Resolution Relating to

RESOLUTION _____

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

Introduced: _____

Referred to: _____

_____

Action: _____

Date: _____

Signed by Mayor: _____

RESOLUTION FOR APPROVAL OF AMENDMENT TO SECURITY AGREEMENT WITH T.B. LINCOLN LOGGER, INC.

CITY OF BURLINGTON

In the year Two Thousand Twelve.....

Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, T.B. Lincoln Loggers, Inc. ("Lincoln Loggers") of Brookfield, Vermont, operates a logging and wood chip business, supplying wood chips under contract to the Joseph C. McNeil Generating Station ("McNeil"); and

WHEREAS, in 2008, the Burlington City Council authorized Burlington Electric Department ("BED"), by resolution, to enter into a security agreement ("Security Agreement") with Lincoln Loggers in the amount of $118,500 for the purchase of a Morbark Whole Tree Chipper, to facilitate the regular supply of wood chips; and

WHEREAS, pursuant to the terms of the Security Agreement, the entire outstanding indebtedness owed by the Lincoln Loggers to BED was due and payable on December 31, 2011; and

WHEREAS, due to unforeseen circumstances beyond the control of Lincoln Loggers, paying the amount immediately due BED pursuant to the terms of the Security Agreement would create a hardship on Lincoln Loggers possibly affecting the viability of its business, an occurrence that would not be beneficial to BED; and

WHEREAS, BED believes that it would be beneficial to the electric ratepayers of the City of Burlington in BED's purchase of wood chips to amend the Security Agreement to give

Resolution Relating to

RESOLUTION FOR APPROVAL OF AMENDMENT TO SECURITY AGREEMENT WITH T.B. LINCOLN LOGGER, INC.

Lincoln Loggers a one year extension to pay the remaining $47,535.78 balance of the amount originally due to BED and modify the amount of payments made by Lincoln Loggers to BED.

NOW, THEREFORE, BE IT RESOLVED, that the City Council approves the attached Amendment to the Security Agreement with Lincoln Loggers providing a one year extension to Lincoln Loggers to pay the balance due BED and modifying the terms of payment; and

BE IT FURTHER RESOLVED, that Barbara L. Grimes, BED General Manager, or her designee, be, and hereby is, authorized to execute the aforesaid Amendment to the Security Agreement on behalf of BED, in a final form as approved by the City Attorney.

211120-42

AMENDMENT TO SECURITY AGREEMENT AND PROMISSORY NOTE

This Amendment to Security Agreement and Promissory Note is entered into this __ day of January 2012, by and between the City of Burlington, Vermont, acting by and through its Electric Light Department (hereinafter "secured party") and T. B. Lincoln Loggers, Inc. (hereinafter "debtor").

WITNESSETH:

WHEREAS, the parties entered into a Security Agreement, dated November 24, 2008, ("security agreement") pursuant to which debtor granted to secured party a security interest in a Morbark Whole Tree Chipper, Model 32NCL, serial number 057 with Cummins KTA600 engine (serial number 60602310), together with all equipment, parts, appliances, accessions, and appurtenances now or in the future placed on the same (hereinafter referred to as "collateral"), to secure the performance and payment of a Promissory Note from debtor to secured party dated November 24, 2008 for $118,500.00; and

WHEREAS, pursuant to the terms of that Security Agreement, the entire outstanding indebtedness owed by the debtor to the secured party shall be due and payable on December 31, 2011; and

WHEREAS, due to unforeseen circumstances beyond the control of debtor, the amount due and payable on December 31, 2011 to secured party would create a hardship on debtor and possibly affect the viability of its business, an occurrence that would not be beneficial to secured party; and

WHEREAS, both debtor and secured party wish to amend the security agreement to extend the term upon which the balance under the Agreement is payable and due one year and modify the amount of the payments made by debtor to secured party; and

WHEREAS, debtor and secured party agree that the existing promissory note referenced in the Security Agreement and dated November 24, 2008 between debtor and secured party will be discharged by secured party upon the grant of a new promissory note to secured party mirroring the existing promissory note but with amendments to the amount promised to be paid by debtor and the date the entire outstanding indebtedness shall be due;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Section One of the Security Agreement is amended to read as follows:

   Debtor grants to secured party a security interest in the collateral, described in Section Two, to secure the performance and payment of debtor's Promissory Note dated January __, 2012, for $47,535.78, given to secured party and payable as to principal and interest as provided in the note, and all expenditures by secured party for taxes, insurance, repairs to and maintenance of the collateral and all costs and expenses incurred by secured party in the collection and enforcement of the note and other indebtedness of debtor, and all liabilities of debtor to secured party now existing or in the future incurred, matured or unmatured, direct or contingent, and any renewals and extensions of and substitutions for the same.

2. Subsection A of Section Three of the Security Agreement is amended to read as follows:

   A. Payment. Debtor shall pay to secured party the sum evidenced by the above-mentioned note or any renewals or extensions of the same executed pursuant to this security agreement in the following manner: Secured party shall receive a discount of $2.50 per ton of wood chips delivered by debtor, which secured party shall credit against the amounts owed by debtor on the above-mentioned note through December 31, 2012, at which time the entire outstanding indebtedness, if any, shall be due and payable.

3. Except as hereinabove set forth, the terms and conditions of the Agreement and Personal Guaranty dated November 24, 2008, shall remain in the same and in full force and effect.

4. Debtor grants to secured party a new Promissory Note, copy attached hereto, in the amount of $47,535.78 with the balance due and payable on December 31, 2012.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

IN PRESENCE OF:

CITY OF BURLINGTON BY AND THROUGH ITS ELECTRIC LIGHT DEPARTMENT

Witness

Barbara Grimes, General Manager

T.B. LINCOLN LOGGERS, INC.

Witness

Thomas B. Lincoln, President

PERSONAL GUARANTY

I, Thomas B. Lincoln, hereby personally guaranty performance by the debtor, T.B. Lincoln Loggers, Inc., of its obligations under the foregoing Security Agreement and the Promissory Note referenced herein, and any renewals, modifications and/or amendments of the same as may be agreed to by debtor and secured party.

DATED as of the day and year first above written.

Witness

Thomas B. Lincoln

211120-42