

To: City Council

From: Samantha Dunn, Asst. Director of Community Works, CEDO
Meagan Tuttle, Director, Office of City Planning
Charles Dillard, Principal Planner, Office of City Planning

Cc: Brian Pine, Director, Community & Economic Development Office
Chapin Spencer, Director, Department of Public Works

Date: February 21, 2024

Subject: South End Coordinated Redevelopment Draft pre-Development Agreement

At the February 26 Council Meeting, staff will provide an update on coordinated planning studies that have advanced under a January 2023 Memorandum of Understanding (MOU) for an approximately 13-acre area within the newly-designated South End Innovation District, and answer questions about a proposed draft pre-Development Agreement to further this work. No action is requested on this item at the upcoming meeting; we anticipate requesting Council action to approve a resolution authorizing the Administration execute this pre-Development agreement at the March 11 meeting.

Background

In December 2021, the Administration put forth an Action Plan to fulfill the promise of Housing as a Human Right in Burlington which included a commitment to open new housing opportunities in the South End. In July 24 2023, City Council unanimously approved the South End Innovation District (SEID) zoning amendment, which was developed with the intent to promote a vibrant urban district with a mix of uses, including hundreds of new homes and neighbors coexisting with new spaces for arts, light manufacturing and other commercial uses. The SEID covers 14 vacant or underutilized parcels on the west side of Pine Street between Howard Street and Sears Lane, including the City-owned 68 Sears Lane parcel.

In anticipation of this Zoning Amendment, on January 31, 2023 the Administration entered into a Memorandum of Understanding (MOU) with the owners of land parcels neighboring City-owned property in the South End: Champlain College, owners of 175 Lakeside Avenue, and Ride Your Bike, LLC, owners of 125 Lakeside Avenue – which is being developed by the same developers as the nearby Hula Lakeside. The purpose of the MOU was to facilitate a conceptual design and framework for the coordinated redevelopment of the parcels resulting in a vibrant, sustainable, and accessible mixed-use neighborhood and the three parties have been working together over the past year with funding from the Chittenden County Regional Planning Commission.

During that time the newly formed South End Innovation District Zoning Amendment was designated a *Neighborhood Development Area* and the City was successful in securing a grant from the Agency of Commerce and Community Development for public realm design for this site. The City has held two public engagement events to share progress and gather feedback from the community and currently has an on-line survey available to continue

gathering input. The MOU, survey and more background about this work can be found at <https://www.burlingtonvt.gov/CEDO/Capital-Projects-Financing/SouthEnd>.

January 2023 MOU Outcomes

Based on the MOU work completed to date, the Parties have agreed upon the following four foundations: a mobility framework of streets and paths that foregrounds pedestrian mobility and accessibility; a conceptual program used for infrastructure analyses that includes approximately 1,100 units of housing and 230,000 square feet of non-residential space; a maximum projected wastewater intensity in gallons per day and a clearer understanding of infrastructure capacity challenges in this area which require further study; and a maximum projected number of peak hour car trips, parking demand, and distribution of cars to and from the sites. More detail on these will be provided in the presentation, and are detailed in exhibits attached to the draft pre-Development Agreement.

In addition to these four foundational outcomes, the work identified the need for future study of the development and financial performance and feasibility of the framework and conceptual program, a sustainability audit and the potential for land swaps and collaborative permitting.

Draft Pre-Development Agreement

The proposed Pre-Development Agreement with Ride Your Bike, LLC and Champlain College will further this collaborative planning work. It identifies an agreed upon set of foundational objectives and design goals to which we are making commitments for ongoing study and potential future collaboration. The agreement assumes we will work together over the next nine months to develop a site-wide housing plan (with a minimum of 20% affordable housing); a public realm conceptual design; and a joint PUD application. During this time, we will also continue to study the infrastructure challenges and opportunities on the site and immediate vicinity, as well as potential funding mechanisms.

