



**CITY OF BURLINGTON  
DEPARTMENT OF PUBLIC WORKS**

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**Chapin Spencer**  
*DIRECTOR OF PUBLIC WORKS*

**MEMORANDUM:**

To: City Council  
Fr: Chapin Spencer, Director  
Lee Perry, Division Director – Maintenance Division  
Re: **195-201 Flynn Avenue MOU and a Potential CSWD Drop-Off Center**  
  
Date: October 25, 2021

**Request:**

The Department of Public Works is seeking City Council approval of a three (3) month extension to the second 195-201 Flynn Avenue Memorandum of Understanding (MOU), pending approval by the Chittenden Solid Waste District (CSWD) Board of Commissioners at their October 27, 2021 meeting, to allow time for the City to negotiate a lease purchase agreement with CSWD for the 195-201 Flynn Avenue parcel as a potential location of a future CSWD Drop-Off Center.

**Executive Summary**

DPW leadership is recommending the City now begin negotiations on a lease purchase agreement (LPA) for 195-201 Flynn Avenue for the following reasons:

- The MOU between the City and CSWD expires on November 1, 2021. If the MOU expires without extension and/or signing a lease purchase agreement, the City would lose \$83,000 in option payments made to date and CSWD will likely sell the parcel on the open market – eliminating the opportunity for a modern DOC at this location and reducing public control of the parcel's future redevelopment.
- The recently developed South End Construction Coordination Plan provides a pragmatic road map for major South End transportation improvements while minimizing impacts on area residents and businesses. This Plan lays out a more concrete timeline for projects such as the Champlain Parkway which will provide convenient access to the DOC without traveling through residential areas.
- The existing 339 Pine Street DOC has been limited to just organics due to site constraints.

Non-Discrimination

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at 865-7145.

- While public comment on whether the 195-201 Flynn Avenue site is a reasonable site for a DOC has been mixed, many of the comments indicated receptivity to a DOC if the facility and adjacent transportation projects were developed in a thoughtful, responsive manner.

### **Background:**

The City of Burlington has long leased the current 339 Pine Street site to CSWD for \$1 per year to serve as CSWD's Burlington Drop-Off Center (DOC). The 339 Pine Street site is not optimal from CSWD's perspective as there are no tipping walls, the traffic circulation pattern is confusing, the site is constrained and there are environmental limitations on the site.

During the late 1990's, the Champlain Parkway's alignment was going to significantly impact the 339 Pine Street parcel and operations on the parcel – so efforts were made to clear the roadway's path. The DPW facility was relocated to 645 Pine Street and Chittenden Solid Waste District (CSWD) acquired 195-201 Flynn Avenue in 2001 with the intent of setting up an expanded DOC at that location.

CSWD purchased 195-201 Flynn Avenue for approximately \$510,000 – including fees. This acquisition was a major deviation from CSWD policy that requires a municipality to provide the site and lease it to the District for a DOC. This policy deviation occurred because South Burlington at the time stated they wouldn't allow non-residents to use their DOC unless Burlington had a DOC. The vote at the CSWD Board to acquire the parcel passed with a thin margin.

Today, twenty years later, South Burlington is in a different place and isn't concerned whether Burlington has a DOC or not. CSWD wants to sell the 195-201 Flynn Avenue parcel to the City so Burlington's DOC will be consistent with CSWD policy of having the municipality provide the property for the DOC. The one-acre parcel has a building that is occupied by 3 or so tenants with a total annual rental income of \$40,920.00 (in 2018). Less the annual lease payment (CSWD), property taxes, water, and electricity for outside light the net income would be approximately \$7,604.00 annually.

The 195-201 Flynn Ave property is comprised of 2 parcels:

- Front parcel: ~1 acre, pays taxes, has cement block garage on site
- Back parcel: ~2 acres, tax exempt, undeveloped

In 2015, CSWD's Board and Staff indicated to the City that they had held the property long enough and wanted to sell it – either to Burlington for a DOC or put it on the market. CSWD obtained two appraisals for Flynn Avenue parcel – one was \$490K and the other was 615K – averaging \$552K.

