

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

A Special Meeting of the Town Board of the Town of Carmel was called to order by Supervisor Kenneth Schmitt on the 28th day of March, 2018 at 7:10 p.m. at Town Hall, 60 McAlpin Avenue, Mahopac, New York. Members of the Town Board present by roll call were: Councilman Barile, Councilman Lupinacci, and Supervisor Schmitt. Councilwoman McDonough and Councilman Schneider were absent.

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.

PUBLIC HEARING HELD - PROPOSED LOCAL LAW TO AMEND THE CODE OF THE TOWN OF CARMEL, CHAPTER 147, HEREOF, ENTITLED "VEHICLE AND TRAFFIC" (HUGHSON ROAD)

Supervisor Schmitt asked the Deputy Town Clerk to read the following Notice of Public Hearing as published in the Town’s official newspapers:

LEGAL NOTICE	
NOTICE OF PUBLIC HEARING	
NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Carmel will conduct a Public Hearing at the Town Hall, 60 McAlpin Avenue, Mahopac, New York 10541 on Wednesday, March 28, 2018 at 7:00 p.m. or as soon thereafter that evening as possible on a Local Law amending Chapter 147 of the Code of the Town of Carmel, entitled "Vehicle and Traffic" as follows:	
TOWN OF CARMEL PROPOSED LOCAL LAW # _____ OF THE YEAR 2018---	
A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF CARMEL, CHAPTER 147, THEREOF, ENTITLED "VEHICLE AND TRAFFIC."	
BE IT ENACTED by the Town Board of the Town of Carmel, County of Putnam, State of New York as follows:	
SECTION 1 - Chapter 147 of the Code of the Town of Carmel, Section 147-43. Schedule IV, Prohibited Turns at Intersection is hereby amended by the addition of the following:	Nothing in this Local Law is intended, or shall be construed (a) to limit the home rule authority of the Town under State Law to limit the Town's discretion in setting fees and charges in connection with any applications requiring Town approval.
NAME OF STREET Hughson Road	SECTION 3 - SEVERABILITY
DIRECTION OF TRAVEL North	If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Carmel hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.
PROHIBITED TURN Left	SECTION 4 - Effective Date
HOURS All	This Local Law shall take effect immediately upon filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.
AT INTERSECTION OF Old Route 6	At said Public Hearing, all interested persons shall be heard on the subject thereof. The Town Board will make every effort to assure that the Public Hearing is accessible to persons with disabilities. Anyone requiring special assistance and/or reasonable accommodations should contact the Town Clerk.
VEHICLES PROHIBITED Over 18,000 lbs	By Order of the Town Board of the Town of Carmel Ann Spofford, Town Clerk
SECTION 2 - HOME RULE	

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With no one objecting to the public notice as read, Supervisor Schmitt opened the Public Hearing for public comment at 7:15 p.m. Approximately thirteen (13) people were in attendance.

Supervisor Schmitt explained the reason for amending this local law was that large vehicles were getting hung up on the rise in the road when attempting this turn. It was suggested by Lt. Dearman that the problematic turn be prohibited by law.

With no one present wishing to be heard on the subject of the Public Hearing, on motion by Councilman Lupinacci, seconded by Councilman Barile, with all members of the Town Board present in agreement, the Public Hearing was closed at 7: 16 p.m.

SEQR DETERMINATION OF SIGNIFICANCE - PROPOSED LOCAL LAW #1 TO AMEND THE CODE OF THE TOWN OF CARMEL, CHAPTER 147 ENTITLED “VEHICLE AND TRAFFIC” (HUGHSON ROAD) - TYPE II ACTION

RESOLVED that the Town Board of the Town of Carmel hereby determines that, the proposed local law # 1, enacting Chapter 147 of the Code of the Town of Carmel, entitled, “Vehicle and Traffic”, is a Type II action under SEQR, and no further review is necessary.

Resolution

Offered by: Councilman Lupinacci
Seconded by: Councilman Barile

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>	
Michael Barile	<u>X</u>	<u> </u>	
Jonathan Schneider	<u> </u>	<u> </u>	Absent
John Lupinacci	<u>X</u>	<u> </u>	
Suzanne McDonough	<u> </u>	<u> </u>	Absent
Kenneth Schmitt	<u>X</u>	<u> </u>	

LOCAL LAW # 1 OF THE YEAR 2018 - A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF CARMEL, CHAPTER 147 HEREOF, ENTITLED “VEHICLE AND TRAFFIC” (HUGHSON ROAD) - ADOPTED AS NOTICED AND PUBLISHED

**TOWN OF CARMEL
LOCAL LAW #1 OF THE YEAR 2018
A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF CARMEL, CHAPTER 147, THEREOF, ENTITLED "VEHICLE AND TRAFFIC."**

BE IT ENACTED by the Town Board of the Town of Carmel, County of Putnam, State of New York as follows:

SECTION 1 Chapter 147 of the Code of the Town of Carmel, Section 147-43. Schedule IV, Prohibited Turns at Intersection is hereby amended by the addition of the following:

NAME OF STREET	DIRECTION OF TRAVEL	PROHIBITED TURN	HOURS	AT INTERSECTION OF	VEHICLES PROHIBITED
Hughson Road	North	Left	All	Old Route 6	Over18,000 lbs

SECTION 2 – HOME RULE

Nothing in this Local Law is intended, or shall be construed (a) to limit the home rule authority of the Town under State Law to limit the Town’s discretion in setting fees and charges in connection with any applications requiring Town approval.

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SECTION 3 – SEVERABILITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Carmel hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

SECTION 4 – Effective Date

This Local Law shall take effect immediately upon filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

Offered by: Councilman Lupinacci

Seconded by: Councilman Barile

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>	
Michael Barile	<u>X</u>	<u> </u>	
Jonathan Schneider	<u> </u>	<u> </u>	Absent
John Lupinacci	<u>X</u>	<u> </u>	
Suzanne McDonough	<u> </u>	<u> </u>	Absent
Kenneth Schmitt	<u>X</u>	<u> </u>	

**CARMEL WATER DISTRICT #4 – PAYMENT TO BEE & JAY PLUMBING
AUTHORIZED AS AMENDED**

RESOLVED, the Town Board of the Town of Carmel, acting as Commissioners of Carmel Water District #4, and upon the recommendation of Town Engineer Richard J. Franzetti, PE, hereby authorizes payment to Bee & Jay Plumbing, Mahopac, NY the sum of \$5,684.00 for goods and services rendered in connection with repair of the Summit Road booster station in accordance with the invoice dated January 15, 2018.

Resolution

Offered by: Councilman Lupinacci

Seconded by: Councilman Barile

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>	
Michael Barile	<u>X</u>	<u> </u>	
Jonathan Schneider	<u> </u>	<u> </u>	Absent
John Lupinacci	<u>X</u>	<u> </u>	
Suzanne McDonough	<u> </u>	<u> </u>	Absent
Kenneth Schmitt	<u>X</u>	<u> </u>	

**CARMEL SEWER DISTRICT #s 1,2,3,4,5,6,7,& 8 AND CARMEL WATER DISTRICT
#s 2,3,& 12 – ENTRY INTO AGREEMENT WITH INFRAMARK WATER &
INFRASTRUCTURE SERVICES FOR OPERATION AND MAINTENANCE SERVICES
- AUTHORIZED**

RESOLVED, that the Town Board of the Town of Carmel, acting as Commissioners of the various Sewer and Water Districts within the Town of Carmel hereby authorizes the entry into a contractual agreement with Inframark Water & Infrastructure Services, Katy TX, for provision of Operations and Maintenance Services for the Sewer District Facilities, Collections Systems and Treatment Plants for Carmel Sewers Districts #1, #2, #3, #4,#5, #6, #7 and #8 and for the Water District Facilities, Distribution Systems and Treatment Plants at Carmel Water Districts #2, #3 and #12 for the period commencing January 1, 2018 through December 31, 2022 in form as attached hereto and made part hereof; and

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BE IT FURTHER RESOLVED that Town Supervisor Kenneth Schmitt is hereby authorized to execute the aforementioned agreement and any and all other documentation to effectuate same upon the terms agreed upon therein.

