



***CITY OF MONTPELIER
MONTPELIER, VERMONT***

Agenda for City Council Meeting

**City Council Chambers, City Hall
Wednesday, June 26, 2013
6:30 P.M.**

- 1) Call to Order by the Mayor
- 2) 13-163. General Business and Appearances
- 3) 13-164. Consent Agenda:
 - a) Consideration of the Minutes from the June 5th Special City Council Meeting and the June 12th, 2013 Regular Council Meeting. 
 - b) Consideration of approving an Engineering Services Agreement for construction and bid phase services for the Barre Street Culvert Reconstruction Project. 
 - 1) Construction and bid phase services will be used to support the Public Works Department staff to undertake this Federal Aid, Emergency Relief Program project made necessary as a result of tropical storm Irene. The culvert carries the Blanchard Brook flowing through “Sabin’s Pasture” under Barre Street.
 - 2) The project design engineer, The Dufresne Group, was retained last fall and the project design has been completed. The Public Works staff has released an invitation for competitive construction bids with a bid opening scheduled on July 2nd.
 - 3) Project funding assistance is provided by the Federal Highway Administration’s (FHWA) Emergency Relief (ER) program and the State of Vermont, Agency of Transportation (VTrans). ER projects are funded at a ratio of 81.08% FHWA, 8.92% State, & 10% Local. Funding participation for the construction services is expected to be at the same proportions and pre-approval from VTrans has been obtained.

- 4) The Dufresne Group has submitted an Engineering Services Agreement which will be at a time and expense basis with an estimated total cost of \$26,630.
 - 5) Recommendation: Approval of the Engineering Services Agreement and authorization for the Assistant City Manager to execute the agreement, acting as the City's duly authorized agent.
- c) Consideration of approving a Maintenance Agreement between the State of Vermont and the City of Montpelier for Accessibility Improvements. 
- 1) The Public Works Department, in collaboration with Montpelier Alive, submitted a grant application through the Vermont Downtown Program, a Division of the Department of Economic, Housing & Community Development. The grant is entitled "Accessibility Improvements Assistance" which is supported and funded at a level of 100% by the Vermont Agency of Transportation (VTrans), Bicycle and Pedestrian Program.
 - 2) For this funding opportunity, two sites were selected where accessibility improvements are needed as defined by the Americans with Disabilities Act (ADA). The approved site is the Elm Street / School Street / Court Street Intersection which will be reconstructed to install new crosswalk ramps and address sidewalk deficiencies adjacent to the School Street bridge and the Elm Street sidewalk southerly of the intersection.
 - 3) The grant award is for funding only; the design and construction are being managed and administered by VTrans and their consultant. VTrans will package all of the several project sites located throughout the state in a single contract. The construction is expected to take place during the 2014 season.
 - 4) The Maintenance Agreement describes the project funding, provides assurance that the City will provide the necessary public highway right-of-way, and support the project planning and design activities. It also certifies that the City agrees to maintain the project upon completion including snow removal, repairs, etc.
 - 5) Recommendation: Approval of the Maintenance Agreement with the State of Vermont and authorization for the Assistant City Manager to execute the agreement, acting as the City's duly authorized agent.

d) Approve, and authorize the City Manager to sign, as the Sublessor, the Sub Lease Agreement between The City of Montpelier, Vermont, and Capital City Farmers Market, Inc. for the Market's use of the 60 State Street Lot owned by the Heney Family.

e) Payroll and Bills

4) 13-165. Re-consideration of a request from Fred Barnett, Director of Facility Operations at the National Life Group, for a waiver of the City's Noise Ordinance for a week of paving projects they are hoping to schedule. 

a) When contacted by Mr. Barnett, staff explained the procedure of notifying "property owners within two hundred fifty (250) feet of the site(s) where the activity is to occur", especially since part of the paving project includes the driveways at the Hopkins House, and 22, 24 and 27 Mountainview Street and "all work will be performed at night, Sunday through Thursday from 6:00 P.M. to 6:00 A.M."

b) Only one letter of concern had been received from Steven Cook, owner of 34 Mountainview; for that reason, Council wondered if most neighbors fully understood the impact.

c) Council pointed out that windows will be open at night this time of year and working those hours, the noise will carry even more. Council would like to see National Life reps extend the 250 foot radius to include all of Mountainview Street, Meadow Lane, Derby Drive, and a few houses on Northfield Street.

d) Council suggested that, depending on responses received the second time around, possibly alternative housing could be offered.

e) Recommendation: Receive update from National Life reps; discussion; and advise whether or not Council feels this paving project can move forward.

5) 13-166. Second Public Hearing to consider amendments to the City's Code of Ordinances, Chapter 3. Public Works, Article 3-IV, Sewer Department.

A) As the Water and Sewer Rate Study Committee reviewed and discussed proposed rates, they also came up with the following proposed revision:

1) Sec. 3-411. **WATER & SEWER BENEFIT CHARGE.**

- a. The City Council determines that the **water treatment and** sewage disposal systems [is] **are** of general benefit to the municipality and will utilize the assessed value of property, as determined by the City Assessor on April 1 of the billing year, to pay for capital improvements and/or expansion of the systems.
- b. The owner of any tenement, house, building or lot shall be liable for the **Water and** Sewer Benefit charge, including exempt properties, and excepting only those buildings regularly established and maintained for religious worship, cemeteries, and those properties owned by the City of Montpelier and the United States Government for governmental purposes, which exemption shall apply only to the portion of the charge based on general benefit. *(Red lettering notes an additional change missed during the First Public Hearing.)*
- c. The Treasurer of the City of Montpelier shall bill each property owner on or before July 15 of each year for the **Water and** Sewer Benefit charge. This charge shall be due and payable by August 15, and if not paid by August 15, the charge shall be forwarded to the Tax Collector for collection with a penalty and interest included, as specified in Section 3-409.

B) Recommendation: Conduct the Second Public Hearing; approve with or without further revisions.

6) 13-167. Review certain parking restrictions on East State Street.

- a) A request for the Traffic Committee to review the parking restrictions on East State Street was received from Councilor Guerlain; he recommends that the current restriction of parking from 54 East State Street through the Hubbard Street intersection be modified to allow parking along that stretch with the exception of a restriction for sight distance consideration at the Hubbard Street intersection.
- b) The Traffic Committee discussed the situation and their findings are included in the attached memo from Committee Chair Todd Law. “The Traffic Committee cannot endorse a condition which is not within the street geometry standards to allow parking on one side, but

understands the position of the City Council if the current restrictions are lifted with the consideration of providing adequate sight distance from Hubbard Street westerly. The ordinance reflecting such a change is found in the modification below.

1) Sec. 10-716. PARKING PROHIBITED.

(u) East State Street. Parking is prohibited on the south side of East State Street from Main Street to No. 79 East State Street; and parking is prohibited on the north side of East State Street from a point two spaces (forty-two feet) westerly of the intersection with Hubbard Street ~~No. 54 East State~~ to a point two spaces (forty-two feet) easterly of Hubbard Street; and on the north side of East State Street from 78 East State Street to College Street; and on the south side of East State from West Street westerly for a distance of ninety (90) feet, and from West Street easterly for a distance of sixty (60) feet; and on the south side of East State Street for a distance of forty (40) feet from the College Street intersection.

c) Recommendation: The Committee is recommending that the above change be warned as a First Public Hearing/First Reading; if approved, the second Public Hearing/Reading should be scheduled for a subsequent meeting.

7) 13-168. Consideration of proposed amendments to the City's Code of Ordinances as they relate to various licenses issued by the City. 

a) City Clerk John Odum has been working on getting these ordinances updated. Attached are his recommendations.

b) Recommendation: Following Clerk Odum's presentation; discussion; set the First Reading/Public Hearing for July 10th.

8) 13-169. Update on City Council's **"Energy Initiatives"** Goal

a) City Council adopted their 2013-2014 Goals on May 22, 2013. One of the goals reads: ***"Proactively explore energy initiatives."***

b) The steps listed are: 1) Explore reenergizing the North Branch Dam; and 2) Pursue photovoltaic initiative.

c) Recommendation: Receive update from Planning Director Gwen Hallsmith, and possibly reps from the Energy Committee; discussion; possible direction to staff.