With all the proposed and active development projects in South End, and the various traffic concerns in this area of the City, the South End City Councilors requested more time for the neighborhood to better understand the progress on Champlain Parkway and other projects before advancing the DOC at the Flynn Avenue. The Champlain Parkway provides direct access to the 195-201 Flynn Avenue parcel without having DOC traffic travelling through residential neighborhoods. Without the Champlain Parkway, DOC commercial and private vehicles would be traveling through South End neighborhoods already impacted by commercial traffic.

Through multiple back and forth negotiations in 2016, CSWD and City Staff settled on a 3-year Memorandum of Understanding (MOU) offering the City a \$50,000 option with the yearly \$16,667 option payments counted towards the ultimate purchase price. Through the executed 2016 MOU,

CSWD offered the parcel to the City for \$500K at a 20-year 0% lease purchase arrangement as long as the City sub-leases it back to the District for \$1/year for two 20-year lease terms. The District would then invest significant funds in developing a modern full-service Drop-Off Center at the site. CSWD expects to need only the back 2 acres for their DOC, so the City would likely have the front 1 acre for its use right away and all three acres free and clear after 40 years.

In 2019, with the 3-year MOU expiring and the Champlain Parkway not yet under construction, South End Councilors requested the MOU be extended. The respective Staff members from the City and CSWD hammered out a new second MOU providing a 1-year option with an additional 1-year extension if (1) the Champlain Parkway project is under contract for construction within the initial one-year option period, or (2) the City of Burlington provides a Champlain Parkway project status report to the CSWD Board and the Board approves a second year extension. The City Council approved the new MOU at its October 28, 2019 meeting and the CSWD Board approved the second year extension in October 2020.

### **Current Status:**

- Currently, the Burlington DOC at 339 Pine Street is limited to the collection of food scraps two days a week. CSWD does not have plans for expanding collection to include trash, or recycling in the future. They cite safety concerns amid COVID-19 as the primary reason as well as site constraints, and undersized queuing areas. They are also concerned with the possibility of traffic backing up on to Pine St. Burlington staff has communicated multiple times with CSWD pushing to have the site open for the four basics (trash, recycling, compost and yard waste), but to date CSWD has not budged.
- For the 195-201 Flynn Avenue property, the City is at the end of the second option period (November 1, 2021), of the 2<sup>nd</sup> MOU with CSWD. DPW staff recently attended the September 22, 2021 CSWD Board of Commissioners meeting to provide an update on the Champlain Parkway project and to express the Administrations interest in developing a lease purchase agreement for the property. The proposal appeared to be well received by the CSWD Board.
- The City has paid \$16,667 per year for the option rights described in the MOU for the last five years, for a total of \$83,335 in option payments. Money for these payments have been paid through the City's General Fund Capital Budget.

### **Summary**

DPW is recommending entering into a lease purchase agreement for the 195-201 Flynn Avenue parcel as it preserves the option to locate a modern, safe DOC in the future. Annual payments under the lease purchase agreement would be approximately \$25,000/year – a modest increase over the \$16,667/year option payments that have been made over the last five years. Additionally, CSWD has expressed willingness to coordinate the permitting, construction and opening of the DOC facility, if supported by the City, in coordination with the Champlain Parkway.

If the City were to relinquish the option and not sign the lease purchase agreement, the following impacts would likely occur:

- The proposed Flynn Avenue DOC would likely be dropped by CSWD.
- The City would lose what has been paid to date from the 2016 and 2019 MOUs (Total \$83,335).
- The City would be left with limited services provided by CSWD at the existing Pine Street DOC site for the foreseeable future.
- The City would lose the ability to use the front 1 acre portion of the 195-201 Flynn Avenue parcel – space that could be used for public purposes that could include storage of DPW equipment and materials or potentially as incubator space for small local businesses.
- The City would lose ability to control who develops the site and when it would be developed. New private development would bring different impacts that would be harder to manage than a publicly-owned DOC.

