



BOARD OF MAYOR AND ALDERMEN
SPECIAL CALLED MEETING AGENDA

January 16, 2025 - 5:30 P.M.
City Hall, 100 East Main St.

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Welcome from the Mayor
6. Old Business:
 - A. SECOND READING: Ordinance 24-539 Purchasing Policy
7. New Business:
 - A. DISCUSSION AND CONSIDERATION: Wastewater Treatment Plant Service Agreement
8. Adjourn



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor Gibson, Vice Mayor Bare, and Alderman Gilliam,
Alderman Patrick, Alderman Shugart, Alderman Binstock, Alderman Cross

THRU: James Stables, Interim Town Administrator-City Manager

FROM: James Stables, Interim Town Administrator-City Manager

DATE: January 16, 2025

RE: ORDINANCE NO. 24-539 (2nd Reading) Repealing Ordinance 23-528 and
Adopting an Updated Comprehensive Best Practices Municipal Purchasing
and Procurement Ordinance

SUMMARY:

This ordinance will implement best practices recommended by the University of Tennessee-Municipal Technical Advisory Service, allowing for better efficiency, effectiveness, and accountability in accomplishing the purchasing actions for the Town.

REQUESTING DEPARTMENT(S):

City Manager

FISCAL IMPACT:

None

STAFF RECOMMENDATION:

Staff recommends approval

ATTACHMENTS:

Ordinance 23-528. Adopted September 28, 2023

Proposed ORDINANCE 24-539

MTAS Purchasing Guide December 2022/Updated May 2024



ORDINANCE 24-539

BEFORE THE MAYOR AND ALDERMEN OF THE TOWN OF MOUNT CARMEL,
TENNESSEE

**AN ORDINANCE OF THE TOWN OF MOUNT CARMEL, TENNESSEE REPEALING
ORDINANCE 23-528, AND ADOPTING A COMPREHENSIVE MUNICIPAL
PROCUREMENT CODE**

WHEREAS, the Town of Mount Carmel is subject to the provisions of the "Municipal Purchasing Law of 1983,"; and

WHEREAS, this law permits municipalities to increase the dollar amount of purchases requiring public advertisement and competitive bidding; and

WHEREAS, the Town of Mount Carmel has determined that it is in the best interest of the Town to increase said amount; and

WHEREAS, Tennessee Code Annotated § 12-3-1207 authorizes municipalities to use, under certain circumstances, competitive sealed proposals to purchase goods and services rather than competitive sealed bids; and

WHEREAS, Tennessee Code Annotated § 12-3-1207 requires that a municipality adopt by ordinance a procurement code before purchases may be made as authorized; and

WHEREAS, the Board of Mayor and Aldermen desires to exercise the power and authority granted to municipalities under said legislation and in that regard desires to adopt a procurement code in accordance with such legislation;

NOW, THEREFORE BE IT ORDAINED by the Board of Mayor and Aldermen of the Town of Mount Carmel, Tennessee that:

SECTION 1. Public advertisement and competitive bidding shall be required for the purchase of all goods and services exceeding an amount of twenty-five thousand dollars (\$25,000) except for those purchases specifically exempted from advertisement and bidding by the Municipal Purchasing Act of 1983.

SECTION 2. Three written quotations are required whenever possible for purchases costing less than the twenty-five thousand-dollar (\$25,000) bid threshold adopted for competitive bidding and public advertisement, but is required if the purchase is more than 40% of the threshold amount.

