

PUBLIC HEARING – 6:15 pm

Being held to consider amending § **CHAPTER 36 (TRAFFIC AND SAFETY BOARD)** the Code of the Incorporated Village of Hempstead.

WHEREAS, The Village Board of Trustees desires to amend the Code of the Incorporated Village of Hempstead to clarify the duties of the Traffic and Safety Board in the Village of Hempstead;

Chapter 95-14, ALCOHOLIC BEVERAGES CONSUMPTION AND OPEN CONTAINERS of the code of the Incorporated Village of Hempstead.

Moved by Trustee _____

Seconded by Trustee _____

**NOTICE OF PUBLIC HEARING
VILLAGE OF HEMPSTEAD**

PLEASE TAKE NOTICE that a public hearing will be held in the Village Hall, 99 James A. Garner Way, Hempstead, New York, on **Tuesday, February 5, 2019** at **6:15 p.m.** to consider amending **CHAPTER 36 (TRAFFIC AND SAFETY BOARD)** .

The proposed local law is on file in the Office of the Village Clerk, Village Hall, 99 Nichols Court, Hempstead, New York, where the same may be inspected during office hours.

ALL PERSONS INTERESTED shall have an opportunity to be heard on said proposal at the time and place aforesaid.

BY ORDER OF THE BOARD OF TRUSTEES
OF THE INCORPORATED VILLAGE OF HEMPSTEAD

DON RYAN, MAYOR
PATRICIA PEREZ, VILLAGE CLERK

Dated: January 15, 2019
D/P: January 25, 2019

§ 36-3 Minutes and records; functions.

The Traffic Safety Board shall keep full and accurate minutes of its proceedings and records of its investigations and official actions. The minutes shall also show the vote or failure to vote of each member upon every question, as well as the absence of any member. The function of said Board shall be:

- (a) to promote and encourage street and highway public safety;
- (b) to formulate Village-wide highway safety programs and coordinate efforts of interested parties and agencies engaged in traffic safety education;
- (c) to cooperate with local officials within the Village in the formulation and execution of traffic safety programs and activities;
- (d) to study traffic conditions on streets and highways within the Village, study and analyze reports of accidents and causes thereof, adopt rules, signage, orders, and regulations, and recommend to the appropriate legislative bodies, departments or commissions changes to existing law as the Board may deem advisable;**
- (e) to conduct meetings within the Village, which meetings shall be open to the public, whenever and wherever the Board shall deem it advisable, and to invite to such meetings parties and agencies, public and private, interested in traffic regulation, control and safety education;
- (f) to promote safety education for drivers and pedestrians;
- (g) to obtain and assemble motor vehicle accident data and to analyze, study and consolidate such data for educational and informational purposes; and
- (h) to coordinate and direct all local activities related to the implementation of the state highway safety program as approved by the Governor or his designee.

The authority of the Traffic Safety Board shall have retroactive effect.

Mayor Ryan and the Board of Trustees wishes to announce that **Cherice P. Vanderhall, Village Attorney, Grace Lawrence, Acting Treasurer** as members of the Personal Wireless Services Facilities Board pursuant to Local Law No.4-2002, term expiring on April 1, 2019 without compensation.

RESOLVED, that recommendation by Samantha Fountain, Deputy Village Clerk to have the minutes waived from the reading of the **Special Meeting January 9, 2019** and a **Regular Meeting** on **January 15, 2019** and be dispensed with and that they be accepted as reviewed.

Moved by Trustee _____

Seconded by Trustee _____

AGENDA – Tuesday, February 5, 2019

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Report of the Village Justice for the month of **December 2018**

Total number of cases before the court 1,577

Total monies remitted to Village Comptroller \$155,780.00

(Copy of this report is on file in the Village Clerk’s Office and may be viewed by the public during office hours.)