- 9) 13-170. Update on City Council's Goal: ***“Make significant progress on three major outstanding capital projects: District Heat, Transit Center and Montpelier Bike Path”*** 
- a) The steps listed are: 1) Acquire the Carr Lot and ensure that it is out to bid by the end of the calendar year; 2) Maintain the Bike Path Schedule; and 3) Complete the District Heat Project.
 - b) During the City Council's 2013 Goal-setting Session, it was requested that regular updates be provided to the Council on the established goals.
 - b) City Manager Bill Fraser and Assistant City Manager Jessie Baker have provided a memo which “intends to capture updates from the last three months and efforts anticipated in the next month.”
 - c) Recommendation: Receive any further information from Assistant City Manager Jessie Baker; discussion; possible direction to staff.
- 10) 13-171. Council Reports
- 11) 13-172. Mayor's Report
- 12) 13-173. Report by the City Clerk
- 13) 13-174. Status Reports by the City Manager
- 14) 13-175. Agenda Reports by the City Manager
- 15) *Adjournment*



**CITY OF MONTPELIER
MONTPELIER, VERMONT**

Addendum to Agenda for Regular City Council Meeting

June 26, 2013

Additional Item ...

13-175. Agenda Reports by the City Manager

- a) Executive Session discussion of grievance and potential declaratory civil action, pursuant to 1 V.S.A., Section 313(a)(1).



**Addendum to City Council Agenda
June 26, 2013**

13-164. Consent Agenda

- a) Approve request from Sarah August, of the Basement Teen Center (BTC), to conduct fundraising on City property as part of the BTC's Amazing Race Challenge this weekend. As part of the event, the participants have challenge stations where they need to do certain things to raise money.
- b) One 'station' will take place in front of Guitar Sam. At that challenge station, participant(s) will sing a song or play an instrument until they raise a certain sum. Guitar Sam had agreed to it.
- c) She went to the Police Station who told her only the Council could give that permission; City Clerk John Odum agreed.
- d) Recommendation: Approve request.

Proposal for the Basement Teen Center's Amazing Race Challenge Station

Proposal made by: The Basement Teen Center, Sarah August

Location: Guitar Sam

Date: June 29th, 2013

Event Details: On Saturday June 29th the Basement Teen Center will host its third annual Amazing Race. The Amazing Race is the Basement Teen Center's biggest fundraiser of the year and serves to bring teens, community members and local businesses together for a day of fun and community building. On Saturday, teams of 4 made up of teens and community members will race around Montpelier following cryptic clues to downtown destinations and completing challenges that will test them mentally and physically. Through this event the Basement Teen Center hopes to raise \$4,750 to go towards providing positive afterschool and summer programming to teens throughout Washington County at no cost to the teens.

Permit Proposal: The challenge that we hope to receive a permit for will take place in front of the store Guitar Sam between the hours of 10am-12pm. We have obtained permission from Guitar Sam for each team of racers to take a turn playing music for the community with the objective of raising \$2.00 in donations in order for them to move on in the race.

Minutes of the Montpelier City Council Meeting
June 12, 2013
Montpelier City Hall Council Chambers

In attendance: Mayor John Hollar (presiding), City Councilors Jessica Edgerly Walsh, Thierry Guerlain, Alan Weiss, Andy Hooper, Tom Golonka and Anne Watson, and City Manager Bill Fraser. City Clerk John Odum acted as Secretary of the meeting.

Mayor Hollar called the meeting to order at 6:32 PM.

13-149. Councilor Weiss moved approval of the consent agenda. Councilor Edgerly Walsh seconded. Councilor Guerlain asked that c and d be pulled for discussion and the motion was so modified before passing unanimously at 6:33PM.

13-150. Fred Barnett, Director of Facility Operations at the National Life Group, addressed the Council to ask for a waiver of the City's Noise Ordinance for a week of paving projects they are hoping to schedule.

Councilors Golonka and Edgerly Walsh expressed concerns about the late hour that the work was planned, and whether it would be disruptive to neighbors. Councilor Watson asked if National Life would consider temporarily relocating families that were adversely impacted. Mr. Barnett indicated it could be discussed.

The Council went into more detailed discussion with Mr. Barnett about possible alternatives that would be less disruptive.

Paul Carnahan rose to observe that late night construction sounds would travel through much of the city. He spoke supportively of Councilor Watson's suggestion that National Life look at alternative parking arrangements (such as the high school parking lot, as the project will take place during summer vacation) including shuttles.

Councilor Alan Weiss moved that the Council approve the request from the National Life Group, for a waiver of the City's Noise Ordinance for a week of paving projects provided they notify neighbors and make any needed special accommodations. The motion was seconded by Councilor Andy Hooper.

Councilor Weiss spoke in support of his motion, citing the large number of cars parking daily, and suggesting that shuttles to and from alternative parking sites would be impractical.

After further discussion of the Council's desire to further consider the issue, Councilor Weiss withdrew the motion.

13-151. The Council considered appointments to the "Montpelier Downtown Improvement District" Committee. The Mayor suggested that the city staff assign different candidates for the different term lengths randomly, with the understanding that terms could be "traded." Councilor Golonka noted that a Council representative was called for in the

original discussions. To meet the terms of the ordinance and accommodate all interested parties, it would need to be a non-voting position.

Councilor Thierry Guerlain moved that Philip Zalinger (Zalinger, Cameron & Lambek), Jesse Jacobs (owner of several downtown properties), Karen Williams-Fox (Woodbury Mountain Toys), Kevin Ellis (Partner at the communications firm of KSE Partners, LLP), Steven Cook (Deputy Commissioner of the Vermont Department of Tourism & Marketing), Mary L. Collins (Summit School of Traditional Music and Culture), Claire Benedict (Bear Pond Books), Bob Watson (Capitol Grounds) and Jason Cheney (Trumbull - Nelson Construction Company, Inc.) and Kim Bent (Lost Nation Theater) be appointed to the Committee, along with Councilor Edgerly Walsh in a non-voting capacity. The motion was seconded by Councilor Anne Watson. The motion carried unanimously at 6:50.

- 13-152. Paul Carnahan, Gregg Gossens and Phayvanh Luekhamhan addressed the Council on behalf of Montpelier Alive to promote the parklet proposal.

Councilor Weiss congratulated Montpelier Alive for being recognized for the poetry event. He asked if the relevant city committees had been approached for input on parklets, citing the potential for conflicts.

The Council engaged in a discussion of possible permutations of, and variables related to, the parklet proposal. Councilor Golonka wanted to be certain to avoid losing revenue.

City Manager Fraser noted that the current parklet project would be distinct from the vendor ordinance, which prohibits seating and parking obstruction.

Councilor Weiss suggested that the previously proposed sidewalk seating ordinance should be considered prior to a parklet project, or in concert with it.

The City Clerk expressed the concerns within his office that the additional strain on the parking supply (or the perception of such a strain) could exacerbate tensions on the parking topic among the citizenry.

Councilor Guerlain asked about angle parking spaces and ADA compliance.

Councilor Thierry Guerlain moved that the Council approve the adoption of a pilot project for "parklets" for this summer and next, for up to 6 parking spaces, as described in the proposal by Montpelier Alive. The motion was seconded by Councilor Anne Watson.

Councilor Weiss unfavorably compared the relatively quick action by the Council to support this project to the decision to defer a final decision on the National Life proposal.

The motion carried unanimously at 7:15.

- 13-156. Lyn Munno (Park Commissioner), was joined by Sharon Asay and Elizabeth Grupp to discuss the dog waste issue in the park. Munno discussed the likely recommendations taking shape from committee discussions, and suggested that the discussion may be

expanded to include a discussion of dog waste throughout the city. Ms. Asay indicated she had heard public feedback indicating support for such an expanded discussion. Mayor Hollar spoke supportively of the idea.

Under questioning from Councilor Guerlain, the group established that there is no literal "leash law," but that dogs were required to be under control (including in Hubbard Park, although it was established by Councilor Hooper that differing treatment of dogs in the park had been an unwritten tradition).

Councilor Watson asked about the possibility of having owners dig holes for dog waste.

Councilor Guerlain asked how other communities funded dog waste remediation strategies, and the group responded with a variety of approaches that could be considered.

Councilor Edgerly Walsh suggested that the Council would like to hear a proposal for the city. Other councilors concurred.

