

TOWN BOARD MEETING
TOWN HALL, MAHOPAC, N.Y.

A Regular Meeting of the Town Board of the Town of Carmel was called to order by Supervisor Kenneth Schmitt on the 3rd day of July, 2012 at 7:40 p.m. at Town Hall, 60 McAlpin Avenue, Mahopac, New York. Members of the Town Board present by roll call were: Councilman Schneider, Councilman Lupinacci, Councilwoman McDonough, Councilman Lombardi and Supervisor Schmitt.

The Pledge of Allegiance to the Flag was observed prior to the start of official business and a moment of silence was observed to honor those serving in the United States Armed Forces.

Four members of Boy Scout Troop #1 were present and led the Pledge of Allegiance to the Flag. Boy Scouts Frank Rendi, Jack Baker, Robert Benzberg and Mark Baker were attending the Town Board meeting as part of working towards their Communications Badge.

COMPREHENSIVE FINANCIAL INDEPENDENT AUDIT REPORT OF BENNETT, KIELSON, STORCH & DESANTIS FOR FISCAL YEAR 2011 – ACCEPTED

RESOLVED that the Town Board of the Town of Carmel hereby accepts the Comprehensive Financial Independent Audit Report of the Town's independent auditor, the Bennett, Kielson, Storch & DeSantis Division of O'Connor Davies Munns & Dobbins LLP, for fiscal year 2011 and hereby directs Town Clerk Ann Garris to publish the required notices in the official newspapers of the Town.

Resolution

Offered by: Councilman Schneider
Seconded by: Councilman Lombardi

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	<u>X</u>	<u> </u>
John Lupinacci	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

SUPPORT OF PUTNAM COUNTY IN REGARDS TO PARKING AND TRAFFIC LINES IN THE HAMLETS OF CARMEL AND MAHOPAC

WHEREAS, the Town Board of the Town of Carmel has been advised that members of the Putnam County Legislature are seeking approval and/or permission from the New York State Department of Transportation for the painting and demarcation of parking lines and traffic control lines on Route 52 in the Town of Carmel as well as Route 6 and Route 6N in the hamlet of Mahopac; and

WHEREAS, the Town Board is further advised that the New York State Department of Transportation requires a resolution of support from the Town of Carmel to process said requests from the County of Putnam;

NOW THEREFORE BE IT RESOLVED, that the Town Board of the Town of Carmel hereby supports the efforts of the County of Putnam in connection with the proposed painting and demarcation of parking lines and traffic control lines on Route 52 in the hamlet of Carmel as well as Route 6 and Route 6N in the hamlet of Mahopac in an effort to facilitate better traffic flow and parking conditions along with the installation of crosswalks for pedestrian safety.

Resolution

Offered by: Councilman Lombardi
Seconded by: Councilman Schneider

JULY 3, 2012
TOWN BOARD MEETING

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	<u>X</u>	<u> </u>
John Lupinacci	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

Supervisor Schmitt explained that he, Councilman Schneider and Rob Vara, Engineering Project Coordinator, had visited the areas slated for the work. Discussion ensued regarding adding more marked parking spaces on Route Six in the hamlet of Mahopac. The Town Board was in agreement that this would be beneficial.

Councilman Schneider stated that he would ask the Putnam County Legislature to modify the request.

Gregory Folchetti, Legal Counsel, indicated that the resolution voted on tonight was sufficient and that the New York State Department of Transportation would make the final determination regarding what work would be done.

DISPOSAL OF SURPLUS MAGNETOMETER - AUTHORIZED

RESOLVED that, upon the recommendation of Chief of Police Michael Johnson, the Town Board of the Town of Carmel hereby authorizes the disposal of the surplus magnetometer formerly utilized at the Town Hall facility in accordance with Town Law, including but not limited to Town Law §64(2-a); and

BE IT FURTHER RESOLVED that any sale of said equipment is authorized to be conducted through Auctions International of East Aurora, NY, together with the sale of the surplus vehicles and equipment previously and duly authorized by Town Board resolution dated June 6, 2012.

Resolution

Offered by: Councilman Lupinacci
Seconded by: Councilman Lombardi

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	<u>X</u>	<u> </u>
John Lupinacci	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

Supervisor Schmitt explained that a magnetometer is a metal detector.

LAKE MAHOPAC PARK DISTRICT EXPENDITURES - AUTHORIZED

RESOLVED that the Town Board, acting as the Commissioners of the Lake Mahopac Park District, hereby authorizes the following expenditures from the Park District 2012 Budget in the sum not to exceed \$2,000 (Two Thousand Dollars) for the purchase or repair of equipment for the Town of Carmel Police Department Marine Division:

- Ten (10) marker buoys;
- Repair of depth sounder and boat fenders;
- Seven (7) shirts for patrolling officers;

JULY 3, 2012
TOWN BOARD MEETING

Resolution

Offered by: Councilwoman McDonough
Seconded by: Councilman Lombardi

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	<u>X</u>	<u> </u>
John Lupinacci	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