### **Public Engagement**

Leading up to the City Council meeting, we've undertaken the following outreach activities:

- Published a South End Front Porch Forum post and then followed up with a post in the immediate Flynn Avenue neighborhood.
- Conducted outreach to area Flynn Avenue business and two area condominium associations.
- Posted the public meeting notice on social media.
- Sent meeting notice to Public Works email mailing list.
- Notified City Councilors.
- Hosted the October 12, 2021 public meeting both virtually and in person at 645 Pine St. 20 people attended. Comments below.
- Scheduled to present to the October 21, 2021 Ward 5 NPA meeting.

### **Public Comment**

Here is a summary of the comments from the October 12 public meeting:

- How will the site be accessed at 195-201 Flynn Ave., and would it be possible to just switch the entrance and exit pattern at the current DOC located at 339 Pine St.?
- Area resident concerned with storm water run-off with the additional impervious surfaces at the DOC.
- How will property values be affected, and will there be a study completed on neighborhood values?
- Who would be responsible for the zoning permits?
- Can it be built without phase 2 of the Champlain Parkway?
- Upgrades to Flynn Ave could be seen as an opportunity to improve traffic flow. Look at the plusses of the project. Should be seen as a transfer station, and not a dump.

- Transfer station does not fit in the South End lifestyle. Feels there will be additional traffic on Oak Beach Dr.
- Occupants of the existing building located on the 1 acre portion of the property are artists, and musicians that value this space as it is hard to find spaces similar in Burlington's South End.
- Concern about traffic impacts to bicyclist, and pedestrians.
- Resident misses not being able to use the current Burlington DOC, and appreciates the project very much and looks forward to a new DOC located at Flynn Ave.
- Resident is concerned with traffic patterns and flow on Flynn Ave. Concerned about queuing size and traffic backing up onto Flynn Ave. Would like to see a presentation by CSWD on traffic flow patterns at other CSWD DOC's. Should be designed with maximum queuing capacity. Should have a left hand turn lane installed on Pine and Flynn intersection.
- Additional traffic would impact safety conditions. The beach, City Market and breweries located on Flynn Ave. create a lot of pedestrian and bike traffic.
- There is a lot of greenspace on the property that is not found in other areas of Burlington
- Will pedestrians use be encouraged and accommodated at the new DOC?

### **Motion**

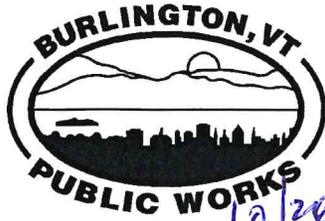
Based on a review of the public comment and weighing the pros and cons of the various options, we recommending the City Council approve the following motion:

“To approve a three-month extension of the Option to enter into a lease-purchase arrangement with the Chittenden Solid Waste District contemplated by the Second Memorandum of Understanding between the Chittenden Solid Waste District and the City dated November 1, 2019, and to authorize the Mayor to sign an addendum to said MOU effecting such, subject to final review and approval by the City Attorney's Office.”

Please feel free to reach out with any questions. Thank you.

