



**CITY OF
MONTPELIER
MONTPELIER,
VERMONT**

Agenda for City
Council Meeting
Wednesday, June 9,
2010
07:00 P.M.

- 1) Call to Order by the Mayor
- 2) 10-139. General Business and Appearances
- 3) 10-140. Consideration of the Consent Agenda:
 - a) Consideration of the Minutes from the May 19th, 2010 Regular Meeting.
 - b) Consideration of becoming the Liquor Control Commission for the purpose of acting on the following:
 1. Request to Cater Malt and Vinous Beverages & Spirituous Liquors.
 - A. The Black Door Bistro-6/24/10-Wood Art Gallery
 - B. New England Culinary Institute-6/6/10-Ratification of poll vote-Hopkins House at National Life
 - C. New England Culinary Institute-6/14/10-Hopkins House at National Life
 2. Outside Consumption Permit
 - A. McGillicudy's Irish Pub-7/3/10-Langdon Street

B. Langdon Street Café-7/3/10-Langdon Street

- c) Receipt of Monthly Budget Report from the Finance Director
- d) North Street Retaining Wall Reconstruction Bid Results.
- e) Street Closures for Independence Celebration on July 3rd:
 - A. State Street—between Governor Davis and Bailey Avenue: Closed from 12:30 p.m. until 10:30 p.m. for vendors and parade. Note: Access to Department of Motor Vehicles will be re-routed through state parking lots.
 - B. Main Street -between the Roundabout and State Street: Closed from 6 p.m. until approximately 7:45 p.m. for the Montpelier Mile Road race followed by the parade. Note: No parking on State Street between 5 p.m. and 8 p.m. Vehicles remaining on street will be towed.
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- 4) 10-141. Consideration of a request from James Nagle, 133 Towne Hill Road for a noise variance on June 12, 2010, 6 to 10 p.m. Neighbors within 250 feet have been notified and council has been provided with a copy of the letter and names and addresses of those so notified. Recommend approval of request.
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Lawrence Houston, residents of First Avenue for a partial street closure of First Avenue on Saturday, June 19th from 1:00 p.m. to 7:00 p.m. A copy of the letter notifying the neighbors on First Avenue, Hubbard Street, Tremont Street, East State Street and Guernsey Avenue has been provided to council. Council has also been provided with a copy of the Police Chief, Fire Chief and Public Works indication of approval with certain requirements. Recommend approval of request.

- 6) 10-143 First Reading of Proposed Ordinances Concerning Berlin Pond. City Attorney Paul Giuliani has recommended two ordinance amendments relating to use of Berlin Pond. The amendments were discussed at the May 26, 2010 meeting. The City Council voted unanimously to proceed with the public hearing process for adoption. Correspondence from Paul Giuliani and copies of the proposed amendments are enclosed.

Recommendation: Conduct the First Reading on both amendments; warn the second reading for June 23rd

- 7) 10-144 Consideration of Transfer of \$182,000 from general fund to the Capital Fund. Staff has identified projected operations budget savings due, primarily, to the mild winter weather.

Recommendation: Transfer \$182,000 from the general fund to the capital fund for use on specific projects as outlined.

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- 8) 10-145 Discussion of City Councils goals, priorities and objectives for 2010-11. On April 5, 2010 the Council conducted a workshop to discuss goals, priorities and objectives for the upcoming year. At that meeting an outline of key issues was developed. The outline is enclosed.

Recommendation: Complete discussion, adopt final version or provide direction to staff.

- 9) 10-146 Council Reports
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- 10) 10-147. Mayor's Report
- 11) 10-148. Report by the City Clerk-Treasurer
- 11) 10-148. Report by the City Clerk-Treasurer
- 12) 10-149. Status Reports by the City Manager
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- 13) 10-150. Agenda Reports by the City Manager Discussion of summer meeting schedule Update on collective bargaining with the police union. Possible executive session under 1 VSA 313 (a) (1) where premature public knowledge would clearly place the city at a substantial disadvantage.
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Adjournment



**CITY OF MONTPELIER
MONTPELIER, VERMONT**

Additional Agenda Item

City Council Chambers, City Hall
Wednesday, June 9, 2010
7:00 P.M.

- 1) Consideration of approval of a contract with DuBois & King for \$240,640 to perform “local share” consultant services connected with the Army Corps of Engineers Flood Mitigation Study. Funds have been allocated in the city’s capital plan and costs are being shared equally with the State of Vermont. Copies of the proposed agreement were sent to the City Council on Monday.

Recommendation: Authorize the City Manager to sign the contract (and any related documents) as presented.

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City of Montpelier
Department of Public Works
Memorandum

To: William Fraser, City Manager

From: Thomas McArdle, Assistant Director

Date: June 4, 2010

**Subject: North Street Retaining Wall Reconstruction
Construction Bid Results
Recommendation of Contract Award**

This is to inform you and the City Council that competitive sealed bids for the above referenced contract were opened on Thursday, June 3rd at 10:00 am. A total of six bids were received, opened and accepted. A tabulation of the bids is attached, showing the following result:

- | | |
|---------------------------|----------------|
| 1) Hebert Excavation, Inc | = \$158,820.00 |
| 2) J.P. Sicard | = \$158,850.00 |
| 3) Capital Earthmoving | = \$177,587.00 |
| 4) Engineers, Inc. | = \$191,580.00 |
| 5) G.W. Tatro | = \$196,604.00 |
| 6) Kingsbury Companies | = \$199,440.00 |

The budget for this project was approximately \$110,000. This includes a Vtrans approved Town Highway Structures grant in the amount of \$84,408 and the remainder of \$25,592 will be from the Capital Improvement Program (retaining wall bond authorization). This leaves a difference of about \$48,000 of additional funds needed to award the contract representing a total of \$74,412 of required local funds. (The cost for professional engineering services for this project is being paid for from the CIP "project management" account.)

The low bid is about 69% more than our original cost estimate (\$93,787) and approximately 32% greater than the engineer's estimate (\$120,000). We attribute the construction cost increase to the following possible causes which were not fully anticipated in our grant application cost estimate:

- Asbestos coating discovered on the existing metal bin wall requires specialized handling and proper disposal in accordance with the VT Dept of Health rules & regulations
- Construction of an adjacent temporary detour (one-way road) conditions to provide emergency services access to upper North St. & E. Montpelier.
- Determination that the existing water main will require temporary support due to a conflict with the extent of excavation.
- Soil analysis revealed poor load bearing quality necessitating the construction of a cast in-place footing to support the segmental wall.
- Assumed added cost due to limited work area and staging in close proximity to adjacent house.
- Seasonal bidding atmosphere possibly affecting the number of contractors still seeking summer projects.

It is our opinion that the low bid is a reasonable price given the circumstances and considering the number of bids received and closeness between the two low bids received. We would not expect that a price difference would result from re-bidding the project. As a retaining wall project which already incorporates the most economical retaining system known to be available, there is no aspect or component of the project that could be cut or eliminated to save significant costs.

In view of the higher than anticipated low bid received, we are now seeking re-consideration of the state grant award amount through an amendment application. A Town Highway Structures Grant typically allows up to 90% of the construction cost which was the intent at the time of the grant application. We should learn relatively soon whether there are additional funds available to apply for.

The retaining wall bond in the amount of \$415,000 was intended to fund three wall projects; Nelson St, Hill St & North St. Unfortunately, the final cost of the Nelson St wall was 8% more than anticipated leaving a balance of \$57,331 for the other walls.

We have tentatively earmarked an additional \$90,000 from the projected savings from the operating budget for FY10 to be applied to the retaining wall bonds due to the increased costs associated with the Nelson Street and North Street retaining walls and to provide some funding to address the Hill Street retaining wall. This will be our contingency if the state grant award cannot be amended.

After review of the bids submitted, we recommend that the contract be awarded to Hebert Excavating, Inc. of Williamstown , VT, in the amount of \$158,820.00 provided the City Manager is satisfied that sufficient funds are available and committed to the project. We request that you seek Council authorization on the next available Consent Agenda to execute this contract, suggested wording as follows:

*To accept the low bid submitted by Hebert Excavating of Williamstown, Vermont, for the contract to reconstruct the North Street retaining wall located at the intersection of Hillhead Street and authorize the City Manager to sign the contract agreement in the amount of **\$158,820.00**, and other contract documents. **Said authorization is subject to the availability of sufficient funds as confirmed by the City Manager and the Finance Director.***

If you would like to review any of the specifications or bids received, please feel free to contact us.

Attachment

C: Todd Law, Director of Public Works
Sandy Gallup, Finance Director
Charlotte Hoyt, City Clerk
Mike Garand, Streets Supervisor

McKEE, GIULIANI & CLEVELAND

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
P.O. BOX 1455
MONTPELIER, VERMONT 05601-1455

TELEPHONE: (802) 223-3479
FAX (802) 223-0247

J. PAUL GIULIANI
GEORGIANA O. MIRANDA (NY AND VT)
GLORIA K. RICE
JOHN P. RILEY
GLENN C. HOWLAND
ELIZABETH H. MAGILL

PETER GIULIANI (1907-1998)
W. EDSON McKEE (1923-1999)
ALDEN GUILD (RET.)

OF COUNSEL
FREDERICK G. CLEVELAND

OFFICES AT:
TD BANKNORTH BUILDING
94 MAIN STREET, 2ND FLOOR
MONTPELIER, VT 05602



April 29, 2010

William J. Fraser
City Manager
39 Main Street
Montpelier, VT 05602-2950

Re: Berlin Pond Source Protection

Dear Bill:

I would be grateful if you will share this letter with the City Council.

The City of Montpelier has prevailed in its application for a temporary restraining order prohibiting trespass or entry upon Berlin Pond and upon City-owned adjoining lands. While the underlying action remains to be concluded, the Superior Court has found for the City on each material element upon which the underlying action is predicated. The Superior Court's findings and order are completely consistent with previous judicial decisions, current and historical regulatory measures, and the City's protection and enforcement initiatives. In my opinion, the City currently is in a position to complete its source protection responsibilities, thereby ensuring that this valuable asset will serve the City for years to come.

When I visited with the Council last month I distributed for consideration drafts of two ordinances. One ordinance is designed to add Section 13-3 to our code of ordinances. Its purpose is to include Berlin Pond specifically within the general trespass prohibition.

The other proposed enactment is the addition of Article VI, a source protection measure styled as both a City ordinance and a health order. This proposed ordinance complements our existing Source Protection Plan and elevates the Plan to an enforceable enactment.

William J. Fraser
April 29, 2010
Page Two

The adoption of these measures will serve to (a) dispel uncertainty over the nature and extent of the City's authority over Berlin Pond and contiguous land, (b) confirm conclusively that the City takes its water supply protection responsibilities very seriously, and (c) sets in place clear, appropriate and prudent regulatory and management standards.

I will be glad to visit with the Council on this subject at its convenience.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Paul Giuliani", with a stylized, flowing script.

J. Paul Giuliani

JPG:pw
[8881-109]

ARTICLE VI
AN ORDINANCE RELATING
TO THE PROTECTION
OF BERLIN POND

DRAFT
DRAFT

WHEREAS, Berlin Pond and its tributaries have been designated by the Vermont Water Resources Board as Class A(1) waters of the State of Vermont; and

WHEREAS, Berlin Pond provides the exclusive public water supply source for the City of Montpelier and for precincts within the Town of Berlin; and

WHEREAS, the City of Montpelier has expended considerable resources to acquire, develop, improve, maintain and protect Berlin Pond and its tributaries, thereby ensuring its continued use as a primary public drinking water source; and

WHEREAS, the City of Montpelier and its City Council are charged by law with protecting Berlin Pond, its tributaries, reservoirs and water supply components from damage, degradation, pollution and contamination; and

WHEREAS, in the exercise of its responsibility and authority with respect to Berlin Pond, the City Council determines the necessity of promulgating, restating and establishing certain protective measures as set forth in this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL IN ITS CAPACITY AS THE LEGISLATIVE BODY OF THE CITY OF MONTPELIER, AND CONVENED AS A LOCAL BOARD OF HEALTH WITH THE CITY HEALTH OFFICER, THAT THE CODE OF ORDINANCES OF THE CITY OF MONTPELIER, VERMONT, BE AMENDED BY ADDING ARTICLE VI TO CHAPTER 7 WHICH READS AS FOLLOWS:

Sec. 7 - 600. The findings and analysis set forth in the Source Protection Plan (WSID #5272) prepared by Dufresne & Associates, dated February 23, 2001, as they pertain to possible pollution, contamination, degradation and damage to Berlin Pond and its tributaries, are hereby adopted and incorporated herein by reference.

Sec. 7 - 601. The land use conditions and activities upon which such findings and analysis are predicated constitute potential sources of pollution and contamination of Berlin Pond and its tributaries, and are deemed to be collectively a public health risk.

Sec. 7 - 603. Additional human activity and changes in land uses in the proximity of Berlin Pond and its tributaries increases the likelihood of water pollution and contamination of the exclusive public water supply source serving thousands of persons.

Sec. 7 - 604. Notwithstanding the land use regulatory powers of those municipalities in which Berlin Pond, its tributaries and its watershed are located, the City asserts primary jurisdiction in the regulation of any and all activities within the Source Protection Area designated and delineated in the above-identified Plan, in concert with the regulatory authority of the Secretary of the Vermont Agency of Natural Resources and the Commissioner of the Vermont Department of Health.

Sec. 7 - 605. Human activity within Zones 1 and 2 of the Berlin Pond Source Protection Area, as designated and delineated on the above-referenced Plan, are prohibited unless directly related to or required for water supply testing, protection, enforcement or improvement purposes.

Sec. 7 - 606. Existing structures and improvements located within 200 feet of the shoreline of Berlin Pond or the margin of any of its tributaries may continue in their present form, use, location and condition; provided, however, that an existing structure, improvement or land condition shall be removed immediately if it is found likely to cause or contribute to any contamination or pollution of Berlin Pond or any of its tributaries.

Sec. 7 - 607. All activities, structures, improvements and land uses within Zone 3 of the Berlin Pond Source Protection Area, as designated and delineated on the above-referenced Plan, involving the use, transportation, storage, generation, manufacture or disposal of hazardous materials, or any other substance, activity or product likely to affect water quality, human health or public drinking water treatment, are prohibited, except for the customary use, transportation and storage by a household.

Sec. 7 - 608. Existing structures and improvements within Zone 3 of the Berlin Pond Source Protection Area may continue in their present use, location and condition, and may be altered for the purpose of mitigating, correcting or removing potential sources of contamination or pollution. An existing structure or other improvement located within the Berlin Pond Source Protection Area shall be removed immediately if it is determined to be, or is likely to be, causing any condition adversely affecting water quality.

Sec. 7 - 609. The provisions of this Ordinance shall not be deemed to be a limitation of the City's jurisdiction and regulatory authority over Berlin Pond, its tributaries and the City's public water supply system, but shall serve to supplement all municipal, state and federal orders, rules, regulations and statutes presently in effect or as may hereafter be enacted or adopted.

Sec. 7 - 610. By its adoption hereof, the City of Montpelier does not waive or relinquish any right, benefit, authority or prerogative it now possesses with respect to Berlin Pond and its tributaries.

Sec. 7 - 611. This Ordinance is designated a civil ordinance under 24 V.S.A. §1971(b), and a health order under 18 V.S.A. §126(a)(1) and (2).

Sec. 7 - 612. A true copy of this Ordinance shall be delivered to the Selectboards and the Planning Commissions of the Towns of Berlin, Williamstown and Northfield, and shall be engrossed as required by law.

Sec. 7 - 613. Any person violating this Ordinance shall be subject to the monetary penalty established in Sec. 1-9 of this Code in addition to any other civil remedy available to the City to prevent, abate or enjoin such violation.

Sec. 7 - 614. The implementation of these presents as a health order shall be conditioned upon notice of intent and a statement of procedural rights being given as provided by law to all persons against whom relief or enforcement is sought.

Sec. 7 - 615. This Ordinance shall take effect thirty days from the date of adoption.

CHAPTER 13

NATURAL RESOURCES

ARTICLE I. IN GENERAL

Sec. 13-1. TRESPASS OR INJURY.

It shall be unlawful for any person to trespass upon or injure public buildings, squares, commons, cemeteries, fountains, statutes or any other public property or resources owned by or under the control of the City of Montpelier.

Sec. 13-2. PENALTIES.

Anyone found to be in violation of Sec. 13-1 shall be subject to the general provisions of Sec. 1-9 of this Code and shall be subject to arrest and/or ejection therefor.

Sec. 13-3. BERLIN POND PROTECTION.

- (a) It shall be unlawful for any person to trespass, occupy, or enter upon the surface of Berlin Pond, or any tributary thereof, or the lands adjacent thereto owned by the City of Montpelier.
- (b) A violation of this ordinance shall be deemed to be a misdemeanor. A person violating this ordinance shall be subject to a fine not to exceed \$500, and subject to imprisonment for a term not to exceed one year.
- (c) Each day a violation of this ordinance occurs shall be deemed to be a separate offense.

Approved and adopted at a regular meeting of the Montpelier City Council held on the
____ day of _____, 2010.

ATTEST: _____
CHARLOTTE L. HOYT
City Clerk

JPG:ja
[8881-109]

Request to Cater Malt and

Vinous Beverages &

Spirituuous Liquors

Caterer's Permit Number 5834-001-CATRD1

APPROVED

DISAPPROVED

Date: _____

Reason: _____

(for department use only)

To: Board of Selectmen/Alderman at catered location and Vermont Liquor Control Board.

From: Licensee name: 10 GEMS LLC

d/b/a: The Black Door Bistro

Street: 44 MAIN ST Town/City: MONTPELIER, VT

Contact name and phone number: PHIL GENTILE @ 223-7070

Email or Fax # 223-7003

BE SURE TO READ INSTRUCTIONS BELOW, BEFORE COMPLETING APPLICATION.

(Each catered affair must have a recommendation from the local Board of Selectman or Alderman acting in their capacity as local control commissioners and must have the approval of the State Liquor Control Board.)

Please answer the following questions:

1. Describe type of party to be catered: Retirement Party - Kimball, Sherman, Ellis

2. Location of catered party (street, town or city; if no address, describe location): _____

Wood Art Gallery

3. Date of catered party (not more than five days, unless specifically authorized: 6/24/10

4. Hours of operation Start 4:30 pm End 8:30 pm # Of Persons Attending 150

Signed: Phil Gentile (caterer) Date: 6/1/10

We recommend: approval ☐ disapproved ☐

If you recommend disapproval, please state reason(s): _____

Town/City Clerk's signature
Of CATERED location.

Town/City

Date

Fax Number: ☒

SUBMIT AT LEAST 15 DAYS PRIOR TO DATE OF FUNCTION

Submit to Town/City Clerk for recommendation. Town/City Clerk will mail to Vermont Liquor Control Board, Green Mountain Drive, Drawer 20, Montpelier, VT 05620-4501.