MAHOPAC VOLUNTEER FIRE DEPARTMENT ADDITION OF WILLIAM H. FRAKE, III, MATTHEW SMITH AND AARON ZAUDERER TO ACTIVE LIST AND DELETION OF WOLFGANG LAWTON AND PAUL HARNISH FROM ACTIVE LIST - AUTHORIZED

RESOLVED that the Town Board of the Town of Carmel hereby authorizes the addition of the following names to the active list of the Mahopac Volunteer Fire Department:

William H. Frake, III
Matthew Smith
Aaron Zauderer

BE IT FURTHER RESOLVED that Town Board of the Town of Carmel hereby authorizes the deletion of the following names from the active list of the Mahopac Volunteer Fire Department:

Wolfgang Lawton
Paul Harnish

Resolution

Offered by: Councilman Schneider
Seconded by: Councilman Lupinacci

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	<u>X</u>	<u> </u>
John Lupinacci	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

Supervisor Schmitt thanked the former members of the Mahopac Volunteer Fire Department for their service and congratulated the new members.

RECREATION AND PARKS DEPARTMENT – INTERMUNICIPAL AGREEMENT BETWEEN MAHOPAC CENTRAL SCHOOL DISTRICT AND TOWN OF CARMEL REGARDING USE OF RECREATIONAL FACILITIES, SCHOOL FACILITIES AND ATHLETIC FIELDS FOR PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2015 - AUTHORIZED

WHEREAS James R. Gilchrist, Director of the Town of Carmel Recreation and Parks has requested that the Town Board authorize the signing of an Intermunicipal agreement between the Mahopac Central School District and the Town of Carmel providing for use by the Town of Carmel of the recreation facilities, school facilities and athletic fields belonging to the Mahopac Central School District for the period of July 1, 2012 through June 30, 2015;

**JULY 3, 2012
TOWN BOARD MEETING**

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Carmel hereby authorizes the Town Supervisor to sign on behalf of the Town of Carmel, the Intermunicipal Agreement between the Mahopac Central School District and the Town of Carmel in regard to the foregoing in the form as attached hereto and made a part hereof, and

BE IT FURTHER RESOLVED that a copy of said Intermunicipal Agreement be filed with Town Clerk Ann Garris after signature by the Town Supervisor.

Resolution

Offered by: Councilman Lombardi
Seconded by: Councilman Schneider

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	<u>X</u>	<u> </u>
John Lupinacci	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

☒ Work Session 6/27/12
☒ Agenda 7/3/12

MUNICIPAL COOPERATION AGREEMENT
SCHOOL DISTRICT FACILITIES
excluding Route 6 Roller Skating Rink & HS Concession Stand

#6

THIS AGREEMENT (the "Agreement") entered into as of the 18th day of June, 2012, by and between the BOARD OF EDUCATION OF THE MAHOPAC CENTRAL SCHOOL DISTRICT (hereinafter referred to as the "School District") with offices for the transaction of business located at 179 East Lake Boulevard, Mahopac, New York and the TOWN OF CARMEL (hereinafter referred to as the "Town"), with offices for the transaction of business located at 60 McAlpin Avenue, Mahopac, New York.

WITNESSETH

WHEREAS, under the provisions of Section 119-o of the General Municipal Law, each party has the power to enter into agreements for the performance among themselves of their respective functions, powers and duties or for the provisions of a joint service;

WHEREAS, the School District and the Town were previously parties to a series of agreements pertaining to the use of certain facilities owned by the School District; and

WHEREAS, the parties are desirous of entering into a single agreement which would encompass all such uses and replace all previous agreements; and

WHEREAS, to that end, the School District and the Town have entered into discussions pertaining to engaging in municipal cooperation for the joint use of certain facilities and services; and

WHEREAS, the School District is permitted to allow the use of its facilities in accordance with Education Law section 414; and

WHEREAS, both parties believe that it is in the best interest of their respective taxpayers to share resources with respect to the use of certain facilities and services; and

WHEREAS, the School District and the Town wish to contract with one another in accordance with General Municipal Law section 119-o;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

