Resolution Relating to

RESOLUTION _____

Sponsor(s): Councilors Bushor, Aubin, Knodell: Bd. of Finance

Introduced: 12/9/13

Referred to: _____

_____

Action: _____

Date: _____

Signed by Mayor: _____

AUTHORIZATION TO EXECUTE LEASE RENEWAL WITH GREYHOUND LINES, INC. AT BURLINGTON INTERNATIONAL AIRPORT

CITY OF BURLINGTON

In the year Two Thousand Thirteen.....

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

WHEREAS, the City of Burlington ("City") owns and operates the Burlington International Airport in South Burlington, Vermont ("Airport"); and

WHEREAS, the City owns land and a building at the Airport known as 1200 Airport Drive, portions of which are leased to the Greyhound Lines, Inc.; and

WHEREAS, Greyhound now seeks to renew its lease of 204 square feet at the rental rate of approximately $9,792 per year, with possible annual adjustments based on Airport operating expenses, effective January 1, 2014, with a term of three years ("Lease"); and

WHEREAS, the Director of Aviation has determined that the Lease will be in the best interest of the City and Airport, and in the interest of public airport purposes; and

WHEREAS, the Board of Airport Commissioners at their meeting on October 15, 2013, approved the Lease; and

WHEREAS, the Board of Finance, at its meeting on November 12, 2013, approved the Lease, to be in substantial conformance with the draft document attached hereto,

NOW THEREFORE BE IT RESOLVED THAT the Director of Aviation is hereby authorized to execute the Lease on behalf of the City, subject to prior review by the Chief Administrative Officer and City's legal counsel, as necessary.

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Resolution Relating to

AUTHORIZATION TO EXECUTE LEASE RENEWAL WITH GREYHOUND LINES, INC. AT BURLINGTON INTERNATIONAL AIRPORT

NAME/PURPOSE OF CONTRACTS:	Greyhound Lease Renewal
ADMINISTRATING DEPARTMENT:	Airport
CONTRACT AMOUNTS:	Per Agreement
CONTRACT TERM:	Three years effective January 1, 2014
DESIGNATION OF FUNDS:	
FISCAL YEAR:	2014
ACCOUNT NAME:	Terminal Non-Airline
ACCOUNT NUMBER:	400-35-430-4505

200020-206 "Greyhound" Lease Renewal

DRAFT LEASE AGREEMENT – OFFICE/COUNTER SPACE AND PUBLIC/COMMERCIAL BUS TRANSPORTATION

THIS LEASE AGREEMENT ("Agreement"), is made and entered into as of the ___ day of _____, 2013, by and between the City of Burlington ("City"), and Greyhound Lines, Inc. ("Lessee") a corporation organized under the laws of the State of Delaware. For and in consideration of the premises and the mutual covenants in this Agreement, City and Lessee agree as follows:

I. RECITALS

1.1 City owns and operates the Burlington International Airport (the "Airport"), located in Chittenden County, Vermont; and

1.2 Lessee desires to lease certain existing space in the Terminal building at the Airport as office/counter space and desires accommodation of transient (i.e..; for loading and unloading of passengers and baggage) bus parking near the Airport's Terminal building; and

1.3 City is willing to grant Lessee the right to use existing space at the Airport for office/counter purposes; and the right to park buses near the Airport's Terminal building, on the following terms and conditions.

II. PURPOSE

2.1 City leases to Lessee the office/counter space located at the Airport as depicted on Exhibit A (the "Space"). Lessee shall have the exclusive right to utilize the Space for general office space, ticket sales, and information purposes, in connection with its business operations and no other use of the Space is allowed without the prior written consent of the City.

2.2 City authorizes the transient parking of buses for the purposes of loading and unloading of bus passengers and their baggage only, at the location depicted on Exhibit B the "Parking Area"). No more than two buses shall be curbside at the same time.