LIQUOR CONTROL BOARD'S PROCEDURAL REQUIREMENTS FOR CATERER'S PERMIT HOLDERS:

1. All liquor control laws and regulations that apply to 1st and 3rd class licenses also apply to caterer's permits.
2. Before a catered event is approved in any open area, the following requirements must be fulfilled:
 - a) A defined area, for serving and consumption of alcohol beverages, designated with physical barriers.
 - b) Separate toilet and lavatory facilities available for both men and women.

Dear Neighbors of First Ave., Hubbard St., Tremont St., East State St and Guernsey Ave:

As you may or may not know, on First Ave we have three 2010 graduates of Montpelier High School: Gabe Calza, Nancy Campbell and Tori Houston. We truly believe that it "takes a village" and our neighbors have been a huge part of supporting and helping our children on their journeys. To help celebrate their special achievements, Gabe, Nancy and Tori's parents would like to throw a block party on First Avenue on Saturday, June 19th from 1:00 PM -7:00 PM. As part of this celebration we would like to close off First Ave from Hubbard Street to Tremont Street allowing friends and neighbors alike to celebrate together.

Breck Campbell (5 First Ave), Susan Calza (10 First Ave) and Lawrence Houston (12 First Ave) are working closely with the City Police and Fire Departments as well as the Montpelier City Council to gain approvals, and ensure that this is a safe and fun neighborhood event.

While we are hoping that you all will support this event, we realize that you might have questions or concerns. You are more than welcome to call us directly- Breck Campbell 223-1024, Susan Calza 229-4552 or Lawrence Houston 225-5957 or you can express those to your District 2 Montpelier City Council members:

Sarah Jarvis
115 College Street
223-6150
sjarvis@montpelier-vt.org

Nancy Sherman
20 College Street
223-2632
nsherman@montpelier-vt.org

Or you can also share those with the City Council and Susan, Breck and Lawrence at the next city council meeting being held Wednesday, ~~May 26, 2010~~ starting at 7:00 pm and ending at 10:00 pm.

June 9, 2010

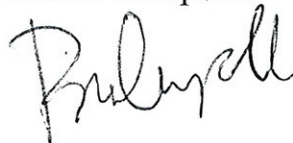
We thank you for your support, and again, hope that you will join us in congratulating and celebrating the Graduates.

Sincerely yours,

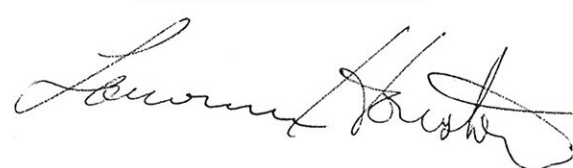
Susan Calza



Breck Campbell



Lawrence Houston





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Discussion of summer meeting schedule

Update on collective bargaining with the police union. Possible executive session under 1 VSA 313 (a) (1) where premature public knowledge would clearly place the city at a substantial disadvantage.

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 - C. **Langdon Street**- Closed from 3:00 p.m. to 1:00 a.m. for McGillicuddy's and Langdon street Café Street parties.
 - D. **60 State Street Parking Lot**: Closed from 3:00 p.m. to 1:00 a.m. for Julio's Cantina Street Party.
 - E. **The Meadow Area**: Closed from 4:30 p.m. to 6:30 p.m. for parade staging area. All resident vehicles must be removed from the street. Letters will be sent to property owners of record.
 - F. **School Street** – between St. Paul and Main Streets: Closed from 4:30 to 7:45 p.m. for parade staging area. All vehicles must be removed from the Street.

- 4) 10-141. Consideration of a request from James Nagle, 133 Towne Hill Road for a noise variance on June 12, 2010, 6 to 10 p.m. Neighbors within 250 feet have been notified and council has been provided with a copy of the letter and names and addresses of those so notified. 

Recommend approval of request.

- 5) 10-142. Consideration of a request from Susan Calza, Breck Campbell, and Lawrence Houston, residents of First Avenue for a partial street closure of First Avenue on Saturday, June 19th from 1:00 p.m. to 7:00 p.m. A copy of the letter notifying the neighbors on First Avenue, Hubbard Street, Tremont Street, East State Street and Guernsey Avenue has been provided to council. Council has also been provided with a copy of the

Police Chief, Fire Chief and Public Works indication of approval with certain requirements. 

Recommend approval of request.

- 6) 10-143 First Reading of Proposed Ordinances Concerning Berlin Pond.

City Attorney Paul Giuliani has recommended two ordinance amendments relating to use of Berlin Pond. The amendments were discussed at the May 26, 2010 meeting. The City Council voted unanimously to proceed with the public hearing process for adoption. Correspondence from Paul Giuliani and copies of the proposed amendments are enclosed. 

Recommendation: Conduct the First Reading on both amendments; warn the second reading for June 23rd

- 7) 10-144 Consideration of Transfer of \$182,000 from general fund to the Capital Fund.

Staff has identified projected operations budget savings due, primarily, to the mild winter weather. 

Recommendation: Transfer \$182,000 from the general fund to the capital fund for use on specific projects as outlined.

- 8) 10-145 Discussion of City Councils goals, priorities and objectives for 2010-11.

On April 5, 2010 the Council conducted a workshop to discuss goals, priorities and objectives for the upcoming year. At that meeting an outline of key issues was developed. The outline is enclosed. 

Recommendation: Complete discussion, adopt final version or provide direction to staff.

- 9) 10-146 Council Reports

- 10) 10-147. Mayor's Report

- 11) 10-148. Report by the City Clerk-Treasurer

- 12) 10-149. Status Reports by the City Manager
- 13) 10-150. Agenda Reports by the City Manager

Discussion of summer meeting schedule

Update on collective bargaining with the police union. Possible executive session under 1 VSA 313 (a) (1) where premature public knowledge would clearly place the city at a substantial disadvantage.

Adjournment

CITY OF MONTPELIER
MONTPELIER, VERMONT

Agenda for City Council Meeting
City Council Chambers, City Hall
Wednesday, June 9, 2010
7:00 P.M.

- 1) Call to Order by the Mayor
- 2) 10-139. General Business and Appearances
- 3) 10-140. Consideration of the Consent Agenda:
 - a) Consideration of the Minutes from the May 19th, 2010 Regular Meeting.
 - b) Consideration of becoming the Liquor Control Commission for the purpose of acting on the following:
 1. Request to Cater Malt and Vinous Beverages & Spirituous Liquors.
 - A. The Black Door Bistro-6/24/10-Wood Art Gallery
 - B. New England Culinary Institute-6/6/10-Ratification of poll vote-Hopkins House at National Life
 - C. New England Culinary Institute-6/14/10-Hopkins House at National Life
 2. Outside Consumption Permit
 - A. McGillicuddy's Irish Pub-7/3/10-Langdon Street
 - B. Langdon Street Café-7/3/10-Langdon Street
 - c) Receipt of Monthly Budget Report from the Finance Director
 - d) North Street Retaining Wall Reconstruction Bid Results.
 - e) Street Closures for Independence Celebration on July 3rd:
 - A. State Street—between Governor Davis and Bailey Avenue: Closed from 12:30 p.m. until 10:30 p.m. for vendors and parade. Note: Access to Department of Motor Vehicles will be re-routed through state parking lots.
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On Wednesday evening, May 19, 2010, the City Council Members met in the Council Chamber for the purpose of acting as the Board of Health.

Present: Mayor Hooper; Council Members Sherman, Weiss, Hooper, Golonka and Sheridan; also City Manager Fraser and Attorney Steven Stitzel. Council Member Jarvis had recused herself from participating as the law firm she works for represents Mr. Hammer and Vermont Compost Company.

Call to Order by Mayor:

Mayor Hooper called the workshop portion of the meeting to order shortly after 6:30 P.M. She explained to member of the viewing public that the Montpelier City Council will convene as the local Board of Health at 7:00 P.M. The city attorney is going to review the conduct and procedures for the hearing

Attorney Steve Stitzel said he looks at this session they are having right now as somewhat in the nature of a deliberative process for the Council to understand exactly what is expected of them in this proceeding and how to conduct the proceeding in accordance with the requirements of state law. Typically, this sort of session would occur not in an open public forum. He has reviewed with the City Manager the substance of what he wants to share with the Council and he does not see that it would compromise the city's interest or the ability of this Board to act in accordance with law by having this in open session. He said this only to point out to Council Members that it would not be appropriate in this portion of the proceeding to be entertaining questions or comments from members of the public. This really is a session being conducted very much as if we are the only people in the room.

He prepared about 10 days ago what he identified as a pre-hearing notice, which the Council approved a week ago, and this has since been sent to the parties in this proceeding for their review. The pre-hearing notice really sets out and defines the parameters in which the Council acting as a Board of Health tonight needs to conduct the proceeding and to expand beyond what is in the pre-hearing notice – one, as a matter of law, moves beyond what is the jurisdiction of the Board of Health in this particular matter, but also it becomes a matter of fundamental fairness to the participants who received this pre-hearing notice. They were provided this for the purpose of enabling them to prepare for and address the specific issues in the pre-hearing notice. They would have the reasonable expectation that issues beyond those identified in the pre-hearing notice would not be something that would be open to discussion and could reasonably claim that if the Council were to open the

proceeding more broadly that they are being prejudiced and that they would be entitled to have a continuation of the hearing and come back at another night, if necessary, to be prepared to respond fully and completely to what is presented that was beyond the scope of the pre-hearing notice.

The next thing he wanted to say is that even though this will be conducted in the open with the public present it is in the nature of a contested case proceeding under state law. The statute is clear. He mentioned in the pre-hearing notice on the second page that the Council will conduct it in accordance with the requirements of 18 V.S.A. § 128(a), and that is a statutory reference that ties into the Vermont State Administrative Procedures Act which sets up rules for the conduct of what are called contested cases. A contested case is a proceeding in which a governmental body, in this case the Board of Health or the City Council sitting as the Board of Health, has a statute, law, ordinance or rule that is being applied to a specific set of facts in a specific instance. The role of the Council in a contested case proceeding is to hear evidence that is relevant on the issue or issues that are before the Council. After hearing the evidence to deliberate on the evidence presented, apply the legal standards to the evidence presented and then render a written decision.

The purpose of the hearing tonight is to hear that evidence that is relevant to the legal issue that is before the City Council. Under the Administrative Procedures Act it says in general the rules of evidence as applied in the courts of the state of Vermont are applicable. Nonetheless the law contemplates that there is more informality in this type of hearing conducted before a lay body as opposed to something that occurs in a court of law. But it is appropriate to keep in mind with that as a standard that this Council is really sitting as judge and jury on the matter that is before it tonight, and there is an expectation, a requirement under the state statute, that you are going to afford the parties that appear before you the same fairness, constitutional fairness and the same compliance with legal requirements in applicable statutes, that these participants would be afforded were they in a court of law. There is a certain strictness that needs to be observed even in the context of this being a more relaxed proceeding before a lay board.

The critical issue that the Council is looking into at this time, as he identified in the memorandum he sent, is whether or not there is evidence at this time to suggest to the Council that there may be a public health hazard or public health risk occurring with this particular property. If it concludes that there is some evidence of that, there is a more formal proceeding that the Council would need to initiate, so this is very much preliminary and investigatory in terms of the process. He didn't put it in his memo, which was an oversight, but handed out to each of them tonight a copy of the definition of "public health hazard" as it appears in the state statute. This is photocopied out of the applicable state statute which is in Title 18. He wants to go over the definition because this really defines the scope of the evidence that the

Council needs to be looking for as people provide testimony for the Council tonight. Public health hazard means potential harm to the public health by virtue of any condition or any biological, chemical, or physical agent. Here is the key part. In determining whether a health hazard is public or private, the Commissioner (this definition is written in a section of the statute that applies to the Commissioner of Health and the same definition is then included in the provisions that apply to a local Board of Health).

The Commissioner shall consider at least the following factors:

- (A) the number of persons at risk;
- (B) the characteristics of the person or persons at risk;
- (C) the characteristics of the condition or agent which is the source of potential harm;
- (D) the availability of private remedies;
- (E) the geographical area and characteristics thereof where the condition or agent which is the source of the potential harm or the receptors exist;
- (F) department policy as established by rule or agency procedure.

The first five items he read are the key items that the Council needs to focus on in its receipt of evidence tonight and in its questioning of the people who offer testimony so that when the Council having heard all the evidence deliberates on what it hears tonight it is able to formulate answers to these various questions. You want to keep focused on that as you listen to the testimony this evening.

He outlined in the pre-hearing notice an order of testimony to be offered to the Council tonight, which appeared on the second page. He would look at in terms of the initiation of this matter before the City Council is an action taken by the Health Officer for the city in entering into an agreement with Vermont Compost regarding certain operations that are occurring at the Vermont Compost facility in Montpelier. He pointed out in his memo to the Council that under state law health officers are encouraged to work cooperatively with persons who may be contributing to the creation of a public health hazard or public health risk, and wherever possible seek some corrective actions that may prevent something from becoming a public health hazard or risk, or even if it is a public health hazard or risk that would abate it short of requiring the initiation of formal health order proceedings or proceedings in court to obtain compliance.

He looks at the agreement that was entered into with the Health Officer as being authorized under that statutory provision and being a major consistent with that statutory provision. That said, at least one neighboring property owner in an e-mail to the City Council does not believe that the agreement is adequate to address the

situation currently existing on the property. Tonight they will hear evidence about what exists on the property, what impact that agreement is having on what exists, and whether there are still problems that need to be addressed and how they might best be addressed.

He has ordered things in a way that first the Council would hear from the Health Officer as to exactly what the Health Officer has done, and then next hear from Vermont Compost regarding what they have done in connection with the agreement, and then from the neighboring property owners. Everyone presenting evidence testimony to the Council tonight needs to be sworn in. This will be sworn testimony to the Council. He is able to administer an oath and he will do that with those persons who are going to provide testimony at one time so it is more orderly.

Documents that are submitted to the Council, while in court they would refer to them as exhibits, they don't need to engage in that degree of formality but it is important that we keep track of all documents that are submitted to the Council so that we have a complete stack and the parties can be assured they can have a copy of everything the Council is considering in making its decision on this. At the end of the day the key to keep in mind is that the Council will have received information on the matter before it in the form of testimony and in the form of documents that are provided to the Council in this proceeding.

All participants in this proceeding, principally the neighboring property owners and Vermont Compost, need to have had an opportunity to hear all of that testimony and respond. They need to be assured they have copies of everything that the Council has before it for consideration so when a decision is rendered by the Council it will refer to only information that was provided the Council at this hearing tonight. Consequently, they can know there were no surprises and nothing going on behind the scenes and that they had a full and complete opportunity to address the issues that were raised and any of the evidence presented.

There has been a request to the Council that it conduct a site visit. It is always within the discretion of a body, in this case the Council or a judge to decide whether a site visit is necessary or not. It is not a requirement that because one participant in the proceeding requests a site visit that the Council has to conduct a site visit. Frequently, what occurs in court proceedings is that a judge will defer to the end of the hearing to decide whether in the judge's mind it would be helpful to have a site visit based on the information that was presented. In cases of multi day hearings a judge may conclude at the end of the first day that they will have a site visit in mid stream. At least tonight the Council does not need to decide at the outset whether they are going to have a site visit or not but wait and see what the evidence provides them.

Finally, the Council has before it a motion challenging the authority of the Council to conduct this proceeding in the first place and claiming it has no authority or jurisdiction over this matter at this point because the Health Officer has not issued a notice of intent to seek a Health Order starting what would be a formal health order proceeding. In this type of proceeding he recommends that as to legal objections to the proceeding that the Council note the objections but otherwise generally proceed with the taking of evidence and then when the Council renders a decision it needs to address procedural or jurisdictional questions and the Council has the ability at the conclusion of this to say they really had no authority to be doing this in the first place and that is their decision. It is clear that an objection has been made. It is properly before the Council. It is preserved even though the parties show up and present evidence and the Council proceeds with the taking of evidence, that that does not mean that the Council does not have an obligation to give full and fair consideration to those legal issues and address them in any final decision.

At the end of tonight's hearing hopefully they will have received all of the evidence. The Council will have to decide whether they want to take a site visit or not if they defer to the end of the hearing. If the decision is that you will take a site visit, then that will be arranged. Typically, that should be scheduled at a time when all of the parties can be present at the site. The site visit is not for the purpose of hearing any testimony or comment. It is solely for the purpose of the Council being able to see physically where things are to put the evidence in a better context in some instances. Specifically, in this case he knows there have been photographs that the Council has seen previously about different things, but the parties may want a site visit so they get some physical sense on the ground of the proximity of this activity. But it is for the Council to decide whether it will need that site specific information. The key is that everyone needs to be present so that everyone participating can be there and see what the Council sees when the Council sees it, but it is not for the purpose of taking evidence. After the site visit the Council would then be able to deliberate on this matter. When the Council gets together to deliberate it does not need to do that at a public meeting subject to the Vermont Open Meeting Law. The deliberations of a public body in a quasi judicial proceeding, which is what this is characterized as, a contested case under state law, are not subject to the Vermont Open Meeting Law so they don't need to publicly announce when they are deliberating but simply schedule it among themselves and then ultimately prepare a written decision that will be released publicly when they reach that decision. They do not need to come back into an open meeting to issue the decision. They simply need the consensus of the Council or a majority of the Council members, to concur on a particular result and then the decision can be issued without coming back into an open session.

In deliberations they only may have present Members of the Council, legal counsel if they want legal counsel present, and then clerical assistance if there is someone who is going to be responsible for drafting a decision other than Council Members. No one

else can be present in a deliberative session if you conduct it in private. That would include the City Manager and the Health Officer and the parties to the proceeding. It would be conducted with everyone excluded so that it is clear there is no additional information being presented during the deliberative session.

After the decision is issued, depending upon what the decision is, there is a right to appeal that decision to the State Board of Health.

Health Officer Schneider said he had a question.

Attorney Stitzel told the Chief he may not ask a question.

Health Officer Schneider said it is a point of order for his role as Health Officer.

Attorney Stitzel said it wasn't appropriate. He had to object because if there is a comment from one individual then it opens it up to others.

Health Officer Schneider said the statute defines him as the guardian of the local health ordinance so he has to know if he is excluded as part of the local Health Board from participating in the process other than giving evidence.

Attorney Stitzel said he is. He said that was what he wanted to review in terms of the process before the Council.

Council Member Sherman asked if they were only talking about events after February 5, 2010.

