

**Agreement for Professional Services
BLUE® Williston**

**Town of Williston
Agreement for Professional Services**

This Agreement between the TOWN OF Williston, VERMONT, ("Town") and Salix Solutions LLC, ("Consultant") effective on this ____ day of _____, _____.

All work under this agreement shall be referred to by the following:

BLUE ® Williston

PROJECT NAME

Consultant's project manager under this agreement is **Juliana Dixon**. Consultant's project manager may not be changed without the written consent of the Town. The Town's project manager is **Williston Stormwater Coordinator**, Project Manager.

ARTICLE 1. Scope of Work

1.1 The scope of work to be performed hereunder (“**Salix Solutions – BLUE® Williston Pilot Project Scope of Work**”) is more completely described in Appendix A which is incorporated herein by reference.

ARTICLE 2. Compensation

2.1 Compensation shall be paid in accordance with “**Salix Solutions – BLUE® Williston Pilot Project Cost Proposal**” as depicted in Appendix B and incorporated herein by reference.

ARTICLE 3. Period of Performance

3.1 The Consultant agrees to commence work under this agreement only as authorized by and in accordance with written notice to proceed and to complete the work in accordance with the Scope of Work (Appendix A).

3.2 The period of performance under this agreement shall end and Consultant shall have completed all work under this agreement on, or before, **March 16, 2021**. Work shall proceed in accordance with the schedule set forth in Appendix A.

ARTICLE 4. Subconsultants

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4.1 The Consultant shall be responsible for the performance of all services required under this agreement.

ARTICLE 5. Insurance

5.1 In accordance with the provision contained in the General Conditions (Appendix C), the following minimum limits of insurance coverage are required:

Professional Liability (Errors & Omissions)

\$1,000,000 Aggregate

\$1,000,000 Per Claim

Commercial General Liability

\$1,000,000 Each Occurrence

\$1,000,000 General Aggregate applying, in total, to this project only

ARTICLE 6. Appendices

6.1 The following appendices are attached to this agreement and incorporated herein:

<u>Appendix</u>	<u>Title</u>
A	Scope of Work
B	Basis of Compensation
C	General Conditions

IN WITNESS WHEREOF, the parties have executed this agreement.

CONSULTANT

TOWN OF Williston

By: _____

By: _____

Title: Juliana Dixon, Owner / Consultant

Title: Stormwater Coordinator

Date: _____

Date: _____

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Appendix A - Scope of Work

<p style="text-align: center;">Salix Solutions – 2020 BLUE® Williston Pilot Project Scope of Work</p>
<p style="text-align: center;">Task A - Property Evaluations</p>
<p>Consultant agrees to provide stormwater evaluation services for properties which request an evaluation and are located within the Town of Williston. Consultant will assist the property owner in determining the appropriate size and design of a green stormwater installation according to the BLUE® Certification Program. If requested by the property owner, Consultant will prepare a report which will include any recommended green stormwater installations and information about qualified local contractors who can complete the work. A copy of the evaluation will be electronically sent to the property owner and posted to a cloud-based repository for program staff within one week of the site visit.</p>
<p style="text-align: center;">Task B - Property Owner Assistance</p>
<p>Consultant agrees to provide technical assistance for property owners looking to move forward with green stormwater installations that are consistent with the BLUE® Certification Programs, as determined by the Consultant. Technical assistance includes ensuring Program Agreement is signed by program participants; providing information to property owners about available area contractors to complete work; providing a property owner the appropriate contacts and information to navigate the Town building permit process should one be required for selected activities; conduct site visit(s) during construction if requested by the property owner or contractor retained for the installation; final inspection of the installation once complete; assisting property owners with receiving a BLUE® Certification; and managing any incentive payment owed to the property as described in Task C.</p>
<p style="text-align: center;">Task C - Processing Incentive Payments</p>
<p>All construction and inspections must be completed prior to distribution of incentive payments. This project includes a tiered rebate process as funds allow. Salix Solutions LLC will inspect any completed green stormwater installations for compliance with the planned design and the BLUE® Certification Program, and after a successful inspection, will issue a rebate to the property owner. Rebates shall reflect the cost of installation up to a maximum of \$100 for smaller installations (such as tree or perennial planting, rain barrels, and gutter applications) and \$200 for larger installations (such as berms / swales, dry wells, driveway trenches, and permeable pavement systems). All requests for incentive payments must be reviewed and finalized no later than the expiration of the contract.</p>

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Task D - Final Program Report

Upon the conclusion of the program the Consultant will prepare a final project report for the Town. This final report will summarize what installations were completed as part of the project, what water quality benefits can be expected as a result of those installations, an estimate of the amount of impervious surface and corresponding gallons of stormwater mitigated as a result of the pilot project, and recommendations as to how this project might be improved beyond the pilot phase.