Resolution

Offered by: Councilman Barile
Seconded by: Councilman Lupinacci

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>	
Michael Barile	<u>X</u>	<u> </u>	
Jonathan Schneider	<u> </u>	<u> </u>	Absent
John Lupinacci	<u>X</u>	<u> </u>	
Suzanne McDonough	<u> </u>	<u> </u>	Absent
Kenneth Schmitt	<u>X</u>	<u> </u>	

OPERATION AND MAINTENANCE AGREEMENT

for

WATER & SEWER DISTRICTS

Between

INFRAMARK, LLC

and

Town of Carmel

March 5, 2018

WASTEWATER AND WATER OPERATION AND MAINTENANCE AGREEMENT

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- A. Compensation
- B. Agreements between the City of New York and Town of Carmel for O&M of Upgrades to meet Watershed Regulations (NYCDEP Watershed Upgrades to Sewer District #2, #4 & #7)
- C. Town of Carmel Standard Operating Procedures
- D. SPDES Permits

This WASTEWATER AND WATER OPERATION AND MAINTENANCE AGREEMENT (hereinafter, the “Agreement”) is made and entered into this _____ day of _____, 2018, by and between the Town of Carmel, Town Hall, 60 McAlpin Avenue, Mahopac, NY 10541, (the “Town”) and Inframark, LLC, 2002 W. Grand Parkway N., Suite 100, Katy, Texas 77449 (hereinafter the “Operator”).

WITNESSETH

WHEREAS, the Town wishes to continue to provide centralized and uniform operation, administration and supervision of the Town's water and sewer districts as listed in Item I below and

WHEREAS Operator agrees to provide the same; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

I. FACILITIES COVERED:

- Water and Wastewater facilities
 - Carmel Sewer District # 1

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- o Carmel Sewer District #1, extension 3
- o Carmel Sewer District #2
- o Carmel Sewer District #3
- o Carmel Sewer District #4
- o Carmel Sewer District #5
- o Carmel Sewer District #6
- o Carmel Sewer District #7
- o Carmel Sewer District #8

- o Carmel Water District #2
- o Carmel Water District #3
- o Carmel Water District #12

and their corresponding distribution and collection systems.

II. DEFINITIONS

"Abnormal or Biologically Toxic Material" is defined as any substance or combination of substances contained in the influent wastewater received or treated at any of the Facilities in sufficient concentrations or amounts so as to either:

- (i) interfere with the biological processes necessary for the removal of organic and chemical constituents from the wastewater in a manner required to meet Applicable Law including the discharge limits specified in the Town's Discharge Permit(s); or
- (ii) cause the effluent wastewater discharged from the Facilities or the Process Residue to become hazardous waste as defined under RCRA and/or hazardous substances as defined under CERCLA.

Abnormal or Biologically Toxic Materials may include, but are not limited to, concentrations of heavy metals, phenols, cyanides, pesticides, herbicides, priority pollutants as listed by USEPA, or any substance that violates the local or USEPA standards for finished water after the routine processing of the influent wastewater.

"Adjustment Date" shall mean each and every anniversary of the Commencement Date.

"Affiliate" shall mean "related parties" to the Operator and Town within the meaning of Section 144(a) (3) of the Internal Revenue Code.

"Agreement" is defined in the Preamble to this Agreement.

"Agreement Year" is defined as any consecutive twelve (12) month period during the term of the Agreement (including the renewal options) that begins on the Commencement Date and subsequently ends on each anniversary of that date.

"Applicable Law" is defined as those laws, rules, regulations, codes, administrative and judicial orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, local government, agency or executive or administrative body of any of the foregoing, including CERCLA and RCRA, in each case that pertain to the (a) parties' respective responsibilities under this Agreement; (b) operation or maintenance of the Facilities; (c) health and welfare of individuals working at or visiting the Facilities; and (d) the collection, delivery, treatment and disposal of the Town's wastewater, Process Residue and/or related wastes. This definition specifically includes the terms, conditions, requirements or schedules of any administrative or judicial settlement or

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enforcement related, in any way, to the Facilities, to the collection, delivery, pretreatment, or treatment of the Town's wastewater, to the handling, transportation, treatment and disposal of Process Residue and to each of the Town's environmental permits issued for the Facilities.

"Authorized Representative" is defined in Section VII of this Agreement.

"Base Compensation" is defined in Article IX of this Agreement.

"Capital Improvement(s)" shall mean changes, modifications, additions, or upgrades to the Facilities constructed or implemented by the Town or with the Town's prior approval.

"CERCLA" is defined as the federal Comprehensive Environmental Response Compensation and Liability Act, as same may be amended from time to time, 42 USC §9601 et seq.

"Change of Law" is defined as the occurrence of any of the events listed in (i) through (iv) below, which results or can reasonably be expected to result in (a) the need to make a Capital Improvement at or to the Facilities in order for the Operator to operate the Facilities in accordance with this Agreement and Applicable Law; or (b) an increase or decrease to the cost of managing, operating or maintaining the Facilities in accordance with this Agreement and Applicable Law; or (c) a material and adverse effect on the scope of the Operator's liabilities or obligations under this Agreement:

- (i) there is passed or promulgated any federal, state, or other local law, statute, ordinance, rule or regulation different from those existing on the date this Agreement is executed; or
- (ii) there is passed or promulgated any amendment to, or change in, any federal, state, or other local law, statute, ordinance, rule or regulation (including any applicable sales tax regulation) following the date of this Agreement; or

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- (iii) following the execution of this Agreement, there comes into existence an order or judgment of any federal, state, or local court, administrative agency or other governmental body containing interpretations of any Applicable Law relating to the operation or maintenance of the Facilities or the health and safety of the Operator's employees that is inconsistent with generally accepted interpretations in effect on the date this Agreement is executed; or
- (iv) after the effective date of this Agreement, any change occurs which affects the issuance or renewal, or causes a suspension, termination, interruption, revocation, denial or failure of renewal (for reasons other than Operator fault or failure by the Operator to comply with the terms of this Agreement) of any official permit, license or necessary approval by the USEPA, the Occupational Safety and Health Administration or the New York State Department of Environmental Conservation.

"Commencement Date" shall mean the date designated by the parties hereunder for the commencement of their respective obligations. The parties agree that the Commencement Date shall be January 1, 2018.

"Corrective Maintenance" is defined as maintenance work which involves the repair or replacement of components which, in Contractor's reasonable discretion have failed or are reasonably likely to fail

"Consumables" means products/equipment used in connection with the operation of the Facilities.

"Environmental Compliance Guarantee" is defined in Section VI.