Attorney Stitzel said the issue before the Council is whether right now there exists a condition on the property that presents a public health hazard. The relief that is available to a Board of Health in the context of a health order is what he would call all prospective or corrective relief. There is not ability under this particular statute for the Council to go backward and assess some sort of penalties, fines or sanctions for conditions that may have existed previously. The real issue is what currently exists. Does that give the Council reason to suspect there may be a public health hazard and then pursue the formal health order process to address that, or if it concludes that such conditions do not exist then there is nothing further for the Council to do in the matter. That is why looking backward doesn't give the Council any information that helps the Council to address whether today there is a public health hazard.

Council Member Sherman said they are only talking about today.

Attorney Stitzel replied that is correct, currently. He would put this in the context of situations that he has been involved in where individuals are maintaining unsanitary conditions on their property and attracting rodents and a health officer issues a notice of intent to issue a health order. Following the issuance of that but before the hearing before the City Council or Select Board the property owner says he gets it and the whole property is cleaned up so when it comes before the Council the property owner says here is the condition of the property today. Then the Council asks the Health Officer if that is correct and is this an accurate depiction of what is there today. Has the health hazard been addressed? Yes, it has. The corrective action that has been taken has eliminated that so there is no reason for the Council to issue a health order at this point.

Council Member Golonka asked during testimony if it is appropriate for Council Members to ask questions or should they wait for the end.

Attorney Stitzel said what he would suggest as an order of questioning is that first the individual who is providing testimony that they provide the testimony they are going to provide. Secondly, a participant in the proceeding, and there are only three people who are participants in this proceeding tonight, that they be offered an opportunity to ask any questions in the nature of clarification of the information that has been presented by that individual. In this type of proceeding it is generally not considered productive for there to be formal cross examination of witnesses. If one party has questions of the other party it is more that they ask a question of the Council saying they would like to hear from this witnesses about this and this instead of a direct question. After those questions are asked it is appropriate for the Council to ask any questions it then has remaining about the matter. If the Council has questions, then after they have asked their questions it is appropriate to ask the parties if they have any follow up questions based on the information that was elicited from the Council's questions. Generally, in this type of proceeding there are not formal objections to testimony that is being offered. The one exception that is fairly common is if the testimony of a particular witness begins to go outside the parameters of what appear to be the focus of the proceeding. If somebody does get outside the parameters of the hearing, then it is appropriate to hold things on course.

Mayor Hooper asked Attorney Stitzel to describe his role.

Attorney Stitzel said his role is to advise her as Mayor and Chair of the proceeding so she is the one who is responsible for controlling what is occurring publicly. If there are issues raised or questions asked more of a procedural nature, not of an evidentiary nature, he is here to assist the Mayor and the Council in addressing those. He is not here to ask questions or act as some sort of inquisitor on behalf of the Council. He will not be asking substantive questions of any witness. If it appears that some important area about which the Council should have evidence to address what it

needs to decide he might suggest to the Council that it may want to ask some additional questions on a particular matter, but it would be for the Council to decide whether or not to pursue that information. He would do that only because he has been involved in proceedings where a board goes through the evidence, get into deliberations and then discover they never followed up to get answers to particular matters and then they have to reconvene and continue the hearing to get that information. It is certainly much more efficient if everything can be accomplished in one proceeding.

Mayor Hooper explained what the Council has been doing is receiving advice from the city's attorney as to how to conduct a hearing and what the rules of procedure are. As noted earlier this is a new process for the Council and they wanted to make sure they were doing it correctly. The City Attorney has advised the Council that this is very limited in scope as to what they are hearing this evening. They are simply hearing as to whether or not there is a health hazard existing today that requires the Council to take further action. The question before the Council is do they have reason to believe that there is a health hazard. If there is, then the Council will convene as a Board of Health and take the appropriate steps to abate the health hazard. Right now they are going to hear from the City's Health Officer. They are going to hear from Vermont Compost and from one of the adjacent property owners.

Attorney Stitzel said the people who are the parties to this proceeding at this point are Vermont Compost, the Health Officer as an individual who has taken an action, and the one neighboring property owner the LaRosas. The LaRosas and Vermont Compost have authority in the presentation of their cases to call witnesses to provide testimony in addition to what they are providing. If Vermont Compost or the LaRosas have other persons that they wish to call as witnesses they would be able to do that.

Mayor Hooper convened the Montpelier Board of Health hearing on the inquiry concerning the Vermont Compost Company's Main Street facility and whether or not there is evidence of a health hazard at that site. They would like to begin with the Health Officer. She noted that the sixth member of the City Council is Sara Jarvis who is a member of the firm which is representing Vermont Compost Company and Council Member Jarvis has consistently recused herself from any matter related to this.

Mayor Hooper said Attorney Stitzel has referred to the pre hearing notice which lays out how the Council is going to proceed. The City Council has received several e-mails, a memo from Daniel Richardson who is representing Vermont Compost Company, a copy of the document that was an agreement between the Health Officer and Vermont Compost back in February; they have also received the e-mail which

was the appeal of Steven LaRosa to that agreement. There is a meeting notice and some additional documents which are a letter, an e-mail and a memo from the attorney representing Vermont Compost Company.

Health Officer Schneider was administered the oath by Attorney Stitzel.

Mayor Hooper told Fire Chief Schneider the particular question the Council would like to hear from him is a general description of the conditions that the February agreement with Vermont Compost Company have attempted to address and what has occurred since the execution of the agreement.

Health Officer Gesualdo Schneider said he had to go back to December 2009 when complaints started to come in of food waste deposits on the LaRosa property. This was an issue they have dealt with on and off for a period of time prior to that, but it became clear after about two weeks of observing the situation that a fair amount of the garbage – the definition he is using for “garbage” is from the Vermont Health Department Residential Housing Rules. “Garbage” mean animal, vegetable or other organic waste resulting from the handling, preparing, cooking, consumption or cultivation of food and containers and cans that have contained food unless such containers or cans have been cleaned or prepared for recycling. It was apparent that an amount of food was starting to be deposited back on the LaRosa property, which primarily appeared to be by crows, from the operation at Karl Hammer’s Vermont Compost Company.

On January 11th it became clear that Mr. Hammer through information received by e-mails from Barbara LaRosa that the situation was obviously serious enough and he was at the point he was going to have to talk to Mr. Hammer about that also. He stopped feeding the crows at that location. Then, the LaRosas came to the City Council meeting at the same time expressing their concerns. At that time he decided he would reserve time at the February 10th Council meeting to discuss the issue. On January 14th he sent out an e-mail to Karl Hammer and the LaRosas which basically told them that at the February 10th meeting he would have to do one of two things, which is to ask the City Council to review and if appropriate approve a binding contract on Mr. Hammer concerning the impact on the LaRosas, or if he wasn’t willing to go into a contract he would go ahead and recommend the issuance of a health order that would cause the problem to cease.

He advised specific recommendations for a contract or the health order. Those conditions specifically gave an objective to stop the transport of fresh food waste on the LaRosa property, keeping him and the LaRosas informed of any changes in any use on his property basically not receiving food waste between November and February 1st with the exception of mulching as long as it was well buried immediately, and also an exception for feeding of chickens with the fresh food waste if he could

construct and maintain a structure that would keep crows from getting to the food waste. He came up with an agreement that met all of the Chief's requirements so he signed the agreement and went forward to the City Council to provide a report of what happened.

His basic assessment was that garbage by itself is not a health issue. The accumulation of garbage over a period of time could become a health issue primarily through the feeding of either rodents or insects, but garbage by itself is not a health issue.

Following the agreement at that time he went up on a regular basis observing the area and had observed the area from Christmas on and there was a considerable crow population in the area during that time. Once the changes were made and the new feeding facility was put in basically within a week or two there were virtually no crows in the area so he gave up regular visits and asked the LaRosas or Mr. Hammer to inform him if there was any problems or issues. He has not heard from either party. Last week he sent out an e-mail asking if there was any condition and he has not received an answer back from the LaRosas indicating there were continuing problems. Mr. Hammer has informed him that he has continued to feed under the shelter not taking advantage of the open feeding option after May 1st.

Mayor Hooper said he has not been informed of or observed himself any garbage which leads him to believe that as of today there is a foundation for a health hazard.

Health Officer Schneider replied that is true. He has not observed anything. He went up a couple of times this last week and he has virtually observed no crows in the area.

Mayor Hooper said she noted he was careful in choosing the words by saying that the garbage itself is not a health issue but the concern would be the transport or the feeding of the garbage by insects or rodents.

Health Officer Schneider said he would compare it with human waste or sewage where by itself that is a health risk because human sewage probably contains e-coli bacteria. Garbage, food waste, as defined are themselves not necessarily harmful.

Council Member Golonka said the Chief has indicated he had been notified that the feeding of the chickens will continue under the pen even after the May 1st deadline.

Health Officer Schneider replied that was correct.

Council Member Golonka asked if it was the Chief's intention to monitor that continuously. Is that process going to continue? Is the process for feeding the chickens under the pen as testified by Mr. Schneider intended to continue?

Health Officer Schneider said they would have to ask Mr. Hammer whether or not he would attempt to use the option of the outside feeding from May 1st to November 1st, but at this point he has not taken advantage of it.

Council Member Golonka asked if he does not do it according to the agreement, do you intend on monitoring that more frequently.

Health Officer Schneider said he is going to monitor primarily based on any complaints. It is up to the parties to provide him if the situation has changed significantly.

Council Member Hooper asked if there was any other vector for creating a health issue with that many crows depositing food waste on the LaRosas property.

Health Officer Schneider said as he testified back in February he thinks there is a bunch of serious problems that are related to the properties. He thinks there are property issues. The only specific health issue that was raised was the crows. There was one time when he talked with Mrs. LaRosa about the possibility of rats. However, even though they know there are rats at the Hammer facility we know the LaRosas do have horses so it would be hard to identify. She did have one problem for a short period of time when she complained about rats getting into some containers in her garage area and she changed the containers. That was when they were first involved over two years ago.

Mayor Hooper said as they described earlier before they formally convened this hearing this is a matter that is limited to the parties. They described they would also give the two parties involved an opportunity to ask our Health Officer and each other questions associated with this. At this point she would like to turn to representatives of Vermont Compost and also to the LaRosas to see if there are any questions they would like to ask of our Health Officer.

Dan Richardson, an attorney at Tarrant, Gillies, Merriman & Richardson, said he represents Vermont Compost in this matter. He asked Chief Schneider to review a document and identify it.

Health Officer Schneider said the document is Mr. Richardson's response that includes an e-mail he initially sent to him on May 18, 2010.

Attorney Richardson asked if it was fair to say it covers the question of whether there had been additional sightings of any further public health problems.

Health Officer Schneider replied yes and that he had asked if he had received any answer from the LaRosas to indicate whether there was anything going on, and his answer to him was back on May 19th was he had not received any communication from Steve or Barb LaRosa.

Attorney Richardson said he would like to submit that as an exhibit. The only other question he has for Chief Schneider concerns the report he gave on February 10th to the City Council which was recorded in the minutes that were later adopted by City Council. Has he had an opportunity to review those minutes?

Health Officer Schneider replied he did a couple of months ago.

Attorney Richardson asked if the minutes were accurate.

Health Officer Schneider said the minutes seem to be very accurate and complete.

Attorney Richardson asked if he stands by his report that he gave which was reflected in the minutes of February 10th to City Council.

Health Officer Schneider said he presumed so.

Mayor Hooper asked Chief Schneider from his observations could he tell the Council where he saw food waste being deposited.

Health Officer Schneider said that he would have to turn over specifically to Barb LaRosa. He primarily relied on the fact that she was collecting the information and passing it on to him, but the information as she gave it to him was pretty much over all of her whole property and around the house area specifically.

Mayor Hooper said his finding garbage was based on the testimony that he received from the adjacent property owner the LaRosas, and that was where the garbage was noted. It was not noted in other areas.

Health Officer Schneider said they heard some complaints from a few other areas in East Montpelier and occasional individual complaints from other locations.

Mayor Hooper said in fact in addition to the LaRosas the Council did receive complaints from others that there was garbage being deposited on their property.

Health Officer Schneider replied yes.

Mayor Hooper asked if he did not observe it himself but was relying on the testimony of these individuals.

Health Officer Schneider replied that is correct. He said he was relying specifically on what Mrs. LaRosa was telling him about the locations around the house that she found and collected garbage each day.

Mayor Hooper said the next party they would like to hear from is the Vermont Compost Company.

Attorney Richardson said maybe it is fair for him to make his objection about Vermont Compost going first. They have heard testimony from Chief Schneider. At this point he would note an objection that we have heard from Chief Schneider that there is no evidence of any food residuals being moved by crows and deposited on neighbors' property since February. In the original appeal of the LaRosas that started this process there was no allegation that there was any current issue with the food residuals being moved? To put them on at this point is somewhat irregular in a judicial proceeding in that someone seeking to challenge what has already been established is usually the one with the burden of production in going forward first. If the Council would not choose to move and reorder this hearing as far as testimony is concerned, they would simply ask and reserve that they have an opportunity to recall witnesses after the LaRosas testify. If there is information that heretofore has not been put out into the public record despite repeated requests they should have an opportunity to respond to that and those allegations should they venture beyond what they understand to be the scope of this present hearing.

Mayor Hooper said she has the right to authorize that. Yes, they recognize both the contest of the facts and also the right to come back.

Attorney Richardson said this will limit who they are going to call as witnesses. Joe Bulely, Joe Ferris and Rosanna Vestuti will be witnesses for Vermont Compost.

Attorney Stitzel administered the oath to the witnesses for Vermont Compost Company.

Attorney Richardson said they have both requested a site visit as well as have submitted two memoranda. One is procedural objections and history they seek on a legal basis, and would offer it into the record. There is also a second memoranda that is only offered conditionally if the limited scope of this hearing should go beyond its boundaries simply because it does deal with some of the past issues that were initially raised in the LaRosas appeal letter that generated this hearing. They simply prepared that as a summary of expected testimony, and they submit it conditionally not to open the door to that issue but to have it at the Council's disposal if that issue arises.

Karl Hammer said he has a farm on Main Street and operate a business there called the Vermont Compost Company. He would like to read his own non-legal message to the Council and to the neighbors in his community.

Dear Neighbors,

We are here this evening at a special meeting convened by our City Council to discuss the concerns that some neighbors have about the health and other effects of our farming and composting activities on life in our neighborhood.

I would like to invite this Council and any one else with interest to come and take a guided tour of our farm so that we may talk about specific concerns on the land.

Our farm is one of the original farms in our community. Animals and crops have been raised here continuously at least since the end of the 18th century.

I embraced a responsibility to care for this land seventeen years ago when I first walked, mowed, fenced, pastured, manured, plowed, planted, and harvested and dreamed of the food this farm could and should continue to produce into the next generations.

I acknowledge that we steward a watershed.
Farming is about water as much as it is about soil.
We welcome honest discussion about this responsibility.

I believe that the health of a community depends on the health of its soil.
A community that cannot harvest food to feed itself is vulnerable and cannot be said to be either safe or free.

I am proud of our farming and composting craft, proud to be at work on this land providing food for our neighbors and food for their soil.

I am proud of the people who work at Vermont Compost and of the community of farmers we serve.

I hope that we can reassure neighbors with honest concerns that we are good land and water stewards contributing to the health of our community.

Sincerely

s/ Karl Hammer

He doesn't know how many Council Members have actually been to the farm. He knows that none of them have ever really walked all the way around it and understood what it is they are doing, and that is true of many of their neighbors. We have certainly failed to communicate adequately and effectively with you, and for that he apologizes.

Mayor Hooper said she wanted to be clear that they are limiting to whether or not there is evidence that a health hazard exists today, nothing else to do with the operation and procedures up there. That would be an entirely different discussion.

Attorney Richardson asked Karl Hammer how many people he employs at Vermont Compost Company.

Mr. Hammer said there are nine people besides himself.

Attorney Richardson asked if he sold outside of Vermont.

Mr. Hammer replied they do.

Attorney Richardson asked where.

Mr. Hammer said they sell products in the upper Midwest. Actually, two-thirds of their revenue now comes from out of the state of Vermont.

Attorney Richardson asked Mr. Hammer if he understood this is a hearing about a public health issue surrounding food residuals with the crows. Could you describe to the Council why food residuals are brought on to the Vermont Compost Farm on Main Street and what purpose it is for?

Mr. Hammer said they receive source separated community food residuals at the farm to provide part of the feed that they provide to their laying hen flock and the roosters involved. They bring food residuals in and combine them with other farm and forest residuals and provide that forage opportunity to hens and they lay eggs, and they harvest those eggs and sell them in the community. Then, they manage the combination of those food residuals, mammal manures, etc. and the chicken excreta and make compost from that. Then, they make other products that are based on that compost.

Mayor Hooper said the question they have here deals with the health hazard and whether or not there is one, and specifically whether or not the agreement that Vermont Compost entered into with our Health Officer is eliminating that issue. That is what they would like to hear evidence about.

Attorney Richardson said it is fair to say that in late December or early January that Mr. Hammer was made aware by the Health Officer for Montpelier that food residuals from his property were being deposited on to neighboring properties.

Mr. Hammer said yes, that is so.

Attorney Richardson asked Mr. Hammer what steps did he take to ameliorate that situation as part of the agreement.

Mr. Hammer said pursuant to the agreement that he reached with the Health Officer he constructed a 48 foot long 30 foot wide steel framed structure covered with an assortment of chicken wire, clear plastic and curtains of bird netting at the end walls. Their intent was to make an enclosure that the chickens would have access to that wild birds would be reluctant to enter or at least be unable to leave with residuals. They developed a strategy for feeding the incoming food residuals in that structure and they observed they were very effective at preventing crows and ravens in particular from taking food away and ultimately they got frustrated and dissipated. Immediately there were far fewer crows once they developed the feeding protocol in the building.

Attorney Richardson said that feeding protocol is consistent with the agreement that Vermont Compost entered into with the City of Montpelier signed by the Health Officer.

Mr. Hammer replied yes to his belief.

Attorney Richardson asked when that feeding protocol begin. On what date?

Mr. Hammer said they finished the building around the 8th or 10th of February. They started construction on the structure at the end of January. It was very cold and both the crows and chickens were very concerned about getting to food. There wasn't much else around. Their activities in building the building immediately eliminated the crow presence because they are very responsive to changes and habits. They observed they were not getting away with food from about the time they started the construction, which was the last week of January.

Attorney Richardson said since the protocol has been in place, has he observed any crows or other wild birds removing food residuals from his property?

Mr. Hammer said he had not. There are also some seagulls around right now and of course they do carry things, but the only seagull he see carrying he was unable to identify what he was carrying.

Attorney Richardson said he hasn't heard any reports.

Mr. Hammer said he has not heard anyone report that food was being removed from their feeding enclosure and they are very attentive to that.

Attorney Richardson said as far as Mr. Hammer understands there has been no further distributions of food off your property by wild birds.

Mr. Hammer replied that was his understanding.

