

## AGENDA

### COMMITTEE ON ADMINISTRATION/INFORMATION SYSTEMS

August 30, 2010  
Aldermen Lopez, Osborne,  
O'Neil, DeVries, Corriveau

6:00 PM  
Aldermanic Chambers  
City Hall (3<sup>rd</sup> Floor)

1. Chairman Lopez calls the meeting to order.
2. The Clerk calls the roll.
3. Communication from the Board of School Committee requesting an expendable trust be established for technology for the School District.  
**Ladies and Gentlemen, what is your pleasure?**
4. Communication from the Board of School Committee requesting a transfer of unreserved, undesignated fund balance in excess of \$864,617 to the expandable trust for health insurance.  
**Ladies and Gentlemen, what is your pleasure?**
5. Request from Jay Minkarah, Economic Development Director, for approval of the attached draft agreement between the City of Manchester and the International Chili Society for hosting the upcoming World's Championship Chili Cookoff.  
**Ladies and Gentlemen, what is your pleasure?**
6. Communication from Jay Minkarah, Economic Development Director, requesting approval of a recent amendment to the Manchester Development Corporation (MDC) By-Laws.  
**Ladies and Gentlemen, what is your pleasure?**

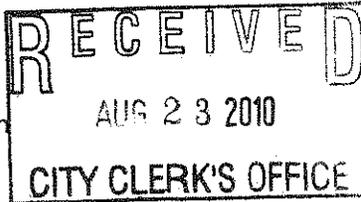
7. Communication from Mayor Gatsas requesting the Committee review the correspondence from the Finance Department regarding disputed Aviation/City Business P-Card purchases and make a recommendation.  
**Ladies and Gentlemen, what is your pleasure?**
  
8. Communication from Mayor Gatsas requesting the Committee conduct a review of the Mayor's Senior Luncheon and propose any future changes deemed appropriate.  
**Ladies and Gentlemen, what is your pleasure?**
  
9. Communication from Alderman Arnold regarding tax exemptions for individuals.  
**Ladies and Gentlemen, what is your pleasure?**
  
10. Communication from Matthew Normand, City Clerk, regarding a proposed Municipal Banner Policy.  
**Ladies and Gentlemen, what is your pleasure?**
  
11. Appeal of the denial of a Peddler's License.  
*A motion would be in order to enter non-public session under the provisions of RSA 91-A:3(II)(c).*  
  
*A roll call vote is required on the motion.*

#### **TABLED ITEMS**

*A motion is in order to remove any of these items from the table.*

12. Presentation by Robert Cote, President of Brattle Consulting Group, Inc., regarding SubItUp.com and its impact on the Manchester Police Department.  
*(Note: Tabled 04/20/2010; no representative present.)*
  
13. Communication from Connie Boyles Lane, Orr & Reno, regarding the Effluent Supply Agreement between Manchester and Granite Ridge Energy.  
*(Note: Table 04/20/2010, awaiting an update from the City Solicitor. An updated agreement from the City Solicitor is attached.)*

14. Communication from Jay Minkarah, Economic Development Director, recommending that the City enter into a proposed Water Line & Sewer Line Extension Agreement with the U.S. Department of Labor related to the Job Corps Center construction off of Dunbarton Road.  
*(Note: Referred by the Board of Mayor and Aldermen on 05/04/2010. Tabled 5/18/10 at the Department Head's request.)*
  
15. There being no further business, a motion is in order to adjourn.



TO: Board of Mayor & Aldermen  
FROM: Board of School Committee  
DATE: August 9, 2010  
RE: Establishment of Expendable Trust

At the meeting of the Board of School Committee held on August 9, 2010, the Board of School Committee reviewed recommendations relative to the above-referenced. After due and careful consideration the Committee recommends:

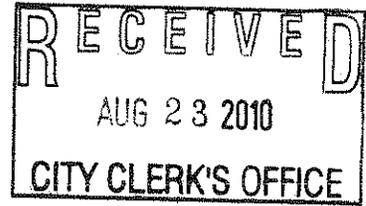
To request that the Board of Mayor & Aldermen establish an expendable trust for technology for the School District.

The motion was made by Comm. Herbert and seconded by Comm. Briggs. The motion passed by unanimous vote of the entire 15 members of the Board.

IN BOARD OF SCHOOL COMMITTEE

Adopted.....2010

  
Suzanne O. Sears Board Clerk



TO: Board of Mayor & Aldermen  
FROM: Board of School Committee  
DATE: August 9, 2010  
RE: Transfer to Expendable Trust

At the meeting of the Board of School Committee held on August 9, 2010, the Board of School Committee reviewed recommendations relative to the above-referenced. After due and careful consideration the Committee recommends:

To approve the Administration's recommendation to transfer the unreserved, undesignated fund balance at June 30, 2010, in excess of \$864,617 to the expendable trust for health insurance.

The motion was made by Vice Chair Gelinas and seconded by Comm. Soucy. The motion passed by majority vote of the 15 members of the Board. Comm. Herbert and Avard voted in opposition of the motion.

IN BOARD OF SCHOOL COMMITTEE

Adopted.....2010

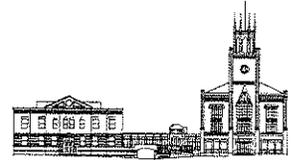
A handwritten signature in cursive script that reads "Suzanne O. Sears".

Suzanne O. Sears Board Clerk

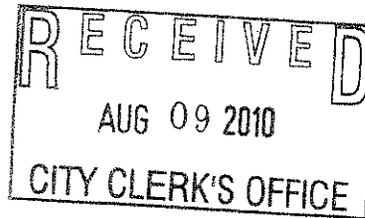


# CITY OF MANCHESTER

## Economic Development Office



August 9, 2010



Michael J. Lopez, Chairman  
Committee on Administration & Information Systems  
Board of Mayor & Aldermen  
One City Hall Plaza  
Manchester, NH 03101

RE: International Chili Society/City of Manchester Hosting Agreement

Dear Chairman Lopez and Members of the Committee:

Attached is draft agreement between the City of Manchester and International Chili Society for hosting the upcoming World's Championship Chili Cookoff for consideration by the Committee on Administration & Information Systems at its next available meeting. Our hope would be to have the agreement reported out for full Board approval at the meeting of September 7, 2010. Thank you for your consideration. If you have any questions or need additional information, please feel free to contact me at your convenience.

Sincerely,

  
Jay Minkarah, Director  
Manchester Economic Development Office

cc: Theodore L. Gatsas, Mayor  
Tom Clark, City Solicitor

## AGREEMENT

This Agreement ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_ 2010, between the City of Manchester, New Hampshire, (hereinafter referred to as "City" or "Host") and The International Chili Society, Inc., a California corporation, (hereinafter referred to as "ICS" or "client").

WHEREAS, The ICS has produced preliminary and qualifying cookoff events on a District, State and Regional basis to determine the participants for, and approximately 400 ICS contestants are qualified for, the World's Championship Chili Cookoff, a trademark of the International Chili Society, and

WHEREAS, Host owns or controls certain property and facilities set forth in the attached Schedule A ("Facilities") and agrees to make such Facilities available to ICS for the World's Championship Chili Cookoff upon the terms and conditions set forth below, and

Therefore, for and in consideration of the mutual promises and agreements herein contained, the parties hereto, intending to be legally bound, the parties hereby agree as follows:

1. Host agrees to host the ICS sanctioned 2010 World's Championship Chili Cookoff (the "Event") at the Facilities on October 1, 2 and 3, 2010. Host shall provide the Facilities and the necessary physical infrastructure, equipment, and services to set-up, stage, operate, and support the Event in accordance with ICS criteria and program plans, including the obligations as set forth in detail in the attached Schedule A. Host will provide event management services to coordinate the logistics and marketing of the Event and to interface with ICS, including a final co-ordination meeting to be held on September 30, 2010. Host shall control and direct the production of the Event, including its format, "look and feel", schedule, programs and individual events with input from the ICS. ICS shall control and direct event judging and Chili Society member relations, including those items and responsibilities set forth in Schedule B attached hereto. ICS shall provide Host with the promotion and publicity as set forth in detail in the attached Schedule C. The parties anticipate that the Host's obligations shall provide up to \$150,000.00 in value, which may include in-kind goods and/or services and sponsorships. As part of such Host amount, Host shall provide, directly or by sponsorship, a total of \$45,000.00 in cash for prize money to be awarded to contestants at the Event, which \$45,000.00 amount shall be provided by check payable to "The International Chili Society, Inc." and delivered to ICS on or before September 15, 2010.
2. Host shall have the right to collect and retain vendor fees charged to commercial vendors selling merchandise, products or services at the Event and Event admission fees charged to the general public, provided such fees shall not exceed \$5.00 and free for children younger than 10. ICS shall collect and retain any "last chance" cook-off participant entry fees. Only ICS shall have the right to authorize the sale of any merchandise or products utilizing the ICS' trademarks, trade names, or logos and no

vendor may sell any such items unless approved by ICS at its sole discretion. The parties intend that up to \$1.00 from the proceeds of each Event admission ticket shall be for the benefit of charity.

3. The Facilities shall be fully set-up and prepared for the Event no later than 6:00 P.M. on September 30, 2010, and shall be open and available to ICS and its designees and agents for load-in and set up commencing at 7:A.M on October 1, 2010. All property of ICS and Event participants shall be removed and all load-out shall be completed by 7:00 P.M. on October 3, 2010. Host shall provide ICS, sponsors and souvenir vendors a "direct to site" shipping address and contact person beginning 10 days prior to the event. Items shipped to this address will be securely stored by Host until shipper personal are on-site and ready to take possession.
4. Sponsorship Rights. Host shall have the right to solicit Event Host sponsors and shall be entitled to retain all fees paid by Event Host sponsors solicited by Host. An Event Host sponsor is one that is a general sponsor of the Event and is not identified as a sponsor of any specific aspect or part of the Event. Host has the right to solicit sponsors for promotional identification of specific activities or parts of the Event created and developed solely by the host in support of the event. Event Host sponsors shall be provided with a standard promotional recognition package that is agreed upon by Host and ICS. ICS shall be also be entitled to solicit Event Host sponsors and shall have the exclusive right to solicit all sponsors for promotional identification with specific activities and parts of the Event (including for example prize money, aprons, judges ("Event Specific sponsors")). ICS shall retain all fees paid by any Event Host sponsor and any Event Specific sponsor solicited by ICS. In the event any proposed Sponsor secured by the ICS seeks rights to a greater space than the standard 10'X10' tent or normal banner space, the parties ICS agrees to negotiate an equitable sharing of any such sponsorship revenue with Host due to the impact on other available sponsorship space.
5. Promotion by Host/Use of Marks. Host shall undertake commercially reasonable efforts to promote the Event to the public throughout the New England region and New York State through print, television, radio, and on-line media beginning no later than August 10, 2010 and continuing through the close of the Event. Host shall provide ICS with a detailed marketing and promotion proposal on or before August 10, September 1, 2010 setting forth the marketing campaign, proposed sponsors and funding, and other marketing partners. All Host marketing and promotion shall be approved in advance by ICS. The ICS will allow City use of the society's name, logo and trademarks and the 2010 WCCC logo on a one-time basis for the event. City is provided rights to use 2010 WCCC logo beyond event date as long as logo is not used for financial gain. Such use is a limited license and all use of ICS name, logos, trade names and trademarks shall be in compliance with the requirements of ICS. City agrees to hold harmless the International Chili Society, its officers, agents and employees from any claims and liabilities arising from Host's use.

6. Termination. This Agreement may be terminated by ICS, at its option and without prejudice to any of its other legal and equitable rights and remedies, if Host breaches any of the material terms, conditions, or agreements of this Agreement such that the Event cannot reasonably be held as scheduled (a "Termination"). Such a Termination shall be effected by ICS giving the Host notice in writing, particularly specifying the breach, and stating that the Agreement will terminate ten (10) days after the giving of such notice. Such notice of termination shall not be effective if the Host cures the specified breach within the ten (10) day period, or if a cure is not reasonably possible in such 10-day period, the party commences and diligently pursues to completion a cure, but not to exceed 30 days, provided in all instances such cure must be sufficient to permit the Event to proceed fully as scheduled.

A TERMINATION DUE TO THE CITY'S FAILURE TO PERFORM ITS OBLIGATIONS WILL CAUSE SUBSTANTIAL HARM TO ICS, ITS REPUTATION AND RELATIONSHIP WITH ITS MEMBERS, EVENT PARTICIPANTS AND THE PUBLIC. ICS' sole and exclusive remedy for damages for any SUCH TERMINATION SHALL BE THE PAYMENT TO ICS BY THE CITY OF THE SUM OF \$100,000.00 (the "LIQUIDATED Fee"). ICS shall have no right to any other relief, legal or equitable, for a TERMINATION, other than for specific performance for the payment of the LIQUIDATED Fee. The parties agree that the LIQUIDATED Fee shall constitute liquidated damages for the DAMAGES TO ICS and not a penalty. The parties further agree that such liquidated damages are a good faith, fair and reasonable estimate of the damages ICS will incur as a result of a TERMINATION, and that the damages which could reasonably be anticipated from a TERMINATION are difficult to ascertain because of their indefiniteness or uncertainty.

\_\_\_\_\_  
ICS Initials

\_\_\_\_\_  
City Initials

7. Insurance. Host shall obtain and maintain at its own cost and expense from a qualified insurance company licensed to do business in New Hampshire or by self insurance, insurance coverage for the Event as follows: Property damage insurance with limits not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, Commercial General Liability Insurance with limits not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, Product Liability Insurance, including, but not limited to coverage for food and food services and contractual liability, Worker's Compensation Insurance as required by statute and Automotive insurance coverage. Such insurance shall cover damages caused by the acts or omission of the Host, its employees, its agents, its contractors, its Event volunteers, cook-off participants' publically distributed food samples, sponsors and vendors (the obligation for sponsors and vendors may be fulfilled by requiring similar insurance coverage from such parties), The policies shall contain a clause stating that the insurance will not be canceled or reduced without at least thirty (30) day's prior notice to ICS. Such policy shall name ICS as an additional insured and shall not affect Host's liability under the provisions of this Agreement.

