

1
2 **Resolution Relating to**
3

RESOLUTION
Sponsor(s): Councilors: Keogh,
Wright, Paul, Mulvaney-Stanak: BOF

Introduced: 04/25/11
Referred to: _____
Action: _____
Date: _____
Signed by Mayor: _____

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7 APPROVING THE ENGAGEMENT LETTER
8 WITH TD SECURITIES (USA) LLC
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12 **CITY OF BURLINGTON**
13

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

16
17 That WHEREAS, Section 64b(b) of the Burlington City Charter (“Charter”) authorizes and
18 empowers the City of Burlington (the “City”) to issue bonds for the purpose of financing the
19 costs of any improvement to a revenue producing facility or the City of Burlington Airport (the
20 “Airport”); and

21 WHEREAS, at the Annual City Meeting of the City, held March 2, 2010, the voters
22 approved the issuance of Revenue Bonds, in an amount not to exceed \$21,500,000, to finance
23 certain capital improvements to the Airport, including the expansion of the parking structure (the
24 “Project”); and

25 WHEREAS, the City is undertaking the Project; and

26 WHEREAS, pursuant to Section 64b(g) of the Charter, temporary notes may be issued in
27 anticipation of bonds authorized under Section 64 of the Charter; and

28 WHEREAS, TD Securities (USA) LLC (“TD Securities”) is being considered as the sole
29 and exclusive placement agent (the “Agent”) for the City in connection with the proposed private
30 placement of the bond anticipation notes contemplated to be issued by the City for the Airport
31 and has submitted an engagement letter between the City and TD Securities (the “Engagement
32 Letter”), a copy of which is attached hereto;

33 NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves and
34 appoints TD Securities as the Agent for the private placement of the bond anticipation

* * * * *

ORIGINAL

DISTRIBUTION:

I hereby certify that this resolution has been sent to the following department(s) on

RESOLUTION RELATING TO

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.....
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Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Vol. Page

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Attest:

36 **Resolution Relating to** APPROVING THE ENGAGEMENT LETTER
37 WITH TD SECURITIES (USA) LLC

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39 notes for the Project and approves the Engagement Letter. The issuance of the bond anticipation
40 notes shall be subject to prior approval by the City Council and subject to the prior review and
41 approval of the City Attorney; and

42 BE IT FURTHER RESOLVED that the City's Chief Administrative Officer, or his
43 designee, be and hereby is authorized to execute on behalf of the City the Engagement Letter
44 substantially in the form presented to the City Council, with such change as he may deem
45 necessary or in the best interest of the City, subject to the prior review and approval of the City
46 Attorney; and

47 BE IT FURTHER RESOLVED that it is the official intent of the City Council to
48 reimburse some capital expenditures made for the Project, up to the \$21,500,000 authorized by
49 the voters, within the fiscal year with the proceeds of the bond anticipation notes, in accordance
50 with Section 1.150-2 of Treasury Regulations adopted under the Internal Revenue Code of 1986,
51 as amended.

* * * * *

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Adopted by the City Council

....., 20.....

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Approved....., 20.....

..... Mayor

Vol. Page

* * * * *



Securities

TD Securities (USA) LLC
31 West 52nd Street
New York, NY 10019
www.tdsecurities.com

April __, 2011

City of Burlington, Vermont
149 Church Street
Burlington, Vermont 05401

Attention: Richard Goodwin
Assistant Chief Administrative Officer

Dear Mr. Goodwin:

We understand that City of Burlington, Vermont (the "Issuer") is currently contemplating a private placement of bond anticipation notes (the "Securities") up to \$20 million to finance, on an interim basis, the construction of certain garage facilities located at the Burlington International Airport (the "Airport") which is owned and operated by the Issuer, and the reimbursement of costs previously paid for the project. This letter agreement (the "Agreement") confirms the understanding and agreement between TD Securities (USA) LLC ("TD Securities") and the Issuer with respect to such transaction as follows:

Section 1: Engagement of TD Securities. The Issuer hereby retains TD Securities and TD Securities hereby agrees to act, as of the date hereof for the term of this Agreement, as sole and exclusive placement agent for the Issuer in connection with the proposed private placement of the Securities (the "Transaction") by the Issuer pursuant to one or more exemptions from registration under the U.S. Securities Act of 1933, as amended (the "Securities Act") and any applicable securities laws of any state or other jurisdiction. The "Securities" shall not include any general obligation debt of the Issuer, any revenue obligation or bond anticipation notes for any enterprise or activity of the Issuer other than the Airport or any long-term bonds of the Issuer for the Airport. Moreover, the term "Securities" shall not include any grant anticipation borrowing for the Airport, as such is currently being considered by the Issuer for the Airport.