Attorney Richardson said he had no further questions.

Council Member Hooper said Item 7 in the agreement of February says : Clean Up: The Vermont Compost Company with permission of the landowner shall provide personnel to clean up any food residual acquisitions reported on a neighboring property in a timely manner. He is curious how many times food depositions have been reported since the February agreement.

Mr. Hammer replied none that he is aware of.

Council Member Golonka said part of the scope of the agreement lists May 1st as a date where Vermont Compost will be able to feed the chickens outside of this enclosure that has been constructed. Is it the intention of Vermont Compost to utilize that portion of the scope of agreement and now start feeding the chickens outside of this pen?

Mr. Hammer said they have not decided. Currently, they are managing the entire feeding within the confines of that structure.

Council Member Golonka said his testimony is that it is working inside that enclosure.

Mr. Hammer said at this moment he doesn't envision a reason they would want to change that. They are under very little bird pressure. The biology of crow activity as they understand it is that the period when they are congregating in winter is called pre-roosting. It is a time when they are very socially active and they are meeting each other and it is about getting together and go off to make a nest to make babies. In the normal course of events at a certain point in the spring they have met somebody and go off, and then the seriousness of their life changes. They are obligated to provide food to babies so they don't actually have the opportunity to party and distribute food in the neighborhood.

Council Member Golonka said he has a second question with regards to the agreement under Section 5 communication. It basically says if you decide to change those practices or Vermont Compost changes their procedures you would notify the Health Officer as well as the LaRosa family. Does that include the period from May 1st to November 1st? You indicated the scope of the agreement is just from November 1st to May 1st. Does that preclude communication as a section from being enforceable? Will the Fire Chief be informed if you are deciding not to feed the chickens in the impound?

Attorney Richardson said this was drafted and his testimony is not that Vermont Compost would deviate from this agreement from November to May. The reason there is an outside of the scope of the agreement was that after the Chief's investigation he determined that the time which there was this crow activity was limited to a period in the fall and the winter and early spring. He developed and requested this agreement with buffers on either side, such that he saw there was no evidence of any kind of threat of this public health hazard during the times outside the agreement. It would be his understanding that this agreement wouldn't necessarily cover those periods outside that time simply because that is the limit of the agreement, but that is the evidence that was shown in the report as Chief Schneider's minutes from further attempts indicate.

Council Member Golonka said his question goes more to the fact that they are trying to determine actions today based on a scope of agreement that in essence expired three weeks ago, and is it being followed through this period so we can determine.

Attorney Richardson said it hasn't expired. This is a continuous agreement. That obligation doesn't necessarily cover certain periods of time, but come November this agreement is still valid and this agreement is still binding.

Council Member Golonka said the agreement for communication and the agreement for feeding and notification seem to be precluded in the period from May 1st to November 1st. He just wants to hear from Vermont Compost what the intention is.

Mr. Hammer said their intent is not to spend a lot more time involved in discussing this matter if possible. They recognize without going to the question of whether a significant public health risk exists when small amounts of food are distributed on frozen pasture. We recognize that it is offensive to neighbors and that it is unacceptable. Their intent is to continue to manage this valuable resource in such a way that it does not offend neighbors. They have this feeding structure, and if he had to guess he would say more feeding structure is in the offing. It would be more and larger to accommodate the bird population they intend to have.

Mayor Hooper said one of the items is that the residue will also be buried if necessary. Has he been doing that?

Mr. Hammer said there are two locations discussed in the agreement. The truck that brings food residuals is a Class A tandem axle roll off truck. It is quite large for the capacity of the structure they built which was constrained by time, money and the location. Because we have the capability to receive material and bury it deeply enough in non-food materials that they can prevent crows from getting to the recognizable food – it has always been a challenge. Not that they couldn't prevent crows from getting to food but they also had to provide access for chickens so anything that a crow can't get to it does reduce the amount of nutrition that the chickens get. Within the scope of the agreement because we now have the capacity to move somewhat more than half of the food residuals they will manage to another site they manage in East Montpelier where they don't have chickens. They receive food residuals once a week now and they receive that in the described receiving location that is not covered by the building. They immediately blend it with appropriate materials to constitute the feed regime they want because food residuals by themselves are not very wholesome for chickens. Then, they bury that and introduce it into the feeding building typically three to four times a week and maintain deep cover in the receiving area. That has been going on since they started using the feeding structure, although they did experiment with putting food directly from the truck into the feeding building. They decided it was too much for a single insertion.

Mayor Hooper said once a week they receive a large truckload of material that goes to a receiving area where it is blended with other material. Then, during the week some of it is brought into the feeding area and made available to the chickens.

Mr. Hammer said that is correct.

Mayor Hooper said the receiving area where it is blended with other material is managed in such a way that the crows cannot have access to that food.

Mr. Hammer said they would have access to the area but the procedure is to do the mixing, introduce the first charge into the feeding structure and then cap the remaining material that is to be saved for the next two to three insertions, cap it in such a way and dig deeply enough that there is no visible or available recognizable food. This has been the protocol since the completion of the food structure. To their knowledge the transport of small amounts of recognizable food off site has not continued through the period, that their receiving, lending and capping protocol is working to prevent the transport of food off site.

Mayor Hooper asked if he could describe for them the location of both the feeding area, receiving area and blending area .

Mr. Hammer said he brought some photographs with him.

Mayor Hooper said they know where they face on the highway so maybe he could describe it like they were standing down on the road looking up.

Mr. Hammer said the receiving area is about 200 feet south of the common boundary with the LaRosas. It is about 400 feet as the crow flies from the road. There were several attempts over time to move feeding further from the LaRosas. They move over time until they started to have a lot of trouble with the chickens who were finding the commute to the food sometimes fatal in the winter. It is an area which is out of direct sight of the LaRosas house. It is sheltered behind buildings. The feeding building itself is directly south of our original chicken barn. This is why he thinks a site visit makes a lot of sense.

Council Member Weiss said he is trying to understand this. There are two distinct operations here, the farm business and the compost business. Are they related and considered to be one total operation?

Mr. Hammer said their business is very much integrated.

Council Member Sherman said he says there is one delivery a week and they talked about the life cycle of the crows. Will spring and what chickens do in spring mean that he will take more than one delivery of food residuals? Will that increase?

Mr. Hammer said there are seasonal variations in the generation of food residuals. Norwich University, which is the biggest single generator, sometimes there is nothing and sometimes there is a huge amount of material. Different times of year change. Sometimes birds are hungrier than other times and they respond to their requests for food. They don't actually give them food but expect them to forage for their livelihood but they are very communicative. It is not their expectation that they would be taking more than one delivery right now. There is a new crop of young birds being incubated for us by a local incubator operator. They are intending to add some birds. They may decide they need more food for birds and at which time they would need to bring in more food. Currently, they feel like they are in pretty good balance with the one delivery a week.

Council Member Sherman said there is a possibility of an increased population of chickens and increased deliveries.

Mr. Hammer replied absolutely.

Council Member Sherman said there is also the possibility of more food residuals going to the other location.

Mr. Hammer said the other location being the East Montpelier Vincent Flats location. By other location they are talking about two places they put food residuals at Main Street. Does she mean the alternate location they operate in East Montpelier?

Council Member Sherman replied yes.

Mr. Hammer said there is an overall intent to increase the amount of food residuals collected. That has been an ongoing intent of the Solid Waste District and they also would like to manage more. They have the opportunity to balance the needs of the chickens at Main Street which is why they bring food residuals to Main Street. At Vincent Flats they have a permit to accept food residuals for composting directly into composting process. If they need more food for chickens and there isn't more food coming that will diminish what is going to Vincent Flats, but he doesn't anticipate that. He anticipate that they will see both an increase in food residuals collected and will need to bring more to Main Street as well.

Council Member Golonka said he is trying to focus on the present. He is trying to get testimony in regards to scientific reasons on how the dates were determined and why he feels there will not be an issue order. Crows are scavengers. He is trying to determine why those dates were chosen.

Mr. Hammer said he responded to an e-mail from the Health Officer and they gave him exactly what he requested. They were faced with two choices as they got untenable. One was to butcher the chickens and put them in freezers or stop managing food residuals at the farm. They have the capacity to meet their obligations for receiving food residuals at another facility where they can manage them legally and appropriately. They could attempt to make a technical fix for this technical problem of transporting food. There was the feeling on the farm that it was enough already and they should stop producing eggs, eat the chickens and solve the problem that way. They have been producing eggs uninterrupted and selling them in this community since 1998. He found himself challenged. He woke up in the middle of the night thinking that was what they were going to do. They weren't going to spend any more money. They weren't going to have any more aggravation. They would announce they wouldn't take food residuals at Main Street any longer. He woke up in the middle of the night and thought about explaining that decision to a roomful of intelligent fifth graders who had might ask questions. They have spent a lot of time with school kids in this community talking about food, what we do and giving them tours of the facility. He thought it was going to be very hard to explain how we killed the chickens that were laying eggs in the middle of January in Vermont, the only food being produced at that time in our community, because we couldn't figure out a way to solve the problem of very small amounts of food being transported by wild birds on to a neighboring horse pasture. He decided they would solve the problem

technically, and the excuse for that in business terms was that it was an important business development. It was important to be able to do this because it was non-negotiable about recognizable food transported off site. He doesn't believe it is principally a health issue. He believes it is a community development issue; it is a property rights issue, and it may be a community justice issue, but he does not believe it has been shown to be a health issue.

Mayor Hooper said that is the only matter in front of the Council today, whether or not it is a health issue.

Council Member Golonka said the date wasn't driven by Vermont Compost; the date was driven by the Health Officer.

Mr. Hammer said the dates were not driven by Vermont Compost.

Council Member Golonka asked if the dates were irrelevant in Mr. Hammer's opinion.

Mr. Hammer said the dates are the agreement they made.

Attorney Richardson said the dates are based on, as the record shows, the evidence that was collected and it was the city's decision to set those dates and we abide by them. Part of the danger here is that we do not want to get into the realm of regulating agriculture. This is public health.

Council Member Golonka said every aspect of the agreement references during the scope of the agreement. He is only asking about that scope of agreement which is section 2.

Attorney Richardson said they aren't talking about the agreement. They are talking about whether or not there are on the ground facts that illustrate a public health risk, but the agreement is what they are abiding by. The hearing here is looking to whether or not this agreement is in place.

Council Member Golonka said they have heard testimony that there is no evidence at this point of residuals being brought to these different properties because they are following an agreement. The agreement has a specific end date or a period where it is not covered. He is trying to figure out why that end date is and trying to figure out the end date in regards to the discussion. It has everything to do with it.

Mayor Hooper said the limited question to the Council is, is there a health hazard today? The question could be, after May 1st has there been evidence that food was being deposited? The answer is no but we know they are still contained.

Mayor Hooper reminded people in the audience that the Council is taking testimony from three parties as to whether or not a health hazard exists today. The three parties are the Health Officer, Vermont Compost and the adjacent property owners who brought the appeal. These individuals may ask other people to testify on their behalf, but we are really trying to limit it to the question of the health hazard.

Attorney Stitzel said a possible way to frame a question might be to ask if the agreement were followed as it is written and the birds were fed outside. At this point, what evidence can they provide that there will not be a resumption of the depositing of food waste on other property?

Mr. Hammer said he couldn't speculate about that. They didn't dictate these dates. They are currently abiding by the protocol that is working because they are very interested in preventing transport of food off site. They are determined not to have food transported off site on to the LaRosas. They built a substantial structure, bought a machine and are utilizing those things. They recognize they do have this latitude to manage feed on their farm within the scope of this agreement and he is not looking to encumber their management any more than it needs to be encumbered. They did everything the city asked them to do by way of agreement. Currently, there is to their knowledge no transport of fresh recognizable food by wild birds from their site.

Attorney Richardson said he would like to ask a follow-up question of Karl.

Question: Are you and Vermont Compost committed to abiding by this agreement?

Mr. Hammer said they are committed to abiding by the agreement.

Attorney Richardson said thus far this agreement has been successful.

Mr. Hammer said that is his belief.

Attorney Richardson said he would like to pose this hypothetical which goes to the heart of this question. Thus far he has stayed with this agreement even though technically by the agreement he is not bound to feed them inside the shelter. If in the future he were to remove the feeding and there was, contrary to all evidence heretofore, some evidence of crow activity, would he resume feeding inside the structure which has proven successful?

Mr. Hammer replied he would. He frankly doesn't envision changing to feeding in an unrestricted area.

Council Member Golonka asked if he could think of any reason why he would feed them outside of that restricted area.

Attorney Richardson said he objected to that question.

Mayor Hooper reminded them that the question before the Council is whether or not a health hazard exists today.

Attorney Richardson said he wanted to ask Mr. Hammer a question. Is there any evidence to his knowledge that has ever shown this kind of crow food removal activity during the periods that are not covered specifically by this agreement?

Mr. Hammer said there are crows at every time of the year.

Attorney Richardson said he is asking a specific question. Has he heard of any deposition complaints from the neighbors during the periods that are not covered by this agreement?

Mr. Hammer replied he has not. He doesn't receive the complaints from the neighbors directly. They are collated by the Health Officer.

Attorney Richardson said he has not heard them directly and has not heard anything from the Health Officer.

Mr. Hammer said he has not. He accepted from the Health Officer that he had to his satisfaction designed a process that would mitigate the problem. They are absolutely committed to and interested in mitigating the problem while continuing to provide sustenance to their chickens.

Mayor Hooper said she thinks they will ask the Health Officer back because there are some specific questions that have come up about why the terms of this agreement.

Mr. Hammer said that is talking about the agreement again and not about the health issues on the ground today.

Steve LaRosa said Mr. Hammer has testified a couple of time that small amounts of food have been removed from his operation. Can he define for him what a small amount is?

Mr. Hammer asked if they were talking about prior times. Is it appropriate to talk about volumes? He said he has never actually gotten to hold any of this material that is evidential in nature. He understands Chief Schneider has seen it. He has never actually had an opportunity to look at the alleged material. They have accepted other peoples' word for it. His understanding from the photographs he has seen that they are typically talking about a portion in a week's time would be small amounts distributed over several acres.

Mr. LaRosa asked what would constitute something that is not a small amount but a significant amount.

Attorney Richardson said he objected to this line of questioning. This doesn't seem to be relevant to the issue at hand.

Mayor Hooper told Mr. LaRosa that perhaps he could bring them up to date on what is happening today.

Mr. LaRosa said what has been testified to a couple of times tonight is that the volume of food waste that has accumulated is what determines whether there is a health risk.

Mayor Hooper told him he would have his chance to present testimony as to what he has experienced. If he has questions that Vermont Compost can answer directly that is okay.

Attorney Richardson said he would like to call Joseph Ferris to testify.

Joseph Ferris said he has lived in Montpelier his whole life. He works at Vermont Compost Company and has worked there for four years.

Attorney Richardson asked what he does at Vermont Compost.

Mr. Ferris said he mixes potting soil, screens compost, takes care of chickens, bags products, and from the time he has been there he has done most of the things that one can do at Vermont Compost. Currently, his position is soil mixing.

Attorney Richardson asked if he had worked with the chickens in the past.

Mr. Ferris replied he had.

Attorney Richardson asked if he was familiar with the subject of this hearing which is whether or not there is any continuing public health threat from the crow depositions.

Mr. Ferris said he was familiar with the subject.

Attorney Richardson said you are familiar with Vermont Compost before the February agreement about the grounds and the feeding systems. Since the February feeding agreement you are familiar with the grounds and arrangements. Has he seen any crow removal of food residuals since the February agreement?

Mr. Ferris said he has not.

Attorney Richardson asked if he was aware of any removal of these food residuals from the property since the February agreement.

Mr. Ferris said he was not aware of any removal of these food residuals.

Attorney Richardson asked if it was fair to say that as he understands it there is no removal of any food residuals from Vermont Compost since the February agreement went into effect.

Mr. Ferris said there are none.

Attorney Richardson asked how many days a week he is there.

Mr. Ferris replied five days a week.

Attorney Richardson said in addition to this agreement what other tasks does he do as an employee of Vermont Compost each day to police the area.

Mr. Ferris replied on a daily basis they police the whole site for exposed food or plastic wraps. They are very meticulous and making sure everything is in order.

Attorney Richardson said each day he is at work he polices the grounds in its entirety.

Mr. Ferris said they do virtually, yes.

Attorney Richardson said neither he or anyone he knows of has encountered any kind of removal of food residuals since the February agreement.

Mr. Ferris replied no.

Roseanna Vestuti appeared as the next witness.

Attorney Richardson asked her where she lived in regards to Vermont Compost.

Ms. Vestuti said she lives on the same side of the street as the farm is at and she is the next door neighbor closest to Montpelier. She is the adjacent neighbor.

Attorney Richardson asked if she shared a common boundary with Vermont Compost.

Ms. Vestuti replied yes.

Attorney Richardson asked how long she had lived there.

Ms. Vestuti replied 15 years.

Attorney Richardson asked if she had ever experienced crow depositions of food residuals on her property

Ms. Vestuti replied no.

Attorney Richardson said since the February agreement that Vermont Compost entered into with the city has she noticed any change in the situation.

Ms. Vestuti replied no. There are hardly any crows and maybe one or two seagulls flying around, which is unusual.

Attorney Richardson asked if this agreement and protocol has been effective in lessening any wild bird population.

Ms. Vestuti replied most definitely, yes.

Attorney Richardson said for the record, what is her relationship with Karl Hammer?

Ms. Vestuti said she was his ex-wife and he is the father of her son.

Attorney Richardson asked if she let her son work at Vermont Compost.

Ms. Vestuti said she is really happy that he does.

Attorney Richardson asked if she let him work with the food residuals.

Ms. Vestuti replied yes. It's a safe place. It's a great place for him to work.

Attorney Richardson asked if she had any fear that he may contract an illness, or has he ever contracted an illness by working there?

Ms. Vestuti said he hasn't and she doesn't have any fears. It's one of the cleaner places he could work.

Council Member Golonka said she stated she was his ex-wife. Does she have any financial interest in Vermont Compost?

Ms. Vestuti replied no. He is the father of her son.

Health Officer Schneider said he had a question for the record. How far is her house from the feeding area as opposed to the LaRosas?

Ms. Vestuti replied it is further away than the LaRosas.

Mayor Hooper said she referenced to the change in the bird behavior. There has been a significant change in the bird behavior since the feeding regime has been changed. Is that right?

Ms. Vestuti replied behavior as in quantity. There are a lot less. She has never personally noticed food issues on her side, but there are definitely less birds now, hardly any at all.

Council Member Sherman asked Ms. Vestuti if she had open fields so that the layout of her property is comparable to the LaRosa's property.

Ms. Vestuti replied yes. She also gardens on one part of it and in the winter she snowshoes up there. She has never noticed any particles of food on the snow.

