

**AGREEMENT
BY AND BETWEEN**

**THE TOWN OF CALAIS
and
THE CURTIS POND ASSOCIATION**

THIS AGREEMENT is by and between the Town of Calais, a Vermont municipal corporation having its situs in Washington County, State of Vermont (“Town”), and the Curtis Pond Association, a Vermont non-profit corporation (“CPA”), having a principal business address of 84 West County Road, Calais, Vermont 05648 (hereinafter the “Parties”).

WHEREAS, on or about November 8, 2021, the Town’s Selectboard approved a Memorandum of Understanding (“MOU”) with CPA concerning the potential renovation of Curtis Pond Dam (“Dam”), which MOU was dated and effective November 3, 2021; and

WHEREAS, for the reasons set forth in the MOU, the Parties are interested in continuing to pursue renovation of the Dam, as detailed in the MOU; and

WHEREAS, CPA has engaged in a campaign to raise funds to contribute to the cost of the renovation, has presently received donations totaling \$230,000 where \$40,000 was given to the Town on June 2, 2022 for engineering and permit application expenses and \$4,000 has been spent on administrative expenses for a balance of \$186,000 (“Cash”), and has commitments for other donations totaling \$13,500 (“Future Funds”); and

WHEREAS, the Parties believe that a clear understanding as to the roles and responsibilities of each is necessary to facilitate timely pursuit of renovations to the Dam;

For and in consideration of the foregoing recitals and the promises, obligations and other considerations herein set forth, the receipt and sufficiency of which each party acknowledges and accepts, the Parties hereby agree as follows:

1. TOWN’S DUTIES AND OBLIGATIONS: The Town, itself or through its contractors, will be responsible to take steps, when and as it deems reasonably necessary and prudent, to:
 - a. Apply for and pursue in good faith all permits necessary to rehabilitate and renovate the Dam to a condition sufficient to meet then-current statutory and regulatory standards (“Work”).
 - b. Acquire good and marketable title to and ownership, possession, and control of the Dam properties.
 - c. Secure access and other rights in and to other lands and properties in the vicinity of the Dam necessary to safely accommodate the rehabilitation and renovation of the dam, including construction of a coffer dam or dams, access by construction-related vehicles and personnel to the dam site, all necessary areas for laying down and storing materials, supplies and equipment, work trailers, making utility connections, safety zones and the like.

- d. Engage one or more qualified engineers or engineering firms to assist the Town to apply for permits necessary to rehabilitate and renovate the Dam, and to design, engineer, and oversee (as the Town's representative) the rehabilitation and renovation of the Dam.
- e. At a time the Town deems appropriate, issue a request for proposal and an award for a construction contractor to undertake the work.
- f. Maintain a dedicated webpage to keep the town updated as the work progresses.
- g. Enter into a binding construction contract with an identified qualified contractor to prosecute the Work in a timely and workmanlike manner, at a cost negotiated by the Town and the chosen qualified contractor, and to execute all documents deemed necessary and reasonable for that purpose.
- h. Upon completion of the work, manage, control, operate and maintain the Dam, subject to DEC oversight.
- i. Manage and control the Cash and Future Funds turned over to the Town by CPA for the purposes set forth herein.
- j. Advise CPA on a quarterly basis of the balance and expenditure of Cash and Future Funds held in town accounts for the purposes set forth herein.

2. CONTROL OF THE WORK: Notwithstanding anything to the contrary herein, the Town shall have unfettered and exclusive authority over and control and supervision of the Work, its commencement, continuation, suspension, abandonment, or termination. The Town may retain a contractor to assist in this regard.