"Facilities" or "Town's Facilities" is defined as the water and wastewater treatment plant and all associated facilities as described in Section I of this Agreement.

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"Force Majeure" is defined as any act, event, or condition to the extent that it adversely impacts the cost of performance of, or adversely affects the ability of, either party to perform any obligation under this Agreement (except for payment obligations) if such act, event or condition, in light of any circumstances that should have been known or reasonably believed to have existed at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error, omission or failure to exercise reasonable diligence on the part of the party relying thereon; provided, however, that the contesting party in good faith or failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error, omission or lack of reasonable diligence of either party.

- (a) Inclusions. Subject to the foregoing, such acts, events or conditions may include, but shall not be limited to, the following:
 - (i) an act of God, landslide, earthquake, arson, tornado, sabotage, or similar occurrence, acts of a public enemy, terrorism, extortion, war, blockade, insurrection, riot or civil disturbance;
 - (ii) the failure of any appropriate governmental agency or private utility to provide and maintain utilities;
 - (iii) any failure of title to the Facilities or any placement or enforcement of any lien, charge or encumbrance on the Facilities or on any improvements thereon that is not consented to in writing by, or arising out of any action or agreement entered into by, either party to the Agreement;
 - (iv) the inability of the Operator and its subcontractors to gain and maintain access to all areas of the Facilities and/or adjoining the Facilities where the Operator is required to provide services or perform any work hereunder;
 - (v) the preemption, confiscation, diversion, destruction, or other interference by, on behalf, or with authority of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action, in the possession of property, equipment or materials located at the Facilities, or in the performance of the Services to be performed by Operator hereunder;
 - (vi) with respect to the Operator, contamination of the Facilities from groundwater, soil or airborne hazardous materials or regulated substances migrating from sources outside the Facilities to the extent not caused by the Operator's negligence;
 - (vii) with respect to the Operator, damage to the Facilities caused by third parties not related to or under the control of the Operator including, but not limited to, other contractors and subcontractors for the Town;
 - (viii) the breach of this Agreement by one of the parties to the extent that it substantially impacts the non-breaching party's cost of performance under this Agreement or substantially affects the ability of the non-breaching party to perform any material obligation under this Agreement.
- (b) Exclusions. None of the following acts, events or conditions shall constitute an event of Force Majeure:
 - (i) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in process, or currency or exchange rate fluctuations;
 - (ii) changes in the financial condition of the Town, the Operator, or any of their Affiliates or subcontractors;
 - (iii) union work rules which increase the Operator's operating cost for the Facilities;
 - (iv) any impact of prevailing wage laws on the Operator's costs, provided however that such requirements or demands may constitute a Change of Law entitling the Operator to additional compensation;
 - (v) the consequence of Operator error, including any errors of Operator Affiliates or subcontractors; and/or
 - (vi) litigation against the Town and/or Operator.

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"Indemnified Party" is defined in XVII.

"Indemnifying Party" is defined in XVII.

"Independent Engineer" refers to a nationally recognized independent consulting engineering firm experienced in the design and/or the operation of wastewater treatment systems as selected in accordance with the procedures set forth in Article 11 herein.

"Maintenance" means those routine or repetitive activities, including preventive and predictive activities required by the equipment guidelines or manuals and those activities recommended by the Town and the contractor to maximize the service life and performance of the Facilities' equipment and the components thereof, which includes replenishment of Consumables.

"Non-Processable Wastewater" is defined as wastewater (i) which contains Abnormal or Biologically Toxic Materials or other substances which cannot be removed or treated by the existing Facilities; or (ii) which is unable to be treated by the Facilities or is otherwise detrimental to the operation and performance of the Facilities; or (iii) which exceeds the design capabilities of the Facilities as defined by the Operations and Maintenance Manual for the Facilities or as provided in submissions made to regulatory agencies in connection with the construction and/or the permitting of the Facilities.

"Process Residue" is defined as grit, screenings and wastewater sludge generated by or through the operation of the Facilities.

"RCRA " is defined as the Resource Conservation Recovery Act, as same may be amended from time to time, 42 USC §8921 et seq.

"Repair" means those unplanned, non-routine and non-repetitive activities required for operational continuity, safety, and performance, generally due to failure, or to avert a failure of, equipment, vehicles, structures, and the Facilities or component thereof.

"Replacement" means the complete substitution of a piece of equipment, a component of a piece of equipment, vehicles, structures, or a component of the Facilities due to wear, breakage, or other failure in order to return the equipment, vehicle, structure, Facilities or some component thereof to designed functionality.

"Services" is defined in Section V.

"Sewer Use Ordinance" is defined as the Town's ordinance, order, regulation or policy which establishes the requirements for persons discharging wastewater to Town's sewer system, as same may be amended from time to time.

"Shutdown" is defined as the cessation or substantial interruption of normal operations at the Facilities due to the failure of operating equipment or interruption of the processes of the Facilities for reasons other than the negligence of the Operator or its employees, agents or subcontractors.

"State" is defined as the State of New York.

"Town " is defined in the Preamble to this Agreement.

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"Town's Discharge Permit(s)" and/or *"Discharge Permit(s)"* shall refer to all permits and licenses issued to Town and required for the discharge of wastewater from the Facilities. Copies of all Discharge Permits are attached as Exhibit B to this Agreement.

"USEPA" refers to the United States Environmental Protection Agency.

III. PURPOSE

Commencing on the Commencement Date and during the term of this Agreement, the Town agrees to engage the Operator as an independent contractor to operate and maintain the Facilities, and Operator agrees to operate, and maintain the Facilities in accordance with the terms and conditions of this Agreement, Applicable Law, and all permits, licenses, manufacturer's protocols, and specifications applicable to the operation and maintenance of the Facilities. Each party hereto agrees that it will cooperate in good faith with the other and its agents, employees, representatives, officers, contractors, and subcontractors to facilitate the performance of the mutual obligations set forth in this Agreement.

IV. REPRESENTATION AND WARRANTIES OF PARTIES

1) Representations and Warranties of the Town

The Town hereby represents and warrants that, as of the date hereof:

- (a) It is an incorporated Town of the State duly organized, validly existing and in good standing under the laws of the State, with all legal right, power and authority to enter into this Agreement, to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, and to enter into and perform its obligations under this Agreement.

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- (b) This Agreement, Town's execution and delivery of this Agreement and Town's performance of its obligations hereunder, have been duly and validly authorized. This Agreement has been validly executed and delivered by Town and constitutes a legal, valid, and binding obligation of Town, enforceable in accordance with its terms.
- (c) Town's execution, delivery, and performance of this Agreement will not conflict with, or result in any violation of, or constitute a default or a condition which upon notice or lapse of time, or both, would constitute a default under any judgment, order, writ, injunction, decree, rule, regulation, permit, license, note, agreement, mortgage, deed, contract or other instruments that apply to, or which bind Town or any of its assets and properties.
- (d) There are no actions, suits, proceedings or governmental investigations pending, or, to its best knowledge, threatened against it or its assets or properties, and no judgments, decrees, orders, rulings, writs or injunctions outstanding against it or its assets or properties, that would in any case have a material adverse effect upon Town's ability to execute this Agreement or otherwise to consummate and perform its respective obligations hereunder, except as indicated hereunder by affidavit of counsel for the Town.
- (e) The Town and its representatives are fully familiar with this Agreement and the obligations set forth herein, including all the exhibits and schedules attached to this Agreement, if any, and Town is fully capable of performing and complying with the same.