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Appendix B - Basis of Compensation

On completion of work and submission of invoices, the Town shall pay to consultant the compensation as follows:

Salix Solutions, LLC – 2019-2020 BLUE® Williston Pilot Project Cost Proposal	
Task A – Property Evaluations	
Salix Staff to perform up to an estimated 20 property consultations, up to 5 hrs each, \$60/hr	\$6,000
Task B – Program Marketing	
Salix Staff will utilize print, web, radio, and other forms of marketing to raise awareness of the program	\$115
Task B – Property Owner Assistance	
Salix Staff to support property owner implementation, up to 2 hrs each for an estimated 10 properties, \$60/hr	\$1,200
Task C – Managing Incentive Payments	
Salix Staff to manage rebate process for an estimated 10 properties, .5 hr each, \$60/hr	\$300
Financial Rebates, up to an estimated 10 each at average of \$200	\$2,000
Task D - Final Program Report	
Preparation of Final Project Report, up to 4 hrs, \$60/hr	\$240
Direct Cost Reimbursements	
Mileage, .58c/mile up to 250 miles	\$145
Total contract amount not to exceed:	
	\$10,000

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Payment shall be in four (4) installments not to exceed \$2,500 each to Salix Solutions for financial management. The Town's Project Manager will be given access to financial tracking and program management documents for real-time fiscal accountability. No new payment shall be released without appropriate documentation of program expenditure to date. Salix Solutions shall return all unused funds at termination of the agreement and shall be held liable for this sum.

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**Appendix C
General Conditions**

I. Definitions:

Basic Services: The identified work elements set forth in this Agreement for which the Consultant will receive prime compensation.

Change: An addition to, or reduction of, or other revision in the scope, complexity, character, or duration of the services or other provisions of this Agreement.

Town's Project Manager: Town's representative and the consultant's primary point of contact for notice(s) to proceed invoices, correspondence and interface with the Town.

Consultant's Project Manager: The Consultant's representative in charge of the project(s) who is directly responsible for, and engaged in, performing the required services.

Extra Services: Any services or actions required of the Consultant above and beyond provisions of this Agreement.

Funding Agency(s): The agency(s) of the federal, state or municipal government which furnishes funds for the Consultant's compensation under this Agreement.

Optional Services: Identifiable and/or indeterminate work elements set forth in this Agreement, which are separate and distinct from those covered by the prime compensation, which the Town has the option to authorize.

Prime Compensation: The dollar amount paid to the Consultant for basic services set forth in this Agreement. Prime compensation does not include payment for any optional or extra services.

Scope of Work: Basic and optional services required of the Consultant by provisions of this Agreement.

Subconsultant: Any person, firm, corporation, joint venture, partnership or other entity engaged through or by Consultant.

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II. Information and Services from Others:

Provision of information, data, budget, standards, and other materials by the Town does not warrant their accuracy or quality nor provide approval of omissions or oversights or of any non-compliance with applicable regulations.

The Town may, at its election, or in response to a request from the Consultant, furnish information or services from other Consultants. If, in the Consultant's opinion, such information or services are inadequate, the Consultant must notify the Town of the specific service or material deemed inadequate and the extent of the inadequacy prior to use in the performance of this Agreement. Unless so notified by the Consultant, the Town may assume the information or services provided are adequate.

III. Indemnification

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Town, its officers, directors and employees (collectively, Town) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable.

Neither the Town nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

IV. Insurance:

The Consultant shall purchase and maintain professional liability insurance coverage with limits not less than those specified herein for the duration of the Agreement. Insurance coverage shall provide errors or omissions which the Consultant, employees of the Consultant or Subconsultant may make for negligent acts, which produce loss or liability to the Town and for protection against loss which results from reliance on the Consultant's products, reports or a combination thereof.

The Consultant shall purchase and maintain general liability and property damage insurance coverage with limits not less than those specified herein for the duration of the Agreement. With respect to all operations performed under this contract, the Consultant shall carry general liability insurance having all major divisions of coverage including, but not limited to: Premises/Operations; Products and Completed Operations; Personal Injury Liability and Contractual Liability.

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The Consultant shall purchase and maintain automotive liability insurance coverage with limits not less than those specified herein for the duration of the Agreement, covering all motor vehicles, including hired and non-owned vehicle, used in connection with the Agreement.

Client shall name the Town as an additional named insured on its Commercial and General Liability policy in an amount not less than \$1,000,000. Such policy shall not be cancelable without fifteen days' written notice to the Town.