3. CPA DUTIES AND OBLIGATIONS: CPA will take all reasonable and necessary steps to assist the Town to prosecute the Work, as follows:

- a. Assign, transfer and facilitate the transition of any permits, approvals, consents, commitments (other than Future Fund commitments), agreements and the like ("Documents") related in any way to the Dam or the Work. The Town shall not be obligated to reimburse or otherwise compensate the CPA for any expenses related to the acquisition or procurement of or transfer and assignment of any of the Documents to the Town.
- b. Identify available grants to aid in the funding of the Work and assist the Town to seek such grants.
- c. Continue to raise funds to contribute to the cost of the Work and hold any collected donations in an interest-bearing account for the benefit of the Town.
- d. Deliver to the Town the Cash within five (5) business days of a request from the Town for same.
- e. Advise the Town on a quarterly basis regarding the amount of Future Funds than committed and considered by CPA to be "in hand" (subject to any necessary notice requirement to the donor(s) of a particular contribution).
- f. Collect and deliver to the Town such Future Funds in such amounts and at such times as requested by the Town.

g. Post regular updates in Front Porch Forum to keep the town informed as work progresses on the project. Assist and collaborate with the Town webmaster in updating the Town webpage pursuant to 1.f above.

4. DAM FAILURE. If prior to completion of the Work there is a breach of the Dam:

a. The Town shall have no liability whatsoever to the CPA for any property loss or damage, including without limitation claims for loss or diminution of property value, viewshed degradation, loss or diminution of amenities proximate to the affected property, personal injury or any other claims or causes of action whatsoever arising therefrom.

b. The Town shall have no obligation whatsoever to return, refund or repay to the CPA or any of its members any expended or encumbered Cash delivered to the Town by the CPA in connection with the Work or provided in connection with this agreement.

If a breach occurs following completion of the Work, the Town shall have no obligation or responsibility whatsoever under this agreement to rebuild, repair, restore, rehabilitate, or replace the Dam.

5. LIMITATIONS; REMEDIES: This agreement is subject to all of the substantive and procedural requirement of State and local law, regulations and policy, any Town voter approval required or requested by the Town.

6. DISPUTE RESOLUTION: In the event of a dispute regarding this Agreement, the Parties shall confer in good faith, in an effort to cooperatively resolve their differences. If such efforts fail, the Parties shall engage the services of a qualified Vermont mediator and shall participate in mediation, the costs of which shall be shared equally. Thereafter, if necessary, either Party may commence an action, including for injunctive relief, in the Vermont Superior Court, Civil Division, Washington Unit.

7. AMENDMENTS & MODIFICATIONS: Any changes, modifications, or amendments in the terms and conditions of this Agreement must be written and signed by the duly authorized representatives of the Town and CPA.

8. RELATIONSHIP OF THE PARTIES: The Town and CPA shall be and act at all times as independent entities, separate from each other, and neither is nor shall represent itself to be an agent or authorized representative of the other. Each Party shall have responsibility for general supervision of its own officials, members, agents, employees and any person or entity engaged by it as a contractor or subcontractor. Except as provided above concerning the Cash and Future Funds, each Party shall be solely responsible for all costs incurred by it relative to the Agreement including, without limitation, payment of salaries, fringe benefit contributions, payroll taxes, withholding taxes and other taxes or levies, office overhead expenses, travel expenses, telephone and other telecommunication expenses, and document reproduction expenses.

9. SUCCESSORS AND ASSIGNS: Subject to the limits of the law, this Agreement and all covenants hereof shall inure to the benefit of and be binding on the Town and the CPA respectively and their respective successors, permitted assigns and legal representatives.

10. ASSIGNMENT: Neither Party shall assign this Agreement (in whole or in part) or transfer of convey responsibility for the Party's obligations and responsibilities under the Agreement without the express written consent of the other Party.

11. ENTIRE AGREEMENT: The terms and conditions set forth herein constitute the final, complete and exclusive agreement of the Parties.

12. GOVERNING LAW; SEVERABILITY: This Agreement shall be governed by the law of the State of Vermont, without regard to laws that might otherwise govern under applicable conflict of laws principles. The provisions of this Agreement are severable. If any provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect and the Parties shall use their best efforts to construe and implement the Agreement in accordance with the intent expressed herein.

IN WITNESS WHEREOF, this Agreement is approved and executed by the Parties hereto on the dates set forth below:

DATE:

TOWN OF CALAIS

BY:

CHAIR, VICE-CALAIS SELECTBOARD

CURTIS POND DAM ASSOCIATION

BY:

PRESIDENT, CURTIS POND DAM ASSOCIATION