SECTION 3. Title 5, chapter 4 of the municipal code is hereby amended by adding a new section 5-407 to the city's procurement code:

5-407, Competitive Sealed Proposals. (1) Notwithstanding anything to the contrary in the municipal ordinances and/or resolutions governing purchases, the city may use competitive sealed proposals to purchase goods and services rather than competitive sealed bids when the Board, acting under the restrictions and requirements of Tennessee Code Annotated Title 12, Chapter 3, Part 12, as same may hereinafter be amended, and the procurement code adopted by this section, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the city. The Board must make the aforesaid determination with regard to each use of competitive sealed proposals rather than competitive sealed bids, except that in actual emergencies caused by unforeseen circumstances such as natural or human-made disasters, delays by contractors, delays in transportation, or unanticipated volume of work, purchases through competitive sealed proposals may be made without specific authorizing action of the Board. A record of any emergency purchase shall be made by the person authorizing the emergency purchase, specifying the amount paid, the items and services purchased, from whom the purchase was made, and the nature of the emergency. A report of the emergency purchase purchased through competitive sealed proposals containing all relevant information shall be made as soon as possible by the person authorizing the purchase to the Board.

(2) **Criteria and Procedure.** The following shall constitute the criteria and procedures for purchasing through competitive sealed proposals:

(a) *Conditions for Use.*

(i) Competitive sealed proposals may be used only after the municipality has documented the reasons why competitive sealed bids are not practicable or not advantageous to the municipality, and

(ii) Competitive sealed proposals may be used only when qualifications, experience, or competence are more important than price in making the purchase and:

(1) When there is more than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution; or

(2) When there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one or more solutions.

(b) *Public Notice.* Adequate public notice of the request for competitive sealed proposals shall be given in the same manner provided by applicable law for competitive sealed bids.

(c) *Request/Evaluation Factors.* The request for competitive sealed proposals must state the relative importance of price and other evaluation factors. Among other things, the request shall include the desired specifications (which may be expressed in the context of the result sought to be obtained); the qualifications of each proposer; warranties, time frame for performance, the contract; and, if applicable, the bond or other security that the successful proposer will be required to furnish. The request for competitive sealed proposals shall provide that, after receipt by the city of a proposal, interviews, presentations, demonstrations, and discussions, either oral or in writing or both, may be conducted for clarification to assure full understanding of, and responsiveness to, the solicitation requirements with one (1) or more responsible proposers who submit proposals determined by the purchasing agent to be reasonably susceptible of being selected. The request shall set forth the date, time, and place for submission of proposals.

(d) *Opening of Proposals.* Competitive sealed proposals must be opened in a manner that avoids disclosure of the contents to competing proposers during the negotiation. The proposals and all related materials must be open for public inspection after, but not before, the intent to award the contract to a particular proposer is announced.

(e) *Discussions with Responsive Proposers and Revisions to Proposals.* After receipt by the city of a proposal, interviews, presentations, demonstrations, and discussions, either oral or in writing or both, may be conducted for clarification to assure full understanding of, and responsiveness to, the solicitation requirements with one (1) or more responsible proposers who submit proposals determined by the purchasing agent to be reasonably susceptible of being selected. The proposers must be accorded fair and equal treatment with respect to an opportunity for an interview, presentation, demonstration, discussion, or revision of proposals, both as to the particular goods or services to be furnished and the price thereof. In order to permit the city to obtain the best offers of proposers, revisions may be permitted after submission and before the intent to award to a particular proposer is announced. In conducting interviews, presentations, demonstrations, or discussions, the purchasing agent and other municipal personnel shall not disclose to a proposer during the negotiations information derived from proposals submitted by competing proposers. Nothing contained herein shall preclude the city from conducting conferences or otherwise communicating with all parties who may be interested in responding to a proposal prior to the time that proposals are to be received.

(f) *Best and final offers.* If interviews, presentations, demonstrations, or discussions are conducted, the purchasing agent shall issue a written request for best and final offers. The request shall set forth the date, time, and place for submission of best and final offers. Best and final offers shall be requested only once, unless the purchasing agent makes a written determination that it is

advantageous to the city to conduct further discussion or clarify the city's requirements. The request for best and final offers shall inform proposers that, if they do not submit a notice of withdrawal or a best and final offer, their latest written offer will be construed as their best and final offer. Nothing contained herein shall preclude the Board from rejecting all proposals and thereafter requesting new proposals.