The Issuer acknowledges and agrees that this Agreement is not a commitment, express or implied, on the part of TD Securities to purchase or place the Securities and the placement of the Securities will be made on a "best efforts" basis. Under no circumstances will TD Securities or its affiliates be obligated to purchase any Securities for its, or their own, accounts. In soliciting purchases of the Securities, TD Securities shall act solely as the Issuer's agent and not as principal and therefore shall have no authority to bind the Issuer.

During the term of this Agreement, the Issuer will not, and will cause its affiliates not to, initiate, solicit or enter into any discussions or negotiations looking toward the issuance, offering or sale of the Securities to any third parties, except through the TD Securities. In the event that the Issuer receives any inquiry concerning the Securities or the Transaction the Issuer agrees to promptly inform TD Securities of such inquiry. In addition, the Issuer agrees that from the date hereof until the termination of this Agreement, it will not offer, sell, contract to sell or otherwise dispose of any securities substantially similar to the Securities without TD Securities' prior written consent.

Section 2: Responsibilities of TD Securities. TD Securities shall:



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(a) familiarize itself (to the extent it deems appropriate) with the Issuer and the Airport, its operations, properties, financial condition and prospects, including, among other things, an analysis of historical financial statements, and other financial and operating information with the understanding that TD Securities shall rely entirely upon information as may be supplied by the Issuer without independent investigation;

(b) if agreed upon by the Issuer and TD Securities, assist in the drafting, preparation and distribution of an offering memorandum (the "Memorandum") and other related documentation (together with the Memorandum, the "Offering Materials") describing the Issuer and the terms of the Transaction;

(i) such Offering Materials will be based entirely upon information supplied by the Issuer, which information the Issuer hereby represents and warrants will be complete and accurate in all material respects; and

(ii) the Issuer shall be solely responsible for the completion of the Offering Materials and the accuracy and completeness of such Offering Materials which the Issuer acknowledges and agrees is its own work product.

(c) assist the Issuer in formulating a marketing strategy for the Transaction and in developing procedures and a timetable therefore;

(d) identify and contact prospective purchasers of the Securities;

(e) consult with the Issuer as to the strategy and tactics of negotiations with such prospective purchasers and participate in such negotiations;

(f) consult with the Issuer as to the timing, structure, pricing and closing of the Transaction; and

(g) provide such other investment banking services as are customary for similar transactions and as may from time to time be agreed upon by TD Securities and the Issuer.

Section 3: Fees and Expenses. The fees payable to TD Securities for its services in connection with the Transaction shall be as follows:

The Issuer shall pay TD Securities a fee of 75 bps of the aggregate principal amount of Securities sold in the Transaction; provided, however, that the fee for the services of TD Securities, if a successful closing of the transaction occurs, shall not be less than \$ 100,000. The fee shall be paid by the Issuer promptly following the closing of the Transaction.

In the event that TD Securities is unable to find a purchaser of the Securities, it shall not be entitled to any compensation under this letter agreement.

In the event that TD Securities finds one or more purchasers for the Securities but the terms or conditions are not acceptable to the Issuer (in its discretion, but exercising reasonability and good faith) the Issuer shall not be obligated to issue or sell the Securities nor to pay a fee to TD Securities.



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If at anytime during the term of this Agreement or within twelve months thereafter, the Issuer effects a Transaction, or a private placement of Securities similar to the Transaction as described in the Offering Materials other than through TD Securities, the Issuer shall pay to TD Securities a cash amount equal to the fees for a Transaction as set forth above.