V. Payments:

Payments shall be made in accordance with Appendix B. Consultant shall submit progress invoices to Town showing the itemized services performed during the invoice period and the charges therefore.

All progress invoices shall be prepared as a percentage of the work completed except contracts performed on "time and materials" basis which invoiced amounts shall not exceed the actual charges to the invoice date.

Under no circumstances will Town pay for charges in excess of any lump sum or not-to-exceed contract amount incurred prior to written authorization by Town for an increase in the contract amount. Written request for an increase in the contract amount shall be given to the Town with sufficient notice to allow the Town to issue formal approval prior to the incurring of excess charges without delay to the work.

On "time and materials" contract amounts, compensation for work included in the Scope of Work shall be for direct labor costs, times a factor for overhead plus a fixed fee and the actual cost of reimbursable expenses. Direct labor costs shall be as shown on the current Standard Labor Rates for the Consultant, a copy of which is attached as Appendix D, for services rendered by principals and employees of the firm. The Fixed Fee for ALL projects shall not exceed ten percent (10%). Reimbursable expenses mean the actual expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto; obtaining bids or proposals from contractor(s); furnishing and maintaining field office facilities; toll telephone calls and telegrams; reproduction of reports, drawings, specifications, and similar project-related items and, if authorized in advance by the Town, overtime work requiring higher than regular rates. Reimbursable expenses shall also include the amount billed to Consultant by Subconsultants employed by consultant for such Subconsultants' services and reimbursable expenses times a factor of 1.00.

The sum of payments shall not exceed the allowable compensation stated in this

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Agreement. In the event items on an invoice are disputed, payment on those items will be withheld until the dispute is resolved.

The Consultant shall submit a final invoice and required documentation for services authorized by each Notice to Proceed within thirty (30) days after final acceptance by the Town. The Town will not be held liable for payment of invoices submitted after this time unless prior written approval has been given.

VI. Changes:

Changes in the Scope of Work or of services may only be made by written amendment.

If at any time the Town through its authorized representatives, either orally or in writing, requests or issues instructions for extra services or otherwise directs actions which conflict with any provisions of this Agreement, the Consultant shall, within ten (10) days of receipt and prior to pursuing such instructions, notify the Town in writing, and to the extent possible, describe the scope and estimated cost of any extra services. Unless so notified by the Consultant, the Town may assume such instructions have not changed any provisions of this Agreement nor require additional compensation. No additional payments shall be made to the Consultant without such notice.

In the event that the scope of work cannot be completed within the designated performance period due to circumstances beyond either party's control, the Town shall have the authority to extend the performance period as necessary. This change shall not be considered as extra services or a change in scope and no additional compensation will be provided.

VII. Audits and Records:

The Consultant shall maintain records of all performances, communications, documents, and correspondence pertinent to this Agreement, and the Town or its authorized representatives shall have the right to examine such records and accounting procedures and practices.

The materials described in this Article shall be made available at the business office of the Consultant, at all reasonable times, for inspection, audit or reproduction by Town or any funding agency, for a minimum of three years from the date (a) of final payment under this Agreement, (b) final payment upon claims or disputes, and for such longer period, if any, as may be required by applicable statute or other provisions of this Agreement.

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VIII. Inspections:

The Town, or any funding agency, has the right to inspect, in the manner and at reasonable times it considers appropriate during the period of this Agreement, all facilities, materials and activities of the Consultant in the performance of this Agreement.

IX. Termination or Suspension:

This Agreement may be terminated by either party upon ten (10) day's written notice if the other party fails substantially to perform in accordance with its terms through no fault of the party initiating the termination (default termination). If the Town terminates this Agreement, the Town will pay the Consultant a sum equal to the percentage of work completed that can be substantiated by the Consultant and the Town. If the Town becomes aware of any fault or defect in the work of the Consultant or nonconformance with this Agreement, the Town will give prompt written notice thereof to the Consultant. Should the Consultant's services remain in nonconformance to this Agreement, the percentage of total compensation attributable to the nonconforming work may be withheld.

The Town at any time may terminate (convenience termination) or suspend this Agreement for its own needs or convenience. In the event of a convenience termination or suspension for more than three months, the Consultant will be compensated for authorized services and authorized expenditures performed to the date of receipt of written notice of termination plus reasonable termination expenses. No fee or other compensation for the uncompleted portion of the services will be paid, except for already incurred indirect costs which the Consultant can establish and which would have been compensated for over the life of this Agreement, but because of the convenience of the termination would have to be absorbed by the Consultant without further compensation.

If state or federal funds support this Agreement, settlement in the event of default or convenience termination must be approved by the Town and any appropriate state or federal agency.

