

## ESSEX COMMUNITY PARKS & RECREATION AGREEMENT

### **§ 1-1. Purpose and Composition**

The purpose of the District is to provide the member municipalities with diverse year-round high quality and affordable recreational opportunities for all age groups, maintain a variety of public recreation facilities and community spaces, create affordable and accessible opportunities for physical activity, maintain the aesthetic beauty of parks and open spaces and to provide for the general health, fitness, quality of life and well-being of the community. The District is composed of those municipalities in the State of Vermont that vote to approve and enter into this District at the time of its creation and other municipalities which may be added as provided by this chapter. The municipalities composing the District shall constitute its Members.

### **§ 1-2. Term**

The District shall continue perpetually unless and until dissolved according to the procedures set forth in this chapter.

### **§ 1-3. Powers**

The District shall have all of the power and authority listed in 24 V.S.A. § 4866 (union municipal authorities) as the same presently exist, together with any additional powers which may be added thereto by amendment in the future, all of which powers are incorporated herein by reference. The District shall also have the power:

(1) To operate, cause to be operated, contract, or any of those, for the operation of any and all facilities as voted by the Board.

(2) To purchase, sell, own, lease, acquire, convey, mortgage, improve, and use real and personal property.

(3) To file lawsuits on its behalf.

(4) To enter into contracts for any term or duration.

(5) To adopt a capital budget and program.

(6) To adopt rules implementing the purposes of the District, subject to the requirements of 24 V.S.A. chapter 59 (adoption and enforcement of ordinances and rules), relating to the functions of the District.

(7) To provide recreational and community services and programs for the members and general public.

(8) To develop a clear operational philosophy and a definite policy of priority for the use of the parks and facilities.

(9) To exercise the authority of eminent domain, using the procedures and definition of “necessary” set forth in 19 V.S.A. chapter 5 (condemnation); to the extent they are applicable. The exercise of eminent domain shall be approved in advance by the legislative body of the member towns affected by the proceeding.

(10) To borrow money and issue evidence of indebtedness as provided by 24 V.S.A. chapter 53 (indebtedness) or other provisions of law authorizing general obligations or revenue debt, including but not limited to, 10 V.S.A. chapter 12 (Vermont Economic Development Authority) and 24 V.S.A. chapter 119 (Municipal Bond Bank).

(11) To establish a budget and levy and assess taxes in accordance with this chapter and applicable provisions of State law.

(12) To appropriate and expend monies.

(13) To establish sinking funds for the retirement of bonded or other indebtedness.

(14) To establish capital reserve funds.

(15) To accept and administer gifts, grants and bequests in trust.

(16) To exercise all powers incident to public corporations.

(17) To appoint an executive director of parks and recreation.

(18) To make payments in lieu of taxes to members hosting District facilities.

(19) To enter into contracts with banks, insurance companies, or other financial institutions so as to obtain a letter of credit, bond insurance, or other forms of financial guarantees or credit enhancement in connection with District bonds, notes, or other evidence of indebtedness.

(20) To contract with private and public businesses, nonprofit corporations, and other governments for the provision of services associated with the District’s functions.

(22) To do all things set forth in or necessary to this chapter.

(23) The power to hire and fire employees.

#### **§ 1-4. Sovereign immunity**

The District shall have the benefit of sovereign immunity to the same extent that a municipality of the State does. The District shall provide liability and other insurance for itself

and the members of the Board. The District shall hold harmless and indemnify all members of the Board from all claims of every kind and nature arising out of or connected with duties as directors, excepting only willful negligence and criminal conduct.

### **§ 1-5. Definitions**

As used in this chapter:

(1) “Board” means the Board of Directors of Essex Community Parks & Recreation.

(2) “District” means Essex Community Parks & Recreation.

(3) “Members” means those municipalities that comprise the District and include the Town of Essex and Village of Essex Junction and any other that join pursuant to Section 39 of this Agreement. Other municipalities may, at the District’s discretion, contract with the District for provision of one or more services from time to time.

### **§ 1-6. Authority**

All power and authority of the District shall be exercised by the Board.