(g) *Award.* The award shall be made to the responsible proposer whose proposal the Board determines is the most advantageous to the city, taking into consideration price and the evaluation factors set out in the request for competitive sealed proposals. No other factor may be used in the evaluation. The purchasing agent shall place in the contract file a statement containing the basis on which the award was made.

(h) *Protest.* In the event that any proposer to a request for competitive sealed proposals is aggrieved by the decision of the city, such aggrieved proposer may protest the intended award to another proposer if the protest is filed within seven (7) days after the intended award is announced. The protest must be filed with the Board in care of the City Administrator of the city and shall be promptly decided by the Board. The purchase shall not be finalized and work may not commence until the Board has reviewed and made a decision on the protest.

(i) *No Conflict with Other Laws.* Nothing contained herein is intended to change the authority of the city with respect to contracting for professional services in accordance with the applicable laws of the state of Tennessee.

SECTION 4. This ordinance shall take effect from and after the final passage on second reading, and Ordinance 23-528 shall be repealed, the public welfare requiring it.

Approved on First Reading December 19, 2025

Approved on Second Reading January 16, 2025

City Attorney

This Ordinance was duly considered and adopted by the Board of Mayor and Aldermen, on first reading, in and for the Town of Mount Carmel, Tennessee, this 16th day of **January 2025**.

Attest

John Gibson, Mayor

Tyler Williams, Town Recorder



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor Gibson, Vice Mayor Bare, and Alderman Gilliam,
Alderman Patrick, Alderman Shugart, Alderman Binstock, Alderman Cross

THRU: James Stables, Interim Town Administrator-City Manager

FROM: James Stables, Interim Town Administrator-City Manager

DATE: January 13, 2025

RE: DISCUSSION & CONSIDERATION: Temporary Service Agreement with
Inframark, LLC to provide operational services and certified personnel for
our Wastewater Plant

SUMMARY:

We have received a Temporary "Services Agreement" from Inframark, LLC to provide a Grade 2, or higher, certified wastewater operator and lab technician for our plant, with the availability of additional maintenance technician personnel to be called upon if the issues exceed our Town personnel's capabilities.

By entering into this agreement, the Town will become compliant with our NPDES permitting requirements for maintaining a certified operator, which we have been out of compliance with since the previous operator resigned before August 2024 and have been subsequently served with a notice of violation from the Tennessee Department of Environment and Conservation.

The sole purpose of this agreement is to bridge the gap of services, ensuring we are compliant and responsibly functional at the wastewater facilities, while we seek a more permanent solution.

REQUESTING DEPARTMENT(S):
City Manager

FISCAL IMPACT:

\$200.00 per week, Administrative Fee

\$79.56 per hour, for a Grade 2 Certified Wastewater Operator

\$44.55 per hour, for a Laboratory Technician

\$66.83 per hour, per employee, Maintenance Tech

\$100.00 per mobilization request for maintenance work, not conducted by town maintenance personnel.

STAFF RECOMMENDATION:
Staff recommends approval

ATTACHMENTS:

Inframark, LLC SERVICES AGREEMENT (11 pages)

SERVICES AGREEMENT

This **Services Agreement** (the "Agreement") is made this ____ day of _____ 2025, between:

- 1) **Mount Carmel, Tennessee**, a municipal corporation with its principal place of business at 100 E. Main Street, Mount Carmel, Tennessee 37645 (hereinafter the "Client"); and
- 2) **Inframark, LLC**, a Texas limited liability company with its principal place of business at 2002 West Grand Parkway North, Suite 100, Katy, Texas 77449 (hereinafter the "Operator").

BACKGROUND

The Client desires to procure operation services for its wastewater treatment facility, which is located at 116 Seminole Drive, Mount Carmel, Tennessee 37645 ("Facilities") and the Operator desires to provide said operation services to the Client.