**JULY 3, 2012
TOWN BOARD MEETING**

1. The parties understand and agree that by execution of this Agreement, all prior agreements for the use of the facilities covered by the terms hereunder are hereby rescinded and rendered null and void.
2. The terms of this Agreement shall commence on July 1, 2012 and terminate on June 30, 2015 unless earlier terminated as provided herein.
3. The School District and the Town each represent that it is authorized by applicable law to enter into inter-municipal agreements.
4. The School District and the Town, believing it to be in the best interest of their taxpayers, do hereby authorize an inter-municipal cooperation and assistance agreement with and between each other for the use of the facilities in accordance with applicable law and as provided for in this Agreement.
5. During the term of this Agreement, the School District hereby grants to the Town a non-transferable, revocable license to use the athletic, practice fields, recreational and school building facilities throughout the School District including the artificial turf field at the Mahopac High School (excepting School District property on which the Skating Rink is located and the High School concession stand) for appropriate recreation programs operated by the Town and/or the Mahopac Sports Association (the "MSA") in accordance with Education Law section 414 and applicable School District policies and practices as amended from time to time. Nothing herein shall be construed as a grant of permission to advertise or allow others to advertise or engage in commercial/corporate promotion of any kind on School District property.
6. Each school year, the Town shall provide the School District with a written schedule according to which the Town and/or the MSA will have access to and/or use of the School District's facilities. The schedule shall set forth the date, time, specific facility and/or field and the name of the Town or MSA program that will be utilizing the School District's facilities. The Town may supplement or change this schedule from time to time in writing upon the approval of the School District, which shall not be unreasonably withheld.
7. The parties understand and agree that the Town's use shall be subject to the use of the facilities by the School District which shall, at all times, have priority over the Town's use.
8. The School District shall have the right to alter or cancel any previously scheduled use upon reasonable advance notice to the Town in the event that the School District needs to use the same facilities; however, in the event of an emergency, the School District shall provide notice to the Town as soon as practicable under the circumstances.
9. The Town understands and agrees that its use shall not disrupt normal school district operations or the School District's educational process. The School District reserves exclusive judgment to determine whether any intended use of the school facilities and/or athletic fields by the Town would interfere with or disturb normal school district operations, the school buildings, school grounds or other property of the School District.
10. Notwithstanding, at the end of any session, the Town shall leave the premises in an organized and tidy manner. All trash and debris related to the Town's or the MSA use shall be removed at the end of each use. The Town shall be responsible for the cost of any repair to and/or replacement of the School District's facilities, fields and/or property caused by the Town's or MSA's use including excessive wear and tear sustained while in use by either the Town or MSA. In the event that the Town and/or MSA leaves any personal property, such property shall be deemed abandoned by the Town and/or MSA and the School District shall be automatically authorized to dispose of such abandoned property without liability of any kind.

**JULY 3, 2012
TOWN BOARD MEETING**

11. During the term of this Agreement, the Town's programs, including those of the MSA, shall be conducted by, and remain under, the direct supervision and control of the Town. The Town shall be responsible for and ensure that adequate supervision is maintained over the participants and the School District's property at all times when in use by the Town or the MSA. The Town further acknowledges that the premises are being provided to the Town "as is" and that no representations or warranties are made concerning its fitness.
12. In consideration of the use provided for herein, the Town shall pay to the School District as follows:
 - A. The sum of \$80,000 (Eighty Thousand Dollars) for the first year of this Agreement (July 1, 2012 through June 30, 2013);
 - B. The sum of \$85,000 (Eighty-Five Thousand Dollars) for the second year of this Agreement (July 1, 2013 through June 30, 2014);
 - C. The sum of \$90,000 (Ninety Thousand Dollars) for the third year of this Agreement (July 1, 2014 through June 30, 2015).
13. To the fullest extent permitted by law, the Town shall indemnify and hold harmless the School District, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the services or the use of the School District's facilities under this Agreement, provided that any claim, damage, loss or expense is (i) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and (ii) caused by any negligent act or omission of the Town, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this paragraph.
14. Each party shall purchase from and maintain in a company or companies lawfully licensed to do business in the State of New York, such insurance as will protect themselves from claims set forth below for which they may be legally liable:
 - A. claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the obligations to be performed under this Agreement;
 - B. claims for damages because of bodily injury, occupational sickness or disease, or death of employees;
 - C. claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;
 - D. claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of this person by either party, or (2) by another person;
 - E. claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom;
 - F. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle

Each party's liability insurance shall include all major divisions of coverage and be on a comprehensive basis including, without limitation:

Premises/Operations;
 Personal Injury Liability with Employment Exclusion deleted;
 Owned, non-owned and hired motor vehicles;
 Broad Form Property Damage.

**JULY 3, 2012
TOWN BOARD MEETING**

The insurance herein required shall be written for not less than the following limits:

- Occurrence-1998 ISO or equivalent
- General Aggregate-\$2,000,000.00
- Products-Aggregate-\$1,000,000.00
- Personal & Advert. Injury-\$1,000,000.00
- Each Occurrence-\$1,000,000.00
- Fire Damage (Any one fire)-\$50,000.00
- Medical Expense (Any one person)-\$5,000.00

The Town shall list the School District as an additional insured on its insurance policy.

15. All employees of the Town shall be deemed employees of the Town for all purposes and the Town alone shall be responsible for their work, personal conduct, direction, and compensation. The Town acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of the School District. The Town's relationship with the School District is only for the purposes and to the extent set forth in this Agreement, and its relationship to the School District shall, during the periods of its services hereunder, be that of an independent contractor. The Town shall not be considered as having employee status and shall not be entitled to participate in any of the School District's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, the Town, its officers, its employees and/or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by the School District. The Town agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein. The Town shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. The Town shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between the School District and its employees.
16. The term of this Agreement shall be subject to the right of either party to suspend or terminate this Agreement in whole or in part for convenience upon six (6) months prior written notice in which case such Agreement shall thereafter be null and void for all purposes.
17. Notwithstanding the foregoing, the parties understand and agree that in the event that the facilities covered by this agreement become needed for School District purposes, the School District shall have the right to suspend or terminate this agreement, in whole or in part, upon written notice to the Town. Further, the School District shall have the right to suspend the use of particular facilities or locations for a period of time if such facilities or locations become needed for School District purposes upon written notice to the Town. Notice shall advise the Town of the effective date such suspension or termination. In the event that the School District exercises such right to suspend, the Town's use of the remaining facilities shall continue under the terms and conditions set forth herein.
18. The Town and School District shall each maintain all documents and records created or maintained in connection with this Agreement for a period of six (6) years after the termination of this Agreement. Each party agrees to make those documents available for audit and inspection by any government official or agency with authority and/or jurisdiction over the provision of the services described herein.
19. Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be communicated as of two (2) days after mailing. Notice shall be delivered or mailed to:

JULY 3, 2012
TOWN BOARD MEETING

For the School District:

District Clerk
179 East Lake Blvd.
Mahopac Central School District
Mahopac, New York 10541

For the Town:

Town of Carmel
60 McAlpin Avenue
Mahopac, New York 10541

20. This Agreement constitutes the full and complete Agreement between the School District and the Town and supersedes all prior written and oral agreements, commitments or understandings with respect thereto.
21. Any alteration, change, addition, deletion, or modification of any of the provisions of this Agreement or any right either party has under this Agreement must be made by mutual assent of the parties in writing and signed by both parties.
22. This Agreement shall be governed by the laws of the State of New York. If any portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.
23. The Town shall comply with any and all applicable regulations of the State of New York State Education Department concerning operations in a school district facility and hereby represents that it has reviewed and is familiar with those rules and regulations which are applicable to the use of the School District's facilities.
24. Nothing contained in this Agreement shall be construed to create an employment or principal-agent relationship, or partnership or joint venture, between the Town and the School District and any officer, employee, servant, agent or independent contractor of the School District.
25. This Agreement must be approved by the Board of Education of the Mahopac Central School District and the Board of the Town of Carmel in public session. Absent said approvals, this Agreement is null and void and unenforceable.
26. This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
27. The undersigned representative of each party hereby represents and warrants that the undersigned is an officer, director or agent of that party with full legal rights, power and authority to enter into this Agreement on behalf of that party and bind that party with respect to the obligations enforceable against that party in accordance with the terms contained herein.

IN WITNESS WHEREOF, the undersigned hereby acknowledges that they have read and fully understand the foregoing Agreement and further, that they agree to each of the terms and conditions contained herein.

TOWN OF CARMEL

MAHOPAC CENTRAL SCHOOL DISTRICT

By: _____

By: Penny Swift

Printed Name: _____

Printed Name: Penny Swift

Date: _____

Date: _____

JULY 3, 2012
TOWN BOARD MEETING

Councilman Lombardi explained that the amount the Town of Carmel would be paying to the Mahopac Central School District would be \$80,000 for the first year of the contract and then an additional \$5,000 for each subsequent year.

**RECREATION AND PARKS DEPARTMENT – INTERMUNICIPAL AGREEMENT
BETWEEN MAHOPAC CENTRAL SCHOOL DISTRICT AND TOWN OF CARMEL
REGARDING USE OF SKATING RINK KNOWN AS MICHAEL GEARY MEMORIAL
RINK FOR PERIOD OF JULY 1, 2012 THROUGH JUNE 30, 2015 - AUTHORIZED**

WHEREAS James R. Gilchrist, Director of the Town of Carmel Recreation and Parks has requested that the Town Board authorize the signing of an Intermunicipal agreement between the Mahopac Central School District and the Town of Carmel providing for use by the Town of Carmel of the skating rink located on Route 6 in Mahopac, also known as the Michael Geary Memorial Rink, located upon the property of the Mahopac Central School District for the period of July 1, 2012 through June 30, 2015;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Carmel hereby authorizes the Town Supervisor to sign on behalf of the Town of Carmel, the Intermunicipal Agreement between the Mahopac Central School District and the Town of Carmel in regard to the foregoing in the form as attached hereto and made a part hereof, and

BE IT FURTHER RESOLVED that a copy of said Intermunicipal Agreement be filed with Town Clerk Ann Garris after signature by the Town Supervisor.

Resolution

Offered by: Councilman Lupinacci

Seconded by: Councilwoman McDonough

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	<u>X</u>	<u> </u>
John Lupinacci	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

MUNICIPAL COOPERATION AGREEMENT
Route 6 Property in which the Town's Skating Rink is located

THIS AGREEMENT (the "Agreement") entered into as of the 18th day of June, 2012, by and between the BOARD OF EDUCATION OF THE MAHOPAC CENTRAL SCHOOL DISTRICT (hereinafter referred to as the "School District") with offices for the transaction of business located at 179 East Lake Boulevard, Mahopac, New York and the TOWN OF CARMEL (hereinafter referred to as the "Town"), with offices for the transaction of business located at 60 McAplin Avenue, Mahopac, New York.