RESOLUTION SCHEDULING A PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 95 ARTICLE VIII (CONDUCT IN PUBLIC PLACES) THE CODE OF INCORPORATED VILLAGE OF HEMPSTEAD

WHEREAS, The Village Board of Trustees desires to amend the Code of the Incorporated Village of Hempstead so as to further promote the safety at and within the public transportation facilities located in the Village of Hempstead and;

NOW, THEREFORE
THE VILLAGE BOARD OF TRUSTEES

HEREBY SCHEDULES a public hearing to be held on the 5th day of **MARCH, 2019** at **6:15 p.m.** at the Hempstead Village Hall, 99 James A Garner Way, Hempstead, New York, to consider amending CHAPTER 95 ARTICLE VIII (CONDUCT PROHIBITED IN PUBLIC PLACES) .

Chapter 95 – Article VIII of the Village Code

§95-14 Alcoholic beverages: public consumption and open containers; smoking

A. * * *

B. It shall be unlawful for any person to smoke tobacco or any other substance including E-cigarettes in any Village park or within 25 feet of a Village building, or inside, or within 25 feet of any other municipal building located within the Village of Hempstead.

§95-15 * * *

§ 95-16 Prohibited Conduct in Denton Green Park/Cemetery, Bus Terminal, Platform or Long Island Rail Road Train Station.

A. It shall be unlawful in Denton Green Park/Cemetery for any person to sleep, or to operate or permit to be operated any bicycle, or to permit any animal owned, harbored or possessed by said individual, whether leashed or not, to enter upon said park/cemetery.

B. It shall be unlawful for any person to bring or carry in the terminal/train station: explosives, acids, gases, inflammables, compressed gases, potentially noxious materials or dangerous material at or within 25 feet of the bus terminal, platform or Long Island Rail Road Train Station.

C. It shall be unlawful for any person cook, light a fire or otherwise create a fire, except pursuant to the terms of any license or concession granted by the Inc. Village of Hempstead at or within 25 feet of the bus terminal, platform or Long Island Rail Road Train Station.

D. It shall be unlawful for any person except a police officer or other authorized person to enter in the bus terminal, platform or train station with any animal except a Seeing Eye or hearing ear dog or an animal properly confined for shipment.

E. It shall be unlawful to skateboard, roller skate, ride a bicycle, scooter, or any other self or motor propelled vehicle or device on or through any part of the bus terminal, platform or on the Long Island Rail Road Train station.

§ 95-17 .

AGENDA – Tuesday, February 5, 2019

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Presentation of activities report by the public bodies of the Incorporated Village of Hempstead:

- Recreation and Parks Commission – Chairperson Vanessa Henry
- Human Relations – Juanita Hargwood, Director
- Personal Service Wireless Facilities Board – Zoning Officer Deloris Mc Queen
- Hempstead Library Board – Irene Duszkievicz, Library Director
- Traffic Safety Board – Lt. Kirichenko/ Chairperson Mary Burns
- Hempstead Coordinating Council of Civics Association – Reginal Lucas
- Youth Council – FCA
- Board of Zoning Appeals – Chairman Edwin Monteverde
- Planning Board – Chairperson Kennetha Pettus
- Hempstead Housing Authority – Shereen Goodson, Executive Director
- Community Development Agency – Commissioner Charlene Thompson
- Electrical Board – Christian Castillo
- Plumbing Board – Chairperson Kelly Magee
- Historian - Reine Bethany
- Hempstead Chamber of Commerce – Tina Shuford

_____ Clerk wishes to report that Mayor Ryan and Deputy Mayor Renfroe approved miscellaneous license and permit applications as reviewed

NEW BUSINESS

Pizza Wonder Inc.
Malak I. Ahmad
391 Peninsula Blvd.

Hondumex Restaurant Corp.
Alex Martinez
58 Main Street

J. Perez Restaurant
Brandon Martinez
751 Front Street

RENEWALS

Hempstead Poultry LLC
Saleh S. Muflehi
39 Newmans Ct

Health & Wellness Farmacia Inc.
Zia Khan
634 Fulton Ave

Checo Deli & Grocery Inc.
Jose G. Checo
589 Fulton Ave

Sonic Car Wash & Lube Inc.
Amilcar Cesar Lemus Cartagena
404 Peninsula Blvd.