8. Indemnity.

- a. Host agrees to indemnify and hold harmless ICS and its advisors, attorneys, subsidiaries, stockholders, directors, officers, employees, agents, successors and assigns (the "ICS Indemnitees"), from and against any and all losses, damages, liabilities, obligations, assessments, suits, actions, proceedings, claims or demands, including costs, expenses and fees (including reasonable attorneys' fees and expert witness fees incurred in connection therewith) incurred in connection with, suffered by any of them, or asserted against any of them, arising out of or based upon (i) the acts or omissions of the Host or its employees, agents or contractors, and (ii) the acts or omissions of Event volunteers utilized by Host and sponsors and vendors (which obligation may be fulfilled by requiring insurance coverage from such parties), and (iii) the breach of any covenant or agreement or obligation of Host contained in this Agreement.
  - b. ICS agrees to indemnify and hold harmless the Host and its advisors, attorneys, subsidiaries, stockholders, directors, officers, employees, agents, successors and assigns (the "Host Indemnitees"), from and against any and all losses, damages, liabilities, obligations, assessments, suits, actions, proceedings, claims or demands, including costs, expenses and fees (including reasonable attorneys' fees and expert witness fees incurred in connection therewith) incurred in connection with, suffered by any of them, or asserted against any of them, arising out of or based upon (i) the acts or omissions of the ICS or its employees, agents or contractors or (ii) the breach of any covenant or agreement or obligation of ICS contained in this Agreement.
9. Relationship of the Parties. The parties enter this Agreement as independent business. Nothing contained in this Agreement shall be construed to place the parties in the relationship of legal representatives, partners, joint venturers, agents or fiduciaries, and no party shall take any action nor incur any debts, obligations or liabilities in the name of the other.
10. Trademarks. Neither party shall in any way, directly or indirectly, seek or attempt to interfere or infringe upon, or challenge or contest the other party's ownership of their trademarks, designs, or trade secrets and each party agrees not to claim any trademark or other property or ownership rights in the other party's trademarks, or to file any application for any related trademark. Each party agrees that the use of the other party's trademarks pursuant to this Agreement does not constitute a grant of any ownership interest in or to such trademarks, and any and all goodwill arising from the use of the other party's trademarks granted hereunder is non-exclusive and that any and all goodwill arising from use of the other party's trademarks (whether permitted or not) inures solely to the benefit of owner of the trademark.
11. Confidentiality Each party shall keep confidential and use only for purposes of performing this Agreement any and all confidential information of the other party, which the receiving party receives from the disclosing party. For purposes of this

Section 10, confidential information shall mean that proprietary information of a party which is maintained as confidential by such party, but shall not include any information which is (a) known to other party prior to this Agreement, (b) is generally known to or available to the public, (c) subsequently becomes know to the public through no act of the receiving party in violation of this Agreement.

12. Notices. All notices, claims, certificates, requests, demands and other communications hereunder shall be given in writing and shall be delivered personally or sent by facsimile or by a nationally recognized overnight courier, postage prepaid, and shall be deemed to have been duly given when so delivered personally or by confirmed facsimile or one (1) business day after the date of deposit with such nationally recognized overnight courier. All such notices, claims, certificates, requests, demands and other communications shall be addressed to the respective parties at the addresses set forth below or to such other address as the person to whom notice is to be given may have furnished to the others in writing in accordance herewith.

**If to ICS, to:**

International Chili Society, Inc.  
Carol Hancock  
32244 Paseo Adelanto, Suite D3  
San Juan Capistrano, CA 92675

**If to Host, to:**

13. Further Assurances Each party agrees that it will, at any time and from time to time upon request of the other party, do, execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances, and assurances as may be reasonably required to carry out the provisions and intent of this Agreement.
14. Force Majeure. Neither party will be liable for its failure to perform any of its obligations hereunder during any period which such performance is delayed by acts of God, fire, war, embargo, riot, strikes or similar cause outside the control of the party whose performance is affected thereby; provided, however, that the above shall not be applied to excuse or delay any payment obligation of either party under this Agreement, unless any such act of God or similar cause acts to prevent payment by disrupting the banking system or shutting down the postal service.

15. General Terms

15.1. Time. Time is of the essence in the performance of this Agreement.

15.2. Survival. All of the representations, warranties, and indemnification's made in this Agreement and all terms and provisions hereof intended to be observed and

performed by the parties after the termination hereof shall survive such termination for and continue thereafter in full force and effect for one year except the obligations of confidentiality as set forth in Article 9, which shall not terminate or expire.

15.3. Complete Agreement. This Agreement and the agreements referenced or contemplated by this Agreement constitutes the entire agreement of the parties with respect to the subject matter described in this Agreement and shall supersede all previous negotiations, commitments or writings regarding such subject matter.

15.4. Waiver, Discharge, etc. This Agreement may not be released, discharged, abandoned, changed or modified in any manner, except by an instrument in writing signed on behalf of each of the parties to this Agreement by their duly authorized representatives. The failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part of it or the right of either party after any such failure to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

15.5. Applicable Law. This Agreement shall be governed by, and interpreted in accordance with the laws of the State of New Hampshire including all matters of construction, validity, enforcement and performance, without giving effect to principles of conflict of laws. Venue shall be in the appropriate state or federal forum in Manchester, New Hampshire.

15.6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their permitted successors or assigns.

15.7. Execution in Counterparts, Signatures. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement, and shall become a binding agreement when one or more counterparts have been signed by each party and delivered to the other party. This Agreement may be executed by facsimile, PDF or other digital means and such signatures shall be as effective as original signatures.

15.8. Titles and Headings; Construction. The titles and headings to Sections herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Agreement to be drafted.

15.9. No Third Party Benefit. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties to this Agreement or their respective permitted successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

15.10. Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remaining provisions shall nonetheless be enforceable according to their terms. Further, if any provision is held to be overbroad as written, such provision shall be deemed amended to narrow its application to the extent necessary to make the provision enforceable according to applicable law and shall be enforced as amended.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed in the manner appropriate to each, effective as of the date first above written.

International Chili Society, Inc.

Host

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Its \_\_\_\_\_

## Schedule A

### HOST PROVIDED FACILITIES, EQUIPMENT AND SERVICES

#### **Facilities**

All of Veterans Park, Manchester, New Hampshire and such adjacent property as is sufficient in size to accommodate up to 10,000 visitors a day and the requirements below, with exact area and dimensions and facilities configuration approved by ICS. All permits required by the City of Manchester, Health/Fire Depts. and others for Event.

#### **Power**

Electric generators or power supply for vendors, sponsors, VIP Tent, Judging Tent, stage, and all other facilities, excluding cooking tents.

#### **Parking & Loading:**

Free and reserved parking must be available for all Event cooks and judges (200 spaces) within walking distance of the Event.

Public parking for 2,000 vehicles within walking distance of Event.

Access for cooks to drive up to their booths to unload supplies. If this is not possible, Host must provide reasonable load-in/load-out plan that must include golf carts, and motorized flat cart or volunteer assistance carts to allow cooks to load in/load out EACH of the three days.

Golf carts – 4

#### **Stage:**

Stage (Minimum Size – 24'x20') with audience seating for at least 200 and with public address system with a qualified operator present during from 10:00A.M. to 7:00 P.M. during the three days the Event is open to the public. The system must have sufficient capacity and equipment to support the intended entertainment and for Event public address announcements, including not less than 4 live microphones.

#### **Security and Safety:**

Secure storage for Event supplies, sponsor products and 24-hour security to protect cooking tents, stage, VIP Tent, Judges Tent, souvenir tents, and other facilities

Police presence during public event hours.

Fire extinguishers and other fire equipment as required by local fire marshal

An on-site first aid station or roaming “medi-bikes” or similar personnel

Signage for the public (directional, gate information, event schedule)

Potable water for cooking and hand wash stations.

**Sanitation:**

Host will provide physical facilities and equipment as described below and all services to deliver and install such facilities, maintain and service them during the Event, dispose of any waste material, and remove all facilities at termination of Event.

Public or portable restrooms with a minimum of two units reserved for use of cooks and judges only and hand-wash facilities.

Grease containers for use by cooks and food vendors.

Dumpsters and trash barrels with at least one 55 gallon trash barrel between each pair of cooking tents, as well as dump stations for chili waste.

Potable water for cooking and hand wash stations for cooks

Cooks will be responsible for complying with all City Health Department regulations.

**Set Up and Tear Down:**

Host to provide all labor, equipment, supplies and other services to deliver, erect, and set up the Host required Infrastructure and Equipment Items listed below pursuant to a location design and plan agreed upon by Host and ICS and to generally prepare the Facility for the Event

**Infrastructure and Equipment Items**

Eighty (80) 10’x10’ Tents for Cooks (pop-up type canopies are not acceptable)

One (1) 40’x90’ 30’x 60’ Judging Tent (Minimum Size) with sidewalls as needed and lights and One (1) 20’x20’ scorers’ tent

One (1) 30’x40’ 30’ x30’ VIP Tent (Minimum Size) with sidewalls and lights

Two (2) One (1) 10’x20’ Souvenir Tents with sidewalls

10’x10’ Sponsor Tents with sidewalls in sufficient amounts to accommodate all sponsors - as required

Three (3) 10’x10’ Tents with sidewalls for Information Booth, Ticket Gates, and Sampling Kit Booths

12’x12’ Food Vendor Tents in sufficient amounts to accommodate all vendors

Tent for FIREFEST vendors (size TBD) as needed

800 chairs (4 for each cook tent, stage seating, VIP tent, Judging Tent, seating areas as required)

320 non-skirted 8 foot tables (4 in each 10'x10' cooking spaces)

30 8 foot non-skirted tables for miscellaneous use

75 8 foot skirted tables (for Judging Tent, Sponsor booths, stage, souvenirs, bars)

25 six foot round tables (VIP Tent, public seating, etc.)

24 cocktail tables

Six (6) radios for ICS volunteers (Minimum)

### **Entertainment**

Host to arrange or provide live musical entertainment of a type and quality appropriate for a national chili cook-off event and as approved by ICS for at least 6 hours each day during the public access times of the Event starting at Noon on October 1 and 11:00AM on October 2 and 3. 2 and at 11:00 AM on October 3. The schedule of such entertainment shall be arranged not to interfere with ICS specified announcements and events, such as judging and awards, and shall be approved by ICS.

Friday night cooks/judges VIP/sponsor party with free admission to all ICS cooks, their guests, ICS invited judges, ICS staff, sponsors and VIPs.

### **Judging Area**

Forty (40) 8-foot banquet tables, twenty 55 gallon trashcans, coolers or troughs to cool water and beer, ice as needed for Judging Tent.

20,000 light duty spoons (not individually wrapped), 25 lbs. flour tortillas, 40 lbs. sour cream, 30 lbs. low salt corn chips, 40 cases of bottled water, 80 cases of beer, 500 linear feet of white plastic table covering, 70 half-size aluminum roasting pans, 300 small plastic cups (5.5 ounce), 300 paper plates, 700 lids for judging cups (to fit 32-ounce "squat" style cup), 420 one gallon jugs of water.

### **Miscellaneous**

Full service bar and liquor license as required for VIP Tent

Cash Bar with Beer and Wine available at VIP Tent

20,000 light duty spoons, 20,000 2 oz. cups, and sufficient napkins for public tasting and sampling

Trophies/ plaques per ICS requirements and provided by agreed upon vendor

Stage Banner stating 2010 WORLD'S CHAMPIONSHIP CHILI COOKOFF,  
OCTOBER 1-3, 2010, MANCHESTER, NEW HAMPSHIRE – size to be agreed  
upon, but sufficient for stage of 4'x20 and to include 2010 WORLD'S  
CHAMPIONSHIP logo and sponsors logos as per sponsor packages

Appropriate event signage

Cooks/Judges Medallions one per contestant/judge

Contestant Booth Signs – 1 per contestant per competition

Contestant aprons imprinted with sponsor logos and contestant's name and event

Judges aprons with sponsor logo and imprinted with "JUDGE"

## Schedule B

### The ICS shall be responsible for the following:

- Notification to each qualified contestant of the Rules and Regulations of participation
- Preparation and mailing of all Judges Invitations and collection of RSVPs
- Announcement and promotion of Manchester as the host and Presenting Sponsor via the ICS website, emails, all print materials, the ICS *Newspepper*, qualification letters, judging invitations, announcements at the remaining 2010 ICS events including the 2010 WCCC
- Provide all Contestant Application Forms, detailed Contestant Information, Schedule of Events, promotional materials for City (in amounts as provided to ICS by City)
- Conduct all cooking contests and activities related to the cookoff
- All materials necessary to conduct the cooking contests, ie, official ICS judging cups, ballot sheets and required reports
- Membership validation for each participant.
- Contestants' waivers (waivers require contestants to indemnify and hold harmless ICS and Host during event)
- Registration of contestants and judges each day of the event.
- Enforcing ICS cooking and judging rules
- Provide the Chief Judge, Chief Scorekeeper, Scorekeepers, Chief Wrangler, Judges Tent Wranglers, Site Coordinator, "volunteer" security at the VIP tent during event hours only, Stage emcee, assistance in set up, loading/unloading of cooks equipment
- Invite qualified judges with experience in judging ICS sanctioned events. City will be given the opportunity to invite an agreed upon number of judges with approval by ICS. NOTE: No person invited by either Manchester or the ICS will be allowed to judge chili or be a scorekeeper if a relative or significant other is competing.
- Assign cooking spaces to each contestant
- Provide personnel to hang contestant signs each day
- Conduct all "special activities" or additional contests, ie, Miss Chili Pepper, Mister Hot Sauce, Shoot N'Holler Contests – as applicable
- Announce all winners
- Provide the Schedule of Events and timelines for planning to City as soon as possible upon signing the Agreement
- Provide the design of the 2010 WCCC logo

Schedule C

**ICS PROVIDED PUBLICITY AND PROMOTION FOR HOST**

Logo identification as a “Producer” or “Host” of the Event on all national and local promotion and advertising, including all forms of media.

Mentions of “2010 host” or “Title Partner” at all award ceremonies of qualifying events prior to the Event weekend.

Prominent logo identification and Web site link on [www.chilicookoff.com](http://www.chilicookoff.com).

Extensive and prominent on-site recognition, including logo on Event related signage in addition to banner placement opportunities

Premium on-site exhibit/sales space.

Public address announcements from the main stage throughout the three days of the Event

Logo identification on aprons for competitors and judges.

Sampling/coupon opportunity in 800 gift bags for competitors and judges.

Right to provide an agreed-upon number of judges for the Event.

Opportunity to host Event Kick-off and VIP Party

Opportunity to invite a select number of guests to the private Event Kick-Off Party.

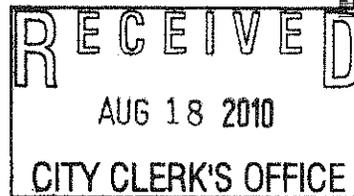


# CITY OF MANCHESTER

## Economic Development Office



August 18, 2010



Michael J. Lopez, Chairman  
Committee on Administration & Information Systems  
Board of Mayor & Aldermen  
One City Hall Plaza  
Manchester, NH 03101

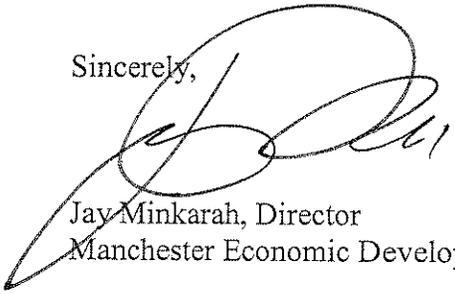
RE: Manchester Development Corporation By-Laws Amendment

Dear Chairman Lopez and Members of the Committee:

Approval is requested of a recent amendment to the Manchester Development Corporation (MDC) By-Laws. At its meeting of June 11, 2010, the MDC Board of Directors voted unanimously to amend Article III of the By-laws (Objects) to include "[ ] in-state and out-of-state marketing and promotion including tourism development" as a part of MDC's mission statement. By making this amendment, the MDC will be able to apply to the NH Department of Resources and Economic Development Division of Travel and Tourism Development for Joint Promotional Program (JPP) matching grants. These grants are intended primarily for out-of-state marketing and promotion aimed at tourism. Only non-profits with tourism promotion in their mission statements are eligible to apply. Though municipalities are not eligible to apply, with this change the MDC will be able to apply on the City's behalf.

