City of Burlington
Burlington International Airport
1200 Airport Drive, #1
South Burlington, VT 05403
(802) 863-2874
www.btv.aero

MEMO

TO: Board of Finance
FROM: Heather Kendrew, Burlington International Airport
DATE: June 3, 2013

SUBJECT: Finance Board Approval Request – Canoe Portage Easement for GMP Corporation

The Burlington Airport seeks Finance Board and City Council approval and authorization for the City to grant an easement to Green Mountain Power Corporation ("GMP").

Currently, there is no easy way for recreational, non-motorized boaters to easily maneuver around the hydroelectric dam located on the Winooski River that is currently owned and operated by GMP. The City's involvement has occurred as a result of the need for construction of a short path over City owned land along a specific section of the Winooski River. By granting the easement, GMP would be authorized to construct two areas to "put-in" non-motorized watercraft as well as two areas to "take-out" non-motorized watercraft.

The Airport Commission approved the Easement agreement on May 20, 2013.

Thank you for your consideration of this project.

GRANT OF PORTAGE AND PUT-IN EASEMENTS

This Grant of Portage and Put-in Easements (this "Easement") dated as of the ___ day of _____ 2013, is by and between the **CITY OF BURLINGTON**, a municipal corporation in the State of Vermont (the "Owner") and **GREEN MOUNTAIN POWER CORPORATION**, a Vermont corporation with a principal place of business in Colchester, Vermont (the "Holder").

ARTICLE I. BACKGROUND

Property: The Owner is the sole owner in fee simple of the Property described as a lot of land commonly known as 15 Berard Drive in the City of South Burlington, Vermont, and being a portion of the land and premises conveyed to Owner by Warranty Deed of Nick Enterprises dated June 19, 2003, and recorded in Volume 617 at Pages 522 and 523 of the City of South Burlington Land Records, said portion being identified as Parcel 2 in said Deed, described therein as follows: An irregularly shaped parcel of land bordered in part as follows: On the north and east by Berard Drive and the westerly boundary of the commercial lots lying westerly of Berard Drive; on the northwest by the bank of the Winooski River; and on the west by the right-of-way of Interstate 89 (identified on a "Plat of Survey, Rene J. Berard" by John A. Marsh dated December 12, 1978, last revised October 14, 1988, bearing Map file No. C-301, recorded in Volume 275, at Page 27 of the City of South Burlington Land Records (the "Property").

Easement Area: The portions of the Property that are the subject of this Easement (the "Easement Areas") consist of an area ten (10) feet in width commencing at an existing access route for the Property from Berard Drive and extending in a generally northwesterly direction along an existing path or trail to the Winooski River, all as more particularly depicted and described on a map identified as Exhibit A attached hereto and made a part hereof, together with an area approximately 40 feet in width by 60 feet in length at the end of the trail and adjacent to the Winooski River, depicted on said Exhibit A marked as "Put-in Area", to facilitate access to the Winooski River by canoes and kayaks.

Purpose: The purpose of the Easement is to provide non-motorized public access to and from the Winooski River from Berard Drive for portage and put-in to enable recreational canoeing and kayaking, including connecting to existing portage to and from Holder's canoe/kayak take-out located northeasterly of the Property on Holder's property near Holder's dam commonly known as the Gorge 18 dam (the "Easement Objective").

ARTICLE II. GRANT

Grant of Easement for Public Access: **KNOW ALL PERSONS BY THESE PRESENTS THAT** Owner, in consideration of the foregoing, One or more Dollars paid to it by Holder, and other good and valuable consideration, the receipt of which are hereby acknowledged, intending to be legally bound, by these presents does hereby **REMISE, RELEASE, AND FOREVER QUITCLAIM** unto said Holder and its successors and assigns, a right to make available to the public a perpetual easement in gross and right of way over the Easement Areas for the sole Purpose described in Article I above.

