

**INTERLOCAL CONTRACT FOR OPERATION OF THE LAKE FAIRLEE DAM  
AMONG THE TOWNS OF FAIRLEE, THETFORD, AND WEST FAIRLEE**

**THIS AGREEMENT** is made and entered into by and among the Towns of Fairlee, Thetford and West Fairlee, all municipal corporations organized and doing business under the laws of the State of Vermont and located in Orange County in the State of Vermont;

**WHEREAS**, the Selectboards of the Towns of Fairlee, Thetford and West Fairlee are authorized under 24 V.S.A. §4901(a) to enter into contracts to perform any governmental service, activity, or undertaking which each Town entering into the contract is authorized to perform; and

**WHEREAS**, the Towns of Fairlee, Thetford and West Fairlee are authorized under 24 § 872 to manage the infrastructure of the municipality for the safety and security of the citizens; and

**WHEREAS**, the Selectboards confirm they have independently found and determined that the condition of the dam is such that it constitutes a potential threat to person and property, and that its failure would result in material reductions in the appraised value of real property in each of the Towns, and

**WHEREAS**, it is the express understanding and agreement of the Towns that this Interlocal Agreement shall take effect only after the necessary positive votes of the individual Towns, but also only after the appropriate funding of the anticipated obligations for maintenance and operation of the dam, either through properly voted bonding, or equivalent alternative; and

**WHEREAS**, the Towns of Fairlee, Thetford and West Fairlee will jointly acquire and hold the necessary property interests in the dam on Lake Fairlee and operate the same to assure its structural safety; and

**WHEREAS**, the Selectboards of the Towns of Fairlee, Thetford and West Fairlee desire to enter into an agreement for acquisition of property interests in and continued operation of the dam on Lake Fairlee;

**NOW THEREFORE**, in consideration of the promises, mutual covenants hereinafter recited, and other good and valuable and sufficient consideration, the parties agree that the property interests necessary for the safe and sound operation of the dam on Lake Fairlee shall be jointly acquired and operated by said Towns upon the following terms, rules and regulations:

**1. Purpose.** The purpose of the Interlocal Agreement is to delineate the operating accountability of the participating Towns after acquiring the property interests necessary for the operation of the dam on Lake Fairlee, for the operation and maintenance of the dam, and any necessary rehabilitation and to assure the safety and security of the citizens who would be negatively impacted, financially or otherwise, by a failure of the dam.

**2. The Tri-Town Commission.** Supervision of the dam on Lake Fairlee shall be vested in a governing body initially composed of nine members, three appointed by the Selectboards of each of the participating Towns of Fairlee, Thetford and West Fairlee, to be known as the Tri-Town Commission. After two (2) years of existence, the Commission shall revisit the matter of number of members and may, by vote of a majority of the appointed members of each Town, recommend adjustment to the Selectboards of the participating towns. By majority vote of the participating Towns, the number of members of the Commission may be reduced to a number which results in equal representation among the Towns. A vote concerning number of members cannot be called more than once each two (2) years. Except as provided herein, the Tri-Town Commission shall have authority to exercise any powers consistent with law in order to carry out the purposes contemplated in this contract.

**3. Appointments and Term.** Annually, on or before the last Monday in March, the Selectboard of each Town shall appoint its representative(s) to the Tri-Town Commission. Appointments shall be in writing, signed by the chair of the Selectboard of each Town and recorded with the clerk of each Town. Each representative to the Tri-Town Commission shall hold office for one year and until his or her successors are duly appointed and qualified. Any representative to the Tri-Town Commission may be reappointed to successive terms without limit. A Selectboard, by majority vote, may remove its representatives, without cause, to the Tri-Town Commission during the one-year term.

**4. Vacancy.** Any vacancy on the Tri-Town Commission shall be filled within 30 days after such vacancy occurs by appointment by the Selectboard, which appointed the representative whose position has become vacant. An appointee to a vacancy shall serve until the expiration of the term of the representative to whose position the appointment was made and may thereafter be reappointed.

**5. Meeting, Quorum and Voting.** The Tri-Town Commission shall meet at least once a year, as soon after April 1 as practicable, at a mutually convenient location; and at such additional times as the members may determine would be beneficial to the purpose of the Tri-Town Commission. A majority of the members of the Tri-Town Commission shall be a quorum for transacting business, and any action or decision shall be taken upon a majority vote of the total number of Tri-Town Commission. In the event of a tie vote, the question shall be submitted to the Selectboards of the Towns of Fairlee, Thetford and West Fairlee for their separate consideration and voting. In that instance, the motion shall pass if approved by the Selectboards of two (2) of the participating Towns. Meetings of the Tri-Town Commission shall be warned and conducted in accordance with the Vermont Open Meeting Law, 1 V.S.A. §§ 310-314. The Tri-Town Commission shall adopt rules of procedure for the conduct of its meetings.