### **§ 1-7. Composition**

There shall be a Board of Directors consisting of five (5) directors. Each director shall be a resident of his or her municipality and registered to vote in municipal elections at the time of the director’s election. At the expiration of the terms of the appointed directors in the initial election as outlined by Section 1-8(b) of this Agreement, there shall be one additional “ex-officio” non-voting director per Member, appointed according to each Member’s method of making appointments.

### **§ 1-8. Selection of directors**

(a) Directors. Directors shall be elected by filing a petition signed by 30 voters of the municipalities and filing it with the District Clerk before 5:00 p.m. on the sixth Monday prior to the day of elections, which shall be the filing deadline. Except for the election of the initial Board, elections shall be held in April and the term shall be for three (3) years. Votes shall be tallied by the clerks of the respective members and certified to the District Clerk within a week of the day of election. The directors receiving a plurality of the votes shall be deemed elected after the vote is confirmed by the District Clerk.

(b) Initial Election. In the initial election, the members of the Board of Directors shall serve staggered terms of three (3) years. After voter approval of this agreement by the Members, the residents of the Members eligible to vote shall elect one director that is a resident of the Town of Essex located outside the Village of Essex Junction, one director that is a resident of the Village of Essex Junction and one director elected at-large from either Member. After voter approval of this agreement, each Member shall appoint one representative according to each

municipality's method of making appointments. The terms shall be staggered such that the elected director representing the Town of Essex located outside the Village of Essex Junction as well as the elected director serving the Village of Essex Junction shall serve terms of three (3) years. The appointed representatives from each Member shall serve terms of two (2) years. The at-large director shall serve a term of one (1) year.

(c) Oath of office. All directors shall take an oath of office similar to that taken by members of legislative bodies of municipalities, as in 24 V.S.A. § 831. The oath shall be administered by the clerk of the director's municipality.

(d) The District shall pay directors such reimbursement of expenses or stipend as the Board shall determine.

### **§ 1-9. Organizational meeting**

(a) Annually, on the first meeting after the April election, the Board shall hold its organizational meeting at a time and place designated by the Board Chair or by a majority of the Board in the event there is no acting Board Chair.

(b) At the organization meeting, the Board shall elect from among its membership a Chair, and a Vice Chair, each of whom shall hold office for one year and until a successor is duly elected and qualified.

(c) The Board shall determine its own rules of procedure.

### **§ 1-10. Regular meetings**

A schedule of regular meetings of the Board shall be established at its annual organizational meeting. The schedule shall be sent to the clerk of each Member for posting.

### **§ 1-11. Special meetings**

(a) Special meetings of the Board may be called at any time by the Chair or shall be called upon written request of a majority of the members of the Board.

(b) Each director shall be given at least 24-hours' notice of any special meeting by telephone, written notice delivered personally, e-mail, fax, or regular mail. Directors waive the notice requirements if they attend the special meeting, unless attendance is for the sole purpose of protesting the holding of the meeting.

(c) No action may be taken at a special meeting that is not warned specifically in the notice.

### **§ 1-12. Quorum and rules**

(a) To transact business, a majority of all directors shall be present and shall vote in favor of a motion for it to be effective. No proxies shall be allowed. A smaller number may adjourn to a later date provided notice is given to all members as if such adjourned meeting were a special meeting.

(b) Each member of the Board shall be entitled to cast one vote for the municipality.

(c) Any member of the Board may participate in any meeting of the Board through electronic or other means in accordance with the provisions of 1 V.S.A. § 312.

### **§ 1-13. Vacancy**

(a) A director may resign at any time by notice to the Chair of the District.

(b) When a director resigns, dies, becomes incapacitated, or removes residency from the District, such seat shall be considered vacant. When a vacancy occurs, the Board shall forthwith, by appointment, in writing, fill such a vacancy until the election of a successor at the annual election next thereafter. At such election, the voters of the District shall fill the vacancy for the remainder of the term. Incapacity shall include the failure by any member of the Board to attend at least 50 percent of the meetings of the Board in a calendar year.

(c) Each vacancy or withdrawal of a director shall not reduce the number of directors needed to constitute a quorum or binding vote of the District.