Council Member Sherman asked if the current times different than prior times. She says now she doesn't notice that the bird population is down and doesn't notice food. When the bird population was high, did she notice food?

Ms. Vestuti said she didn't notice food. She noticed a quantity of birds but not ever food.

Council Member Sherman asked if they roosted on trees on her property. Did they come there?

Ms. Vestuti said there were some. Not that many but there were definitely some roosting and she hasn't noticed that lately either.

Attorney Richardson said that was all of the witnesses they choose to call at this time.

Mayor Hooper said they would like to hear from Steve and Barbara LaRosa.

Attorney Stitzel administered the oath to Steve and Barbara LaRosa.

Mayor Hooper said specifically what they are looking to learn from them are observations and comments about what has occurred since the execution of the agreement and any comments they might have concerning any deficiencies that may exist.

Steve LaRosa said he unfortunately doesn't have legal counsel. He doesn't fully understand why their appeal of the Health Officer's decisions is not what is being discussed. Their appeal was to formally appeal the decision of Health Officer

Schneider, that the Vermont Compost Company actions have not historically resulted in health hazards. That is what their appeal was. They also mentioned they had some issues with the testimony represented in the agreement between the City Health Officer and Vermont Compost Company. They are not appealing the agreement. There are some things they would like to see changed, but what they are appealing is the decision of the Health Officer. One of his questions is, why is that not what they are discussing and why is that not allowed in the pre-hearing notice?

Attorney Stitzel said there is no process provided in the state statute that specifically authorizes an appeal of an action of a health officer that does not precipitate a request for issuance of a health order by the Council. The fact that the Health Officer made a determination that there has not been a health hazard is not an issue that is directly reviewable by the City Council in an appeal. What the City Council is doing is independently evaluating at this point whether there are facts to demonstrate, regardless of what the Health Officer has determined, that there is in fact a health hazard or a significant health risk currently. He is also focusing on the appeal of the specific relief that was requested in their appeal which is:

We simply want protection for our family and pet's health. I ask that the city create an agreement that has a very specific timeline and consequential language that will assure the neighborhood is protected from the health risks posed by food waste transported.

The relief he is seeking is prospective in nature, not retroactive. He has mentioned during the deliberative session the Council doesn't have authority under this statute to look retroactively at imposing fines or penalties but merely looks forward and tries to come up with a remedy for a problem if a problem exists. The focus is definitely on is there a problem at the present time that requires some further intervention than what has been done so far.

Mr. LaRosa said that evaluation if they came here tomorrow would be made independently for what tomorrow's data says, but not what is happening today but tomorrow, or if they came in next week what the conditions are then and not what the conditions are today or the date the agreement was put in place.

Attorney Stitzel said he didn't want to engage in speculation.

Mr. LaRosa said he doesn't want to go back in history. He just wants to know where the start of history is.

Attorney Stitzel said if there are facts to document the creation of a health hazard on property at some time in the future that certainly is something that is reviewable in the first instance by the Health Officer and can potentially ultimately come before the

Council. The Council can only act on the basis of the evidence that presently exists of what is presently occurring and not on the basis of speculation as to what might occur.

Steven LaRosa said he lives at 2012 Main Street directly adjacent to the Vermont Compost Company's main offices and their farm. They have lived there for approximately 10 years and have had a number of interactions in the past regarding the deposition of food waste on their property. Since the installation of the agreement that Vermont Compost and the City Health Officer have entered into they too have seen a massive decrease in the amount of food waste being transported off property. He only had an opportunity to observe the bird activity on a limited basis during the week and on the weekends. He has seen maybe a dozen crows in the area recently. He doesn't recall seeing many of them with items in their mouths so it doesn't seem they are gaining access to the food waste. Barb hasn't indicated to him that they haven't seen any transport or they have picked up much of anything for food waste. They have picked up the occasional piece but not much so the arrangement they have for dealing with the food waste when it arrives at their property and how they are feeding now certainly seems to appear to be working, again in the operations occurring as the agreement has been laid out. However, he would point out, as Mr. Hammer testified to earlier, this is not spring. Summer is not the best time to evaluate the worst case scenario. Fall has traditionally been the time where they see the most activity. He is hopeful this will work. Last year their first contact with the Health Officer in the fall was around October 14th, so from a timeframe standpoint it seems like the timeframes that have been straining the agreement is coming in too late in the fall and they would actually like to see things carry a little bit further towards summer, primarily because they were real lucky this year and lost all of their snow cover very early. If that carries later, what they have seen in the past is that the spring need for food seems to congregate crows a little more. That seems to be the case from their experience in the neighborhood.

He thinks he has addressed the comments about execution of the agreement and how that has worked. Comments regarding deficiencies – he doesn't like the word deficiencies because it has a bit of a negative connotation to it, but they would like to see some modifications to the agreement that they believe would make it better structured in the event that there is an issue that arises in the future so they don't need to come forward again and say this is what is happening in the present time, that they lay out a method for moving forward.

They, too, would like to see the agreement actually be year round. Not necessarily that the feeding happen inside the enclosure but that the feeding methods be consistently evaluated and that the potential for removal of food waste be continually evaluated and that any changes in feeding be reported on the basis of when it happens

and not just during the spring/fall period but throughout the year so they are all aware of what is happening.

What really concerns them about the agreement is if something does happen in the future. There is some very good language in here that if there are reports to the Health Officer that Vermont Compost will do some things immediately, do some evaluations, and that's all great. It is heartening to him to hear Karl Hammer say that they are very committed to this agreement because in the past when they have brought up these issues and when the Health Officer has looked at what is currently happening today it has taken quite a bit of time to move forward from what's happening to actually getting to the agreement. They initially discussed things in October through December and January, and in February finally came and there was action that was taken. They would very much like to see some sort of timeframes proposed for responses. He certainly isn't going to put them forward because Karl knows how long it takes to even try to do it this way and it doesn't seem to be working. There needs to be something in there to say how we are going to go about it and this is how we will try to remedy this if something happens. Then, they would also like to see some sort of consequences for not following the agreement, that if the agreement isn't followed and if the Council or Health Officer determines that the agreement isn't being followed that there are some sort of consequences. Having an agreement has happened in the past. Changes to the operations have happened without notification and there have been no repercussions because of that. He would like to see this in the agreement. They think it would make it a bit stronger. From the sound of things it really isn't going to change how the commitment that Karl and Vermont Compost has clearly indicated tonight that they are going to put forth with regard to this matter. He doesn't see that it would be any more constrained to their operations to do that.

Mayor Hooper said while she knows there are some that would like to discuss the content of the agreement the Council is limited. Mr. LaRosa's testimony has been that he has seen a massive decrease in the food waste. Has he had any food wastes deposited on his property since the feeding area has been up and in operation?

Mr. LaRosa said he would estimate that they have seen less than a dozen individual pieces of recognizable fresh food waste. They found a couple of bones and some clam shells in the front yard, but compared to what they had been seeing there has been a very minor amount.

Barbara LaRosa said she lives adjacent to Vermont Compost with her husband Steve. The February date that the building was erected was also the time where the snow cover was large, and typically the crow population does decrease in the area and they spread out. Today is not a day where they normally would ever have a crow problem. Typically, it is in the fall through spring time that they do have a very large problem.

Mayor Hooper said there are a couple of questions for Chief Schneider so they will call him back.

Attorney Richardson said he would like to recall Karl Hammer for one quick question. The written agreement he signed with the city in February, is that the first written agreement on a public health matter he entered into?

Mr. Hammer said they made an agreement the year before but it was open and not executed. He believes he signed it.

Attorney Richardson said he is talking about an executed agreement with the city on a voluntary compliance.

Mr. Hammer said yes.

Mr. LaRosa said he would like to ask a question of Mr. Hammer.

Attorney Richardson said he would ask that it stay to the scope of the redirect he had with Karl about the agreement.

Mr. LaRosa asked Mr. Hammer if he recalled whether he followed through with that agreement in its totality.

Mr. Hammer asked which agreement, the agreement he made with Chief Schneider in 2009. They didn't make an agreement in 2009. That was when the city, Vermont Compost and also intended the LaRosas would enter into an agreement.

Mr. LaRosa said he is discussing the agreement he entered into.

Mayor Hooper said there was one executed agreement which was the one that was completed in January of this year and one that was not executed, which she believes that the testimony was that it was not final. Is that correct?

Mr. Hammer said in 2009 they attempted an agreement that was not executed.

Mr. LaRosa said he misunderstood the testimony. He thought that Dan had asked that there was a previous agreement he had entered into and he indicated yes there was.

Mayor Hooper said no there was not a previous agreement. She told Chief Schneider that while they are not revisiting or attempting to rewrite the terms of the agreement there was a desire to understand in terms of the deposition of food residuals has to do

with crow behavior and say that crows deposit food some periods of the year and some periods they don't. Can he help the Council understand that?

Health Officer Schneider said to keep in mind that he first got involved on January 8, 2008 and that first spring, as he testified prior at the City Council, he doesn't think the LaRosas were aware of the impact it was having on them and they made very little effort to notify the city when things were happening so they only had one or two contacts with them up until April of the third year. That summer they did not have any specific complaints about crows. On December 17, 2008 they were told that the crows were back and there were food residuals there. January 19th, which is about 17 days later, he determined that while maybe not a significant health risk that there was enough accumulation of material to indicate that a health risk was occurring at that time. Actions were taken and changes and procedures were attempted. Over the summer of 2008, again there were no specific complaints about deposits. On October 15th the LaRosas did notify him that the crows were back. However, it was only on December 21st that they went ahead and notified him again that there were food deposits and food wastes. Again, it was around January 11th when he was basically ready to make the same finding that Karl Hammer change his rules. Keeping in mind from his point of view the garbage itself is not a health risk. It is the accumulation of garbage and it requires evidence that garbage is accumulating. That is not to say it is not a property issue, but as far as being a health officer he cannot say that garbage is a health risk. It became very clear to him that over a two year period, a period starting in December and into January, February and March that was a high risk area. He went back a month and a half from the earlier actual deposition of the food waste to get to the November 1st date and the May 1st date is a guess in the spring because they haven't had any specific information.

Mayor Hooper said in summary the dates of agreement were based on his experience in terms of when problems begin to arise within a definitive time frame.

Health Officer Schneider said two years' experience with that specific problem showed him that was the high risk time. Obviously, if he received a complaint outside of that then he would have to start evaluating if there was enough deposition to consider it becoming a possible health risk.

Council Member Sherman said they have defined the problem in terms of a period of time, but during that period of time when the problem has gone away there has been a significant change in the operation, i.e. the food is in the feeding structure. Would the problem persist without the feeding structure?

Health Officer Schneider said he presumes that after two years without the feeding structure they would continue to have a problem, at least during the wintertime.

There is no evidence at this point with his experience of two years dealing with it that there is a summer problem. There is definitely a wintertime problem.

Mayor Hooper said she would like to know if there is any other evidence to be entered. This is the time to receive evidence and then they will close the hearing and there will not be an opportunity to receive additional evidence from either party.

Mayor Hooper closed the evidentiary portion of the hearing at 8:50 P.M. The Board of Health needs to decide if it would like to make a site visit in order for us to determine as the Board of Health that there is a health hazard or you believe that there is a risk of a health hazard and we should be reconvened as a Board of Health to deal with that issue. Do they wish to visit the site?

Council Member Hooper asked if they made that decision in deliberative session and decide that now.

Council Member Golonka said he would like to see the site.

Mayor Hooper said she assumes two vocal yes's and no one objecting strenuously is a desire to make a site visit and they will need to have all of the parties join them. This will not be an opportunity for the Board of Health to gather additional evidence or be shown specific issues.

Council Member Weiss said if he is assuming correctly that before this evening is over this group will go into deliberative session. Is that correct?

Mayor Hooper said if they make a site visit they will do nothing until they make the site visit, and then having visited the site they will go into deliberative session. Is that right?

Attorney Stitzel said they could have some deliberations tonight.

Mayor Hooper said the answer to Council Member Weiss' question is yes, we will have a deliberative session which is only open to the Board of Health and our attorney and not our City Manager or Health Officer.

Council Member Weiss said if they are going into deliberative session he would like the deliberative session to cover all matters, and following the deliberative session then it would be determined whether or not a field trip would be worthwhile.

Mayor Hooper asked if he would like to defer making that decision.

Council Members Hooper and Weiss replied yes.

Mayor Hooper asked the question if they wanted to make a field trip and there are some members who would like to. However, they would like to have a deliberative opportunity, and then based on that opportunity to decide on whether or not they will make a field trip. They may take the invitation to visit the site. If they do they will make sure that all of the parties have an opportunity to join us at the site. There is also a motion they need to consider from Vermont Compost. At this point she will adjourn this portion of the hearing.

Mayor Hooper asked Attorney Stitzel what were the rules in terms of them talking to anyone about this until they have made a decision. She presumes they should not have any conversations with any member of the public or the press.

Attorney Stitzel said that is correct.

Mr. LaRosa asked if he would have an opportunity to respond to the voluminous information provided by Vermont Compost immediately prior to the meeting.

Mayor Hooper said because there was information that Mr. LaRosa has not had a chance to review he does have an opportunity to respond to it. She would ask that he do it in writing so they can all share it equally.

Mr. LaRosa said they would be glad to do that within the next seven calendar days.

Attorney Richardson said at this point he would withdraw the second memorandum that is the summary of testimony simply because it was not required. He asked the Board of Health not to consider that. The second memorandum which is entitled "A Summary" is the one they are withdrawing. That is the one they filed in anticipation of potential expanded testimony that did not come to fruition. It is simply the first memoranda on procedural history and objections.

Mr. LaRosa said they would have their response to the Board of Health by May 27th.

Attorney Richardson asked that a copy be sent to his office.

Attorney Stitzel said he would like to clarify why the Health Officer would not be allowed to participate. The Health Officer under Vermont law is a member of the Board of Health and the Board of Health has many responsibilities, only one of which is the review of issuance of health orders. Health orders are actually issued directly by either the City Council or a Select Board and not by the Board of Health. In health order matters typically the Health Officer is requesting that the Council or the Select Board issue the health order, and in those cases the Council is exercising judgment independent of the judgment exercised by the Health Officer. In other instances where the Council is acting purely as a Board of Health, such as the adoption of

ordinances under the health statute, the Health Officer is a member of the Board of Health and participates with the Council as a member.

Mayor Hooper said this portion of the meeting is adjourned. She appreciates everyone's interest in this issue and hopes understanding of the very limited scope of what we are looking at, which is whether or not a health hazard exists today.

The City Council entered into deliberative session as the Montpelier Board of Health.

Transcribed by Joan Clack

Attest: _____
Charlotte L. Hoyt, City Clerk

**Montpelier Community Renewable Energy Project
Environmental Assessment Consultant
Fee Proposal
May 2010**

Item 2.1 Environmental Assessment

The professional fees presented below are based upon the City of Montpelier's Request for Proposals, our proposed scope of work and our understanding of the project. The fees are also based on several key assumptions as identified in the proposal, including:

The project will not result in any significant impacts and that no issues or concerns or significant opposition to the project are encountered warranting special studies or analysis.

DuBois & King (prime consultant; Environmental Assessment).....	\$68,518
Johnson Company (hazardous waste)	\$5,500
Liz Pritchett (historical).....	\$5,595
Resource Systems Group (air quality)	\$3,500
UVM CAP (archaeology)	\$3,406
Irland Group (BioEconomic)	\$1,200

Total Environmental Assessment (total, NTE) \$87,719

Item 2.2 Permit Process Management

As indicated in our technical proposal, DuBois & King and our project team is prepared to assist the City in completing permit applications for all the permits that may be required for this project.

However, the specific permitting services to be provided have not yet been fully defined. To be responsive to the RFP, the D&K Team has outlined several key permitting services that should be provided by the consulting team, and the associated fees for these services are presented below:

General Coordination with the City regarding permits (D&K)	\$5,000
Air Quality, Pre-application and dispersion modeling (RSG).....	\$8,000
Site Remediation – 248 support (Johnson Company)	\$7,871
Traffic Impact Assessment (D&K).....	\$4,114
Public Engagement.....	\$4,000

Total Permitting Process Management (total, NTE)..... \$28,985 **

** D&K intends to coordinate with City officials during the development of the EA and quantify the specific permitting tasks that are appropriate for the consulting team to prepare as opposed to the City or others.

FY10 DPW-Related Savings (Projected) and Recommended Uses for Capital Projects

Anticipated Savings in DPW Areas of the FY10 General Fund Budget:		Recommended Allocation of Savings to Capital Projects
DPW Streets:		
DPW Streets Salaries	30000	Local Share Aug 08 Storm Damage 22000
DPW Streets Benefits FICA/Pension W/C	25000	
DPW Streets OT	10000	Retaining Wall Repairs-Hill & North St 90000
DPW Streets Operating Supplies	20000	Paving Projects (match for grants) 20000
DPW Streets Other Rental	12000	Sidewalk Projects (match for enhancement grants) 50000
DPW Streets Contract Pavement	12000	
DPW Streets Equip (Street Lights)	10000	
DPW Streets Roadside Mowing	8000	
Other DPW Streets accounts	17000	
Total DPW Street Savings	144000	
DPW Fleet:		
DPW Fleet OT	5000	
Other DPW Fleet accounts	6000	
Total DPW Fleet Savings	11000	
DPW Building:		
DPW Building Heat	7000	
Other DPW Building accounts	5000	
	12000	
DPW STD Disability Reimb	15000	
Total DPW Anticipated Savings	182000	Total Allocation to Capital Projects 182000

Anticipated DPW Equipment Savings:	Recommended Allocation of Savings to Equipment Plan
Sale of Vactor -funds available due to ARRA	Purchase Dump Truck #3 - 1/2 was cut from FY11 Budget
55000	55000

Anticipated City Hall Savings:	Recommended Allocation of Savings to Capital Projects
City Hall Heat	Front Step Railing 5000
City Hall Trash Removal	ADA 10000
City Hall Machinery	DPW Office Improvements - mold issue 10000
Total City Hall Savings	Total Allocation to Capital Projects 25000
	Note: \$10,000 left in bond funds for City Hall wiring will be used for DPW Office Improvements for a project total of \$20,000



City of Montpelier, Vermont

"The Smallest Capital City in the United States"

TO: City Council Members
William J. Fraser, City Manager

FROM: Sandy Gallup, Finance Director

DATE: June 4, 2010

SUBJECT: City of Montpelier Fund Balances FY09 and FY10 Update

I am attaching the City of Montpelier June 30, 2009 Fund Balance Worksheet. It is organized by Funds, with details on the specific reserves, restricted or designated funds. Some of the restricted funds are required by accounting practices, some from donations for specific purposes. Many are accounts established by city management and the city council to carry forward funds to be used in future years.

