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Resolution Relating to

AUTHORIZATION FOR BURLINGTON ELECTRIC DEPARTMENT TO ENTER AGREEMENT WITH CHITTENDEN SOLID WASTE DISTRICT TO CONTINUE OPERATION OF CLEAN WOOD AND YARD WASTE DEPOT

CITY OF BURLINGTON

In the year Two Thousand Eleven.....
Resolved by the City Council of the City of Burlington, as follows:

That, WHEREAS, in December, 2005 Burlington Electric Department ("BED") entered into an agreement with Chittenden Solid Waste District ("CSWD") to operate a wood and yard waste depot on BED's property located at 111 Intervale Road, Burlington, Vermont 05401 (the "Site") for the purpose of collecting and processing clean wood and yard waste ("Original Agreement");
and

WHEREAS, the Original Agreement expired on December 31, 2010; and

WHEREAS, in February, 2011 BED and CSWD entered into an extension agreement ("Extension Agreement") that extended the Original Agreement on a month to month basis until such time as a more permanent agreement could be negotiated and entered into and CSWD could obtain all necessary permits and/or certifications to demolish the existing yard waste bunker at the Site and construct a new, larger yard waste bunker on the Site; and

WHEREAS, CSWD has now obtained all necessary permits and/or certifications for the demolition of the old yard waste bunker and construction of a new larger yard waste bunker on the Site; and

WHEREAS, BED and CSWD have reached a tentative agreement ("Agreement") pursuant to which BED would continue the responsibility for the operation and maintenance of the wood and yard waste depot effective upon signing, for a period of time terminating on

RESOLUTION

Sponsor(s): Councilors Keogh, Wright, Paul, Mulvaney-Stanak, Bd. of

Finance

Introduced: 5/23/2011

Referred to:

Action:

Date:

Signed by Mayor:

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Resolution Relating to

**AUTHORIZATION FOR BURLINGTON ELECTRIC
DEPARTMENT TO ENTER AGREEMENT WITH
CHITTENDEN SOLID WASTE DISTRICT TO
CONTINUE OPERATION OF CLEAN WOOD
AND YARD WASTE DEPOT**

December 31, 2015, and CSWD would, among other things, make an annual \$60,000.00 payment to BED; and

WHEREAS, at its regularly scheduled meeting on May 11, 2011, the Burlington Board of Electric Commissioners approved the Agreement and authorized that the Agreement be presented to the Burlington City Council for consideration and approval; and

WHEREAS, at its regularly scheduled meeting on May 16, 2011, the Burlington Board of Finance approved the Agreement and authorized that the Agreement be presented to the Burlington City Council for consideration and approval.

NOW, THEREFORE, BE IT RESOLVED that Barbara L. Grimes, BED General Manager, or her designee(s), is hereby authorized to negotiate an agreement with CSWD for the operation and maintenance of the wood and yard waste depot consistent with the terms of the attached Agreement; and

BE IT FURTHER RESOLVED that Ms. Grimes is authorized to execute said agreement in a final form to be approved by the City Attorney.

AGREEMENT

This Agreement is dated as of the 1st day of January 2011, by and between the CITY OF BURLINGTON, a municipal corporation existing under the laws of the State of Vermont, acting by and through its electric light department, with a place of business at 585 Pine Street, Burlington, Vermont 05401 (hereinafter referred to as "BED"), and CHITTENDEN SOLID WASTE DISTRICT, a union municipal district existing under the laws of the State of Vermont, with a principal place of business at 1021 Redmond Road, Williston, Vermont 05495 (hereinafter referred to as "CSWD").

RECITALS

WHEREAS, BED presently operates a Wood and Yard Waste Depot on BED's property located at 111 Intervale Road, Burlington, Vermont 05401 ("the Site") for the purpose of collecting and processing clean wood waste and compostables; and

WHEREAS, BED presently is the recipient of all processed clean wood waste from the Site for use as fuel at the Joseph C. McNeil Generating Station; and

WHEREAS, BED has agreed to continue responsibility for the operation and maintenance of the Site for the purpose of collecting and processing clean wood waste; and

WHEREAS, BED has agreed to also have the Site be used for the collection of compostable yard waste for CSWD on the term and conditions set forth herein; and

WHEREAS, the performance of the parties and their respective obligations is subject to certain conditions precedent as set forth herein.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

SECTION ONE CONTINUATION OF CLEAN WOOD OPERATIONS

BED shall continue the responsibility for the operation, maintenance and capital costs associated with collecting and processing clean wood waste at the Site, including staffing and the disposal of any residue from such operations. All clean wood delivered to the Site accepted by

BED pursuant to the terms of this Agreement shall become the property of BED.

