



MEMORANDUM

To: City Council Transportation, Energy & Utilities Committee

From: Rob Green; Assistant Director DPW Right of Way

Date: August 1, 2018

Re: Chittenden Solid Waste District (CSWD) Flynn Ave property

Background

In September 2016, the City of Burlington and CSWD entered into a Memorandum of Understanding (MOU) regarding property owned by CSWD at 195 and 201 Flynn Avenue. The MOU has now entered its last year, and DPW believes we need to extend this MOU because more time is needed to see what traffic impact the new City Market and the Southern Connector construction will bring to the South End of Burlington before we agree to a new DOC on Flynn Avenue.

City Councilors Mason and Shannon are in support of negotiating with CSWD to extend the MOU. It would add two additional installments of \$16,666 per year.

Request

With the support of the TEUC, DPW will negotiate an extension the Memorandum of Understanding between the City of Burlington and the Chittenden Solid Waste District and bring forward for City Council approval.

**MEMORANDUM OF UNDERSTANDING
BETWEEN CHITTENDEN SOLID WASTE DISTRICT
AND THE CITY OF BURLINGTON**

This Memorandum of Understanding (“MOU”) is made effective as of the ____ day of _____, 2016, between the Chittenden Solid Waste District (“District”) and the City of Burlington (“Burlington”) (the District and Burlington are also referred to as the “Parties,” and each, a “Party”).

PRELIMINARY STATEMENT

WHEREAS the District owns properties in the City of Burlington located at 195 Flynn, being a parcel with 0.91 acres and a three unit, 7200 SF commercial building, and at 201 Flynn Avenue, being a parcel with 2.87 undeveloped acres (collectively referred to as the “Premises”);

WHEREAS the District purchased the Premises in December 2001 for the purpose of having a property on which a Drop-Off Center (DOC) could be constructed and operated for the collection of recyclable materials, special waste, universal waste, and refuse in Burlington in order to serve the residents and business in Burlington and other District member communities;

WHEREAS, it has been the District’s policy as adopted by the District’s Board of Commissioners, to locate and operate DOCs in member communities at suitable sites that are provided by the host member community, which sites are leased to the District for the use as a DOC for an annual rent of \$1 per year;

WHEREAS, under such arrangement, the District operates DOCs in Essex, South Burlington, Richmond, Milton and Hinesburg;

WHEREAS, the District has recommitted to three of these host member communities to provide DOC services for an additional 20 year term, and the District anticipates that the remaining host member communities will also want to recommit to an additional 20 year term when its current contract term expires;

WHEREAS, the District currently operates a limited service DOC on 0.68 acres in the City of Burlington at 339 Pine Street, under a short term lease with Burlington;

WHEREAS, it is the desire of Burlington to provide the District with a DOC location in the City of Burlington;

WHEREAS, the Parties have reached an understanding for Burlington to provide the District with a DOC location, under the current lease terms, through June 30, 2019.

WHEREAS, Burlington believes it is necessary for it to engage in some due diligence and public exploration before entering into a lease-purchase arrangement for the Premises, but the District is prepared to move forward with marketing the Premises now;

WHEREAS, the Parties have reached an understanding that the District will forego immediate marketing and give Burlington a three-year option to enter into the lease-purchase arrangement for the Premises, with the District developing and operating a DOC on a portion of the Premises in order to serve the residents and businesses of Burlington as well as other District member communities.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

OPTION TERMS. The parties agree to the following option:

1. For a period of three (3) years from the date of signing of this Memorandum of Understanding, or until this Option is terminated as outlined below, the District agrees to forego any marketing, offering, or other activity to sell or convey the Premises and to grant to Burlington an option to enter into a lease-purchase arrangement upon the general terms outlined below.
2. For that option, Burlington will pay the District the non-refundable sum of \$50,000, ("the Option Payment") payable one-third at the signing of this MOU, one-third on July 1, 2017, and one-third on July 1, 2018.
3. Burlington's failure to pay an installment of the Option Payment within ten (10) days of receipt of written notice of non-payment from the District shall be an event of default.
4. This Option may be terminated by the District upon thirty (30) days written notice to Burlington for a default by Burlington of any obligation under this Memorandum of Understanding.
5. This Option may be terminated by Burlington for any reason, including non-appropriation of funds, upon thirty (30) days written notice to the District.
6. Option Payments are not refundable. If the Option is terminated, or if the term of three (3) years expires without the parties' entering into a lease-purchase arrangement, the Option shall end, and any amount of the Option Payment paid to date is not refundable. If a lease-purchase arrangement is agreed upon, the Option Payment shall be credited to the installments of lease payments due under the Lease-Purchase Agreement.
7. Burlington may exercise this Option by delivering, during the Option term, written notice to the District, and the parties agree to finalize a lease-purchase agreement consistent with the general terms outlined below. If a mutually agreeable lease-purchase agreement is not entered into by June 30, 2019, this Option will terminate.
8. The District is allowed to continue leasing a portion of the Premises on a short-term basis under current leases and renewals thereof. Any future lease entered into by the District shall be subject to this Memorandum of Understanding and Burlington's rights to the Premises in the event Burlington exercises the Option.
9. Both Parties understand the importance of the public process to inform the community of all aspects of the development of a DOC at the Premises, and that this public process will take many months. The Parties agree that they will begin a public process as soon as the Memorandum of Understanding is executed, and that if, as a result of the public process, the contemplated uses of the Premises are no longer viable, either party may terminate this Agreement. If this Agreement is terminated under this clause during the Option period, the

District will keep all payments made to date, but Burlington will be relieved of any obligation to make any further payments.

LEASE-PURCHASE. The parties intend to negotiate in good faith and with reasonable diligence a mutually agreeable lease-purchase of the Premises and sub-leasing of a portion of the Premises as outlined in this Memorandum of Understanding. The general terms of such transaction are as follows:

1. The District will lease the Premises to Burlington under a Lease-Purchase Agreement. The Lease-Purchase Agreement would provide for the District to lease the Premises to Burlington so that Burlington, at the end of the term and upon full payment, would own the Premises in fee simple with no remaining obligation to the District (except to the extent of any rights and obligations under the sub-lease to the District as described herein).
2. Annual lease payments would be subject to appropriation by the City Council of Burlington. The lease payments would not constitute a debt of the City of Burlington.
3. The term of the Lease Purchase Agreement will be for 20 years, and the total base rent shall be \$ 500,000.00. There will be no annual increases or additional fees charged by the District. Burlington would be responsible for its own costs as well as water/sewer charges, property taxes, insurance premiums and similar charges for the Premises. Payments of rent would be made in annual installments of \$25,000.00 each per year for 20 years. Burlington will receive a credit of the amount of the Option Payment made to the District to the last annual lease payments due under the Lease Purchase Agreement. At the end of the term, and after payment of the full 20 years of rental payments, Burlington would have the right to purchase the Premises for \$1. In the event of a default by Burlington, or if Burlington does not make an annual appropriation of lease payments, the Lease Purchase Agreement would terminate, and ownership of the Premises would revert to the District. Burlington would not receive any credit or return of lease payments. If the Lease Purchase Agreement is terminated by the District prior to the end of the 20-year term for any other reason permitted by the Lease Purchase Agreement, all lease payments will be returned to Burlington, and the ownership of the Premises will revert to the District.
4. The Lease-Purchase Agreement would be triple net, with Burlington responsible for any and all real estate taxes, real property insurance premiums, and costs of ownership of the Premises, as well as for its own use of a portion of the Premises.
5. As part of the transaction, Burlington will sub-lease a certain portion of the Premises consisting of the approximately 2.87 acre parcel designated as 201 Flynn Avenue ("201 Flynn") back to the District for a rent of \$1/year for an initial