Based on the outcome of this work we anticipate entering into a Development Agreement in early 2025, an intended joint Planned Unit Development (PUD) application, and potential joint funding applications to support site development.

We look forward to discussing this further over the upcoming Council meetings. Please feel free to reach out to the Planning or CEDO teams with any questions about the draft pre-Development Agreement.

Attachments

DRAFT South End Coordinated Redevelopment Pre-Development Agreement

Pre-Development Agreement

This Pre-Development Agreement (“Agreement”) is entered into as of March ____, 2024 by and between the **City of Burlington**, a Vermont municipal corporation (the “City”) **Ride Your Bike LLC**, a Vermont limited liability company (“RYB”) and **Champlain College Incorporated**, a Vermont nonprofit corporation (the “College”). Each is referred to individually as a “Party” and collectively as the “Parties.”

Background

A. The Parties own contiguous parcels of real property (each, a “Parcel”) in the City of Burlington which collectively measure ±13.28 acres (collectively, the “Site”, as depicted on the plan attached hereto as **Exhibit A** and made a part hereof) identified as follows:

- The College owns the ±3.65-acre parcel numbered 175 Lakeside Avenue, Burlington, Vermont, Parcel No. 053-2-007-000.
- RYB owns the ±6.32-acre parcel numbered 125 Lakeside Avenue, Burlington, Vermont, Parcel No. 053-2-009-000.
- Through its affiliate Burlington Community Development Corporation, a Vermont nonprofit corporation (“BCDC”) the City owns the ±3.33-acre parcel numbered 68 Sears Lane, Burlington, Vermont, Parcel No. 057-1-050-000.

B. The Parties desire to redevelop the Site in a coordinated fashion with a mixed-use development project (the “South End Coordinated Redevelopment Project” or “Project”), as contemplated by a Memorandum of Understanding made among the Parties effective as of January 21, 2023 (the “MOU”, a copy of which is attached hereto as **Exhibit B** and made a part hereof) in which the Parties agreed to create a conceptual design and development framework for the coordinated, phased redevelopment of their respective Parcels within the Site, and agreed to a process for iterative design and analysis in the creation of a selected development framework, the primary components of which will include: a transportation network, including streets, paths and integration with existing infrastructure; and identification of water and wastewater infrastructure requirements for the development; an affordable housing allocation program; and identification of funding strategies. Within the MOU, the parties further agreed to undertake and perform certain investigations and analyses more particularly described therein and to enter into a development agreement upon the conclusion of their initial investigations and analyses.

C. The Parties desire to enter into and memorialize certain agreements and commitments to reasonably facilitate the South End Coordinated Redevelopment Project substantially in accordance with the terms, conditions, design framework, principles and schedule referenced below.

Now therefore, in consideration of the covenants, considerations and mutual benefits set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Foundational Elements and Objectives. As the result of the investigations conducted pursuant to the MOU, the Parties agree that the Project will include the following foundational elements and objectives:

- (a) The Project represents a unique opportunity and corresponding challenge to develop an entire district as a sustainable, walkable and mixed-income neighborhood, and as such, may require additional process collaboration between the Parties, the Burlington City Council, the Burlington Development Review Board (DRB) and the Burlington Planning Commission in order to achieve these shared goals and aspirations.
- (b) The Project will include a mobility framework of streets, paths, parking and other mobility infrastructure and services that support the shared and respective goals of the Parties in the manner encompassed by the Mobility Framework Diagrams attached hereto as **Exhibit C** and made a part hereof (the “Mobility Framework”). Although the Parties intend for the Mobility Framework to form the network of streets and paths within the Site, because the Project will be constructed in phases it may be necessary for the Parties to modify the Mobility Framework by future mutual agreement to accommodate the construction schedule.
- (c) The Project goal is to maximize the number of new residents who can be accommodated in a variety of housing types, including, but not limited to, rental housing, home-ownership, and “beds” associated with any student housing component on the Site, incorporating a program of compatible, non-residential uses in order to establish a mixed-use active neighborhood, including but not limited to: daycare, educational and training spaces; retail, restaurants and services; maker, collaborative suites, healthcare, general business and start-up spaces; civic, artistic and cultural venues; and other activities that enhance a low impact, walkable district.
- (d) In addition to basing the Project’s conceptual design on future market and affordable housing demand and financing, development phasing and design analyses, the Project’s ongoing conceptual design will be informed by the overall water, wastewater, stormwater, traffic and parking projections – which in turn will enable the Parties to better understand the magnitude of infrastructure constraints and develop strategies to address such constraints on the Site. Initial traffic analyses and trip-ends and wastewater projections have been developed and are attached hereto as Exhibit D and Exhibit E. These exhibits may be updated over time by mutual agreement of the Parties as additional analyses, reports, review procedures, monitoring programs and/or proposed tenant mix and technical solutions demonstrate a per unit reduction in trip-ends or wastewater flows. Until updated modeling of the Pine Street wastewater collection system provides new capacity information, any initial phases of development within the Site may need to be designed with 24 hours of on-site retention of Site wastewater flows for that initial development. The Parties will continue to work together to develop phased development proposals that work within existing infrastructure capacities or include investments that will expand capacity in particular assets where needed.
- (e) The Parties intend for the Project to be developed as a planned unit development (a

“PUD”) under the City’s Comprehensive Development Ordinance (“CDO”) and they intend to become (and, in the case of the City, to cause BCDC to become) joint co-applicants for a zoning permit for a Master PUD Framework. Subsequent modifications or site plans may be proposed jointly by the Parties or by individual owners, subject to the Master PUD Framework conditions and procedures.

2. Project Design Goals. The Parties share the vision of coordinating the development of a vibrant, sustainable and accessible mixed-use district, as expressed in the planning context described in the MOU. This vision includes the following components:

- (a) As one of the largest single development sites remaining in Burlington, the Site is of critical importance in the achievement of the community’s goal of expanding the housing supply.
- (b) The Site should include a range of housing tenure types (i.e., rental properties, owned properties, student housing, senior, workforce, etc.), including but not limited to affordable ownership and rental opportunities.
- (c) The Parties acknowledge that a diversity of residents is integral to the community’s vision of inclusive growth. Therefore, the Parties are committed to delivering a Project with a minimum of 20% of housing units meeting the State’s definition of “affordable housing” codified in 10 V.S.A. § 6001(29).
- (d) As the core development site within the South End Innovation District, the Parties will pursue a development program for the Project that is housing forward, and also integrates into the current fabric of the existing district by prioritizing non- residential space to expand the South End’s arts and innovation economy.
- (e) The Site’s development as a walkable, bikeable and active-mobility-focused urban district is a generational opportunity to support the Burlington community’s vision of a car-light future. The majority of street space will be allocated to pedestrians and cyclists and the site will strive to incorporate one or more structured parking “mobility hubs” and implement the model of shared parking established in *planBTV: South End*.
- (f) Sustainable building and site design practices are to be explored in good faith, with a particular focus on supporting the City’s Net Zero Energy Roadmap, reducing embodied carbon and employing ecological design practices that support clean water and healthy local ecosystems.
- (g) The Site will not place an undue burden on water resources infrastructure. The Parties will work with the City’s Water Resources team to develop necessary infrastructure improvements to accommodate the Project. The Parties acknowledge that the water, wastewater and stormwater infrastructure intended to be adopted as part of the public right of way acceptance must be built in accordance with the City’s Engineering Standards.

