

To: CSWD Board of Commissioners  
From: Josh Estey, Director of Compliance and Hazardous Waste  
Date: June 22, 2023  
RE: Environmental Depot Lease Agreement

On Monday, June 19, 2023, the South Burlington City Council voted, as part of their consent agenda, to authorize the City Manager to execute two amended agreements with CSWD. Those two agreements are as follows:

- 1) Environmental Depot land lease agreement - The original Environmental Depot lease was entered into between the City of South Burlington and CSWD in 2003 and it expired on December 31, 2022. The lease allows CSWD to operate the Environmental Depot on city owned property at 1011 Airport Parkway. The renewed lease would continue the term of the lease to December 31, 2028 and CSWD would hold the option to extend the lease for four successive periods of five years each. The lease terms including the payment of rent and PILOT remain essentially unchanged from the original lease entered into in 2003. Rent will continue to increase annually on July 1 based on the percentage of CPI each year and the PILOT will be based on the annual tax rate.
- 2) Pump Station lease agreement - The Pump Station lease was originally entered into between the City of South Burlington and CSWD in 2004. The lease relates to a sewage pump station and associated equipment owned by CSWD and installed for the purpose of servicing the Environmental Depot. The city leases the pump station in order to maintain it and to access its electrical service so the city can provide power to an adjacent city-owned drain and pump station servicing the adjacent landfill. Pursuant to the lease, the city has access to the electrical service, will maintain the pump station, will pay for electrical usage, and pay \$1.00 to CSWD annually. With the extension, the term will be extended to December 31, 2028 and the city will have the option of extending the term for four successive period of five years each. All other terms of the original lease will remain in effect.

**BE IT RESOLVED** that the Board of Commissioners hereby authorizes the Executive Director to execute both of the above-mentioned agreements with the City of South Burlington on behalf of CSWD.

## **AMENDED AND RESTATED LEASE AGREEMENT**

This AMENDED AND RESTATED LEASE AGREEMENT (“Lease”) made effective as of the 1<sup>st</sup> day of June, 2023 (the “Effective Date”), is by and between the CHITTENDEN SOLID WASTE DISTRICT, a union municipal district duly organized under the laws of Vermont, having an address of 19 Gregory Drive, Suite 204, South Burlington, Vermont 05403 (“District”) and the CITY OF SOUTH BURLINGTON, a municipal corporation duly organized under the laws of the State of Vermont, having an address of 180 Market Street, South Burlington, Vermont 05403 (the “City” or “South Burlington”).

WHEREAS, South Burlington and the District entered into a lease agreement dated April 19, 1993, whereby South Burlington leased the District land for the purpose of constructing and operating a Biosolids Processing Facility.

WHEREAS, the Biosolids Processing Facility was constructed and operated for a period of time before being shut down and permanently closed, leaving the District with an unused building located on the land leased from South Burlington;

WHEREAS, the District and the City terminated such prior lease for the Biosolids Processing Facility and simultaneously entered into a new Lease Agreement dated as of January 1, 2003, and amended by Amendment to Lease Agreement dated on or about May 1, 2015, to allow the District to operate a collection and waste management processing facility, primarily to collect and manage household hazardous waste;

WHEREAS, such Lease Agreement has terminated and the District and the City desire to amend and restate such lease to extend the term of such Lease Agreement and make other modifications to such lease.

NOW THEREFORE, the District and South Burlington, for good and valuable consideration, the receipt and sufficiency of which are both hereby acknowledged, agree as follows:

1. Agreement to Lease. South Burlington hereby leases to the District, and the District hereby takes and rents from South Burlington, the Leased Premises (as such term is defined herein), upon, in accordance with, and subject to the terms and conditions hereinafter set forth.

2. Leased Premises. The Leased Premises consist of approximately 3.2 acres of land located behind the existing South Burlington Wastewater Treatment Plant and adjacent to South Burlington’s existing landfill, at Airport Parkway, South Burlington, Vermont, being depicted on the site plan attached hereto as Attachment A and made a part hereof, together with all easement rights and rights-of-way over adjacent lands of South Burlington for purposes including, but not limited to, access, water, sewer, and other utility easements and rights of-way.

3. Facility Description. CSWD will operate an Environmental Depot (“Depot”) on the Leased Premises. This program will accept hazardous waste from households and very small quantity generators (VSQGs, and also known as conditionally exempt generators or CEG).