WITNESSETH

WHEREAS, under the provisions of Section 119-o of the General Municipal Law, each party has the power to enter into agreements for the performance among themselves of their respective functions, powers and duties or for the provisions of a joint service; --

WHEREAS, the School District and the Town were previously parties to a series of agreements pertaining to the use of certain facilities owned by the School District; and

**JULY 3, 2012
TOWN BOARD MEETING**

WHEREAS, the parties are desirous of entering into a single agreement which would encompass all such uses and replace all previous agreements; and

WHEREAS, to that end, the School District and the Town have entered into discussions pertaining to engaging in municipal cooperation for the joint use of certain facilities and services; and

WHEREAS, the School District is permitted to allow the use of its facilities in accordance with Education Law section 414; and

WHEREAS, both parties believe that it is in the best interest of their respective taxpayers to share resources with respect to the use of certain facilities and services; and

WHEREAS, the School District and the Town wish to contract with one another in accordance with General Municipal Law section 119-o;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. The parties understand and agree that by execution of this Agreement, all prior Agreements for the use of the facilities covered by the terms hereunder are hereby rescinded and rendered null and void.
2. The terms of this Agreement shall commence on July 1, 2012 and terminate on June 30, 2015 unless earlier terminated as provided herein.
3. The School District and the Town each represent that it is authorized by applicable law to enter into inter-municipal agreements.
4. The School District and the Town, believing it to be in the best interest of their taxpayers, do hereby authorize an inter-municipal cooperation and assistance agreement with and between each other for the use of the facilities in accordance with applicable law and as provided for in this Agreement.
5. During the term of this Agreement, the School District hereby grants to the Town a non-transferable, revocable license to use the School District property upon which the Skating Rink is located for appropriate recreation programs operated by the Town and/or the Mahopac Sports Association (the "MSA") in accordance with Education Law section 414 and applicable School District policies and practices as amended from time to time. Nothing herein shall be construed as a grant of permission to advertise or allow others to advertise or engage in commercial/corporate promotion of any kind on School District property.
6. Each school year, the Town shall provide the School District with a written schedule according to which the Town and/or the MSA will have access to and/or use of the School District's facilities. The schedule shall set forth the date, time, specific facility and/or field and the name of the Town or MSA program that will be utilizing the School District's facilities. The Town may supplement or change this schedule from time to time in writing upon the approval of the School District, which shall not be unreasonably withheld.
7. The parties understand and agree that the Town's use shall be subject to the use of the facilities by the School District which shall, at all times, have priority over the Town's use.
8. The School District shall have the right to alter or cancel any previously scheduled use upon reasonable advance notice to the Town in the event that the School District needs to use the same facilities; however, in the event of an emergency, the School District shall provide notice to the Town as soon as practicable under the circumstances.

**JULY 3, 2012
TOWN BOARD MEETING**

9. The Town understands and agrees that its use shall not disrupt normal school district operations or the School District's educational process. The School District reserves exclusive judgment to determine whether any intended use of the school facilities and/or athletic fields by the Town would interfere with or disturb normal school district operations, the school buildings, school grounds or other property of the School District.
10. Notwithstanding, at the end of any session, the Town shall leave the premises in an organized and tidy manner. All trash and debris related to the Town's or the MSA use shall be removed at the end of each use. The Town shall be responsible for the cost of any repair to and/or replacement of the School District's facilities, fields and/or property caused by the Town's or MSA's use including excessive wear and tear sustained while in use by either the Town or MSA. In the event that the Town and/or MSA leaves any personal property, such property shall be deemed abandoned by the Town and/or MSA and the School District shall be automatically authorized to dispose of such abandoned property without liability of any kind.
11. During the term of this Agreement, the Town's programs, including those of the MSA, shall be conducted by, and remain under, the direct supervision and control of the Town. The Town shall be responsible for and ensure that adequate supervision is maintained over the participants and the School District's property at all times when in use by the Town or the MSA. The Town further acknowledges that the premises are being provided to the Town "as is" and that no representations or warranties are made concerning its fitness.
12. As part of this Agreement, the Town agrees to permit the following additional uses of the property:
 - A. The Fire Department will have the use of the property periodically throughout the year, in particular, for their annual fair for two weekends in July, so long as the Town is provided with notification fourteen (14) days prior to the date of intended use. In addition, the Fire Department will have the use of the facility for parking for firefighters responding to an alarm at all times the facility is not opened to the public.
 - B. Temple Beth Shalom will have the use of the property as a parking lot during the High Holy Days, so long as the Town is provided with notification fourteen (14) days prior to the date of intended use.
13. In consideration of the use provided for herein, the Town shall pay to the School District the sum of \$1.00 (One Dollar and No/Hundredths) each year. Payment to the School District shall be on February 15th of each year of this Agreement. The parties hereto agree that during the first year of this Agreement, the School District shall have the right to separately invoice the Town and Town shall pay to the School District the costs associated with the use of the facilities during the spring and summer of 2012 and 2013.
14. To the fullest extent permitted by law, the Town shall indemnify and hold harmless the School District, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the services or the use of the School District's facilities under this Agreement, provided that any claim, damage, loss or expense is (i) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and (ii) caused by any negligent act or omission of the Town, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this paragraph.

**JULY 3, 2012
TOWN BOARD MEETING**

15. Each party shall purchase from and maintain in a company or companies lawfully licensed to do business in the State of New York, such insurance as will protect themselves from claims set forth below for which they may be legally liable:

- A. claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the obligations to be performed under this Agreement;
- B. claims for damages because of bodily injury, occupational sickness or disease, or death of employees;
- C. claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;
- D. claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of this person by either party, or (2) by another person;
- E. claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- F. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle

Each party's liability insurance shall include all major divisions of coverage and be on a comprehensive basis including, without limitation:

Premises/Operations;
 Personal Injury Liability with Employment Exclusion deleted;
 Owned, non-owned and hired motor vehicles;
 Broad Form Property Damage.