RESOLVED, by the recommendation of Grace Lawrence, Acting Treasurer for the Board of Trustees to authorize (9) nine capital projects be closed out pursuant and residual proceeds be transferred pursuant to General Municipal Law as follows: \$144,504.62 to be transferred to Debt Service Fund.

Moved by Trustee _____

Seconded by Trustee _____

RESOLVED, that upon the recommendation of Jacqueline Zore, Smrek that authorization to settle Tax Certiorari with Hempstead Plaza, LLC (formerly 175 Hempstead LLC), properties known as Hilton Avenue, 173-191 Fulton Avenue & Fulton Avenue, Hempstead, New York Hempstead, New York I the amount of \$1,400,000 ?

WHEREAS, litigation was instituted against the Incorporated Village of Hempstead in the Supreme Court, County of Nassau, State of New York, under Consolidated Index No. 406442/16, in case entitled “In the Matter of Hempstead Plaza, LLC (formerly known as 175 Hempstead, LLC), Petitioner, against The Board of Assessors and/or the Assessor of the Village of Hempstead and The Board of Assessment Review, Respondents” to resolve the issue of the true assessment, both retroactively and prospectively, for the 2014/15 through 2018/19 tax years, for real property tax purposes, for the premises described as Section 34, Block 285, Lot 105, known as Hilton Ave, Section 34, Block 285, Lot 406, known as 173-191 Fulton Avenue and Section 34, Block 285, Lots 167 and 363, known as Fulton Avenue, Hempstead, New York 11550; and

WHEREAS, by proposed Stipulation of Settlement, subject to the approval of this Board, the Village has agreed to refund to Hempstead Plaza, LLC (formerly 175 Hempstead, LLC), a total of \$1,400,000.00 to resolve the issue of the true tax assessment for the 2014/15 through 2018/19 tax years, payable in eight (8) installments every 90 days after receipt by the Village of a certified copy of the duly signed and entered Order and Judgment; first installment will be \$250,000.00 due 90 days after receipt by the Village of a certified copy of the duly signed and entered Order and Judgment, second installment will be \$200,000.00 due 180 days after receipt by the

Village of a certified copy of the duly signed and entered Order and Judgment, third through seventh installments will be \$150,000.00 each due 270, 360, 450, 540 and 630 days respectively after receipt by the Village of a certified copy of the duly signed and entered Order and Judgment and the eighth and final installment will be \$200,000.00 due 720 days after receipt by the Village of a certified copy of the duly signed and entered Order and Judgment; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Trustees of the Incorporated Village of Hempstead, that the Village refund to Hempstead Plaza, LLC (formerly 175 Hempstead, LLC), a total of \$1,400,000.00, to resolve the issue of the true tax assessment for the 2014/15 through 2018/19 tax years, payable in eight (8) installments every 90 days after receipt by the Village of a certified copy of the duly signed and entered Order and Judgment; first installment will be \$250,000.00, second installment will be \$200,000.00, third through seventh installments will be \$150,000.00 each, and the eighth and final installment will be \$200,000.00; and

BE IT FURTHER RESOLVED, that the issue of the prospective tax assessment for the tax years 2019/20, 2020/21 and 2021/22 for Section 34, Block 285, Lot 105, known as Hilton Avenue, will be \$17,500.00 and that no protest will be filed by Hempstead Plaza, LLC (formerly 175 Hempstead, LLC), for the tax years 2019/20, 2020/21 and 2021/22; and

BE IT FURTHER RESOLVED, that the issue of the prospective tax assessment for the tax years 2019/20, 2020/21 and 2021/22 for Section 34, Block 285, Lot 406, known as 173-191 Fulton Avenue, will be \$292,500.00 and that no protest will be filed by Hempstead Plaza, LLC (formerly 175 Hempstead, LLC), for the tax years 2019/20, 2020/21 and 2021/22; and

