

#5.1

To: Board of Commissioners
From: Sarah Reeves, Executive Director
Date: June 23, 2023
RE: MOU Extension, City of Burlington

In 2001, CSWD purchased two parcels of property in the south end of the City of Burlington, 195 and 201 Flynn Avenue, for the purpose of constructing a future Drop-Off Center. The plan at the time was to temporarily operate a DOC on city-owned property on Pine Street, and when Burlington completed the Champlain Parkway, CSWD would sell the Flynn Avenue property to the City of Burlington and would then construct a permanent DOC at the Flynn Ave location. The Champlain Parkway project is now underway, 22 years later.

In 2015, CSWD and the City of Burlington began discussions regarding the disposition of the Flynn Ave parcels. In 2016, the parties entered into a Memorandum of Understanding which outlined a process to develop a Lease-Purchase Agreement for the city to buy the parcels from CSWD. The MOU expired in 2019. A second MOU was authorized, expired in 2021, and was subsequently extended twice. The second extension of the second MOU expires June 30, 2023. The City has asked to extend the second MOU a third time, to September 30, 2023. The third extension is a "Restated" version of the MOU, which removes the option payments for the duration of the extension. The restated version is attached (6.2). The Burlington City Council approved the extension at their June 19, 2023 meeting.

As negotiations towards a Purchase and Sales Agreement have proceeded in good faith, I am recommending authorizing the third extension. For additional background information, please see the memo to the Burlington City Council and CSWD Board of Commissioners, dated November 11, 2022 (6.3, attached).

BE IT RESOLVED, The Board of Commissioners authorizes the Executive Director to extend the second Memorandum of Understanding with the City of Burlington for a third extension, to expire September 30, 2023.

**THIRD EXTENSION
TO THE
AMENDED AND RESTATED
SECOND MEMORANDUM OF UNDERSTANDING
BETWEEN
CHITTENDEN SOLID WASTE DISTRICT
AND
THE CITY OF BURLINGTON**

This Third Extension Agreement is made by and 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”), and is effective as of June __, 2023.

The Parties entered into the Second Memorandum of Understanding in 2019 (the “2nd MOU”) with respect to the development by the District of a Drop-Off Center (DOC) in the City of Burlington, and the potential lease-purchase of parcels on Flynn Avenue identified collectively as the Premises. The District and Burlington have continued good faith discussions with respect to the development by the District of a DOC within the City of Burlington, and wish to further extend the term of the 2nd MOU in order to allow the District leave to obtain a professional assessment of the valuation of the Premises, in furtherance of agreement on a purchase price and other material terms for the outright sale of the Premises to Burlington by the District.

The discussions have and will continue to take into account the interests of the respective communities and constituents of the Parties, development on Flynn Avenue, the advancement of the Champlain Parkway, the Railroad Enterprise Project, as well as the current District DOC at 339 Pine Street.

In furtherance of these mutual goals and in a show of good faith, the Parties twice previously extended the term of the 2nd MOU, first through December 31, 2022 (“First Extension”) and again through June 30, 2023 (“Second Extension”). Now, as these discussions have continued, evolved, and progressed, the Parties agree to further extend the term of the 2nd MOU through September 30, 2023 (“Third Extension”).

The 2nd MOU currently provides for Burlington to make additional Option Payments of \$16,667 for each year of the extension of the 2nd MOU and affiliated Option. However, in a show of good faith towards negotiation of a purchase and sale agreement for the Premises, as of the Effective Date of this Third Extension through September 30, 2023, the District hereby agrees to waive and disclaim any further option payments that would otherwise be due under the terms of the 2nd MOU. This shall in no way impact Burlington’s compliance with the terms of the 2nd MOU or its ability to exercise the Option for lease-purchase of the Premises for the duration of the term of the 2nd MOU. The Parties agree that Burlington has made all Option Payments as necessary to preserve the lease-purchase option of the Premises through September 30, 2023.

The Parties agree that if the City purchases one or both of the parcels at 195-201 Flynn Avenue, all Option Payments received shall be credited to Burlington's purchase of any parcel of the Premises. In the event the Parties work towards development of 339 Pine Street as a new expanded drop-off center, the City will need land for displaced soil management activities and would need one of the Flynn Avenue parcels for such soil management.

Capitalized terms used herein have the respective meanings given in the 2nd MOU. Unless otherwise indicated in this Third Extension Agreement, all terms and conditions as written in the 2nd MOU remain in full force and effect.

In witness whereof, the parties have extended this Second Extension Agreement effective as of June 30, 2023.

-signature page to follow-

Chittenden Solid Waste District

By: _____
Sarah Reeves
Executive Director

City of Burlington

By: _____
Chapin Spencer
Director of Public Works



#5.3

MEMORANDUM:

TO: Chittenden Solid Waste District Board of Commissioners
Burlington City Council

FR: Sarah Reeves, CSWD General Manager
Chapin Spencer, DPW Director

CC: Lee Perry, DPW Division Director – Maintenance Division
Josh Tyler, CSWD Director of Operations

RE: **195-201 Flynn Avenue MOU and CSWD Drop-Off Center in Burlington**

DATE: November 11, 2022

PROVIDED AS BACKGROUND INFORMATION June 23, 2023

Request:

We are seeking general feedback at this time on a modified proposal to advance the development of a modern, full-service Chittenden Solid Waste District drop-off center in the City of Burlington. If favorably received, we plan to return to the respective bodies at your December 2022 meetings to seek a six month extension on the 2019 Memorandum of Understanding (MOU).

Background:

For over two decades, the City of Burlington's Department of Public Works (DPW) and the Chittenden Solid Waste District (CSWD) have been attempting to resolve a protracted effort to construct a modern, safe, full-service drop off center (DOC) in the City. CSWD has operated a space-constrained and recently-limited DOC at 339 Pine Street for many years as a stop gap measure. In 2001, CSWD purchased 195-201 Flynn Avenue (two adjoining parcels) for the purpose of developing a modern, full-service DOC at that location. Due to uncertainty with the Champlain Parkway and other issues, the DOC development did not advance. In 2015, CSWD informed the City of plans to sell the Flynn Avenue parcels as the DOC development was not proceeding. The City, committed to the DOC concept but needing time to work through Champlain Parkway and other South End considerations, requested the sale of the property be delayed. So in 2016 and 2019, MOUs were approved that preserved an option for the City to purchase the parcels through a lease purchase agreement as long as annual option payments were made. The City has now paid \$100,001.32 in annual option payments.

Burlington DPW and CSWD Management have continued productive discussions regarding the development of a full-service drop off center in the City of Burlington since both parties agreed to

an extension of the second memorandum of understanding in April 2022. Through the dialogue, a modified proposal has emerged. This memorandum lays out the framework of the modified proposal and seeks to gauge the receptivity of the respective governing bodies and understand what key issues may need further consideration before further work is done.

In sum, the modified concept would be to:

- Enter into a purchase and sale agreement to have the City of Burlington purchase 195-201 Flynn Avenue parcel outright – instead of entering into a 20-year lease purchase agreement as contemplated in the 2016 and 2019 MOUs
- Execute a new MOU between the City and CSWD committing each party to make best efforts to locate a full-service CSWD DOC in Burlington, whether at 195-201 Flynn Avenue or 339 Pine Street.

The benefits of this new approach include:

- **Securing a long-term City site for soil and solid waste management.** The current constrained area for soil management at 339 Pine Street will be displaced, at least in part, by the Railyard Enterprise Project. Additionally, if the DOC is determined to be best located at 339 Pine Street, CSWD will be seeking additional space to improve safety and circulation at the site which will also displace soil management activities. The 2016 and 2019 MOUs contemplated scenarios whereby CSWD could revoke the lease purchase agreement (LPA) during the 20 year term – leaving the City with significant uncertainty as to where soil management activities could occur. Furthermore, if the City advances a municipally-operated consolidated collection service for solid waste in the future, it would need a site like this to accommodate the service.
- **Providing funds for the full purchase price up front to CSWD.** The MOU contemplated a 20 year lease purchase agreement with annual City payments to CSWD. City staff are already researching other various borrowing opportunities that would not require CSWD to finance the sale. Funds could therefore be used by CSWD right away for District priorities.
- **Simplifying the 195-201 Flynn Avenue property transfer – from a 20-year lease purchase with various contingencies to a straight forward fee simple transaction.** This approach would enable the parties to work together siting the DOC without directly tying the DOC development project to a complicated and extended land transfer arrangement.
- **Offering both parties flexibility to collectively pursue a DOC at either the 195-201 Flynn Avenue parcel or 339 Pine Street.** The 2016 and 2019 MOUs focused on developing a DOC at the Flynn Avenue site. Given the shifting considerations at both sites, and increased interest among CSWD staff to explore the concept of an expanded presence at 339 Pine Street, both CSWD and DPW management recommend a more flexible MOU going forward.

A pivotal item to be negotiated is the purchase price for 195-201 Flynn Avenue. We have heard from CSWD Commissioners that the proposed \$500,000 lease purchase agreement price in the 2016 and 2019 MOUs is now far below fair market value and is in need of recalibrating upwards. At the same time, we have heard from City leaders that a bargain sale is justified as CSWD's mission is

to support member communities in achieving solid waste management solutions and a number that covers CSWD's original purchase price and subsequent net carrying costs is reasonable - but not have a number that makes a profit at Burlington's expense. We understand these perspectives and believe that through further negotiations between executive staff, and conferring periodically with our respective governing bodies, we can present a proposed purchase and sale agreement for 195-201 Flynn Avenue along with a new proposed MOU for consideration within 6-8 months.

Next Steps:

If both parties indicate a general receptivity to the approach laid out above, we'd propose an additional six-month extension of the Second MOU to June 30, 2023 to give both parties the time to negotiate the terms of the property transfer and the new MOU. We would plan to return to both bodies at the respective December 2022 meetings to approve the six-month extension and provide direction to staff to negotiate terms similar to those described in this memo.

Feedback Welcome:

We hope this briefing and proposed road map is helpful. Feel free to reach out to us with any questions or feedback.

- Sarah Reeves, sreeves@cswd.net
- Chapin Spencer, cspencer@burlingtonvt.gov