The insurance herein required shall be written for not less than the following limits:

Occurrence-1998 ISO or equivalent
 General Aggregate-\$2,000,000.00
 Products-Aggregate-\$1,000,000.00
 Personal & Advert. Injury-\$1,000,000.00
 Each Occurrence-\$1,000,000.00
 Fire Damage (Any one fire)-\$50,000.00
 Medical Expense (Any one person)-\$5,000.00

The Town shall list the School District as an additional insured on its insurance policy.

16. All employees of the Town shall be deemed employees of the Town for all purpose and the Town alone shall be responsible for their work, personal conduct, direction, and compensation. The Town acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of the School District. The Town's relationship with the School District is only for the purposes and to the extent set forth in this Agreement, and its relationship to the School District shall, during the periods of its services hereunder, be that of an independent contractor. The Town shall not be considered as having employee status and shall not be entitled to participate in any of the School District's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, the Town, its officers, its employees and/or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by the School District. The Town agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein. The Town shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. The Town shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between the School District and its employees.

**JULY 3, 2012
TOWN BOARD MEETING**

17. The term of this Agreement shall be subject to the right of either party to suspend or terminate this Agreement in whole or in part for convenience upon six (6) months prior written notice in which case such Agreement shall thereafter be null and void for all purposes.
18. Notwithstanding the foregoing, the parties understand and agree that in the event that the facilities covered by this agreement become needed for School District purposes, the School District shall have the right to suspend or terminate this agreement, in whole or in part, upon written notice to the Town. Further, the School District shall have the right to suspend the use of particular facilities or locations for a period of time if such facilities or locations become needed for School District purposes upon written notice to the Town. Notice shall advise the Town of the effective date such suspension or termination. In the event that the School District exercises such right to suspend, the Town's use of the remaining facilities shall continue under the terms and conditions set forth herein.
19. The Town and School District shall each maintain all documents and records created or maintained in connection with this Agreement for a period of six (6) years after the termination of this Agreement. Each party agrees to make those documents available for audit and inspection by any government official or agency with authority and/or jurisdiction over the provision of the services described herein.
20. Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be communicated as of two (2) days after mailing. Notice shall be delivered or mailed to:

For the School District:

District Clerk
179 East Lake Blvd.
Mahopac Central School District
Mahopac, New York 10541

For the Town:

Town of Carmel
60 McAlpin Avenue
Mahopac, New York 10541

21. This Agreement constitutes the full and complete Agreement between the School District and the Town and supersedes all prior written and oral agreements, commitments or understandings with respect thereto.
22. Any alteration, change, addition, deletion, or modification of any of the provisions of this Agreement or any right either party has under this Agreement must be made by mutual assent of the parties in writing and signed by both parties.
23. This Agreement shall be governed by the laws of the State of New York. If any portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.
24. The Town shall comply with any and all applicable regulations of the State of New York State Education Department concerning operations in a school district facility and hereby represents that it has reviewed and is familiar with those rules and regulations which are applicable to the use of the School District's facilities.

**JULY 3, 2012
TOWN BOARD MEETING**

25. Nothing contained in this Agreement shall be construed to create an employment or principal-agent relationship, or partnership or joint venture, between the Town and the School District and any officer, employee, servant, agent or independent contractor of the School District.
26. This Agreement must be approved by the Board of Education of the Mahopac Central School District and the Board of the Town of Carmel in public session. Absent said approvals, this Agreement is null and void and unenforceable.
27. This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
28. The undersigned representative of each party hereby represents and warrants that the undersigned is an officer, director or agent of that party with full legal rights , power and authority to enter into this Agreement on behalf of that party and bind that party with respect to the obligations enforceable against that party in accordance with the terms contained herein.

IN WITNESS WHEREOF, the undersigned hereby acknowledges that they have read and fully understand the foregoing Agreement and further, that they agree to each of the terms and conditions contained herein.

TOWN OF CARMEL

By: _____

Printed Name: _____

Date: _____

MAHOPAC CENTRAL SCHOOL DISTRICT

By: *Henny Swift*

Printed Name: Henny Swift

Date: _____

Councilman Lupinacci explained that the cost to the Town of Carmel would be \$1 per year for this contract.

CARMEL SEWER DISTRICTS #2, #3, #4, #5, #6, #7, & #8 AND CARMEL WATER DISTRICTS #2, #3, & #12 – EXTENSION OF EXISTING CONTRACTS FOR OPERATIONS AND MAINTENANCE WILTH SEVERN TRENT ENVIRONMENTAL SERVICES, INC. - AUTHORIZED

RESOLVED that the Town Board of the Town of Carmel hereby authorizes the extension of the existing contracts for operations and maintenance of Carmel Sewer Districts #2, #3, #4, #5, #6, #7 and #8, as well as the operations and maintenance of Carmel Water Districts #2, #3 and #12 with Severn Trent Environmental Services, Inc., for an additional period of six (6) months from July 1, 2012 through December 31, 2012; and

BE IT FURTHER RESOLVED that upon review and approval of insurance certificates in form satisfactory to Town Counsel Town Supervisor Kenneth Schmitt is hereby authorized to execute any and all necessary documentation required in connection said contract extension.

