vii. The cost of required stormwater system upgrades to the Type 2 stormwater system to meet the City's adopted and State approved FRP shall be borne by the non-public contributing stormwater system permittee unless it is determined by the City to be in its best interests as defined in Section 1902(B) above to participate in some or all of the system upgrade project or project costs.
3. Any prior written agreements entered into by the City and non-public contributing stormwater system permittees shall remain in full force with respect to cost sharing and operation, maintenance, repair, and replacement of existing stormwater infrastructure.
 - a. Permit responsibility and upgrades to meet the FRP are separate elements of stormwater responsibility not defined in previous agreements, and therefore, this Ordinance is the controlling document relative to permitting.
 - b. In the event of any conflict between pre-existing agreements and the ordinance, the pre-existing agreements shall control.
 4. Acceptance of partial stormwater permit responsibility by the City shall not relieve non-public contributing stormwater system permittees from compliance with all other elements of the stormwater ordinance or applicable State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best stormwater management practices as defined in adopted regulations or ordinances.

C. Type 3 Stormwater Systems

1. The City will not accept responsibility for operation, maintenance, repair, replacement, and upgrade to meet an approved FRP of non-public stormwater infrastructure identified in a valid or expired stormwater permit or non-public stormwater infrastructure added subsequent to the original version of the valid or expired permit, unless it is determined by the City Council, in its sole discretion, to be in the best interests of the City, as defined in Section 1902(B) above, to accept some or all of this responsibility.
2. The City will accept MS4 permit responsibility on a proportional basis by relative impervious area contributed within the permitted area of the shared stormwater system for

the valid or expired Type 3 stormwater system permit if requested by the non-public contributing stormwater system permittee and provided the following conditions are satisfied:

- a. The Type 3 non-public contributing stormwater permittee shall enter into a written agreement with the City, which includes, at a minimum, the requirements set forth in Section 1907B)(2)(b)(i)-(vii) above. A form of the Type 3 Stormwater System Agreement is provided in Appendix C to this Ordinance. If the non-public contributing stormwater system permittee has not entered into a written agreement, the City will request the State to use its RDA to require permit compliance by the Type 3 non-public contributing stormwater system permittee.
 - b. If the Type 3 non-public contributing stormwater system permittee elects not to enter into a shared agreement with the City on MS4 permit responsibility, the City shall comply with the requirements pertaining to the public stormwater infrastructure and may request the State to use its RDA over that portion of the shared stormwater system not included within an agreement with the City.
 - c. All applicable permit fees, including initial fees and all future renewals, if such fees are required, shall be shared between the municipality and the non-public contributing stormwater permittee based on relative impervious area, unless the appropriate legislative body determines that it is in the City's best interests, as defined in Section 1902(B)1902(B) above, that such fees shall be paid either on a larger percentage than relative impervious area or in full by the City. If the City accepts permit responsibility, then the intent is to consolidate the permit under the municipal NPDES MS4 General Permit 3-9014.
3. Any prior written agreements entered into by the City and the Type 3 non-public contributing stormwater system permittee shall remain in full force with respect to cost sharing and operation, maintenance, repair, and replacement of existing stormwater infrastructure.
 - a. Permit responsibilities and upgrades to meet the FRP are separate elements of stormwater responsibility not defined in previous agreements and therefore this Ordinance is the controlling document relative to these issues.
 - b. In the event of any conflict between executed pre-existing agreements and this Ordinance, the pre-existing agreements shall control.
 4. Acceptance of MS4 Permit responsibility by the City does not relieve non-public contributing stormwater system permittees from compliance with other elements of the City's stormwater ordinance or State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best stormwater management practices as defined in adopted regulations or ordinances.

D. Type 4 Stormwater Systems

1. Other stormwater systems with valid or expired stormwater permits that do not qualify as a Type 1, 2, or 3 stormwater system.
2. These systems shall be managed on a case-by-case basis, using the general procedures and methods as applicable from the three system types described herein.
3. Permits involving the City and VTRANS shall fall under this category. VTRANS is a separate MS4 permittee. Under a future adopted FRP for each impaired waterway, the City will negotiate an agreement with VTRANS on the level of shared responsibility and costs for meeting the TMDL requirement of each impaired waterway. In the event an agreement cannot be negotiated with VTRANS, the City will request VANR to use its RDA concerning those VTRANS direct or indirect discharges contributing stormwater flow to the impaired watersheds under the VTRANS MS4 permit.