- 13-154. The Mayor opened the public hearing at 7:49 to consider adopting the revised Water and Sewer Rate Resolution as recommended by the Water and Sewer Rate Committee, and to consider amendments to the City's Code of Ordinances, Chapter 3. Public Works, Article 3-IV, Sewer Department).

Councilor Edgerly Walsh suggested a technical tweak to the ordinance wording for presentation at the second hearing.

Sandy Gallup (Montpelier Finance Director) discussed the water/sewer rates, as well as the recommendation that the relevant ordinance be changed.

Councilor Jessica Edgerly Walsh moved the adoption of the revised Water and Sewer Rate Resolution as recommended by the Water and Sewer Rate Committee, seconded by Councilor Anne Watson. The motion carried unanimously at 7:48.

At 7:50, the Mayor closed the public hearing.

- 13-149(c),(d) After a brief discussion, Councilor Thierry Guerlain moved that the council approve items c and d of the consent agenda. Councilor Andy Hooper seconded. The motion passed unanimously at 7:52.

City Manager Fraser thanked Tim Heney and the Heney family for a favorable lease.

- 13-157. Councilor Edgerly Walsh expressed her appreciation at the middle school for engaging students in experience based learning.

Councilor Watson reported that she and some of her students are hosting an "ice cream on the bus day" Friday afternoon on the circulator bus. She also indicated that she had received questions about the smell of the utility polls on the bike path behind Green Mountain Power, and will be meeting with GMP representatives to discuss it.

Councilor Weiss announced the selection of 4 eligible students who would receive Harry Sheridan scholarships of \$4250 (per year for four years). He further asked about the city

council goals and the division of responsibilities to follow up with these goals between the council and staff - asking in particular how the council should proceed on those goals which are exclusively the responsibility of the council to follow up on. The Mayor indicated he is in discussions with the City Manager on how to create a process for follow-up.

Councilor Guerlain had the following concerns:

1. Asked for details on a letter appearing in the Bridge indicating pending public fishing access on Berlin Pond (Councilor Edgerly Walsh followed up with a request for a review of the legal status of the pond).
2. Asked about the number of bike racks to be placed in town. Assistant City Manager Jessie Baker clarified the location of the 6 locations recommended by the bike committee for additional bike racks, indicating that the grant provided for their placement and that should be placed in the coming weeks.
3. Asked for a report on the status of the fire box removal plan.
4. Asked about the difference between "status" reports and "agenda" reports from the City Manager on meeting agendas (City Manager Fraser indicated it was an archaic distinction).
5. Requested to add an agenda item regarding additional parking on East State Street for next meeting.

13-158. Mayor Hollar noted the large amount of policy work he had on his plate, as well as his participation in the Memorial Day Parade (he encouraged councilors to march in city parades).

13-159. The City Clerk noted that the new record keeping software system in his office was now live.

13-160. City Manager Fraser noted the addition of the portrait of former mayor Mary Hooper. He also noted that the preliminary Grand List had been filed.

Councilor Alan Weiss moved that the Council enter executive session (with the City Manager) to discuss negotiations on the Carr Lot, and was seconded by Councilor Thierry Guerlain. The motion carried unanimously at 8:01.

At 8:45 PM, Councilor Weiss moved that the Council return to open session and adjourn. Councilor Guerlain seconded the motion, which carried unanimously without discussion.



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

Mayor John Hollar

City Council:

Tom Golonka, President
Thierry Guerlain, Vice President
Andy Hooper, Parliamentarian
Alan H. Weiss
Anne Watson
Jessica Edgerly Walsh

William J. Fraser
City Manager
wfraser@montpelier-vt.org

Jessie Baker
Assistant City Manager

MEMORANDUM

To: Mayor Hollar & City Council Members
From: William Fraser, City Manager
Jessie Baker, Assistant City Manager
Re: Council Goal Update on "Make significant progress on three major outstanding capital projects: District Heat, Transit Center and Montpelier Bike Path."
Date: June 21, 2013

During the City Council's 2013 goal setting session, it was requested that regular updates be provided to the Council on the established goals. In this communication we will provide updates on the goal, "Make significant progress on three major outstanding capital projects: District Heat, Transit Center and Montpelier Bike Path." This memo intends to capture updates from the last three months and efforts anticipated in the next month. For history on these projects, please review past submittals to the Council or the City's website.

District Heat

Constructing the Distribution System: Construction is well underway on the City's District Heat distribution system. Daily Kingsbury Construction has two crews in the City. Currently they are working on State Street and anticipate being in this section of the City for three weeks. Work is also wrapping up on School Street and the alley between Bethany Church and the City Center. Currently Kingsbury Construction is on schedule to meet the substantial completion date of September 30, 2013.

Communications: Efforts are being made to communicate effectively to residents and business through local media updates, website and Facebook updates, and direct notices to the businesses and residents along the construction route. While this important infrastructure project does cause some disruption to vehicle traffic in the City, we have received very limited negative feedback from residents and business owners.

District Heat Customers: Currently we have sixteen customers signed on to connect to the District Heat system. Three of these are City and School buildings and the remaining thirteen are private

businesses, nonprofits, or governmental partners. The City is in active negotiations with two other potential customers and anticipates securing Customer Agreements with them in the next few weeks. We continue to be excited by the local interest in joining to the District Heat system and are endeavoring to be in regular communications with all of our customers.

Utility Start-Up: While great attention is being paid to the construction project, there are also significant efforts underway to anticipate the start of the District Heat Montpelier utility in the Fall. To this end the Finance and Technology team have had preliminary phone calls with the contractors to determine how information will flow from the meters to the billing system. Plans are underway to enable this utility bill to be integrated into the existing City billing system. Additionally, conversations have started between the operations staff of the St. Paul, MN system and our DPW professionals around the regular operation and maintenance of the system. Furthering these early efforts, the Distribution Field and Construction Superintendent from St. Paul, MN spent a week with Kingsbury and the DPW staff in early May to guide their efforts and start the conversations about system maintenance overtime. Finally, the City Manager, Assistant City Manager, Finance Director, and DPW Director will be traveling to St. Paul in July to observe their financial and operational system first hand and start to develop Montpelier's operational plan.

State Biomass Heat Plant: On Tuesday, June 18th the State received their Act 250 permit with minimal conditions. With the receipt of this permit, the State will mobilize at the State's Heat Plant on Monday, June 24th. Given this significant delay, it is likely that State's Plant will not be able to provide heat to the City's distribution system until mid-November 2013. The City is in active negotiations with the State to plan for this delay and will be working with customers as decisions are made to make contingency plans for the beginning of the 2013-2014 heating season.

Transit Center

Property Acquisition and Business Relocation: Efforts are underway to work with all of the property owners toward reaching amenable property acquisition agreements. Currently, two property owners have agreed in principle to Purchase and Sale agreements. Two other property owners are in active discussions with the City with the goal of reaching agreements. The City is also exploring options for the relocation of the business in the Mowatt Trust property. This includes the possibility of relocating the business to another property in town or possibly working to construct another building on the overall project footprint. Additionally, the City is working with the Relocation Office of VTTrans to ensure that the property owners and tenants receive the benefits to which they are entitled.

Potential Upper Floor Development: As presented to the Council on May 22, 2013, assuming the City takes title to the property at 1 Taylor Street, the City has outlined a process to enter into an agreement with partners to develop the upper floors of the Transit Center. This process is ready to be implemented if and when the City takes tile to the property. Additionally, on June 10, 2013 the City Manager, Assistant City Manager, and Community Development Specialist had a call with the Federal Transit Administration (FTA) about the possibility of upper floor development and any future Joint Development Agreements (JDA) necessary. It was determined that if the upper floors are developed through a condo relationship, Joint Development Agreements are not needed between the FTA and the partners. The FTA is aware of the City's plans for upper floor development and supports these attempts.

Montpelier Bike Path

The project to design and construct the Montpelier Bike Path from Granite Street to Gallison Hill Road is following the project schedule established early in 2013. The project is on schedule and project management efforts are underway to track progress. A team of the City Manager's Office, DPW, VTrans, and DuBois & King meet monthly to review progress and plan for the next stage of work.

Draft preliminary plans have been reviewed by the City and VTrans and will be fine-tuned in time to meet the July 22nd deadline for completion. Early in June a letter was sent to Act 250 requesting a jurisdictional opinion. And efforts are underway to develop a needed agreement with the Railway.