The definition of VSQGS:

A Very Small Quantity Generator (VSQGs) is a business that:

- (1) generates less than 220 pounds of hazardous waste in a calendar month; and
- (2) generates less than 2.2 pounds of acutely hazardous waste in a calendar month; and
- (3) generates less than 220 pounds of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a discharge of any acutely hazardous waste in a calendar month; and
- (4) accumulate less than 2,200 pounds of hazardous waste, 2.2 pounds of acutely hazardous waste, or 220 pounds of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a discharge of any acutely hazardous waste at any time.

CSWD will collect the material, sort it according to the physical properties/chemical characteristics, store it in appropriate containers in an approved facility, pack the material for transport, and have material transported to approved reuse, recycling, or disposal facilities. The District will operate the Environmental Depot as stated in the “Environmental Depot Operations Manual” (EDOM) - Appendix 1. The District will immediately notify in writing both the Vermont Department of Environmental Conservation (DEC) and the South Burlington City Manager of any changes to the EDOM. The changes will take effect thirty (30) days after notification unless the changes are disapproved by either the Vermont DEC or by the South Burlington City Manager or his/her designee.

CSWD may also accept at the Depot architectural paint, electronics covered in the CSWD E-cycles program, and mercury-containing bulbs (such as fluorescent light bulbs).

4. Materials Accepted. CSWD will only accept those materials at the Environmental Depot that are listed in the Vermont Agency of Natural Resources (ANR) Solid Waste Management Certification for the Depot (sometimes referred to as a Vermont Act 78 Permit), Attachment B as amended. The specific material types, the total weight of each material type, and the maximum number of containers permitted under this agreement are found in Appendix 2 “Materials Collected.” Appendix 2 shall be the controlling document as to the materials permitted. CSWD will not knowingly accept explosives, radioactive materials, sharps, or needles or any medical waste at the Depot.

Any changes to the “Materials Collected” list will not occur unless preapproved by both the Vermont DEC, if approval is required under applicable permits, and the South Burlington City Manager.

5. Initial Term. The initial term of this Lease commenced on January 1, 2003 (“Commencement Date”) and, after several extension, terminated on December 31, 2022, with the parties continuing such Lease term through the Effective Date (the “First Term”). The District and South Burlington hereby extend the term of the Lease to December 31, 2028 (the “Term”).

6. Extensions of Term. The District may, at its sole option, extend the Term of this Lease for a minimum of four successive periods of five years each. The option to extend shall be exercised automatically unless the District gives written notice to South Burlington not more than twelve (12) months and not less than three (3) months prior to the expiration of the then existing term that it no longer desires to extend and continue this Lease. Each extended term shall be upon the same terms, covenants, and conditions, as provided in this Lease for the initial term with the exception of rents and fees noted in section 7(a).

7. Rent and Fees.

(a) The District has paid rent through June 30, 2023. During the Term, the District shall pay to South Burlington an annual fixed rent (“Rent”) at the rate of \$16,367.08 per year, payable in equal quarterly installments in the amount of \$4,091.77, commencing as of the Effective Date and continuing quarter-annually thereafter. Quarterly payments shall be due September 1 (for the period July through September), November 1 (for the period October through December), January 1 (for the period January through March), and April 1 (for the period April through June).

The annual fixed rent will change annually on July 1 of each year that this Agreement is in effect by the percentage increase in the annualized average (ending with the month of May) of the Consumer Price Index for All Urban Consumers (CPI-U) all items, “Northeast Urban, Size B/C”, published by the United States Department of Labor, Bureau of Labor Statistics.

(b) During the First Term, the District has paid to South Burlington an annual Payment in Lieu of Taxes (“PILOT”), payable in advance on the same dates that Rent is due, in equal quarterly installments, calculated annually as \$3,000 multiplied by the South Burlington combined City and School tax rate. Commencing on the Effective Date, the District shall continue to make such PILOT to South Burlington, payable in advance on the same dates that Rent is due, in equal quarterly installments, calculated annually as \$3,000 multiplied by the South Burlington combined City and State Education tax rate. As of the Effective Date, such tax rate is \$1.9176 resulting in current quarterly payments of \$1,438.20, to be paid with the quarterly installments of Rent.

8. Permits.

(a) The District will obtain and maintain all permits and approvals required for the construction and operation of all improvements and modifications to the Leased Premises as required by law.

(b) The District shall pay all permit application fees and applicable fees levied by South Burlington in their normal course of business.

(c) South Burlington shall assist and support the District in obtaining permits and approvals required for the construction and operation of all improvements and modifications to the Leased Premises in compliance with permitted uses. If necessary, South Burlington, as the land owner, shall be the applicant on applications for permits, and the District shall be co-applicant. CSWD shall bear any and all permit application costs.