III. REPRESENTATIONS

3.01 Representations by the City. The City hereby represents that City is a duly and lawfully created, existing and organized municipal corporation owning and operating the Airport, having the power to enter into the transaction contemplated by this Agreement and to carry out its obligations hereunder, and by proper action the City has duly authorized the execution and delivery of this Agreement.

3.02 Representations by Lessee. The Lessee makes the following representations as the basis for its undertakings herein contained:

a. Lessee is in good standing under the laws of Delaware; has the power to enter into this Agreement; and is in full compliance with all applicable Vermont laws relating to the conduct of its business in Vermont.

b. Lessee will occupy and use the Leased Premises subject to the control and jurisdiction of the City in accordance with the terms hereof.

IV. TERM

4.1 This Agreement shall commence on January 1, 2014, and shall end on December 31, 2016, unless sooner terminated in accordance with the terms hereof.

V. RENT

5.1 For the exclusive use of the Space identified in "Exhibit A" and the right to park buses as depicted on Exhibit B," Lessee shall pay to City a rental fee, adjusted annually on the first day of July and based upon the total square footage, equal to two hundred and four (204) square feet, of the Premises multiplied by the square footage rate payable by signatory airlines for similar space within the Terminal building. Such payment shall be prorated on a monthly basis and paid monthly in advance on the first day of each calendar month of the term of this Agreement, with or without billing. Payment shall be made at the Office of the Director of Aviation, 1200 Airport Drive, #1, South Burlington, Vermont 05403 or such place as may hereafter be designated by City.

City, subject to its ability to so provide, will furnish heat and air conditioning for the demised Premises at no additional cost to Lessee. Please note that if Lessee wishes to operate a queue area in front of the counter space, that area will be billed at the same rental fee identified above. Prior to installation of a queue area or kiosk, Contractor must receive written approval from the Director of Aviation.

VI. CITY OBLIGATIONS

As to the Space:

6.1 City shall provide finished floors, doors, walls, ceilings with general lighting, heating and air conditioning to all parts of the Space. City makes no representation or warranty with respect to the condition of the Space or its fitness or availability for any particular use and City shall not be liable for any latent or patent defect thereon.

As to the Parking Area:

6.2 The City shall cause the Parking Area to be available to Lessee during its scheduled hours of operation, providing for the timely removal of snow as applicable, the general maintenance of the curb for public operations and control of passenger vehicles.

VII. LESSEE OBLIGATIONS

7.1 Lessee agrees to establish, operate and maintain a high quality, financially sound coach service business responsive and courteous to the traveling public including the furnishing of good, prompt and efficient services at the Airport on a fair and reasonable basis.

7.2 Lessee agrees to maintain an appropriate on-Airport counter facility in the Space identified in Exhibit A, including operating facilities and accessories as required, and conduct its ticket sales in the space assigned.

7.3 Lessee agrees to keep the assigned premises clean, neat, and orderly at all times to include regular vacuuming, carpet cleaning, counter and sign cleaning and provide for the orderly disposal of all trash and debris.

7.4 Lessee agrees to pay the rent and other charges herein reserved at such times and places as the same are payable.

7.5 Lessee shall provide only the operate the latest model coach buses to and from Airport premises which are safe and in good repair, free of mechanical defects, and clean and properly serviced.

7.6 Lessee agrees to keep and maintain all parts of the Space and Parking Area, including related and associated appurtenances, in good condition, order and repair during the term of this Agreement. Lessee is further obligated to, upon termination whether for cause or conclusion of term, restore Space to the condition upon which it was found upon commencement of this Agreement. Notwithstanding anything to the contrary in this Agreement, Lessee shall not be responsible for structural work, capital improvements, capital expenditures and/or replacements in, on or affecting the Space or the Parking Area.

7.7 Lessee agrees to, at its own expense, obtain any necessary approvals and/or permits from the City of South Burlington (and any other appropriate governmental authority) for its use of the Space and Parking Area and agrees to observe and comply with any and all present and future requirements of the constituted public authority and with all federal, state or local statutes, ordinances, regulations and agreements applicable to Lessee for its use of the Space and Parking Area, including, but not limited to, ordinances, rules and regulations promulgated from time to time by or at the direction of City for the administration of the Airport.