BE IT FURTHER RESOLVED, that the proceedings pertaining to Section 34, Block 285, Lots 167 and 363 known as Fulton Avenue, Hempstead, New York 11550 for the tax years 2014/15 through 2018/19 are hereby discontinued with prejudice; and

BE IT FURTHER RESOLVED, that refund interest is waived unless payment of the refund is delinquent; and

BE IT FURTHER RESOLVED, that, upon payment of the total refund, the certiorari tax proceedings brought on behalf of Hempstead Plaza, LLC (formerly known as 175 Hempstead, LLC), for properties known as Hilton Avenue, 173-191 Fulton Avenue and Fulton Avenue, Hempstead, New York 11550, for the tax years 2014/15 through 2018/19, shall be discontinued with prejudice and that no costs or disbursements shall be awarded to either party; and

BE IT FURTHER RESOLVED, that the Office of the Village Attorney is authorized to execute a Stipulation of Settlement and any related documents consistent with this Resolution.

Moved by Trustee _____

Seconded by Trustee _____

RESOLVED, upon the recommendation of Stacey Hargraves that authorization be hereby granted for the regularly scheduled meeting of the Board of Trustees meeting on Tuesday, February 19, 2019 at 6:30 p.m. to be changed to 7:00 p.m. as not to conflict with Tax Grievance Day which will be held on the same day from 3:00 p.m. to 7:00 p.m.

Moved by Trustee _____

Seconded by Trustee _____

RESOLVED, that upon the recommendation of Samantha Fountain, Deputy Village Clerk that authorization by Board of Trustees is hereby granted for the regularly scheduled meeting of the Board of Trustees Village Board meeting on **Tuesday, March 19, 2019 at 6:30 p.m.**, be rescheduled to **Wednesday, March 20, 2019 at 6:30 p.m.**, so as not to conflict with Election Day.

RESOLVED, that permission is granted for the Incorporated Village of Hempstead to enter into an agreement with Alphamore LLC, having an office at 2571 E 17th Street, 3rd Floor, Brooklyn, New York 11235,, to utilize thirty five (35) parking spaces, all which are located in Municipal Parking Field, (**"PARKING FIELD #16"**), situated in the Incorporated Village of Hempstead, Nassau County, New York. the operator of the PARKING FIELD #16 and has the right (subject to the Owner's consent) to grant parking license rights thereon pursuant to an agreement with the owner of PARKING FIELD #16, from January 16, 2019 and shall expire on the 30th day of June, 2019. The Mayor be and he hereby is authorized to execute said agreement on behalf of the Village of Hempstead on such terms and conditions as are acceptable to the Village Attorney.

Moved by Trustee _____

Seconded by Trustee _____

PARKING LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“**LICENSE**”), dated as of ___ day of January, 2019 (together with the schedules, appendices, attachments and exhibits, if any, collectively referred to as the License) between (i) the Incorporated Village of Hempstead (hereinafter referred to as the **LICENSOR**), a municipal corporation of the State of New York, having its principal office at 99 Nichols Court, Hempstead New York, 11550, and (ii) Alphamore LLC, having an office at 2571 E 17th Street, 3rd Floor, Brooklyn, New York 11235, (hereinafter referred to as the **LICENSEE**).

WITNESSETH:

WHEREAS, the **LICENSEE** is desirous of providing adequate parking spaces for vehicles operated by the **LICENSEE**'s officer(s), director(s), employee(s), servant(s), agent(s), tenants and/or independent contractor(s), and have requested the **LICENSOR** to license to the **LICENSEE** the non-transferable right to utilize thirty five (35) parking spaces, all which are located in Municipal Parking Field, (“**PARKING FIELD #16**”), situated in the Incorporated Village of Hempstead, Nassau County, New York.