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2) Representations and Warranties of the Operator

Operator hereby represents and warrants to Town that, as of the date hereof:

- (a) It is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, and qualified to conduct business in the State with full corporate power and authority to enter into this Agreement, to carry on its business as now conducted and as proposed to be conducted, and to enter into and perform this Agreement.
- (b) This Agreement, Operator's execution and delivery of this Agreement and Operator's performance of its obligations hereunder, have been duly and validly authorized by Operator by all necessary corporate action. This Agreement has been validly executed and delivered by Operator and constitutes a legal, valid and binding obligation of Operator, enforceable in accordance with its terms.
- (c) The execution, delivery and performance of this Agreement will not conflict with, or result in any violation of, or constitute a default or a condition which upon notice of lapse of time, or both, would constitute a default, under the organizational documents of Operator nor under any judgment, order, writ, injunction, decree, rule, regulation, permit, license, note, agreement, mortgage, deed, contract or other instruments that apply to, or which bind, Operator or any of its assets or properties.
- (d) There are no actions, suits, proceedings or governmental investigations pending, or, to its best knowledge, threatened against it or its assets or properties, and no judgments, decrees, orders, rulings, writs or injunctions outstanding against it or its assets or properties, that would in any case have a material adverse effect upon Operator's ability to execute this Agreement or otherwise to consummate and perform its respective obligations hereunder.
- (e) The Operator is fully familiar with this Agreement and the obligations set forth herein, including all exhibits and schedules attached to this Agreement, if any, and Operator is capable of performing and complying with same.

3) Disclosure of Information

The Town and the Operator each represent and warrant to the other that each has disclosed, and will in the future disclose, any and all information it now has, or may have in the future, relating to the Facilities that may be relevant to the other in performing its duties and obligations. Such information shall include, but shall not be limited to, the appropriate sections of any vulnerability or security assessment performed (including any vulnerability assessments performed in accordance with 42 USCS §300i-2 or any other similar statute), environmental audits, prior permit violations and/or dealings with regulatory agencies.

V. SCOPE OF SERVICES AND OPERATOR'S RESPONSIBILITY

1) General

Subject to the terms and conditions provided herein, the Operator shall provide labor, tools, utilities and materials necessary for the operation and maintenance of the Facilities to the extent specifically set forth in this Section (hereinafter the "Services"). The Services include providing an on-site staff, to perform the following functions: (a) treatment of wastewater influent and raw water delivered to the Facilities; (b) routine preventive maintenance of the Facilities; (c) repair and replacement of the Facilities' equipment; (d) laboratory testing and analysis; (e) management of the chemical inventory, ordering, and delivery process, (f) preparation and prompt delivery of all applicable and required filings, including discharge reports, to Town and to regulatory agencies as prescribed by Applicable Law, and (g) snow removal and grass mowing.

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2) Standard of Care

Operator shall provide the Services under this Agreement in a professional nature, in accordance with the degree of professional skill and care ordinarily exercised by members of Operator's profession in the geographic region of the Facilities, and in compliance with all applicable State, Federal and Local Laws, rules and regulations.

3) Services to be provided

A. Operator shall maintain compliance with the permits and regulations of the New York City Department of Environmental Protection, the Putnam County Department of Health, the New York State Department of Environmental Conservation and the New York State Department of Health, which includes but is not limited to required testing, routine and periodic maintenance, data accumulation and associated reporting, required consumer confidence reports and annual water quality reporting to the satisfaction of all involved regulatory agencies.

Operator shall use qualified (and where required, certified) personnel to operate and maintain the Facilities and all its equipment and processes in accordance with relevant operation and, if available, maintenance manuals for the Facilities, Applicable Law, and the Town's Permits and Discharge Permits. Additional management time needed for routine tasks included in the scope of work will not be charged to the Town. Additional management time needed for special projects or emergencies will be compensated at the hourly rate provided in Attachment A with prior approval from the Town.

B. Supervise and administer all outside contractors at the facilities. Where Operator pays the outside contractor, Operator shall be reimbursed by the Town for its costs (including taxes that may be required on payments to any of its subcontractors, vendors or suppliers), plus ten percent (10%)

C. Operator shall be available for meetings relating to the Facilities if attendance is requested by the Town.

D. Operator shall provide weekly reports for the Facilities including a summary of work performed, customer requests, environmental compliance, performance metrics, financial, technical, safety performance, security, personnel, public relations and other miscellaneous information relevant to the operation and maintenance of the facilities.

- E. Operator shall provide an annual evaluation and assessment report for each water and sewer district identified in Section I with the following information:
1. An evaluation of the probable causes of any noncompliance with current regulations;
 2. An evaluation of the operation and condition of existing equipment and facilities;
 3. A summary of recommendations and/or conclusions relative to items 1 and 2 including a plan of action by the Operator to resolve and/or mitigate any compliance deficiencies and a list of recommended equipment repairs and/or replacement including estimated costs to effect same; and
 4. Recommendations and outline for capital plan for Facilities.

F. Operator may interface with regulatory agencies without Town's consent in matters related to

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compliance with the Town's permits, including the Discharge Permits, and/or with respect to matters required under the Operator's staff certification and licensing requirements and/or as otherwise necessary to comply with Applicable Law, including communication during emergency situations. Operator shall, as soon as practicable and in reasonable detail, inform the Town of the subject matter of such communications with regulatory agencies via the Town's designated representatives, agents or employees. All other communications with regulatory agencies, the media, or community groups may occur only upon Town's request or with Town's prior approval.

G. Operator shall provide, by September first of each year, a budget estimate for operation and maintenance of each water and sewer district identified in Section I for the next calendar year.

H. Operator shall meet with the Town Engineer as is reasonably necessary to discuss system operations, invoices, purchases, repairs, vouchers, capital improvements, and other Services hereunder.

I. Operator shall make appropriate personnel available for routine inspections and meetings with the New York State Department of Health, New York State Department of Environmental conservation, New York City Department of Environmental Protection and the Putnam County Department of Health. Provide response within 24 hours to inquiries from the Town regarding customer complaints or similar issues as they arise. Operator shall provide Town Engineer a draft of reporting documents for review prior to submittal to agencies.

L. Comply with all applicable State, Federal and Local Laws, rules and regulations.

M. Operator shall provide semiannual flushing of water mains and fire hydrants as may be required to address water quality as requested by the Town. If water mains or fire hydrants require more frequent flushing, such additional flushing shall be treated as additional services under Attachment A.

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N. Operator shall respond to blockages as needed to clear small blockages with trailer mounted sewer jet. More severe blockages requiring larger sewer equipment will be provided by sewer cleaning contractor contracted with the Town

O. Operator shall manage a sewer cleaning program that includes developing a monthly plan for sewer cleaning addressing problem areas in the collection systems, managing the sewer cleaning contractor contracted with the Town to provide the cleaning as set out in the monthly plan, and providing a monthly report to the Town on the sewer cleaning activity.

P. Operator shall manage all accounts payable including the submission of purchase orders and vouchers to the Town Engineer for review and approval prior to incurring any costs. The Town will be responsible for costs associated with the equipment and materials necessary for the proper testing, operation and maintenance i.e. oil, belts, grease, paint, janitorial supplies, garden hoses, garden hose nozzles, brushes, sludge judge, safety signs, tank and facility cleaning tools.