3. Continuation of MOU Planning Study Work. The Parties desire to build on the investigations

and analyses conducted pursuant to the MOU and they agree to ongoing Planning Study work under the MOU, subject to funding and joint agreement, while making progress on the formal Development Agreement and preliminary project review of a Master PUD Framework “Sketch Plan”. Accordingly, the Parties desire to accomplish the following additional work by September 30, 2024 in order to advance a Development Agreement and prepare a Master PUD Framework application:

- (a) Identify preliminary estimates for residential and non-residential program, including a range for the residential unit counts and non-residential gross floor area that will be refined for the final Development Agreement, based on the economic feasibility of paying for the cost of constructing necessary infrastructure and the desired infrastructure, housing affordability, sustainability and urban design goals.
- (b) Work collaboratively to identify planning and construction funding sources in addition to the State of Vermont Community Partnership for Neighborhood Development in the amount of \$133,000 that the City has been awarded to advance the conceptual design of 68 Sears Lane, and in cooperation with all Parties, evaluate the shared public realm elements across the Site, pedestrian/bike connections within and adjacent to the District, and pedestrian/bike/auto access options to potential mobility hub locations.
- (c) Continue to evaluate the wastewater infrastructure analysis and develop design, engineering, and funding options for addressing challenges identified in the Pine Street Collection System.
- (d) Identify a preliminary master budget within the overall trip-end and wastewater projections that have been developed for the Project based on the development program describe in Section 3(a), as also described in Section 1(d) of this Agreement. Investigate the feasibility of, and an allocation of responsibilities related to the construction of, an incremental mitigation program, including temporary systems for the initial development phase of the Project to provide onsite wastewater retention for wet weather conditions. The Parties commit to refine the wastewater and trip-end projections (Section 4(c)) and to develop an allocation protocol throughout the Project phases as more current and relevant data becomes available.
- (e) Continue to explore Net Zero Energy Roadmap requirements and to work in good faith to develop the Project as a Net Zero development across the Site, in furtherance of the Parties’ mutually agreed-upon development framework that incorporates approximately 1,000-1,100 homes (in accordance with the 2021 Action Plan to Fulfill the Promise of Housing as a Human Right in Burlington) in addition to the Parties’ additional respective development goals for their Parcels.
- (f) Evaluate the financial feasibility, infrastructural adequacy and urban design character of the working preliminary development framework, as well as the framework’s contribution to a high quality, accessible and livable urban district.
- (g) Demonstrate the ecological sustainability of potential development concepts, including an analysis of embodied carbon within all framework and parking scenarios.

- (h) Continue to work with the Vermont Agency of Transportation to explore the cost to extinguish the deed restrictions applicable to the use of 68 Sears Lane, which state that such property is “to be used for highway purposes only” and which state that “the City of Burlington shall not permit any alterations of access control, any encroachments on, or disposal of [such property] ... without written permission of the State of Vermont” and/or whether monies used to extinguish the deed restrictions can be used to design and construct Project transportation infrastructure.
- (i) Identify alternative design, location, phasing and funding strategies for satisfying applicable Inclusionary Zoning (i.e., affordable housing) requirements in a manner that will enable individual Parcels to be developed on a phased basis while balancing the costs of constructing road, wastewater, open space, pedestrian/bike connections and other infrastructure improvements.
- (j) Identify and agree upon individual and shared roles and responsibilities to undertake the analyses in order to accomplish the foregoing and to accomplish any other objectives established in this Agreement, including by agreeing to an estimated budget, a development schedule, and a process for selecting, engaging and paying Project consultants.

4. Mobility Framework. The Parties agree to further refine the Mobility Framework by June 1, 2024 in advance of preparing a PUD application and entering into a Development Agreement as follows:

- (a) The Parties acknowledge that the vision of a shared parking district as established in *planBTV: South End* and the South End Innovation District zoning standards is a universal best practice. As such, the Parties shall agree upon the location, identified in the Mobility Framework, of up to two shared mobility hubs, which shall include services and amenities that encourage sustainable, non-car modes of transportation along with structured parking. The Parties agree that the need for and capacity within the mobility hubs for car parking should be continuously monitored based on development phasing, evolving market demand and the Parties’ shared goals, along with the availability of local, regional, state and/or federal grants.
- (b) The Parties acknowledge that the adopted design of the Champlain Parkway as a limited-access road is not conducive to their vision of the Project as a highly integrated, walkable and sustainable coordinated development. Therefore, the Parties agree to engage with State and Federal agencies to seek permission for desired interventions to the Champlain Parkway to ensure safe, accessible and inviting access across this roadway in lieu of bridges and enclosed paths. City staff will take the lead in this effort, with support from the other Parties.
- (c) The Parties acknowledge that the Mobility Framework and initial traffic modeling were developed using anticipated Champlain Parkway traffic data, and they agree to update the model data with actual data upon completion of the Champlain Parkway, or portions thereof. The Parties acknowledge that the initial traffic modeling does not obviate the requirement to complete a traffic impact study as part of the Master PUD Framework,