WHEREAS, the **LICENSOR** is the operator of the **PARKING FIELD #16** and has the right (subject to the Owner’s consent) to grant parking license rights thereon pursuant to an agreement with the owner of **PARKING FIELD #16**, RDU A (tax map 34/342/283-285) (“**Owner**”), and Owner’s affiliate, Renaissance Downtowns UrbanAmerica LLC (“**RDU A**”);

NOW, THEREFORE, in consideration of the mutual terms, conditions, covenants and agreements contained in this **LICENSE**, the parties hereby agree as follows:

1. Term. This **LICENSE** shall commence on January 16, 2019 and shall expire on the 30th day of June, 2019, unless sooner terminated pursuant to Clause 15 hereof.

2. Licensing Fees. **LICENSEE** shall make **monthly** payments to the **LICENSOR** within fifteen (10) days of the beginning of each quarter, to wit: payment is due on the 10th of each month throughout the term of this **LICENSE**, as set forth in Exhibit “A” below. Upon **LICENSEE**'s failure to pay any **monthly** installment within ten (10) days beyond the due date of each installment, the **LICENSEE** shall pay to the **LICENSOR** one percent (1%) interest of the unpaid balance.

3. Licensing Placards. **LICENSOR** shall issue to **LICENSEE** parking placards for display for all licensed parking spaces in **PARKING FIELD #16**, which must be displayed on the rearview mirror of the vehicle of the individual recipient, and said vehicle shall be parked in one of the thirty five (35) parking spaces in **PARKING FIELD #16**. If placard is lost or stolen there will be a Twenty Five Dollar (\$25.00) charge the **LICENSEE** shall pay to **LICENSOR** for each placard replaced.

4. Utilities. There shall be no abatement of license fees on account of the interruption of any gas, water, steam, electricity, light, heat or power, telephone or other utility service furnished

to or used on PARKING FIELD #16, unless such interruption renders PARKING FIELD #16 (or a portion thereof) inoperable, unsafe or in violation of any law.

5. Maintenance. At its own cost and expense, the **LICENSOR** shall service and maintain PARKING FIELD #16 so as to keep same in as good condition, appearance and working order, except as to reasonable wear and tear, as when delivered to the **LICENSEE**. Notwithstanding any other provision of this License and without limiting the generality of the foregoing sentence, the **LICENSOR** has the sole responsibility to maintain and clean PARKING FIELD #16. Maintenance and cleaning shall include, but not be limited to painting, repairs to parking surfaces, drainage systems and site lighting, sweeping, snow and ice removal and waste removal.

6. Alterations. Without the prior written consent of the **LICENSOR**, and Owner, the **LICENSEE** shall not make any alterations, changes, modifications or additions to PARKING FIELD #16. Any alterations, changes, modifications or additions to PARKING FIELD #16 shall immediately become part of the property of the **Owner**.

7. Right of Way The **LICENSEE** will permit the **LICENSOR**, the **Owner** and their respective officer(s), director(s), employee(s), servant(s), agent(s) and/or independent contractor(s), to enter upon PARKING FIELD #16 at all reasonable times, to examine the condition of PARKING FIELD #16.

8. Liens. The **LICENSEE** shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to PARKING FIELD #16 or any interest therein. The **LICENSEE** shall promptly, at its own expense, take such action as may be necessary to duly discharge such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time.

9. Enforcement The **LICENSOR** reserves the right to enforce its reasonable parking rules and regulations for those vehicles of the **LICENSEE's** officer(s), director(s), employee(s), servant(s), agent(s) and/or independent contractor(s), not parked in their assigned parking space(s).

10. Damage to/or Destruction of Property. The **LICENSEE** assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to **LICENSEE's**, and/or its officer(s), director(s), employee(s), servant(s), agent(s) and/or independent contractor(s), vehicles, and/or any injury or death arising from or incident to the use of PARKING FIELD #16, whether or not such damage, loss, injury and/or death be to officer(s), director(s), employee(s), servant(s), agent(s) and/or independent contractor(s) of the **LICENSEE** or of third parties.