Attached is a copy of the amendment. If you have any questions or need additional information, please feel free to contact me at your convenience. Thank you.

Sincerely,

  
Jay Minkarah, Director  
Manchester Economic Development Office

cc: Theodore L. Gatsas, Mayor

# BY-LAWS OF MANCHESTER DEVELOPMENT CORPORATION

## ARTICLE I

### Name and Principal Place of Business

The name of the Corporation shall be Manchester Development Corporation. The principal place in which the business of this Corporation is to be carried on is Manchester, New Hampshire.

## ARTICLE II

### Seals

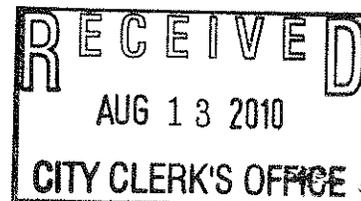
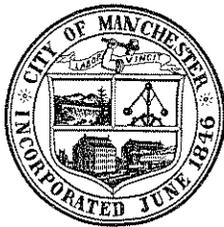
The seal of the Corporation shall bear the name of the Corporation, the year of its incorporation and otherwise shall be in such form and have cut or engraved thereon such words or figures as the Board of Directors may determine.

## ARTICLE III

### Objects

The purpose of this Corporation is to promote the growth and prosperity of the City of Manchester; to encourage, support, engage and invest in the economic development of any projects and activities in the City of Manchester as may from time to time be directed or approved by the Board of Mayor and Aldermen of the City of Manchester; and to encourage the welfare of local industries, promote the establishment of new industries in metropolitan Manchester and in-state and out-of-state marketing and promotion including tourism development. In order to carry out the objects for which this Corporation is established it shall have all of the powers and rights conferred upon voluntary corporations by New Hampshire Revised Statutes Annotated, Chapter 292, as amended, provided, however, that inasmuch as it is the intention that the Corporation is not established and organized for the purpose of earning a net profit that the corporate income must not inure to any private person, firm or corporation. Subject to the provisions of Article IX hereof, no director shall receive compensation for his services as such director, but he may be entitled to reimbursement for any expenses incurred by him in connection with the administration of the Corporation affairs. Subject to the provisions of Article IX hereof, he may be paid reasonable value of services rendered in any capacity other than as director. He shall not be entitled at any time to any distribution of any property of the Corporation whatsoever, except as herein provided in this paragraph.

Deleted: and



## CITY OF MANCHESTER

*Theodore L. Gatsas*  
*Mayor*

August 13, 2010

The Hon. Mike Lopez  
Chair, Administration and Information Systems  
c/o City Clerk  
One City Hall Plaza  
Manchester, NH 03101

**RE: Airport Business Expenses**

Dear Chairman Lopez,

I am respectfully requesting that the Committee on Administration and Information Systems review the attached correspondence from the Finance Department with regards to disputed Aviation/City Business P-Card purchases.

I would further request that the Committee on Administration make a recommendation on how to handle and/or reconcile the disputed charges so a clear precedence is established for future purchases. Also attached within the correspondence is a copy of Section 4 of the City Business Expense Policy that is in question.

If I can be of any assistance in this matter please do not hesitate to contact me.

Regards,

Theodore L. Gatsas  
Mayor

Enclosures

cc: Mark Brewer, Airport Director  
Membership of the Airport Authority  
Bill Sanders, Director of Finance  
Matthew Normand, City Clerk  
Guy Beloin, Assistant Finance Director

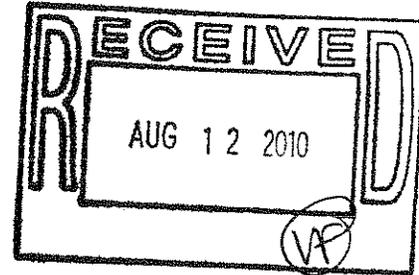


William E. Sanders  
Finance Officer

**CITY OF MANCHESTER**  
*Finance Department*

August 12, 2010

The Honorable Mayor Gatsas  
Office of the Mayor  
One City Hall Plaza  
Manchester, NH 03101



Dear Mayor Gatsas,

The purpose of this letter is to inform your office of three disputed Aviation / City Business P-card purchases.

Attached please find copies of disputed Aviation food purchases, a memo from Teresa Avampato from the Aviation department supporting these purchases as allowed, a letter from the Mayor's Office to the Aviation Director denying a permanent exemption from the City Business Expense Policy; Section 4, IV Conditions, an email from the City's audit manager not supporting these purchases as allowed and an excerpt from the City of Manchester, NH Business Expense Policy.

My reasoning to classify the three purchases as non-allowed purchases consists of the following items;

Item 1 This was for an individual's retirement event which is specifically non-allowed.

Item 2 This is not allowed nor was it preauthorized by the Office of the Mayor.

Item 3 The purpose of this purchase was to order food catered for an employee quarterly meeting. Section IV States that "Meals and refreshments should only be purchased with City funds where a public benefit can be demonstrated." #1 of the list in this section of appropriate examples states "Board, commission or other business meetings that extend through a normal meal period." Does not specify staff. Section III. Policy states "Meals and refreshments are not provided as a perquisite to City employees, board members, commission members or employees."

If these purchases are deemed as non-allowed, the two individual card holders would be responsible to reimburse the City respective amounts of \$17.99 and \$992.46. William Sanders, Finance Officer and Kevin Buckley, Independent City Auditor, concur.

I respectfully request your perspective to reach a final outcome for future practice to this difference of interpretation.

Sincerely,



Guy Beloin

Assistant Director – Accounting & Reporting

CC: Bill Sanders  
Kevin Buckley  
Teresa Avampato

2500 A30580



Hannaford Food & Drug  
1 John Devine Dr - Manchester NH 03101  
(603) 626-4567 - www.Hannaford.com

P-Card ok (JD)



Hannaford Food & Drug  
John Devine Dr - Manchester NH 03101  
(603) 626-4567 - www.Hannaford.com

Pay Date 3-30-10  
Term 10  
Doc Total 17.99  
Account Code 2500A30580

PO# PAID BY MASTERCARD  
Approved 74

VERY  
1/4 GOLD SHT CK 17.99  
TOTAL TAX \$0.00

BALANCE DUE 17.99  
MasterCard 17.99  
[S] \*\*\*\*\*2095

CHANGE 0.00

Total number of items sold = 1

CASHIER NAME: Chris R  
STORE:00164 REGISTER:007 CASHIER:0147  
TICKET#:4621 25MAR2010 12:2

STORE HOURS

Sunday 7am - 10pm  
Monday - Saturday 6am - midnight

Pharmacy Hours  
Mon-Fri 8-8 Sat 8-6 Sun 9-6  
626-1233

MAA  
ntg

CAVE FOR RETIRING  
CHAIRMAN GARY O'NEIL

ITEM (1) 74

# Hilton Garden Inn® Manchester Downtown

101 South Commercial Street • Manchester, NH 03101  
Phone (603) 669-2222 • Fax (603) 668-2957  
Reservations  
www.StayHGI.com or 1 877 STAY HGI

Name & Address

MANCHESTER AIRPORT 3/24

Room H91  
Arrival Date 3/9/2010  
Departure Date

Adult/Child  
Room Rate

RATE PLAN

HH#

AL:

BONUS AL:

CAR:

*Folio*

3/24/2010 PAGE 1

DATE	DESCRIPTION	ID	REF. NO	CHARGES	CREDITS	BALANCE
3/24/2010	*CATERING	LINTR	431004	\$415.10		
3/24/2010	MEETING ROOM	MK1	431029	\$300.00		
3/24/2010	MC *2325	NG1	431036		\$715.10	
	BALANCE					\$0.00

The Hilton Family

*p-card  
Senior mgmt team  
training  
2500A 302*

LUNCH ATTENDEES

- M. BREWER
- B. O'NEILL
- S. ADAMS
- R. FIXLER
- D. BUSH
- T. MALAFRONTI
- T. AVAMPATO
- W. ROBINSON
- S. L. DUPUIS

Pay Date 3-30-10  
Vnar CD \_\_\_\_\_  
Doc Total 715.10  
Account Code 2500A30271

PO# **PAID BY MASTERCARD**  
Approved: DA

ACCOUNT NO. MC \*2325

CARD MEMBER NAME  
MANCHESTER AIRPORT 3/24

ESTABLISHMENT NO. & LOCATION ESTABLISHMENT AGREES TO TRANSMIT TO CARD HOLDER FOR PAYMENT

CARD MEMBER'S SIGNATURE  
X

DATE OF CHARGE 3/24/2010 FOLIO NO./CHECK NO. 120780 A

AUTHORIZATION 115220 INITIAL

PURCHASES & SERVICES

TAXES

TIPS & MISC.

TOTAL AMOUNT

Hilton Grand Vacations Club

HOMERWOOD SUITES

USA Official Sponsor

ITEM (2) 7-5

PAYMENT DUE UPON RECEIPT

SIMONS ROAST BEEF

SIMONS ROAST BEEF AND PIZZA  
2676 BROWN AVE  
MANCHESTER, NH 03103  
(603) 521-2900

Sale

Chart ID: 5425298803904630

Am ID: 18755288

DATE: 05/05/10 TIME: 11:00AM

MASTERCARD Entry Method: K

XXXXXXXXXXXX2325

Seq. #: 0001 Appr. Code: 001445

Amount: \$ 277.36

Tip:

\*\*\*\*\*

\*\*\*\*\*  
CVV2 Log

Code: N

APPROVED

Customer Exp.

THANK YOU

Pay Date 5-5-10  
Vnr CD \_\_\_\_\_  
Doc Total 277.36  
Account Code 2500A30580

PO# **PAID BY MASTERCARD**  
Approved AA

*Employee quarterly meeting  
Airport employees 277*

*MAYOR'S DENIAL 2/20/10*

ITEM (3) 7-6

# Employee Quarterly Update Meeting

4/29/10

1 Adams Jr, Stephen	40 Marchand, Mike
2 Adams, John	41 Marsh, Carol Ann
3 Alberti, Diane	42 McGrail, Mike
4 Allen, Bruce	43 Mignault, Marc
5 Almeida, Dean	44 Moquin, Marc
6 Avampato, Teresa	45 Mueller, Paul
7 Bell, Cheryl	46 Mulhern, Chris
8 Biser, Bill	47 Murphy, Dave
9 Braley, Carl	48 O'Neill, J. Brian
10 Brewer, Mark	49 Partington, Al
11 Brock, Brien	50 Perkins, Ryan
12 Brown, Scott	51 Philibert, Wayne
13 Bryant, Mike	52 Pierce, Greg
14 Bush, David	53 Pinard, Joe
15 Camp, Jon	54 Pitman, Joan
16 Cayer, Ken	55 Ponio, Manny
17 Delani, Christina	56 Reed, Margaret
18 Desrocher, Pete	57 Richard, Don
19 Duhaime, Dennis	58 Robbins, Mike
20 Duhaime, Mac	59 Robinson, Wayne
21 Eisman, Alex	60 Roessner, Nick
22 Fixler, Richard	61 Shea, Lauren
23 Fournier, Andrew	62 Shea, Steve
24 Frost, Melissa	63 Smith, Matthew
25 Gannon, Sy	64 Starkey, Doreen
26 Germain, Roy	65 Tarbox, Kathy
27 Hagopian, John	66 Therrien, Rhonda
28 Holt, Rick	67 Tower, Derek
29 Hood, Jeff	68 Tower, Mark
30 Horton, Toni	69 Turcotte, Pat
31 Hussni, Hassan	70 Veale, Keith
32 Jackman, Dan	71 Venti, Mike
33 Keefe, Darren	72 Waldecker, Kim
34 Kramer, Glenn	73 Westbrook, Toni
35 Labranche, Tony	74 Wihby, Mike
36 Legere, Mike	75 Wike, Bob
37 Lessard, Rick	76 Willis, Dave
38 Malafronte, Tom	77 Young, Lisa
39 Manning, Steve	

ITEM (3)

7-7

FROM TERESA AVAMPATO 8-11-10

1. MAA meeting sheetcake \$17.99

1. Section 4 of the General Business Expenses states in IV Conditions #2 "Expenditures that benefit an individual such as a birthday, birth of a child, retirement or death in the family" are non-allowable.

The Airport disagrees with the above conclusion; this is an allowable expense as stated in Section 4, IV, 2. This satisfies as a light refreshment.

2. Hilton Garden \$715

2. Section Section 4 of the General Business Expenses states in V Citywide Employee Training HRD (Human Resources) is primarily responsible for coordinating citywide training and development meetings, seminars and workshops"...."The meal expenditure, based on the number of expected participants, for such meetings shall not exceed \$5.00 for light refreshments or the City per diem (\$50) meal rate if a meal is provided." This would have to be preauthorized by the Office of the Mayor.

The Airport disagrees with the above conclusion; this was not a citywide training but a strategic meeting where senior staff worked through the future goals of the airport and the current struggles in the aviation industry. This meeting has resulted in a revised mission statement and a set of strategic action steps to help improve the airport.

3. Simons Roast Beef - \$277.36

The Airport considers this as an allowable expense under Section 4, IV, 1. This was a business meeting that extended through a normal meal period (approximately a 3 hour meeting) with a presentation and to get input from personnel in regards to suggestions for cost savings, areas where the facility can be improved, etc.



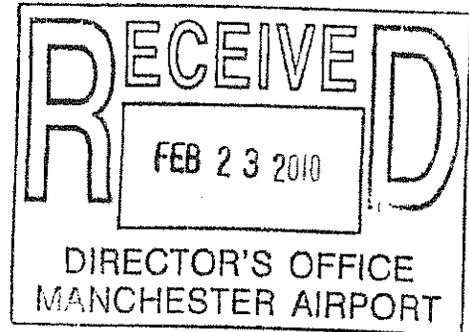
**CITY OF MANCHESTER**

*Theodore L. Gatsas*

*Mayor*

February 20, 2010

Director Mark P. Brewer  
Manchester Boston Regional Airport  
One Airport Road, Suite 300  
Manchester, NH 03103-3995



RE: Business Expense Policy Request / Exemption

Dear Director Brewer,

This correspondence is to inform you that I am denying the attached request. While I understand your logic my approval of this policy would begin a precedence that I am not willing to set.

If you have any questions regarding or wish to discuss this matter further please feel free to contact me directly.

Regards,

Theodore L. Gatsas  
Mayor

cc: Bill Sanders, Director of Finance

Enclosures

TLG/swp



Mark P. Brewer, A.A.E.  
Airport Director

February 11, 2010

Theodore Gatsas  
Mayor  
City of Manchester  
One City Hall Plaza  
Manchester, NH 03101

Re: Business Expense Policy  
Section 4  
General Business Expenses  
Exemption Request

Dear Mayor Gatsas,

The airport respectfully requests your approval of a permanent exemption of the City Business Expense Policy; Section 4, IV. Conditions.

The Airport Enterprise Fund has budgeted and has from time-to-time sent flowers following the illness or death of an employee, family member or VIP. Further, for example, we have provided recognition awards to Airport Authority members whose terms have expired or to others who have played a significant role in support of the airport. We have also provided food (pizza) at my quarterly All Employee Update meetings.