In consideration of the mutual promises in this Agreement, the parties agree as follows:

1) **TERM**

- 1.1 This Agreement shall commence on January 16, 2025 ("Commencement Date") and shall remain in full force and effect until terminated under Section 5 below.

2) **OPERATOR'S SERVICES**

- 2.1. Operator shall provide the following services (the "Services"):

- Supply an operator holding a Tennessee Grade 2 wastewater license, or higher to serve as the Certified Operator in Direct Charge ("COIDC");
- Perform (or contract with a laboratory certified by the appropriate regulatory body to perform) all sampling and laboratory analysis required by Applicable Law, the Client's Permits. Laboratory procedures and analysis shall conform to the then current edition of Standard Methods for the Examination of Water and Wastewater, or shall be in accordance with testing requirements of Applicable Law and the Client's Permits
- Make maintenance recommendations for the Client's employees or third parties acting on behalf of the Client to perform;
- Operate any Process Residue dewatering equipment and all other equipment supplied by the Client necessary for Operator to treat the Process Residue; and
- Schedule the pick-up and transportation of Process Residue with Client's contractors. Title and ownership of Process Residue shall remain with the Client notwithstanding such services by the Operator hereunder and the Client remains responsible for the transportation and disposal of Process Residue and all costs thereof.

- 2.2. Operator may perform additional services beyond the Services outlined herein with the mutual consent of both parties. The parties shall separately negotiate the costs of any such additional services.

- 2.3. Operator may recommend Capital Improvements or operational changes to the Client as are

necessary or recommended to perform the Services in compliance with the terms of this Agreement and Applicable Law. In the event the Client 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 Client's rejection of or refusal to implement the recommended Capital Improvement or 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.

- 2.4. Operator shall take reasonable and good faith steps to notify Client's existing employees of an Emergency Event at the Facilities twenty-four hours a day, seven days a week so the Client's employees can respond within a thirty (30) minute or less. If Operator is unable to notify Client's employees or Client's employees do not respond in thirty (30) minutes or less, Operator will not be liable for any loss, damage or liability, 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.

- 2.5. Operator shall:

- 2.5.1. Perform the Services in accordance with the provisions of this Agreement, Applicable Law, Client's existing Permits as defined in Schedule 2 of this Agreement, licenses, and specifications applicable to the Services; exercising the degree of skill and care ordinarily exercised by members of Operator's profession in the geographic region; and
- 2.5.2. Use qualified (and where required, certified) personnel to provide the Services in accordance with Applicable Law and the Client's Permits and Discharge Permits.

3) CLIENT OBLIGATIONS

- 3.1 Client shall:

- 3.1.1. Obtain and maintain all state, federal, and local permits and licenses required for ownership, operation and maintenance of the Facilities, including without limitation, the Client's Permits and Discharge Permits;
- 3.1.2. Arrange for and pay: i) all costs related to delivery to and consumption of utilities to the Facilities, including electricity, water, gas, generator fuel, and telephone usage at the Facilities; ii) all property, value-related, franchise, sales, use, excise, gross receipts, transaction privilege or other taxes associated with the Services and the ownership, operation and maintenance of the Facilities, other than taxes imposed on Operator's net income or payroll; iii) expenses incurred from the treatment of Non-Processible Water, including without limitation, any penalties and fines that may be assessed as a result; iv) expenses resulting from influent or pollutant loads exceeding the performance capabilities of the Facilities; iv) expenses resulting from hydraulic or organic loads exceeding the performance capabilities of the Facilities; v) all costs attributable to the transportation and disposal of Process Residue; vi) all Capital Improvements; vii) all costs for grass cutting and other landscaping; viii) all costs, rates, and fee incurred by Operator in responding to an Emergency Event; and ix) all costs for the sampling and laboratory services set forth in Section 2.1 of this Agreement, including but not limited to materials or third party contractor fees;
- 3.1.3. Comply with Applicable Law relating 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 this Agreement). The Operator shall not be responsible for Client's failure to comply with any provision of Applicable Law that is not otherwise specifically assumed by the Operator hereunder;