### **§ 1-14. Officers**

The officers of the District shall be the Chair, the Vice Chair of the Board of Directors, District Clerk, Treasurer and the Executive Director of Parks and Recreation.

### **§ 1-15 Executive Director of Parks and Recreation**

The Board shall appoint an Executive Director of Parks and Recreation, based on experience and demonstrated competence, shall set the salary and benefits for this office and shall not be a member of the Board. The Executive Director of Parks and Recreation shall oversee the operations and hire and supervise the personnel of the District. In addition, the Executive Director shall have the following responsibilities:

(a) Prepare an annual report of the activities of the District to be distributed to the legislative bodies of the members.

(b) Prepare and distribute any other reports required by laws of the State of Vermont and resolutions or rules of the Board.

(c) Issue purchase orders, enter into lease agreements and other contracts with Board approval.

(d) Assign a Collector of Taxes who shall perform the same duties and have the same authority and power in the collection of taxes as those given by law to the collectors of taxes and collectors of delinquent taxes in towns.

### **§ 1-16. District Clerk**

The District Clerk shall be appointed by the Board of Directors, shall not be a member of the Board and shall serve at its pleasure. The Clerk shall have the exclusive charge and custody of the public records 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.

### **§ 1-17. Treasurer**

The Treasurer for the district shall be appointed by the Board of Directors, shall not be a member of the Board and shall serve at its pleasure. The Treasurer shall perform all of the duties and functions incident to the office of treasurer of a body corporate, including but not limited to:

(a) Maintain custody and distribute the funds of the District and sign, make, or endorse in the name of the District all checks and orders for the payment of monies and pay out and disburse the same.

(b) Keep a record of every note or bond issued by the District and of every payment thereon of principal and interest and, if coupons are taken up, shall cancel and preserve them.

(c) Render a statement of the condition of the finances of the District quarterly and at all other times as shall be required by the Board.

(d) Prepare an annual financial statement of the District and distribute it to the Members.

### **§ 1-18. Chair**

The Chair shall preside at all meetings of the Board and shall make and sign all communications on behalf of the District upon approval of the Board. The Chair shall perform all the duties incident to the position and office.

### **§ 1-19. Vice Chair**

The Vice Chair shall preside during the absence of the Chair or in the event the Chair elects not to preside. In either case, the Vice Chair shall have the same duties and authority as the Chair.

### **§ 1-20. Acting Chair**

When both the Chair and the Vice Chair are either absent or elect not to preside, the Board shall designate a member of the Board to serve as acting chair. In any such case, the acting

chair shall have the same duties and authority of the Chair and shall serve until either the Chair or Vice Chair resume his or her duties.

**§ 1-21. Open meeting and public records**

The conduct of all meetings and the maintenance of all records of the District and the Board shall be governed by the laws of this State relating to open meetings and accessibility of public records.

**§ 1-22. Audit**

The Board shall cause an audit of its financial records to be performed annually by an independent professional accounting firm or a certified public accountant.

**§ 1-23. Committees**

The Board shall have the authority to establish any and all committees as it may deem necessary.

**§ 1-24. Fiscal year**

The fiscal year of the District shall commence on July 1 and end on June 30 of each year.

**§ 1-25. Grand List**

The grand lists of the member municipalities composed of the taxable property and estate within the limits of the District shall constitute the grand list of the District. The District may at any regular or special meeting legally warned for that purpose vote to lay and assess a tax on its grand list for District purposes, all taxes so voted, laid, or assessed shall be paid and collected in the same manner as is provided by law for the payment and collection of town taxes.

**§ 1-26. Preparation and Approval of Budget and Tax Rate**

(a) At least 50-days prior to the public vote, the Board of Directors shall prepare a budget for the district for the next fiscal year, which shall include reasonably detailed estimates of:

- (1) Deficits and surpluses from prior fiscal years;
- (2) Anticipated expenditures for the administration of the District;
- (3) Anticipated expenditures for the operation and maintenance of any District facilities;
- (4) Costs of debt service;
- (5) Payments due on long-term contracts;

- (6) Payments due to any sinking funds for the retirement of debts;
- (7) Payments due to any capital reserve funds;
- (8) Estimates of revenue from taxes and others sources;
- (9) Any threatened or reasonably anticipated lawsuits or other contingent expenses.