11. Indemnification. (a) **LICENSEE** agrees to indemnify, defend and hold harmless the **LICENSOR**, Owner and RDUA against any and all claims, demands, causes of action, including personal injury and/or death, damages, costs, and liabilities directly arising out of or in

connection with any acts or omissions done in furtherance of this **LICENSE** and/or in the conduct of the **LICENSEE's** activities upon PARKING FIELD #16. **LICENSOR** agrees to indemnify and hold harmless the **LICENSEE** against any and all claims, demands, causes of action, including personal injury and/or death, damages, costs, and liabilities directly arising out of or in connection with any gross negligence or willful misconduct of the **LICENSOR** in connection with PARKING FIELD #16 under this Agreement.

(b) **LICENSEE** shall, and shall cause its respective officer(s), director(s), employee(s), servant(s), agent(s) and/or independent contractor(s) to, cooperate with the **LICENSOR**, Owner and RDUA in connection with the investigation, defense or prosecution of any action, suit or proceeding related to the subject matter of this **LICENSE**.

(c) This section is for the protection of the **LICENSOR and LICENSEE**, Owner and RDUA and their respective officers, directors, employees and/or servant(s) only, and shall not establish any liability by the **LICENSOR or LICENSEE** to third parties.

(d) The provisions of this paragraph shall survive the termination and/or expiration of this Agreement.

12. Insurance. (a) Types and Amounts. The **LICENSEE** shall maintain and furnish to **LICENSOR** evidence of (i) commercial general liability insurance providing coverage for any liability arising out of this **LICENSE**, incidental to the use of or resulting from any accident occurring in or about **PARKING FIELD #16**, including coverage for bodily injury (including death and mental anguish), broad form property damage, premises/operations and hazards thereto, naming **LICENSOR**, Owner and RDUA as additional insureds with a combined single limit amount of not less than ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS per occurrence and TWO MILLION and 00/100 (\$2,000,000.00) DOLLARS aggregate coverage, (ii) statutory workers' compensation together with employer's liability with limits per accident and per disease for each employee/policy limit of not less ONE MILLION and 00/100 (\$1,000,000.00), (iii) automobile liability insurance in the amount of not less than ONE MILLION and 00/100 (\$1,000,000.00) combined single limit covering all owned, non-owned and hired vehicles, naming **LICENSOR**, Owner and RDUA as additional insureds, and (iv) umbrella liability insurance on a follow form basis in an amount of not less than TWO MILLION and 00/100 (\$2,000,000.00) per occurrence and TWO MILLION and 00/100 (\$2,000,000.00) annual aggregate, providing coverage (at **LICENSEE's** sole cost and expense) in excess of the coverages described in (i), (ii) (employer's liability), and (iii) above, naming **LICENSOR**, Owner and RDUA as additional insureds on such umbrella policy. Such coverage shall be concurrent to and not more restrictive than the underlying insurance, and such insurance policies shall be in full force and effect during the term of this License. All insurance maintained by **LICENSEE** shall waive rights of subrogation against **LICENSOR**, Owner and RDUA and be primary and noncontributory to any and all insurance maintained by **LICENSOR**, Owner and RDUA.

(b) Acceptability; Deductibles; Subcontractors. The **LICENSEE** shall secure an insurance policy from an A.M Best rated "secured" New York State licensed insurer that contains a thirty (30) day notice of cancellation, which names the **LICENSOR**, Owner and RDUA as unrestricted

additional insureds. Additional insured status shall be provided with ISO endorsement CG 2038 or its equivalent; and if applicable, participant endorsements and spectator endorsements. The **LICENSEE** shall be solely responsible for the payment of all deductibles to which such policies are subject.

(c) No later than ten (10) days after execution of this **LICENSE** the **LICENSEE** shall provide the **LICENSOR**, Owner and RDUA with Certificates of Insurance and a copy of the declaration page with an endorsement providing additional insured status or the actual endorsement page with the declaration page. Not less than thirty (30) days prior to the date of any expiration or renewal of or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, the **LICENSEE** shall provide written notice to the **LICENSOR**, Owner and RDUA of the same and deliver to the **LICENSOR**, Owner and RDUA a renewal or replacement copy of the declaration page with an endorsement providing additional insured status or the actual endorsement page with the declaration page. The **LICENSEE** shall cause all insurance to remain in full force and effect throughout the term of this **LICENSE** and shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverage. The failure of the **LICENSEE** to maintain the other required coverage shall be deemed a material breach of this **LICENSE** upon which the **LICENSOR** reserves the right to consider this **LICENSE** terminated as of the date of such failure.