It is anticipated that over the summer the team will present preliminary plans to the Bike Committee for consideration and start conversations with property owners along the Bike Path route. With the receipt and approval of the preliminary plans and the obligation by VTrans of the right of way funds, efforts will start to work with the property owners and VTrans on needed acquisitions and easements. This work is anticipated to be complete around the middle of April 2014. Finally, in early Fall we hope to hold a public meeting with all interested residents to review the preliminary plans in advance of developing final plans in Spring of 2014.

City of Montpelier
Department of Public Works
Memorandum

To: William Fraser, City Manager

From: Todd Law, Director of Public Works & Traffic Committee Chair

Date: June 18, 2013

Subject: East State Street, Parking Restriction

A request for the Traffic Committee to review the parking restrictions on East State Street was received from Councilor Guerlain. Councilor Guerlain recommends that the current restriction of parking from 54 East State Street through the Hubbard Street intersection be modified to allow parking along that stretch with the exception of a restriction for sight distance consideration at the Hubbard Street intersection.

The Traffic Committee discussed the situation and finds the following:

East State Street is twenty eight feet, ten inches in width, which is less than the bare minimum recommended dimensions of thirty feet in width. Although one foot, two inches is not significant, it still will create a situation where two vehicles passing each other might cross over the centerline to avoid the parked vehicle, which is exacerbated by the utility poles along the curb edge. This is the same dimension as the section of East State Street above Hubbard Street, which functions adequately and has no parking restrictions on the north side of the street. Lower East State Street (Cedar-Main) is sufficiently wide enough to support parking on one side of the street.

The Traffic Committee cannot endorse a condition which is not within the street geometry standards to allow parking on one side, but understands the position of the City Council if the current restrictions are lifted with the consideration of providing adequate sight distance from Hubbard Street westerly. The ordinance reflecting such a change is found in the modification below.

Sec. 10-716. PARKING PROHIBITED.

(u) East State Street. Parking is prohibited on the south side of East State Street from Main Street to No. 79 East State Street; and parking is prohibited on the north side of East State Street from a point two spaces (forty-two feet) westerly of the intersection with Hubbard Street ~~No. 54 East State~~ to a point two spaces (forty-two feet) easterly of Hubbard Street; and on the north side of East State Street from 78 East State Street to College Street; and on the south side of East State from West Street westerly for a distance of ninety (90) feet, and from West Street easterly for a distance of sixty (60) feet; and on the south side of East State Street for a distance of forty (40) feet from the College Street intersection.

We are recommending that the above change be warned as a public hearing of first reading. If approved, the second reading should be scheduled for a subsequent meeting.

C: Traffic Committee

DUFRESNE GROUP CONSULTING ENGINEERS



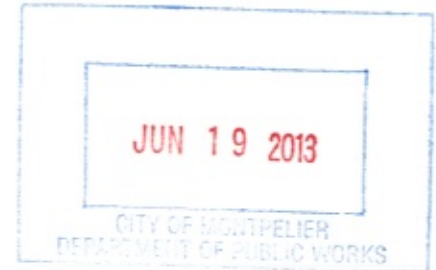
54 Main Street, P.O. Box B, Windsor, VT 05089

(t) 802.674.2904 | (f) 802.674.2913 | (e) info@dufresnegroup.com

www.dufresnegroup.com

June 18, 2013

Tom McArdle
City of Montpelier
39 Main Street, City Hall
Montpelier, VT 05602



Re: Replacement of the Barre Street Pipe-Arch Culvert (BR1) Construction Services
DG 6130006

Dear Tom,

Enclosed please find two copies of a draft Engineering Services Agreement for the above referenced project. Please review the Agreement and, if acceptable, sign both copies, keep one copy for your records and return the remaining copy to our office.

As noted in the Agreement, we included 210 hours of RPR time during the 90 calendar day (65 work days) construction period. The hours are based on an estimated average of 2 hours per day for 55 days and 10 days with RPR time at 10 hours per day.

If you have any questions please contact our office.

Sincerely,
DUFRESNE GROUP

Naomi R. Johnson, PE
Vice President

NRJ/jlr

Enclosures

DUFRESNE GROUP CONSULTING ENGINEERS ENGINEERING SERVICES AGREEMENT

This AGREEMENT, dated on the day last signed below, is made between Dufresne & Associates, PC d/b/a DUFRESNE GROUP (DG) and:

CLIENT: City of Montpelier

ADDRESS: 39 Main Street – City Hall
Montpelier, VT 05602

The services, terms and conditions provided in this AGREEMENT and any attachments represent all such provisions and supercede any prior written or oral understandings. The AGREEMENT may only be modified by a written amendment executed by authorized representatives of the CLIENT or DG.

PROJECT: Replacement of the Barre Street Pipe-Arch Culvert (BR 1)
Construction Services

STANDARD PROVISIONS: As shown in Attachment 1

SCOPE OF SERVICES: As shown in Attachment 2

FEE: As shown in Attachment 3

SCHEDULE: Provide services during construction scheduled to end in Fall 2013

The authorized signatures representing the CLIENT and DG so execute this AGREEMENT and authorize initiation of services unless otherwise provided.

CITY OF MONTPELIER

DUFRESNE GROUP

(CLIENT)

(DG)

Signed _____

Signed 

By _____
(Printed Name)

By Naomi R. Johnson, P.E.
(Printed Name)

Title _____

Title Vice President

Date _____

Date June 18, 2013

*Dufresne Group is owned by Dufresne & Associates, PC

Dufresne Group Consulting Engineers

ATTACHMENT 1 - STANDARD PROVISIONS

1. **PAYMENTS TO DG:** Invoices will be submitted monthly and are payable within thirty (30) days from date of invoice. Interest may be charged at the rate of 1.5 % per month on any balance that remains unpaid 30 days after the date of the invoice. Failure to pay within 30 days will also permit DG to suspend or terminate services 10 days after written notice of intent to suspend or terminate. The CLIENT agrees to be liable for all reasonable collection costs, including attorney's fees, and the DG time and expenses. CLIENT agrees to accept responsibility for securing sufficient funds to ensure prompt payments to DG.
2. **DEFINITIONS CONCERNING PAYMENT:** Where the term "time and expense" (T&E) is used, it shall mean that hourly rates of pay for various employees plus incidental expenses such as mileage, lodging, printing, postage, or other project related items are invoiced to the client. Work by others including subconsultants or specialty firms are marked up by an additional 8% for administration. Where an amount is established as a budget for a T&E amount, DG can exceed the budget by 10% without specific authorization by the CLIENT. DG agrees to cease scope activities at or below the 110% budget amount until the budget is increased by the CLIENT. DG cannot assure completion of scope items for any budget amount using the T&E method of payment.
3. **STANDARD OF CARE:** The standard of care applicable to services provided by DG is based on the standards, skills and diligence normally provided by other engineers performing similar services at the same time, in the same area, and under the same circumstances
4. **COST ESTIMATES:** Estimates of construction or total project cost provided by DG are based on experience and judgment. Actual costs will differ from the estimates given due to market conditions or unforeseen circumstances. DG does not warrant that these estimates will represent actual costs.
5. **USE OF DOCUMENTS:** The CLIENT agrees that all documents provided to the CLIENT by DG are instruments of service to be utilized solely for this PROJECT exclusively by the CLIENT. The CLIENT agrees to indemnify and hold harmless DG and DG's sub-consultants from all claims, damages, losses and expenses, including attorney's fees arising from reuse of these documents.
6. **LIMITATION OF LIABILITY:** The CLIENT agrees to limit DG's total liability from claims to the total compensation received by DG under this AGREEMENT. The CLIENT agrees not to personally charge any employee of DG with any liability arising from the performance of services provided in this AGREEMENT.
7. **SEVERABILITY AND REFORMATION:** The parties agree that any provisions held to be void or unenforceable shall be stricken without invalidating the intent of this AGREEMENT. The parties agree to reform the remaining terms and provisions and to replace the stricken provision or part thereof with a valid and enforceable provision which best represents the original intent.
8. **ENGINEERING SERVICES DURING CONSTRUCTION:** The CLIENT recognizes that construction review is a vital element of DG's complete service to minimize problems during construction. Such services allow rapid response to unanticipated or changed conditions, or errors or omissions committed by design professionals, contractors, materials providers or others. The CLIENT recognizes that construction review is a technique employed to minimize the risk of problems arising during construction; that construction review by DG is not insurance and does not constitute a warranty or guarantee of any type. In all cases, Contractors, et al. (that is, the General Contractor, subcontractors, subcontractors, material-persons and others) shall retain responsibility for the quality of their work and for adhering to plans and specifications. The CLIENT agrees to utilize DG for on-site resident engineering services during the construction phase of the PROJECT or hold DG harmless for any claims made during construction.
9. **TERMINATION:** The CLIENT or DG may terminate this AGREEMENT for cause without penalty. Such termination requires 21 days written notice. In the event of termination by either party DG shall be paid for services rendered up to the date of termination. The CLIENT may terminate the AGREEMENT for convenience after a termination expense of 10% of the fee or estimate for services is provide to DG in addition to payment for services rendered up to the date of termination.
10. **ESTIMATED FEE:** DG will attempt to estimate the total fee involved for the project for budgeting purposes. The CLIENT should be aware that the estimate is based on the project scope as outlined to us by the CLIENT. If the project scope changes, the original estimated fee may change. In addition, specific project conditions such as local/state permit requirements may affect project costs. When such factors appear to affect the project estimate, DG will endeavor to contact the CLIENT to discuss alternatives to limit the work or modify the estimate.