- term of 20 years. The District will be responsible for all costs related to its use of 201 Flynn, other than real estate taxes and real property insurance premiums.
6. If Burlington purchases the Premises at the conclusion of the Lease-Purchase Agreement, it will provide the District with an additional 20 year sub-lease extension at the expiration of the initial 20 year term, to be exercised at the option of the District, with the same terms as the first 20 year Lease-Purchase Agreement. Terms may be negotiated at the time of purchase, provided both parties agree to the changes.
 7. Upon signing the Lease-Purchase Agreement and 201 Flynn sub-lease, the District will develop the 201 Flynn parcel for solid waste management purposes, which may include a DOC, a regional leaf and yard waste collection facility, and a sales outlet for Green Mountain Compost. The development of such parcel would be subject to the District's complying with all zoning and other code requirements and obtaining all necessary state and local permits. If for any reason, the District cannot develop a DOC on 201 Flynn, including if it finds the terms and conditions of any permit unduly burdensome, then the Lease-Purchase Agreement would terminate and ownership of the Premises would revert to the District. If termination occurs because the District is unable to develop 201 Flynn for a DOC, then the District would refund to Burlington all rent payments made under the Lease-Purchase Agreement (but not any payments made for the Option). If the District begins operating a DOC, but then ceases those operations before the full term of the Lease-Purchase Agreement, the Lease-Purchase Agreement and the 201 Flynn sub-lease will continue, unless the parties mutually agree to termination.
 8. The District shall operate any solid waste facility in compliance with all federal, state and local rules and regulations. All costs, expenses, responsibilities, and liabilities of operating a DOC by the District on the Premises shall be the responsibility of the District. Pursuant to the Sub-lease Agreement, both parties will indemnify each other for their respective use of the Premises during and after cessation of that use.
 9. The development of the 201 Flynn parcel and all of the District's structures, improvements, equipment, fixtures, and other personal property of every kind in or upon the 201 Flynn parcel, and all costs, responsibilities, and liabilities associated with them, shall remain the property of the District for as long as the parcel is leased from Burlington, and any responsibilities or liabilities arising from the District's use of the 201 Flynn parcel, particularly those related to hazardous waste or its removal, will remain the responsibility of the District in the future.
 10. The remainder of the Premises not sub-leased to the District may be used by Burlington for any lawful purpose, and any structures, improvements, equipment,

fixtures, and other personal property of every kind on the Premises other than the 201 Flynn parcel, shall remain the property of Burlington, and any responsibilities or liabilities arising from Burlington's use of the Premises (excluding the 201 Flynn parcel), particularly those related to hazardous waste or its removal, will remain the responsibility of Burlington upon and after execution of any Lease-Purchase Agreement.

11. If the Lease-Purchase Agreement is terminated, Burlington may elect to remove any of such property from the Premises before vacating.
12. Both Parties agree to negotiate in good faith a Lease-Purchase Agreement and the Sub-lease for the 201 Flynn parcel (the "Agreements") as set forth above. The Parties will endeavor to complete and execute a Lease Purchase Agreement and Sub Lease Agreement before June 30, 2019. If the Agreements are not executed by June 30, 2019, this Memorandum of Understanding offer will be withdrawn by the District. No payment (other than the Option Payment outlined above) will be due from the City until the final Agreements are executed.
13. This Memorandum of Understanding shall be executed before September 28, 2016, or the offer will be withdrawn by the District.
14. Both Parties understand that the District will pursue a district-wide comprehensive plan to be approved by the District Board by July 31, 2017, and if the plan does not include a DOC on the Premises, both parties agree that the District shall have the option to terminate this Memorandum of Understanding. If the MOU is terminated by the District because a Burlington DOC is not included for recommendation as part of the district-wide comprehensive plan, then the District agrees to return the Option payments made by the City.

NOTICES. All notices, requests, and statements shall be in writing and shall be sent to the recipients and addresses set out below, as the same may be modified by the parties from time to time:

CSWD: Brian Wright, Facilities Manager
Chittenden Solid Waste District
1021 Redmond Road
Williston, Vermont 05495-7729
Phone: 802-872-8100
bwright@cswd.net

Burlington: Chapin Spencer, Director
Burlington Public Works Department.
PO Box 849
Burlington, Vermont 05401
Phone: 802-863-9094
cspencer@burlingtonvt.gov

MISCELLANEOUS.

1. The Parties reserve the right to re-visit or supplement this MOU if, during the course of negotiations, there is any change that materially affects the Premises or the expected use of the 201 Flynn parcel as a DOC and of the remainder of the Premises for City uses.

2. This MOU is not intended to, and does not create, any rights, remedies, or benefits of any character whatsoever, including any intended third-party beneficiaries, in favor of any persons, corporations, associations, or entities other than the Parties. The obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest, and, where permitted, their assigns.

IN WITNESS WHEREOF the Parties hereto have caused their representatives to execute and deliver this MOU as of the date hereinabove set forth.

Dated at Williston, Vermont this _____ day of _____, 2016.

Chittenden Solid Waste District

By: _____

Title: _____

Dated at Burlington, Vermont this _____ day of _____, 2016.

City of Burlington

By: _____








Title: _____

Flynn Ave

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-  Flynn Ave
-  Flynn Avenue Self Storage
-  Howardcenter
-  Lake Champlain Shoreline Cruises
-  Pine Street at
-  Switchback Brewing Co

339 Pine St DOC

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