O. Operator shall provide landscaping and snow removal services as is reasonably necessary.

P. Operator shall provide at least three (3) vehicles for Operator's staff as necessary to operate and maintain the Facilities, including a heavy-duty tow vehicle for mobilization of the Town's portable emergency generator.

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Q. Operator shall supply the following equipment:

- Computer equipment for process control and data reporting
- Cellular telephones
- Emergency pagers
- Confined space entry equipment
- Fall protection equipment for manhole entry
- Shoring

Operator shall provide meter reading for the Town's current commercial customers. There will be no charge for residential water meter replacement for simple direct replacement requiring no piping modifications needed during normal work days. Meter replacement excludes replacement to implement an Advance Meter Infrastructure program. The Town shall pay Operator for all other meter replacements as set forth in Attachment A.

S. The Operator shall perform the following:

- Inspect main pump stations three times per week and provide weekly report to Town;
- Inspect on-lot systems on an annual basis which includes:
 - Observing the condition of the pumps
 - Insuring pumps are operable
 - Insuring alarm system is operable
 - Insuring the correct emergency number is posted by the pump
 - Providing an annual report on the on-lot systems to Town
- Grease and grit will be removed as required and shall be performed by an outside contractor and billed to and paid directly by the Town.
- Administer a cross connection program for Water Districts #2, #3, and #12. Operator will input locations of said equipment and track that proper inspections are completed as per PCHD. All legal notification will come from the Town as well as the initial notification of local laws.
- Perform a water valve exercising program per district where Operator is to exercise 25% of the valves each year so all valves will be exercised on a four (4) year cycle. Operator shall provide an annual schedule of valves to be tested and time frame to complete and a report on the status of valves and any valves that need repair.
- Develop and manage a manhole inspection program with the Town contracting with a specialized contractor to provide the inspections.

T. Operator shall operate the Town's access alarm and all other alarms located at the Facilities and any of its appurtenances which will notify the Operator of any conditions that warrant immediate attention. All alarm systems, monitoring fees, repairs and related equipment and any related costs are the sole responsibility of the Town.

U. The Operator shall (i) perform routine preventive maintenance in accordance with manufacturers' specifications and approved operating and maintenance procedures developed for equipment and processes of the Facilities; (ii) repair and/or replace equipment (iii) clean and lubricate equipment; (iv) make equipment inspections and needed adjustments; (v) perform predictive

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maintenance as appropriate (vi) perform landscaping and lawn cutting at Facilities and cleaning of all equipment; (vii) maintain vehicles and light duty service trucks necessary for daily operations; and (ix) Operator shall schedule and track all preventive and corrective maintenance and perform spare parts inventory control in accordance with standard industry practice, (x) perform building janitorial and grounds maintenance services for the Facilities and cleaning of all equipment and vehicles; and (xi) maintain all of the Facilities' instrumentation, including instrumentation provided to the Operator by the Town pursuant to this Agreement.

V. In regard to Carmel Sewer Districts #2, 4 and 7, Operator acknowledges that it is aware that these districts are reimbursed for certain operation and maintenance costs by The City of New York. Certain provisions of the Town's agreement with the City of New York are required to be included in the Town's contracts for work to be paid with funds provided by the City. These provisions, as contained in Attachment C and made a part hereof, are incorporated by reference into this contract. Operator will track costs associated with the microfiltration systems and bill separately to facilitate the Town's reimbursement by NYCDEP.

W. Operator shall comply with Standard Operating Procedures as issued by the Town of Carmel including but not limited to the SOP's attached herewith in Attachment D.

X. Operator shall perform utility mark outs. Utility mark outs shall be treated as additional services under Attachment A.

Y. Operator will provide staff to assist Town Engineer to perform spot checks of flow and pressure of the water system.

4) Services Not Provided

Operator shall not provide the following:

- A. Legal and engineering services;
- B. Certified Laboratory testing;
- C. Capital improvements, unless otherwise agreed upon;
- D. Chemicals necessary for the operation of the Facilities;
- E. Transportation and disposal of sludge and other process residue generated by the Facilities;
- F. Emergency generator maintenance;
- G. Meter calibration and lab equipment, flow meters and RPZ certifications;
- H. Facility structure repairs i.e. Roofs, siding, painting, windows, doors, fences, lighting, oil burner services and electrical heaters;
- I. Tree trimming and removal and snow removal from district hydrants; and
- J. Detailed flow and pressure testing of entire water systems except as noted in Section VIII Z above.
- K. Leak detection.

5) Services Provided at Additional Costs

Operator may perform additional services or Corrective Maintenance beyond the Services specified herein with the mutual consent of both parties. The parties shall separately negotiate the costs of any such

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additional services. Operator shall be reimbursed for its costs in performing such additional services or Corrective Maintenance at Operator's cost plus ten percent (10%)

6) Safety

- (a) The Operator shall implement a proper safety program prior to beginning its Services under this Agreement. Such safety program shall comply with Applicable Laws and Operator agrees that it will adhere to all portions of that safety program; provided however that under all circumstances, Operator should not assume any obligation or incur any liability for any injury, death or damage caused by (i) unsafe site conditions not created by the Operator or by any of its agents, employees and subcontractors, (ii) work being performed by other parties not related to the Operator, (iii) the negligence of Town, and/or (iv) the negligence of any third party not related to the Operator.
- (b) Operator shall specifically ensure all operating personnel are briefed quarterly on no access areas and are kept off of any such no access areas. Operator and Town shall identify said no access areas jointly.
- (c) Operator shall document and submit to Town all training and certifications provided to Operator's personnel providing the Services hereunder.

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7) Reports

- (a) Operator shall maintain computerized and other necessary records of operations, maintenance, repair and improvement activities at the Facilities and shall prepare and submit to the Town a monthly report, delivered to the Town not later than ten (10) days following the end of each month, including a narrative and itemized summary of operations, maintenance, repair and replacement activities (including the draw-down against the Annual Repair and Maintenance Limit) and data required for monthly reporting to local, state and federal agencies. The monthly report shall also include the following items: (i) copies of waste and sludge manifests; (ii) insurance claims that are filed or pending; (iii) copies of all reports and correspondence made by the Operator to local, State and federal regulatory agencies on behalf of the Town; (iv) copies of all reports and correspondence received by Operator from same. (v) copies of any complaints; and (vi) copies documenting all training; and (vi) copies of any accident reports or safety violations.
- (b) The Operator shall collect the data for all permit monitoring and operating reports required by Applicable Law or by this Agreement and shall deliver the required monitoring and operating reports to the Town and to the appropriate regulatory agencies having competent jurisdiction over same. If required pursuant to Applicable Law, the Operator shall attest as to the accuracy and completeness of the data collected for each report. The Town, however, shall at all times be responsible for maintaining all required permits for the ownership and operation of the Facilities.
- (c) All Facilities' records and data, including but not limited to operation reports, laboratory reports and monitoring documentation, but excluding Operator's budgetary, financial, or other confidential and proprietary information, are the property of the Town and cannot be destroyed by Operator without written consent of the Town. All site-specific operating procedure guidelines, preventive maintenance and safety programs and plant evaluation reports will, upon termination of this Agreement, become and remain the property of the Town.

8) Emergency Response

- (a) Operator shall provide twenty-four (24) hours per day, seven (7) days per week emergency response when required. Normal business hours in Operator's Base Compensation are 7:00 AM – 3:00 PM Monday through Friday and 8:00 AM – 12:00 Noon Saturdays, Sundays and Holidays.