7.8 Lessee agrees that it is an independent business and an employing unit subject as an employer to all applicable unemployment compensation, occupational safety and health, or similar statutes. The City shall have no responsibility to or liability for treating Lessee's employees as employees of the City, their safety, or keeping records, making reports, or paying any payroll taxes or contribution.

7.09 Lessee shall pay, on or before their respective due dates, all federal, state, and local taxes and fees which are now or may hereafter be levied upon the Space and Parking Area, or upon Lessee, or upon the business conducted on the premises, or upon any of Lessee's property used in connection therewith.

7.10 Lessee shall commit no actionable waste or nuisance upon the Space and Parking Area and shall not do or permit to be done anything that may result in the creation, commission or maintenance of any such wage or nuisance on the Space and Parking Area.

7.11 Lessee shall observe and comply with any and all present and future security regulations and procedures and operational procedures promulgated from time to time by or at the direction of City for the administration of the Airport.

7.12 Lessee shall pay all charges for telephone service, data and electrical utilities, including installation and normal repair and maintenance, related to referenced services and utilities required by Lessee.

7.13 Lessee shall not assign, mortgage, or encumber this Agreement or underlet or sublease the Space or Parking Area or any part of the Space or Parking Area.

7.14 Lessee shall not use or occupy the Space or Parking Area in such a manner as to impair the use of any part of the Terminal building or interfere with the business or occupancy of any other Airport tenant.

7.15 Lessee shall not inscribe, paint, affix or permit any sign, advertisement or notice on any part of the Space or Parking Area, including affixing the same to any door, without the prior written

consent of City. Lessee shall have the right to install on the Premises a sign or other corporate or trade name identification. The size, type, design and location of such sign or other identification in the Space shall, however, be in compliance with any and all applicable state statute or local ordinance and shall be subject to the prior written approval of the Airport Director which approval will not be unreasonably denied or delayed. The Lessee shall maintain such signs in good state of repair, and shall repair any damage that may have been done to the Leased premises by the erection, existence, maintenance, or removal of such signs.

VIII. MAINTENANCE

8.1 Except for damage caused by any negligent or intentional act or negligent omission of Lessee, Lessee's agents, employees, or invitees, City shall maintain the common areas, all structural elements of the Terminal building and all mechanical systems in good condition and repair. Subject to section 6.2 above, Lessee shall maintain the Space and Parking Area in good repair and condition at all times.

8.2 The City is not responsible for any claims for compensation or any losses, damage of injury sustained by the Lessee resulting from conditions outside the control of the City, including but not limited to, failure of any water supply, heat, air conditioning, electrical current, or sewage or drainage facility, bursting or leaking of water pipes unless due to the negligence or willful acts of City or its agents or employees.

IX. ALTERATIONS AND IMPROVEMENTS

9.1 City is not responsible or obligated to make any alterations, modifications or improvements to the Space or Parking Area.

9.2 Lessee shall not do any work in or about the Space or Parking Area or make any improvements, alterations or additions to the Space or Parking Area without the prior written consent of City. Any alterations, improvements or additions made by Lessee shall be at no cost to City and shall remain upon the Space and Parking Area at the termination of this Agreement and become the property of City unless City shall give Lessee written notice to remove the same. In that event, Lessee shall remove the improvements or additions and restore the Space and Parking Area to the same condition in which it was at the commencement of this Agreement, reasonable wear and tear excepted. Should Lessee fail to do so, City may do so and Lessee shall pay the cost and expense thereof.

X. RIGHT OF ENTRY

10.1 City and its agents shall have the right to enter the Space and Parking Area during all reasonable hours for any reasonable purpose, including but not limited to, inspection and repair.