The City Finance Department has reviewed the expenditures, and while understanding the intent, could not find the Mayoral approval for the purchases. City Finance has suggested the Airport receive, for the record, the Mayor-authorized "exception" provided for in the policy on Page 21.

Thank you, in advance, for your consideration of this request

Sincerely,  


Mark P. Brewer, A.A.E.  
Airport Director

Cc: Bill Sanders, City Finance Manager

One Airport Road  
Suite 300  
Manchester, NH  
03103-3395  
Tel: 603-624-6539  
Fax: 603-666-4101  
[www.flymanchester.com](http://www.flymanchester.com)

**Beloin, Guy**

---

**From:** Buckley, Kevin  
**Sent:** Thursday, August 12, 2010 7:29 AM  
**To:** Beloin, Guy  
**Cc:** 'tavampato@flymanchester.com'  
**Subject:** RE: P-Card Transaction back up  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

In my opinion none of these items appear reasonable or allowable under the business expense policy.

---

**From:** Beloin, Guy  
**Sent:** Wednesday, August 11, 2010 1:51 PM  
**To:** Buckley, Kevin  
**Subject:** FW: P-Card Transaction back up

Kevin,

Attached is a letter from Teresa, copies of questionable backup for meals and Section 4 of the city's business expense policy. We have a different view of whether or not this should be paid by the city. Can you let me know your thoughts?

Guy

---

**From:** Teresa Avampato [mailto:tavampato@flymanchester.com]  
**Sent:** Wednesday, August 11, 2010 11:10 AM  
**To:** Beloin, Guy  
**Subject:** P-Card Transaction back up

Per your request, please see attached.

Teresa M Avampato, CPA  
Airport Chief Financial Officer  
Manchester- Boston- Regional Airport  
One Airport Road, Suite 300  
Manchester, NH 03103

603-624-6539  
tavampato@flymanchester.com

## SECTION 4 GENERAL BUSINESS EXPENSES

### MEALS AND REFRESHMENTS

#### I. Purpose

This policy provides general guidance for the use of City funds to purchase meals or refreshments for meetings, employee training, employee recognition meetings and/or other gatherings that provide a public benefit. Nothing contained herein shall prohibit the Mayor or his designee from modifying or approving exceptions to this policy to meet the needs of a unique situation; provided however, that no such modification will result in a detriment to the City

#### II. Scope

Meals or refreshments shall include food products purchased at a restaurant, catered at a City facility or at another location, or directly purchased and prepared by City employees for a meeting or function.

#### III. Policy

The purchase of meals or refreshments is appropriate only if it can be demonstrated to provide a public benefit. Meals and refreshments are not provided as a perquisite to City employees, board members, commission members or ~~employees~~.

VOLUNTEERS

#### IV. Conditions

Meals and refreshments should only be purchased with City funds where a public benefit can be demonstrated. The following is a list of examples where providing meals or refreshments would be appropriate. This list is not inclusive and is intended only to provide examples.

1. Board, commission or other business meetings that extend through a normal meal period.
2. Light refreshments at meetings of volunteer boards, commissions or groups that directly benefit the City. Light refreshments purchased shall not exceed a cost of \$2.00 per person. The \$2.00 per person will be based on the estimated number of people that can be reasonably expected to attend.
3. Reasonable and customary meal expenses relating to volunteer efforts on the City's behalf providing that the event and related expenditure are preauthorized by the originating Department Director.

The Human Resources Department (HRD) is the agency responsible for coordinating and promoting all training, and employee recognition and rewards programs in the City. HRD is responsible for authorizing expenditures of these programs. The following are examples of non-allowable expenditures. Exceptions to these non-allowable expenditures may be obtained if pre-approved by the Office of the Mayor or if a part of a budgeted program such as HRD employee recognition and rewards program

1. Refreshments served at meetings lasting less than 2 ½ hours.
2. Expenditures that benefit an individual such as a birthday, birth of a child, retirement or death in the family.
3. Refreshments served at departmental staff meetings.
4. Miscellaneous expenditures for items such as awards, flowers, greeting cards, gift certificates, tickets to events, decorations, kitchen supplies and personal items unless part of a budgeted HRD program.

The Finance Department is responsible for auditing miscellaneous expenditures prior to payment for compliance with this policy.

For any expenditure rejected by the Finance Department for non-compliance with this policy that is disputed by a department, a memo of disputed charges shall be sent to the Office of the Mayor by the department seeking payment.

## **V. Citywide Employee Training**

HRD is primarily responsible for coordinating citywide training and development meetings, seminars and workshops. HRD shall be responsible for authorizing allowable expenditures as outlined in this policy.

- Provision shall be made for employees to have a lunch break when attending all day training sessions.
- It is the employees' responsibility to provide their own lunch.
- If it has been determined that it is beneficial to the City to have lunch provided, such as having a speaker during the lunch hour or a working session during lunch, it shall be considered an allowable expense providing that the event and related expenditure are preauthorized by the Office of the Mayor.
- The Director of Human Resources shall follow proper business practices and any appropriate procurement ordinances in selecting and retaining vendors for such events.
- The per meal expenditure, based on the number of expected participants, for such meetings shall not exceed \$5.00 for light refreshments or the City per diem meal rate if a meal is provided.

- HRD shall notify the Mayor on a monthly basis, via the training calendar and other written communication of employee events and training functions sponsored by HRD and City departments.

## VI. Documentation

In order for miscellaneous expenditures to be processed in a timely and efficient manner the following documentation will be required:

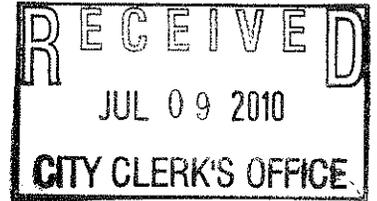
- The original invoice or receipt.
- Explanation of the business purpose of the expenditure.
- The attendance records and agenda of the meeting.
- Calculation of the per person cost.
- If required, evidence that the expenditure was pre-authorized.

Department Directors shall be responsible for determining the appropriateness of purchases or reimbursement for meals and refreshments in accordance with this policy.



## CITY OF MANCHESTER

*Theodore L. Gatsas*  
Mayor



July 9, 2010

The Hon. Mike Lopez  
Chair, Administration and Information Systems  
c/o City Clerk  
One City Hall Plaza  
Manchester, NH 03101

**RE: Mayor's Senior Luncheon**

Dear Chairman Lopez,

I am respectfully requesting that the Committee on Administration and Information Systems conduct a review of the Mayor's Senior Luncheon and propose any future changes you deem appropriate.

Going forward the budget for the Mayor's Senior Luncheon, as set by the Board of Mayor and Aldermen in FY 2011, is \$12,000. This current level of funding, along with the current ticket price of \$3.00 will not sustain the costs of a winter and spring senior luncheon moving forward.

Chairman Lopez, I understand that the Mayor's Senior Luncheon is a beloved tradition instituted by Mayor Bob Shaw and don't advocate for its elimination. However, I do believe that we have a duty to all of the taxpayers of the City of Manchester to act as good stewards. For your information, and that of your committee, I have attached a two year financial history of the Luncheon.

I would also suggest that we rename this annual luncheon to the City of Manchester Senior Luncheon going forward.

If my office can be of any assistance in this matter please do not hesitate to contact me. I look forward to your recommendations.

Regards,

Theodore L. Gatsas  
Mayor

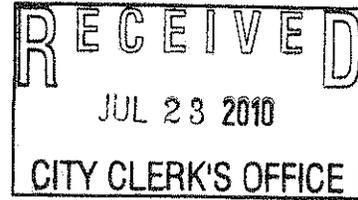
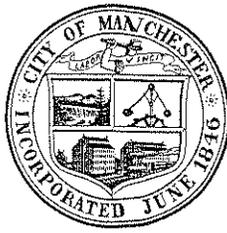
Enclosures

cc: Barbara Vigneault, Director; Senior Services  
Bill Sanders, Director; Finance

Expenses Senior Luncheon by Category						
	<u>Banquet Charges</u>	<u>DJ Charges</u>	<u>A/V Charges</u>	<u>Parking</u>	<u>Supplies*</u>	<u>Total</u>
<b>Fiscal Year 2010</b>						
June	\$8,787.30	\$500.00	\$0.00	\$0.00	\$0.00	\$9,287.30
December	\$10,653.99	\$500.00	\$36.00	\$280.00	\$461.11	\$11,931.10
<b>Fiscal Year 2009</b>						
June	\$10,252.66	\$500.00	\$36.00	\$423.00	\$159.95	\$11,371.61
December	\$11,147.44	\$500.00	\$36.00	\$582.00	\$319.36	\$12,584.80
<b>Fiscal Year 2008</b>						
June	\$8,967.06	\$500.00	\$36.00	\$0.00	\$363.19	\$9,866.25
December	\$8,593.63	\$500.00	\$35.40	\$456.00	\$101.49	\$9,686.52
*includes centerpieces and other extra sdecorative supplies						

From the Finance Office

Senior Luncheon					
Fiscal Year	Contributions	Expenses	Account Balance	Budget	Over/Under Budget
2010	5,417.00	21,182.40	(15,765.40)	12,000.00	(3,765.40)
2009	4,760.00	23,956.41	(19,196.41)	12,000.00	(7,196.41)
2008	4,561.00	19,552.77	(14,991.77)	12,000.00	(2,991.77)
2007	4,878.00	18,347.16	(13,469.16)	12,000.00	(1,469.16)
2006	5,932.00	17,988.50	(12,056.50)	12,000.00	(56.50)
2005	5,970.00	18,200.37	(12,230.37)	13,000.00	769.63



**CITY OF MANCHESTER**  
*Board of Aldermen*

MEMORANDUM

TO: Committee on Administration/Information Systems  
Aldermen Lopez, Corriveau, DeVries, O'Neil and Osborne

FROM: Alderman Patrick Arnold 

DATE: July 23, 2010

RE: City Tax Exemptions for Individuals

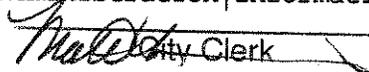
The City provides various tax exemptions to individual resident property owners pursuant to RSA 72. These exemptions allow certain amounts of money to be deducted from a property owner's assessed valuation of real property. In Manchester, the authority to modify such exemptions, including the amount of such exemptions and the manner of their determination, is vested in the Board of Mayor and Aldermen.

Partial modification of these exemptions could provide much-needed relief to our community's senior citizens. Modification could ease the general tax burden on average-income earners in Manchester as well.

Because I believe this issue deserves a healthy debate, I respectfully request that the Committee initiate discussions about reforming the present structure of individual tax exemptions to investigate how this mechanism can better serve our city residents and taxpayers.

Thank you in advance for your consideration.

In board of Mayor and Aldermen  
Date: 8/3/10 On Motion of Ald. Arnold  
Second by Ald. DeVries  
Voted to refer to the Committee on  
Administration|Information Systems.

  
City Clerk

*Matthew Normand*  
*City Clerk*



*Kathleen Gardner*  
*Deputy City Clerk*

**CITY OF MANCHESTER**  
*Office of the City Clerk*

MEMORANDUM

TO: Committee on Administration/Information Systems  
Aldermen Lopez, Corriveau, DeVries, O'Neil, Osborne

FROM: Matthew Normand   
City Clerk

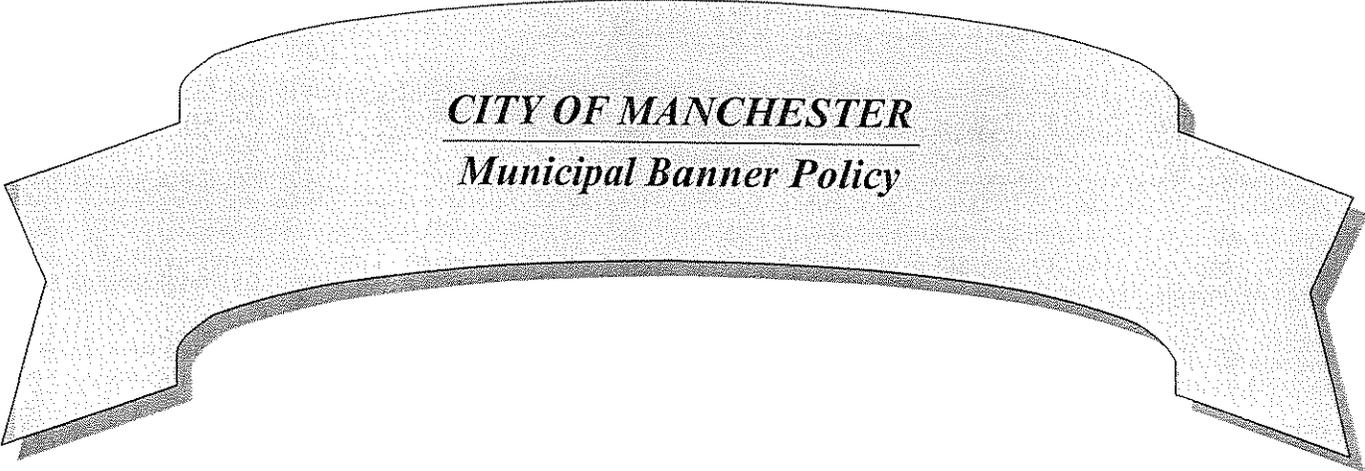
DATE: August 26, 2010

RE: Municipal Banner Policy

As requested, I have attached a proposed Municipal Banner policy for the Committee's consideration. In drafting the policy, I researched over 30 communities across the country with a population base of 100,000 to 200,000 or more. Policies and fees varied greatly from one community to another. The attached represents a collection of those policies that is presented for your consideration. The Mayor and the Solicitor have reviewed this draft.

I will be available for your questions or concerns at the Committee's next meeting on August 30, 2010.

10-1



***CITY OF MANCHESTER***  
***Municipal Banner Policy***

**DRAFT**

**CITY OF MANCHESTER  
MUNICIPAL BANNER POLICY  
GUIDELINES**

<b>TABLE OF CONTENTS</b>	<b>PAGE</b>
I. PURPOSE	3
II. DEFINITIONS	3
III. BANNER POLICY	4
IV. GROUP RESPONSIBILITIES	7

## MUNICIPAL BANNER PROGRAM

### **I. PURPOSE**

- A. To complement the aesthetic appearance and/or improvement of the Central Business District and eligible neighborhoods.
- B. To introduce color and a sense of excitement.
- C. To assist in the promotion of cultural, recreational, and civic events sponsored by various groups throughout the city united in mission to improve the quality of life and offerings for Manchester residents and visitors.
- D. To support and promote special events, bringing increased attention and awareness to Manchester and its businesses and to create the image of an economically vital, active and flourishing City.
- E. To create an effective administrative process to manage a high quality municipal banner program.

### **II. DEFINITIONS**

- *Sponsoring Organization* – Organizations applying for banner placement under the Municipal Banner Program promoting activities reflecting general community interest.
- *Cross-Street Banner* – Banners used in the City which are placed from pole to pole across public rights-of-way.
- *Municipal Banner Program* - All aspects of establishing and maintaining the ongoing use of City banner system components by various organizations and their sponsors. Approved banner locations within the program are (1) Elm Street, adjacent to Veteran's Park, (2) Hanover Street, at the corner of Chestnut Street, and (3) Kelley Street, at the corner of Rimmon Street.
- *Committee on Administration/Information Systems* – Committee with responsibility to review and approve or deny all banner requests.

