

**AGREEMENT FOR THE EXCHANGE  
OF RIGHTS AND INTERESTS IN REAL PROPERTY**

This Agreement for the Exchange of Rights and Interests in Real Property (the “Agreement”) dated and effective as of the last date a party signs below is entered into by and between the **City of South Burlington**, a Vermont municipality in the County of Chittenden and State of Vermont, (the “City”) and the **South Burlington School District**, a Vermont municipality in the County of Chittenden and State of Vermont, (the “School District” and with the City collectively, the “Parties”) related to the exchange of certain rights and interests in real property owned by the Parties.

**RECITALS**

**WHEREAS**, the City has an option to purchase a certain 0.75-acre, more or less, parcel of land on the northerly side of Market Street (the “Municipal Building Parcel”) that is located southerly of and adjacent to the southwesterly corner of a 11.2-acre, more or less, parcel of land owned by the School District on which is located the Rick Marcotte Central School (the “Marcotte School Parcel”); and

**WHEREAS**, the City seeks to construct a new municipal building, including a space for a library, senior center, and the City’s administrative and Clerk’s offices (the “Municipal Building”), on the Municipal Building Parcel; and

**WHEREAS**, to provide access, limited parking and stormwater treatment facilities for the new Municipal Building, the City seeks certain non-exclusive easements and rights-of-way from the School District over, upon and through a 0.7-acre, more or less, portion of the southwesterly corner of the Marcotte School Parcel (the “Municipal Building Access Easement”), which is shown as “Parcel #1” on the plan attached as “Exhibit A” hereto and a 0.6-acre portion of which is described as “Easement #1 – Municipal Building Access Easement” in a draft Easement Deed from the School District to the City attached hereto as “Exhibit B;” and

**WHEREAS**, the development of the new Municipal Building and conveyance of the Municipal Building Access Easement will also allow for connection of the Marcotte School Parcel to Market Street by way of a public road right-of-way extending northerly from Market Street to and through the Municipal Building Access Easement, which is shown as both “Parcel #2” and “Future Public Right of Way” on the plan attached as “Exhibit A” hereto (the “Market Street Access”). The portion of the Market Street Access shown as “Future Public Right of Way” on Exhibit A is described as “Easement #2 – Market Street Access Public Roadway Easement” in “Exhibit B;” and

**WHEREAS**, the School District desires to secure permanent access for the Marcotte School Parcel to Market Street, subject to certain terms and conditions; and

**WHEREAS**, in connection with its construction of the future Garden Street to the east of and adjacent to the Marcotte School Parcel, the City seeks an easement and right-of-way for public roadway purposes over, upon and through a 0.1-acre, more or less, portion of the southeasterly corner of the Marcotte School Parcel (the “Garden Street Easement”), which is shown as “Parcel #3” on the plan attached as “Exhibit A” hereto and is described in a draft Easement Deed from the School District to the City attached hereto as “Exhibit C;” and

**WHEREAS**, the School District’s administrative offices are currently located in the Frederick Tuttle Middle School and in the South Burlington High School, but their relocation would make available much-needed additional classroom space to better serve the needs of the School District’s students and their consolidation in a single location would facilitate more efficient administrative operations; and

**WHEREAS**, in exchange for the School District’s conveyance of both the Municipal Building Access Easement and the Garden Street Easement to the City, the City agrees to grant the School District an option to lease, including an option to purchase, the current City Hall building and related parking located at 575 Dorset Street (the “City Hall Lease Option”), which will be effective upon completion of construction of the Municipal Building, so the School District may relocate its administrative offices as described in a draft Option to Lease Agreement attached hereto as “Exhibit D;” and

**WHEREAS**, the exchange of rights and interests in land described above and herein will provide numerous benefits for the community and reciprocal benefits to both Parties, including but not limited to:

- A. Creating a new, permanent access from Market Street to the Marcotte School Parcel;
- B. Providing adequate land to build the preferred design of a Municipal Building with some parking to support the facility;
- C. Improving and expanding the existing parking lots on the Marcotte School Parcel;
- D. Enhancing and improving safe access to the Marcotte School Parcel by limiting traffic flow through the Marcotte School Parcel itself while simultaneously providing the City through the Municipal Building Access Easement with the access, stormwater treatment and limited parking necessary for the Municipal Building;
- E. Providing sufficient land area to create an appropriate turning radius for large vehicles using future Garden Street;
- F. Having the closest building to the Marcotte School Parcel be a municipal building that includes a library;

- G. Enhancing treatment and management of stormwater associated with the parking areas on the Municipal Building and the Marcotte School Parcels;
- H. Providing sufficient space for relocating the School District's administrative offices to a building immediately across Dorset Street from South Burlington High School and Tuttle Middle School;
- I. Providing improved learning opportunities for students in both Tuttle Middle School and South Burlington High School upon relocation of the School District's administrative offices;
- J. Potentially providing access to Mary Street for the Marcotte School Parcel and the Municipal Building through the Allard Square property located at the northeasterly corner of Market Street and Mary Street and westerly of the Municipal Building Parcel.

**NOW THEREFORE**, the Parties hereby agree as follows:

1. Voter Approval. The Parties agree that the City and/or the School District, as the case may be, shall seek voter approval of the following items related to the exchange of rights and interests in real property contemplated by this Agreement on November 6, 2018:
  - a. The City borrowing for construction of a new Municipal Building.
  - b. The School District's conveyance of the Municipal Building Access Easement to the City.
  - c. The School District's conveyance of a public roadway easement to the City as part of the Municipal Building Access Easement.
  - d. The School District's conveyance of the Garden Street Easement to the City.
  - e. The City's granting of an option to the School District to lease the current City Hall at 575 Dorset Street, as well as an associated lease agreement for the same that contains an option to purchase. The option to lease period shall commence upon the relocation of the City's administrative offices and City Clerk's office to the new Municipal Building, and the initial, renewable lease term shall be three years with two, three-year renewal terms at the School District's option.
  - f. The School District's entering into an option to lease with the City for the current City Hall at 575 Dorset Street, as well as an associated lease that contains an option to purchase. The option to lease period shall commence upon the relocation of the City's administrative offices and City Clerk's office to the new Municipal Building, and the initial, renewable lease term shall be three years with two, three-year renewal terms at the School District's option.

Draft Warnings for the City and the School District November 6, 2018 special meetings containing the articles for the above-referenced items are attached hereto as "Exhibit E" and "Exhibit F," respectively. Notwithstanding any other provision

of law, if voters reject any of the items described in Section 1(a) through (f), above, then the Parties agree that the City and/or the School District, as the case may be, may re-present any such rejected item to the voters for approval on additional dates prior to January 1, 2022, excluding therefrom any vote resulting from a petition submitted for rescission or reconsideration of any items described in Section 1(a) through (f). Voter approval of all the items described in Section 1(a) through (e) shall be required for the exchange of rights and interests in land contemplated by this Agreement to proceed. Should the voters fail to approve by January 1, 2022, any of the items described in Section 1(a) through (f) above, authorizing the exchange of rights and interests in land described herein, then the exchange of rights and interests in land contemplated hereby shall not proceed, and this Agreement shall terminate and be of no further force or effect. If the City decides prior to January 1, 2022, in its sole discretion either to no longer pursue the Municipal Building, or to no longer present the items described in Section 1(a) and 1(e) to the voters, then the City shall give written notice thereof within thirty (30) days of said decision to the School District, and this Agreement shall terminate and be of no further force or effect as of the date of written notice from the City. If the School District is of the opinion that the City prior to January 1, 2022, decided either to no longer pursue the Municipal Building, or to no longer present the items described in Section 1(a) and 1(e) to the voters, then the School District shall give written notice thereof to the City, and the City shall have sixty (60) days to respond affirmatively to the School District in writing of its intentions to pursue the Municipal Building and to present the items described in Section 1(a) and 1(e) to the voters; otherwise, this Agreement shall terminate and be of no further force and effect sixty (60) days following the date of the School District's written notice to the City.