**ATTACHMENT 2
SCOPE OF SERVICES
ENGINEERING SERVICES FOR CONSTRUCTION PHASE OF
BARRE STREET CULVERT REPLACEMENT
MONTPELIER, VERMONT
June 18, 2013**

I. GENERAL:

- A. The City of Montpelier (CLIENT) intends to construct improvements as defined in the Barre Street Box Culvert (BR1) Contract Documents, Plans and Specifications prepared by Dufresne Group.

These improvements are collectively herein after described as the PROJECT. DG will perform certain customary engineering services during the construction phase of the PROJECT. These customary engineering services are described herein.

II. BASIC SERVICE DURING CONSTRUCTION:

- A. Assist the CLIENT during advertisement for public bids for the project. These services include the following specific items.
1. Print 15 copies of the Contract Documents including the Drawings and Specifications prepared by DG.
 2. Assist the CLIENT in advertising for and obtaining bids for the project. The CLIENT will pay directly for newspaper advertisements. DG shall post the advertisement in VT Business Registry and Bid System and Works in Progress. Maintain a record of prospective bidders holding bid documents and process deposits and refunds as necessary.
 3. Receive questions from bidders, subcontractors, manufacturers, distributors, suppliers, and other stakeholders and issue addenda as appropriate to clarify or expand the Bid Documents.
 4. Assist the CLIENT in evaluating the bids received, investigate the qualifications of the apparent low bidder, and make written recommendations for contract award.
 5. Assist the CLIENT in awarding the contract for construction and assist the CLIENT at the contract signing by preparing contract documents suitable for execution and attend a pre-construction conference. Prepare the Notice to Proceed for signature by the CLIENT and issue such notice to the Contractor.
- B. Provide general administration of the construction contract:
1. Observe the construction activity in connection with the Contractor's work in progress using the following methods:

- a. Make visits to the site at intervals appropriate to the various stages of construction, as necessary, in order to observe the progress and quality of the various aspects of Contractor(s)' work. In addition, provide the services of a Resident Project Representative (RPR) at the site to assist and to provide more continuous observation of the Work. Based on information obtained during such visits and on such observations, endeavor to determine if the work is proceeding in accordance with the Contract Documents and keep the CLIENT informed of the status and progress of the construction activity.
 - b. Supervise and manage a part time RPR agent or employee. DG will provide the services indicated in Part III.B herein.
 - c. Provide assurance to the CLIENT based on these site visits and based on part-time on-site Resident Project Representation that the completed work of the Contractor(s) is in general conformance with the Contract Documents. If construction activities are not in conformance with the Contract Documents, immediately notify the CLIENT and recommend a course of action for the CLIENT to follow.
2. If the Engineer believes the work is not in conformance with the Contract Documents or that it will prejudice the integrity of the design concept of the Project, the Engineer may recommend the CLIENT reject the work.
3. Issue any necessary interpretations and clarifications of the Contract Documents and prepare field orders (that do not affect contract time and/or price) as required. Issue routine change orders that modify the contract time and/or contract price. Routine change orders will include minor contract modifications such as winter shutdown, quantity adjustments (balancing) or engineer requested items. Change orders requested by the CLIENT or the CONTRACTOR or items that modify the vertical or horizontal location of PROJECT components are not considered routine.
4. Review and take appropriate action regarding Shop Drawings (except for water and sewer items), samples and other data for conformance with the design concept of the Project and compliance with the Contract Documents. Such reviews and appropriate action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs.
5. Act as the interpreter of the requirements of the Contract Documents. Promptly address questions, which may arise concerning quality and acceptability of materials furnished and execution and progress of the construction activity.
6. Based upon on-site observations and information provided by the RPR, review applications for payment including accompanying data and schedules.
 - a. Advise the CLIENT regarding payments made to the Contractor. Such recommendations will constitute a representation to the CLIENT, based on observations and review that the construction activity has progressed to the point indicated, and that, to the best of information and belief, the

quality of such work is in accordance with the Contract Documents. In the case of unit price work, recommendations of payment will include final determinations of quantities and classifications of such work.

- b. By recommending payments made to contractors, D&A will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by D&A to check the quality or quantity of the Contractor(s) work as it is furnished and performed beyond the responsibilities specifically assigned to D&A in this AGREEMENT and the Contract Documents. The review shall not impose responsibility on D&A to determine if the title to any of the construction activity, materials or equipment has passed to the CLIENT free and clear of any lien, claims, security interest or encumbrances.
7. Conduct a substantial inspection to determine if the construction activity is substantially complete. Prepare a punch list of any work items required under the Contract Documents but not yet completed. Provide a schedule and cost estimate to perform the punch list work and issue a certificate of substantial completion should the project be substantially complete.
8. Conduct a separate final inspection of the PROJECT upon completion of the final punch list items to determine if the completed work is acceptable and complete. If deemed to be completed in all respects, provide a written recommendation that the CLIENT make final payment to Contractor(s), and give written notice to the CLIENT and the Contractor(s) that the completed project is acceptable.

III. SPECIAL SERVICES DURING CONSTRUCTION:

- A. Furnish a part -time Resident Project Representative (RPR) and other field staff to assist in observing performance of the work of the Contractor. The duration of the resident project representation shall be based on 210 manhours, based on a 90 calendar day schedule to substantial completion. The furnishing of such on-site resident project representation services will not be construed to give DG control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for contractor's failure to perform the Work in accordance with the Contract Documents.
 1. Provide the RPR as an agent at the site and to act as directed by and under the supervision of DG. The RPR is to keep DG advised as necessary. The project manager for DG will advise the CLIENT as described in Section II herein.
 2. The RPR shall have the following duties and Responsibilities:
 - a. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor. The RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor.

- b. Attend meetings with the Contractor, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings and prepare and circulate the agenda and the minutes for these meetings.
- c. Serve as a liaison to the Contractor, working principally through Contractor's superintendent to assist in understanding the intent of the Contract Documents; and to assist in serving as the CLIENT's agent with the Contractor when the Contractor's operations affect the CLIENT's on-site operations. Assist in obtaining from the CLIENT additional details or information, when required, for proper execution of the work.
- d. Record date of receipt of Shop Drawings and samples furnished at the site.
- e. Receive samples, which are furnished at the site by the Contractor and notify the testing lab of the availability of samples for examination.
- f. Advise the Contractor of the commencement of any work requiring a Shop Drawing or sample if the submittal has not been acted upon.
- g. Conduct on-site observations of the construction activity in progress and attempt to determine if the Work is proceeding in general accordance with the Contract Documents.
- h. Report to DG whenever the RPR believes that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required. Advise DG of work that RPR believes should be corrected or rejected or should be uncovered for observation or requires specialized testing, inspection or approval.
- i. Verify that tests, equipment and system start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that the Contractor maintains adequate records of such testing. Observe record and report appropriate details concerning the test procedures and start-ups.
- j. Accompany visiting inspectors representing public or other agencies having jurisdiction over the project and record the results of these inspections.
- k. Report when clarifications and interpretations of the Contract Documents are needed and transmit to the Contractor clarifications and interpretations as issued.
- l. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such recommendations. Provide input to DG office staff and communicate decisions to the Contractor.