SECTION TWO EXPANSION OF YARD WASTE OPERATIONS

CSWD, at its sole expense, shall demolish the existing bunker currently utilized to collect compostables located on the Site and shall construct and install a new and larger yard waste bunker at the Site as depicted in attachment 2 to this Agreement. The new yard waste bunker including its construction blocks and all yard waste delivered to the Site accepted by BED pursuant to the terms of this Agreement shall become the property of CSWD.

SECTION THREE TERM

The term of this Agreement shall commence as of the Effective Date (as defined below) and end December 31, 2015, unless earlier terminated pursuant to Section Ten below.

The "Effective Date" shall be the date that CSWD obtains all legally required solid waste categorical certification, an Act 250 permit (if required) and any local building permits for the construction and installation of the expanded yard waste bunker as set forth in Section Eight. The obligations and covenants of the parties under this Agreement shall not become effective until the Effective Date. BED and CSWD agree that their prior agreement dated as of December 29, 2005 shall continue on a month to month basis as set forth in a certain Extension Agreement dated as of January 1, 2011. Upon receipt by CSWD of any required permits, CSWD shall promptly notify BED and this Agreement shall then become effective. Any payments due under Section Four shall be paid on the first day of the month of the first quarter after the Effective Date (adjusted pro rata based upon the month in which the permits are received). Upon and after the Effective Date, the parties shall thereafter be obligated to perform their respective duties and obligations as set forth in this Agreement.

SECTION FOUR ANNUAL FEES

In consideration of BED's operation and maintenance of the Site, for the collection and processing of clean wood waste, for the collection, monitoring and loading of yard waste, and for the services provided hereunder, CSWD shall make a \$60,000 annual payment to BED; subject

to the conditions set forth in Section Three. The annual payments shall be invoiced by BED quarterly in four (4) equal installments, with the first invoice issued on March 1, 2011 (or such date as may be due under Section Three hereof). CSWD shall pay all undisputed invoices within thirty (30) days of receipt. Any undisputed amounts that remain unpaid after thirty (30) days of receipt of an invoice shall bear interest at one percent (1%) per month until paid.

SECTION FIVE MATERIAL SPECIFICATIONS AND MANAGEMENT

Clean Wood: BED shall accept clean wood waste meeting the specifications identified in Attachment 1 to this Agreement. BED may, in its sole discretion, determine to accept wood waste above and beyond those meeting the minimum specifications. BED shall be responsible for the management of all aspects of the wood waste delivered to the Site.

Yard Waste: BED shall accept yard waste meeting the specifications identified in Attachment 1 to this Agreement into the new bunker to be provided by CSWD. BED must accept all loads generated from within Chittenden County that are less than 6 cubic yards per load. BED will monitor the acceptance of the incoming yard waste so as to accept only those materials as described in Attachment 1. BED will notify customers that the yard waste will not be accepted if it has excessive contamination, or unless the contaminated material is removed. BED will remove obvious contamination that they allow customers to deposit. Periodically, BED shall push up the yard waste in the bunker as required to maximize space. BED shall notify CSWD when the yard waste bunker is approaching capacity. CSWD will coordinate transport services so as to not allow the yard waste bunker to overflow. BED will load the yard waste into CSWD's transport vehicles. In certain times, BED may need to load CSWD transport vehicles during the time when the facility is not open to the public. CSWD is responsible for transporting all yard waste from the site. BED shall provide access to CSWD or its representative to the Site for the purpose of picking up and exporting the yard waste. BED will cooperate with CSWD in implementing such additional measures as CSWD may implement in order to minimize contamination of any yard waste.

SECTION SIX HOURS OF OPERATION

The facility shall be open, at a minimum, Saturdays from 8:00 a.m. to 4:00 p.m., and at

least sixteen (16) additional hours during the week. BED may, in its sole discretion, increase the hours of operation beyond the specified minimum. BED may close the facility on all Legal Holidays, including Saturdays, and shall be exempt from the minimum weekly hour requirement outlined above for those weeks that include Legal Holidays. Hours of operation are subject to change upon one (1) month notice to CSWD, but shall not be less than the above stated minimum. The current operational hours described below are acceptable:

Winter hours (mid-November through mid-April): Sunday and Monday, closed; Tuesday through Friday, 8 a.m. to noon; Saturday from 8 a.m. to 4 p.m.

Summer hours (mid-April through mid-November): Sunday, Monday and Wednesday, closed; Tuesday, Thursday, Friday and Saturday, open from 8 a.m. to 4 p.m.

SECTION SEVEN TIPPING FEES

For materials from sources within Chittenden County, BED shall not charge a tipping fee for (i) loads of clean wood waste or (ii) loads of yard waste less than or equal to six (6) cubic yards, that in both cases, meet the specifications in Attachment 1. With respect to clean wood waste from sources outside of Chittenden County, BED may establish tipping fees in its sole discretion. BED shall not accept any yard waste from customers outside of Chittenden County.

SECTION EIGHT PERMITS

BED shall be responsible for obtaining all permits and approvals necessary for its clean wood waste operations at the Site, and all such permits and approvals shall identify BED as the applicant, owner and operator. CSWD shall be the applicant and responsible for obtaining the solid waste categorical certification, an Act 250 permit (if required) and any local building permits for the expanded yard waste bunker. BED will cooperate with CSWD for the permits CSWD requires and shall sign the permit applications as the landowner.

SECTION NINE UTILITIES AND INSURANCE

BED shall be responsible for the payment of all utilities serving the Site, and procurement of insurance for its operations. CSWD agrees that it shall be solely responsible for the new yard

waste bunker to be installed on the site pursuant to the terms of this Agreement. CSWD shall procure and maintain at its own expense during the term of this Agreement General Liability Insurance on its property on the site in an amount not less than one million dollars (\$1,000,000) per occurrence including bodily injury and property damage. BED shall be named as an additional insured on the certificate.

BED shall procure and maintain at its own expense during the term of this Agreement General Liability Insurance on its property on the site in an amount not less than one million dollars (\$1,000,000) per occurrence including bodily injury and property damage. CSWD shall be named as an additional insured on the certificate.

CSWD agrees, to the fullest extent permitted by law, that it shall defend, indemnify and hold harmless BED, its officers, agents and employees for liability damages to third parties, together with costs, including attorney's fees, incurred in defending such claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of CSWD, its agents or employees, committed in the construction, installation, maintenance or transportation of its property on, to and from the Site.

BED agrees, to the fullest extent permitted by law, that it shall defend, indemnify and hold harmless CSWD, its officers, agents and employees for liability damages to third parties, together with costs, including attorney's fees, incurred in defending such claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of BED, its agents or employees, committed in the construction, installation or maintenance of its property on the Site.

CSWD is responsible for its own actions. BED is not obligated to defend and indemnify CSWD or its officers, agents and employees for any liability of CSWD, its officers, agents and employees attributable to its, or their own, negligent acts, errors and omissions.

BED is responsible for its own actions. CSWD is not obligated to defend and indemnify BED or its officers, agents and employees for any liability of BED, its officers, agents and employees attributable to its, or their own, negligent acts, errors and omissions.

**SECTION TEN
TERMINATION OF AGREEMENT**

In the event either party fails to comply with the material terms and conditions of this Agreement, that party shall be in default. If the defaulting party fails to cure the default within thirty (30) days after receipt of written notice from the non-defaulting party, this Agreement may be terminated in the discretion of the non-defaulting party. In the event of termination, neither party shall be entitled to consequential damages as a result of the termination, except that CSWD shall be responsible for making the annual payment to BED required under Section Four, above, prorated to the date of termination, less any costs incurred by CSWD to process any unprocessed material remaining on the Site after the termination date.

**SECTION ELEVEN
GOVERNING LAW**

It is agreed that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Vermont.

**SECTION TWELVE
ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to the specific subject matter hereof. Any prior agreements, licenses, understanding or representation of any kind preceding the date of this Agreement with respect to the subject matter hereof shall not be binding on either party except to the extent incorporated in this Agreement.

**SECTION THIRTEEN
MODIFICATION OF AGREEMENT**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

**SECTION FOURTEEN
NO WAIVER**

The failure of either party to this Agreement to insist on the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their proper officers thereto duly authorized as of the day and year first above written.