The budget shall be in such form as deemed desirable by the Board and shall be so arranged as to show budgeted income and expenditures of the current fiscal year and budgeted and actual income and expenditures of the preceding fiscal year.

(b) The Board of Directors shall call a public hearing on or before April 1 of each year for the purpose of presenting and inviting discussion on the proposed budget, which shall include the amount to be raised by taxes and rate on a dollar of the grand list. The hearing shall be held within the boundaries of one of the Members of the District and shall be warned by a notice published in a newspaper of general circulation in each member municipality at least 15 days prior to the hearing. The notice shall contain a copy of the proposed budget.

(c) Following the public hearing, the Board of Directors shall review the proposed budget in light of comments received at the hearing, and shall thereupon submit the amount to be raised by taxes or the rate on a dollar of the grand list to the District voters for approval with or without changes. If approved by a majority of the District voters, the Board shall then appropriate the sums that it deems necessary to operate and carry out the District's functions for the fiscal year, and upon notice, assess and collect a tax upon the taxable property of the District. If the District votes specific amounts in lieu of a rate on a dollar of the grand list, the Board shall, after the grand list book has been computed and lodged in the office of the District Clerk, set the tax rate necessary to raise the specific amounts voted. The District may apply for grants and may accept and expend grants or gifts above those which are approved in the budget. The Executive Director shall include, in its annual report, a description of all grants or gifts accepted during the year and associated expenditures.

**§ 1-27. Limitations of appropriations**

(a) The Executive Director may at any time transfer an unencumbered appropriation balance or portion thereof between general classifications of expenditures within a category of funds (i.e. parks, events, etc.).

(b) At the request of the Executive Director, the Board may, by resolution, transfer any unencumbered appropriation balance or portion thereof within the budget.

(c) The amount of any deficit at the end of the fiscal year shall be included in the next proposed operating budget and paid out of the appropriations for that budget year. At the discretion of the Board, any unencumbered balance may be placed in a reserve fund.

### **§ 1-28. Sinking Fund**

(a) The Board may establish and provide for a sinking fund for the retirement of bond issue or other debt, or to provide security for the payment thereof.

(b) When so established, the sinking fund shall be kept intact and separate from other monies at the disposal of the District, and shall be accounted for as a pledged asset for the purpose of retiring or securing such obligations.

(c) The cost of payments to any sinking fund shall be included in the annual budget of the District.

### **§ 1-29. Capital Reserve Fund**

(a) The Board may establish and provide for a capital reserve fund to pay for public improvements, replacement of worn-out buildings and equipment, and major repairs of District facilities.

(b) Any such capital reserve fund shall be kept in a separate account and invested as are other public funds and shall be expended for such purposes for which established.

(c) The cost of payments to any capital reserve fund shall be included in the annual budget of the District.

### **§ 1-30. Special Authority meetings**

(a) The Board may on its own motion call special meetings of the District and shall call a special meeting of the District when action by the voters of the District is required.

(b) The Board shall call a special meeting of the District if petitioned to do so by not less than five percent of the voters of the District.

(c) The Board may rescind the call of the special meeting called on its own motion.

(d) The Board shall endeavor to schedule the time of special meetings to coincide with the time of annual municipal meetings, primary elections, general elections, or similar meetings when the electorate within the members will be voting on other matters.

### **§ 1-31. Signing of warning**

The original warning of any annual or special meeting of the District shall be signed by the District Clerk and Chair of the Board.

### **§ 1-32. Warning contents**

The posted notification shall include the date, time, place, and nature of the meeting. It shall be separate articles and specifically indicate the questions to be voted upon.

### **§ 1-33. Australian ballot**

The Australian ballot system shall be used at all annual and special meetings of the District.

### **§ 1-34. Qualifications and registration of voters**

All legal voters of the members shall be legal voters of the District. The municipality shall post and revise checklists in the same manner as for municipal meetings prior to any District meeting.

### **§ 1-35. Conduct of meetings**

(a) At all Special Authority meetings of the District, the provisions of Title 17 shall apply except where clearly inapplicable.