This information is almost a year old. Many of the actual reserve balances have changed. These changes will be reported as of June 30, 2010 and be part of the FY10 audit,

The following reserved funds are necessary to comply with Generally Accepted Accounting Practices:

<u>General Fund:</u>	<u>Water , Sewer and Parking Funds</u>
Inventory	Fixed Assets (Invested in Cap Assets)
Inventory-Equipment	
Records Restoration	<u>Community Development</u>
Armory note Receivable	Reserved for Com Dev
Prepaid Expenses	Reserved for Note Rec
<u>Senior Center</u>	
Reserved for Corey Fund	
<u>Non-Expend-Permanent Funds</u>	<u>Cemetery</u>
Cemetery non-exp Trust	Cemetery exp Trust
G. Blanchard non exp trust	
Hubbard non exp trust	

The following reserved funds have been/will be zeroed out with FY10 & FY11 transactions:

General Fund
VMERS Paydown "surplus"
Equipment Reserve-Police
Equipment Reserve-Fire
Vactor Reserve
Parks
Tower Reserve

I am recommending unrestricting (zeroing out) the following reserve funds:

General Fund

Parks Wetlands \$140

City Hall Plaza \$191.65

Inside Agencies Fund

Fall Celebration \$58.56

Flags \$-33.22

Plaza Pavers \$125

Please review the attached worksheets and let me know if you have questions regarding individual reserve account. I will be presenting this information at the June 9th City Council meeting.

City of Montpelier							
30-Jun-09							
General Fund Fund Balances							
Final Final	Audit	Fund	Govt	Account	Net Rev	Description	
GENERAL FUND	6/30/2008	Stmts	Wide	Number	(exp)		6/30/2009
Reserved:							
				2310-00.00	28,532.40		
Act 60 Reappraisal	29,748.11	YES	YES	9951-92.01	-		58,280.51
Inventory	41,893.09	YES	NO		74,468.90		116,361.99
Inventory - Equipment	62,944.63	YES	NO		(11,132.39)		51,812.24
				2602-00.00	-		
Drug seizure	(84.56)	YES	YES	4160-83.00	-		(84.56)
Parks wetland	140.00	YES	YES			no change	140.00
Records restoration	54,619.30	YES	YES	2404-00.00	7,655.00		62,274.30
Armory note receivable	261,753.07	YES	YES	2817-00.00	(25,672.67)		236,080.40
Park Impact fees	35,823.50	YES	YES	2205-00, 2810.00	1,624.50		37,448.00
				9390-97.00	-		
City Hall Plaza	191.65	YES	YES	9951-79.01	-		191.65
Ambulance reserve	(0.00)	YES	YES	2804-00.00	55.00		55.00
				4500-50.01	-		
Civil Air Patrol	3,437.77	YES	YES	9950-95.00	(3,437.77)		-
Prepaid expenses	2,030.03	YES	NO		(2,030.03)		-
				10-9100-91	(195,300.88)		
VMERS Paydown "surplus"				2921-00,	229,237.28		33,936.40
Reserved	492,496.59				103,999.34		562,559.53
Fire revenue reserve	11,919.05	NO	NO	2813-00.00	2,064.88		8,893.93
				4500-50.00	(5,090.00)		
Tree Board	23,127.88	NO	NO	8135-00.00	(170.72)		6,716.59
				8130-00.00	(16,240.57)		
				2806&2809&2316	-		
Conserv Commission	(239.72)	NO	NO	8300-00.00	2,541.81		2,302.09
Computer Equipment	21,262.04	NO	NO	9400-83.05	(1,439.39)		19,822.65
				2614-00	21,711.00		
Equipment Reserve DPW	86,709.33	NO	NO	9400-83.01	(58,389.34)		50,030.99
				2614-00	2,425.00		
Equipment Res-Police	3,149.00			9400-83-02	2,369.79		7,943.79
Equipment Res-Fire	569.00			9400-83-03	1,742.00		2,311.00
Equipment Res-Clerk	2,500.00			9400-83-04	-		2,500.00
Vactor Reserve	35,000.00			9400-83.01	-		35,000.00
Parking Fund Reserve	-	NO	NO		-		-
Reappraisal Reserve				3430-60.01	52,297.00	unspent \$70,000 funds	52,297.00
Total Designated	183,996.58				3,821.46		187,818.04
Unreserved/Undes	669,551.38				(46,113.51)		623,437.87
Total Fund Balance	1,346,044.55				61,707.29		1,373,815.44

City of Montpelier
6/30/2009

Fund Balances/Net Assets					
Final Final					
	6/30/2008	Fund	Govt	Net Rev	6/30/2009
		Stmts	Wide	(exp)	
WATER(11)					
Fixed assets (Invested in Cap Assets)	8,991,742.77			544,761.48	9,536,504.25
Unreserved	365,975.48			(1,000,230.73)	(634,255.25)
Berlin Users Alternative Water Supply	50,000.00	NO	NO	-	50,000.00
Water Distribution Equipment Res	-	NO	NO	10,000.00	10,000.00
Subtotal (Net Assets per TB)	9,407,718.25			(445,469.25)	8,962,249.00
SEWER(12)					
Fixed assets (Invested in Cap Assets)	10,269,337.40			190,124.11	10,459,461.51
Unreserved:	(245,356.42)			(536,701.60)	(782,058.02)
Vactor Replacement	107,862.00	NO		-	107,862.00
River St Line Improvements	-			72,181.00	72,181.00
Bridges & Tanks	65,000.00			-	65,000.00
WWTP Alternative Water Supply	50,000.00	NO		(50,000.00)	-
Variable Frequency Drive (VFD) &					
Motor Control Panel	50,000.00	NO		-	50,000.00
Lift Station Pump Replacement	30,000.00			-	30,000.00
Subtotal (Net Assets per TB)	10,326,842.98			(324,396.49)	10,002,446.49
PARKING(40)					
Reserve for Parking Replacement	1,169.70	yes	2995-00	-	1,169.70
Reserve for State St/Parking Lot Imp	40,000.00	yes		-	40,000.00
Reserve for Jacobs Parking Lot	50.00	yes		(50.00)	-
Reserve for Traffic Circulation Study	-	yes		-	-
Reserve for Parking Lot Improv	-			-	-
Fixed assets	334,505.02			(8,909.84)	325,595.18
Unrestricted	(28,759.76)			(67,064.34)	(95,824.10)
Subtotal	346,964.96			(76,024.18)	270,940.78
COMM DEV(16)					
Reserved for Com Dev	330,186.05	YES		(10,232.44)	319,953.61
Reserved for Note Rec	2,855,135.00			30,464.35	2,885,599.35
SUBTOTAL	3,185,321.05			20,231.91	3,205,552.96
CEMETERY (17)					
CIP Ballot Item Reserve					-
Fund Balance Reserve	88.34			7,399.48	7,487.82
SUBTOTAL	88.34	NO		7,399.48	7,487.82

City of Montpelier
6/30/2009

Fund Balances/Net Assets					
Final Final					
	6/30/2008	Fund	Govt	Net Rev	6/30/2009
		Stmts	Wide	(exp)	
<u>PARKS (18)</u>					
Unrestricted	8,304.95	NO		11,326.31	19,631.26
Karen Kitzmiller Memorial Reserve	750.00	NO		-	750.00
Nature Trail Project Reserve	2,000.00	NO			2,000.00
Tower Reserve	20,000.00			6,000.00	26,000.00
SUBTOTAL	31,054.95			17,326.31	48,381.26
<u>SENIOR CENTER (38)</u>					
Reserve for Corey Fund				39,212.44	39,212.44
Reserve for Feasibility Study				6,721.00	6,721.00
Unrestricted				277,101.58	277,101.58
SUBTOTAL	-			323,035.02	323,035.02
<u>INSIDE AGENCIES FUND (27)</u>					
Montpelier Arts	9,841.52	NO		(35.53)	9,805.99
Independence Day (see USS Montp)	(762.47)	NO		762.47	-
Envision Montpelier (private grant)	54,259.99			(32,795.21)	21,464.78
Welcome Mpr Signs	4,876.00	YES	YES	-	4,876.00
Fall Celebration	58.56	NO		-	58.56
First Night	-			-	-
USS Montpelier	1,000.00	NO		(912.47)	87.53
Flags	(33.22)	NO		-	(33.22)
Plaza Pavers	125.00	NO			125.00
State Capitol 200th Celebration	1,088.75	NO		-	1,088.75
SUBTOTAL	70,454.13			(32,980.74)	37,473.39
<u>CONSERVATION FUND(28)</u>	48,712.25	YES	YES	(2,712.29)	45,999.96
<u>CAPITAL PROJECT(30,45,70)</u>					
Reserve for WIFI Project	-			3,272.51	3,272.51
Reserve for Traffic Imp Fees(30)	31,944.81	YES	YES	(3,335.00)	28,609.81
Designated for Future Projects(30,45,70)	735,115.33	See V-14		(1,019,382.59)	(284,267.26)
SUBTOTAL	767,060.14			(1,019,445.08)	(252,384.94)
<u>Mont Foundation (80)</u>	91,166.43	YES	YES	(11,513.77)	79,652.66
<u>Montpelier Housing Trust (32)</u>	59,090.15	YES		22,836.14	81,926.29
<u>Non Expend - Permanent funds</u>					
<u>CEMETERY non exp trust(85)</u>	349,143.66	YES	Yes	10,425.00	359,568.66
<u>G. Blanchard non exp trust(81) PARKS</u>	68,480.07	YES	Yes	1,693.23	70,173.30
<u>Hubbard non exp trust (82) PARKS</u>	14,620.12	YES	Yes	-	14,620.12
	432,243.85				444,362.08
<u>CEMETERY exp trust(86)</u>	297,409.07	YES	Yes	(22,336.67)	275,072.40
Total of 2 (Restricted Fund Balances)					

From: [William Fraser](#)
To: [Beverlee Hill](#); [Audra Brown](#)
Subject: FW: street closures for July 3rd
Date: Tuesday, June 01, 2010 10:27:49 AM

FYI – for June 9th agenda

From: Suzanne Eikenberry [mailto:director@montpelieralive.org]
Sent: Tuesday, June 01, 2010 10:25 AM
To: William Fraser; Jimmy Swift
Subject: street closures for July 3rd

Hi Bill,

We just realized that we had not gone through the City Council process yet for closing down street for the July 3rd festivities. We are looking for the same street closures as in the past, with one change: State St in front of the State House we would like to close from 12:30pm-10pm. Since it is a Saturday this year, we are expanding activities. When can we get on the Council agenda to formally set this up? Jimmy is meeting with police/fire, etc on June 10th.

Here is the full list of closures we are requesting:

- State Street--between Governor Davis and Bailey Avenue: Closed from 12:30pm until 10:00pm for vendors and parade. Note: Access to Department of Motor Vehicles will be re-routed through state parking lots.
- Main Street between the Roundabout and State Street: Closed from 6:00pm until approximately 7:45pm for the Montpelier Mile Road Race followed by the parade. Note: No parking on State Street between 5:00-8:00pm. Vehicles remaining on street will be towed.
- Langdon Street: Closed from 3:00pm to 1:00am for McGillicuddy's and Langdon Street Café street parties.
- 60 State Street Parking Lot: Closed from 3:00pm to 1:00am for Julio's Cantina street party.
- The Meadow Area: Closed from 4:30 to 6:00pm for parade staging area. All resident vehicles must be removed from the street.
- Schools Street—between St. Paul and Main Streets: Closed from 4:30 to 7:45pm for parade staging area. All resident vehicles must be removed from the street.

Thanks!
Suzanne

--
--

Suzanne Eikenberry (formerly Suzanne Hechmer)
Executive Director
Montpelier Alive (aka Montpelier Downtown Community Association)
39 Main Street, Montpelier, VT 05602
Phone: 802-223-9604
www.MontpelierAlive.org

Please consider the environment before printing this email.

GOALS DISCUSSION OUTLINE

Department Head Issues –

Police: Training, Impact of State Cutes. Need partnerships with other agencies. Regional dispatching. Major upgrade of communications equipment.

Public Works: Road/Sidewalk Maintenance underfunded. Need more preventive maintenance on roads. Shared water/sewer. Increased equipment funding. Stormwater Utility.

Planning & Development: Completing and implementing Master Plan. District Energy Plant and clean energy district. 58 Barre Street Building and Senior Center function. Transit Center project.

Fire Department: Expensive vehicle replacements needed in near future. Stable service demands. Training mandates. Finding qualified/capable people.

Administration: Economic Development. Water, particularly in Berlin. Rail issues/Stone Cutters Way. Organizational issues now and in near future. Flood prevention. Maintaining services while holding line financially.

MUST DO ITEMS FOR 2010-11

Existing activities/obligations/commitments that will require significant staff and/or council time

Budget

Master Plan

Reappraisal

Flood Study

Carr Lot/Transit Center

58 Barre St/Senior Center

Civic Center Tax issue

District Heat

Rail Issues

Water Fund Deficit

Election/Fire District # 1

ADA Transition Plan & compliance

INDIVIDUAL COUNCIL MEMBER PRIORITIES

Transit Center – continue on present path of developing the project.

Ordinance Committee – create a standing committee to review the city's ordinance book. Committee will make periodic recommendations for updates, edits, cleanup and amendments.

Rec Department – make a decision about Rec Dept management. If city is to assume management, create a transition plan.

Senior Center/58 Barre St. – continue on present path. Make decision on future use of 58 Barre St and if that doesn't include Senior Center then find new location for that. Consider potential uses/issues with 55 Barre St, St. Michael's School and, possibly, Main St. Middle School.

Economic Development – meet with CVEDC about possible strategies to promote development in Montpelier.

Tax Increment Financing District – actively pursue identifying and adopting a TIF district as an economic development tool.

City Economics – can't afford all, maintain awareness of fiscal constraints when making decisions.

Housing – promote new/affordable housing. Seek recommendations from Housing Task Force about actions the city can take to promote housing.

Review of Committees/Commissions

Regional Shared Services

Street Lights

Management Study

Bike Path

Water Contract with Hospital

Charter Commission

Local Options Taxes

Water Pipes

New ☐
Renewal ☒

If this is a renewal
with changes please
indicate below, if there
are no changes, it is not
necessary to complete each year.

VERMONT DEPARTMENT OF LIQUOR CONTROL
Enforcement & Licensing Division
OUTSIDE CONSUMPTION PERMIT

Approved/Disapproved

Office Use Only

Name of Licensed Premise (Corporation/Partnership/Individual, d/b/a)

d/b/a Langdon Street Cafe

Address 4 Langdon St. Town/City Montpelier, VT

License Number 5546-CO1-3 RST-06 Email or Fax # meg@langdonstreetcafe.com

Outside consumption would be in the area described below: (describe fully, including size, physical barriers, etc.)

Directly in front of the Cafe on the Street while it
is closed for July 3rd Events. It will be as wide as the
cafe building and the full width of the Street.

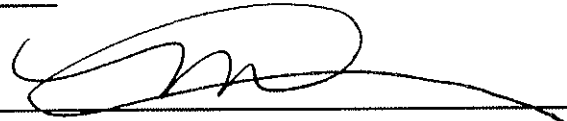
We will be using snow fencing for the barriers

Outside Consumption time period (hours) from 7pm to Midnight

Permanent Use ☐ from _____ to _____

Month/Day July 3rd, 2010 Month/Day _____

Occasional Use ☒ Day(s) Requested _____

Signature of Licensee 

APPROVED BY LOCAL CONTROL COMMISSIONERS

Town/City Clerk Signature _____ Date _____

APPROVED BY DEPARTMENT OF LIQUOR CONTROL

Investigator/Enforcement Office _____ Signature _____ Date _____

Please remember that this outside consumption permit is an extension of your license to serve alcohol beverages, and that the same rules apply in this area as do in the regularly licensed premise area.

New ☐

Renewal ☐

If this is a renewal

with changes please

indicate below, if there

are no changes, it is not

necessary to complete each year.

VERMONT DEPARTMENT OF LIQUOR CONTROL

Enforcement & Licensing Division

OUTSIDE CONSUMPTION PERMIT

Approved/Disapproved

Office Use Only

Name of Licensed Premise (Corporation/Partnership/Individual, d/b/a)

Langdon St. Pub C.

d/b/a

McEllicuddy's Irish Pub

Address

14 Langdon St.

Town/City

Montpelier (802) 229-2291

License Number

Email or Fax #

Melliepub@aol.com 6228

Outside consumption would be in the area described below: (describe fully, including size, physical barriers, etc.)

A fenced in area on Langdon St. Adjacent to the restaurant. The area will be staffed and food and beverage will be sold from 5:00pm - 1:30 AM. It is our annual 4th of July celebration.

Outside Consumption time period (hours) from 5:00 pm to 1:30 AM

Permanent Use ☐

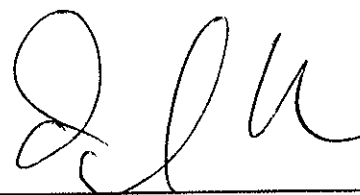
from July 3rd to _____

Month/Day July 3rd Month/Day July 3

Occasional Use ☐

Day(s) Requested

Signature of Licensee



APPROVED BY LOCAL CONTROL COMMISSIONERS

Town/City Clerk Signature

Date

APPROVED BY DEPARTMENT OF LIQUOR CONTROL

Investigator/Enforcement Office

Signature

Date

Please remember that this outside consumption permit is an extension of your license to serve alcohol beverages, and that the same rules apply in this area as do in the regularly licensed premise area.

Enf 02/03

Subj: **July 3RD**
Date: 5/19/2010 8:02:51 A.M. Eastern Daylight Time
From: Nelliepub@aol.com
To: Nelliepub@aol.com

McGillicuddy's Irish Pub respectfully requests to close Langdon Steeet on July 3rd as part of the downtown celebration and events. We are asking the council to allow us to close Langdon street to traffic at 2:00 PM .

The street will return to normal use after the festivities . McGillicuddy's will fence in an area in front of the restaurant and sell food and beverages outside beginning at 5:00 PM. There will be live music and we are asking the council to extend this years permit for the music to 12:30 as opposed to midnight. The reason for the extended music time is to allow the large outdoor crowd to remain in the area as opposed to them creating a bottleneck trying to get into the restaurant as we close the area. By this time of the evening, more of the patrons I believe will have left the area creating less of a bottleneck. We will need time after the music stops to let people finish their food and beverages and safely clean-up the area and remove the barriers for the street re -opening. This normally takes an hour or so. I believe this will keep people from the midnight push to overcrowd the inside of the bar. Many times by 1:30 AM or so we close the bar a little early on this event and I believe this is the safest way to disperse the crowd.

This letter will also act as our notification to our neighbors. It will be distributed to them by May 22nd. If anyone has any concerns or questions we are asking that they call Dave Nelson at 802-279-0232 .