The Issuer will be responsible for all expenses relating to the Transaction, including, without limitation, fees and expenses of the Issuer's counsel, auditors and other advisors, printing costs, and all applicable stamp, issuance, transfer or other similar taxes or duties as well as roadshow expenses. The Issuer shall promptly reimburse TD Securities for all reasonable expenses incurred by TD Securities in performing its services hereunder including, without limitation, printing, courier, travel and accommodation, communication, facsimile and telephone and database service expenses. These expenses shall be reimbursed by the Issuer notwithstanding that the Issuer may not complete the Transaction or any part thereof or may be prohibited from doing so by court order, administrative ruling or otherwise. [In addition, if, and only if, TD Securities does not choose to be represented by counsel, the Issuer will also pay the reasonable fees and expenses of counsel for the purchasers of the Securities, such counsel to be mutually acceptable to the Issuer and TD Securities, and subject to any cap on fees as may be reasonably determined by the Issuer and TD Securities.

Section 4: Responsibilities of the Issuer. The Issuer shall provide TD Securities, on a timely basis, with all information (financial and otherwise), data, documents, opinions, appraisals, valuations and other materials of any kind or nature available to the Issuer concerning the Issuer and/or its Airport which TD Securities may reasonably request or consider appropriate in the performance of its services. In addition, the Issuer shall provide TD Securities with timely access to the Issuer's officers, directors, employees, independent auditors, counsel and other advisors and consultants and to the key operating and management staff of the Airport.

The Issuer will, until the completion of the Transaction, advise TD Securities promptly of: (i) any material change, whether actual or contemplated, or change in material facts of which it is aware, financial or otherwise, relating to the business, affairs or prospects of the Issuer or the Airport; (ii) any material change in any of the information or representations provided by the Issuer in writing to TD Securities; (iii) any intervening event that occurs prior to completion of the Transaction; and (iv) any other material change or material fact of which the Issuer is aware that might reasonably be considered material to the Issuer, the Transaction, the Offering Materials or the services rendered by TD Securities.

The Issuer will advise TD Securities promptly of: (i) any request received for any information, meeting or hearing relating to the Transaction, services rendered by TD Securities or any disclosure document or document prepared in connection with the Transaction; and (ii) the initiation of any relevant proceeding, litigation or investigation by an administrative agency, regulatory or judicial authority or other party with respect to the City, the Airport or the Transaction. If any representative of TD Securities is requested by the Issuer or required by law to attend any hearing or proceeding before any administrative agency, regulatory or judicial authority in connection with the matters herein contemplated, the Issuer shall promptly reimburse TD Securities for: (i) the time spent by its personnel in connection therewith, at a rate based on TD Securities' normal per diem rates; (ii) all reasonable expenses incurred by TD Securities' personnel in connection therewith; and (iii) the reasonable fees and disbursements of TD Securities' counsel, if any.



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Section 5: Accuracy of Information. The Issuer recognizes and confirms that TD Securities (i) will be relying solely on such information about the Issuer and the Airport as the Issuer furnishes to TD Securities and other information available from generally recognized public sources in performing the services contemplated hereunder, (ii) will not independently verify the accuracy or completeness of such information, (iii) does not assume responsibility for the accuracy or completeness thereof, and (iv) will make appropriate disclaimers consistent with the foregoing. The Issuer represents and warrants that the Issuer's information and the Offering Materials will, at all times during the period of the engagement of TD Securities hereunder, be complete and accurate in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances under which such statements are made. Further, the Issuer represents and warrants that its information and all relevant information contained in the Offering Material will, to the best of its knowledge, fairly present in all material respects the financial condition and operations of the Issuer and its Airport, and any projections, financial or otherwise, provided to TD Securities will be prepared in good faith with a reasonable basis for the assumptions and the conclusions reached therein and on a basis consistent with the Issuer's historical financial data with respect to the Airport or the City of Burlington. The Issuer will give TD Securities a certificate to this effect with respect to an Investor Memorandum prepared by the Issuer with the assistance of TD Securities for dissemination to potential investors by TD Securities just prior to its dissemination. Under no circumstances will TD Securities be liable to the Issuer or any other party for any damages, losses or liability arising from the inaccuracy or incompleteness of such information or the Offering Materials.