### **Attachment**

Second Memorandum of Understanding between Chittenden Solid Waste District and the City of Burlington, signed November 1, 2019



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DEPARTMENT OF PUBLIC WORKS**

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At their meeting on 10/28/19  
the Burlington City Council voted to

*Approve the motion as written \**  
Attest: *Joi Oberg - written \**

**Chapin Spencer**  
DIRECTOR OF PUBLIC WORKS



To: Board of Finance, City Council  
Fr: Chapin Spencer, Director  
Lee Perry, Interim Assistant Director – Maintenance Division  
Re: **195-201 Flynn Avenue MOU**

Date: October 9, 2019

The attached 2<sup>nd</sup> Memorandum of Understanding (MOU) provides the City up to a 2-year extension on a 2016 3-year option to purchase the 3-acre parcel at 195-201 Flynn Avenue. This MOU lays out the framework for a lease purchase agreement if the City chooses to exercise the option, which extends most of the terms of the current MOU. The shared goal between the CSWD and the City of Burlington is to develop an expanded, safer, more customer-friendly CSWD drop-off center (DOC) in the largest community in the District. The District has an existing DOC at 339 Pine Street that has many constraints.

**Requested Motions:**

Board of Finance:

To recommend that the City Council approve the October 2019 extension of the 2nd Memorandum of Understanding with the Chittenden Solid Waste District regarding 195-201 Flynn Avenue and authorize Mayor Weinberger to sign the MOU, subject to final review and approval by the City Attorney's Office.

City Council:



To approve the October 2019 extension of the 2nd Memorandum of Understanding with the Chittenden Solid Waste District regarding 195-201 Flynn Avenue and authorize Mayor Weinberger to sign the MOU, subject to final review and approval by the City Attorney's Office.

**Background**

- CSWD purchased 195-205 Flynn Avenue in 2001 with the intent of setting up an expanded Drop Off Center (DOC). With fees, the purchase price was approximately \$510,000. This acquisition was a major deviation from CSWD policy that requires a municipality to provide

Non-Discrimination

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the site and lease it to the District for a DOC. This policy deviation occurred because South Burlington at the time stated they wouldn't allow non-residents to use their DOC unless Burlington had a DOC. The vote at the CSWD Board to acquire the parcel was very close. Eighteen years later South Burlington is in a different place and isn't concerned whether Burlington has a DOC or not. As a result, CSWD wants to sell the City of Burlington the 195-205 Flynn Avenue parcel and have Burlington's DOC comply with CSWD policy of having the municipality provide the property for the DOC. The one-acre parcel currently has a building that is occupied by (3) tenants with a total annual rental income of \$40,920.00. Less the annual lease payment (CSWD), property taxes, water, and electricity for outside light the net income would be \$7,604.00 annually.

- The current Burlington DOC site at 339 Pine Street is not optimal from CSWD's perspective. There are no tipping walls, the traffic circulation pattern is confusing, the site is constrained and there are environmental limitations on the site. The property may be impacted by the Railyard Enterprise Project as well.
- The 195-201 Flynn Ave property is comprised of 2 parcels:
  - Front parcel: 1 acre, pays taxes, has cement block garage on site
  - Back parcel: 2+ acres, tax exempt, undeveloped
- Several years ago, CSWD obtained two appraisals for Flynn Avenue parcel -- \$490K and 615K, average \$552K.
- Through multiple back and forth negotiations in 2016, CSWD and City staff settled on a 3-year Memorandum of Understanding (MOU) offering the City a \$50,000 option with option payments counted towards the ultimate purchase price.
- Through the executed 2016 Option, CSWD offered the parcel to the City for \$500K at a 20-year 0% lease purchase arrangement as long as the City sub-leases it back to the District for \$1/year for two 20-year lease terms. The District would then invest \$500-\$800K in developing a modern full-service Drop Off Center at the site. CSWD only needs the back 2 acres for their DOC, so the City would have the front 1 acre for its use right away and all three acres free and clear after 40 years.
- However, With the proposed and active development projects in South End currently, the South End City Councilors would like more time for the neighborhood to better understand the progress on Champlain Parkway and other projects before advancing the DOC. Therefore, we want to extend the City's option to purchase the building.
- On June 19, 2019 Director Chapin Spencer and Interim Assistant Director Lee Perry met with the Chittenden Solid Waste District Executive Board to discuss an extension of the original MOU for the 195-201 Flynn Avenue property.
- As of June 30, 2019 the existing MOU regarding the 195-201 Flynn Avenue property has expired between Chittenden Solid Waste District and The City of Burlington.
- This proposed Option extension offers a one-year extension from the date of the signing with an additional extension of one year if (1) the Champlain Parkway project is under contract for construction prior to the expiration of the initial one-year option period, or (2) the City of Burlington provides a Champlain Parkway project status report to the District Board and the Board approves a second year extension.

