CITY of Manchester
Highway Department
Purchasing Division
228 Maple Street
Manchester, New Hampshire 03103

AGREEMENT

This ***AGREEMENT*** is made effective this 8 day of February, 2012 ("Effective Date") by and between the City of Manchester, New Hampshire, through the Highway Department, hereinafter called "CITY" and Competitive Energy Services, LLC hereinafter called "CES".

WHEREAS, the CITY has selected CES to assist the CITY in developing and executing a comprehensive fuel consumption and procurement strategy for energy products and services including electricity, natural gas, propane, and liquid fuels.

NOW, THEREFORE in consideration of the promises, mutual covenants and Agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, CITY and CES agree as follows:

1. Scope of Work

CES will perform the following Scope of Work:

A. Gather all energy usage data for the CITY and will use the data for building energy profiles and performing energy and utility portfolio evaluations. CES will gather usage for all proposed utilities utilizing a web-based service. CES will continue to use this information to create long range procurement plans for the purchase of electricity, natural gas and requested liquid fuels as well as for related services that may enhance and optimize the CITY'S long term budget.

B. CES will provide a detailed utility budget. CES will identify each utility and liquid fuel account and with the CITY'S permission and help gather 12 to 36 months of historic usage information for the accounts either directly from a utility, supplier or from the CITY. CES will project the anticipated usage for electricity, natural gas and liquid fuels using historical averages. CES will also consider any future changes in usage anticipated by the CITY. CES will take into account current utility tariff and supply rates for each account, as well as forecasting certain regulatory changes. CES will track these budgeted costs against actual costs using CES utility tracker. The budget will be organized by Facility or as requested by the CITY and will be modified so that it can be used by the CITY in its internal accounting systems.

C. CES will assist the CITY in the development and implementation of a comprehensive energy portfolio risk strategy. CES will consider many factors, including the CITY'S financial risk tolerance, need for budget assurance and internal political structure to help develop the procurement/saving strategy that best meet the CITY'S goals.

D. CES will plan, prepare, issue and administer competitive bid processes for electricity, natural gas and liquid fuels for the CITY, as requested, during the term of this Agreement. Based upon an agreed upon procurement strategy, CES will issue requests for bids on an aggregated basis for all or selected accounts as well as for selected groupings of accounts. CES will issue multiple competitive solicitations for electricity,

natural gas and liquid fuels and will request pricing for a minimum of four (4) terms and product options for the CITY to the extent feasible. CES will issue a minimum of three (3) competitive solicitations to procure electricity and for product options including but not limited to fixed and variable pricing. CES will provide a summary and detailed analysis of the competitive bids for all rounds of competitive bidding. CES will solicit energy contracts that include scheduling, nominating and balancing of energy, capacity, transmission (including congestion charges), ancillary services, dispatch services and losses, as well as resale of any fuel supply or transmission capacity reserved but not used. The CITY shall have sole discretion to determine whether to execute a contract for the supply of a commodity with any supplier ("Contract")

E. CES will identify and pre-screen all potential suppliers and review all contract documents. CES will obtain contracts and credit approvals with the energy suppliers. CES will review all contract documents for the CITY and will make sure that the suppliers are aware of any specific language requested by the CITY'S Solicitor.

F. CES will assist the CITY in the contracting process to ensure that all documents are complete and are turned around promptly. CES will follow up with each chosen supplier to ensure smooth transitions from one supplier to another and to make sure that a contract is booked and that all accounts are enrolled according to the agreed-upon terms and conditions. CES will manage all communications with suppliers on behalf of the CITY. CES will be responsible to resolve billing errors and facilitate the addition and deletion of accounts.

G. The project manager and other required CES staff will meet with the CITY as needed to review consumption data, purchase options, risk assessments, energy budget, hedged positions, project progress and energy goals. If requested by the CITY, CES will attend meetings and hearings of legislative or regulatory bodies, prepare and deliver testimony on the matters associated with the contract and any related work products.

H. CES will assist the CITY in evaluating a formal demand response program and will provide notification of all demand response events.

I. Upon the CITY'S request CES will seek suitable "green" procurement options for the CITY and will provide an analysis of the alternatives and recommendations to the CITY.

J. CES will assist the CITY in evaluating trends in the energy market and will communicate any opportunities to achieve set goals and additional savings.

K. CES will provide the CITY with its hosted system, CES Utility Tracker, ensuring data access, privacy and security while handling all aspects of database maintenance. CES will provide/perform the following in regards to this:

- Set up and administer all of the CITY'S energy accounts into Utility Tracker
- Load historic data
- Establish individual accounts for CITY'S staff
- Generate interactive dashboards and reports, including but not limited to:
  - Use by facility, building and account by month and by year
  - Cost by facility, building and account by month and by year, both total and broken out by delivery and supply cost
  - Benchmarking of actuals against forecasted budget
- Ongoing monthly database update

- Set up an access for a CITY staff member to view all accounts and make updates if necessary
- Online reporting available 24x7 that can track the key elements of use and cost, including:
  - Use
  - Demand
  - Delivery charges
  - Supply charges
- Track carbon emissions
- CITY will have access to phone and email-based technical support during normal east coast business hours.