6. **Officers.** The officers of the Tri-Town Commission shall be the chair, vice chair, and clerk who shall be elected annually by the Tri-Town Commission at its first organizational meeting.

7. **Chair and Vice-Chair.** The chair shall preside at all meetings of the Tri-Town Commission. During the absence of or inability of the chair to render or perform her or his duties or exercise her or his powers, the same shall be performed and exercised by the vice-chair.

8. **Clerk.** The clerk of the Tri-Town Commission shall have the exclusive charge and custody of the public records of the Tri-Town Commission. The clerk shall record all votes and proceedings of the Tri-Town Commission including meetings of the Tri-Town Commission and shall cause to be posted and published all warnings of meetings of the district. The clerk shall perform all of the duties and functions incident to the office of secretary or clerk of a body corporate. All records of the Tri-Town Commission shall be maintained in each of the participating towns in accordance with the Vermont Public Records Act, 1 V.S.A. §§315-320.

9. **Facility Manager.** The Tri-Town Commission may employ a Facility Manager who shall have general supervision of, and responsibility for, the day-to-day operation and business affairs of the dam, *or the Tri-Town Commission may delegate the responsibility of Facility Manager to a current employee position in a participating Town.* In all matters, the Facility Manager shall be subject to the direction and supervision and shall hold the position at the will of the Tri-Town Commission who, by majority vote, may remove her or him from that position without cause, at any time. In particular the Facility Manager shall have power and it shall be her or his duty:

- (1) To carry out the policies established by the Tri-Town Commission.
- (2) To keep full and complete records of the actions of her or his office.
- (3) To be present at all meetings of the Tri-Town Commission except when excused by the Tri-Town Commission.
- (4) To keep such books and accounts of disbursements for the Facility.
- (5) To prepare an annual budget, submit it to the Tri-Town Commission for approval, and be responsible for its administration after adoption.
- (6) To keep the Tri-Town Commission informed of the financial condition and future needs of the Facility and annually furnish to the Tri-Town Commission a five-year projection of capital expenditures.
- (7) To ensure Facility compliance with all local, state, and federal laws and regulations to which the Facility is subject.
- (8) To make such reports as may be required by law or requested by the Tri-Town Commission or the Selectboards of the Towns of Fairlee, Thetford and West Fairlee.

**10. Budget.** On or before \_\_\_\_\_ of each year, the Facility Manager shall submit to the Tri-Town Commission a proposed budget of capital expenses, operating expenses and estimated revenues, if any, for the next fiscal year. The Tri-Town Commission shall review and on or before \_\_\_\_\_ of each year, approve or revise and approve the proposed budget. Upon approval by the Tri-Town Commission, the budget shall be transmitted to the Selectboards of the Towns of Fairlee, Thetford and West Fairlee for final approval.

As used in this agreement, capital expenses shall mean all costs for maintaining, repairing, constructing or adding to the Facility, and for making extraordinary repairs thereto. Capital expenses shall also include payment of all principal and all interest on bonds, notes, or other obligations issued to finance such costs. Operating expenses shall mean all costs other than capital expenses, including any costs incurred for regular maintenance and ordinary repairs.

The allocation of capital expenses among the participating Towns will be calculated by reference to their respective Grand List valuations of lake front property, until such time as a different methodology is agreed upon. Each Town will be responsible for the payment of obligations it has issued to fund dam rehabilitation costs and any future capital expenditures.

**11. Orders.** Orders for payment of the expenses and obligations of the Facility shall be prepared by the Facility Manager. Checks to pay such expenses and obligations from the Facility Enterprise Account shall be signed by the Treasurer of the Town of \_\_\_\_\_ upon approval of such orders by the Tri-Town Commission. Any order for payment of an expense or obligation of the Facility from the Facility Enterprise Account exceeding \$ \_\_\_\_\_ shall also be approved by the Fairlee, Thetford and West Fairlee.

**12. Borrowing.** After the necessary, initial funding called for above, the Selectboards of each Town may issue such notes or other obligations as they may deem necessary for Facility capital expenses and operating expenses and the Towns may refund the same in accordance with the requirements of Chapter 53 of Title 24 of Vermont Statutes Annotated. The apportionment between the Towns of the costs of repayment of such notes and obligations shall be made before the bond elections in accordance with such agreements as negotiated by the Selectboards.