- 3.1.4. During visits to the Facilities, comply and shall require its agents, licensees of invitees to comply with all reasonable safety rules and regulations adopted by the Operator;
 - 3.1.5. Maintain necessary records of operations, maintenance, repair and improvement activities at the Facilities and shall prepare and submit signed data required for monthly reporting to local, state and federal agencies;
 - 3.1.6. Maintain all sewer lines, pipes, force mains, and all other water transportation lines ("Client Lines"), that are not part of the Facilities under Operator's control, in a manner that will prevent, to the extent practicable, any damage to the operation of the Facilities due to leakage of water or infiltration or inflow of storm water from such Client Lines;
 - 3.1.7. 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; and
 - 3.1.8. Grant the Operator, free of charge, a license to use the Facilities, including all equipment, structures, facilities and vehicles under Client's ownership and which have been assigned by Client to the Facilities.
- 3.2. Client shall be responsible for all equipment, materials, supplies, parts, tools, rental equipment, and chemicals related to the operation and maintenance of the Facilities. If Client does not provide any such equipment, materials, supplies, parts, tools, rental equipment, and chemicals, Operator will not be liable for any loss, damage or liability arising from or related to the Client's work, 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. If Client does not provide any such equipment, materials, supplies, parts, tools, rental equipment, and chemicals, Operator may incur said equipment, materials, supplies, parts, tools, rental equipment, and chemicals and Client shall reimburse or compensate the Operator for the costs of such plus an administrative fee of 15% of the cost thereof.
- 3.3. Client shall provide Operator with use of Process Residue dewatering equipment and all other equipment necessary for Operator to perform its obligations under section 2.1 of this Agreement; provided, however, Client shall be responsible for disposal of Process Residue after treatment by the Operator and all costs thereof. Title and ownership of Process Residue shall remain with the Client notwithstanding such services by the Operator hereunder.
- 3.4. Client shall instruct its employees performing services at the Facilities to follow all directions given by the Operator with respect to the operation of the Facilities, manage its employees, and handle any performance or conduct issues as referred to the Client by the Operator; provided however, Operator shall not be liable for any damages, fines, penalties, or other liabilities of any kind resulting from Client's employees' work. All such Client employees shall remain the employees of Client and Client shall pay said employees, provide all employee benefits, manage all leave programs for said employees, and pay for all training, certifications, travel, uniforms, business expenses and other costs incurred by or on behalf of said employees. This Agreement does not establish the relationship of an employer and employee as between the Operator and the Client's employees and the Client's employees shall at all times remain

employees of the Client.

- 3.5. Client represents and warrants that Operator is not required to pay its employees prevailing wage rates pursuant to Applicable Law for the Services provided hereunder as of the Commencement Date.

4) FEES AND PAYMENT

- 4.1 Client shall pay Operator \$79.56 per hour for each Tennessee Wastewater Grade 2 or higher certified operator and \$44.55 per hour for each laboratory technician used to perform the Services and a weekly administrative fee of \$200.00 per week. If Operator performs any maintenance services, Client shall pay Operator \$66.83 per hour per employees for such maintenance work and a mobilization fee of \$100.00 per maintenance service request.
- 4.2 If Client does not provide any such equipment, materials, supplies, parts, tools, rental equipment, and chemical pursuant to Section 3.2, Operator may incur such costs and Client shall reimburse or compensate the Operator for the costs of such plus an administrative fee of 15% of the cost thereof.
- 4.3 Client shall reimburse or compensate the Operator for the laboratory sampling and analysis costs incurred by Operator that are the obligation of Client under Section 3.1 of this Agreement plus an administrative fee of 15% of the cost thereof.
- 4.4 Operator shall invoice Client on a monthly basis for the Services provided in the prior month and any costs incurred by Operator under Section 4.2 above. All payments shall be due within thirty (30) days of the date of invoice.
- 4.5 Client shall notify Operator of any dispute with an invoice within ten (10) days from receipt of said invoice in writing. In the event that Client has a dispute with any charges, all undisputed charges on said invoice(s) will be due in accordance with the above times and the Parties shall negotiate in good faith to resolve any such dispute in a timely manner. If Client does not properly raise a dispute with an invoice within ten (10) business days from the date of said invoice, any such disputes will be waived.
- 4.6 Any and all late payments due to either party from the other party shall accrue interest as allowed by the Constitution and the Laws of the State of Tennessee.
- 4.7 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 Client and the parties shall negotiate in good faith to adjust the Compensation to account for such change in Operator's costs. If the parties are unable to reach a negotiated agreement within ten (10) days of the date of notice, then the Agreement may be terminated pursuant to Section 5 below.