L. CES will provide other services as outlined in the CITY'S Request for Proposal FY12-500-27.

2. Term

The initial term shall be for a period of three (3) years beginning on the Effective Date. At the CITY'S discretion, the term may be renewed for up to one (1) additional three (3) year period. The CITY reserves the right to cancel the Agreement, with or without cause at anytime, by providing a 30 day written notice to CES. The rights, duties and responsibilities of the Parties hereto shall continue in full force until the expiration of the Term.

3. Compensation

A. In the event that the CITY executes a Contract during the Term or during the three (3) months following the Term with a Supplier brought to the CITY by CES, CES will receive compensation from the Supplier in accordance with the Compensation Schedule, attached hereto, not to exceed the maximum annual amount in any year.

B. In the event that the CITY does not execute a Contract during the Term or during the three (3) months after the Term with a Supplier, CES is entitled to the minimum annual fee in accordance with the Compensation Schedule, attached hereto.

C. In the event that the Contracts executed between Suppliers and the CITY does not meet CES'S minimum annual fee in accordance with the Compensation Schedule, attached hereto, the CITY shall pay CES the difference upon CES providing the appropriate paperwork to the CITY.

4. Ownership

All reports and material prepared by CES specifically in the performance of this Agreement shall become property of the CITY.

5. Successors and Assigns

This Agreement shall be binding upon the Parties and their respective partners, affiliates, heirs, legal representatives, successors and assigns. No portion of this Agreement or any right or obligation hereunder can be transferred or assigned, in whole or in part, whether by operation of law or otherwise, by either Party without prior written consent of the other Party.

6. No Joint Venture

CES and CITY are and shall be independent contractors to one another, and nothing herein shall be deemed to cause the Agreement to create an agency, partnership or joint venture. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CES or any employee or agent of CES.

7. No Consequential Damages

In no event, shall either CES or CITY be liable to each other or any third party for any incidental, special, indirect, exemplary or consequential damages, including but not limited to loss of use of loss or loss of profits, whether foreseeable or not, occasioned by or arising out of CES'S or CITY'S breach hereof or performance hereunder, delay in performance or any other cause whatsoever.

8. Exclusive Remedy

The CITY'S and CES'S sole obligation and exclusive remedy to each other, in the event of an alleged breach or defect in any service provided hereunder is the correction by that Party of such alleged breach or defect. If after repeated efforts that Party is unable to correct, or if that Party fails within reasonable time to attempt to correct and continues not to attempt to correct within ten (10) days of receipt from other Party of written notice of such breach or defect, the other Party shall be entitled to terminate this Agreement and to recover actual damages in an amount not to exceed the amount of fees due and payable to CES by Supplier under this Agreement. Both parties understand and agree that this exclusive remedy allocates risk of service defects between the Parties as authorized by applicable law.

9. Indemnification

The CITY and CES mutually agree to indemnify and hold harmless each other from any claims, actions or other proceedings and any losses, damages or liabilities asserted by third parties in respect to personal injury or death to any person, or damage to any property arising out of or based upon any act or omission of the Parties in performance of this Agreement, but only to the extent that the indemnifying Party is negligent or its action constitutes willful misconduct.

10. Arbitration

All claim or controversy or claim arising out of or relating to this Agreement, or the formation or breach thereof, shall be settled by arbitration in Manchester, New Hampshire in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This Agreement shall be governed by, and construed in accordance with the laws of the State of New Hampshire

Notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statue of limitations.

The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

11. Miscellaneous

This Agreement may be amended only by written instrument signed by both CITY and CES

In the case of a discrepancy between this Agreement and CES'S "Client Representation Agreement" (*Exhibit A*), this Agreement shall prevail.

This Agreement, together with the request for proposal FY12-500-27, the exhibits attached hereto and any written amendments thereof, constitutes the entire Agreement and understanding between the Parties with respect to the subject matter hereof and merges and supersedes all prior discussions and writings with respect thereto. If any provision contained in this Agreement shall for any reason be held unenforceable in any respect under the law of any state or the United States of America, such unenforceability shall not affect any other provisions in this Agreement; this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

Agreed and accepted on behalf of

Competitive Energy Services, LLC

By: _____

Name: JON F SORENSON

Title: MANAGING PARTNER

Date: 2/08/12

City of Manchester, New Hampshire

By: _____

Name: _____

Title: _____

Date: 2/9/12

Timothy J. Clougherty
Deputy Public Works Director

Compensation Schedule

For the City of Manchester, New Hampshire – pricing agreement from Proposal Submittal FY12-500-27 apply CES fees are noted below:

Electricity - $0.00125 per kWh

Natural Gas - $0.10 per Dth

Liquid Fuels - $0.02 per gallon

Minimum Annual Fee - $55,000

Maximum Annual Fee - $70,000

Contractors Initials: _____

City's Initials: _____