Section 6: Use of Name; Disclosure; TD Securities' Views, Role, Etc. The Issuer agrees that any references to TD Securities and/or its affiliates made in connection with the engagement hereunder are subject to TD Securities' prior approval. The Issuer acknowledges that all views or opinions (whether written or oral, formal or informal) given by TD Securities to the Issuer in connection with its engagement hereunder are intended solely for the benefit and use of the Issuer in considering the transaction to which they relate and the Issuer agrees that no such views or opinions shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner or for any purpose, without TD Securities' prior written consent, except as otherwise provided for herein. Any views or opinions given by TD Securities hereunder will be made subject to and will be based on assumptions, limitations, qualifications and reservations as TD Securities, in its sole judgment, deems necessary or prudent in the circumstances. TD Securities shall be permitted to reference the Transaction in its marketing materials.

Section 7: No Rights Bestowed on others or Fiduciary Relationship Created. The Issuer acknowledges and agrees that TD Securities has been retained only by the Issuer and that the Issuer's engagement of TD Securities is not deemed to be on behalf of and is not intended to confer rights upon other entity or persons having any relationship of any nature with the Issuer or any other person (other than the Issuer) as against TD Securities, its affiliates or any of their respective directors, officers, employees, advisors and agents, and no other person shall acquire or have any rights under or by virtue of this Agreement.

The Issuer acknowledges that in any Transaction, TD Securities would be acting pursuant to a contractual relationship entered into on an arm's length basis and in no event do the parties intend that TD Securities act or be responsible as a fiduciary to the Issuer or any other person in connection with any activity that TD Securities may undertake or has undertaken in furtherance of such Transaction, either before or after the date hereof. TD Securities hereby expressly disclaims any fiduciary or similar obligations to any such person, either in connection with such



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Transaction or any matters leading up to such Transaction, and the Issuer hereby confirms its understanding and agreement to that effect. Each of you and we agree that you and we are each responsible for making our own independent judgments with respect to any Transaction, and that any opinions or views expressed by TD Securities to the Issuer regarding such transactions, including but not limited to any opinions or views with respect to the price or market for the Issuer and its subsidiaries' securities, do not constitute advice or recommendations to the Issuer or its subsidiaries. The Issuer, on behalf of itself and any other person or entity for which it may act, hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against TD Securities with respect to any breach or alleged breach of any fiduciary or similar duty in connection with the transactions contemplated by this Agreement or any matters leading up to such Transaction.

Section 8: No Brokers. The Issuer acknowledges and agrees that it has not employed or engaged any brokers, representatives or other persons which have an interest in compensation due to TD Securities from any transaction contemplated herein.

Section 9: Term. The expiration of TD Securities' engagement hereunder shall be the earlier of closing of the Transaction or termination of the Agreement. The engagement may be terminated by either the Issuer or TD Securities upon 30 days' prior written notice. The definitions in section 1 as well as section 3 shall survive the expiration or termination for any reason of this Agreement. It is expressly agreed that following the expiration or termination of this Agreement, TD Securities will continue to be entitled to receive fees as set forth herein that have accrued prior to such expiration or termination but are unpaid, as well as reimbursement for expenses incurred prior to the date of termination as contemplated herein.

Section 10: Acknowledgments; Waiver. The Issuer acknowledges and agrees that (i) TD Securities is being retained solely to assist the Issuer in its efforts to structure a Transaction and that TD Securities is not being retained to advise the Issuer on, or to express any opinion as to, the wisdom, desirability or prudence of consummating a Transaction and, (ii) TD Securities shall not have any liability (including without limitation, liability for any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements unless resulting from any negligent act or omission of TD Securities) (whether direct or indirect, in contract, tort or otherwise) to the Issuer or to any person (including, without limitation creditors of the Issuer) claiming through the Issuer for or in connection with the engagement of TD Securities, this Agreement and the transactions contemplated hereby (including, without limitation, the Transaction and the use of proceeds). Neither TD Securities nor its affiliates shall be responsible or have any liability for any indirect, special or consequential damages arising out of or in connection with this Agreement or the Transactions contemplated hereby, even if advised of the possibility thereof. The Issuer confirms that it will rely on its own counsel, accountants and other similar expert advisors for legal, accounting, tax and other similar advice. The Issuer acknowledges that TD Securities was induced to enter into this Agreement by, inter alia, the provisions of this paragraph.