- m. Keep a diary or log book, recording Contractor's hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions and observations in general. Maintain a written record of specific observations in more detail, as in the case of observing test procedures.
- n. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
- o. Furnish DG periodic reports as required for progress of Work and for Contractor's compliance with the progress schedule and schedule of Shop Drawings and sample submittals.
- p. Consult with DG in advance of scheduled major tests, inspections or start of important phases of the Work.
- q. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from the Contractor and make recommendations to D&A concerning Change Orders, Work Directive Changes and Field Orders.
- r. Immediately notify DG and the CLIENT upon the occurrence of any accident.
- s. Review applications for payment with the Contractor for compliance with the established submission procedure and forward with recommendations, noting particularly the relationship of the payment requested to the schedule of values, construction activity completed and materials and equipment delivered at the site, but not yet incorporated in the Work.
- t. During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents.
- u. Assist in the preparation of a punch list of observed items requiring completion or correction before issuing a Certificate of Substantial Completion.
- v. Assist in conducting a final inspection in the company of DG, the CLIENT and Contractor. Verify that all items on the punch list have been completed or corrected and make recommendations concerning final acceptance. Prepare a final list of warrantee items if applicable.

**ATTACHMENT 3
FEES and CHARGES
ENGINEERING SERVICES FOR CONSTRUCTION PHASE OF
BARRE STREET CULVERT REPLACEMENT
MONTPELIER, VERMONT
June 18, 2013**

A. General

1. DG agrees to provide the Engineering Services described in Attachment 2 upon receipt of signed copy of the AGREEMENT.
2. The CLIENT agrees to pay DG for the services described in Attachment 2 as described below:

B. Fees and Charges

1. The CLIENT agrees to pay DG for the services described in Attachment 2 as described in this attachment.
 - a) Basic services during construction as described in Attachment 2
Part II, A-B, a fixed fee of..... \$8,470
 - b) Special services during construction as described in Attachment 2
Part III, A, on a time and expense basis estimated at \$18,160

This AGREEMENT provides for a total of \$26,630 as outlined above.

C. Definitions Concerning Payment

1. Items paid on a time and expense basis shall be based on the rate table as shown in Table 1 included in this Attachment. Mileage is charged at the rate shown. DG reserves the right to revise the Rate Schedule once per year on the first day of each calendar year. The maximum increase at any time shall be ten percent per year.
2. Reimbursable expenses shall mean the actual expenses incurred directly or indirectly in connection with the project for independent professional associates or consultants. Costs for work by others shall be charged to the CLIENT at 108% of the actual cost incurred. Charges for transportation and subsistence; mail, reproduction of reports, drawings, specifications; meals and lodging; and project related telephone charges shall be charged at the actual cost incurred without mark up.
3. Services provided under the time and expense method of payment shall not exceed the limit shown. DG agrees to cease all activity under such items until the limits are formally modified. Where individual estimates are shown DG can modify individual estimates as necessary as long as the total limiting sum for special services is not exceeded. DG will assist the CLIENT in formalizing such budget flexibility with the funding agencies if necessary. The "level of effort" showing the anticipated hours for the various scope items is shown in Table 2. Significant deviations from the hours shown may require an engineering amendment.
4. Services provided under a fixed fee or lump sum basis shall be billed on a percent complete basis and include all charges necessary to provide the finished product to the CLIENT.

TABLE 1
SCHEDULE OF RATES AND TERMS FOR YEAR ENDING 2013

FEES:

Engineering and Technical Services:

President (R. Dufresne, P.E.).....	\$180.00 per hour	
Senior Civil Engineer/Office Manager (N. Johnson, P.E.; VP).....	\$160.00	" "
Project Manager Office Manager (C. Whitehead, PE).....	\$115.00	" "
Project Engineer (C. M. Legge, PE).....	\$95.00	" "
Project Engineer (T. P. Knapp, PE).....	\$90.00	" "
AutoCAD Design Tech/RPR/Office Manager (B. Baker, CST-B)	\$80.00	" "
Field Engineer (R. Goodwin).....	\$76.00	" "
Engineer/AutoCAD Designer/RPR (E. A. Emmons, EI).....	\$70.00	" "
Technician/AutoCAD/RPR Tech (H. H. Converse).....	\$65.00	" "
Topographic Surveyor/RPR (M. V. Walker)	\$65.00	" "
Entry Engineer/RPR/Surveyor (A. D. Morse, EI)	\$60.00	" "
Entry Engineer/RPR's (T. Y. Craven, EI)	\$60.00	" "
Entry Level Technician.....	\$55.00	" "
Office/Field Assistant	\$45.00	" "

Administrative Services:

Clerical Office Manager	\$50.00 per hour
Clerk Typist.....	\$36.00 per hour

EXPENSES:

Mileage - passenger car	\$ 0.565 per mile
Use of soils or survey truck and related equipment.....	\$0.68 per mile
Moisture density tests	\$200.00
Soil sieve analysis	\$200.00
Toll telephone charges including cell phone.....	No Charge
CAD system including plotter.....	No Charge
Project file storage	No Charge
Copying - Xerox	
24" x 36"	\$2.50 each
8½" x 11" B&W	\$.10 each
8 ½" x 11" Color	\$.20 each
11" x 17" B&W	\$.49 each
11" x 17" Color	\$.98 each

Subcontracted Services:

Equipment charges, backhoe, outside surveying, mapping or	
Reproduction services, special consultants, if required	At Cost Plus 8%

Other charges not listed herein:

Miscellaneous charges not listed	By Mutual Agreement
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TERMS AND CONDITIONS:

1. Time provided in excess of 40 hours per week or after 9 PM for night time inspection shall be provided at 150% of the rates shown.
2. Time and Expense Charges for Dufresne Group (DG) are valid through December 31, 2013
3. Dufresne Group is owned by Dufresne & Associates, PC

SUB LEASE AGREEMENT

BY THIS AGREEMENT, made and entered into on the 27th day of June, 2013 between THE CITY OF MONTPELIER, VERMONT, herein referred to as "Sub Lessor" and CAPITAL CITY FARMERS MARKET, INC., herein referred to as "Sub Lessees",

Subject to all provisions in a certain LEASE between the City of Montpelier as Lessee and Mary Heney as Trustee of the Lawrence P. Heney Family Trust and of the Mary M. Heney Family Trust, Lessor, dated June 13, 2013, (hereinafter the "Master Lease," a copy of which is annexed hereto as Exhibit A),

Sub Lessor leases to Sub Lessees the premises located in the City of Montpelier, County of Washington, and State of Vermont, more particularly described as follows:

Management and control of a certain paved Lot located at 60 State Street from 6:30 AM to 2:30 PM every Saturday from May through October; each such block of time to be considered one day;

Upon the following terms and conditions:

1. RENT: Sub Lessees agree to pay, without demand, to Sub Lessor as rent for the leased premises the following sums in advance, allocated for each of the 26 Saturdays within the season. Rent is calculated as 8.73% of the Master Lease rate paid by the City to the Lessor. Rent shall be paid to the Sub Lessor at 39 Main Street, Montpelier.

July 1, 2013	\$2,378	(\$91 per day)
July 1, 2014	\$2,507	(\$96 per day)
July 1, 2015	\$2,594	(\$99 per day)
July 1, 2016	\$2,685	(\$103 per day)
July 1, 2017	\$2,779	(\$106 per day)
2. TERM: The term of this Agreement shall extend from the date of execution through June 30, 2014, and shall renew automatically thereupon from year to year until June 30, 2018, subject to changes which may occur from time to time in the Master Lease.
3. USE OF PREMISES: The leased premises shall be used and occupied by Sub Lessees and their licensees, exclusively for purposes directly connected to the management and operation of the Capital City Farmers' Market upon market operations. During the times set forth in this Agreement, Sub Lessees shall have exclusive control and management of all activities on the premises as allowed by law. Sub Lessees shall comply with all laws, ordinances, rules, regulations and

orders of appropriate authorities affecting the use and occupancy of the leased premises during the term of this Lease.