2. Municipal Building Access Easement. Subject to the City acquiring the Municipal Building Parcel from South Burlington City Center, LLC, or its successors and assigns, and obtaining necessary planning, zoning and land use approvals for the Municipal Building, the School District shall convey the Municipal Building Access Easement to the City. The Municipal Building Access Easement shall only be used for utility easements (water, electric, gas, stormwater, sewer), access to the Municipal Building Parcel and to the Allard Square property, stormwater treatment and limited parking for the Municipal Building. The easterly 0.1 acres of the Municipal Building Access Easement may be used for public roadway purposes. Subject to approval by the City's zoning authorities, the Municipal Building Access Easement also may be used for access connecting the Municipal Building Parcel and Mary Street. No parking garage or parking structures may be built on the Municipal Building Access Easement. The section of the Easement Deed describing the 0.6-acre portion of the Municipal Building Access Easement shall contain the reservation of a reversionary interest to the School District (subject to advanced notice of breach and an opportunity to cure) if the portion of the Municipal Building Access Easement that is not proposed to be used

as a public roadway easement and right-of-way ceases to be used for public or community purposes. The access to the Marcotte Central School within the Municipal Building Access Easement shall be separated from any access or parking for the Municipal Building Parcel and the Allard Square property so as to limit traffic associated with the Municipal Building and the Allard Square property from accessing the Marcotte Central School's parking lots. The City shall pay all costs and expenses for construction, operation, maintenance, repair and replacement of the improvements on the Marcotte School Parcel and within the Municipal Building Access Easement, including but not limited to access drives, stormwater treatment systems, parking areas, utility lines, sidewalks and landscaping. In light of the limited parking within the Municipal Building Access Easement, the City shall continue its good faith efforts to identify additional permanent parking for the Municipal Building so as to mitigate any burden on, and the unavailability of, parking spaces in the Marcotte Central School parking lots. Except for large events pursuant to Section 4(d), below, the City shall not use the Marcotte Central School parking lots for parking associated with the Municipal Building.

3. Municipal Building and Market Street Access Design. As the community partner with the School District, the City shall share information with the School District with respect to its design of the Municipal Building. Upon final voter approval for the borrowing for construction of the Municipal Building, referenced in Section 1(a), above, the City Manager and the School District Superintendent, or their respective designees, shall meet at least every thirty (30) days to work collaboratively on the design plans for the Municipal Building and Market Street Access, acknowledging the School District's concerns for safety and security of children attending Marcotte Central School and the School District's preferences that vehicular access from the property adjacent to and easterly of the Market Street Access to the Market Street Access: (a) be secondary to any access from such property to Market Street and/or the future Garden Street, and (b) be discouraged from using the access driveway from the Market Street Access to the Marcotte Central School parking lots. Upon completion of final design plans for improvements to be located on the Municipal Building Access Easement, the City shall obtain the School District's written consent, which consent shall not be unreasonably withheld conditioned or delayed. The City shall pay all costs, fees and expenses, including but not limited to permitting costs, fees and expenses, for the design, construction, operation, maintenance, repair and replacement of the Market Street Access and related infrastructure.

4. Marcotte School Parking Lot Improvements. To accommodate construction within the Municipal Building Access Easement, the easterly parking lot on the Marcotte School Parcel will need to be redesigned, relocated easterly and reconstructed by the City. The southerly portion of the westerly parking lot on the Marcotte School Parcel will also be redesigned and reconstructed. Said improvements shall be subject to the following terms and conditions:

- a. The City and School District shall share equally the costs and expenses associated with traffic circulation design for Marcotte Central School and parking lot design elements on the Marcotte School Parcel, and the final design plans of the traffic circulation and parking lot re-design shall be subject to the School District's advanced approval.
- b. The City shall pay all costs and expenses, including but not limited to permitting costs, fees and expenses, for relocation and reconstruction of the easterly parking lot on the Marcotte School Parcel, reconstruction of the southerly portion of the westerly parking lot on the Marcotte School Parcel and any infrastructure improvements associated therewith, including but not limited to stormwater treatment systems associated with the Municipal Building and related improvements on the Municipal Building Access Easement and Marcotte School Parcel.
- c. The School District shall pay all costs and expenses of relocating the existing athletic field on the Marcotte School Parcel to the east to accommodate the relocated easterly parking lot on the Marcotte School Parcel.
- d. In redesigning and reconstructing said parking lots, there shall be no net loss of parking spaces that exclusively serve the Marcotte Central School. This means that at least the same number of parking spaces that serve the Marcotte Central School as of the date hereof, being one hundred and thirty-one (131) parking spaces, must be reconstructed by the City and provided to the School District for the exclusive use of the Marcotte Central School upon completion of the reconstruction of both parking lots as described in this Section. For large events, both the City and School District agree to work together to assess the location of parking, to communicate the availability of and to indicate appropriate parking, recognizing the School District shall have right to consent or reject, in its sole discretion, the City's desire to use the Marcotte Central School parking lots.

5. Market Street Access and Easement and Right-of-Way for a Public Roadway Within the Municipal Building Access Easement. In conjunction with the City's construction of the new Municipal Building on the Municipal Building Parcel, the City shall construct and maintain the Market Street Access to provide a relocated access drive to the Marcotte School Parcel, including the Municipal Building Access Easement, from Market Street. The Market Street Access once constructed will become a public road right-of-way and shall be constructed in late-June, July or early-August and as soon as practicable after the City issues a Notice to Proceed to its chosen contractor for construction of the new Municipal Building so as to minimize disruption to the School District's operations on the Marcotte School Parcel. The School District shall convey an easement and right-of-way to the City for a public roadway and related utility purposes, over, upon and through a 0.1-acre, more or less, rectangular parcel of land at the easterly side of the Municipal

Building Access Easement, substantially in the same form as the section of the Easement Deed attached as “Exhibit B” hereto entitled “Easement #2 – Market Street Access Public Roadway Easement.” This section of the Easement Deed shall contain the reservation of a right of reversion to the School District (subject to advanced notice of breach and an opportunity to cure) if a Notice to Proceed for construction of the Municipal Building has not been issued by the City before July 1, 2023.

6. Garden Street Easement. The School District shall convey the Garden Street Easement to the City, which is an easement and right-of-way for a public roadway and related utility purposes over, upon and through a 0.1-acre, more or less, triangular parcel of land at the southeasterly corner of the Marcotte School Parcel substantially in the same form as “Exhibit C” hereto. This easement and right-of-way is intended to improve the turning radius for large vehicles using future Garden Street.

7. First Option to Lease with Option to Purchase. In exchange for the School District’s conveyance of the Municipal Building Access Easement and the Garden Street Easement to the City, the City shall provide the School District with the City Hall Lease Option substantially in the same form as “Exhibit D” hereto. The term for the School District’s exercise of the City Hall Lease Option shall extend one hundred and eighty (180) days after the City provides written notice to the School District that it has moved its administrative and City Clerk’s offices from the building at 575 Dorset Street to the new Municipal Building. The School District agrees to work cooperatively with the City to allow the City’s Recreation Department offices to remain in their current location in the City Hall building during the term of the School District’s lease, if requested by the City.

Provided the current City Hall building and associated parking lots to the east, south and west thereof will be used for School District purposes and uses authorized by the School District, the City’s lease to the School District shall be for a minimum initial term of three (3) years, which term may be renewed at the School District’s option for at least two consecutive three-year renewal terms for a rent of Ten Dollars (\$10.00) per year. Furthermore, the City Hall Lease Option shall also provide the School District an option to purchase the southerly portion of the property at 575 Dorset Street that is subject to the lease for Ten Dollars (\$10.00) upon the expiration of the initial three-year lease term and any renewal terms, provided it is used and maintained for School District purposes with a reversionary interest to the City (subject to advanced notice of breach and an opportunity to cure) if the School District ever desires to divest itself of its interest in the site.