which will establish the parameters for the purpose of obtaining future land use permits and other regulatory permits and approvals for the Project.

- (d) The Parties agree that the vision of a sustainable, highly accessible and actively mobile urban district will be created through a combination of infrastructure and transportation demand management (“TDM”) programs and services. Therefore, the Parties agree that future development proposals will include a TDM program that will, at minimum, comply with the CDO and conform to achieve a robust TDM plan that addresses the proposed building types/mix of residential and non-residential tenants.
- (e) The Parties acknowledge the shared goal of a visionary urban design. As such, the Parties agree to continue collaborating on the design of public rights-of-way, including regular coordination with the Department of Public Works and the City Engineer. Such design shall be funded through the Vermont ACCD Community Partnerships in Neighborhood Design grant, with support from other Parties if possible.
- (f) The Parties intend for all streets and paths in the Project to be located within public rights of way and constructed to the City’s Engineering Standards, as they may be updated to support the overall goals of the Project. The Parties acknowledge that rights-of-way are only made public through the City Engineer’s acceptance and City Council’s adoption of streets as public rights-of-way in compliance with applicable law.
- (g) The Parties agree that the Site’s fullest potential and the community’s goal of a more accessible South End can only be realized through the extension of proposed internal streets beyond the Site. The Parties acknowledge that such extensions are most appropriately made through adjacent properties, the owners of which are not parties to this Agreement. Therefore, the Parties agree to continue exploring the incorporation of such adjacent properties (east of the Champlain Parkway) in the Project. The Parties agree that collaboration is essential to this effort and that they will make good faith efforts to communicate the status of any such discussions to one another in a timely manner.
- (h) The Parties agree that potential modifications to internal and adjacent rights-of-way which may impact the Project and the Site should be considered, including but not limited to the following:
 - (i) The Parties acknowledge a twenty-foot (20’) buffer alongside the western boundary of the Site to allow for flexibility for future needs (e.g., transit access). Within this buffer the Parties agree that no major structures shall be proposed or constructed, and that only sidewalks, paths, parking and landscape elements are appropriate within such buffer.
 - (ii) The Parties acknowledge a shared goal that modifications to right-of-way (ROW) designs, typical street sections, and landscaping and sidewalk dimensions for Sears Lane, Pine Street, Lakeside Avenue and the Champlain Parkway should be pursued. The Parties agree to collaborate and communicate openly regarding

such modifications, including on any real estate acquisitions that would facilitate such modifications. The City agrees to make a good faith effort to facilitate such modifications to the extent practicable and appropriate.

- (iii) The Parties will collaborate to explore the identification and incorporation of one or more parking mobility hub(s), and to explore new public street ROW's over time, in order to facilitate the goals of the SEID to increase pedestrian and bike connectivity and the smooth flow of traffic in and around the SEID area, including Pine Street, Lakeside Avenue and Sears Lane. The Parties agree that a Mobility Framework shall be incorporated into the Master PUD Sketch Plan and be used as a template in subsequent PUD applications, and not be subject to material changes beyond those outlined in that PUD Sketch Plan unless new traffic projections indicate that material changes are warranted.