SECTION 1908. PENALTY

Any person violating any of the provisions of Chapters 19-20 of the City of Essex Junction Municipal Code (“this Ordinance”) shall be subject to a civil penalty of Five Hundred Dollars (\$500) for each violation. Each day that any violation of any of the provisions of this Ordinance or a permit issued hereunder continues shall constitute a separate offense. The City may recover all attorney’s fees, court costs, and other expenses associated with the enforcement of this Ordinance including sampling and monitoring expenses.

APPENDIX A

Table 1: Expired and Valid Storm Water Permits in the City of Essex Junction as of the Date of Ordinance as amended 10/22/2024

Permit #	Project Name	Valid or Expired	Ordinance Type	Watershed
2-0855	Village Knoll-Woods End & Acorn	Valid	Type 1	Indian Brook
2-1103	Pleasant Street & East Street	Valid	Type 1	Indian Brook
1-1074	Countryside II Fairview Farms: Chestnut Lane	Valid	Type 2	Indian Brook
1-1074	Countryside II Fairview Farms: Spruce Lane	Valid	Type 2	Indian Brook
1-1074	Countryside II Fairview Farms: Walnut Lane	Valid	Type 2	Indian Brook
2-0835	Village Glen	Valid	Type 2	Indian Brook
1.1527.0111	Highland Village	Expired	Type 2	Sunderland Brook
1-0236	Brickyard	Valid	Type 2 & 3	Indian Brook
1-1074	Countryside II Fairview Farms: Locust Lane	Valid	Type 3	Indian Brook
2-0863	167 Pearl Street	Expired	TBD	Sunderland Brook

Appendix B

TYPE 2 STORMWATER SYSTEM AGREEMENT

This STORM WATER SYSTEM AGREEMENT (“Agreement”) is made this _____ day of _____ 20__ by and between the [City of Essex Junction], a Vermont municipal corporation with a principal place of business at [City address] [2 Lincoln Street], Essex Junction, Vermont 05452 (the [“City”]), and _____ with a principal place of business at _____ (“Permittee”). The City and Permittee are sometimes each referred to in this Agreement as a “Party” or collectively as the “Parties.”

WITNESSETH:

WHEREAS, the City has adopted Chapter 19 of the City of Essex Junction Municipal Code (“Chapter 19”) entitled Establishing Stormwater Permit Transfer Authority for Expired and Unpermitted Discharges to Impaired Waterways Regulation of; and

WHEREAS, the Storm Water Ordinance amendment identifies the requirements under Section 1907(B) necessary for the City to accept stormwater permit responsibility for a valid or expired Type 2 stormwater permit, as such type is defined in the Ordinance; and

WHEREAS, the Parties have identified that it is in their best interests to have the City accept stormwater permit responsibility by entering into this Agreement; and

WHEREAS, it is in the best interests of the Parties to work together to achieve State of Vermont stormwater permit compliance; and

WHEREAS, the Parties agree that the City has no responsibility for the operation, maintenance, repair, replacement, or upgrade of all non-public stormwater or stormwater-related infrastructure, or non-public stormwater infrastructure added to the original version of a valid or expired stormwater permit; and

WHEREAS, the City may in its sole discretion, if determined by the City Council to be in its best interests, to accept some or all of the operation, maintenance, repair, replacement, or upgrade of all non-public stormwater or stormwater-related infrastructure, at some future date;

NOW, THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, and on the express condition that all conditions precedent described below are satisfied, the Parties agree as follows:

SECTION ONE
[CITY] OBLIGATIONS

The City agrees to accept full or shared permit responsibility for valid or expired storm water system permits as follows and also shall:

1. Hire a professional engineer, at no cost to the City, to inspect and certify that the Type 2 stormwater system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless such work is undertaken at no cost to the City by Permittee.
2. Conduct future inspections that occur after the initial certification inspection of Type 2 stormwater systems at no charge to the Permittee.
3. Conduct annual system compliance inspections to verify the condition and maintenance of the Type 2 stormwater system and report findings to the State and the Permittee.
4. Inspect and prepare an annual structural condition survey and extent of debris capture in all catch basins contributing to stormwater flow within the permitted area.
5. At the request of the Permittee, arrange for cleaning of non-public catch basins, and to bill such cleaning costs to the Permittee.
6. Make best efforts to minimize the impact on the Permittee's property and their business operations thereon in performing its obligations under this Agreement.