XI. INSURANCE AND INDEMNIFICATION

11.1 During the terms of this Agreement, Lessee shall at all times carry insurance with companies duly licensed to provide insurance coverage in the State of Vermont, and approved by the City, to protect Lessee and the City against any and all claims, demands, actions, judgments, costs, expenses, or liabilities of every kind which may arise, directly or indirectly, from or by reason of Lessee's use and occupancy of the Space and Parking Area. At a minimum, Lessee shall carry and maintain Commercial General Liability coverage in the minimum amount of $1,000,000 per occurrence. Any and all such policies shall name the City of Burlington, Vermont, Burlington International Airport, as an additional insured.

11.2 Lessee shall defend (at the option of the City), indemnify, and hold the City, its successors, assigns, officers, elected and non-elected officials and employees, harmless from and against any and all claims, demands, suits, causes of action, judgments and liability of every character type or description, including all expenses of litigation, court costs and attorney's fees (collectively "Indemnified Liability") arising out of or concerning this Agreement, or the use and occupancy of the Space and Parking Area, including but not limited to:

a. damage to or loss of any property, including but not limited to City of Burlington/Airport property;

b. death, bodily injury, illness, disease, workers' compensation, loss of services, or loss of income or wages to any person, including but not limited to employees of Lessee and the City, arising out of, or caused, by the negligence, gross negligence, willful misconduct or strict liability of Lessee or its agents, employees or contractors.

XII. HAZARDOUS SUBSTANCES

12.1 Lessee shall not use, generate, store, discharge, or dispose of any Hazardous Substance on, under, about, or within the Space and Parking Area or any building or other property at the Airport. In the event of any spill or discharge of Hazardous Substances caused by Lessee, its employees, agents or invitees, Lessee, at Lessee's sole cost, shall promptly remediate all affected areas including, without limitation, the Space and Parking Area, to background levels in full and complete compliance with all applicable laws, rules, ordinances and regulations. As used herein, Hazardous Substances shall mean any substance, product, waste or other material of any nature that is or becomes listed or regulated under any Federal, State of local law, rule, regulation or ordinance concerning hazardous, toxic or dangerous substances, wastes or materials including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource conservation and Recovery Act ("RCRA"), and the Hazardous Substances Act ("HSA"). Lessee shall defend, indemnify and hold City harmless from all claims, demands, fines, suits, actions judgments and liability (including both civil and criminal) and all costs of litigation, attorney's fees and court costs, to the full extent arising out of or concerning the use, generation, storage, disposal, discharge, or clean-up of hazardous substances by Lessee at the Airport.

XIII. EXCLUSIVITY – NON-DISCRIMINATION

13.1 Lessee agrees that in the exercise of the rights and privileges herein granted for the furnishing of services hereunder to the public that it will:

a. Furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

b. charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

13.2 It is specifically understood and agreed that nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

13.3 Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person, on the ground of

race, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Space or Parking Area or furnishing of services thereon (2) in the construction of any improvements on the Space or Parking Area, no person on the grounds of race, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination, (3) Lessee shall use the Space or Parking Area in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

In event of breach of any of the above nondiscrimination covenants, City shall have the right to immediately terminate this Agreement, and to re-enter and repossess the Space and Parking Area, and hold the same as if said Agreement had never been made or issued.

XIV. GENERAL PROVISIONS

14.1 Subordination to Agreements- This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the City and the United States Government or State of Vermont relative to the operation or maintenance of the Airport, the execution of which has been required or may be required as a condition precedent to the transfer of federal rights, funds or property to the City for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time.

14.2 Acceptance of Fees - No acceptance by City of rentals, fees, charges or other payments in whole or in part, for any period or periods after a default of any of the terms, covenants, and conditions hereof to be performed, kept or observed by Concessionaire, shall be deemed a waiver of any right on the part of the City to terminate this Agreement for any subsequent violation by Concessionaire.