5. Housing. The Parties agree to further refine the agreed-upon development framework with regard to housing in advance of entering into a development agreement and preparing a PUD application, as follows:

- (a) The Parties agree that a socioeconomically diverse population is a shared and fundamental goal of the Project. In addition to meeting the Inclusionary Housing requirements applicable to the SEID zoning overlay district under the CDO, the Parties agree to pursue development of the Project as a Priority Housing Project (PHP) that as defined in 10 V.S.A. § 6001(35). The PHP shall provide a minimum of 20% affordable housing units (as defined in 10 V.S.A. § 6001(29)) inclusive of the 15% Inclusionary Units required by Article 9 of the CDO. Assuming a Project housing program of between 1,000-1100 dwelling units (as currently estimated), developing the Project as a PHP would result in the creation of approximately 200 -220 affordable housing units across the three Parcels.
- (b) Given the Project's goals to develop a range of housing affordability, including but not limited to more deeply discounted rental units, affordable home ownership opportunities, targeted workforce housing, and market rate units, the Parties will work in consultation with internal and external stakeholders, including third-parties who are experts in the provision of affordable housing, in the process of developing and/or delivering a housing agreement applicable to the Project.
- (c) Parcel Modifications; Inclusionary Housing. The Parties will explore opportunities to exchange real property and/or engage in the collaborative distribution of the development program across the Parcels in the interest of maximizing cost-efficient housing and non-residential construction, provided such construction meets the urban design, programmatic, sustainability and equity goals of each Party as outlined in the MOU, this Agreement and any future Development Agreement. Such collaboration will consider the Parties' shared goal of developing a Priority Housing Project and will explore mutually beneficial siting and allocation of Inclusionary Housing (as defined in the CDO), permanently affordable home ownership opportunities and other purpose-built housing for traditionally underserved and/or market-burdened communities.

6. Funding Sources. The Parties agree to identify and seek funding sources to pay for the design and construction of the Project and, in some instances, to pay for the maintenance and operation of Project elements post-construction, as follows:

- (a) The Parties agree to collaborate to identify and complete State and Federal grant applications for the provision of funds to support the design and construction of the Mobility Framework.
- (b) The Parties agree to explore whether the Vermont legislature will support establishing a municipal Tax Increment Financing District to help finance the construction of the Mobility Framework and other Project infrastructure.
- (c) The Parties agree to advocate as feasible for the State's Sales Tax Reallocation benefit to be extended to Neighborhood Development Areas to be reinvested in the Site as a means of financing the construction of the Mobility Framework and other Project infrastructure.
- (d) If the Parties desire for any streetscape public infrastructure within the Project to be designed and/or constructed in a manner that is substantively and materially different from the City's Engineering Standards, as interpreted by the City Engineer, the Parties may provide a traffic and engineering report to identify additional engineering standards that might be applied to streets located within the Project, which is being designed as a walkable district containing lower traffic volumes. Obtaining the City's consent to proposed deviations from the City's Engineering Standards shall be forwarded with recommendations by the City Engineer to the City Council which, the Parties acknowledge, may condition approval on a future agreement to establish a maintenance regime for such infrastructure, including funding sources and the establishment of maintenance responsibilities.
- (e) The Parties agree to continue collaborating to identify and obtain funding sources to support the design, construction and management of affordable housing.
- (f) The Parties agree to communicate openly, as feasible, regarding the going-forward budget, allocation of expenses and pursuit of additional third-party funding to support further study in support of this Agreement and any future Development Agreement.
- (g) Notwithstanding anything in this Agreement to the contrary, the parties agree that no party is obligated to pay any costs, make any financial commitment, or be bound by any land use restrictions or other conditions or restrictions pursuant to this Agreement unless such party enters into a separate written agreement concerning such costs, commitments, conditions or restrictions. For clarity, the parties acknowledge that this Agreement is part of a negotiation being pursued in good faith following the related MOU between the Parties, and no terms concerning the payment of costs, the making of financial commitments, or the imposition or acceptance of any land use restrictions or other conditions or restrictions should be considered binding unless or until final agreement(s) are reached with regard thereto.