SECTION TWO
PERMITTEE OBLIGATIONS

Permittee shall:

1. Accept all responsibility for the operation, maintenance, repair, replacement, or upgrade of non-public stormwater infrastructure identified in a valid or expired stormwater permit, or non-public stormwater infrastructure added subsequent to the original version of a valid or expired permit, to meet an approved Flow Restoration Plan (FRP) unless it is determined by the City Council, in its sole discretion, to be in the City's best interests, as defined in Section 1902(B) above, to accept some or all of this responsibility.
2. To pay all applicable permit fees, including initial fees and all future renewal fees, if any such fees are required of the Type 2 stormwater system.
3. Hire a professional engineer, at no cost to the City, to inspect and certify that the Type 2 stormwater system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless Permittee requests such work be performed by the City and the City agrees.
4. Correct any deficiencies identified in the engineer's stormwater system inspection at their own expense prior to the date for system certification.

5. Maintain, repair, replace, and upgrade as necessary all stormwater infrastructure covered under the Type 2 stormwater system permit.
6. Sweep clean all paved private roadways or parking lots at least twice per year and clean out all private catch basins whenever the depth of deposited material exceeds 50% of the depth of the catch basin sump, or enter into an agreement with the City to perform the services for a fee.
7. Bear all costs of required stormwater system upgrades (if needed) to the Type 2 stormwater system to meet the City's adopted and State approved FRP unless it is determined by the City to be in its best interests as defined in Section 1902(B) of the Chapter 19 to participate in some or all of the system upgrade project or project costs.
8. Comply with all other elements of the stormwater Ordinance or other applicable State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best stormwater management practices as defined in adopted regulations or ordinances.
9. Perform any necessary structural repairs to any non-public stormwater infrastructure beyond the annual routine maintenance within at least six (6) months of discovery of such needed structural repair or, if not repaired within six months of discovery, reimburse the City for all its costs for such catch basin repair plus a ten percent (10%) surcharge for associated administrative expenses relating to such repair.
10. Indemnify, defend, and hold harmless the City and its officers, employees, agents, and representatives for and from any claims for liability and or damages arising out of the City's performance of the required annual operations and maintenance and required testing of the stormwater infrastructure, including all catch basins and pipes, that may occur on Permittee's property, except to the extent such claims (a) arise from the gross negligence or intentional misconduct of the City or its employees, agents or contractors.

SECTION THREE

MISCELLANEOUS

1. The City will notify the Permittee at such time as the FRP for the watershed in which the property lies is adopted as to any obligations of the Permittee to make on-site stormwater improvements as required under the FRP.
2. All payments required under this Agreement shall be due upon receipt of an invoice. Any payments not made within thirty (30) days of their due date shall accrue interest at a rate of one percent (1%) per month on the past due amount until paid in full.
3. The Parties covenant and agree that the conditions and obligations under this Agreement shall run with the land and shall accrue to the benefit of and be binding upon their respective successors and assigns as if they were parties to this Agreement. Any payments required under this Agreement not made when due shall constitute a lien on the property of the Party failing to make payment and shall be collectible in the same fashion as unpaid property taxes.

- 4. In the event a Party resorts to the judicial process to enforce another Party’s obligations hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees.
- 5. This Agreement shall be interpreted consistent with and governed by the laws of the State of Vermont.
- 6. This Agreement consists of the entire understanding between the Parties relative to its subject matter, and may not be modified orally, but only by a written instrument signed by all Parties.

IN WITNESS WHEREOF, the Parties have caused their corporate seal to be affixed hereto and these premises to be signed in its name and on its behalf by its duly authorized agent as of the day and date first written above.

_____, VERMONT

Witness

BY: _____
Duly Authorized Agent

Witness

BY: _____
Duly Authorized Agent

STATE OF VERMONT)

) **SS.**

COUNTY OF CHITTENDEN)

At Essex Junction in said County this ____ day of _____, A.D., ____, personally
appeared _____ duly authorized officer of _____, and he acknowledged
this instrument, by him sealed and subscribed to be his free act and deed and the free act and deed of the
City of Essex Junction.