### III. BANNER POLICY

- A. **ELIGIBILITY:** Potential banner program participants should represent or promote local non-profit or cultural civic events or activities of particular interest or benefit to the Manchester community. Banners are not to be used for commercial advertising or to advertise or promote political candidates, parties, or issues. However, a professionally placed logo of a business or corporation sponsoring the event may be included on a banner.
- B. **BANNER REVIEW:** Banners will be reviewed and considered for approval by the Committee on Administration/Information Systems. All banners must be professionally manufactured by a bonded printer to ensure only quality, well-made banners will be displayed within the city of Manchester.
- C. **INFORMATION CONTENT:** All banner designs should be artistic in nature, graphically or symbolically representing the subject/purpose of the community event or organization. Banners can include text for dates, activities, logos, and/or title of event.

Banners must:

1. Not display any legend or symbol which may be construed to advertise, promote the sale of, or publicize any merchandise or commodity, or to be political in nature.
2. A banner shall not have displayed thereon which portrays a traffic control device, or which attempts to direct the movement of traffic
3. Use bright, contrasting colors on both sides (front and back)
4. Be simple in nature, incorporating large simplistic and bold elements.
5. Incorporate imagery and text that are appropriately scaled for long-range visibility
6. A banner may not contain more than 20% of space used to highlight the sponsor of the banner.
7. A banner may not display any inappropriate symbols or messages or in any way suggest partisan political statements or endorsements.
8. Inappropriate material including but not limited to: offensive language, hate speak, pornographic images, and/or content considered demeaning and derisive will not be accepted. Decisions on the appropriateness of material will be governed by the City.
9. Conform to standards of construction as outlined within Section D.

D. BANNER SPECIFICATIONS: Cross-street banners shall comply with the following specifications:

1. All banners in the Municipal Banner System shall be printed on both sides of the banner fabric.
2. Cross-street Banners shall be made of marine acrylic canvas or heavy reinforced vinyl resistant to ultraviolet rays, mold, and mildew. Each banner shall have two double stitched reinforced hems. Cross-street banners must have wind slits. Cross-street banner size will depend on the locations selected for placement. Banners intended for Elm Street shall be no larger than 4' tall by 45' wide. Banners intended for the Hanover Street or Kelley Street locations shall be no larger than 4' tall by 20' wide.

E. APPLICATION PROCESS: The sponsoring organization shall make a written application and present it to the Office of the City Clerk six (6) weeks prior to planned installation date. The City Clerk will present each application received to the Committee on Administration/Information Systems at their next regularly scheduled meeting. The Committee shall review and either grant or deny the applications. The City Clerk will notify the applicant as soon as possible with the Committee's decision.

Applications shall include:

1. Name of event
2. Name of sponsoring organization
3. Date of event
4. Time period requested for banner exposure
5. Banner design
6. Number of streetlight banners
7. Number of cross-street banners (*2 maximum*)
8. Location of banners
9. Application fee
10. Certificate of insurance

The City shall honor recognized events which are held annually by reserving banner space for the following events. These events include:

*(Committee could select specific annual events that it wishes to reserve dates for.)*

Other special events shall be approved on a first-come first-served basis not to exceed five (5) total events per year including the above events. There shall be no more than two special event cross-street banners placed at any given time.

F. APPLICATION FEES: The application fee for banners by location shall be as follows:

Elm Street:	\$250.00
Hanover Street:	\$100.00
Kelley Street:	\$100.00

Application fees include associated installation and removal fees.

- G. APPEALS: The Committee on Administration/Information Systems is authorized by the Board of Mayor and Aldermen to approve the design and placement of cross-street banners. If a banner design or a placement request is denied by the Committee, the sponsoring organization may appeal this decision directly to the Board of Mayor and Aldermen by asking to be placed on the next available agenda of the Board.
- H. BANNER SPONSOR PRIORITY: The Office of the City Clerk will maintain a Master Banner Calendar at all times. The month of January will be the official Banner Scheduling period. All banner hanging requests made within the month will follow the Banner Prioritization Schedule. Banner requests can be made after the month of January, however, they will be processed on a first come first serve basis.

#### Banner Prioritization Schedule

1. Banners produced by the City of Manchester or its agencies that promote the City of Manchester or its events receive first priority.
  2. Banners promoting special events or activities held within the city of Manchester and sponsored by a community non-profit organization located within the city limits receive second priority.
  3. Banners promoting special events or activities held within the city of Manchester open to the public receive third priority.
- I. BANNER PLACEMENT: The Manchester Public Works Department shall be responsible for placement and retrieval of approved cross-street banners.
  - J. LENGTH OF EXPOSURE: Banners may be hung for a period not to exceed two weeks.
  - K. STORAGE / LIABILITY: All banners shall be the responsibility of the sponsoring organization. The City will not be responsible for storing banners.
  - L. BANNER CONDITION: The Committee on Administration/Information Systems has the authority to refuse the placement of cross-street banners which, because of previous use, are in poor condition. In addition, the Public Works Department has the authority to remove banners which have become, frayed, ripped or otherwise unsightly.

M. **INSURANCE REQUIREMENTS:** Sponsoring organizations wishing to place cross-street banners must carry a \$500,000 General Liability insurance policy. Sponsoring organizations shall provide the City with said proof of insurance listing the City of Manchester as “**Additional Insured**”. Said insurance certificate shall be provided to the City Clerk’s Office and be approved before any banner placement activities may take place.

#### **IV. GROUP RESPONSIBILITIES**

##### **A. CITY OF MANCHESTER:**

1. Provides use of banner poles.
2. Authorizes the Office of the City Clerk to receive and process applications.
3. Authorizes the Public Department to install and retrieve cross-street banners.

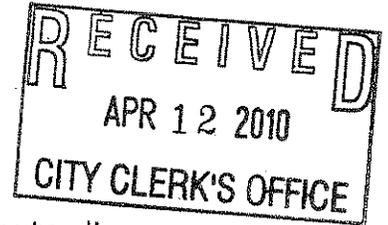
##### **B. SPONSORING ORGANIZATION:**

1. Follows the banner program criteria established in the Municipal Banner System Policy.
2. Creates their own respective original banner designs.
3. Bears cost of banner manufacture and storage.
4. Provides the City with an Insurance Certificate listing the City of Manchester as “additional insured” in the types and amounts required.

##### **C. COMMITTEE ON ADMINISTRATION/INFORMATION SYSTEMS:**

1. Reviews and approves all applications for design and placement of cross-street banners.

4/20/10 Tabled



Mayor Gatsas,

My team and I would like to thank you for the opportunity to discuss SubItUp.com and its impact on the Manchester Police Department.

We would like to give a twenty to thirty minute presentation to the Committee on Administration at their earliest convenience. The goal of this presentation will be to outline SubItUp's functionality, address any questions and discuss scalability, integration and any other technical concerns.

We thank you in advance for your consideration.

A handwritten signature in black ink, appearing to read "R. Cote".

Robert Cote  
President, Brattle Consulting Group, Inc.



Brattle Consulting Group, Inc. - 1800 Elm Street, Manchester, NH 03104 - 817 401 8733

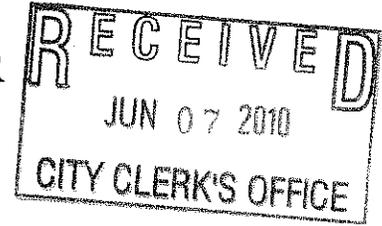
*Thomas R. Clark.*  
*City Solicitor*



*Thomas I. Arnold, III*  
*Deputy City Solicitor*

*Peter R. Chiesa*  
*Gregory T. Muller*  
*John G. Blanchard*  
*Jeremy A. Harmon*

**CITY OF MANCHESTER**  
*Office of the City Solicitor*



June 7, 2010

Matthew Normand, City Clerk  
City of Manchester  
One City Hall Plaza  
Manchester, NH 03101

**RE: Consent and Agreement**

Dear Matt:

Attached please find a revised Consent and Agreement to replace the one currently tabled in the Committee on Administration.

Very truly yours,

Thomas R. Clark  
City Solicitor

TRC/hr  
Attachment

## CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT, dated as of [\_\_\_\_], 2010 (this "Consent"), is executed by THE CITY OF MANCHESTER (the "Contracting Party"), and GRANITE RIDGE ENERGY, LLC, a Delaware limited liability company (formerly known as AES LONDONDERRY, LLC) (the "Borrower"), for the benefit of UNION BANK, N.A., as collateral agent (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent") for the Secured Parties (as defined below). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as defined below).

### W I T N E S S E T H:

WHEREAS, the Borrower owns a natural gas-fired combined cycle electric generation facility in Londonderry, New Hampshire with a seasonally rated generation capacity of approximately 752 MW (the "Project");

WHEREAS, Contracting Party and the Borrower have entered into that certain Effluent Supply Agreement, dated as of February 3, 2000 (as amended, restated, supplemented or modified from time to time in accordance with the terms hereof and thereof, the "Effluent Agreement");

WHEREAS, in accordance with Section 3.1(d) of the Effluent Agreement, the Contracting Party has granted to Borrower certain easements and licenses for the purpose of the construction, operation and maintenance of, and access to the Pipeline (as defined in the Effluent Agreement), including, without limitation, those easements and licenses described on Exhibit A attached hereto (collectively, the "Real Property Entitlements", and together with the Effluent Agreement, the "Contract").

WHEREAS, the Borrower, the lenders party thereto from time to time (the "Lenders"), Union Bank, N.A., as administrative agent (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and as Collateral Agent for the Lenders and as letter of credit issuer, and WestLB AG, New York Branch and Union Bank, N.A., as joint lead arrangers and joint bookrunners, have entered into or will enter into a Credit Agreement, dated on or about the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), pursuant to which the Lenders and the issuers thereunder will make loans and other extensions of credit to the Borrower on the terms and subject to the conditions set forth therein; and

WHEREAS, pursuant to a Pledge and Security Agreement, dated on or about the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), between the Borrower and the Collateral Agent, for the benefit of the Secured Parties (as defined therein) (collectively, the "Secured Parties"), the Borrower has collaterally assigned all of its right, title and interest in, to and under, and granted a first priority security interest in, the Contract and all of its rights to receive payment under or with respect to the Contract and all payments due to the Borrower under or with respect to the Contract, whether as contractual obligations, damages, indemnity payments or otherwise, to the Collateral Agent for the benefit of the Secured Parties.

NOW THEREFORE, Contracting Party hereby agrees as follows:

SECTION 1. Acknowledgment; Consent to Assignment.

Contracting Party consents in all respects to the pledge and assignment to the Collateral Agent, pursuant to the Security Agreement, of all of the Borrower's right, title and interest in, to and under the Contract, including, without limitation, all payments due to the Borrower under or with respect to the Contract, whether as contractual obligations, damages, indemnity payments or otherwise (collectively, the "Assigned Interests"). Contracting Party agrees with the Collateral Agent, for the benefit of the Secured Parties, as follows:

The Collateral Agent or its designee shall be entitled to exercise all rights and to cure any defaults of the Borrower under the Contract. Upon receipt of notice from the Collateral Agent, Contracting Party agrees to accept such exercise and cure by the Collateral Agent or its designee and to render to the Secured Parties or the Collateral Agent all performance due by Contracting Party to the Borrower under the Contract and this Consent and Agreement.

SECTION 2. Representations and Warranties

Contracting Party and Collateral Agent, as applicable, make the following representations and warranties (such representations and warranties being made as of the date of this Consent and Agreement):

(a) Contracting Party has all requisite power and authority, constitutional (both state and federal), under the laws and regulations of the City of Manchester, and otherwise, to enter into and to perform its obligations hereunder and under the Contract, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) The execution, delivery and performance by the Contracting Party of this Consent and the Contract have been duly authorized by all necessary municipal or other action on the part of the Contracting Party.

(c) Collateral Agent has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(d) The execution, delivery and performance by the Collateral Agent of this Consent have been duly authorized by all necessary action on the part of the Collateral Agent.

SECTION 3. Assignment, Termination, Amendment and Governing Law

This Consent and Agreement shall be binding upon and benefit the successors and assigns of Contracting Party, the Borrower, the Collateral Agent, for the benefit of the Secured Parties, and their respective successors, transferees and assigns (including without limitation, any lender, lessor, collateral agent and/or other entity that purchases, refinances, replaces or supplements all or any portion of any credit arrangements, indebtedness or other obligations made available or outstanding under any Loan Document (as defined in the Credit Agreement)). Provided, notwithstanding the foregoing, that any further assignment by the Collateral Agent of

this Consent shall require the written consent of the Contracting Party, which shall not be unreasonably withheld.

This Consent and Agreement shall be governed by the laws of the State of New Hampshire.

SECTION 4. Counterparts

This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement. Delivery of an executed counterpart of a signature page to this Consent and Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Consent and Agreement.

SECTION 5. Severability

In case any provision of this Consent and Agreement, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 6. Entire Agreement

This Consent and Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect of the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and Agreement and any such agreement, document or instrument (including, without limitation, the Contract), the terms, conditions and provisions of this Consent and Agreement shall prevail.

SECTION 7. Headings

The headings of the several sections and subsections of this Consent and Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent and Agreement.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the day and year first above written.

CITY OF MANCHESTER

By: \_\_\_\_\_  
Name:  
Title:

UNION BANK, N.A., as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

GRANITE RIDGE ENERGY, LLC

By: \_\_\_\_\_  
Name:  
Title:

Real Property Entitlements

1. That certain Cooling Water Easement, granted to AES Londonderry, L.L.C. by the City of Manchester, dated July 7, 2000 and recorded in Book 6265, Page 1889.
2. That certain License to Install Pipeline, granted to AES Londonderry, L.L.C. by the City of Manchester, dated July 11, 2000 and recorded in Book 6265, Page 1895, as amended by that certain Amendment to License to Install Pipeline, dated April 24, 2003 and recorded in Book 6912, Page 1505.
3. That certain Easement and Right-of-Way Agreement (Multiple Lines) granted to AES Londonderry, L.L.C. by the City of Manchester, dated January 31, 2000 and recorded in Book 3466, Page 2466.

## EFFLUENT SUPPLY AGREEMENT

THIS AGREEMENT is made and entered into as of the 31 day of Feb, 2000, by and between AES Londonderry, LLC ("AES") and the City of Manchester (the "City"). Both AES and the City are hereinafter sometimes referred to as a "Party" and, collectively as the "Parties".

WHEREAS, AES is developing a power generation facility (the "Project") which will provide substantial benefits for the citizens of the State of New Hampshire;

WHEREAS, the City owns and operates a publicly-owned wastewater treatment facility (the "POTW") for the handling, treatment and disposal of wastewater which meets and is anticipated to continue to meet all applicable governmental requirements ("Effluent"); and

WHEREAS, the City is willing to provide and AES is willing to accept, in each case pursuant to the terms of this Agreement, Effluent;

NOW THEREFORE, the Parties hereto, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, do hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

"Bankruptcy Event" means, in respect of any Person, (a) such Person shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or substantially all of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts become due, (iii) make a general assignment of the benefit of its creditors, (iv) commence a voluntary case under the Bankruptcy Code or any similar or corresponding insolvency law, (v) file a petition seeking to take advantage of any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts, (vi) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Person in an involuntary case under the Bankruptcy Code or any similar or corresponding insolvency law, or (vii) take any other action for the purpose of effecting any of the foregoing; or (b) a proceeding or case shall be commenced without the application or consent of such Person in any court of competent jurisdiction, seeking (i) its liquidation, reorganization, dissolution, winding-up, or the composition or readjustment of debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 90 or more consecutive days, or any order for relief against such Person shall be entered in an involuntary case under the Bankruptcy Code or any similar or corresponding insolvency law.

