

MEMORANDUM OF UNDERSTANDING AND AGREEMENT

THIS MEMORANDUM OF UNDERSTANDING AND AGREEMENT made and entered into between the City Council of the City of Burlington (Council) and the Department of Public Works of the City of Burlington acting by and through the Board of Public Works Commissioners (Board);

W I T N E S S E T H :

WHEREAS, the Waste Water Division of the Department of Public Works carries out its business within the City of Burlington and, in order to conduct such business, has located and desires to continue to locate its pipes, conduits, manholes, fixtures and other facilities on, in, or under public streets of the City; and

WHEREAS, in exchange for the ongoing privilege and right to use and occupy the streets of the City for such public utility purposes, the City and the Board believe that it is reasonable and proper that the Board should pay a franchise fee for such privilege in an amount representative of the fair rental value of using such street rights-of-way for such utility purposes; and

WHEREAS, it is believed by both the Council and the Board that a fair basis for determining the franchise fee to be paid on an annual basis is a percentage of the gross revenues taken in or received by the Waste Water Division from sales and/or services provided within the City;

NOW, THEREFORE, IT IS AGREED by and between the Council and the Board as follows:

1. Effective retroactive to July 1, 1990, the Board shall pay to the City Treasurer a franchise fee on an annual basis for the right and privilege of utilizing the City streets for the location of its poles, conduits, manholes, fixtures and other facilities. In this context, the term "street" shall mean all public streets, alleys, public ways and public places now laid out and dedicated and all additions thereto including air space above and ground underneath the street surface.

2. The franchise fee to be paid for the fiscal year which commenced July 1, 1990 shall be two and one-half (2.5%) percent of the gross revenues of the Board's Waste Water Division. Effective as of July 1, 1991, and continuing thereafter unless and until this Agreement is amended, the annual franchise fee shall be three and one-half (3.5%) percent of such gross revenues. In this context, the gross revenues of the Waste Water Division shall mean all revenues taken in or received by the Division from sales and/or services provided within the City of Burlington. It shall include the total amounts actually received or receivable for the performance of any sale, act or service provided within the City for which a charge or credit is made. It shall also include all receipts, cash, credits and property of any kind or nature without any deduction therefrom on account of the property sold, the cost of the materials used, labor or

service costs, interest paid or payable, or losses or other expenses whatsoever.

3. The Board shall file monthly with the City Treasurer a sworn summary report, showing the gross revenues received from its Waste Water Division operations within the City during that month, and such other information as the Council shall request which is reasonably related to the purposes of this Agreement. The monthly reports shall be on forms prepared by the City Treasurer.

4. Payment of the franchise fees due under this Agreement shall be payable in monthly installments and remittance therefor shall be made no later than the last day of the month next succeeding the month in which the sum is collected.

5. The Board's Waste Water Division shall have the nonexclusive right, privilege and franchise, pursuant to this Agreement, to own, use, lease, lease purchase, place, maintain, operate, erect or construct poles, pipes, cables, underground conduits, manholes and other fixtures necessary for the proper maintenance and operation of the division, in, upon, along, across and under, and to otherwise use and occupy the streets, alleys, rights-of-way and public property of the City.

6. This Agreement shall terminate and be of no further force and effect as of midnight June 30, 2020.

7. Anything to the contrary herein notwithstanding, the uses of public streets within the City by the Waste Water Division are always subordinate to the paramount interests of the public therein. This Memorandum of Understanding and Agreement and the rights thereunder shall convey no property interest or vested right in the public streets or rights-of-way. Any relocation expenses incurred by the Division because of any work on such street undertaken by the City for any purposes shall be exclusively at the expense of the Division. Such use is privileged only, and is at all times subject to all specified ordinances, resolutions and regulations of the City. The Council expressly reserves the right to use the public streets for its own governmental purposes.

IN WITNESS WHEREOF, this Memorandum of Understanding and Agreement is made and entered into this 28~~th~~ day of March, 1991.

CITY OF BURLINGTON  
PUBLIC WORKS DEPARTMENT  
By: Albert J. DiPietro  
Department of Public  
Works Commission Chair,  
Duly Authorized

CITY OF BURLINGTON CITY COUNCIL  
By: [Signature]  
Mayor, Duly Authorized

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W I T N E S S E T H :

WHEREAS, the Water Resources Division of the Department of Public Works carries out its business within the City of Burlington and, in order to conduct such business, has located and desires to continue to locate its pipes, conduits, manholes, fixtures and other facilities on, in, or under public streets of the City; and

WHEREAS, in exchange for the ongoing privilege and right to use and occupy the streets of the City for such public utility purposes, the City and the Board believe that it is reasonable and proper that the Board should pay a franchise fee for such privilege in an amount representative of the fair rental value of using such street rights-of-way for such utility purposes; and

WHEREAS, it is believed by both the Council and the Board that a fair basis for determining the franchise fee to be paid on an annual basis is a percentage of the gross revenues taken in or received by the Water Resources Division from sales and/or services provided within the City;

NOW, THEREFORE, IT IS AGREED by and between the Council and the Board as follows:

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2. The franchise fee to be paid for the fiscal year which commenced July 1, 1990 shall be two and one-half (2.5%) percent of the gross revenues of the Board's Water Resources Division. Effective as of July 1, 1991, and continuing thereafter unless and until this Agreement is amended, the annual franchise fee shall be three and one-half (3 1/2) percent of such gross revenues. In this context, the gross revenues of the Water Resources Division shall mean all revenues taken in or received by the Division from sales and/or services provided within the City of Burlington. It shall include the total amounts actually received or receivable for the performance of any sale, act or service provided within the City for which a charge or credit is made. It shall also include all receipts, cash, credits and property of any kind or nature without any deduction therefrom on account of the property sold, the cost of the materials used,

labor or service costs, interest paid or payable, or losses or other expenses whatsoever.

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5. The Board's Water Resources Division shall have the nonexclusive right, privilege and franchise, pursuant to this Agreement, to own, use, lease, lease purchase, place, maintain, operate, erect or construct poles, pipes, cables, underground conduits, manholes and other fixtures necessary for the proper maintenance and operation of the division, in, upon, along, across and under, and to otherwise use and occupy the streets, alleys, rights-of-way and public property of the City.

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PUBLIC WORKS DEPARTMENT  
By: Albert DiPietro  
Department of Public  
Works Commission Chair,  
Duly Authorized

CITY OF BURLINGTON CITY COUNCIL  
By: [Signature]  
Mayor, Duly Authorized

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