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There is no charge for emergency call service required during normal business hours which is included in Operator's Base Compensation. Any call outside of normal business hours is considered an emergency response and will be compensated at the hourly rates established in Attachment A (b). Emergencies include situations in which, absent Operator's action, there is a risk of: (i) the Facilities' noncompliance with Applicable Law; (ii) failure of the Facilities to operate; (iii) circumstances affecting the health and safety of persons or property; (iv) adverse impact of snow and other extreme weather conditions and other natural or man-made disasters; and (v) the occurrence of an event of Force Majeure or Shutdown.

- (b) Operator shall provide said emergency response as promptly as possible, but, absent extraordinary circumstances, within ninety (90) minutes of being notified of the existence of the emergency and the need to respond thereto.
- (c) When the Operator determines that an emergency exists, it may begin immediately taking any necessary action related thereto, without the Town's prior approval. All costs incurred by the Operator in responding to emergencies shall be borne by the Town, except those costs incurred in normal business hours, where specifically provided otherwise, and where such emergency, production stoppage or failure of the Facilities to operate is a result of Operator's negligent failure to operate and maintain the Facilities in accordance with the terms of this Agreement.
- (d) In the event of sudden damage or destruction of any portion of the Facilities, or in the event of an emergency which in the sole and reasonable judgment of the Operator is likely to result in material loss or damage to any portion of the Facilities, or constitute a threat to human health or safety, the Operator may suspend operations of those portions of the Facilities which are reasonably determined to be affected by the emergency and may make such emergency repairs as are necessary to mitigate or reduce such loss, damage or threat. The Operator shall provide prompt notice to the Town of any such damage, destruction or threat and of any emergency repairs that have or will be taken. The Town and the Operator shall cooperate in good faith in pursuing every reasonable measure to mitigate any threats to human health or safety, or the environment.
- (e) Within thirty (30) days of the Commencement Date, the Operator shall develop an emergency response plan that shall designate emergency team members and identify the standard operating procedures to be followed. In the event of an evacuation, the Operator will report to the Town's designated emergency management location, or other site to be specified by the Town's authorized representative or as designated by emergency response requirements of New York State and/or Putnam County, New York

9) Accounting Records

Operator shall maintain up-to-date financial and accounting records as they apply to the Annual Maintenance Expenditures. The records must be kept in accordance with the Operator's standard accounting practices and made available to the Town within thirty (30) working days of Town's written request.

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VI. CAPITAL IMPROVEMENTS

Operator may recommend Capital Improvements or operational changes to the Town as are necessary or recommended to perform the Services in compliance with the terms of this Agreement and Applicable Law. In the event the Town does not approve and make a Capital Improvement or operational change recommended by Operator, Operator will not be liable for any loss, damage or liability arising from or related to the Town's rejection of or refusal to implement the recommended Capital Improvement or

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operational changes, including any loss, damage, or liability for (a) failure of the Facilities, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification.

VII. ENVIRONMENTAL COMPLIANCE

1) Environmental Compliance Guarantee

The Operator hereby guarantees (the "Environmental Compliance Guarantee") that the operation of the Facilities will comply with the all provisions of Applicable Law, including the Town's Discharge Permits. The Operator's Environmental Compliance Guarantee does not apply in the following conditions:

- (a) The receipt at the Facilities of influent that contains Non-Processable Wastewater or discharges which violate applicable sewage ordinances;
- (b) An event of Force Majeure or Shutdown;
- (c) Town's failure or refusal to approve or fund necessary Capital Improvements, maintenance, repair, and/or replacement activities;
- (d) Towns' failure or refusal to approve necessary operational/process changes;
- (e) Facilities not designed to meet the requirements of the Discharge Permit;
- (f) Town's failure or refusal to approve or fund a recommended Capital Improvements, maintenance, repair, and/or replacement activities where it is determined such recommendation would have ensured operation of the Facilities in compliance with Applicable Law; or
- (g) Town's failure or refusal to approve a recommended operational/process change where it is determined such recommendation would have ensured operation of the Facilities in compliance with Applicable Law

In the event that the Operator is excused from meeting the provisions of the Environmental Compliance Guarantee for any of the reasons set forth in this Section above, the Operator shall provide the best treatment reasonably possible within the constraints of the Facilities' design, condition and physical limitations and shall resume normal operations within a reasonable time.

2) Fines and Penalties

In the event that environmental regulatory violations occur following the Commencement Date and such violations are directly attributable to a breach of Operator's Environmental Compliance Guarantee, the Operator shall be responsible for fines, penalties, or damages or the admission of Operator fault for violations that may be imposed by Applicable Law. To the extent permitted by law, Operator shall only be responsible for such environmental regulatory fines or penalties. Prior to settlement or payment of any such fines, penalties or damages, the Operator reserves the right to contest government or private actions, suits or proceedings for violations through administrative procedures or otherwise.

VIII. TOWN'S RESPONSIBILITIES

1) Town's and Operator's Representatives

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On or before the Commencement Date, the Town and the Operator shall each designate authorized representatives (each an "Authorized Representative") to administer this Agreement. Either party to this Agreement shall provide written notice to the other party of any change to the Authorized Representatives no less than fifteen (15) days prior to said change.

2) Permits

The Town shall be responsible for obtaining and maintaining all state, federal, and local permits and licenses required for ownership, operation and maintenance of the Facilities, including without limitation, the Town's Discharge Permits. Town shall also be responsible for the payment of all regulatory and governmental fees associated with ownership and operation of the Facilities and the Town's equipment used in connection with the operation and maintenance of the Facilities. The Operator shall provide reasonable assistance to the Town in obtaining and maintaining all required state, federal, and local permits and licenses associated with the ownership, operation and maintenance of the Facilities.

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3) Utilities

The Town shall assume responsibility and cost for utility services to the Facilities, including water, electricity and natural gas services, as well as diesel fuel for generators, and shall be responsible for maintaining water service to the Facilities at its sole cost and expense. Potable water is not to be used in the process except in an emergency.

4) Compliance with Laws

The Town will comply with Applicable Law pertaining to the management, ownership, operation, maintenance, repair and replacement of the Facilities to the extent that the responsibility of complying with those laws is not specifically assumed by the Operator under the terms of this Agreement. The Operator shall not be responsible for Town's failure to comply with any provision of Applicable Law that is not otherwise specifically assumed by the Operator hereunder.

5) License to Use Facilities

The Town hereby grants the Operator, without charge, and to the extent permitted by Applicable Law, a license during the term of this Agreement for the Operator's use of the Facilities, including all equipment, structures, facilities and vehicles under Town's ownership and which have been assigned by Town to the Facilities.

6) Notice of Litigation

In the event that the Town receives notice of or undertakes the defense or the prosecution of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, the Town shall give the Operator reasonably prompt notice of such proceedings and shall inform the Operator in advance of all hearings regarding such action, claim, suit, proceeding, or investigation. In the event the Operator receives notice of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, the Operator shall give Town reasonably prompt notice of such proceedings.