14.3 Nonwaiver of Rights- No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

14.4 Notices- Notices required herein may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee seventy-two (72) hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to City shall be delivered as follows:

Director of Aviation
Burlington International Airport
1200 Airport Drive,# 1
South Burlington, Vermont 05403

Vice President, Real Estate
Greyhound Lines, Inc.
600 Vine Street – Suite 1400
Cincinnati, OH 45202

Notices to Lessee shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to Lessee at the address on file with the Director. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

14.5 Captions -The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

14.6 Severability- If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is agreed that the remainder of the Agreement shall not be affected thereby.

14.7 Waiver of Claims- The Lessee hereby waives any claim against the City of Burlington and the State of Vermont and its officers, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit proceeding declaring this Agreement null, void or voidable, or delaying the same or any part hereof, from being carried out.

14.8 Right to Develop Airport- It is further covenanted and agreed that the City reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or view of the Lessee and without interference or hindrance. The City reserves the right to relocate the Assigned Area, and in the event of a relocation, the City will use its best efforts to provide substitute space of comparable size and suitability for the uses called for by this agreement..

14.9 Incorporation of Exhibits-All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

14.10 Incorporation of Required Provisions- The parties incorporate herein by reference all provisions lawfully required to be contained herein by any governmental body or agency.

14.11 Non-liability of Agents and Employees- No member, officer, agent, director, or employee of the City shall be charged personally or held contractually liable by or to Concessionaire under any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

14.12 Successors and Assigns Bound- This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

14.13 Right to Amend- In the event that the Federal Aviation Administration or its successors require modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

14.14 Time of Essence - Time is expressed to be of the essence of this Agreement.

14.15 Gender- Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise required.

14.16 Force Majeure- Neither the City nor the Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, act of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control, and the party experiencing force majeure shall give immediate notice to the other party identifying the nature of such force majeure and when it began. The party experiencing force majeure shall take immediate action to attempt to remove such causes of force majeure as may occur from time to time and its operations under this Agreement shall be resumed immediately after such cause has been removed, provided that neither party shall be required to settle any labor dispute except upon terms that party deems acceptable. The suspension of any obligations under this section shall not cause the term of this Agreement to be extended and shall not affect any rights accrued under this Agreement prior to the commencement of the force majeure. The party giving notice of the force majeure shall also give notice of its cessation.

14.17 Interpretation - The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly construed against the City.

14.18 Reserved Rights and Privileges- All rights and privileges not specifically granted to Lessee in this Agreement shall be reserved to the City.

14.19 This agreement shall be construed and interpreted according to the laws and regulations of the State of Vermont.

XV. ENTIRE AGREEMENT

15.1 It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by Lessee that City and City's agents have made no representations or promises with respect to this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against City for, and City shall not be liable by reason of, the breach of any representation or promises not expressly stated in this Agreement, any other written or parole agreement with City being expressly waived by Lessee.

The individuals executing this Agreement warrant that they have full authority to execute this lease on behalf of the entity for which they are acting herein.

The parties hereto do hereby execute this Agreement on the day and year first above mentioned.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed, in duplicate, with all the formalities required by law on the day and year written below.

BURLINGTON INTERNATIONAL AIRPORT:

ATTEST: _____ By: _____
Gene Richards
Director of Aviation

ATTEST: _____

STATE OF VERMONT

COUNTY OF CHITTENDEN, ss

At Burlington this ___day of _____, 2013 before me personally appeared Gene Richards, Director of Aviation, duly authorized agent of the City of Burlington, and he acknowledged the execution of this document to be his free act and deed, and the free act and deed of the City of Burlington .

_____
Notary Public
My Commission Expires:

Greyhound Lines, Inc. - AIRPORT

ATTEST: _____ BY: _____

ATTEST: _____ TITLE: _____
Duly Authorized

DATE: _____

STATE OF _____
_____ County, SS.

At _____ this ___day of _____, 2013 before me personally appeared _____, duly authorized agent of Greyhound Lines, Inc., and he/she acknowledged the execution of this document to be his/her free act and deed, and the free act and deed of Greyhound Lines, Inc.

_____
Notary Public
My Commission Expires:

Exhibit “A”