8. Closing. Upon receipt of final voter approval of the articles described in Section 1 hereof, and within ninety (90) days of both the City acquiring the Municipal Building Parcel from South Burlington City Center, LLC, its successors

and assigns, and any necessary planning, zoning and Act 250 land use approvals for the new Municipal Building becoming final, the closing and transfer of title for the School District's conveyance of the Municipal Building Access Easement, including the public roadway easement and right-of-way within the Municipal Building Access Easement, and the Garden Street Easement to the City by Easement Deeds substantially in the same form as Exhibits B and C hereto, and the City's granting of the City Hall Lease Option to the School District by Option to Lease in substantially the same form as Exhibit E hereto, shall take place at a mutually agreed upon location. Upon the occurrence of the Closing, the Parties shall not materially change, revise or alter the terms and conditions of the Lease Agreement attached as "Exhibit C" to the City Hall Lease Option.

9. Community Outreach. Prior the November 6, 2018 vote on the items described in Section 1 hereof, the City and School District communications staff shall work cooperatively to make appropriate information available to the public regarding the exchange of rights and interests in land contemplated in this Agreement.

10. Efforts of Agent(s). The Parties agree that there are no real estate agents or brokers associated with this transaction.

11. Possession. Possession and occupancy of the Municipal Building Access Easement and the Garden Street Easement shall be given upon closing unless otherwise agreed in writing.

12. Examination of Title. Each party shall be responsible for any examination of title it chooses to make.

13. Cooperation Required. The Parties acknowledge that various documents and plans must be created, shared and/or executed to consummate this Agreement. As a result, the Parties shall cooperate to bring all pending matters between them regarding the exchange of rights and interests in land contemplated by this Agreement to a close. This cooperation may include, but is not limited to, preparing, supporting and executing transactional and conveyance documents and joint or coordinated applications to the District 4 Environmental Commission, the City's zoning authorities or any other regulatory agency, all consistent with the terms of this Agreement.

14. Dispute Resolution. In the event a dispute arises as a result of the implementation of this Agreement, resolution shall be addressed by the Parties in the following order:

a. Step 1 - Within 30 days from the date of the initial dispute, the City Manager of the City or its designee and the School District

Superintendent or its designee shall meet at least once to attempt to resolve the dispute.

b. Step 2 - If the dispute is unresolved after Step 1, within 30 days the City Manager of the City or its designee, City Council Chair or its designee, the School District Superintendent or its designee and the School District Board Chair or its designee shall have the option to meet at least once to attempt to resolve the dispute.

c. Step 3 - If the dispute remains unsolved after Step 2, within 30 days the City Council and the School Board shall have the option to meet at least once to attempt to resolve the dispute.

d. Step 4 - If the dispute cannot be settled through direct discussions between the above parties and before commencement of any suit or action in a court of competent jurisdiction, the Parties shall endeavor to settle the dispute by mediation before a mutually agreed-upon mediator within ninety (90) days of the date of a writing from either party indicating that discussions between those identified in Step 3, above, have failed or not occurred. If a suit or action is commenced, the Parties agree that specific performance may be sought as a remedy in addition to any other remedy at law or equity.

Through mutual agreement, the Parties may skip Steps 1 through 3 at any phase of the Dispute Resolution process, but Step 4 is mandatory prior to commencement of any suit or action in a court of competent jurisdiction.

15. Assignment. Neither the City nor the School District may assign its rights under this Agreement.

16. Risk of Loss/Insurance. During the period between the date of this Agreement and any transfer of title, risk of loss for each party shall be with the party then owning record title to the property.