Grant of Easement for Other Purposes: **KNOW ALL PERSONS BY THESE PRESENTS THAT** Owner, in consideration of the foregoing, One or more Dollars paid to it by Holder, and other good and valuable consideration, the receipt of which is hereby acknowledged, intending to be legally bound, by these presents does hereby **REMISE, RELEASE, AND FOREVER QUITCLAIM** unto said Holder, and its successors and assigns, the following rights and easements, together with access to the Property for purposes of exercising the rights set forth below:

1. Easement and right to install, construct, maintain, repair and replace a trail and canoe/kayak portage and put-in in the Easement Areas, with the right to go outside the Easement Areas as reasonably necessary and with equipment, to perform such installation, maintenance, repair and replacement provided any damage to Owner's Property outside the Easement Areas is promptly repaired or restored solely at Holder's cost;

2. Easement and right to cut and clear vegetation to allow for an open ten (10) foot wide path/trail and canoe/kayak put-in, in the Easement Areas, including the right to mow vegetation in the Easement Areas on a periodic basis as reasonably necessary to maintain the Easement Areas; and to clear an area adjacent to Owner's existing gate near the Property's boundary along Berard Drive to permit entrance and access by pedestrians carrying canoes and/or kayaks; all at Holder's sole expense;

3. Easement and right to place signage at the entrance to the Easement Areas, including on the gate referenced in paragraph 2 above, and such other locations in the Easement Areas as are required to identify the portage route and river access all at Holder's sole expense;

4. Easement and right to remove trash from the Easement Areas all at Holder's sole expense;

5. Easement and right to make such other reasonable improvements in the Easement Areas that are consistent with the Easement Objective and authorized in advance by the written consent of Owner, such consent not to be unreasonably withheld; and

6. Pursuant to the terms of an Order of the Vermont Public Service Board in Docket No. 7754, the Holder will perform, and this Easement shall permit, the right to make the following specific improvements and perform the following specific maintenance activities all at Holder's sole expense:

    a. Provide a sign on Berard Drive at the point where the portage trail and put-in leaves the street. The sign shall be clearly visible when traveling in either direction on Berard Drive.

    b. Provide a portage sign on the gate at the top of the runway approach maintenance road on the portage trail and put-in.

c. Provide a sign indicating the route on the second approach light structure above the river on the portage trail and put-in.

d. Mow vegetation off the end of the access road on the put-in to provide an open path to the put-in at the riverbank. Perform limited mowing as necessary to maintain an open staging/put-in area. Locate put-in between the two drainages at the end of the access road.

e. Perform repairs and maintenance, including mowing, as needed to ensure the portage trail and put-in remains safe and in good repair for portaging canoes and kayaks.

f. Perform an annual spring inspection of the portage trail and put-in to identify any issues with signage, access and suitability of the path for portage and taking out and launching canoes and kayaks, and promptly address all issues identified.

Exercise of Rights:

Holder, at its sole expense, shall obtain, maintain, and ensure compliance with any permits and approvals required for signs or other improvements, and shall further submit any plans for signage to Owner for its advance review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

Holder agrees to maintain the Easement Areas in as natural a state as possible, excepting as provided for herein and improvements shown on attached Exhibit A, and such other improvements as are required in order to comply with applicable laws and regulations and permitting requirements. Holder also agrees to maintain the Easement Areas in a reasonably safe condition for Holder's uses contemplated by this Easement for purposes of the Easement Objective.

No person or entity is permitted to charge a fee for access to, or use of, the Easement Areas.