We thank you for the consideration and hope to see everyone on the 3rd for the 13th annual event.

Respectfully,
David Nelson
McGillicuddy' Irish Pub

CITMEN

**Request to Cater Malt and
Vinous Beverages &
Spirituuous Liquors**

Caterer's Permit Number 1488.005 catr 01

APPROVED

DISAPPROVED

Date:

Reason: _____

(for department use only)

To: Board of Selectmen/Alderman at catered location and Vermont Liquor Control Board.

From: Licensee name: Vermont Hospitality Management

d/b/a: New England Culinary Institute

Street: 56 College Street Town/City: Montpelier

Contact name and phone number: Erica Kaskel 802-225-3334

Email or Fax # erica.kaskel@neci.edu

BE SURE TO READ INSTRUCTIONS BELOW, BEFORE COMPLETING APPLICATION.

(Each catered affair must have a recommendation from the local Board of Selectman or Alderman acting in their capacity as local control commissioners and must have the approval of the State Liquor Control Board.)

Please answer the following questions:

1. Describe type of party to be catered: reception and dinner

2. Location of catered party (street, town or city; if no address, describe location):
Hopkins House at National Life

3. Date of catered party (not more than five days, unless specifically authorized: 06/14/2010

4. Hours of operation: Beginning 3:30 PM hrs. Ending 10:00 PM hrs. No. of Persons 35

Signed: [Signature]
(caterer)

Date: TUES MAY 25 2010

We recommend: approval ☐ disapproved ☐

If you recommend disapproval, please state reason(s): _____

Town/City Clerk's signature
Of CATERED location.

Town/City
Fax Number or email address: _____

Date

SUBMIT AT LEAST 5 DAYS PRIOR TO DATE OF FUNCTION

Submit to Town/City Clerk for recommendation.

Town/City Clerk will email, fax or mail to Vermont Liquor Control Board, 13 Green Mountain Drive, Montpelier, VT 05602 email address: { [HYPERLINK "mailto:DLC-Licensing@state.vt.us"](mailto:DLC-Licensing@state.vt.us) } Fax number is 802-828-1031

LIQUOR CONTROL BOARD'S PROCEDURAL REQUIREMENTS FOR CATERER'S PERMIT HOLDERS:

1. All liquor control laws and regulations that apply to 1st and 3rd class licenses also apply to caterer's permits.
2. Before a catered event is approved in any open area, the following requirements must be fulfilled:
 - a) A defined area, for serving and consumption of alcohol beverages, designated with physical barriers.
 - b) Separate toilet and lavatory facilities available for both men and women.

**Request to Cater Malt and
Vinous Beverages &
Spirituos Liqueurs**

Caterer's Permit Number 1488.005 catr 01

APPROVED	DISAPPROVED
Reason: _____	Date: _____
(for department use only)	

Ratification of Poll Vote

To: Board of Selectmen/Alderman at catered location and Vermont Liquor Control Board.
From: Licensee name: Vermont Hospitality Management
d/b/a: New England Culinary Institute
Street: 56 College Street Town/City: Montpelier
Contact name and phone number: Erica Kaskel 802-225-3334
Email or Fax # erica.kaskel@neci.edu

BE SURE TO READ INSTRUCTIONS BELOW, BEFORE COMPLETING APPLICATION.

(Each catered affair must have a recommendation from the local Board of Selectman or Alderman acting in their capacity as local control commissioners and must have the approval of the State Liquor Control Board.)

Please answer the following questions:

1. Describe type of party to be catered: reception and dinner
2. Location of catered party (street, town or city; if no address, describe location): Hopkins House at National Life
3. Date of catered party (not more than five days, unless specifically authorized: 06/06/2010)
4. Hours of operation: Beginning 5:00 PM hrs. Ending 9:00 PM hrs. No. of Persons 35

Signed: [Signature] Date: THURS MAY 27, 2010
(caterer)

We recommend: approval disapproved

If you recommend disapproval, please state reason(s): _____

Charles L Hayt Montpelier June 3 2010
Town/City Clerk's signature Town/City Date

Of CATERED location. Fax Number or email address: _____

SUBMIT AT LEAST 5 DAYS PRIOR TO DATE OF FUNCTION

Submit to Town/City Clerk for recommendation.

Town/City Clerk will email, fax or mail to Vermont Liquor Control Board, 13 Green Mountain Drive, Montpelier, VT 05602 email address: { HYPERLINK "mailto:DLC-Licensing@state.vt.us" } Fax number is 802-828-1031

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 - a) A defined area, for serving and consumption of alcohol beverages, designated with physical barriers.
 - b) Separate toilet and lavatory facilities available for both men and women.

133 Towne Hill Road
Montpelier, VT 05602

May 25, 2010

Barbara and Sheldon Prentice
35 Woodrow Avenue
Montpelier, VT 05602

Re: Application for Noise Variance

Dear Barbara and Sheldon:

At the City Council meeting on June 9, 2010 at 7 PM, I will be requesting a variance from Article X – Noise Control – for Saturday, June 12, 2010 from 6 PM to 10 PM for my residence of 133 Towne Hill Road. At that time a band, Rusty Romance, will be playing.

If you have any objection, please attend the meeting to make known your objections.

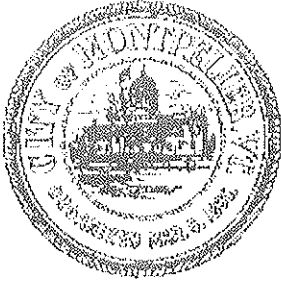
Thank you.

Sincerely,


James Nagle

Cc: Montpelier City Manager

This notice also sent to:
Dan Gass/Corale Hersam
97 College St.
Lloyd Richards/Cameron Connors
103 College St.
Craig and Sarah Jarvis
36 Woodrow
David Nelson/Stacey Nelson
48 Coolidge St.
Cynthia Poliv
117 Towne Hill Road
only top 4 are w/in 250'



City of Montpelier, Vermont
"The Smallest Capital City in the United States"

DATE: May 27, 2010

TO: Mayor and City Council Members

FROM: Sandra Gallup, Finance Director

SUBJECT: SUMMARY BUDGET REPORT BY DEPARTMENT FOR GENERAL FUND AND DETAILED BUDGET STATUS REPORTS FOR GENERAL FUND, WATER FUND, SEWER FUND, CEMETERY FUND, PARKS FUND, PARKING FUND AND SENIOR CENTER FUND FOR A TEN MONTH PERIOD BEGINNING JULY 1, 2009 AND ENDING APRIL 30, 2010..

Enclosed please find budget reports for the above reference funds.

For the General Fund, please note that 104% of revenues budgeted have been received (compared to 102% last fiscal year) and 90% of expenditures budgeted have been expensed for this time period (compared to 89% last year). This represents 83% of the budget year completed.

GENERAL FUND NOTES AND PROJECTIONS:

I am projecting that the General Fund should end the year with a positive financial position.

As we enter the final month of FY10, projected Revenue and Expenditures are close to balancing out. Unanticipated revenue is covering unanticipated expenditures. This projection assumes that most of the budgeted, weather-related expenditures in DPW Streets, DPW Fleet and Heating Fuel will be spent. This may not occur due to the relatively mild winter we experienced in Montpelier. I am working with Todd Law to determine what the "savings" might be. In addition there should be "savings" in employee health insurance but that amount is difficult to project. This year's financial position will be discussed at the June 9th Council Meeting.

WATER FUND: Usage in FY09 was 3% lower than in FY08. In FY10 usage is down another 3%. In the most recent quarter National Life dramatically reduced their water usage which they believe is the result of conservation improvements. We are checking their meter to make sure it is operating correctly. The Water Fund could have an \$171,000 loss in FY10 due to low usage revenue and high legal expenditures but as of mid-May there remains \$87,000 unspent in Operating Supplies so there may be some savings in the Water Treatment area of the budget.

SEWER FUND: Sewer Use Revenue may be down as much as \$100,000 in FY10. But, the federal stimulus money which provides ½ Loan Forgiveness on the Vactor replacement will save \$90,000 in the FY10 budget. Also, there appears to be savings in Wastewater Treatment and Sewer Collection areas of the budget. The Sewer Fund may end the year without adding to the prior year deficit.

Both funds are experiencing declines in revenues, no user growth and substantial debt. City management and the Water and Sewer Fund Rate Committee met this month and is developing long term plans to address the financial issues in these enterprise funds.

The Budget Reports are scheduled for the City Council Consent Agenda for June 9, 2010.

**City of Montpelier, Vermont
Agreement for Professional Engineering Services
with DuBois & King, Inc.
for the
Winooski River Flood Damage Risk Reduction Project**

THIS AGREEMENT is made this _____ day of _____, 2010, by and between DuBois & King, Inc., a Vermont Corporation, with its principal place of business at 28 North Main Street, P.O. Box 339, Randolph, Vermont 05060, hereafter referred to as the CONSULTANT and the City of Montpelier, VT with a principal place of business at the Montpelier City Hall, 39 Main Street, Montpelier, Vermont 05602-2950, hereinafter referred to as the CITY.

WHEREAS, the CITY wishes to employ the CONSULTANT for the purpose of providing professional engineering services; and,

WHEREAS, federal funds may participate in the cost of the services described in this AGREEMENT pursuant to the provisions of Title 23, United States Code; and 23 Code of Federal Regulations, which are incorporated herein by reference, and,

WHEREAS, the CONSULTANT is ready, willing and able to perform the required services.

NOW THEREFORE, in consideration of these premises and the mutual covenants herein set forth, it is agreed by the parties hereto as follows:

I. SCOPE OF WORK

The CONSULTANT agrees to provide and the CITY agrees to accept professional engineering services as set forth in the CONSULTANT's Scope of Work June 7, 2010 Attachment A, Schedule of Fees, Attachment B, and the Consultant Contract Terms and Conditions, Attachment C, all of which are incorporated herein and made a part of this AGREEMENT.

II. BEGINNING OF WORK AND TERMINATION

This AGREEMENT shall be effective on June 3, 2010 and shall be completed on or before December 31, 2011, unless modified in writing by both parties.

III. PROFESSIONAL FEES

General. The CITY agrees to pay the CONSULTANT and the CONSULTANT agrees to accept as full compensation for performance of all services and expenses encompassed under this AGREEMENT a lump sum fee for the scope of work tasks as identified in Attachment B, Schedule of Fees.

IV. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of Vermont, U.S.A. If any provision in this Agreement is determined to be invalid by a court of competent jurisdiction, the remaining terms and conditions shall remain in full force and effect.

V. RESOLUTION OF DISPUTES.

If a disagreement arises concerning a matter covered by this Agreement, CITY and CONSULTANT agree to promptly communicate with each other regarding the matter and to attempt to resolve the disagreement to their mutual benefit. All attempts will be made to resolve the dispute without litigation, including first working with mediators that can be mutually agreed by both parties. Should either party hereto, or any heir, personal representative, successor or assign of either party hereto, resort to litigation to enforce this Agreement, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys' fees and costs in such litigation from the party or parties against whom enforcement was sought.

VI. ENTIRE AGREEMENT

This Agreement, together with any exhibits attached hereto, constitutes the entire Agreement between the parties. This Agreement supersedes any prior or contemporaneous oral or written communications, understandings or agreements related to the subject matter of this Agreement.

VII. PAYMENT PROCEDURES

Invoices shall be submitted monthly to the City of Montpelier, Manager's Office, at 39 Main Street, Montpelier, Vermont 05602-2950.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the date and year first above written.

DUBOIS & KING, INC.

By: _____
Jeffrey W. Tucker, P.E., LEED AP

Title: President

Date: _____

CITY of MONTPELIER, VERMONT

By: _____
William J. Fraser

Title: City Manager

Date: _____

**Attachment A
Scope of Work:**

**City of Montpelier
Washington County, Vermont**

**Winooski River
Flood Damage Risk Reduction Project**

DuBois & King, Inc.

Introduction:

The City of Montpelier, in conjunction with the U.S. Army Corps of Engineers, New York District (NAN) and the State of Vermont is advancing the Winooski River Flood Risk Management Reconnaissance Study that was completed in 1996 into the Feasibility Phase. The Feasibility Phase work to be performed is identified in the Project Management Plan (PMP) dated October 2009 for this project.

The City of Montpelier has retained DuBois & King, Inc. (D&K) as the A/E to conduct the in-kind services as identified in the PMP and as detailed below.

Scope of Work:

As detailed in this scope of work, D&K will be responsible for various Structure Inventory and Value Survey tasks, Cultural and Environmental Analysis tasks, and Engineering tasks.

D&K and will work closely with CRREL, NAN ENG, NAN EAB, the City of Montpelier, and the State of Vermont on all above listed tasks.

General Submission Requirements Applicable to all Parts of this Contract:

The following general requirements will apply as terms of the contract between the contractor and the City of Montpelier:

- The contractor will provide copies of resulting documents and materials for review and approval prior to submittal to the NAN or release to other approved parties. NAN shall provide review comments within 14 calendar days, unless determined otherwise.
- The contractor will make appropriate revisions to documents and materials in response to NAN comments and will submit final copies within 14 calendar days, unless determined otherwise during development of delivery order.
- The contractor will attend coordination meetings and field visits. If additional meetings are deemed necessary to ensure timely resolution of major issues and decision points, as well as to assist in presenting project information during public meetings then additional budget will be required.
- The contractor will provide, on CDs/DVDs, copies of all computer generated data files. Materials are to be furnished to the appropriate NAN point of contact.

Structure Inventory and Structure Value Survey

D&K will conduct the Structure Inventory and Structure Value Survey as outlined below:

- A 2-person team will conduct the fieldwork and field inventory the structures with the locations identified below.
- Initial preparation of the summary forms, including Inventory Sheet R4 and the Structure Inventory Guidelines spreadsheet.
- Coordinate with City officials and request available depreciated building values of each structure. Provide the city with the street addresses of the structures identified in the field.
- Estimate the depreciated structure value of each structure following the procedures identified below.
- Complete the Inventory Sheet R6 provided by the NAN for this project. Submit all information to the City and Nan for review and comment.
- Address comments and prepare a final Structures Inventory and Structures Value Survey.

Structure Locations: The structures to be inventoried are assumed to be located within the 500-year floodplain as defined on the current FEMA mapping. The limits of the survey will be within the study area as defined in the 1994 reconnaissance study, beginning at the Town of Middlesex / City of Montpelier border and extending upstream to the City limits on the main stream of the Winooski River and also to the City limits of the Stevens Branch. The survey will also extend up the North Branch to the 500-year backwater limits of the main stem of the Winooski River. D&K has assumed 264 residential structures and 288 non-residential structures. D&K will utilize the same reaches as those identified in the 1994 reconnaissance study.

Structure Value: The structure value will be based on available depreciated building values provided by the City and the State of Vermont. Structures that do not have assessed values will utilize RS Means or similar structure valuation methods/publications. In addition, D&K will estimate the depreciated building value for six (6) typical residential structures and six (6) typical commercial structures using RS Means for the structures that value information is available. This estimated value will be used to check the provided values and as an adjustment factor if required.

D&K has assumed that the survey can be conducted from the street and that entrance onto private property is not required. We have also assumed that entrance into the structures is not required. This inventory will define the structures as to structure condition, type of construction, number of stories, first floor elevations, square footage, and various other features. Other important structures such as outbuildings, landscaping, etc. will also be inventoried. Square footage of each structure may be estimated from existing mapping. Ground elevations will be obtained from existing mapping, and the elevation of the main floor will be estimated using visual references in the field. When assumptions or estimations are made, a note will be placed with the data describing the assumptions made.

D&K has assumed that all of the structures can be field inventoried within 10 working days, and that the structure values and completion of the survey is in addition to the field time.

Prior to initiating the Structure Inventory and Structure Value Survey, D&K will hold a conference call with NAN economist to ensure methods used and data collection format are acceptable, as all data will ultimately must be approved for use by NAN. An MFR will be prepared by D&K summarizing the conference call.

Cultural and Environmental Resource Analysis

Cultural Analysis

D&K, using the sub-consulted professional services of Dr. Charles Knight at the University of Vermont Consulting Archaeology Program, will conduct the Phase I survey for the cultural resources investigations within the study area, as defined in the PMP. This work will include an update of the Phase IA survey conducted during the reconnaissance study and conducting a Phase IB study in upland areas of the project where construction or earth disturbance would be anticipated. The results of this work will be provided to the NAN for inclusion into the main Feasibility Report and NEPA documentation.

D&K will also prepare the detailed scope of work, (including a testing plan where and how many test pits will be obtained), for conducting this work and will provide it to the NAN Environmental Branch for approval. As with the 1994 reconnaissance study conducted by D&K, approved consulting archaeologists will be in responsible charge of the Phase IB work and for the associated summary of the results.

Coordination with the VTSHPO is the responsibility of the NAN. D&K will not coordinate with the VTSHPO.

Prior to initiating these Cultural Analysis tasks, D&K will hold a conference call with NAN archaeologist to ensure methods used and data collection format are acceptable as all data will ultimately must be approved for use by NAN. An MFR will be prepared by D&K summarizing the conference call.

Environmental Resource Analysis

Wetland Delineation, Eastern Pearl Mussel Survey, GIS Management and HTRW Assessment Report.

D&K will conduct all wetland delineation and associated subtask work as described in the PMP. D&K's Certified Wetland Scientist will be in responsible charge of all related work elements. D&K will also conduct the Eastern Pearl Mussel survey, and will provide the NAN with a final report on the survey results.

D&K will conduct the Geographical Information Systems Management as described on page 37 of the PMP. D&K will utilize GIS software that is compatible with City and NAN software tools.

D&K will conduct the Phase One HTRW Site Assessment and prepare the associated Assessment Report as described on page 37 of the PMP.

Prior to initiating these Environmental Analysis tasks, D&K will hold a conference call with NAN biologist and HTRW specialist to ensure methods used and data collection format are acceptable, as all data will ultimately must be approved for use by NAN. An MFR will be prepared by D&K summarizing the conference call.

Design Engineering:

D&K will be responsible for the development of engineering tasks as defined in the PMP and below.

Prior to initiating these Design Engineering and Management tasks, D&K will hold a conference call with NAN ENG and CRREL to ensure methods used and data collection format are acceptable, as all data will ultimately be approved for use by NAN. An MFR will be prepared by D&K summarizing the conference call.

Geotechnical and Survey

Boring Plan: D&K will develop a subsurface exploration plan and coordinate with CRREL and NAN ENG. The plan will include the number, locations, and depth of the borings and/or test pits in the probable location of the proposed alternative structure. The type of equipment to be used and a means to access the site will be determined and listed in the subsurface exploration plan. Rights-of-Entry will be the responsibility of the City.