ATTEST:

CITY OF BURLINGTON, BY AND THROUGH
ITS ELECTRIC LIGHT DEPARTMENT

Witness

By: _____
Barbara L. Grimes, General Manager

ATTEST

CHITTENDEN SOLID WASTE DISTRICT

Witness

By: _____
Thomas E. Moreau, General Manager

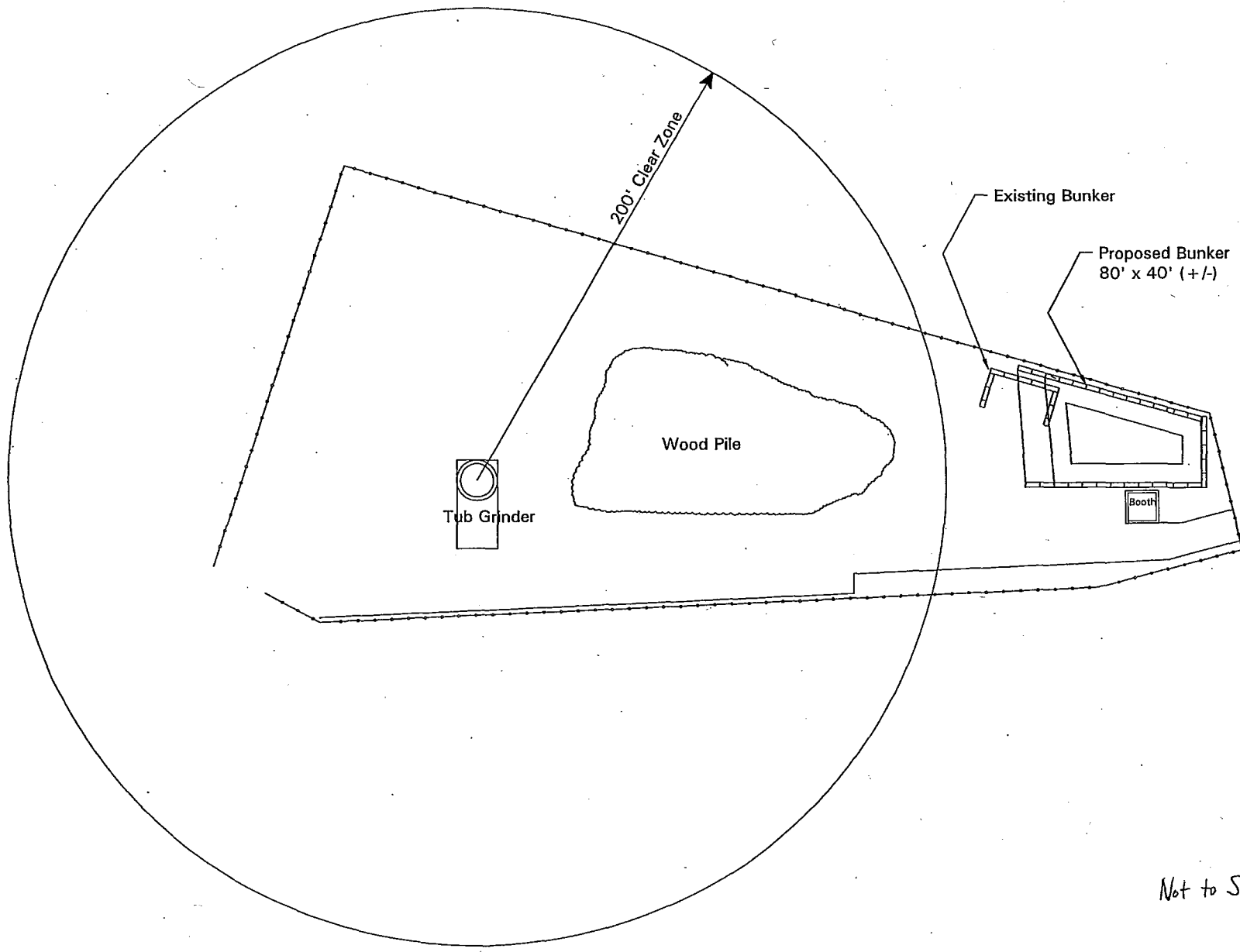
ATTACHMENT 1
MATERIALS SPECIFICATIONS

1. Clean Wood Waste

Wood that has never been painted, stained, treated, or glued (e.g., no plywood). Nails and staples are okay, but no spikes, strap steel, or metal appendages. Brush, tree trimmings, trunks, and limbs are accepted up to 6 feet in length and 2 feet in diameter. Stumps are accepted with up to a 2-foot diameter trunk and 3-foot root ball (maximum) free of all dirt and stones.

2. Yard Waste

Leaves, grass clippings, pine needles, flowers, and garden plants up to ½ inch in diameter stems. The yard waste will have no visible contaminants such as plastic, rocks, stones greater than ½ inch in diameter, untreated clean wood greater than ½ inch in diameter, metal of any kind, or painted-treated-glued wood (plywood etc).



Not to Scale

Existing Bunker

Proposed Bunker
80' x 40' (+/-)
800 cy Capacity

Booth