"Capital Improvements" means any new equipment or facilities necessary to ensure that the City is capable of delivering Effluent to the Point of Delivery, through a pipeline to be further described below (the "Pipeline") in the quantities specified in this Agreement.

"Effluent" means treated water provided from the City's Facility which meets all applicable Governmental Approvals and is delivered to the Pumping Station.

"Financing Parties" shall mean those Persons (other than AES) party to the loan contracts, promissory notes, documents, guarantee contracts, mortgages, pledges, subordination contracts, assignment contracts, subscription contracts, capital contribution contracts and other documents related to the acquisition of debt (whether senior or subordinate) and capital to carry out the Project, including any modification, extension, renewal, refinancing or replacement of the same.

"Force Majeure" means an event beyond the reasonable control, and not attributable to the negligence or willful misconduct, of the Party affected, including but not limited to the following: flood; earthquake; storm; lightning; fire; explosion; war; riot; civil disturbance; strike; sabotage; or electrical outage; provided, however, that Force Majeure shall not include any equipment failure due to neglected maintenance or repair.

"GDPIPD" means the Gross Domestic Price Implicit Price Deflator for a calendar year as published in the United States Department of Commerce, Bureau of Analysis publication entitled "Survey of Current Business".

"Governmental Approval" means any law, rule or regulation of any Governmental Authority and any authorization, consent, approval, license, franchise, lease, ruling, permit (including but not limited to any National Pollutant Discharge Elimination System (NPDES) permit), tariff rate, certification, exemption, filing or registration by or with any Governmental Authority (including, without limitation, zoning variances, special exceptions and non-conforming uses) relating to the construction, ownership, operation or maintenance of the Project, the Pipeline or the City's POTW (including those relating to Effluent), as the case may be.

"Governmental Authority" means any national, federal, state, provincial, departmental or municipal government or any political subdivision thereof, and any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any other governmental entity with authority over any aspect of the construction or operation of the Project, the Pipeline or the Authority's Facility, but excluding in each case the Authority.

"Maximum Continuous Consumption Rate" means 3,750 gallons per minute.

"Non-Conforming Effluent" means treated wastewater from the City's POTW which would otherwise be Effluent but for its failure to meet all requirements of applicable Governmental Approvals.

"Pipeline" means the approximately 3 mile pipeline, of 16" pipe, and ancillary facilities required to connect the Project with POTW for the purpose of delivery of Effluent in accordance with this Agreement. The Pipeline is based upon a conceptual design prepared by Hoyle, Tanner & Associates (HTA) in August 1998.

"Point of Delivery" means the point where the Pipeline, including any Capital Improvements thereto, is physically connected to the Pumping Facility, which location shall be at or inside the border of the City's POTW property and which shall be as otherwise agreed to by the Parties.

"Project Financial Closing" means the date AES obtains an initial drawdown on the financing for the construction of the Project. AES agrees to provide written notice to the City within thirty (30) days after AES obtains such initial drawdown.

"Pumping Facility" means a Pumping Station with related facilities capable of the Maximum Continuous Consumption Rate to be located within the POTW for the purpose of delivery of Effluent in accordance with this Agreement. The Pumping Station is based upon a conceptual design being prepared by Metcalf & Eddy (M&E).

## ARTICLE II

### SUPPLY OF EFFLUENT

SECTION 2.1 Effluent Supply. (a) Subsequent to completion of the Pipeline and promptly following delivery of a written notice from AES to the City specifying that delivery of effluent is to commence in accordance with the terms of this Agreement (the "Commencement Notice") and throughout the Term of this Agreement, the City shall make available to AES, on an exclusive basis, the Effluent being discharged from the POTW in amounts not to exceed:

- (i) 5,400,000 gallons per day; or
- (ii) 1,700,000,000 gallons per calendar year.

(b) Upon commencement of deliveries of Effluent, the City shall make available a daily quantity of Effluent which is all Effluent being discharged by the POTW up to the maximum amounts in 2.1(a). If the City is unable on any day to make available the maximum amounts specified in 2.1(a) such Effluent, whether due to a shortage of Effluent, due to the presence of Non-Conforming Effluent or otherwise, the City shall immediately upon obtaining knowledge thereof notify AES orally (with prompt written confirmation thereof or in writing of such inability to provide the maximum daily quantity of Effluent (a "Shortfall Notice"). Each Shortfall Notice shall specify (i) that a shortfall in the delivery of Effluent has occurred or will occur, the amount of such shortfall, the reasons for such shortfall and the anticipated length of such shortfall, including in each case all relevant dates, and (ii) the steps the City is taking to remedy the shortfall.

(c) Actual purchases of Effluent by AES may be less than the maximum allowed, and actual usage will, at the sole discretion of AES, vary according to the electric dispatch of the

Project, weather conditions, electrical outages (forced or scheduled), electric market conditions and ISO-NE safe utility operating practices. AES shall not be obligated to purchase any minimum amount of Effluent under this Agreement and shall be entitled to seek and obtain water from other available sources. Title and risk of loss of Effluent shall pass to AES upon AES' receipt of such Effluent at the Point of Delivery. Until such time as title to Effluent passes to AES, the City shall bear risk of loss of Effluent and shall retain liability for any and all claims, costs, demands, damages, expenses, liabilities and losses relating to Effluent or other discharges from the City's POTW.

(d) To the extent that the City is discharging quantities of Effluent in excess of the amounts specified in Section 2.1(a) above ("Excess Effluent"), AES shall have the right of first refusal to purchase Excess Effluent in accordance with the terms and conditions of this Agreement. If the purchase of Excess Effluent by AES requires additional infrastructure modification or improvements in order to deliver the Excess Effluent to the Project, AES will be solely responsible for the costs of said modifications or improvements.

(e) Solely for informational purposes, AES shall from time to time notify the City of its anticipated Effluent needs and the Parties shall work together in good faith to coordinate the timing of delivery of Effluent in accordance with such notice and the other terms of this Agreement. Subject to the requirements of applicable Governmental Approval and prudent practice, the City shall use its best efforts to coordinate any transmission of Effluent discharge so as to maximize the quantity of Effluent made available to AES with due regard to the timing of the Project's Effluent requirements.

**SECTION 2.2 Quality of Effluent.** The City shall maintain the quality of the Effluent in compliance with Governmental Approvals. Any treatment in addition to that required by Governmental Approvals shall be negotiated and agreed to by AES and the City; provided, however, any such additional treatment shall be at the sole cost of AES. The City shall be responsible for enforcing all ordinances related to pretreatment of waste streams entering the POTW system. The City shall notify AES of any proposed and final changes in its state and federal discharge permits.

**SECTION 2.3 Compensation.** (a) AES will pay the City quarterly for all Effluent delivered, and metered, at the Point of Delivery during the prior three (3) months. The base rate for Effluent supplied shall be twenty cents (\$.20) per one thousand (1,000) gallons. The base rate, and any escalation of same, includes all applicable taxes.

(b) The amount specified in Section 2.2(a) above is stated as of January 1, 1999. During the Term, such rates shall be subject to annual escalation in accordance with GDPIPD (with 1999 being the base year), or if the parties so elect, such other mutually agreeable escalation index.

**SECTION 2.4 Service Interruptions.** The City will operate the POTW in a manner that minimizes interruptions in the flow of Effluent to the Project. The Parties will jointly schedule service outages for the POTW, if necessary, to correspond with planned outages of the Project. Upon the event of a temporary unscheduled interruption or curtailment in Effluent delivery, the

City shall work to minimize the period of time of the interruption or curtailment. The City shall provide a Shortfall Notice in accordance with Section 2.1(b) upon the interruption or curtailment of Effluent under this Section. If the Pumping Facility is the cause of the temporary unscheduled interruption or curtailment and the City fails to restore full service within 12 hours from the commencement of the interruption or curtailment the following provisions shall apply:

(a) AES has the right, but not the obligation, to contract with such contractors as reasonably approved by the City from time to time to step in and remedy the interruption or curtailment, with the good faith cooperation and under the direction of a City engineer or other duly appointed official of the City.

(b) All reasonable costs associated with the taking of actions applicable to the Pumping Station under Section 2.4(a) will be borne by AES.

SECTION 2.5 Non-Conforming Effluent. (a) If the City becomes aware that it has provided or will provide Non-Conforming Effluent, the City shall immediately notify AES orally (with prompt written confirmation thereof) or in writing (a "Non-Conforming Notice"). Each Non-Conforming Notice shall specify (i) when deliveries of Non-Conforming Effluent began or will begin, (ii) the amount of Non-Conforming Effluent delivered or to be delivered, (iii) the cause of such effluent being Non-Conforming Effluent, and (iv) the steps the City is taking to remedy the situation.

(b) AES shall have the right to reject all Non-Conforming Effluent. The City and AES will work together to develop a procedure for returning Non-Conforming Effluent to the City's wastewater treatment system.

(c) If AES elects to accept any Non-Conforming Effluent, the Parties shall meet and agree to the price which shall apply to such Non-Conforming Effluent. In negotiating a lower price for any Non-Conforming Effluent, the parties shall take into consideration the additional costs incurred by AES to utilize such Non-Conforming Effluent, including without limitation, the costs of increased treatment of the Non-Conforming Effluent.

### ARTICLE III

#### PIPELINE, PUMPING STATION AND REAL ESTATE RIGHTS

SECTION 3.1 Concerning the Pipeline and Pumping Station. (a) AES shall be solely responsible, at its cost and expense, for constructing and installing the Pipeline and Pumping Station. As soon as is reasonably practical following the execution of this Agreement and from time to time thereafter as is reasonably necessary, the Parties shall meet to discuss the final design and siting of the Pipeline and Pumping Station. The Parties agree to cooperate in good faith to effect the purposes of this Article. The Pumping Station will be constructed, maintained and operated in compliance with all federal, state and local laws, ordinances and regulations.

(b) AES shall be solely responsible, at its cost and expense, for final design of the Pipeline and Pumping Station, the selection of the contractors to construct the Pipeline and Pumping Station and the siting of the Pipeline. The City shall have the right to review and comment on the design of the Pipeline and Pumping Station, the selection of the contractors and the siting of the Pipeline and AES shall incorporate those of the City's comment that it finds reasonable and in accordance with prudent practice and applicable Governmental Approvals. AES shall provide a performance bond to cover the costs of cleanup, demolition and/or restoration of the City's property and any right-of-way used by AES in the event that the project is terminated prior to completion of construction. All contractors, engineers and other parties working at the POTW shall provide such insurance and bonds as required by the City's rules and regulations.

(c) AES shall reimburse the City for its reasonable costs and expenses (including reasonable costs and expense of legal counsel and technical advisors approved by AES in writing) in connection with the design, construction and siting of the Pipeline and Pumping Station, including obtaining the necessary real property rights.

(d) AES and the City shall cooperate in good faith to obtain the necessary real property rights for the construction, operation and maintenance of, and access to the Pipeline. From time to time AES and the City shall meet and discuss the siting of the Pipeline and the course of action best suited to obtain such real property rights in the most time efficient manner and with the least cost. The City shall provide AES with an easement for the Pipeline within the POTW site and will grant to AES a license to use the public right-of-way for the Pipeline.

(e) AES shall, from time to time, provide the City with progress reports (whether oral or written) relating to the design, siting and construction of the Pipeline and Pumping Station. AES shall give the City prompt written notice of completion of the Pipeline and Pumping Station. Upon completion of the Pipeline and Pumping Station, the Parties shall execute such agreements and documents as shall be necessary to confirm AES' ownership of the Pipeline and the real property interests in the rights-of-way, and the City's ownership of the pumping station and other associated facilities located on the POTW site.

(f) The City agrees to cooperate fully with AES in connection with obtaining all necessary approvals, permits, and licenses from all regulatory agencies, governmental entities, municipalities and service providers.

SECTION 3.2 Operation and Maintenance of the Pipeline, Pumping Station and Related Facilities. (a) The City shall own, operate and maintain, or overhaul the Pumping Station on the POTW site according to terms and schedules to be agreed upon by the parties and set forth in writing, in a workmanlike manner, consistent with prudent practices in good operating condition and in compliance with all Governmental Approvals applicable to the Pumping Station. Such operation and maintenance shall be accomplished in a manner so as to minimize to the maximum extent practicable any disruption or interruption in the services to be provided under this Agreement. Prior to the acceptance of the Pumping Station by the City, AES will provide (i) that the Pumping Station is in full operation, (ii) written certification that the Pumping Station has been constructed in full compliance with all plans and specifications, and (iii) training for all POTW

personnel on the operation of the Pumping Station. AES shall have sole responsibility for the ownership, operation and maintenance of the Pipeline.

(b) AES shall own and maintain, on its side of the Point of Delivery, metering equipment to measure the delivery of Effluent to the Point of Delivery which equipment will determine the quantity of Effluent for billing purposes. AES shall read the meters daily to determine the quantities of Effluent supplied for billing purposes. AES shall keep records of the daily amount of Effluent delivered to the Point of Delivery in accordance with this Agreement and, not later than five (5) days after the end of the month following the end of each quarter after commencement of delivery of Effluent under this Agreement, provide written notice to the City of the amount of Effluent so delivered for each day of such month. At least once every year, or more frequently if the City reasonably requests, and with at least one week prior written notice to the City, AES shall test the accuracy of the metering equipment, at which time the City shall have the right to be present. If such test indicates that the metering equipment is not measuring accurately, AES shall recalibrate or replace the metering equipment and the charges and meter readings for the period of inaccuracy, so far as the period of inaccuracy can be reasonable ascertained, shall be adjusted, but no adjustment related to service provided prior to the beginning of the next preceding calendar month shall be made except by agreement of the parties.

(c) The City may own and maintain metering equipment to measure the delivery of Effluent to the Point of Delivery. The City may elect to read the meters monthly to confirm the quantities of Effluent supplied. At least once every year, or more frequently if requested by AES, and with at least one week prior written notice to AES, the City shall test the accuracy of the metering equipment, at which time AES shall have the right to be present. If such test indicates that the metering equipment is not measuring accurately, the City shall recalibrate or replace the metering equipment.

(d) AES shall reimburse all costs directly associated with operating and maintaining the Pumping Station reasonably incurred by the City as set forth in a schedule to be set forth in writing and mutually agreeable to the parties (the "Schedule").

(e) In addition to the amount specified in the preceding subsection, AES shall pay for the necessary replacement of pumps or other equipment or facilities according to their scheduled useful lives, or as mutually agreed to by the parties.

(f) If the City reasonably determines that the compensation provided for in the two preceding subsections does not adequately reimburse the City for the costs and expenses actually incurred by the City in connection with operation and maintenance of the Pumping Station in accordance with this Agreement, the City may provide written notice to AES to that effect. Thereafter the parties shall meet in good faith to discuss the issue with the goal of reaching a mutually acceptable reimbursement level for the City's costs and expenses relating to operation and maintenance of and access to the Pumping Station. If the parties are not able to reach a mutually acceptable arrangement in respect thereof AES shall have the right to determine if it may operate and maintain, or cause a third-party to operate and maintain, the Pumping Station. In connection therewith, the City shall use best efforts to accommodate any reasonable request of AES or such

third-party to allow the operation and maintenance of the Pumping Station, including but not limited to the execution of all such documents and instruments as may be necessary or advisable to allow such operation and maintenance. The foregoing notwithstanding, until such time as mutually acceptable alternative arrangements have been agreed to by the parties, a dispute concerning the level of reimbursement to the City shall not relieve the City of its obligation to operate and maintain the Pumping Station in accordance with the requirements of this Agreement.

SECTION 3.3 Capital Improvements to the Pumping Station. (a) In the event the City or AES reasonably determines that Capital Improvements to the Pumping Station are required, such party shall notify the other party and the parties shall meet in good faith to determine the scope of such Capital Improvements.

(b) AES shall determine if it would be more cost effective or expeditious for AES or the City, to implement the Capital Improvements agreed upon in accordance with Section 3.3(a).

(c) In the event the parties determine that the Capital Improvements shall be implemented by AES, any contractor used by AES shall be reasonably acceptable to the City. AES or such contractor shall coordinate with the City in order to ensure the minimum disruption of the parties' activities under this Agreement. The City agrees to use its best efforts to assist AES or such contractor in completing the Capital Improvements and agrees to promptly execute such documents and instruments as may be necessary or desirable to complete the Capital Improvements.

(d) In the event the parties determine that it would be more cost effective or expeditious for the City to implement the Capital Improvements, any contractor used by the City shall be reasonably acceptable to AES. The City shall use its best efforts to promptly implement the Capital Improvements with the minimum disruption of the parties' activities under this Agreement. The City shall provide to AES a budget and work plan (including timetable) for the implementation of the Capital Improvements.

(e) AES shall bear its own costs and expenses in connection with the implementation of the Capital Improvements. In addition, AES shall reimburse the City for its reasonable costs and expenses in connection with the implementation of the Capital Improvements; provided such costs and expenses are consistent with the budget provided by the City and approved by AES.

(f) In the event that the City or its agents causes damage to the property of AES while constructing, installing, operating, maintaining or repairing the Capital Improvements or the Pumping Station, the City shall restore or pay AES to restore, at AES' election, AES' property as nearly as possible to its condition prior to such damage. In the event that AES causes damage to the Capital Improvements or Pumping Station while constructing, installing, operating, maintaining or repairing the Project, AES shall restore or pay the City to restore, at the City's election, the Capital Improvements or Pumping Station and related facilities as nearly as possible to its condition prior to such damage. The provisions of this Section 3.3(f) are subject to all applicable laws of the State of New Hampshire (including those that relate to municipal entities).

## ARTICLE IV

### ADDITIONAL OBLIGATIONS OF THE PARTIES

SECTION 4.1 Additional Obligations of the City. (a) Immediately upon obtaining knowledge thereof, the City shall provide AES with oral (with prompt written confirmation thereof) or written notice of any violation of applicable Governmental Approvals relating to the City's POTW.

(b) Promptly after submission thereof to the applicable Governmental Authority, the City shall provide AES with a copy of any report, filing, notice, request for variance or similar document filed with or submitted to a Governmental Authority that relates to the City's POTW.

(c) Not later than the fifteenth day of the month following the last month of each quarter after the commencement of delivery of Effluent or at such other time as required in accordance with this Agreement, the City shall provide to AES a written invoice specifying in reasonable detail (including the method of calculation of any amounts invoiced) the amount claimed by the City from AES in accordance with this Agreement, including amounts under Sections 2.3, 3.1(c), 3.2(b), 3.2(d), 3.2(e), 3.3 and 7.3. Undisputed amounts set forth in any invoice shall be due and payable by AES not later than 30 days following receipt of such invoice.

(d) The City shall, upon prior written or oral request therefore, provide AES, the Financing Parties and each of their respective agents and representatives with escorted access during normal business hours to the City's POTW, the Pumping Station and the other property of the City as may be reasonably requested in connection with the development, financing, construction, operation and maintenance of the Project. The City shall, upon prior written or oral request therefore, provide AES, the Financing Parties and each of their respective agents and representatives with access during normal business hours to (and the right to reproduce) the City's books and records (including books and records relating to Governmental Approvals and compliance therewith) as may be reasonably necessary in connection with the development, financing, construction, operation and maintenance of the Project.

(e) Upon the reasonable request of AES, the City shall, at the cost and expense of AES, execute such additional certificates, documents, instruments, agreements and take such actions as may be reasonably required to give effect to the terms and conditions of this Agreement.

(f) The City shall cooperate with AES and its agents and consultants in AES' due diligence investigation to establish the reliability of the City's POTW.

(g) The City shall provide Effluent to AES, as needed, for the construction, startup and testing of the Project.

SECTION 4.2 Additional Obligations of AES. (a) Immediately upon obtaining knowledge thereof, AES shall provide the City with oral (with prompt written confirmation thereof) or written

notice of any violation by the City of applicable Governmental Approvals relating to Effluent delivery by the City in accordance with this Agreement (excluding, however, any violation of which the City notified AES).

(b) Upon the reasonable request of the City, AES shall, at its cost and expense, execute such additional certificates, documents, instruments, agreements and take such actions as may be reasonably required to give effect to the terms and conditions of this Agreement.

## ARTICLE V

### FORCE MAJEURE

SECTION 5.1 Force Majeure. If either Party shall be unable to carry out any obligation under this Agreement due to Force Majeure, this Agreement shall remain in effect, but such obligation shall be suspended for the period necessary as a result of the Force Majeure, provided, that:

(a) the non-performing Party gives the other Party written notice not later than forty-eight (48) hours after the occurrence of the Force Majeure describing the particulars of the Force Majeure, including but not limited to the nature of the occurrence and the expected duration of the disability, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure and the disability;

(b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and

(c) the non-performing Party uses its best efforts to remedy its inability to perform.

Notwithstanding the foregoing, the settlement of strikes, lockouts, and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle any strike, lockout or other labor dispute on terms which it deems inadvisable.

## ARTICLE VI

### TERM

SECTION 6.1 Term. (a) This Agreement shall take effect upon execution of the appropriate counterpart by each Party and, except as provided in Section 6.1(b), Section 6.1(c) or Section 6.2 below, shall remain in effect for a period of twenty-five (25) years from the earlier of full commercial operation of the Project or July 1, 2002 (the "Term"). This Agreement may be extended for up to two (2) successive five (5) year terms by mutual agreement of the parties. All references in this Agreement to the word "Term" shall mean the initial twenty-five (25) year Term as extended.

(b) This Agreement is conditioned upon AES' successful completion of the Project. It may be terminated by AES in its sole discretion (i) if AES is unable to obtain financing for the Project; (ii) if AES is unable to obtain all permits, licenses, and approvals necessary to construct and operate the Project; (iii) if a final determination is made that the Effluent is unnecessary to the Project; or (iv) if a final determination is made that the City is not a viable source of Effluent. Termination under this Section 6.1(b) shall be effective upon the City's receipt of written notice to that effect. Upon termination of this Agreement pursuant to this paragraph 6.1(b), AES shall, at its expense, remove all of its property and equipment from the City's property, and restore the site to its original condition, including without limitation the removal of any buildings or structures constructed on the City's property.

SECTION 6.2 Early Termination for Event of Default. (a) AES may terminate this Agreement (i) upon a Bankruptcy Event of the City or (ii) if the City fails to perform or observe any of its material obligations under this Agreement within the time contemplated by this Agreement and such failure continues for a period of time greater than thirty (30) days from the City's receipt of notice thereof; provided, that if the City is diligently pursuing a cure of such failure and such failure is not capable of remedy within such thirty (30) day period, such thirty (30) day period shall be extended to such period of time as AES may agree in its sole discretion. For the avoidance of doubt, it is understood that the failure to provide Effluent shall be grounds for early termination under this Section; provided, that if the failure to provide Effluent is excused due to the occurrence of Force Majeure, AES may only terminate this Agreement if such Force Majeure continues for a period of time in excess of 60 days whether or not such failure is excused by the occurrence of such Force Majeure.

(b) The City may terminate this Agreement (i) upon a Bankruptcy Event of AES or (ii) if AES fails to perform or observe any of its material obligations under this Agreement within the time contemplated by this Agreement and such failure continues for a period of time greater than thirty (30) days from the City's receipt of notice thereof provided, that if AES is diligently pursuing a cure of such failure and such failure is not capable of remedy within such thirty (30) day period, such thirty (30) day period shall be extended to such period of time as the City may agree in its sole discretion. The foregoing notwithstanding, the City may not terminate this Agreement without first giving the Financing Parties thirty (30) days written notice of the City's intention to terminate this Agreement. If said thirty (30) day period is insufficient for the Financing Parties to remedy such failure, said thirty (30) day period shall be extended to such period of time as the City may agree in its sole discretion. AES covenants and agrees to give written notice to the City concerning the identities and contact information of the Financing Parties from time to time and the City shall only be obligated to provide the aforementioned notice to Financing Parties of which it has received notice.

## ARTICLE VII

### MISCELLANEOUS

SECTION 7.1 Amendments, Etc. No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed or consented to by the Parties and then such waiver shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 7.2 Assignment. AES may assign this Agreement for financing purposes without the prior written consent of the City. Should the City privatize the operation of the POTW the City may assign this Agreement to a third party provided said third party has demonstrated experience successfully operating wastewater treatment facilities of the size and technology of the POTW.

SECTION 7.3 Cooperation in Financing. The City agrees to cooperate from time to time with AES and the Financing Parties in connection with the financing of the Project. In furtherance thereof the City agrees to enter into such consents to assignments or other agreements as AES or the Financing Parties may reasonably request and the City agrees to provide such certificates from its officers and such opinions of counsel (which may be outside counsel) as AES or the Financing Parties may reasonably request. AES agrees to reimburse the City for any costs and expenses reasonably incurred by the City in complying with its obligations under this Section 7.3, including the reasonable fees and expenses of counsel to the City.

SECTION 7.4 Confidentiality. The City, in performing its duties under this Agreement, will be provided confidential and proprietary information concerning the operations of AES. Except as required by any lawful subpoena or court order, neither the City, nor its employees, agent and contractors shall directly or indirectly, without the written permission of AES, a) disclose such confidential information to any person or entity, or b) use or permit to be used such confidential information. Such restrictions shall not apply to the disclosure or use of any such information that is readily available to the public, or after the time such information is readily available to the public.

SECTION 7.5 Notices, Etc. All notices and other communications provided for hereunder shall be in writing (including by telecopier) and shall be mailed, telecopied or delivered, if to AES, to it at 50 Nashua Road, Suite 202, Londonderry, New Hampshire 03053; if to the City, to it at City of Manchester, Highway Department, 227 Maple Street, Manchester, New Hampshire 03103, with a copy to Environmental Protection Division, 300 Winston Street, Manchester, New Hampshire 03103 as to each Party, to it at such other address or telecopier number as designated by such Party in a written notice to the other Parties. All such notices and communications shall be deemed received, (a) if personally delivered, upon delivery, (b) if sent by first class mail, on the third business day following deposit into the mails and (c) if sent by telecopier, upon acknowledgment of receipt thereof by the recipient.

SECTION 7.6 Severability. Any provision of this Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the

remaining provisions of this Agreement or affecting the validity, enforceability or authorization of such provision in any other jurisdiction.

SECTION 7.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

SECTION 7.8 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW HAMPSHIRE WITHOUT REFERENCE TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

SECTION 7.9 Headings. The section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

SECTION 7.10 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 7.11 Waiver of Jury Trial. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENTS CONTEMPLATED HEREBY TO BE EXECUTED IN CONJUNCTION THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EACH PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

SECTION 7.12 Indemnification. AES hereby agrees to indemnify, defend (through attorneys reasonably acceptable to the City) and hold the City harmless from and against any and all claims, causes of action, damages, losses, costs (including reasonable and necessary attorney's fees) and liabilities of any nature, which may at any time be asserted against or suffered by the City relating to or arising out of the use of the Effluent after such Effluent leaves the POTW.

SECTION 7.12 Insurance. AES will provide an insurance policy naming the City as additional insured regarding any action related to this Agreement. The Insurance will be in accordance with the User Agreement, attached as Exhibit A and acceptable to the City's Risk Manager.

## ARTICLE VIII

### REPRESENTATION AND WARRANTIES OF THE PARTIES

SECTION 8.1 Representations and Warranties of the City. The City hereby represents and warrants to and for the benefit of AES as follows:

(a) Organization and Qualification. The City (i) is a governmental body, duly organized and validly existing under the laws of the State of New Hampshire, with full right and power under its organizational documents and under the laws of the State of New Hampshire to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, and (ii) the City has the power to carry on its business as now being conducted and as proposed to be conducted.

(b) Authorization and Enforceability. The City has taken all necessary action to authorize the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by the City and constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles regardless of whether the issue of enforceability is considered in a proceeding in equity or at law.

(c) No Conflict. Neither the execution and delivery of this Agreement nor compliance with any of the terms and provisions hereof (i) contravenes any Governmental Approval applicable to the City or any of its respective properties or other assets, (ii) conflicts with, breaches or contravenes the provisions of the organizational documents of the City or any contractual obligation of the City, or (iii) results in the creation or imposition of any lien upon any of the property or assets of the City under, or in a condition or event that constitutes (or that, upon notice or lapse of time of both, would constitute) an event of default under any contractual obligation of the City.

(d) Governmental Approvals. No Governmental Approval is required (other than those which have previously been obtained and are in full force and effect) to authorize, or is required in connection with the execution and delivery of this Agreement by the City.

SECTION 9.2 Representations and Warranties of AES. AES hereby represents and warrants to and for the benefit of the City as follows:

(a) Organization and Qualification. AES (i) is a corporation, duly organized and validly existing under the laws of the state of its incorporation, with full right and power under its organizational documents and under the laws of the state of its incorporation to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, and (ii) has the power to carry on its business as now being conducted and as proposed to be conducted.

(b) Authorization and Enforceability. AES has taken all necessary action to authorize the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by AES and constitutes the legal, valid and binding obligation of AES enforceable in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles regardless of whether the issue of enforceability is considered in a proceeding in equity or at law.

(c) No Conflict. Neither the execution and delivery of this Agreement nor compliance with any of the terms and provisions hereof (i) contravenes any Governmental Approval applicable to AES or any of its respective properties or other assets, (ii) conflicts with, breaches or contravenes the provisions of the organizational documents of AES or any contractual obligation of AES, or (iii) results in the creation or imposition of any lien upon any of the property or assets of AES under, or in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of AES.

(d) Governmental Approvals. No Governmental Approval is required (other than those which have previously been obtained and are in full force and effect) to authorize, or is required in connection with the execution and delivery of this Agreement by AES.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers and attested on the date first above written.