9. Traffic. Except as provided below, traffic at the facility will be limited to a 30-day monthly average of forty (40) customer visits/day and one hundred thirty (130) customer visits maximum per day. If either limit is exceeded, the District will notify the City. The City shall have the option following its receipt of said notification to allow such increase in the traffic limits or to request that the District make changes to the operations of the Environmental Depot to alleviate traffic. The parties contemplate that such changes might include, by way of example only, an alteration in operating hours, an increase in the use of the Rover or any other change that will reduce the traffic. If the City requests changes to alleviate traffic, the District shall file a plan with the City within sixty (60) days of receiving the request for changes. If the City does not consent to the changes, which consent shall not be unreasonably withheld, the parties shall submit the disputed traffic issues to an impartial arbitrator agreed to by the parties. If the parties cannot agree to an arbitrator, they each shall choose an arbitrator and these arbitrators shall choose a third arbitrator. These three arbitrators shall then hear the dispute. The parties shall split the cost of arbitration. Prior to the arbitration hearing, the parties shall each notify the other of a proposed plan to alleviate traffic. If the dispute is not resolved prior to the hearing, the parties shall present their respective plans to the arbitrator or arbitration panel. The arbitrator or arbitration panel shall be required to select the plan submitted by one of the parties, without modification. The arbitrator or arbitration panel shall make such selection based on the following criteria:

(a) The traffic limits established in this agreement and the impact of such traffic on highway traffic existing at the commencement of this agreement;

(b) The extent to which traffic generated by the Depot at the time of the arbitration has imposed an increased burden on highway traffic beyond that existing at the commencement of this agreement; and

(c) The extent to which the plans submitted by the parties reduce the burden on highway traffic created by the Depot to levels comparable to that existing at the commencement of this agreement.

At each extension of term, the district may request that the traffic limits be increased in direct proportion to the population in Chittenden County if the District can demonstrate that the increased traffic will have no significant impact on adjacent neighborhoods streets. Upon upgrade of the weight limitations on the Lime Kiln bridge, all trucks greater than 24,000 gross vehicle weight will use that route as the sole route both to and from the Environmental Depot.

10. Repairs and Maintenance. The District shall, at its own cost and expense, at all times maintain the Leased Premises in good order, repair, and condition; damage by fire or casualty only exempted.

11 Property. All of the District's buildings, structures, improvements, equipment, fixtures, and other personal property of every kind in or upon the Leased Premises ("Property") shall remain the property of the District during the term of this Lease. At the end of the useful life of the Property or upon termination or expiration of the Lease, the District may sell, remove, or dispose of all Property from the Leased Premises unless other suitable arrangements are made with South Burlington. At this time, upon request of South Burlington, the District shall return the property to conditions that existed prior to the construction of the Biosolids Processing Facility; reasonable wear and tear excepted.

12. Subletting and Assignment. Without South Burlington's prior consent, the District shall not assign or sublease its rights to the Leased Premises.

13. RESERVED.

14. Quiet Enjoyment. The District shall quietly have and enjoy the Leased Premises during the term of this Lease.

15. Indemnification. The District indemnifies and holds South Burlington harmless from and against all loss, cost, damage, liability, and expense, including reasonable attorneys' fees, arising from injury or death of any person or damage to property resulting from or attributable to the District's use of the Leased Premises, including but not limited to injury or death of any person or damage to property caused by environmental contamination, except for loss, cost, damage, liability, or expense which results from negligent acts or omissions or willful misconduct of South Burlington officers, employees, or agents. This indemnification shall survive the termination of this Lease.

16. Insurance. The District shall keep in force at its expense comprehensive liability insurance insuring the Leased Premises and the Property from an insurance company selected by the District. At the District's option, all or any part of such insurance may be maintained by the District under insurance policies covering multiple properties. As a minimum, the District shall provide, at its own cost and expense, throughout the term of this agreement, the following insurance with insurers recognized by the State of Vermont as "ADMITTED" NON-SURPLUS LINES insurers. Proof of coverage is to be provided by contract via industry standard certificates of insurance.

(a) Commercial General Liability insurance covering all premises and operations addressed within the Lease:

General Aggregate Limit	\$3,000,000
Products/Completed Operations	\$2,000,000
Personal Injury	\$2,000,000
Each Occurrence Limit	\$3,000,000
Fire Damage Liability	\$10,000,000

Medical Expense Limit

\$15,000

Liability coverage is to include (certification verification required):

- (i) contract liability
  - (ii) aggregate limits of insurance (per project)
- (b) Business Auto insurance covering all District owned, non-owned, and hired vehicles, with minimum limits of liability of \$2,000,000 combined single limit.
- (c) Workers' compensation insurance as required by Vermont statute.