Before me,

Notary Public

My Commission Expires: _____

STATE OF VERMONT)

) SS.

COUNTY OF CHITTENDEN)

At Essex Junction in said County this ____ day of _____, A.D., ____, personally appeared _____ duly authorized officer of _____, and he/she acknowledged this instrument, by him/her sealed and subscribed to be his/her free act and deed and the free act and deed of _____.

Before me,

Notary Public

My Commission Expires: _____

Appendix C

TYPE 3 STORMWATER SYSTEM AGREEMENT

This STORM WATER SYSTEM AGREEMENT (“Agreement”) is made this _____ day of _____ 20__ by and between the [City of Essex Junction], a Vermont municipal corporation with a principal place of business at 2 Lincoln St Main Street, Essex Junction, Vermont 05452 (the [“City”]), and _____ with a principal place of business at _____ (“Permittee”). The City and Permittee are sometimes each referred to in this Agreement as a “Party” or collectively as the “Parties.” (**NOTE: *May be multiple parties to sign***)

WITNESSETH:

WHEREAS, the City has adopted Chapter 19 of the City of Essex Junction Municipal Code (“Chapter 19”) entitled Establishing Stormwater Permit Transfer Authority for Expired and Unpermitted Discharges to Impaired Waterways; and

WHEREAS, Chapter 19 identifies the requirements in Section 1907(B)(2)(b)(i)-(vii) necessary for the City to accept shared or full stormwater permit responsibility for a valid or expired Type 3 stormwater permit, as such type is defined in the Ordinance; and

WHEREAS, Permittee (**NOTE: *May be multiple parties***) has identified that it is in their best interests to have the City accept stormwater permit responsibility by entering into this Agreement; and

WHEREAS, it is in the best interests of the Parties to work together to achieve State of Vermont stormwater permit compliance; and

WHEREAS, the Parties agree that the City has no responsibility for the operation, maintenance, repair, replacement, or upgrade of all non-public stormwater or stormwater-related infrastructure, or non-public stormwater infrastructure added to the original version of a valid or expired stormwater permit and shared responsibility on stormwater systems consisting of both public and non-public infrastructure; and

WHEREAS, the City may in its sole discretion, if determined by the City Council to be in the City’s best interests, to accept some or all of the operation, maintenance, repair, replacement, or upgrade of all non-public stormwater or stormwater-related infrastructure, at some future date;

NOW, THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, and on the express condition that all conditions precedent described below are satisfied, the Parties agree as follows:

SECTION ONE.

CITY OBLIGATIONS

The City agrees to accept full or shared permit responsibility on a proportional basis by relative impervious area contributed by the public and non-public stormwater infrastructure within the permitted area for valid or expired stormwater system permits. The relative impervious area has been agreed as follows: City __%; Permittee __%. The City also shall:

1. Hire a professional engineer, at no cost to the Permittee, to inspect and certify that the Type 3 stormwater system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless such work is undertaken at no cost to the City on non-public stormwater infrastructure by Permittee.
2. Conduct future inspections that occur after the initial certification inspection of Type 3 stormwater systems at no charge to the Permittee.
3. Conduct annual system compliance inspections to verify the condition and maintenance of the Type 3 stormwater system and report findings to the State and the Permittee.
4. Inspect and prepare a structural condition survey and extent of debris capture in all catch basins contributing to stormwater flow within the permitted area.
5. At the request of the Permittee, arrange for cleaning of non-public catch basins, and to bill such cleaning costs to the Permittee.
6. Make best efforts to minimize the impact on any Permittee's property and their business operations thereon in performing its obligations under this Agreement.

SECTION TWO

PERMITTEE OBLIGATIONS

Permittee (***NOTE: May be multiple parties***) shall:

7. Accept all responsibility for the operation, maintenance, repair, replacement, or upgrade of non-public stormwater infrastructure identified in a valid or expired stormwater permit, or non-public stormwater infrastructure added subsequent to the original version of a valid or expired permit, or their portion of a shared stormwater system to meet an approved Flow Restoration Plan (FRP) unless it is determined by the appropriate City Council, in its sole discretion, to be in the City's best interests, as defined in Section 1902(B) of the Chapter 19 to accept some or all of this responsibility.