X. Officials Not to Benefit:

No member of or delegate to Congress, United States Commissioner or other officials of federal, state or local government shall be admitted to any share or part of this Agreement or any benefit to arise there from. The Consultant warrants that it has not employed or retained any organization or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any consideration

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contingent upon or resulting from this Agreement.

XI. Independent Consultant:

Except in those instances specifically provided for herein, the Consultant and any of its agents and employees shall act in an independent capacity and not as agents of the Town in the performance of the Agreement.

XII. Ownership of Work Products:

Work products produced under this Agreement, except items which have pre-existing copyrights, are the property of the Town. Payments to the Consultant for services hereunder includes full compensation for all work products, field notes, interim work, reports, and other materials produced by the Consultant and its Subconsultants pertaining to this Agreement. Any re-use the Town might make of these work products shall be at the Town's own risk and the Consultant shall not incur any liability for the Town's re-use of the work products on any project for which they were not intended.

XIII. Claims and Disputes:

If the Consultant becomes aware, or reasonably should have become aware of any act or occurrence which may form the basis of a claim, the consultant shall immediately inform the Town's Project Manager. If the matter cannot be resolved within seven (7) days, the Consultant shall within the next fourteen (14) days, submit written notice of the facts which may form the basis of the claim.

In addition, all claims by the Consultant for additional compensation or an extension of the time for performance of any dispute regarding a question of fact or interpretation of this Agreement shall be presented in writing by the Consultant to the Town's Project Manager within the next sixty (60) days unless the Project Manager agrees in writing to an extension of time for good cause shown. Good cause shown includes time for the Consultant to prepare the claim, and the Town's Project Manager will grant an extension of not more than sixty (60) days for preparation of the claim. The Consultant agrees that unless these written notices are provided, the Consultant shall not be entitled to additional time or compensation for such act, event or condition. The Consultant shall in any case continue diligent performance under this Agreement. The Consultant shall in any case continue to expeditiously accomplish disputed services pending future resolution of the Consultant's claim unless notified by the Town to stop work on the disputed matter.

In presenting any claim, the Consultant shall specifically include, to the extent then possible, the following:

- The provisions of this Agreement which apply to the claim and under which

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it is made.

- The specific relief requested including any additional compensation claimed and the basis upon which it was calculated and/or the additional time requested and the basis upon which it was calculated.
- The claim will be acknowledged in writing by the Town's Project Manager. If the claim is not disposed of within sixty (60) days of acknowledgment, provided additional time is not granted in writing by the Towns Manager, the claim will be decided by the Town Manager. The Town Manager reserves the right to make a written request to the Consultant at any time for additional information which the Consultant may possess to support the claim(s). The Consultant agrees to provide the Town such additional information within thirty (30) days of receipt for such a request. The Town Manager will allow a reasonable time extension for good cause if presented in writing prior to the expiration of the thirty (30) days. Failure to furnish such additional information constitutes a waiver of claim.
- The Consultant will be furnished a written, signed copy of the Town Manager's decision within ninety (90) days of receipt of all necessary information from the Contractor upon which to base the decision. The Town Manager's decision is final and conclusive unless fraudulent as to the claim unless, within thirty (30) days of receipt of the decision, the Consultant delivers a notice of appeal to the Select Board. The notice of appeal shall include specific exceptions to the Town's decision including specific provision of this Agreement which the Consultant intends to rely upon on appeal. General assertions that the Town's decision is contrary to law or to fact are not sufficient.
- The decision of the Select Board will be rendered within 120 days of notice of appeal and the decision constitutes the exhaustion of contractual and administrative remedies.

XIV. Extent of Agreement:

This Agreement, including appendices, represents the entire and integrated Agreement between the Town and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral.

Nothing contained herein may be deemed to create any contractual relationship

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between the Town and any Subconsultants or material suppliers; nor may anything contained herein be deemed to give any third party a claim or right of action against the Town or the Consultant which does not otherwise exist without regard to this Agreement.

This Agreement may be changed only by written amendment executed by both the Town and the Consultant.

All communications that affect this Agreement must be made and confirmed in writing.

The Consultant on receiving final payment will execute a release, if required, relinquishing in full all claims against the Town arising out of or by reason of the services and work products furnished under this Agreement.

The Consultant shall pay all federal, state and local taxes incurred by the Consultant and shall require their payment by any Subconsultant or any other persons in the performance of this Agreement.

XV. Governing Laws:

This Agreement is governed by the laws of the State of Vermont and such federal and local laws and ordinances as are applicable to the work performed.

END OF GENERAL CONDITIONS