- For that option, Burlington will pay the District \$16,667.00 (“the Option Payment”) for each option year payable within 30 days of the start of each option. Money for these payments have been, and will be paid through the Capital Budget.
- If the City does not sign the MOU by November 1, 2019 The CSWD board has indicated it will vote to sell the parcel on the open market. After 18 years they are motivated to sell. It is important to note that if the City does not sign the MOU, it is likely that the property will sell and there will be less ability for the City to control the resulting development.

City staff has worked with CSWD staff over the last six months to negotiate this MOU extension and we believe it is an appropriate and fair approach to moving forward with the goal of an expanded DOC for Burlington. Interim Assistant Director Lee Perry is now the CSWD Board representative for Burlington so either one of us can answer any questions you may have. Thank you.

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

This Second Memorandum of Understanding (“2nd MOU”) is made effective as of the 1st day of November, 2019, 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 are actively working to renew the lease agreement at 339 Pine Street for Burlington to continue to provide the District with a DOC location;

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 had entered into a previous Memorandum of Understanding that expired on June 30, 2019 (the "2016 MOU");

WHEREAS, the Parties now have agreed to renew the terms of the 2016 MOU and have reached an understanding that the District will forego immediate marketing of the sale of the Premises and give Burlington an additional period to enter into a lease-purchase arrangement for the Premises, with the District having a right to develop and operate 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 one (1) year from the date of signing of this Memorandum of Understanding, or until this 2nd MOU 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 for the Premises upon the general terms outlined below ("the Option").
2. The Option shall be extended for a second year if: (1) the Champlain Parkway project is under contract for construction prior to the expiration of the initial one-year option period; or (2) Burlington provides a Champlain Parkway project status report to the District's Board and the Board approves a second year extension. Together the period of one year from date of signing, plus any extended term pursuant to this paragraph shall be known as "the Option Period."
3. For the Option, Burlington will pay the District the non-refundable sum of \$16,667 ("the Option Payment") for each option year, with each year's payment due within thirty (30) days of the start of each option year.
4. Burlington's failure to pay an Option Payment within ten (10) days of receipt of written notice of non-payment from the District shall be an event of default.
5. The 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 2<sup>nd</sup> MOU.
6. The Option may be terminated by Burlington for any reason, including non-appropriation of funds, upon thirty (30) days written notice to the District.

7. Except as otherwise provided in this 2nd MOU, Option Payments are not refundable. If the Option is terminated, or if the Option Period 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.

8. Burlington may exercise this Option by delivering, during the Option Period, 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 before the Option Period has expired, this Option will terminate.

9. 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 2nd MOU and Burlington's rights to the Premises in the event Burlington exercises the Option.

10. 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 undertake a public process, 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.

11. The Parties acknowledge that Burlington paid the District \$50,000 as Option Payments under the 2016 MOU. If a lease-purchase arrangement is agreed upon, those prior \$50,000 Option Payments shall be credited to the installments of lease payments due under the Lease-Purchase Agreement, along with the Option Payments made to the District under this 2nd MOU.