7. Collaboration and Coordination; PUD Considerations.

- (a) The Parties agree to collaborate and communicate openly in any study funded by the Community Partnership for Neighborhood Development (CPND). The Parties will work together to identify the most efficient approach to complete the scope of work anticipated in the CPND grant application. The City will administer all component of the CPND grant and the College and RYB agree to consider how they can support this work substantively or materially as needed.
- (b) Recognizing that significant public resources have been and will be allocated to the Project's successful implementation, the Parties agree that they will each support and participate in public engagement related to the Project. Public engagement shall consist of a minimum of one public open house, together with the provision of online engagement opportunities.
- (c) The Parties agree to cooperate and communicate with each other on a regular basis, including by arranging joint meetings with appropriate personnel present to address issues set forth in this Agreement, to discuss any proposed changes to the Project and to discuss the ongoing work described in this Agreement so as to permit the orderly and efficient development of the Project. The Parties agree to execute, acknowledge, if necessary, and deliver such documents, certificates or other instruments and take such other actions as may be reasonably required from time to time to carry out the intents and purposes of this Agreement. Without limiting the foregoing, (i) the City agrees to share, as appropriate, any information regarding State, Federal, and/or other governmental agency decisions that materially impact RYB and/or the College, (ii) RYB and the College agree to brief the City and one another regarding the status of any negotiation to acquire or secure agreements for adjacent properties, as allowed within the limits of confidential discussions between private landowners. The terms of such communication and decision-making shall be further elaborated and codified in a future development agreement.
- (d) As stated above, the Parties agree that a Master PUD Framework identifying elements such as, but not limited to, a connected road network, the configuration of development lots and blocks, density maximums, building heights and a mix of land uses for all of the Parcels, is the preferred instrument for permitting the overall/major components of the Project's phased development. Any such PUD shall include a phasing strategy, the content of which will be defined in a future development agreement. The Parties agree to collaborate with the City of Burlington Department of Permitting and Inspections in the creation of a Master the PUD Framework in order to facilitate an efficient regulatory review process for iterative design, development phasing and permitting. The City acknowledges that current standards regarding PUD applications and modifications are sufficient and supportive of the Parties' preferred development application process. However, the Parties agree that they will continue to evaluate whether any modifications to Article 11 of the CDO, or any other Articles therein, will be necessary to effectively facilitate a multi-partner, multi-phased PUD process and subsequent permit revisions.

8. Schedule; Termination. The Parties desire to determine, by December 20, 2024, whether the

Project is viable as a coordinated, mixed-use development project, developed as a multi-phase PUD. To determine viability, the Parties agree to work together in good faith to implement the terms of this Agreement and to enter into subsequent agreements as reasonably necessary to achieve mutually desired outcomes. If the Parties determine that the Project is viable as coordinated, mixed-use development project, developed as a multi-phase PUD, they anticipate completing and submitting a PUD Sketch Plan application review by June 30, 2024 and entering into a formal Development Agreement by December 16, 2024. However, if, despite the Parties' good faith efforts upon completion of the investigations, analyses and other tasks outlined in this Agreement, any Party determines that the Project is not viable to them, or it cannot provide the resources, time or continued strategic direction to undertake additional joint efforts, then it shall not be obligated to continue to pursue the Project and it may freely develop its Parcel in any manner permitted by applicable laws, ordinances and regulations.

9. Confidentiality. RYB and the College recognize that this Agreement is a public record and that communications and correspondence between the parties are subject to Vermont's public meeting laws and public records laws. The City agrees, however, that to the extent the City requires RYB or the College to disclose to or provide the City with material nonpublic, confidential information or material in connection with the Project, the City will work in good faith with RYB and/or the College to maintain the confidentiality of such information or material in a manner that complies with applicable law.

10. No Assignment. This Agreement shall not be assigned by RYB or by the College without the prior written consent of the City.

11. Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont, without regard to its conflicts of law rules. The Parties consent to and submit to in personam jurisdiction and venue in the State of Vermont, County of Chittenden, and in the federal district courts which are located in the City of Burlington. The Parties assert that they have purposefully availed themselves of the benefits of the laws of the State of Vermont and waive any objection to in personam jurisdiction on the grounds of minimum contacts, waive any objection to venue, and waive any plea of forum non conveniens. This consent to and submission to jurisdiction is with regard to any action related to this Agreement, regardless of whether the Parties' actions took place in the State or elsewhere in the United States.

12. Severability. If any term, covenant or condition contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice any Party in their respective rights and obligations contained in the valid terms, covenants or conditions hereof, and the Parties shall cooperate to modify the Agreement to cause it to conform to the original language of the Agreement to the extent consistent with the finding of the court.

13. Construction; Headings. The Parties waive the benefit of any rule that this Agreement is to be construed against one Party or the other. The headings in this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning hereof.

14. Integration; Modification. This Agreement, together with the exhibits referenced herein and/or attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreements or representations, oral or written, on the same subject. The Agreement can be modified only by written agreement executed by authorized representatives of each

Party.

15. No Partnership. The Parties do not intend by this Agreement to create, nor shall this Agreement be deemed to create, a partnership or a joint venture among the Parties; each Party is an independent actor and entity, and nothing in this Agreement shall be deemed to make either Party an agent or partner of the other, or to give either Party the right to bind the other in any way, notwithstanding any reference to the Project as a “public-private partnership.”

16. Waiver. The failure of either Party to insist on strict performance of any of the provisions of this Agreement or to exercise any right it grants will not be construed as a relinquishment of any right or a waiver of any provision of this Agreement. No waiver of any provision or right shall be valid unless it is in writing and signed by a duly authorized representative of the Party granting the waiver.

17. Incorporation by Reference. The content of the Background section to this Agreement, including without limitation the definitions set forth therein, and all exhibits hereto and the terms contained therein and the contents thereof, are incorporated into this Agreement by reference.

18. Authority. Each of the Parties warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and to thereby bind the Party on whose behalf such person, and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

19. Notices. Any notices to be given pursuant to this Agreement shall be sufficient if given by a writing: deposited in the United States mails, certified mail or registered mail, return receipt requested, postage prepaid; by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender; or by email (provided that the electronic process used is reasonably secure and not easily susceptible to manipulation) addressed as follows:

If to the City: City of Burlington
 149 Church St.
 Burlington, VT 05401
 Attention: Mayor
 Attention: CEDO Director

If to RYB: Ride Your Bike LLC
 Attention: Todd Sarandos
 50 Lakeside Avenue
 Burlington, VT, 05401

If to the College: Champlain College Incorporated
 Attention: April O'Dell
 163 South Willard St.
 Burlington, VT 05401

or to such other person, address or number as the Party entitled to such notice or communication shall

have specified by notice to the other Party given in accordance with the provisions of this Section. Any such notice or other communication shall be deemed given: (i) if mailed, three days after being deposited in the mail, properly addressed and with postage prepaid; (ii) if sent by courier, the next day after being deposited with the courier, properly addressed and with prepaid; (iii) if sent by email, when transmitted as long as the sender does not receive a delivery failure notification or “out of office” notification.

Signature Page to Follow

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In Witness Whereof, this Agreement is executed by the duly authorized officers or representatives of the Parties as of the date first set forth above.

City of Burlington

Ride Your Bike LLC

By: _____
Name: Miro Weinberger
Title: Mayor

By: _____
Name: Todd Sarandos
Title: Manager

Champlain College Incorporated

By: _____
Name: April O'Dell
Title: Vice President of Finance & Treasurer

DRAFT

**Exhibit A
Orthophoto of Site, Outlining Parcels**

**Exhibit B
Memorandum of Understanding effective as of January 21, 2023**

**Exhibit C
Preliminary Mobility Framework Diagrams**

**Exhibit D
Preliminary Project Trip-End Projections**

**Exhibit E
Preliminary Project Wastewater Budget Projections**

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