7) Access

The Town shall have full and unrestricted access to any and all parts of the Facilities at any and all times to

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review the performance of the Operator and inspect the Facilities during normal business hours. If notice is not provided prior to any such visit or inspection, such visit or inspection must be announced immediately upon the arrival of the visiting and/or inspection party at the Facilities. In connection with such visits and inspections, the Town agrees on behalf of itself, and further agrees to require its agents, licensees, or invitees, to comply with all reasonable safety rules and regulations adopted by the Operator and/or promulgated by any governmental authority that regulates work place safety. If the plant is left unattended for any period of time the front gate shall be locked and access to the SCADA system or other process controls shall be protected from unauthorized access.

8) Approval or Disapproval of Proposed Extraordinary Costs

In the event that the Operator provides written notice to the Town that it proposes to incur an expenditure requiring the Town's approval, the Town shall provide Operator with approval or disapproval of the proposed action

9) Costs and Expenses

The Town shall pay for: i) chemical costs; ii) expenses incurred from the treatment of Non-Processable Wastewater, including without limitation, any penalties and fines that may be assessed as a result; iii) expenses resulting from influent or pollutant loads exceeding the design capacity of the Facilities as set forth in the Facilities' Operation and Maintenance Manual; iv) expenses resulting from hydraulic or organic loads exceeding the design capacity of the Facilities as set forth in the Facilities' Operation and Maintenance Manual; v) all costs attributable to the transportation and disposal of Process Residue; and vi) all Capital Improvements.

10) General Authority

The Town shall perform all duties and discharge all responsibilities and obligations relating to the operation and maintenance of the Facilities not expressly assumed by the Operator pursuant to the terms of this Agreement.

IX. Compensation

- A. For the period beginning on the Commencement Date, the Town shall pay Operator the first year compensation of \$1,343,631.89 (the "Base Compensation"). Client shall pay the Base Compensation in equal monthly installments, which for the first Agreement Year shall be of \$111,969.32 in advance of the first of each month. The Base Compensation shall be due, in advance, on the first of the month during which the Services will be rendered. All other payments shall be due within thirty (30) days of the date of invoice. Any disputes regarding invoices shall be raised, in writing setting forth sufficient detail regarding the nature of the dispute, within ten (10) of the date of said invoice
- B. The Base Compensation will be increased annually on each anniversary of the commencement date by a flat rate of three percent (3%)

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C. Any and all late payments due to either party from the other party shall accrue interest at a rate of one and one-half percent (1½ %) per month from the original due date and until payment is received, unless waived by agreement.

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D. In the event of a change in the Services or Applicable Law or other factor which causes an increase in the Operator's cost of providing the Services, the Operator may provide notice to the Town and the parties shall negotiate in good faith to adjust the Base Fee to account for such change in Operator's costs. If the parties are unable to reach a negotiated agreement within ninety (90) days of the date of notice, then the contract may be terminated immediately by the Operator.

X. TERM OF AGREEMENT

A. This Agreement shall remain in full force and effect for five (5) years from the Commencement Date (the "Term") unless terminated as provided for in Article XI below.

B. Thereafter, this Agreement shall be automatically renewed for successive three (3) year periods, unless cancelled in writing by either party at least 90 days prior to the expiration of the then current term

XI. TERMINATION OF AGREEMENT

A. The failure of either party to comply with any of the material terms of this Agreement shall constitute a default. Upon default by one party, the other party shall send written Notice of Termination. Such notice shall clearly specify the nature of the default and provide the defaulting party 45 days to cure the default or thirty (30) days for failure to pay an undisputed invoice when due. If the default is capable of being cured within 45 days but is not cured within 45 days, the Agreement shall terminate at midnight of the 45th day following receipt of the Notice. In the case of default that cannot be cured within 45 days, this Agreement shall not terminate so long as the defaulting party has given written notice of the extension to the other party and the defaulting party has commenced and is diligently pursuing a cure..

B. In the event of the termination of this Agreement under (A) above, the Town shall pay Operator for the Services provided and invoiced by Operator up to the effective date of termination plus the unamortized balance of Capital Improvements financed or paid for by the Operator as reflected on Operator's financial statements and the effectiveness of such termination by the Town will be conditioned upon receipt by Operator of such payment. If the Town incurs costs for damages due to a default of the Operator that results in termination of this Agreement, the Town may deduct such costs or damages from the final payment due to Operator under this Section. Such deduction will not exceed the final payment owed to Operator and will constitute a full and final settlement between the Town and Operator for any and all claims against Operator by the Town and a release by the Town of any and all further claims against Operator. The Town shall make all payments owed to Operator hereunder within thirty (30) days of the date of the termination.

XII. REPRESENTATIONS FROM THE OPERATOR

A. Operator represents that it has the expertise and experience to properly fulfill its duties under this contract.

B. Operator represents it was given a full and fair opportunity to inspect the equipment and improvements. If the scope of the work under this contract varies due to facility changes, regulatory

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requirements or owner requirements, Operator reserve the right to renegotiate the compensation to be paid to the satisfaction of all parties.

XIII. DISPUTE RESOLUTION

A. In the event of any disputes, the parties shall first attempt to resolve the situation by good faith discussions which shall take place in a timely manner. If the dispute cannot be resolved within sixty (60) days, the parties shall mediate their dispute before a mediator acceptable to both parties. If they cannot agree, they shall ask the Director of the Federal Mediation and Conciliation Service to nominate a mediator. The parties shall bear their own costs of the mediation but the parties shall share equally the costs of the mediator and the mediation facilities.

B. If the parties are unable to resolve any disputes in accordance with Section (A) above, either party may request that such dispute be submitted for binding arbitration, which shall be governed by the rules of the American Arbitration Association or such other rules as the parties may agree. The parties agree that any judgment issued as a result of arbitration may be entered in the court having jurisdiction thereof. The parties agree that arbitration shall be the exclusive means to settle any dispute, controversy or claim arising out of this Agreement.

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XIV. INSURANCE, INDEMNITY AND LIABILITY

Insurance, Indemnity and Liability

- A. The Operator shall provide and maintain the following levels of insurance coverage at all times subsequent to the execution of this contract.
1. Commercial General Liability, including contractual liability with a limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate.
 2. Workers' Compensation Insurance in compliance with the statutes of the State that has jurisdiction over the Operator's employees engaged in the performance of services hereunder, to the required statutory amount.
 3. Automobile Liability Insurance with a combined single limit in the amount of one million dollars (\$1,000,000).
 4. Contractors Pollution Liability Insurance with coverage for services rendered to the Town under the contract including coverage for third party liability claims for bodily injury, property damage, or cleanup costs caused by pollution conditions with a limit of ten million dollars (\$10,000,000)
 5. Excess/Umbrella with a limit of \$5,000,000 per occurrence and aggregate.
- B. OPERATOR will furnish the Town with certificates of insurance which evidence that Policies providing the required coverage and limits are in full force and effect. In addition, Operator will name the Town as an additional insured on each Liability policy with respect to services performed under this agreement. Operator agrees to provide the Town with thirty (30) days' notice prior to cancellation of any policy hereunder.
- C. During the term of this contract, each party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other party and their respective successors and assigns (each is referred to herein

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as an "Indemnified Party") against any and all liability for damages, costs, losses, and expenses, including reasonable attorney's fees, resulting from any claim asserted by a third party against the Indemnified Party for wrongful death, bodily injury and/or property damage, but only to the extent caused by the willful or negligent acts or omissions of the Indemnifying Party. To the extent that both Town and Operator are determined by a finder of fact to be negligent and the negligence of both is a proximate cause of the damages assessed by such finder of fact, then in such event, Town and Operator shall each be responsible for their respective portions of the damages assessed in direct proportion to their comparative shares of the total negligence. Notwithstanding any of the foregoing, with respect to any loss, damage, injury or other claims made against the Town as a result of or based upon the presence, removal, handling, storage, release, discharge, escape or other disposition of any hazardous substances, waste, pollutants or contaminants, Operator's obligations to Town for indemnity and/or contribution shall not apply if such removal, handling, storage, release, discharge, or other disposition is not required by any local, state or federal law, rule or regulation, or where the loss, damage, injury or claim is not the result of Operator's gross negligence or willful misconduct.