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 back to the District as outlined in this 2nd MOU. 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 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 in rental payments or additional fees charged by the District; provided, however, Burlington will be responsible for the District's costs and expenses of enforcement if Burlington is in default under the Lease-Purchase Agreement, provided that the City of Burlington receives reasonable notice of the default, and an opportunity to cure. 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 Payments made to the District against 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 annual lease payments (less any Option Payments applied), 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 any 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 and Option 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 for 201 Flynn 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 sub-lease. 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 may develop the 201 Flynn parcel for solid waste management purposes, which may include a DOC, a regional leaf and yard waste collection facility, and other waste management programs. 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 determines not to develop a DOC on 201 Flynn, then the District may terminate the Lease-Purchase Agreement and ownership of the Premises would revert to the District. If termination occurs because the District is unable to obtain permits to develop 201 Flynn for a DOC, then the District shall refund to Burlington all lease payments made under the Lease-Purchase Agreement (but not any payments made for the Option). If termination occurs because the District determines not to proceed with developing 201 Flynn for a DOC, then the District shall refund to Burlington all lease payments made under the Lease-Purchase Agreement and all payments paid to the District by Burlington for the Option. In either case, if the District terminates the Lease-Purchase Agreement, the District shall provide Burlington a right of first refusal to purchase the Premises, as described below, should the District decide to subsequently sell the Premises.

8. The terms of such right of first refusal shall provide that should the District receive a *bona fide* offer from any prospective buyer to purchase the fee interest in the Premises, which the District intends to accept, the District shall send Burlington written notice thereof within 15 days. Such written notice shall contain all the material terms and conditions of the *bona fide* offer. Burlington shall have 45 days after receiving such written notice from the District in which to notify the District of its intent to exercise the right of first refusal, and an additional 30 days after that in which to close on the purchase of the Premises. In order to exercise the Right of First Refusal, Burlington must accept all terms and conditions of such *bona fide* offer from a prospective buyer. Should Burlington fail to either notify the District of its intent to exercise the right of first refusal, or shall fail to close under the terms of the *bona fide* offer, then the right of first refusal shall automatically become null and void with no further notice and the District shall be free to sell the Premises.

9. 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 both continue, unless the parties mutually agree to termination.

10. The District shall operate any solid waste facility located at the 201 Flynn parcel 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 201 Flynn parcel 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.

11. 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.

12. 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. The Lease-Purchase Agreement shall provide for mutually agreeable limits on the construction of improvements on the 195 Flynn portion of the Premises such that (a) the use of 195 Flynn parcel is not inconsistent with the District's use of 201 Flynn for solid waste management operations, and (b) the District is assured the demolition or construction on 195 Flynn will not impair the value of the Premises as a whole or impose liability or additional costs on the District.

13. If the Lease-Purchase Agreement is terminated, Burlington may elect to remove any of such property from the Premises before vacating.

14. 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 the expiration of the Option Period set forth in this 2nd MOU. If the Agreements are not executed by the expiration of the Option Period, this 2nd MOU offer will be withdrawn by the District. No payment (other than the Option Payments outlined above) will be due from Burlington until the final Agreements are executed.

15. This 2nd MOU shall be executed before \_\_\_\_\_, 2019, or the offer will be withdrawn by the District.

16. Both Parties understand that the District will pursue a district-wide comprehensive DOC plan, 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 all Option Payments made by Burlington under the 2016 MOU and 2nd MOU .

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: Sarah Reeves, Executive Director  
Chittenden Solid Waste District  
1021 Redmond Road  
Williston, Vermont 05495-7729  
Phone: 802-872-8100  
[sreeves@cswd.net](mailto:sreeves@cswd.net)

Burlington: Mayor Miro Weinberger.

#### MISCELLANEOUS.

1. The Parties reserve the right to re-visit or supplement this 2nd 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 2nd 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.

— *Signature Page Follows* —

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 1st day of November, 2019.

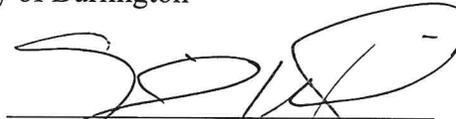
Chittenden Solid Waste District

By: 

Title: Executive Director

Dated at Burlington, Vermont this 1st day of November, 2019.

City of Burlington

By: 

Title: Mayor

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