5) TERMINATION

- 5.1 Either party may terminate this Agreement with or without cause upon fourteen (14) days' written notice to the other party.
- 5.2 Either party may terminate this Agreement by immediate written notice if the other has failed to comply with a material term, provided that the non-defaulting party has first given the defaulting party written notice to cure their default within forty-five (45) days, or thirty (30) days for failure to pay an undisputed invoice when due (such applicable period, "Cure

Period”) and the defaulting party has not done so. If a default cannot be cured within the Cure Period days, the parties may agree to an extension of the time to cure provided the defaulting party provides reasonable evidence within the Cure Period that it has identified a means to cure and is pursuing it diligently. Should Client pay an unpaid, undisputed invoice within the Cure Period, the termination notice under this provision will be deemed automatically withdrawn.

- 5.3 In the event of the termination of this Agreement under Sections 5.1 or 5.2 above, Client shall pay Operator for the Services provided and invoiced by Operator up to the effective date of termination, plus the balance of unamortized costs incurred by Operator as reflected on Operator’s financial statements, and the effectiveness of such termination by Client will be conditioned upon receipt by Operator of such payment. Client shall make payment within thirty (30) days of the date of termination.

6) FINES, INDEMNIFICATION AND LIMITATION

- 6.1 Client shall be responsible for settlement of payment of all fines or penalties that may be imposed on either Client or Operator due to water or wastewater treatment violations or any other regulatory or administrative violations related to the Facilities, unless Operator’s negligent direct actions are found to be the cause of the fines and/or penalties. Prior to settlement or payment of any such fines or penalties, Operator reserves the right to contest any actions, suits or proceedings for violations through administrative procedures or otherwise. Operator shall provide Client with prompt notice of any such violations.
- 6.2 If the Facilities loading exceed its design parameters or if influent contains: i) Abnormal or Biologically Toxic Materials, Non-Processible Water, or other substances which cannot be removed or treated by the Facilities in the condition the Facilities are in or cannot be treated by design parameters as of the Commencement Date; or ii) discharges which violate applicable sewage ordinances, the Operator will use its best reasonable efforts to maximize performance of the Facilities but shall not be responsible for associated effluent characteristics or damages, fines penalties, damages, or other liabilities which result. Operator shall provide Client with prompt notice of such conditions identified in this Section 6.2.
- 6.3 TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE CLIENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OPERATOR AND ITS RESPECTIVE SUCCESSORS AND ASSIGNS (EACH IS REFERRED TO HEREIN AS AN “INDEMNIFIED PARTY”) AGAINST ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, COSTS, LOSSES, AND EXPENSES, INCLUDING ATTORNEY’S FEES, ARISING OR RESULTING FROM OR RELATED TO OPERATOR’S PERFORMANCE OF THE SERVICES HEREUNDER, BREACH OF THIS AGREEMENT BY THE CLIENT, AND ANY CLAIM ASSERTED BY A THIRD PARTY AGAINST THE OPERATOR RELATED TO THE SERVICE PERFORMED BY OPERATOR UNDER THIS AGREEMENT OR OTHERWISE RELATED TO THIS AGREEMENT.
- 6.4 Operator is not liable for any liabilities resulting from the collection system for the Facilities unless such liabilities are the result of Operator’s negligent direct actions.
- 6.5 Operator shall not be liable for any damages, fines, penalties, or other liabilities of any kind resulting from following the instructions, directions, or policies of the Client or authorized representative.
- 6.6 Operator is not liable for any liabilities, losses, damages, expenses, fines, or penalties incurred