4. PUBLIC ACCOMMODATION: Sub Lessees acknowledge that the Premises is a Place of Public Accommodation as defined under the federal Americans with Disabilities Act and related State law, and will comply in all respects with federal and State requirements with respect thereto.
5. MAINTAINING ACCESS: Sub Lessees shall maintain sufficient emergency vehicle access on site as may be determined by the City. Sub Lessees shall maintain proper access to the neighboring parcel (behind the building now or formerly occupied by Julio's Cantina).
6. CONDITIONS OF TENANCY:
 - 6.1 Sub Lessees shall obtain and shall maintain in force a vendor business license for the Farmers Market with the City.
 - 6.2 Sub Lessees shall manage the "Julio's Wall" space, which use shall be restricted to nonprofit organization activity, children's activities, performers, political activity or political speech, charitable activity, or other appropriate non-business activity. The Market may reserve this space on up to two Sundays for a Children's Market or other special Market activity, in addition to the times as set forth above.
 - 6.3 Sub Lessees shall maintain liability insurance coverage for the benefit of the City of Montpelier as insured, in a liability amount not less than \$1,000,000.00 per occurrence, which identifies the area subject to this Sub Lease, throughout the term of this sub lease and any renewals thereto.
 - 6.4 Sub Lessees may place a small, secure, temporary storage shed/trailer, subject to permit requirements, at a location on or near the premises as may be mutually agreed by the parties and situated so as not to interfere with any parking spaces or other parking area. The shed may remain in place during the weeks between the above referenced days and times of occupancy, but shall be removed at the end of the Market season.
7. ASSIGNMENT AND SUBLETTING: Sub Lessees shall not assign this Sub Lease nor sublet the premises without the prior written consent of Sub Lessor. Notwithstanding, this provision shall not be construed so as to limit Sub Lessees' use of a license agreement or other contract with respect to the management of its arrangements with individual business participants in the market.

8. ALTERATIONS AND IMPROVEMENTS: Sub Lessees shall make no alterations, structural or otherwise, to the leased premises or make other improvements on the leased premises without the prior written consent of the Sub Lessor. Sub Lessor retains right to make maintenance improvements to the property as permitted under the Master Lease. Specifically, the Sub Lessor may, during the life of the lease, construct an alternate transportation path segment and bridge as part of the so-called Carr Lot Project. Sub Lessor agrees to make accommodations for additional space (including relaxing restrictions in 6.2) and/or reduced lease rate during the period of construction.
9. DANGEROUS MATERIALS: Sub Lessees shall not keep, store, or have on the leased premises any article or thing of a dangerous, inflammable or explosive character that might unreasonably increase the danger of fire on the leased premises or that might be considered hazardous or extra-hazardous by any reasonable insurance company, excepting therefrom typical fuels in secure containers as may be used by individual vendors in the course of their business operations, and only during Market day activities.
10. UTILITIES: To the extent that Sub Lessees use any electrical or other utilities in the course of Market business, Sub Lessees shall remain solely responsible for their costs.
11. SUBORDINATION OF LEASE: This Lease and Sub Lessees' leasehold interest hereunder are and shall be subordinate and inferior to any liens or encumbrances now or hereafter placed on the leased premises by Sub Lessor and all advances or renewals thereof. Sub Lessees expressly agree to execute subordination agreements at Sub Lessor's request. This Lease and Sub Lessees' leasehold interest are and shall be further subordinate to a certain Lease between the City of Montpelier as Lessee and Mary Heney as Trustee of the Lawrence P. Heney Family Trust and of the Mary M. Heney Family Trust, Lessor, dated April 29th, 2009 (the "Master Lease").
12. SURRENDER OF PREMISES: At the expiration of the Lease term, Sub Lessees shall quit and surrender the premises hereby leased in as good state and condition as they were at the commencement of this Lease, reasonable wear and tear excepted.
13. DEFAULT: If any default is made in the payment of rent or part thereof, at the times hereinafter specified, Sub Lessor may terminate this Lease on fourteen (14) days' notice. If any default is made in the performance of or compliance with any other term or condition hereof, the Lease, at the option of Sub Lessor, shall terminate and be forfeited, and Sub Lessor may re-enter the premises, remove all persons therefrom and prevent such further use as anticipated under this Sub Lease

Agreement. Sub Lessees shall be given written notice of any default or breach, and termination and forfeiture of the Lease shall not result if, within ten (10) days of receipt of such notice, Sub Lessees have corrected the default or breach, or have taken action reasonably likely to affect such correction within a reasonable time.

14. ABANDONMENT: If at any time during the term of this Lease, Sub Lessees abandon the leased premises or any part thereof, or cease operations pursuant to the entitlements of this Sub Lease, Sub Lessor may at its option, enter the leased premises by any means without being liable for any prosecution therefor, and without becoming liable to Sub Lessees for damages or for any payment of any kind whatever, and may, at its discretion, relet the leased premises or any part thereof for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting. If Sub Lessor's right of re-entry is exercised following abandonment of the premises or cessation of operations by Sub Lessees, then Sub Lessor may consider any personal property belonging to Sub Lessees and left on the premises to also have been abandoned, in which case Sub Lessor may dispose of all such personal property in accordance with law which Sub Lessor shall deem proper and is hereby relieved of all liability for doing so.
15. SEVERABILITY: A determination that a provision of this agreement is unenforceable shall not affect the validity or enforceability of the remaining provisions.
16. WAIVER OF COUNTERCLAIM and JURY TRIAL: In the event that the Sub Lessor shall commence any summary proceedings or action for non-payment of rent or additional rent hereunder, or for other violation of this Sub Lease, the Sub Lessees shall not interpose any counter claim of any nature or description whatsoever in such proceeding or action, but shall instead advance any claim which it may have in an independent proceeding. The parties hereto waive a trial by jury on any and all issues arising in any action proceeding between them and their successors under or connected with this Sub Lease or any of its provisions, any negotiations in connection therewith, or the Sub Lessees' use or occupancy of the Premises..
17. APPLICABILITY: The covenants and conditions herein contained shall apply and bind the parties, their heirs, successors and assigns, jointly and severally, and all covenants are to be construed as conditions of this Lease.

Signature page follows.

IN WITNESS WHEREOF, the parties have executed this Sub Lease at Montpelier, Vermont the day and year first above-written.

CAPITAL CITY FARMERS
MARKET, INC., Sublessee

CITY OF MONTPELIER VT.
Sublessor

By

By

Lila Bennett, President

William J. Fraser, City Manager

Kevin Thompson, Treasurer

GCH:pw
881-202]

Proposed ordinance changes for June 26 Montpelier City Council Meeting
(additional/changed language is bold and highlighted).

- **Chapter VII, Article III:** repeal in its entirety. (milk, cream, and milk products)
- **Chapter IX, Article III:** repeal in its entirety. (pool tables)
- **Chapter IX, Article VII:** Change the language in the following way:

ARTICLE VII. DANCE HALL, **NIGHT CLUB, OR DANCE CLUB**

Sec. 9-700. LICENSE REQUIRED.

No person or corporation shall conduct or operate a public dance hall, **Night Club, or Dance Club** unless the hall first ~~have~~ **has** obtained a license therefor.

- **Chapter IX, Article XII:** repeal in its entirety. (itinerant photographer)
- **Chapter IX, Article XV:** repeal in its entirety. (pinball and similar machines)
- **Chapter IX, Article XIV:** Make the following change and append the following subsection:

Sec. 9-1412. SPECIAL TRANSIENT VENDOR LICENSES.

In lieu of the license required under Section 9-1400, the City Clerk may issue a thirty (30) day **license or a seven (7) day license** to a person selling or offering for sale or soliciting orders for the sale of services, goods or merchandise from premises occupied temporarily as a tenant, lessee, guest or invitee. Such license shall be valid only between the dates specified thereon, and the person applying for such a license shall comply with and be subject to all the provisions of Sections 9-1402, 9-1404, 9-1405, 9-1407, 9-1408 and 9-1410. An applicant for a license under this section shall pay a license fee of ~~fifty dollars (\$50.00)~~ **one-hundred dollars (\$100) for the thirty day license and fifty (\$50) dollars for the 7 day license**. As used in this section, the term "merchandise" shall include plants and other agricultural or forest products.