8. Pay their proportionate share of all applicable permit fees, including initial fees and all future renewal fees, if any such fees are required by the Type 3 stormwater system.
9. Hire a professional engineer, at no cost to the City, to inspect and certify that the non-public or shared portion of Type 3 stormwater system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless Permittee requests such work be performed by the City.
10. Correct any deficiencies on the non-public portion of the stormwater system identified by the engineer's stormwater system inspection at their own expense prior to the date for system certification.
11. Maintain, repair, replace, and upgrade as necessary all non-public stormwater infrastructure and share responsibility for portions of shared stormwater systems covered under the Type 3 stormwater system permit according to the percentages identified above.
12. Sweep clean all paved private roadways or parking lots at least twice per year and clean out all private catch basins whenever the depth of deposited material exceeds 50% of the depth of the catch basin sump on non-public private stormwater infrastructure or enter into an agreement with the City to perform such services for a fee.
13. Bear the cost of required stormwater system upgrades on non-public portions of the shared stormwater systems and to share in the costs of all shared elements of the stormwater system (if needed) to the Type 3 stormwater system to meet the City's adopted and State approved FRP according to the percentages identified above unless it is determined by the City to be in its best interests as defined in Section 1902(B) of Chapter 19 to participate in some or all of the system upgrade project or project costs.
14. Comply with all other elements of the stormwater Ordinance or other applicable State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best stormwater management practices as defined in adopted regulations or ordinances.
15. Perform any necessary structural repairs to any non-public stormwater infrastructure beyond the annual routine maintenance within at least six (6) months of discovery of such needed structural repair or, if not repaired within six (months) of discovery, reimburse the City for all its costs for such catch basin repair plus a ten percent (10%) surcharge for associated administrative expenses relating to such repair; and share in such costs on shared elements of the stormwater system according to the percentages identified above.
16. To indemnify, defend, and hold harmless the City and its officers, employees, agents, and representatives for and from any claims for liability and or damages arising out of the City's performance of the required annual operations and maintenance and required testing of the stormwater infrastructure, including all catch basins and pipes, that may occur on Permittee's property, except to the extent such claims (a) arise from the gross negligence or intentional misconduct of the City or its employees, agents or contractors.

SECTION THREE

MISCELLANEOUS

- 17. The City will notify the Permittee at such time as the FRP for the watershed in which the property lies is adopted as to any obligations of the Permittee to make on-site stormwater improvements as required under the FRP.
- 18. All payments required under this Agreement shall be due upon receipt of an invoice. Any payments not made within thirty (30) days of their due date shall accrue interest at a rate of one percent (1%) per month on the past due amount until paid in full.
- 19. The Parties covenant and agree that the conditions and obligations under this Agreement shall run with the land and shall accrue to the benefit of and be binding upon their respective successors and assigns as if they were parties to this Agreement. Any payments required under this Agreement not made when due shall constitute a lien on the property of the Party failing to make payment and shall be collectible in the same fashion as unpaid property taxes.
- 20. In the event a Party resorts to the judicial process to enforce another Party’s obligations hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees.
- 21. This Agreement shall be interpreted consistent with and governed by the laws of the State of Vermont.
- 22. This Agreement consists of the entire understanding between the Parties relative to its subject matter, and may not be modified orally, but only by a written instrument signed by all Parties.

IN WITNESS WHEREOF, the Parties have caused their corporate seal to be affixed hereto and these premises to be signed in its name and on its behalf by its duly authorized agent as of the day and date first written above.

CITY OF ESSEX JUNCTION, VERMONT

_____ BY: _____
 Witness Duly Authorized Agent

PERMITTEE

_____ BY: _____
 Witness Duly Authorized Agent

STATE OF VERMONT)
) SS.
 COUNTY OF CHITTENDEN)

At Essex Junction in said County this ____ day of _____, A.D., ____, personally appeared _____ duly authorized officer of _____, and he acknowledged this instrument, by him sealed and subscribed to be his free act and deed and the free act and deed of the City of Essex Junction.

Before me,

 Notary Public

My Commission Expires: _____