**13. Term.** This agreement shall have a term of \_\_\_\_\_ year, commencing on \_\_\_\_\_ and terminating on \_\_\_\_\_, and shall automatically renew for successive one year terms, unless a participating Town, by its Selectboard, provides notice to the others of its intent to terminate this agreement not less than one hundred eighty (180) days before the end of the then-current term. Any such notice shall be deemed given when deposited in the mail, properly addressed and with postage prepaid:

If to the Town of Fairlee:

Town of Fairlee

Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Town of Thetford:

Town of Thetford

Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Town of West Fairlee:

Town of West Fairlee

Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**14. Withdrawal and Termination.** A participating Town's Selectboard may elect not to continue to participate in the contract. The effective date of the withdrawal will be on the next anniversary of the contract, and such withdrawal cannot operate to negate the voted annual budget commitment of each Town. At the determination to withdraw, the withdrawing Town's interest in the real estate and related interests acquired under this contract will be offered to the remaining Towns at fair market value determined by an appraisal contracted by the remaining Towns. The remaining Towns may acquire the interests at a ratio they determine. The transfer shall occur within sixty (60) days of the commencement of the fiscal year after the Town meeting votes authorizing the acquisition expenditure.

In the event the remaining Towns, or one of them, do not wish to acquire the interests of the withdrawing Town, or if the contract is terminated by a majority vote of the Selectboards of the participating Towns for other reasons, the effective date of the termination will be on the next anniversary of the contract, and cannot operate to negate the voted annual budget commitments of each Town. If this contract is terminated, the Selectboards shall prepare and adopt, prior to the end of the then-current term, a plan of dissolution which shall specify the means by which real estate interests in the dam shall be liquidated and specify the nature and amount of any liabilities or obligations to be assumed and paid by each Town and/or specify the amount monies due from each Town, if necessary, to extinguish the liabilities of the Facility.

In no event may a member Town's interest in the dam be sold or transferred to a private person while there remains outstanding any bond obligation or note of any member Town, the proceeds of which have been used to acquire or rehabilitate the dam.

Any dispute, controversy or claim arising out of or relating to this Agreement shall be settled by binding arbitration in accordance with Chapter 192 of Title 12 of the Vermont Statutes Annotated. Any such Dispute shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any dispute, claim or controversy of any other Party. The arbitration shall be conducted in Orange County, Vermont and any court having jurisdiction thereof may immediately issue judgment on the arbitration award. All costs of the dispute resolution process, including the fees of the arbitrator and attorneys fees, shall be borne by the Party who is the least successful in such process, which shall be determined by comparing (x) the position asserted by each Party on all disputed matters taken together to (y) the final decision of the arbitrator on all disputed matters taken together. The Parties agree that the arbitration provided for in this Agreement shall be the exclusive means to resolve all Disputes.

If the contract is terminated, the interests in the real estate and related interests acquired under this contract, may be marketed to recapture identified expenses and obligations, with first refusal running to the Grantor(s) of the interests acquired.

**16. Entire Agreement.** This Agreement contains the entire understanding and agreement of the parties, and supersedes all prior agreements and understandings relating to the subject matter hereof. No amendment to this agreement will be effective unless it is in writing and approved by the Selectboards of the participating Towns.

**17. Further Assurances.** Following the execution of this Agreement, the Towns of Fairlee, Thetford and West Fairlee shall cooperate fully with each other and take such actions as is necessary to fully implement the terms and conditions of this agreement. This contract shall not be effective unless and until the Selectboards of the Towns of Fairlee, Thetford and West Fairlee approve the agreement and authorize its representative to execute the agreement.

**18. Assignment.** The rights and obligations of the parties under this agreement will not be assigned.

**19. Counterparts.** This agreement may be executed simultaneously in three or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

**20. Severability.** Should any court of competent jurisdiction judge any term, phrase, clause, sentence or provision of this agreement to be invalid, illegal, or unenforceable in any respect, such judgment shall not affect the validity, legality, or enforceability of this agreement as a whole or any other part of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized agents as of the dates set forth opposite their respective signatures.

**ACKNOWLEDGEMENT OF ARBITRATION: THE PARTIES TO THIS AGREEMENT UNDERSTAND THAT IT CONTAINS AN AGREEMENT TO ARBITRATE. AFTER SIGNING THIS DOCUMENT, ALL 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, ALL PARTIES AGREE TO SUBMIT ANY SUCH DISPUTE TO AN IMPARTIAL ARBITRATOR.**

4/8/2015  
Date

TOWN OF FAIRLEE:

By: [Signature]  
Duly Authorized Agent

4/6/16  
Date

TOWN OF THETFORD:

By: [Signature]  
Duly Authorized Agent

4/6/15  
Date

TOWN OF WEST FAIRLEE:

By: [Signature]  
Duly Authorized Agent

Version 04/06/2015