17. Security. The District shall maintain all signs and gates, including the entrance gate. The District shall secure the entrance gate and all buildings during hours the facility is closed to the public. The District may use the scale located onsite for District business during times when the facility is not open to the public.

18. Facility Log. The District shall maintain a log of any unusual events or violations of procedures outlined in the Environmental Depot Operations Manual or the ANR Solid Waste Management Certification (Act 78 permit) for the Depot. Such log will be available, as required by law, for public inspection during normal business hours.

19. Events of Default. The following shall constitute Events of Default:

(a) The District fails to pay when due Rent or PILOT and such failure continues for a period of ten (10) days after the date the District receives a notice from South Burlington specifying such failure.

(b) The District fails to comply within thirty (30) days' notice with any of the District's obligations in this Lease including violations of the procedures set out in the Environmental Depot Operations Manual. If such default is susceptible to cure, the District may request reasonable additional time as may be necessary to cure the default. Four (4) such failures within any twelve-month period shall constitute immediate grounds for the default of this Lease.

(c) The District becomes insolvent or otherwise unable to pay its debts as they become due; or a receiver, trustee, or other officer shall be appointed to take charge of all or any substantial part of the assets of the District; or a petition is filed by or against the District under any bankruptcy, insolvency, or other law relating to the relief or adjustment of indebtedness of debtors and is not dismissed within ninety (90) days of the date of filing.

(d) The District is not in compliance with its Solid Waste Management Certification from ANR for the Environmental Depot or the Environmental Depot Operations Manual after receiving a "notice of alleged violation" and not rectifying the situation within thirty (30) days.

20. South Burlington Remedies. This Lease is made on the condition that if an Event of Default occurs, South Burlington may immediately or at any time thereafter exercise one or more of the following remedies, consecutively or simultaneously, without notice or demand:

(a) South Burlington may bring suit for damages or specific performance for the collection of unpaid Rent, the PILOT, or other fees (less any amounts South Burlington may receive upon reletting the Leased Premises) or the performance of any of the District's obligations, all either with or without entering into possession or terminating this Lease;

(b) For defaults listed in 19 (a), (b), or (c), South Burlington may give the District a notice terminating this Lease on a date not less than thirty (30) business days after South Burlington gives such notice, and upon such date this Lease shall terminate and all rights of the District shall cease without further notice or lapse of time. Upon termination of this Lease, the District shall surrender the Leased Premises to South Burlington. Upon surrender by the District, South Burlington shall use reasonable efforts to mitigate the District's losses.

(c) For default listed in 19 (b) or (d), South Burlington may have the District close the facility to the public and accept no further material until Default described in 19 (b) or (d) is rectified. Additionally, if the South Burlington Health Officer, within his or her professional judgment, determines that conditions exist at the Environmental Depot that puts the community at an unacceptable risk, then he or she may declare an emergency situation and have the District cease accepting materials and properly dispose of certain materials creating the unacceptable risk. The District shall have such rights of petition and appeal as provided under 18 V.S.A. § 127 and 128. The emergency order will be lifted when it is determined by the South Burlington Health Officer or South Burlington Board of Health that the situation causing the risk is corrected.

(d) South Burlington may exercise such other rights and remedies as it may have at law or in equity including, but not limited to, placing a lien on the Leased Premises and Property.

21. Miscellaneous

(a) The District and South Burlington hereby agree to take or cause to be taken such further actions and to execute, deliver, and record or cause to be executed, delivered, and recorded such further documents and instruments as may be reasonably requested by the other in order fully to effectuate the purposes, terms, and conditions of this Lease.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont and may be canceled, modified, or amended only by a written instrument executed by both the District and South Burlington.

(c) Any notice given hereunder shall be deemed duly given when mailed by registered or certified mail, return receipt requested, postage and registration or certification charges prepaid, addressed to the parties' respective addresses stated on the first page hereof, except that either party may by written notice to the other designate another address which shall thereupon become the effective address of such party for the purposes of this clause.



(d) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(e) The headings for the various provisions of this Lease are used only as a matter of convenience for reference and are not to be considered a part of this Lease or to be used in determining the intent of the parties to this Lease.

(f) This Lease represents the entire agreement of the parties with respect to the Leased Premises, and all prior offers, negotiations, and representations not herein expressly contained shall be of no force and effect.

(g) This Lease shall be executed in recordable form and recorded, at the District's cost, in the City of South Burlington land records.

IN WITNESS WHEREOF, the parties hereto through their duly authorized agents have executed this Lease Agreement as of the day and year first written above.