17. Modification and Amendment. No modification, amendment or deletion affecting this Agreement shall be effective unless in writing and signed by the Parties.

18. Governing Law; Venue. This Agreement is governed by and construed in accordance with the laws of the State of Vermont without giving effect to such jurisdictions conflict of laws, and any action with respect to this Agreement shall be commenced in the Chittenden Unit, Civil Division of Vermont Superior Court.

19. Notice. Any notices required under this Agreement shall be provided in writing, via first class mail, delivery in hand or by email to:

To the City:

Kevin Dorn  
City Manager  
City of South Burlington  
575 Dorset Street  
South Burlington, VT 05403  
[kdorn@sburl.com](mailto:kdorn@sburl.com)

To the School District:

David Young  
Superintendent  
South Burlington School District  
500 Dorset Street  
South Burlington, VT 05403  
[dyoung@sbschools.net](mailto:dyoung@sbschools.net)

With copies to:

Andrew Bolduc, Esq.  
City Attorney  
City of South Burlington  
575 Dorset Street  
South Burlington, VT 05403  
[abolduc@sburl.com](mailto:abolduc@sburl.com)

David W. Rugh, Esq.  
Stitzel, Page & Fletcher, P.C.  
P.O. Box 1507  
171 Battery Street  
Burlington, VT 05402  
[drugh@firmspf.com](mailto:drugh@firmspf.com)

Notices will be effective only when received at the above addresses at a time when that party's office is open for business.

20. Time is of the Essence. The Parties acknowledge that time is of the essence with respect to all obligations and undertakings of the Parties under this Agreement. Accordingly, the Parties agree that in any instance where their respective cooperation, action and/or approval is required pursuant to this Agreement, such cooperation, action and/or approval will not be unreasonably withheld or delayed.

21. Effect on Execution by All Parties. This contract is for the benefit of and is binding upon the Parties, their successors and assigns. This contract contains the entire agreement by and between the Parties and supersedes any and all prior agreements, written or oral.

22. Attorneys' Fees. The Parties understand and agree that each party shall bear its own attorneys' fees, costs and expenses related to, incurred in connection with, or arising from a dispute among the Parties regarding this Agreement, any mediation pursuant to this Agreement or the enforcement or interpretation of rights under this Agreement.

23. Sufficiency of Consideration. Each of the Parties acknowledge they have received good and satisfactory consideration for the agreements contained herein,

and the Parties agree that the consideration recited in this Agreement shall be a complete bar to any subsequent action or proceeding to set aside or vacate this Agreement because of mistake of fact or otherwise.

24. No Waiver. No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the Parties hereto may have, nor shall any such delay be construed to be a waiver of any of such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any party hereunder be deemed a waiver of any default or breach subsequently occurring.

25. Enforceability. If any provision of this Agreement shall be determined to be invalid or unenforceable, it shall be interpreted to the maximum extent feasible so as to avoid such invalidity or unenforceability. If such interpretation is not possible, if the provision is a material provision of this Agreement and if the closing described in Section 8 hereof has not occurred, then the Parties agree to enter the dispute resolution process described in Section 14 hereof to attempt to resolve any differences regarding any invalid or unenforceable provision.

26. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

27. Captions; Headings. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of such sections, nor in any way affect this Agreement or have any substantive effect.

28. Joint Drafting. The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

29. Waiver of Jury Trial. TO THE EXTENT ALLOWED BY LAW, THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO INTERPRET OR ENFORCE THIS AGREEMENT. This waiver shall not apply to any future litigation between the Parties relating to any other matter.

DATED this 5 day of Sept., 2018.

CITY OF SOUTH BURLINGTON

By: Helen Riehle  
Helen Riehle, Council Chair and  
Duly Authorized Agent

DATED this 5<sup>th</sup> day of September, 2018.

SOUTH BURLINGTON SCHOOL  
DISTRICT

By: Elizabeth Fitzgerald  
Elizabeth Fitzgerald, Board Chair and  
Duly Authorized Agent