Conduct borings and lab testing: D&K will contract with a boring subcontractor to conduct the on-site borings. D&K will coordinate this work, and will be on-site during the boring operations and will select recovered samples for laboratory testing. Sampling will be continuous for the first ten (10) feet and may be intermittent thereafter as long as the soil is consistent. Laboratory analysis is expected to include the following analyses, subject to revision at the time of the field investigation: grain size distribution, moisture content, specific gravity, Atterburg Limits. A budget allowance of \$10,000 has been provided for testing by an approved COE laboratory.

For the purposes of this scope of work, D&K has assumed that a total of four (4) borings will be required, and that this work can be completed over a 5-day maximum period for \$2,000 per day of drilling costs. The total depth of each boring is assumed to be 25-feet below ground surface (bgs), or to bedrock, whichever is shallower. D&K has also assumed that bedrock, if encountered, will be cored 10-feet at each boring.

Geotechnical Report: D&K will prepare and submit a geotechnical report to the City and NAN ENG that summarizes the work conducted, along with conclusions and recommendations. All relevant field data and engineering computations will be included in the report. The report will be submitted to the City and NAN ENG in draft form, and again in final form reflecting the comments received.

Survey plan: D&K will prepare a survey work plan associated with the topographical and bathymetric survey. D&K will coordinate with CRREL and NAN ENG regarding the limits of survey prior to initiating fieldwork, and will submit the survey plan summarize the survey plan, including limits of survey, features to be obtained, scale, etc for review and comment. Rights-of-Entry will be the responsibility of the City.

Field work: D&K will conduct a topographic survey at the location of the proposed alternative structure. The extent will include the land on the right overbank where a bypass channel might be constructed as well as the likely route of site access. D&K will establish horizontal and vertical control in the project area. The control shall be tied to the North American Datum of 1983 (NAD 83) and the North American Vertical Datum of 1988 (NAVD 88), transferred to the site via GPS units. Boundary or property survey or research is not included in this scope of work.

Control points will be semi-permanent (rebar with cap) and set in a manner that they can be used for layout during construction. The coordinates and elevation of each control point, together with its ties, will be shown on the survey base maps. The density of the ground shots will support 1-foot contour intervals, as well as all significant breaks in grade or change in terrain. Elevations will be taken to the hundredth of a foot. The work in the Winooski River is assumed to occur when the water level is low enough to allow for the safe entry of people.

Basemaps: A basemap will be created from the topographic survey that includes the following information, as applicable: buildings, bulkheads, bollards, guardrails, parking areas, sidewalks, fence lines, and foundations. The final topographic maps will show the location of changes in pavement materials, pavement striping, trees greater than 6 inches diameter, wooded and landscaped areas, extent of ponded waters, streams, and ditches. Each map will be 22" x 34", provided with a legend, a north arrow, a graphic scale, and a coordinate grid at a spacing of 100 feet.

D&K will field locate exposed, or visible and accessible utilities, such as:

- Water Lines - Locate valves, post indicators, and fire hydrants. Provide elevations for top of valve boxes and indicate size of lines.
- Sanitary Sewer Lines - Locate manholes and provide top of rim elevations. Provide pipe invert elevations at manholes, pipe size, material, and direction of flow.
- Storm Drainage - Locate manholes and other storm drainage structures such as culverts, headwalls, inlets, and cleanouts. Provide elevations of tops of manholes and inlets. Indicate pipe sizes, pipe invert elevations, pipe materials and direction of flow.
- Electrical - Locate power poles, vaults, manholes, meters, transformers, and substations. Provide elevations for top of vaults and manholes.
- Gas and Liquid Fuels- Locate valves, meters, and gas line markers. Provide elevations for top of valve boxes.
- Telephone Communications and Data – Locate all poles, manholes, and boxes. Provide elevations for top of manholes.
- Street Lighting - Locate poles.
- Heating - Locate steam lines, manholes and vaults. Locate filler pipes of underground fuel tanks. Provide elevations for tops of manholes and vaults.
- Locate any fire alarm system boxes and telephone boxes.

All survey work will be provided under the supervision of a VT licensed land surveyor in accordance with the laws and administrative codes pertaining to land surveying. All field surveys will be done in accordance with COE Survey Standards.

D&K will provide interactive graphics and non-graphic files that are fully operational on a Pentium based computer system running Microstation software, version 7 or better and InRoads, version 8.04 or better within a Windows NT environment.

D&K will provide complete geospatial data to include a spatial component, content information, and metadata. This data shall be in compliance with EM 1110-1-1002 Survey Markers and Monumentation; EM 1110-1-1003 NAVSTAR Global Positioning System Survey; EM 1110-1-1005 Topographic Surveying; EM 1110-1-2909 Geospatial Data and Systems; and Spatial Data Standards for Facilities, Infrastructure and Environment (SDSFIE); and A/E/C CADD Workspace. The EM's can be found at the website <http://www.hnd.usace.army.mil>. SDFSIE and A/E/C WS can be found at the website <http://tsc.wes.army.mil>.

Special Requirements:

- There will be no cutting of trees, and brush cutting will be kept to a minimum.
- Excessive marking with paint, flagging, etc. will be avoided.
- D&K will comply with all applicable safety regulations of the current U.S. Army Corps of Engineers Safety and Health Requirements manual (EM 385-1-1) and acquaint themselves and their personnel with the safety and security requirements governing the area in which work is being done.
- D&K will contact the local municipality, and public or private utility companies to obtain utility maps and information. Water lines, sanitary sewers, storm drain lines, underground electric, underground communications, underground telephone, gas lines, liquid fuel lines and steam lines will be incorporated onto the base map drawings using provided information.

Supplemental Field Survey and Mapping: D&K will conduct a 1-day additional effort for field survey data collection to augment the data collected initially, if needed. The additional survey data will be added to the base maps.

Hydrology, Hydraulics and Civil Layout

Hindcasting/Stage-frequency/Hydrologic analysis: Conduct a hydrologic analysis to determine peak open-water river discharges throughout the study area. Estimates will be developed for the 2-year, 10-year, 50-year, 100-year and 500-year events. Ice-affected river discharges and stages will be developed by CRREL.

HEC-RAS Model: Prepare a HEC-RAS model of the Winooski River. The model will extend from the I-89 bridge at the downstream end to a location adequately upstream of the proposed alternative structure location to capture any potential backwater effects. The model will be based on the FEMA model used to prepare the draft 2009 Flood Insurance Study. River and floodplain geometry will be augmented with field survey data collected previously.

DynaRice Model: The DynaRice model will be developed by CRREL with river hydraulic input from D&K.

Alternative Formulation and Site Development: Once existing conditions are reassessed and without project conditions established, the analysis shall proceed to a “with project conditions” assessment. Plan formulation techniques shall be employed to guide the development, screening and selection of opportunities for improvement to the recommended plan, in accord with local interests’ needs, while meeting planning objectives and within the constraints listed on page fifteen of the PMP. Formulation will seek to maintain the recommended plan’s purposes of flood risk management, while employing environmentally sound solutions whenever practical. Formulation will be a joint effort of NAN Planning, NAN Engineering, CRREL, the City and State, and D&K.

Several possible non-structural and structural alternatives will be looked at including:

Channel modifications - Because of the frequency of ice jams, modifications to the existing channel in the reach from Bailey Ave. to the Dog River were evaluated in the 1994 Reconnaissance phase of the study. Results of HEC-2 analysis indicated that channel modification might reduce the ice jam probability, but the reduction was not great and there was a concern for potential disruption of stream habitat. The feasibility study will do a limited evaluation of this measure in light of new data and research on ice jam formation and the fact that the 2007 freeze up jam was differed from all other known ice jam’s that have historically occurred in the area.

Ice retention Piers - Ice retention structures will be carried forward as measures for ice jam induced flood risk management. Dams, as ice retention structures, will not be considered for construction due to State regulations that prohibit the construction of new dams. However, as part of the feasibility phase, the effect of the existing dams on the ice regime may be investigated.

Ice Deterioration Methods - Several mechanical and thermal ice deterioration techniques have been studied previously and show little promise for preventing ice formation and ice jams. However, since the 1994 Reconnaissance Study, new developments in ice deterioration techniques warrant a re-study of these possible measures. The feasibility study will include mechanical and thermal techniques as potential means of flood risk management.

D&K will coordinate with CRREL and the City to determine the NED plan for recommendation, which will include determination of the appropriate location for the construction of the flood risk management alternatives. D&K will use results from HEC-RAS and DynaRice along with updated map and field reviews to select appropriate locations for the alternative(s).

Analyze worst-case conditions, and identify preferred alternative: Assist CRREL and provide river hydraulic input regarding with-project ice jam profiles. Review simulation results with CRREL and identify the need for possible flowage easements.

Engineering Design Analysis Report: D&K will summarize the analyses and works conducted to date and prepare an Engineering Design Analysis Report. The report will address detailed results of the alternative formulation. Additional engineering elements included in the report are expected to include:

- Compare the water surface elevations within the affected area with and without project.
- Prepare combined stage-frequency curves for with and without project.
- Prepare limits of flooding for with and without project.

- Evaluate upstream impacts for with and without project.
- Identify necessary flowage easements for with project conditions.

A draft report will be submitted to the City, NAN ENG and CRREL for review and comment. D&K will address appropriate comments and then issue a final report for use as an appendix to the Feasibility Study.

Investigate existing utilities: D&K will investigate existing utilities in the vicinity of the preferred site of the recommended alternative. D&K will evaluate damages and replacement costs along the developed areas.

Infrastructure replacement: D&K will evaluate the existing infrastructure along the riverfront in the vicinity of the preferred alternative(s) site. This will include an inventory of the existing infrastructure and the potential impact associated with the construction and maintenance of the recommended alternative.

Inventory Flood Control Structures: D&K will review and update the inventory of existing flood protection measures. This will be conducted through field inspection, discussion with City and State officials and review of appropriate prior studies and reports.

Develop Design Alternatives: D&K identify and evaluate viable alternatives for a comparative study. The technical product will include engineering sketches; conceptual level costs, and associated technical text descriptions of the alternatives, including advantages and disadvantages of each plan. A side-by-side summary evaluation matrix will be prepared.

Alternative layout and quantities: D&K will develop the design alternative chosen by the PDT for further consideration. This will include appropriate calculations to optimize various features of the plan. Inundation plans to illustrate the inundation boundaries of the proposed plan will be prepared. The inundation map will also include warning times of impending inundation and also areas of access and egress and the potential for loss of life and property damage.

Design of Selected Plan: D&K will advance the design of the selected alternative to the Feasibility Level (approximate 30% plan level) of completion. This work will include determination of the plan layout, typical cross sections and construction materials. Real Estate maps illustrating required property acquisition for temporary and permanent easements required for construction and upstream flowage rights will also be included in the design plan set.

O&M Tasks and Costs: D&K will address the expectations of the non-federal sponsor regarding annual operations and maintenance responsibilities, including costs with anticipated O&M activities.

H&H Appendix Report: D&K will prepare the H&H Appendix report for this project. D&K will coordinate with the City, NAN ENG and CRREL regarding the content and materials for this report. The report will summarize the technical work conducted to date, including HEC-RAS, DynaRice, Hydrology, survey, geotechnical, alternatives, costs, and appropriate engineering drawings of alternatives and of the selected plan. In addition, the Structural Engineering elements of the recommended alternative will be summarized and presented in a Structural Engineering Report, which will be a subset of the H&H Appendix.

Cost Engineering:

Prior to initiating these Cost Engineering tasks, D&K will hold a conference call with NAN Cost Engineering to ensure methods used and data collection format are acceptable, as all data will ultimately be approved for use by NAN. An MFR will be prepared by D&K summarizing the conference call.

Cost Engineering: D&K is responsible for the development of cost engineering for this project. As indicated in the PMP, D&K will:

- Prepare Preliminary construction cost estimates to establish the National Economic Development (NED) plan. Coordination will be required between D&K and NAN ENG. An M-II will be prepared to support the NED plan.
- D&K will prepare annualized cost estimates for operations and maintenance in support of the NED.
- All other cost estimates in support of the alternatives formulation briefing. D&K will estimate alternative plan construction costs using estimated quantities, average unit process and summarized in a spreadsheet format.
- Paper copies and digital files of the M-II based estimate, along with backups such as quantity computation / assumptions, cost source references, catalog cuts, labor rates, and any additional documents necessary to support the cost estimate, will be provided to the City and NAN EN.

Project Cost Updates (as required): Any project cost updates will be prepared by the NAN ENG, with input from D&K.

Review and Response to Comments:

Review and Response to Comments:

D&K will adhere to our QA/QC responsibilities for this project. All deliverables will be checked, documented and back checked prior to each submission. D&K will address all applicable review comments, prepare responses and document the revisions to the product. We have assumed that Dr. Checks will be utilized as part of the project review and response process.

**ATTACHMENT B
Schedule of Fees:**

**City of Montpelier
Washington County, Vermont**

**Winooski River
Flood Damage Risk Reduction Project**

DuBois & King, Inc.

Task: Fees:

Plan Formulation and Economics:

- Structure Inventory and Structure Value Survey\$27,540

Cultural and Environmental Resource Analysis

- Cultural Analysis\$68,040
- Environmental Studies – Wetlands & Rare Plant Survey.....\$14,580
- Environmental Studies – Eastern Pearl Mussel Survey\$7,290
- GIS Management.....\$12,960
- HTRW\$29,160

Design Engineering and Management:

- Geotechnical and Survey.....\$59,130
- Hydrology, Hydraulics and Civil Layout\$164,430
- Cost Engineering\$56,700
- Project Cost Updates\$9,720
- Review and Response to Comments\$16,200
- Site Visits / study Coordination\$4,860

Notes:

1. The fees are only for DuBois & King, Inc. (D&K) The fees do not include any in-kind services provided directly by the City of Montpelier or any other entity other than the subcontracting allowances identified herein.
2. The fees include a \$10,000 allowance for drilling operations and a \$10,000 allowance for soil testing. Any costs exceeding the allowance will be invoiced for payment.
3. The City will provide any required field and required equipment to assistance D&K with accessing any buried utilities, such as manholes, catch basins, etc. The above fees do not include any costs for City assistance with utility locations.
4. No costs for rights of entry are included. The City will provide all required rights of entry at no cost to D&K.

ATTACHMENT C
Contract Terms and Conditions

City of Montpelier
Washington County, Vermont

Winooski River
Flood Damage Risk Reduction Project

DuBois & King, Inc

SERVICES OF OTHERS

On occasion, project needs will require the specialized services of individual consultants or other companies to participate in a project. When considered necessary, these firms or other consultants will be engaged with Client's approval. DuBois & King, Inc. expects that the Client will enter into an appropriate agreement with them and be directly responsible for all costs incurred by them. For work performed under this agreement for the project, we will review their invoices and forward to you a recommendation for disposition of payment. Services, which are subcontracted by DuBois & King, Inc., will be billed at direct cost plus 12% overhead and fee.

ON-SITE SERVICES DURING PROJECT CONSTRUCTION

Should our services be provided on the job site during project construction, it is understood that, in accordance with generally accepted construction practices, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work, and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the contractor's performance conducted by our personnel is not intended to include review of the adequacy of the contractor's safety measures in, on or near the construction site. It is further understood that field services provided by our personnel will not relieve the contractor of his responsibilities for performing the work in accordance with the plans and specifications.

RIGHT-OF-ENTRY

Unless otherwise agreed, Client / Owner will furnish right-of-entry on the land for us to make the planned studies, explorations, or investigations. DuBois & King, Inc. will take reasonable precautions to minimize damage to the land from use of equipment, but have not included the cost for restoration of damage that may result from our operations in the Agreement fees. If DuBois & King, Inc. is required to restore the land to its former condition, this will be accomplished and the cost will be added to the Agreement fee.

SCHEDULE OF FEES

DuBois & King, Inc., at its sole discretion, reserves the right to periodically modify the hourly billing rates as detailed in its published Schedule of Fees and Contract Conditions to more accurately reflect the cost of doing business, with or without notice. Invoiced amounts will be based on the Schedule of Fees in effect at the time of invoicing.

INVOICES

Invoices may be submitted periodically and not less than monthly and are payable upon receipt. Interest of one and one-half percent (1-1/2%) per month will be payable on any amount not paid within fifteen (15) days. Any attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by the Client. Upon request, documentation of reimbursable expenses included in the invoice will be provided in some format itemizing the amount in excess of \$50.00. DuBois & King, Inc., reserves the right to discontinue work on any account that is not paid on a current basis in

accordance with these terms. If reassignment of project personnel occurs due to non-payment on an account, project schedule and fees may be adversely impacted.

TAXES

State and Local Sales, Use and License taxes will be billed at cost. Any taxes or fees, enacted by Local, State or Federal government subsequent to the date of this contract, and based on gross receipts or revenues, will be added to amounts due under this contract, in accordance with any such fees or taxes.

OWNERSHIP OF DOCUMENTS

All reports, field data and notes, laboratory test data, calculations, estimates, and other documents, which we prepare, as instruments of service, shall remain the property of DuBois & King, Inc. DuBois & King, Inc. will retain all pertinent records relating to the services performed for a period of six years following the completion of our services, during which period the records will be made available to you at all reasonable times and for reasonable retrieval and reproduction costs.

INSURANCE

DuBois & King, Inc., is protected by Worker's Compensation Insurance (and/or Employer's Liability Insurance), and by Comprehensive General Liability Insurance for bodily injury and property damage. We will furnish information and certificates upon written request. We will not be responsible for any loss, damage or liability arising from your negligent acts, errors and omissions and those by your staff, consultants, contractors and agents or from those of any person for whose conduct we are not legally responsible.

PROFESSIONAL LIABILITY

The Client agrees to limit DuBois & King, Inc.'s liability to the Client arising from DuBois & King, Inc.'s negligent acts, errors, or omissions, such that the total liability of DuBois & King, Inc., to all those named shall not exceed \$50,000 or the fee amount of the agreement whichever is greater. In the event the Client is unwilling or unable to limit our liability to this amount, this limitation may be waived for additional fee consideration dependent on the limit of project liability insurance coverage desired.

WARRANTY

In performing our professional services, we will use that degree of care and skill ordinarily exercised, under similar circumstances by members of the profession practicing in the same or similar locality. This warranty is in lieu of all other warranties expressed or implied.

COST ESTIMATES

DuBois & King, Inc., has no control over the cost of labor and material, or over competitive bidding or market conditions, and therefore does not guarantee the accuracy of our project or construction cost estimates as compared to contractor bids or actual cost to the Client.

LEGAL JURISDICTION

The parties agree that this contract shall be governed by and construed in accordance with the laws of the State of Vermont in connection with all matters arising out of this contract. The parties agree that the courts of the State of Vermont shall have exclusive jurisdiction over any legal proceeding arising out of this contract.

HR6(06.10)