Resolution

Offered by: Councilwoman McDonough

Seconded by: Councilman Lupinacci

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	<u>X</u>	<u> </u>
John Lupinacci	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

Supervisor Schmitt pointed out that this six month extension allows time for further review of the contract.

LAKE SECOR PARK DISTRICT ADVISORY BOARD – APPOINTMENT OF CLAUDINE EDWARDS

RESOLVED that the Town Board of the Town of Carmel hereby appoints Claudine Edwards to the Lake Secor Park District Advisory Board, effective immediately.

Resolution

Offered by: Councilman Schneider
Seconded by: Councilman Lupinacci

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	<u>X</u>	<u> </u>
John Lupinacci	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

Supervisor Schmitt thanked Claudine Edwards for volunteering.

CARMEL WATER DISTRICT #14 – SETTLEMENT AND RELEASE REGARDING CLAIM AGAINST BAKER DIGGING, INC. - AUTHORIZED

WHEREAS, in April of 2012, the Engineering Department of the Town of Carmel was advised that Baker Digging, Inc. of Somers, NY struck and damaged a Carmel Water District #14 water main during the course a private contract; and

WHEREAS, the Town Engineering Department has investigated the incident and determined that the Town of Carmel and Carmel Water District #14 are entitled to recover as against said contractor Baker Digging, Inc. of Somers, NY, for the damage caused to the aforementioned water main; and

WHEREAS, Robert J. Vara, Engineering Projects Coordinator, in the course of his evaluation and investigation of the matter, has recommended that settlement of the claim on behalf of the Town of Carmel and Carmel Water District #14 in the sum \$7,065.50 is appropriate;

NOW THEREFORE BE IT RESOLVED that the Town Board of the Town of Carmel acting as Commissioners of Carmel Water District #14, hereby authorize the settlement of the referenced claim against Baker Digging, Inc. of Somers, NY, in the sum of \$7,065.50 and further authorize Town Supervisor Kenneth Schmitt to sign a release for said claim in form as attached hereto and made a part hereof.

Resolution

Offered by: Councilman Lombardi
Seconded by: Councilman Schneider and Councilwoman McDonough

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>	
Jonathan Schneider	<u>X</u>	<u> </u>	
John Lupinacci	<u> </u>	<u> </u>	Abstain
Suzanne McDonough	<u>X</u>	<u> </u>	
Frank Lombardi	<u>X</u>	<u> </u>	
Kenneth Schmitt	<u>X</u>	<u> </u>	

JULY 3, 2012
TOWN BOARD MEETING



THE MAIN STREET AMERICA GROUP



Claim Number: MPV35608-002-633-001

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned **Town Supervisor, Ken Schmitt for the Town of Carmel** in consideration of **Seven Thousand Sixty Five Dollars and Fifty Cents(\$7065.50)** for property damages, to the undersigned in hand paid, and other good and valuable consideration, receipt whereof is hereby acknowledged, do/does hereby and for my/our/its heir, executors, administrators, successors and assigns release, acquit and forever discharge **NGM Insurance Company, Baker Digging Inc** and his, her, their, or its agents, servants, successors, heirs, executors, administrators and all other persons, corporations, firms, associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage and the consequences thereof resulting or to result from the accident, casualty, or event which occurred on or about **April 17, 2012**.

It is understood and agreed that the neither this Release nor any payment made pursuant hereto is to be taken as an admission of liability on the part of any person in whose favor this Release is given.

The undersigned further declares and represents that no promise, inducement, or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this ____ day of _____, 20 ____.

CAUTION: READ BEFORE SIGNING BELOW

Witness:

Name: **Town Supervisor Ken Schmitt for Town of Carmel**

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information, or conceals for the purpose of misleading information concerning any fact material thereto, and any person who knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the Department of Motor Vehicles or an insurance company commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation."

Attention: Claims Mail
The Main Street America Group
P.O. Box 19000, Jacksonville, FL 32245-9000
ClaimsMail@msagroup.com

THIRTY DAY NOTICE REQUIREMENT IN SECTION 64 OF THE ALCOHOLIC AND BEVERAGE CONTROL LAW REGARDING APPLICATION OF THE COPPERHEAD GRILLE, INC. D/B/A THE COPPERHEAD GRILLE FOR A LIQUOR LICENSE – WAIVED.