by Client or any third party as a result of a data security breach or other cyber security breach to the Facilities or Client's computer systems, operating systems, and all other technological or information systems related to the Facilities and Services provided hereunder, except to the extent such liability, loss, damage, expense, fine, or penalty is the direct result of Operator's willful or negligent acts or omissions.

- 6.7 To the extent permitted by Applicable Law and notwithstanding any provision to the contrary contained in this Agreement, in no event shall either party be liable, either directly or indirectly, 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.
- 6.8 To the extent permitted by Applicable Law, in the event that claims(s) raised by Client against the Operator on account of this Agreement, or on account of the Services performed hereunder including claims by Client for indemnification under Section 6.3, Operator's liability to Client shall not exceed an aggregate amount equal to the fees paid to Operator by Client during the Agreement Year in which such cause of action and/or claim is raised.
- 6.9 FOR EQUIPMENT OR PARTS PURCHASED BY OPERATOR, OPERATOR SHALL PASS ON ANY MANUFACTURERS WARRANTIES OR GUARANTEES TO THE CLIENT AND PROVIDE THE CLIENT REASONABLE ASSISTANCE IN ENFORCING THE MANUFACTURER'S WARRANTIES AND GUARANTEES. OPERATOR SHALL NOT BE RESPONSIBLE TO THE CLIENT FOR ANY GUARANTEES OR WARRANTIES OFFERED BY OTHERS IN CONNECTION WITH ANY EQUIPMENT, MATERIALS, AND SUPPLIES PROVIDED IN CONNECTION WITH THE SERVICES HEREUNDER AND OPERATOR SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF ANY BREACH OF GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED, BY ANY MANUFACTURER OR SUPPLIER OF EQUIPMENT OR MATERIALS PURCHASED FOR THE CLIENT UNDER THIS AGREEMENT. OPERATOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES REGARDING ANY EQUIPMENT, MATERIALS, AND SUPPLIES, IF ANY, OR ANY WARRANTIES THAT MIGHT ARISE FROM COURSE OF DEALING OR USAGE OF TRADE.
- 6.10 If any information, opinions, recommendations, advice, or other work product or any data, information, procedures, charts, spreadsheets, logs, instruments, documents, plans, designs, specifications, operating manuals and specifications, customer data, billing information, regulatory filings, permits, authorizations, licenses, operation and maintenance records, or other records are provided by the Client or any third party acting on behalf the Client are provide to and used or relied on by Operator, the Client will be liable for any damages resulting directly or indirectly from such use and reliance.

7) INSURANCE

- 7.1 Operator shall provide and maintain the following levels of insurance coverage at all times during the Term.
- 7.1.1. Commercial General Liability Insurance, including contractual liability, with a limit of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate;
- 7.1.2. Workers Compensation Insurance in compliance with the statutes of the State that

has jurisdiction over Operator's employees engaged in the performance of Services hereunder, to the required statutory amount; and

7.1.3. Automobile Liability Insurance with a combined single limit of one million dollars (\$1,000,000).

7.2 Operator shall provide Client with ten (10) days' notice prior to cancellation of any policy hereunder.

7.3 Operator shall provide Client with insurance certificates confirming the levels of coverage in Section 7.1.

7.4 Client warrants that it maintains and will continue to maintain, during the term of this Agreement, appropriate insurance in relation to the Facilities.

8) DISPUTES

8.1 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 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.

8.2 If the parties are unable to resolve any disputes in accordance with 8.1 above, either party may pursue available legal remedies in a court of competent jurisdiction.