Reserved Rights of Owner:

Owner reserves the right to take any action permitted under law to remove from the Property persons entering the Easement Areas for purposes other than set forth in this Easement or who interfere with the use of the Property by Owner or others. Owner further reserves the rights to maintain, repair, replace and operate its existing facilities on the Property including a culvert, airport lighting towers and a gate, provided adequate access to the Easement Areas is afforded to Holder and the public around the gate for the purposes described herein. Owner further reserves the right to conduct on the Property any other actions the Owner deems prudent and in its best interest, provided such actions do not interfere with the exercise of the easements and rights granted hereby. If Owner's exercise of its reserved rights requires relocation of the Easement Areas then Owner covenants and agrees to modify this Easement to define new Easement Areas adequate to achieve the Easement Objective, without need for further or additional consideration but in no event at Owner's expense. The modified Easement Areas shall be determined by mutual agreement of Owner and Holder.

ARTICLE III. INDEMNIFY, DEFEND AND HOLD HARMLESS

Holder, at its sole expense, shall indemnify, defend, and hold Owner, its City Council, Mayor, airport or other city officials, commission members, agents, volunteers, and employees, harmless from and against any and all claims, debts, demands, liabilities, losses, costs, damages, expenses (including reasonable attorney's fees), judgments, penalties, fines, or causes of action of every kind or character, whether in law or in equity, by reason of any death, injury or damage to any person or persons or damage or destruction of property or loss of use thereof, whether it be the person or property of Holder, its agents or employees, or of any third persons, or members of the general public, arising from or related in any way to any and all access to and/or use of the Easement Areas by anyone for any reason, but excluding those claims, debts, demands, liabilities, losses, costs, damages, expenses, judgments, penalties, fines, or causes of action of every kind or character arising from the sole negligence of Owner, its agents and employees.

ARTICLE IV. MAINTENANCE AND ENFORCEMENT

Holder will repair damage to the Easement Areas or improvements maintained by Holder thereon at Holder's sole expense. Owner shall have no responsibility to maintain the Easement Areas or any improvements or signs added to the Easement Areas by Holder pursuant to the terms of this Easement. Holder shall be responsible for ensuring that the Easement Areas are utilized in a manner that is consistent with the Easement Objective and that any uses of the Easement Areas inconsistent with the Easement Objective are prohibited and cease immediately.

ARTICLE V. REVERTER

The grant of this Easement is for the sole purpose of accommodating Holder in satisfying its obligation under an Order of the Vermont Public Service Board pursuant to 10 V.S.A. Chapter 43 in Docket No. 7754 ("Order") to provide access to and from the Winooski River for canoe/kayak portage around the hydroelectric dam currently owned and operated by Holder. If at any time the canoe/kayak access granted by this Easement is 1) no longer needed by Holder to satisfy its legal requirements under the Order; or 2) the Easement Areas cease to be utilized by Holder, its successors and assigns, in a manner materially consistent with the terms of this Easement for a consecutive period of time consisting of at least twelve (12) months; or 3) the Easement Areas cease to be maintained consistent with the terms of this Easement, then, subject to the conditions set forth below, this Easement shall cease to exist and any right, title and/or interest in the Easement Areas possessed by Holder, its successors and assigns, that derive from the grant of this Easement, shall be extinguished and sole ownership of the Easement Areas shall revert back to the Owner or its successors and assigns.

In the case of a failure to utilize the Easement Areas, as set forth in paragraph 2) above, and/or to maintain the Easement Areas as set forth in paragraph 3) above (collectively, "Reverter Event"), Owner shall provide Holder and the Agency of Natural Resources or any successor Agency thereof ("ANR") with written notice of Owner's claim for termination based on such Reverter Event. If within 90 days of receipt of notice from Owner of the occurrence of a Reverter Event, Holder fails or is unable to provide Owner with a statement of use, evidence of

non-abandonment or evidence that the Easement Areas are maintained as required, which statement shall be conclusive as to Holder's representations therein, then Owner may demand that Holder seek an Amended Order from the Vermont Public Service Board approving the termination and extinguishment of this Easement and Holder shall forthwith pursue the same at Holder's sole cost and expense. Holder consents to Owner intervening in any proceeding by Holder to obtain an Amended Order.