(b) The Chittenden Unit of the Vermont Superior Court shall have jurisdiction over petitions for recounts. Election expenses shall be borne by the District.

### **§ 1-36. Reconsideration or rescission of vote**

(a) A question voted on at any special meeting of the District shall not be submitted for reconsideration or rescission except at a subsequent special meeting duly warned for that purpose and called by the Board on its own motion or pursuant to a petition requesting such reconsideration or rescission signed and submitted in accordance with subsection (b) of this section.

(b) Where a petition signed by not less than five percent of the qualified voters of the District requesting reconsideration or rescission of a question considered or voted on at a previous special meeting is submitted to the Board within 30 days following the date of that meeting, the Board shall provide for a vote by the District in accordance with the petition within 60 days of the submission at a special meeting duly warned for that purpose.

(c) A vote taken by a special meeting shall remain in effect unless rescinded at a special meeting called and warned in accordance with this section.

(d) A question voted on shall not be presented for reconsideration or rescission at more than one subsequent meeting.

### **§ 1-37. Validation of District meetings**

(a) When any of the requirements as to notice or warning of a special District meeting have been omitted or not complied with, if the meeting and the business transacted is otherwise

legal, the omission or noncompliance may be corrected and legalized by vote at a special meeting of the District called and duly warned for that purpose.

(b) The question to be voted upon shall substantially be: "Shall the action taken at the meeting of the District held on (state date), in spite of the fact that (state the error or omission), and any act or action of the District officers or agents pursuant thereto be readopted, ratified, or confirmed?"

(c)(1) Errors or omissions in the conduct of any prior special meeting which are not the result of an unlawful notice or warning or noncompliance within the scope of the warning may be cured by a resolution of the Board by a vote of at least two-thirds of all the votes entitled to be cast at a regular meeting or a special meeting called for that purpose, stating that a defect was the result of an oversight, inadvertence, or mistake.

(2) When an error or omission has been corrected by resolution, all business within the terms of the action of the qualified voters shall be as valid as if the requirements had been in compliance initially on the condition that the original action by the Board was otherwise in compliance with the legal exercise of its corporate powers.

### **§ 1-38. Priority**

When a special meeting of the District is called to act to incur bonded or other indebtedness and the meeting procedures in this chapter conflict with the procedures in 24 V.S.A. chapter 53, subchapter 1, the procedures in 24 V.S.A. chapter 53, subchapter 1 shall prevail.

### **§ 1-39. Withdrawal of a municipality**

(a)(1) Subject to the provisions of subsection (b) of this section, a Member may vote to withdraw from this Agreement in the same manner as it votes to adopt the Agreement if five (5) years have elapsed since the District has become a body politic and corporate and if the District has not voted to bond for construction and improvements, all in accordance with 24 V.S.A. § 4863(g).

(2) The provisions of 24 V.S.A. § 4863(i) shall apply so that any vote of withdrawal taken less than five (5) years from the time the District has become a body politic and corporate or any vote of withdrawal taken after the District has voted to bond for construction and improvements shall be null and void.

(3) The membership of a withdrawing Member shall terminate as of one year following a valid vote to withdraw or as soon after such one-year period as the financial obligations of the withdrawing Member have been paid to the District.

(4) Notwithstanding the provisions of this subsection (a), in the event that the General Assembly of the State of Vermont shall specifically approve, a Member may vote to withdraw from the District at any time.

(b) The financial obligations of a withdrawing Member shall include all ongoing costs of the District until the withdrawing Member has entered into a written agreement satisfactory to counsel for the District obliging the withdrawing municipality as follows:

(1) to continue to pay its share of all debts incurred by the District for the remaining terms of all bonds and contracts in existence at the time when the vote to withdraw was taken;

(2) to pay its share, based upon its tax rate for the year in which it withdraws, of the defense costs and judgment rendered in any legal action brought against the District arising or accruing in any year during which it was a member of the District;

(3) to pay its share, based upon its tax rate for the year in which it withdraws, of all unbudgeted costs and expenses of the District arising out of the activities of the District during the withdrawing Member's term of membership, regardless of when such costs and expenses may be discovered; and

(4) to pay all of these additional costs either in a lump sum or in installments at such times and in such amounts as required by the Board.