- D. Notwithstanding any provision to the contrary contained in this contract, in no event shall either party be liable, either directly or as an indemnitor of the other party, for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit even if such party has been advised of the possibility of such damages.
- E. In the event that claims(s) raised against Operator on account of this contract, or on account of the services performed hereunder, is/are covered under Operator's insurance policies required of Operator hereunder, Operator shall not be responsible for any loss, damage or liability beyond the payments made under the policies contractually required hereunder. With respect to any causes of action and/or claims raised against Operator that are not covered by the insurance policies required of Operator hereunder arising under this contract, Operator's liability shall not exceed an aggregate amount equal to Operator's total annual compensation during the contract year in which such cause of action and/or claim is raised against Operator.

XV. MISCELLANEOUS

1) Independent Contractor

Operator acknowledges that it is an independent contractor under this contract and shall in no way be considered an employee or agent of the Town. Operator agrees not to represent itself as an agent of the Town to any of its employees, subcontractors or materialmen without express written consent of the Town.

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2) Assignment and Subcontracting

This contract may not be assigned by Operator. In addition, Operator may not subcontract for the services required to be rendered by it under this contract without the prior approval of the Town.

3) Force Majeure

A party's performance of any obligation under this contract shall be excused if, and to the extent that, the party is unable to perform because of any event of Force Majeure. In any such event, the party unable

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to perform shall be required to resume performance of its obligations under this contract upon the termination of the event or cause that excused performance hereunder.

4) Taxes

The Compensation owed to Operator hereunder does not include sales, use, excise, ad valorem, property or other taxes, other than taxes based on income, now or hereafter imposed directly or indirectly, by any governmental authority or agency with respect to this Contract and the services provided and materials furnished hereunder. The Town shall pay directly or reimburse Operator for any such taxes that Operator may be required to pay, including without limitation, sales taxes that Operator may be required to pay, under applicable law, in connection with its purchase or use of equipment in performing its obligations to the Town hereunder, of supplies, material, and/or services. If the Town is a tax-exempt entity, the Town shall provide the Operator with proof of such exemption.

5) Waiver

The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

6) Amendment

The parties may only modify this Agreement by a written amendment signed by both parties.

7) Non-Solicitation

Neither party may actively solicit, for hire, the employees of the other party during the term of this Agreement.

8) Governing Law

The Agreement shall be governed by and construed in accordance with the laws of the State of New York.

9) Severability

Should any part of this Agreement for any reason be declared invalid or void, such declaration will not affect the remaining parts of this Agreement, which will remain in full force and effect as if the Agreement had been executed with the invalid portion eliminated.

10) Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

11) Notice

All notices will be in writing and shall be deemed given when mailed by first class mail or delivered in

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person. Notices required to be given will be addressed to:

Inframark, LLC

220 Gibraltar Road Suite 200
Horsham, PA 19044
Attn: Thomas Varley

Town of Carmel

60 McAlpin Ave
Mahopac, NY 10541
Attn: Town Engineer

MARCH 28, 2018
TOWN BOARD SPECIAL MEETING

Entire Agreement

This contract represents the entire agreement between the parties and may not be altered unless done so in writing and signed by the parties. All prior written or oral representations are merged herein.

OPERATOR

By:

Name:

Title:

Date:

TOWN OF CARMEL

By:

Name:

Title: Town Supervisor

Date:

Attachment A - Compensation

- (a) For the period beginning on the commencement of this contract, the Town shall pay the Operator an annual fee (the "Base Compensation") in the amount of \$1,343,631.89, as per the fee schedule provided below.

	<u>Monthly Fee</u>
Carmel Sewer District # 1 & # 3	\$ 697.92
Carmel Sewer District # 1 - Extension 3 – Sewer Station #1	\$ 698.48
Carmel Sewer District # 1 - Extension 3 – Sewer Station #2	\$ 698.48
Carmel Sewer District # 2	\$ 32,344.41
Carmel Sewer District # 4	\$ 15,235.50
Carmel Sewer District # 5	\$ 373.77
Carmel Sewer District # 6	\$ 2,400.63
Carmel Sewer District # 7	\$ 2,240.28
Carmel Sewer District # 8	\$ 996.96
Carmel Water District # 2	\$ 19,875.24
Carmel Water District # 3	\$ 2,806.69
Carmel Water District # 12	\$ 840.97
Carmel Sewer District # 2 - Microfiltration	\$ 10,920.00
Carmel Sewer District # 4 - Microfiltration	\$ 10,920.00
Carmel Sewer District # 7 - Microfiltration	\$ 10,920.00
Total Monthly Fee	\$111,969.32
Total Annual Fee	\$1,343,631.89

- (b) The Town agrees to promptly remit payment for all costs billed by Operator for emergency services beyond the basic amount. Additional services including emergency response not included in the base work will be reimbursed the following rates;

Mechanic/Project Manager/Chief Operator	\$ 90.00 per hour
Plant Operator	\$ 85.00 per hour
Sewer Jet Equipment Charge	\$ 195.00 per hour

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- (c) Water Meter replacements will be billed out at the following flat rates:
 - Direct Water Meter replacement requiring no piping modifications: \$ 100.00/meter flat fee
 - All other Water Meter replacements: \$325.00 per meter Flat Fee
 - Troubleshooting Radio Read issues: \$100 per meter
- (d) Utility mark-outs charged at \$100 per hour one hour minimum.
- (e) The Base Compensation and the hourly rates set forth in Attachment A for additional services will be increased annually on each anniversary of the commencement date by a flat rate of three percent (3%)
- (f) All compensation and rates provided herein has been derived under the premise and understanding that the Services to be furnished hereunder involve routine monitoring, upkeep and inspections and do not require the Operator to pay its employees prevailing wage rates pursuant to New York Labor Law. If a determination is made by the Town or by the NYS Department of Labor, or by any other governmental agency with competent jurisdiction thereof that the nature of the Services is such that the Operator is required to pay any of its employees who are performing the Services prevailing wage rates, then the Town shall immediately notify Operator and be responsible for all additional costs incurred by the Contractor as a result thereof.

Councilman Michael Barile requested that Inframark remove the signs that are up and down Route Six.

Supervisor Schmitt explained that Inframark, LLC is the same company that the Town of Carmel has been using for years formerly known as Severn Trent.

PUBLIC COMMENTS - AGENDA ITEMS

No member of the public wished to comment at this time.

TOWN BOARD MEMBER COMMENTS - AGENDA ITEMS

No member of the Town Board wished to comment at this time.

ADJOURNMENT

All agenda items having been addressed, on motion by Councilman Lupinacci, seconded by Councilman Barile, with all members present in agreement, the meeting was adjourned at 7:25 p.m. to the scheduled Work Session.

Respectfully submitted,

Phyllis Bourges, Deputy Town Clerk