AES LONDONDERRY, LLC

Karen J. Belvin  
Witness

By: [Signature]  
Name: RICHARD J. WATKINS  
Title: VICAR PRESIDENT

CITY OF MANCHESTER

Louise Bluskey  
Witness

By: [Signature]  
Name: Robert A. Baines  
Title: Mayor

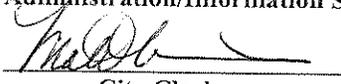
Approved:

CITY SOLICITOR

[Signature]

**Normand, Matthew**

**From:** Lane, Connie B. [CLane@orr-reno.com]  
**Sent:** Monday, March 29, 2010 3:47 PM  
**To:** Normand, Matthew  
**Cc:** Clark, Thomas  
**Subject:** Alderman's Agenda  
**Importance:** High  
**Attachments:** Lane, Connie B..vcf; Manchester Consent Revised lw draft.DOC; gre\_effluent supply agreement.PDF

~~In Board of Mayor and Aldermen~~  
**Date:** 4/6/10  
**On motion of Ald. DeVries**  
**Seconded by Ald. Lopez**  
**Voted to refer to the Committee on Administration/Information Systems.**  
  
City Clerk

Dear Mr. Normand,  
I represent Granite Ridge Energy, LLC, which is the owner of a power plant in Londonderry. Granite Ridge requests that the Alderman consider its request for a consent in connection with a recent financing at their meeting on April 6, 2010. The request is anticipated in Section 7.3 of the Effluent Supply Agreement between Manchester and Granite Ridge Energy (f/k/a AES Londonderry, LLC), a copy of which I have attached to this email. Section 7.3 of the agreement provides that the City will cooperate with providing consents that might be required by any lenders of the "Project" in connection with its financing.

I have been in touch with Tom Clark over the past few weeks, and he directed me to request that this item be added to the agenda.

Please call me at 223-9129 if you have any questions or need additional information.

Thank you,

**Connie Boyles Lane**

**Orr&Reno**



One Eagle Square, P.O. Box 3550  
Concord, NH 03302-3550  
Phone: 603.224.2381  
Direct Ext: 603.223.9129  
Fax: 603.223.9029  
[www.orr-reno.com](http://www.orr-reno.com)

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May 18, 2010 Tabled



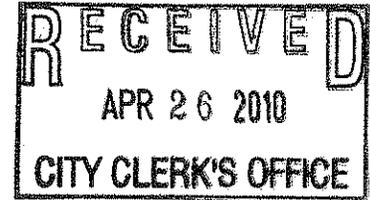
# CITY OF MANCHESTER

## Economic Development Office



April 23, 2010

Michael J. Lopez, Chairman  
Administration & Information Systems  
One City Hall Plaza  
Manchester, NH 03101



Re: Job Corps Center Water Line & Sewer Line Extension Agreement

Dear Chairman Lopez and Members of the Committee:

Attached is a draft water and sewer line extension agreement to service the planned Job Corps Center on Dunbarton Road for your consideration. Upgrades to these lines are essential to the development of the project and this agreement will allow the project to move forward expeditiously. Copies of the proposed agreement have been forwarded to the City Solicitor's Office, the Highway Department, the Environmental Protection and Water Works Divisions, Community Development and the Office of the Mayor. If you have any questions or need additional information, please feel free to contact me at your convenience. Thank you for your consideration.

Sincerely,

Jay Minkarah, Director  
Manchester Economic Development Office

In Board of Mayor and Aldermen  
Date: 5/04/10  
On motion of Ald. O'Neil  
Seconded by Ald. Roy  
Voted to refer to the Committee on  
Administration/Information Systems.

  
City Clerk

Manchester New Hampshire

\_\_\_\_\_  
\_\_\_\_\_  
(Water Line and Sewer Line Extension)

WATER LINE AND SEWER LINE EXTENSION AGREEMENT

This Water Line and Sewer Line Extension Agreement (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the U.S. DEPARTMENT OF LABOR (hereinafter called the "DOL") and THE CITY OF MANCHESTER, a municipality, by and through its Departments of Highway and Water Works (hereinafter the "City").

WITNESSETH:

WHEREAS, the DOL is in the process of undertaking the construction of Job Corps Center (the "JCC") off of Dunbarton Road, in Manchester, New Hampshire (the "Project Site"); and,

WHEREAS, the construction of the JCC will necessitate the extension of the existing municipal water service (the "Water Line") from its current location on Dunbarton Road approximately four hundred seventy five (475) feet west of English Village Road, northwesterly to a point at the western most lot line of the Project Site, and the extension of the municipal sewer service (the "Sewer Line") from its current location on Dunbarton Road to the Project Site; and,

WHEREAS, the DOL desires to enter into this Agreement with the City, whereby the City will, respectively, and as appropriate, agree to: (i) provide the design and engineering services necessary to extend and install the Water Line and Sewer Line to the Project Site; and (ii) contract for the construction and installation of the Water Line and Sewer Line to the Project Site; and (iii) provide for routine operation and maintenance of these water and sewer extensions.

NOW, THEREFORE, in consideration thereof, the parties hereto mutually agree as follows:

1. Work to Be Performed.

The City agrees to provide the following (collectively the "Work"):

- A. Prepare engineering design plans and specifications for the construction, replacement and extension of the existing Water Line and Sewer Line to the Project Site and associated sanitary sewer pump station on the Project Site as described below.
- B. The labor, equipment and materials to construct and extend: (i) the existing water line from its current location on Dunbarton Road

approximately four hundred seventy five (475) feet west of English Village Road, northwesterly to a point at the western most lot line of the Project Site; and (ii) existing municipal sewer line from its current location on Dunbarton Road to the Project Site, and to construct the necessary pump station to discharge the sanitary waste from the Job Corps facility to the gravity flow portion of the sewer, in accordance with the plans and specifications prepared pursuant to Section 1,A, above.

It is understood and agreed that construction and installation of the Water Line and Sewer Line will necessitate ancillary yet directly related work including but not limited to excavation, backfill, restoration of roadway surface, traffic control, restoration of pavement markings, etc. It is further agreed that the City will be reimbursed 100% for all such costs, in accordance with the provisions hereof.

2. The DOL agrees to reimburse the City for the work described in Paragraph 1 as follows:
  - A. Costs To Be Reimbursed: The DOL shall pay the City for the actual cost of all engineering, project administration and construction costs in accordance with Exhibit A. This is estimated at a not-to-exceed cost of \$1,559,000 (\$159,000 being allocated for Design and Construction Administration; and, \$1,400,000 for Construction). If the not-to-exceed cost requires adjustment due to unforeseen circumstances or because once final construction and design plans are prepared and bids to perform the Work are received, the estimated cost for construction exceeds the amount set forth above, DOL approval will be required. If DOL does not approve the increase the DOL shall pay for the design services rendered up to the amount of \$159,000.
  - B. Method of Payment: The DOL shall make periodic payments to the City on a monthly basis upon submission of invoices for work completed in accordance with 2D, below.
  - C. Submission of Monthly Reports. With each invoice for Payment, the City shall submit monthly reports to the DOL detailing the amount of the Work performed in the previous month. The monthly reports shall:
    - Project Name and Number.
    - Brief description of work covered.
    - Breakdown of engineering, design, contract invoices, labor, equipment, construction and materials.
    - Dollar value of the Work performed

D. Submission of Invoices. Invoices shall be submitted, on a monthly basis, to:

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The invoices shall contain:

- Project Name and Number.
- Brief description of work covered.
- Amount requested pursuant to the invoice.
- Breakdown of costs.
- Copy of all authorized engineering and construction payments.
- Whether billing is partial or final.
- Bill or invoice number.
- Date of billing.

3. The Work described in Paragraph 1 above will be shown in greater detail on the plans and specifications prepared by the City in accordance with Section 1, A, above. Upon completion of said plans and specification they shall be made a part of this Agreement.
4. The Work described in Paragraph 1 above, may be done by City forces and/or under an existing continuing contract and/or by competitive bid contract. Continuing contracts shall be defined as a written contract with the City and the contractor who periodically does work for the City. The City will have awarded the continuing contracts using a competitive bid process, the attached documentation of which being made a part of this Agreement. Contracts will be solicited and awarded by the City in accordance with the City of Manchester, NH Code of Ordinances, including but not limited to, Chapter 39, thereto or in accordance with any specific actions of the Board and Mayor and Alderman. Notwithstanding any other provision hereof the contracts by and between the City and any subcontractor, engineering firm or other professional shall be on terms and conditions acceptable to the City. Any reference to the City hereunder, when setting forth obligations of or benefits to the City, shall be understood to mean the City, its departments, divisions, contractors, subcontractors or agents.
5. The City agrees to coordinate the Work hereinbefore described with the other work being done on the JCC, and also agrees to complete the Work by November 30, 2010, provided the City is not delayed by acts of God, strikes, or late delivery of critical materials. Extension requests, due to unforeseen conditions, from the City, of this completion date, will not be unreasonable withheld by the DOL

6. The City agrees to perform the Work hereinbefore proposed, in accordance with all of the items mentioned above, including such additions or modifications hereafter approved, in writing, by the City. The amount of Work to be performed by the City, including any changes in excess of \$25,000, shall be approved by the DOL, within ten (10) days which approval shall not be unreasonable withheld, and the City shall be reimbursed therefore, as herein provided. Should the City determine a change in excess of \$25,000, which will not change the scope of work as defined in Paragraph 1, is necessary, and time is of the essence, the City may move forward with this work and the DOL will not unreasonably withhold approval of this change.
7. The City agrees to notify the DOL of the starting and completion dates of the work hereinbefore described, and to provide the reports set forth in Section 2C, above,
8. Upon the receipt of satisfactory detailed invoices (with applicable credit shown for salvage or scrap, betterments, and accrued depreciation, if any) without arbitrary percentage or lump sum addition for overhead expenses, the DOL agrees to reimburse the City for 100% of the costs of design, engineering, construction, labor, equipment, and materials to perform the work described in the previous paragraphs up to a not-to-exceed amount of \$1,559,000 (\$159,000 for Design and Construction Administration; and, \$1,400,000 for Construction) without additional approval from DOL for the reasons set forth in Section 2A, above.
9. Upon presentation of the invoices set forth in Section 2D above, the DOL will make periodic progress payments to the City within thirty (30) days of receipt by DOL and approval by the Contracting Officer's Technical Representative (COTR) of said invoices, which approval or rejection shall be within ten (10) days receipt of the invoice. Nothing contained herein shall obligate or require the City to continue to perform the Work in the event that the DOL is not making the progress payments required by this Agreement.
10. DELETE
11. Upon the receipt of a final invoice, so marked, showing the dates the work was started and completed, the DOL agrees to reimburse the City for the actual cost as full compensation for the costs of design, engineering, labor and construction work incurred in the extension of the Water Line and Sewer Line up to a not-to-exceed limit of \$1,559,000 (\$159,000 for Design and Construction Administration; and, \$1,400,000 for Construction) unless a higher amount has been authorized.

12. All cost records of the City pertaining to the Work will be subject at any time to inspection by representatives of the DOL for a period of not to exceed three (3) years from the date final payment is received by the City.
13. Upon final completion and acceptance of the improvements the Water Line and Sewer Line improvements shall become the exclusive property of the City. The DOL shall be responsible for all costs associated with the operation, maintenance, and repair of the sanitary sewer lift station. The City, at the expense and cost of the DOL, shall be responsible for all routine maintenance and inspection of the water and sewer line facilities, and for all repairs to the water and sewer conduits located downstream of the sanitary sewer pump station or off of the DOL Project Site.
14. This Agreement does not relieve the DOL from the payment of any routine charges and or fees normally associated with water or sewer service applications within the Project Site. Such fees and charges shall be due and payable to the applicable City Department upon application for such service or as is required by the individual City Department.
15. In performing their undertakings and obligations set forth in this Agreement both parties shall comply with all federal, state and local laws, statutes, rules, regulations and ordinances applicable to said party.
16. This Agreement shall be governed by the laws of the State of New Hampshire, without regard to conflicts of law principles.
17. The parties hereto acknowledge that this Agreement is exempt from the equal opportunity clause pursuant to 41 CFR 60-1.5(a)(4).
18. The Agreement may be executed in multiple counterpart originals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

U.S. DEPARTMENT OF LABOR

CITY OF MANCHESTER

By: \_\_\_\_\_  
 Name:  
 Title:

By: \_\_\_\_\_  
 Name:  
 Title:

EXHIBIT A

- A. Costs To Be Reimbursed. The DOL shall reimburse the City for the Cost of the Work which term shall mean costs necessarily incurred by the City in the performance of the Work up to the not-to-exceed limit of \$1,559,000 (\$159,000 for Design and Construction Administration; and, \$1,400,000 million for Construction) without appropriate DOL approval for the reasons set forth in Section 2A, above. The Cost of the Work shall include the following:
1. Labor Costs. Wages of engineers, supervisors, administrative personnel and other workers employed by the City to perform the Work will be charged at there normal wage rates plus appropriate benefits and overhead.
  2. Subcontract Costs. Payments made by the City to subcontractors, contractors, designers, engineers and other professionals in accordance with the requirements of any contracts by and between the City and any subcontractors, contractors, designers, engineers and other professionals with respect to the performance of the Work.
  3. Costs of Materials and Equipment Incorporated in the Completed Construction.
    - (a) Costs, including transportation, of materials and equipment incorporated or to be incorporated into the Work.
    - (b) Costs of materials described in the preceding clause in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage.
  4. Cost of Other Materials and Equipment and Related Items.
    - (a) Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the City at the site. Cost for items previously used by the City shall mean fair market value.
    - (b) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the City at the site, whether rented from the City or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
    - (c) Costs of removal of debris, waste or other materials in the course of performing the Work.
    - (d) Reproduction costs, costs of facsimile transmissions and long-distance phone calls, postage and Federal Express (or similar courier) charges.

(e) Reasonable transportation costs of the City personnel in execution of the Work, at rates normally applied.

5. Miscellaneous Costs.

(a) Any costs directly attributable to this Agreement for premiums of insurance and bonds.

(b) Any fees and assessments for the building permit and for other permits, licenses and inspections for which the City is required by the Contract Documents to pay.

(c) Fees of testing laboratories for tests required to perform the Work.

(d) Royalties and license fees paid for the use of a particular design, process or product required by the Work, and the costs of any suits or claims for infringement of patent or other intellectual property rights, including the payment of any judgments or settlements thereof.

(e) Legal, mediation and arbitration costs, other than those arising from disputes between the DOL and the City, reasonably incurred by the City in the performance of the Work. Notwithstanding the prior sentence, legal, arbitration, mediation and other fees incurred as a result of the City's failure perform any of its duties hereunder, including, but not limited to, failure to pay subcontractors and suppliers, shall not be deemed a Cost of the Work.

(f) Other costs incurred in the performance of the Work.

(g) Sales, use or other taxes (if any).

(h) Date processing fees and expenses relating to the Work.

6. Emergencies and Repairs to Damaged or Nonconforming Work. The Cost of the Work shall also include costs which are incurred by the City:

(a) In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

(b) In repairing or correcting damaged or nonconforming Work executed by the City or the City's subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of the City.

B. Notwithstanding any other provision of this Agreement, for third party contractor(s) or engineer(s) engaged by the City to perform Work, the DOL shall pay the full amount of any invoice submitted to the City by said third party contractor(s) or engineer(s) as long as it does not exceed the established not-to-exceed limit without prior DOL approval.