TD Securities is a wholly-owned subsidiary of The Toronto-Dominion Bank, which, together with affiliates (collectively, "TD") is a full service financial institution that conducts a full range of investment banking, merchant banking, corporate banking, and security brokerage activities. TD provides loans, structured products, investment banking and financial services to governments, corporations and institutions. In addition, TD has active proprietary trading books that trade securities on behalf of TD that are issued by a wide range of public companies. In the ordinary course of its activities, and subject to compliance with applicable securities laws, TD



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may provide credit or other forms of financing to any party with an interest in the Transaction and may hold long or short positions, may trade or otherwise effect transactions for its own account or for the account of TD's customers, in debt securities or related derivative securities of the Issuer or any other entity of company that may be involved in the Transaction.

Section 11: Authorization. Each party hereto represents and warrants to the other party that this Agreement has been duly authorized, executed and delivered by such party and constitutes a legal, valid and binding agreement of such party, enforceable against such party in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization and other laws of general principles of equity.

Section 12: GOVERNING LAW, ETC. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF VERMONT (WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF). ANY RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THIS AGREEMENT OR THE INDEMNIFICATION AGREEMENT IS HEREBY WAIVED BY THE PARTIES HERETO. THE PARTIES HERETO HEREBY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE STATE IN CONNECTION WITH ANY DISPUTE RELATED TO THIS AGREEMENT OR ANY OF THE MATTERS CONTEMPLATED HEREBY. THE PARTIES AGREE THAT ANY LEGAL SUIT, ACTION OR PROCEEDING BROUGHT BY THE OTHER PARTY, OR ANY OF ITS AFFILIATES TO ENFORCE THIS AGREEMENT OR OTHERWISE RELATED TO THIS AGREEMENT WILL BE GOVERNED BY THIS CHOICE OF LAW AND WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF SUCH SUIT, ACTION OR PROCEEDING. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF THE PARTIES HERETO, ANY OF ITS AFFILIATES OR ANY INDEMNIFIED PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR LIMIT THE RIGHT OF THE PARTIES HERETO OR ANY OF ITS AFFILIATES TO BRING PROCEEDINGS AGAINST THE OTHER PARTY IN THE COURTS OF ANY JURISDICTION OR JURISDICTIONS.

Section 13: Notices. Notice given pursuant to any of the provisions of this Agreement shall be in writing and shall be mailed or delivered or e-mailed (i) to the Issuer, at the address listed on the front of this Agreement and (ii) to TD Securities at 31 West 52nd Street, New York, New York 10019, Attention: John Schopfer, Director.

Section 14: Miscellaneous. This Agreement may be executed in two or more counterparts, all of which together shall be considered a single instrument. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, whether written or oral, between the parties hereto with respect to the subject matter hereof and cannot be amended or otherwise modified except in a writing executed by the parties hereto. Neither party may transfer or assign its rights or obligations hereunder to any other entity or person without the prior written consent of the other party, except that TD Securities may assign this agreement to any successor in interest. TD Securities may use the services of its affiliates in the completion of this engagement. The provisions hereof shall inure to the benefit of and be binding upon the permitted successors and assignees of the Issuer and TD Securities. Any determination that any provision of this



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Agreement may be or is unenforceable shall not affect the enforceability of the balance of this Agreement.

We are delighted to accept this engagement and look forward to working with you on this assignment. If you are in agreement with the foregoing, please sign and return to TD Securities at 31 West 52nd Street, New York, New York 10019, Attention: John Schopfer, the enclosed copy of this letter. Delivery of an executed signature page shall be effective execution and delivery.

Very truly yours,

TD SECURITIES (USA) LLC

By: _____
Name: John Schopfer
Title: Director

Accepted and agreed as of
the date first above written:

City of Burlington

By: _____
Name:
Title:

