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**AUTHORIZATION FOR TRANSFER OF
48.8 ACRES OF AIRPORT LAND TO
WINOOSKI VALLEY PARK DISTRICT**

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

That WHEREAS, the City of Burlington (“City”) owns and operates the Burlington International Airport (“Airport”) in South Burlington, Vermont, and

WHEREAS, the Airport’s Interim Director of Aviation has determined that the transfer of 48.8 acres of land on Van Sicklen Road in South Burlington and Williston, Vermont, purchased by the City in 2005 as a mitigation site for wetlands used for development on the Airport, will be in the best interest of the City, the travelling public and public airport purposes; and

WHEREAS, the Interim Director of Aviation after negotiation with the Winooski Valley Park District (WVPD), a public, non-profit organization, and coordination with the Federal Aviation Administration, has determined that it is in the best interest of the Airport to transfer the land, at no cost, to the WVPD for conservation purposes in accordance with a “Grant of Conservation Rights and Interests” executed by the City of Burlington on February 28, 2006 and a “Letter of Intent” between the Airport and the WVPD; and

WHEREAS, the WVPD is in the process of developing a management plan for the property to ensure its continued availability as a conserved property for the public good; and

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**AUTHORIZATION FOR TRANSFER OF
48.8 ACRES OF AIRPORT LAND TO
WINOOSKI VALLEY PARK DISTRICT**

WHEREAS, THE Airport Commission unanimously approved the transfer at its meeting on March 5, 2013; and

WHEREAS, the parties hope to complete the transfer of the property by April 1, 2013,

NOW, THEREFORE, BE IT RESOLVED that the Honorable Mayor Miro Weinberger, is hereby authorized to execute a Warranty Deed and any other documents necessary to facilitate and complete said transfer of land on behalf of the City of Burlington, subject to the prior review of City's Chief Administrative Officer and the City's legal counsel, as necessary.

NAME/PURPOSE OF CONTRACT:	Transfer of Airport land to Winooski Valley Park District
ADMINISTRATING DEPARTMENT:	Airport
CONTRACT AMOUNTS:	No contract amounts
CONTRACT TERM:	Transfer of title to land via warranty deed for conservation purposes
SOURCE OF FUNDS:	Not applicable
ACCOUNT NAME:	Not applicable
ACCOUNT NUMBER:	Not applicable

MEMO

TO: Finance Board
FROM: Burlington International Airport
DATE: March 5, 2013
**SUBJECT: Finance Board Approval Request –
Release of Airport land on Van Sicklen Road,
South Burlington/Williston**

The Airport seeks Finance Board and City Council approval for the following item related to a release and transfer of land owned by the Airport on Van Sicklen Road to the Winooski Valley Park District.

Authorization to Execute Warranty Deed transferring 48.8 acres of land on Van Sicklen Road to the Winooski Valley Park District. On January 11, 2005, the Airport purchased 48.8 acres of land in So. Burlington and Williston straddling Muddy Brook to be used as a mitigation site for 8.3 acres of wetlands that the airport desired to fill on the Airport as part of its South End Development project. The land was purchased with grant funds (95% federal, 3% state, 2% local). As part of the closing the City of Burlington executed a "Grant of Conservation Rights and Interests" perpetually preserving this property. A copy of that document is included as ATTACHMENT 1 for your information. Here are additional facts:

- The mitigation site was developed over the two year period 2006-2007 and the progress of growth was monitored by an environmental consultant for five years in accordance with Agreement with the U.S. Army Corps of Engineers ("COE") which authorized the filling of the wetlands and development of the site.
- The 5 year monitoring period ended in 2012. The COE has inspected the site and has determined that an additional two years of monitoring is necessary. We are in the process of coordinating that additional work with the Consultant. For your information, a copy of a January 31, 2013 letter from Marty Abair, COE, is included as ATTACHMENT 2.
- The goal of the Airport has been to release/donate the 48.8 parcel to a public conservation group to insure continued use and maintenance. Discussion with Winooski Valley Park District ("WVPD"), a public, non-profit organization, has been underway since mid 2012 on this subject and we have reached agreement on the transfer. The additional two years of monitoring of the wetlands development by the Airport as requested by the COE was included in that agreement and will be a part of the warranty deed or a recorded related document.
- A "Letter of Intent" (LOI) agreement has been executed by both the Airport and the WVPD outlining the parameters of the proposed transfer of property interests. This LOI which is also being coordinated with FAA (who has already informally agreed with the transfer concept), is included with this FB request as ATTACHMENT 3.

- This proposed transfer of the 48.8 acre Van Sicklen Road parcel to the WVPD was unanimously approved by the Airport Commission at a Special Meeting on Tuesday, March 5, 2013.
- The actual property transfer will be executed via a warranty deed upon approval of the appropriate resolution by the Finance Board and City Council.
- The goal is to complete the transfer process by April 1, 2013. We want to insure that the land is under the control of, and managed by, the WVPD. They are in the process of developing a Management Plan for the property.

It is requested that authorization be granted to allow the Airport to execute the appropriate Warranty Deed with WVPD for the transfer of the 48.8 acres of conserved land to that organization at no cost.

A draft resolution has been prepared and included with this Request as ATTACHMENT 4. It is being reviewed and will be formalized by McNeil, Leddy, and Sheahan.

Thank you.

GRANT OF CONSERVATION RIGHTS AND INTERESTS

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Burlington, a municipal corporation existing under the laws of the State of Vermont, with a principal place of business at City Hall, 149 Church Street, Burlington, Vermont 05401 (hereinafter referred to as the "Grantor"), and its successors and assigns, is the owner in fee simple of certain real property located in the City of South Burlington and Town of Williston, County of Chittenden, State of Vermont more particularly described as follows:

Being all and the same lands and premises conveyed to the City of Burlington by Warranty Deed of John P. Larkin, dated January 11, 2005, and recorded in Volume 694 at Pages 444-446 of the Land Records of the City of South Burlington and Volume 387 at Pages 780-782 of the Land Records of the Town of Williston. Being a parcel of land containing 48.79 acres, more or less, and being lots 1, 2 and 3 as shown and depicted on a plan of land entitled, "Three Lot Subdivision, Summersweet Development, William Wessel, Van Sicklen Road, South Burlington, Vermont," prepared by Vermont Land Surveyors, last revised September 14, 2002, of record at Map Volume 495 at Page 167, now Map Slide 407, of the City of South Burlington Land Records (hereinafter the "Property"). Said Property is further shown on a map attached as Exhibit "A" and incorporated by this reference; and

WHEREAS, the City of Burlington, acting by and through its Burlington International Airport, 1200 Airport Drive, Box 1, South Burlington, Vermont 05403 (hereinafter referred to "Grantee"), and its successors and assigns, has determined that it would be in the public interest to retain, maintain, and preserve the Property as open space, in perpetuity, in its natural state, and to protect it from future development;

WHEREAS, in consideration of the need to preserve the natural, scenic, aesthetic and special character of the Property, Grantor is willing and desires to conserve and protect the Property as a natural habitat for birds, wildlife, plants and similar ecosystems, and hereby grants in perpetuity to the Grantee, conservation rights and interests on and over the Property; and

WHEREAS, Chapter 34 of Title 10, Vermont Statutes Annotated permits the creation of conservation rights and interests in a "qualified holder," which is defined to include a municipality; and

WHEREAS, the Grantee agrees, by accepting this grant, to honor the intention of the Grantor as stated herein, and to preserve and protect in perpetuity the conservation values of the Property;

NOW THEREFORE, be it known that the City of Burlington does hereby grant, release and dedicate unto itself, as a qualified holder under Chapter 34 of Title 10, Vermont Statutes Annotated, conservation rights and interests over the Property as set forth below:

Williston, VT Town Clerk's Office

Received for Record

March 6 AD 2006

at 12 O'clock 27 minutes P M

and recorded in Book 403 Pages 134-138

Attest E. Kelly Stratton Town Clerk

ATTACHMENT 1

I. USE LIMITATIONS

1. The Property shall remain in its present natural and open condition in order for it to fulfill its present scenic, wetland, wildlife and/or hydrological functions.
2. The Property shall not be subdivided, and none of the individual tracts, which together comprise the Property, shall be conveyed separately from one another.
3. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial, commercial or forestry activities. Forestry shall include the production of plant products for domestic or commercial purposes, the growing, stocking, cutting and sale of forest trees of any size capable of producing timber or other forest products and the processing and sale of products produced on the Property (e.g., maple syrup).
4. No structures, improvements or alterations, including but not limited to, a dwelling, any portion of a water treatment or disposal system, mobile home, utility tower, or wireless communication facility shall be constructed, placed or introduced onto the Property.
5. No removal, filling or other disturbances of soil, nor any changes in the topography or surface or subsurface water systems, nor any other changes that would eliminate wetlands on the Property shall be allowed.
6. No mining, quarrying, excavation or removal of rocks, minerals, gravel, sand, topsoil or other similar materials shall be allowed on the Property.
7. The placement of signs (except for the approved entrance sign), billboards or other advertising materials or structures of any kind is prohibited.
8. There shall be no use of pesticides, poisons, biocides or fertilizers, unless specifically authorized by the U.S. Army Corps of Engineers and the Vermont State Wetlands Office or the appropriate successor federal or state agencies vested with such similar powers and duties. There shall be no draining of wetlands or burning of marshlands on the Property.
9. There shall be no manipulation or alteration of the natural watercourses, lakeshores, marshes or other water bodies, nor shall any uses of or activities upon the Property be permitted which could be detrimental to water purity or to any wetland, wildlife or hydrological function.
10. There shall be no operation of vehicles, snowmobiles, dune buggies, motorcycles, mini-bikes, go-cars, all-terrain vehicles, or any other type of motorized vehicle upon the Property.
11. There shall be no storage or placement of equipment, natural or man-made materials or substances upon the Property.

12. There shall be no dumping, burning, release, burial, injection, or disposal of any type of material on the Property.
13. Any other disturbances of the Property except for those activities explicitly authorized by the Compensatory Plan for Permit # CENAE-R-NAE-2004-1330 and/or Vermont Agency of Natural Resources Conditional Use Determination # EJ96-0386 and referenced under Section II.

II. ALLOWED USES

The following activities may be conducted on the premises upon receipt of written approval by the U.S. Army Corps of Engineers and Vermont State Wetlands Office or the appropriate successor federal or state agencies vested with such similar powers and duties:

1. Wetland creation, restoration, remediation and monitoring activities required by Corps of Engineers 404 wetlands permit # CENAE-R-NAE-2004-1330-M1 and/or Vermont Agency of Natural Resources Conditional Use Determination # EJ96-0386 are expressly allowed. Access to and maintenance of the existing municipal utilities, which cross through the site, are also expressly allowed. Other than the above-referenced allowed activities, there shall be no changes made or any action taken on any portion of the Property that would cause changes in topography or surface or subsurface waters, or that would eliminate any wetlands on the Property.
2. Planting of trees, shrubs, or other vegetation for the purpose of promoting wildlife or aesthetic quality.
3. Maintenance, repair and replacement of existing utilities.
4. Removal of debris, dead trees, or brush for the purpose of promoting safety and aesthetic quality.
5. Pruning and thinning live trees and brush for the purpose of promoting safety and aesthetic quality.

III. RESERVED RIGHTS

It is expressly understood and agreed that this grant of conservation rights and interests does not grant or convey to members of the general public any rights of ownership, entry or use of the Property. This grant is created solely for the protection of the Property and Grantor reserves the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the right to exclude others and to use the Property for all purposes consistent with this grant.

The Grantor reserves to itself the right to create, restore, remediate, monitor and

maintain those areas of the Property as required by Corps of Engineers 404 wetlands permit # CENAE-R-NAE-2004-1330-M1 and/or Vermont Agency of Natural Resources Conditional Use Determination # EJ96-0386.

IV. COMPLIANCE INSPECTION

The Grantor expressly authorizes the Grantee, and its duly authorized designees or agents, to enter upon the Property for the purpose of determining compliance with the permits issued by USACE and the terms and conditions contained within this document.

V. BENEFITS AND BURDENS

The restrictions set forth herein shall run with the land and shall be enforceable against all future owners and tenants of the same in perpetuity. They may be amended or modified only with the approval of the Vermont Agency of Natural Resources or the appropriate successor federal or state agencies vested with such similar powers and duties.

Grantor hereby affirms that it is the sole owner of the Property in fee simple and has the right to enter into this Grant of Conservation Rights and Interests.

Grantee, by accepting and recording this Grant of Conservation Rights and Interests, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this grant is delivered.

VI. MARKING OF PROPERTY

The perimeter of the Property shall at all times be plainly marked by permanent signs or by an equivalent, permanent marking system designating the area as a protected area.

VII. PROPERTY TRANSFERS

The Grantor shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property. Failure to comply with this paragraph does not impair the validity or enforceability of this Grant of Conservation Rights and Interests:

NOTICE: This Property is Subject To A Grant of Conservation Rights and Interests dated _____ and recorded at Volume __, Page __ of the Land Records of the City of South Burlington, and Volume __, Page __ of the Land Records of the Town of Williston.

VIII. SEVERABILITY

If any provision of this Grant of Conservation Rights and Interests, or the application thereof to any person or circumstances, is found to be invalid by a court of competent

jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

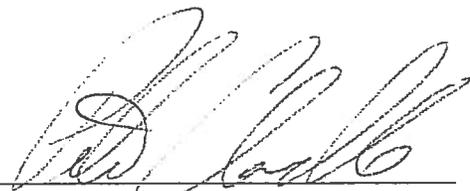
IX. MERGER

The Grantor and Grantee agree that it is their express intent that the provisions of this Grant of Conservation Rights and Interests set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property to any successor or assignee shall be deemed to eliminate this Grant of Conservation Rights and Interests, or any portion thereof, granted under the doctrine of "merger" or any other legal doctrine.

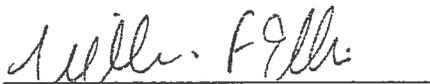
DATED at Burlington, Vermont this 28 day of February 2006.

CITY OF BURLINGTON

Jay M. Lawes
Witness

By: 
Hon. Peter Clavelle, Mayor

Approved as to legal form:



STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington in said County and State on the 28 day of February 2006, the Honorable Peter Clavelle, Mayor, personally appeared, and acknowledged this instrument by him sealed and subscribed, to be his free act and deed and the free act and deed of the City of Burlington.

Jay M. Lawes
Notary Public



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

FEB - 6 2013

8 Carmichael Street, Suite 205
Essex Junction, Vermont 05452

January 31, 2013

BY E-MAIL

Regulatory Division
CENAE-R-2004-1330

Burlington International Airport
Attn: Robert McEwing
1200 Airport Drive #1
South Burlington, Vermont 05403
rmcewing@btv.aero

Dear Bob:

This is in reference to your Department of the Army permit, number NAE-2004-1339, which authorized the placement of fill in about 8.3 acres of a scrub-shrub/emergent wetland adjacent to Petash and Muddy Brooks in conjunction with the proposed "South End Development" (SED) expansion project at the Burlington International Airport in South Burlington, Vermont.

We have reviewed the Post-Construction Assessment for the Muddy Brook Compensatory Mitigation Site and noted the following problems at the site:

- The overall success rate of plantings for the mitigation site is currently 73%. Black chokecherries and highbush blueberries were planted in 2011. Many of the woody plantings were browsed by deer and rabbits.
- The report states that reed canary grass is hampering seed dispersal of woody plantings and thus hampering volunteers from becoming established.
- Invasive species have been problematic at this site.
 - o Purple loosestrife and giant reed have been treated with glyphosate but not completely eradicated.
 - o Reed canary grass continues to be widespread at the site.
 - o In 2010 wild parsnip became established and is now widespread at the site.
 - o Buckthorn, autumn olive, and honeysuckle have been cut to the ground each year. Beginning in 2010 glyphosate was applied to cut stumps. These woody invasives have been reduced but not yet eradicated.

Based on our review, the following actions should be implemented:

- Monitoring of the site should continue for an additional two years (2013 and 2014 growing seasons) to monitor the success of planted woody species and control of

ATTACHMENT (2)

invasives. If the chokecherries and highbush blueberries planted in 2011 do not bring the success rate above 75%, additional plantings should be considered. Any additional plantings should be fenced to prevent deer and rodent browse. The 2010 report showed grey dogwood (*Cornus foemina*) and nannyberry (*Viburnum lentago*) successfully shading out reed canary grass. Additional plantings of these species as an invasive species control measure should be considered.

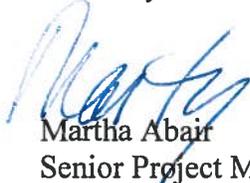
- Additional measures to prevent reed canary grass from choking out native woody species should be taken, such as mowing or planting larger woody species. Proposed measures should be submitted to the Corps Vermont Project Office for review.
- Mechanical treatment of wild parsnip should be considered. Potential control methods can be found at http://www.dcnr.state.pa.us/forestry/invasivetutorial/wild_parsnip_M_C.htm. Releasing *Gallerucella* beetle to help reduce purple loosestrife should also be considered.

The following is in response to your questions about transfer of the Muddy Brook Compensatory Mitigation Site to the Winooski Valley Park District:

- The permittee retains the responsibility for the success of the mitigation.
- Before the property is transferred, we will need a site management plan from the Winooski Valley Park District to ensure that they plan to maintain the property in a manner that will continue to provide aquatic resource benefits. We will need to know if they intend to retain the same deed restrictions that allow for the mitigation activities.
- We will need a copy of the transfer for our records.

If you have any questions, feel free to call me at 802 872-2893.

Sincerely



Martha Abair
Senior Project Manager
Vermont Project Office

Copies furnished:

Mr. Alan Quackenbush

Alan.quackenbush@state.vt.us

Ms. Charlotte Brodie

cbrodie@dubois-king.com



BURLINGTON INTERNATIONAL AIRPORT

March 4, 2013

Yumiko Jakobcic
Executive Director
Winooski Valley Park District
Ethan Allen Homestead
Burlington, VT 05408

Re: 49 +/- Acres; Van Sicklen Road, South Burlington and Williston, Vermont

Dear Yumi:

It was a pleasure to meet you when you were recently here at the Airport meeting with the Airport's Director of Planning and Development Bob McEwing and others concerning the above referenced property ("Parcel"). This letter is intended to memorialize the present mutual understanding between the City of Burlington, Burlington International Airport (BTV) and Winooski Valley Park District (WVPD) with regard to the transfer of the Parcel from BTV to WVPD.

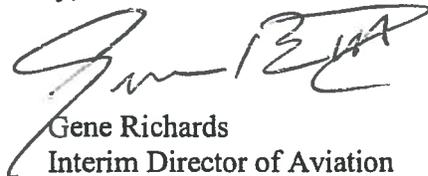
It is presently BTV's intent to transfer the Parcel to WVPD in fee by means of a warranty deed on or about April 1, 2013, at no cost to WVPD. Such a transfer is contingent upon the express authorization of the City Council of the City of Burlington ("City Council"). In addition (and as I believe you know as a result of your preliminary negotiations with Bob McEwing), such a transfer is contingent upon the satisfaction of any requirements of the United States Government and the State of Vermont (and/or any of their agencies or subdivisions), including but not limited to the monitoring of plantings and invasive species, as requested by the U.S. Army Corps of Engineers ("COE"), and use limitations set forth in a February 28, 2006 Grant of Conservation Rights and Interests, a copy of which is attached hereto. Satisfaction of such requirements may necessitate easements in favor of BTV and/or an agreement between BTV and WVPD delineating certain rights and responsibilities. Please know that the Airport is prepared to continue to fulfill its responsibility for satisfying the requirements of the COE until such time that they determine that the permit conditions have been satisfied.

ATTACHMENT (3)

This is not an offer to sell or otherwise transfer the Parcel without further approval of the City Council. However, if the foregoing accurately reflects your understanding of what BTV and WVPD intend, please sign and date on the lines provided below, and return the original of this letter to me in the postage-paid envelope provided.

Thank you and we look forward to working with you in this regard.

Sincerely,



Gene Richards
Interim Director of Aviation
Burlington International Airport

3-5-2013

Date



Yumiko Jakobcic, Executive Director
Winooski Valley Park District

c: Robert McEwing
Eileen Blackwood, Esq.
Joseph A. Farnham, Esq.
Robert C. Roesler, Esq.