The City Clerk may also issue a 90-day license for mobile vendor vehicles selling ice cream or other frozen products alone, or in conjunction with other goods and products (ice cream trucks). Such vendors will operate within the restrictions provided for under any city noise ordinance. Applicants for such a license will pay a fee of one-hundred (\$100) dollars.

Sec. 9-1416. WEEKEND-ONLY VENDOR LICENSE.

In lieu of the license required under Section 9-1400, the City Clerk may issue a license only applicable to Saturdays and Sundays to a person selling or offering for sale or

soliciting orders for the sale of services, goods or merchandise from premises occupied temporarily as a tenant, lessee, guest or invitee. Such license shall be valid only on the weekends, and the person applying for such a license shall comply with and be subject to all the provisions of Sections 9-1402, 9-1404, 9-1405, 9-1407, 9-1408 and 19-1410. An applicant for a license under this section shall pay a license fee of one-hundred dollars (\$100).

- Chapter IX, Article XXIII (Medical Marijuana – new article)

ARTICLE XXIII. MEDICAL MARIJANA DISPENSARIES.

Sec. 9-2300. LICENSE REQUIRED.

No facility for the legal distribution of cannabis products approved for medical usage (medical marijuana), as allowed under Vermont law, shall operate in the city unless licensed.

Sec. 9-2301. LICENSE FEE.

The fee for such license shall be one-hundred dollars (\$100.00).

Sec. 9-2302. STATE LICENSING REQUIREMENTS.

Such license shall only be granted upon certification that the facility is licensed and operated in accordance with state statute.

- Chapter IX, Article XXIV (Catering – new article)

ARTICLE XXIV. CATERING MALT AND VINOUS BEVERAGES AND SPIRITOUS LIQUORS.

Sec. 9-2400. LICENSE REQUIRED.

Caterers of Malt & Vinous Beverages and Spirited Liquors who are properly licensed under the Vermont Department of Liquor Control must obtain an annual license from the city in order to cater events within the city.

Sec. 9-2401. LICENSE FEE.

The fee for such license shall be thirty-five dollars (\$35.00).

Minutes of the Montpelier City Council Special Meeting
June 5, 2013
Montpelier City Hall Council Chambers

In attendance: Mayor John Hollar (presiding), City Manager Bill Fraser, City Councilors Jessica Edgerly Walsh, Thierry Guerlain (via webconference), Alan Weiss, Andy Hooper, Tom Golonka and Anne Watson. City Clerk John Odum acted as Secretary of the meeting.

Mayor Hollar called the meeting to order at 6:34PM.

13-147. The Mayor explained the agenda item and opened the evidentiary hearing concurrent with the opening of the meeting. The witnesses giving testimony (City Manager Bill Fraser, Jeff Tucker, Larry Martin & Alan Palmer) were sworn in by the Mayor (called to hear testimony and consider the necessity, and possible compensation to be paid, for acquiring lands and rights in land for public purposes, namely a Multi-modal Transportation Center, pursuant to 24 V.S.A., Â§2801 et seq. The lands considered at this hearing are located on Taylor Street and are owned by the Allan R. Carr Revocable Trust.

First to give evidence was City Manager Bill Fraser. He referenced a memo outlining his arguments, and indicated that Jeff Tucker would follow him to review the survey. City Manager Fraser reviewed the city's need for the Carr Lot. Fraser also reviewed the history of the site selection process, as well as the city's attempts to secure the site.

Mr. Tucker entered two pages of surveys and two pages of site plans into the record as exhibits A-1, A-2, B-1 and B-2. Mr. Tucker then reviewed the exhibits.

City Manager Fraser offered his written materials into the record as exhibit G.

The City Manager was joined by Larry Martin (whose credentials and background as an appraiser are included in exhibit F - an appraisal of the lot - which was entered into the record). Martin reviewed some of the appraisal's content, methodology, and conclusions.

City Manager Fraser briefly discussed the environmental reviews of the site and the retaining wall. He added that there is one outstanding soil test, which was the only outstanding piece of data that could yet impact the assessed value of the property. The results are expected next week.

Jeff Tucker returned to the table to assist the City Manager in responding to the Mayor's questions about transitioning the site from its current use as a parking lot for the state.

Alan Palmer from the state's Building and General Services Department testified, and was joined by Jacob Humbert from the Attorney General's office. Humbert appeared to testify only on the question of damages related to the state's lease on the site. Palmer reviewed the current lease on the lot held by the state. The lease was entered into the record as States 1.

Palmer also discussed improvements the state has made to the site.

States exhibit 2 was entered (the City Center lease) into the record as a comparison. Under prompting from Humbert, Palmer reviewed States exhibit 2.

Humbert indicated (and explained the basis for) an estimated damage claim which he believes should attach to the city if the city were to terminate the lease upon taking ownership of the lot. The Mayor indicated that this was not consistent with commitments made to him by representatives from the state on numerous previous occasions. Humbert countered that an acquisition by eminent domain would allow the state to claim damages, whereas a commercial transaction would not.

In response to a question from Councilor Edgerly Walsh, Palmer reviewed the parking challenges faced by the state in Montpelier.

The Mayor reminded Humbert and Palmer that the city's planning for the site predated the state's lease by several years.

Councilors Guerlain and Edgerly Walsh questioned Humbert's figures in determining potential damages. Humbert granted that the ultimate damage figure could be different.

Councilor Golonka asked about comparable leases at National Life. Palmer indicated he did not have that data available.

Councilor Watson questioned the validity of the basis for the damage calculation, given the inconsistencies in the parking supply for state workers.

Councilor Edgerly Walsh and Golonka asked questions raising the potential value of the city's planned transportation hub to the state in providing for its employees.

The Mayor swore in Allan Carr, property owner. Mr. Carr testified that he felt the appraisal was too low, that he had received offers for leases as long as twenty years, and that he would fight any eminent domain seizure in court.

The Mayor recessed the public hearing at 7:49PM.

Jay White rose to comment. Mr. White referenced the other properties identified as part of the overall project, wanting to know whether the project would go forward if the Carr lot was acquired, but the other parcels were not. City Manager Fraser replied that, while the city was confident it would acquire the properties, there may be options without them (although the Bike Path funds assume the additional properties would be acquired). White expressed his concern that these additional acquisitions could become problematic.

Councilor Edgerly Walsh responded to Mr. White, expressing her view of the necessity of the project.

Danny Cohn testified to his discomfort with the condemnation by eminent domain. The Mayor replied that no one was comfortable with this proceeding and reviewed the reasoning behind going forward with it. Cohn expressed frustration that a prior building project proposed by Mr. Carr's had been rejected, as well as noting that there was no guarantee that Greyhound would utilize the transit center.

State Representative Mary Hooper spoke in support of the project, noting how long it had been under discussion. She also referred to discussions in the legislature about the need to promote transportation alternatives for state employees in Montpelier. Hooper further reminded the Council that many state employees were scheduled to be relocated to offices in other towns which would have the effect of lessening the parking pressure.

The Mayor noted that 262-6251 was the call-in number for comments from television viewers.

Tim Heney noted how long the project had been discussed, adding that he wasn't convinced of the necessity for this specific project, and that eminent domain was inappropriate.

City Manager Fraser made some quick responses to some of the comments. He noted that the approved project does include all four properties, so working with only the Carr Lot would require amendments. He also indicated that the sequence of acquiring the properties is necessitated by the federal approval. Fraser also indicated that, despite the length of the discussion, the city has only been able to move forward with acquisition relatively recently. Finally, he spoke to the city's efforts to negotiate a purchase price, and the limitations created by the professional assessment.

Mr. White spoke again, asking who would own the proposed transit center. Fraser replied that the city would own the transit center, and that a private interest could potentially own the upper floors. White expressed discomfort at the idea of transferring any portion of a seized property to another private entity.

Councilor Edgerly Walsh echoed the comments of the Mayor and the City Manager that this was a significant and uncomfortable discussion.

Councilor Golonka moved that the council go into deliberative session and invite the city's attorney. Councilor Edgerly Walsh seconded. The council passed the motion unanimously at 8:19.

At 8:45 PM, Councilor Weiss moved that the Council return to open session and adjourn. Councilor Guerlain seconded the motion, which carried unanimously without discussion.