9) MISCELLANEOUS

9.1 The relationship of Operator to Client is that of independent contractor for all purposes under this Agreement. This Agreement is not intended to create, and shall not be construed as creating, between Operator and Client, the relationship of principal and agent, joint ventures, co-partners or any other similar relationship, the existence of which is hereby expressly denied

9.2 This Agreement contains the entire agreement between Client and Operator and supersedes all prior or contemporaneous communications, representations, understandings or agreements that are not consistent with any material provision of this Agreement.

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

9.4 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.

9.5 This Agreement shall not be assigned by either party without the prior written consent of the other party unless such assignment shall be to a parent, subsidiary, affiliate, or successor of either Party. When written consent of a party is required, such consent shall not be unreasonably withheld.

9.6 A party's performance of any obligation under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of any event of Force Majeure, as defined in Schedule 1. In any such event, the party unable to perform shall be required to

resume performance of its obligations under this Agreement upon the termination of the event or cause that excused performance hereunder.

- 9.7 The Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.
- 9.8 In the event that Client receives notice of or undertakes the defense or prosecution of any legal or administrative action or proceeding in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, Client shall give Operator prompt notice of such proceedings and shall inform Operator in advance of all hearings. In the event 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, Operator shall give Client prompt notice of such proceedings.
- 9.9 All notices will be in writing and shall be deemed given when mailed by first class mail or delivered in person. Notices required to be given to the parties by each other will be addressed to:

Inframark, LLC
229 Northside Drive
Danville, Virginia 24540
Attn: Jerry B. Shupe Jr.

Mount Carmel
100 E. Main Street
Mount Carmel, Tennessee 37645
Attn: James Stables

With copy to:

Inframark, LLC
2002 West Grand Parkway North, Suite 100
Katy, Texas 77449
Attn: Legal Department

- 9.10 All records compiled by Operator with information and material gathered when performing this Agreement are the property of Client.
- 9.11 Defined terms in this Agreement are set out in Schedule 1 or within the main body of this Agreement, capitalized or within quotation marks.
- 9.12 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.
- 9.13 This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.
- 9.14 Both parties warrant and represent to the other that they have full power and authority to enter into and perform this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date at the top of this Agreement.

MOUNT CARMEL, TENNESSEE

INFRAMARK, LLC

By: John Gibson
Title: Mayor
Date:

By:
Title:
Date:

Schedule 1: Definitions

"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, any substance that violates the local or USEPA standards for finished water after the routine processing of the raw water, or any substance or material for which the Facilities and routine procedures are not designed to receive or treat.

"Applicable Law" means 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 above, in each case that relate 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 and treatment of the Client's raw and finished water.

"Capital Improvements" means any modifications, additions or upgrades to the Facilities made by or on behalf of the Client or with its prior approval and funded from Client's capital proceeds.

"Client's Permit(s)" and/or *"Permit(s)"* means all permits and licenses issued to Client and required for the treatment of potable water from the Facilities. Copies of all Permits are attached as Schedule 2 of this Agreement.

"Commencement Date" is defined in Section 1.1.

"Compensation" is defined as Operator's compensation for the Services rendered under this Agreement.

"Emergency Event" means an event which threatens the immediate shutdown of, or the substantial reduction in the operational capacity of, any of the Facilities, or the life, health or property of Client and/or Operator, their employees and/or agents or others.

"Force Majeure" means an event which is beyond the reasonable control of a party, including without limitation: (a) acts of God; (b) flood, fire, earthquake, hurricane or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances, other than those involving the affected parties employees; (i) shortage of adequate power or transportation facilities.

"Non-Processible Water" is defined as influent raw water (i) which contains Abnormal or Biologically Toxic Materials; or (ii) which 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" means grit, screenings, water treatment residuals, and wastewater sludge and biosolids generated by or through the operation of the Facilities.

Schedule 2: Client's Permits

NPDES Permit # TN0062057