In the case of a Reverter Event based on failure to maintain, any termination of this Easement shall be subject to the additional requirement that if Holder provides Owner with notice prior to the expiration of the 90 day notice period specified above, of its plan to correct or cure such failure and proceeds with such plan and completes the cure within a time period reasonably agreed to between the Holder and the Owner ("Cure Period"), Owner shall have no right of reverter hereunder unless Holder fails to correct or cure within the Cure Period.

Notwithstanding the foregoing, Owner shall not take any action to extinguish this Easement as set forth herein or claim a right of reversion unless or until the foregoing provisions have been strictly followed and this Easement shall not be extinguished by Owner, nor shall any Easement rights revert to Owner unless and until a certified copy of an Amended Order of the Vermont Public Service Board evidencing the release of Holder from the requirement to provide canoe/kayak access over Owner's Property as set forth herein (an "Amended Order") is recorded in the City of South Burlington Land Records.

ARTICLE VI. NOTICES

Any notice, statement, demand, request or other communication required or permitted to be given, rendered or made by either party to the other, pursuant to this Easement or pursuant to any applicable law or requirement of public authority, or if to ANR under Article V hereof, shall be in writing, shall be deemed to have been properly given, rendered or made, if sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at the address herein below set forth, or sent via facsimile with original by overnight mail and shall be deemed to have been given, rendered or made on the day so mailed, unless mailed outside of the State of Vermont, in which case it shall be deemed to have been given, rendered or made on the expiration of three business days after mailing. Either party and ANR may, by notice as aforesaid, designate a different address or addresses for notices, statements, demands or other communications intended for it:

Holder:	GREEN MOUNTAIN POWER CORPORATION 163 Acorn Lane Colchester, VT 05446 Attn: Legal Department
With copy to:	SHEEHEY FURLONG & BEHM P.C. P.O. Box 66 Burlington, VT 05402 Attn: Diane M. McCarthy, Esq.

Owner: CITY OF BURLINGTON

_____

_____

Burlington, VT 05401

ANR: State of Vermont
Agency of Natural Resources
Department of Fish & Wildlife
103 S. Main Street
Waterbury, Vermont 05671
Attn: Secretary of Agency of Natural Resources

ARTICLE VII. QUIT CLAIM DEED

TO HAVE AND TO HOLD the stated rights, easements and title in and to said quitclaimed premises, with the appurtenances thereof, to the said Holder, and its successors and assigns forever as provided herein, **AND FURTHERMORE**, the said **Owner** does for itself, its successors and assigns, covenant with the said Grantee, **Holder**, and its successors and assigns, that from and after the ensealing of these presents, the said Owner, will have and claim no right in, or to the said quitclaimed rights and easements, except as stated above.

The undersigned Owner and Holder, by their respective duly authorized agents, have signed and delivered this Easement this _____ day of _____ 2013.

Signature page to follow

In the Presence of:

OWNER:

CITY OF BURLINGTON

_____
Witness

By: _____
Its Duly Authorized Agent

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At _____, this ____ day of _____ 2013, personally appeared _____, the _____ of the CITY OF BURLINGTON and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of CITY OF BURLINGTON.

Before me, _____
Notary Public
Commission Exp. 2/10/15

In the Presence of:

HOLDER:

GREEN MOUNTAIN POWER CORPORATION

_____
Witness

By: _____
Its Duly Authorized Agent

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Colchester, this ____ day of _____ 2013, personally appeared _____, the _____ of GREEN MOUNTAIN POWER CORPORATION, and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of GREEN MOUNTAIN POWER CORPORATION.

Before me, _____
Notary Public
Commission Exp. 2/10/15

Accepted as to form:
AGENCY OF NATURAL RESOURCES

By: _____
, Secretary

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Exhibit 2. VT PSB Docket #7754
Canoe Portage Route at
GMP Gorge #18 Generation Site
INTERSTATE 89
GMP
Substation
17
VELCO
Substation
Parking Lot
Canoe Portage Route
Sign Locations
0
150
300
600