(c)(1) After a Member has voted to withdraw, the Board shall give notice to the remaining Members of the vote to withdraw and shall hold a meeting to determine if it is in the best interest of the District to continue to exist. All interested parties shall be given an opportunity to be heard.

(2) If the Board determines that it would be in the best interests of the District to cease operations, the Board may prepare and implement a plan for dissolution of the District.

#### **§ 1-40. Admission of additional municipalities**

(a) The Board, by the affirmative vote of directors representing a majority of all possible directors (including vacancies), may authorize the inclusion of additional municipalities in the District upon such terms and conditions as it shall deem to be fair, reasonable, and in the best interests of the District.

(b) After an affirmative vote by the Board of Directions, the question shall be submitted to the District voters thereof at a special meeting to be held for that purpose. If the voters by a majority vote for the admission of the additional municipality, the District Clerk shall inform the petitioning municipality of the voters' decision.

(c) The petitioning municipality shall comply thereafter with the approval procedures specified in 24 V.S.A. chapter 121 (intermunicipal cooperation and services). If a majority of the voters of the petitioning municipality present and voting at a meeting of such municipality duly warned for such purpose shall vote to approve the agreement and the terms and conditions for

admission, the vote shall be certified by the clerk of that municipality to the District Clerk of the District, and the municipality shall be a Member.

### **§ 1-41. Dissolution of the District**

(a)(1) Prior to five (5) years from the formation of the District, upon affirmative vote of directors representing a majority of all votes entitled to be cast on behalf of all Members, and affirmative vote of the legislative bodies of the Members, the Board may prepare a plan of dissolution for submission to the voters of the District at a special meeting of the District duly warned for such purposes. After five (5) years elapse from the formation of the District, upon affirmative vote of directors representing a majority of all votes entitled to be cast on behalf of all Members, and without an affirmative vote of the legislative bodies of the Members, the Board may prepare a plan of dissolution for submission to the voters of the District at a special meeting of the District duly warned for such purposes.

(2) If the voters of the District present and voting at such special meeting of the District vote to dissolve the District, the District shall cease to conduct its affairs except insofar as may be necessary to complete the plan of dissolution and conclude its affairs.

(3) The Board of Directors shall cause a notice of the plan of dissolution to be mailed to each known creditor of the District and to the Secretary of State.

(b) The plan of dissolution shall, at a minimum:

(1) identify and value all assets of the District;

(2) identify all liabilities of the District, including contract obligation;

(3) determine how the assets of the District shall be liquidated and how the liabilities and obligations of the District shall be paid, to include assessments against municipalities of the District; and

(4) specify that any assets remaining after payment of all liabilities shall be apportioned and distributed among the municipalities according to the same basic formula used in apportioning the costs of the District to the municipalities.

(b) When the plan of dissolution has been fully implemented, the Board shall certify that fact to the members whereupon this chapter and the District shall be terminated.

(c) After five (5) years from the formation of the District, a vote for dissolution may be proposed by a petition signed by five percent of the voters of the District.

(d) In the event any of the Members decide to merge to form one member municipality so that there is only one Member in this Agreement, the District shall continue in full force and effect unless and until the District votes to dissolve in accordance with the provisions of this section.

### **§ 1-42. Amendment of the District agreement**

(a) Amendments to this agreement may be proposed by a petition signed by five percent of the voters of the members, or by the Board by a resolution expressing the intention to amend the agreement. The amendment shall then be submitted to the District voters thereof at an annual or special meeting to be held for that purpose.

(b) If the voters by a majority vote for the proposed amendment, the amendment shall take effect following confirmation of the vote by the District Clerk.

(c) No amendment shall substantially impair the rights of the holders of any bonds or other notes or other evidence of indebtedness or substantially affect any obligations under long-term contracts of the District then outstanding or in effect, or the rights of the District to procure the means for payment, continuation, or termination thereof.

(d) The Board may determine that it is in the best interest of the District to adopt a District charter pursuant to the provisions of 17 V.S.A. § 2645. In such event, the ratified charter shall supersede this Agreement.

### **§ 1-43. Severability**

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