WHEREAS, The Copperhead Grille, Inc. d/b/a The Copperhead Grille, located at 957 Route 6, Mahopac, NY 10541, has advised that it intends to apply for an on-premises liquor license for which thirty days advance notice of such application must be sent to the municipality, and

JULY 3, 2012
TOWN BOARD MEETING

WHEREAS, the notice required by Section 64-2(a) ABC Law may be waived by the Town Board, and

WHEREAS, the Town of Carmel Town Board does not intend to comment upon the application referred to herein;

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Carmel hereby waives the thirty day notice requirement contained in Section 64 of the Alcoholic and Beverage Control Law, and states that it does not intend to offer any comments regarding the application of The Copperhead Grille, Inc. d/b/a The Copperhead Grille, for a liquor license at the premises referred to herein; and

BE IT FURTHER RESOLVED that the Town Clerk is authorized to sign a Waiver of Said Notice on behalf of the Town of Carmel

Resolution

Offered by: Councilman Lupinacci
Seconded by: Councilwoman McDonough

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	<u>X</u>	<u> </u>
John Lupinacci	<u>X</u>	<u> </u>
Suzanne McDonough	<u>X</u>	<u> </u>
Frank Lombardi	<u>X</u>	<u> </u>
Kenneth Schmitt	<u>X</u>	<u> </u>

RECOGNITION OF PUBLIC - AGENDA ITEMS

No members of the public wished to speak at this time regarding agenda items.

RECOGNITION OF TOWN BOARD MEMBERS – AGENDA ITEMS

No Town Board Members wished to speak at this time regarding agenda items.

OPEN FORUM

Jennifer Kreatsoulos, resident of Old Farm Rd., spoke regarding concerns she and her neighbors have about a 16 child day care center being opened up in the Laurel Farms subdivision. She explained that they are worried about the additional traffic and parking problems that might be created by parents dropping off and picking up their children.

Mrs. Kreatsoulos inquired about the Town of Carmel zoning code and said she was surprised that Michael Carnazza, Building Inspector, indicated that it could be allowable under the code.

Supervisor Schmitt asked about the specific location of the property involved.

Mrs. Kreatsoulos explained where the house is and noted that the owners have only been there about a year.

Gregory Folchetti, Legal Counsel, stated that the licensing of child day care centers are governed by New York State and pre-empts local zoning codes unless a certain threshold is hit then it must comply with local zoning codes.

Gregory Folchetti, Legal Counsel, also stated if licensed by New York State that the parking issue would not be addressed. He suggested that Michael Carnazza, Building Inspector, and Joseph Charbonneau, Legal Counsel to Planning Board, determine if this day care center would hit the threshold or not.

JULY 3, 2012
TOWN BOARD MEETING

Councilman Lombardi questioned if the Padavan Law would apply in this case.

Supervisor Schmitt suggested that the residents may want to contact Senator Ball and Assemblyman Katz since it seems to be a state issue.

Sue Schwenk, resident of Old Farm Rd., mentioned that she lives diagonally across from the property in question and that there already is a problem with the owners parking on the street. She told the Town Board that she appreciated their consideration of this matter.

Mrs. Schwenk also expressed her concern that changes were made to the house for a supposed different reason and that the owners were not letting anyone know about their plans.

Councilman Lombardi said they would have to look into the situation and determine if the town has jurisdiction.

Supervisor Schmitt questioned if a petition would be helpful.

Gregory Folchetti, Legal Counsel, responded that the residents have rights and that they can claim that they would be negatively affected by the traffic issues.

Jim McGuire, resident of Old Farm Rd., asked if the Town of Carmel zoning laws are being applied to the proposed day care center.

Gregory Folchetti, Legal Counsel, responded that the local laws would not apply if under a certain threshold and that he is being told by New York State that the Town of Carmel local laws are being pre-empted but he will have to look into it.

Councilman Lombardi asked if there has been advertising regarding the day care center.

Mrs. Kreatsoulos responded that they are advertising for twelve to sixteen children. She added that they will be getting their license this month so time is an issue.

There was a brief discussion regarding enforcement and timing issues.

Supervisor Schmitt questioned if the Town of Carmel Building Inspector has to issue a certificate of occupancy for day care centers.

Gregory Folchetti, Legal Counsel, responded that an annual inspection is done.

A brief discussion was held regarding safety issues.

RECOGNITION OF TOWN BOARD MEMBERS

Councilman Lupinacci reported on mysterious holes that have been discovered at the Baldwin Meadows Town Park ball fields. He explained that when reviewing security tapes a man was observed using a metal detector, digging holes and not filling them up again.

A brief discussion was held regarding the legality of using metal detectors and if there should be something in the Town Code or Park Rules banning metal detectors on town property.

Councilman Lombardi wished everyone a happy, healthy and safe Fourth of July. He reminded the public that fireworks are illegal in the state of New York and more importantly for people to be careful. He also reminded store owners to ask for identification when selling alcoholic beverages.

Supervisor Schmitt announced that the Sunset Concert Series is continuing this Thursday with a performance at 7:00 PM at the Chamber Park.

**JULY 3, 2012
TOWN BOARD MEETING**

Councilman Lupinacci announced that there would be a concert and festivities on July 4, 2012 at the Red Mills Historic Park.

Councilman Schneider encouraged the public to enjoy their 4th of July celebrations but to keep in mind those who have sacrificed for our country and our freedom. He read an e-mail that he had received from a friend in that regard.

All agenda items having been addressed, on motion by Councilman Lombardi, seconded by Councilman Lupinacci, with all members present and in agreement, the meeting was adjourned at 8:40 p.m.

Respectfully submitted,

Phyllis Bourges, Deputy Town Clerk