IN WITNESS WHEREOF

CITY OF SOUTH BURLINGTON

\_\_\_\_\_

By: \_\_\_\_\_  
Jessie Baker, City Manager

IN WITNESS WHEREOF

CHITTENDEN SOLID WASTE DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_  
Sarah Reeves, Executive Director

STATE OF VERMONT  
COUNTY OF CHITTENDEN, SS.

At South Burlington, in said County and State, this \_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared Jessie Baker, duly Authorized Agent of the City of South Burlington, and she acknowledged this instrument by her signed to be her free act and deed and the free act and deed of said City of South Burlington.

Before me, \_\_\_\_\_  
Notary Public  
My commission expires:

STATE OF VERMONT  
COUNTY OF CHITTENDEN, SS.

At South Burlington, in said County and State, this \_\_\_\_ day pf \_\_\_\_\_, 2023,  
personally appeared Sarah Reeves, duly Authorized Agent of the Chittenden Solid Waste  
District, and she acknowledged this instrument by him signed to be her free act and deed and the  
free act and deed of said District.

Before me, \_\_\_\_\_  
Notary Public  
My commission expires:

## List of Attachments

Attachment A	Site Plan
Attachment B	Solid Waste Management Certification (Act 78 Permit)
Appendix 1	Environmental Depot Operations Manual
Appendix 2	Materials Collected

## EXTENSION OF PUMP STATION LEASE AGREEMENT

This Extension of Pump Station Lease Agreement (the “Agreement”) , entered into as of the \_\_\_\_ day of June, 2023 is by and between the CHITTENDEN SOLID WASTE DISTRICT, a union municipal district duly organized under the laws of Vermont, having an address of 19 Gregory Drive, Suite 204, South Burlington, Vermont 05403 (“District”) and the CITY OF SOUTH BURLINGTON, a municipal corporation duly organized under the laws of the State of Vermont, having an address of 180 Market Street , South Burlington, Vermont 05403 (“South Burlington”).

WHEREAS, the District and South Burlington entered into the Pump Station Lease Agreement dated as of December 21, 2004 (the “Pump Station Lease Agreement”);

WHEREAS, the Pump Station Lease Agreement provides for the leasing by the District to South Burlington of certain land and premises consisting of a curtain drain and pump station near the Environmental Depot owned and operated by the District at property the District leases from South Burlington at 1011 Airport Parkway, South Burlington Vermont;

WHEREAS, the District and South Burlington are simultaneously entering into an Amended and Restated Lease Agreement for the property used by the District for the Environmental Depot (the “Environmental Depot Lease”) for an extended term; and

WHEREAS, the District and South Burlington intend to continue the Pump Station Lease Agreement.

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:

1. Extension and Continuation of Lease Term. The District and South Burlington agree to continue and extend the term of the Pump Station Lease Agreement on the same terms and conditions as in the original Pump Station Lease Agreement. The term is hereby extended to December 31, 2028 (the “Term”).
2. Extension of Term. South Burlington may, at its sole option, extend the Term for a minimum of four successive periods of five years each. The option to extend shall be exercised automatically unless South Burlington gives written notice to the District not more than twelve (12) months and not less than three (3) months prior to the expiration of the then existing term that it no longer desires to extend and continue the Term of the Pump Station Lease Agreement. Each extended term shall be upon the same terms, covenants, and conditions, as provided in the Pump Station Lease Agreement. Upon the expiration or termination of the Environmental Depot Lease, the Pump Station Lease Agreement shall terminate.
3. Rent and Covenants. Payment of rent and the covenants and obligations of South Burlington under the Pump Station Lease Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

CHITTENDEN SOLID WASTE DISTRICT

BY: \_\_\_\_\_  
Executive Director

CITY OF SOUTH BURLINGTON

BY: \_\_\_\_\_  
City Manager

STATE OF VERMONT  
COUNTY OF CHITTENDEN, SS.

At South Burlington, in said County and State, this \_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared Sarah Reeves, duly Authorized Agent of the Chittenden Solid Waste District, and she acknowledged this instrument by her signed to be her free act and deed and the free act and deed of said Chittenden Solid Waste District.

Before me, \_\_\_\_\_  
Notary Public  
My commission expires:  
Commission No.: \_\_\_\_\_

STATE OF VERMONT  
COUNTY OF CHITTENDEN, SS.

At South Burlington, in said County and State, this \_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared Jessie Baker, duly Authorized Agent of the City of South Burlington, and she acknowledged this instrument by her signed to be her free act and deed and the free act and deed of said City of South Burlington.

Before me, \_\_\_\_\_  
Notary Public  
My commission expires:  
Commission No.: \_\_\_\_\_