13. Assignment; Amendment; Waiver; Subcontracting. (a) This **LICENSE** and the rights and obligations hereunder may not be, in whole or part, (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) sub-contracted, without the prior written consent of the **LICENSOR** and any purported assignment, other disposal or modification without such prior written consent, shall be null and void. Notwithstanding the prior sentence in this paragraph, the **LICENSOR's** prior written consent will not be unreasonably withheld, if and/or when the **LICENSEE** assigns, transfers and/or disposes of all its interest in the building located at 50 Clinton Street, Hempstead, New York 11550 (including the restructuring of the business of **LICENSOR** provided ownership remains the same).

(b) The failure of the **LICENSOR** and/or **LICENSEE** to assert any of its rights under this **LICENSE**, including the right to demand strict performance, shall not constitute a waiver of such rights.

14. Representations and Warranties. (a) The **LICENSOR** shall have no obligation, except as provided in paragraph 5, to install, erect, test, inspect, or service PARKING FIELD #16. THE **LICENSOR** MAKES NO EXPRESS OR IMPLIED WARRANTIES CONCERNING PARKING FIELD #16.

(b) The **LICENSEE** has made the selection of PARKING FIELD #16 based upon its own judgment and expressly disclaims any reliance upon any statements or representations made by the **LICENSOR**, Owner and RDUA or any persons on the **LICENSOR's** behalf. The **LICENSOR**, Owner and RDUA shall not be liable for any special, indirect, incidental or consequential damages of any character or nature as a result of licensing the property, except those resulting from the gross negligent/reckless/willful act(s) and/or willful omission(s) of the **LICENSOR**, including without limitation loss of profits, property damage or lost production, whether suffered by the **LICENSEE** or any third party.

(c) Notwithstanding any other provision of this **LICENSE**, the **LICENSOR** is not responsible for, and shall not be liable, other than an abatement to the **LICENSEE**, for damage resulting from the inoperability or loss of value of PARKING FIELD #16 due to any cause or situation (including without limitation governmental actions or regulations or actions of other third parties) whether or not presently foreseeable.

15. Termination/Relocation. (a) Notwithstanding anything to the contrary contained in this Agreement, this **LICENSE** may be terminated for any reason or for no reason by either party upon thirty (30) days written notice to the other party.

(b) Termination shall be accomplished by providing written notice, at the address specified by each party in the “NOTICES” paragraph below, delivered to the other party in the manner set forth in said “NOTICES” provision.

(c) Notwithstanding anything herein contained to the contrary, **LICENSOR** may, upon thirty (30) days prior written notice to **LICENSEE**, require the relocation of any **LICENSEE** to another parking lot or to other property owned or controlled by **LICENSOR** or its affiliates (an “Alternate Parking Lot”) if such Alternate Parking Lot is in reasonable proximity to the PARKING FIELD #16.

16. Notices. Any notice, request, demand or other communication required to be given or made in connection with this **LICENSE** shall be in writing, delivered or sent (i) by hand delivery, evidenced by a signed, dated receipt, (ii) postage prepaid via certified mail, return receipt requested, or (iii) overnight delivery via a nationally recognized courier service with proof of delivery. Said notice shall be deemed made on the date the delivery receipt was signed by an employee of the other party to this **LICENSE** and, if to the **LICENSOR**, to the attention of the Village Clerk at the address specified above for the **LICENSOR**, and, if to the **LICENSEE**, to the attention of Mr. Eli Tsinis, 2571 E 17th Street, 3rd Floor, Brooklyn, New York 11235, unless and until either party shall designate in writing to the other party any other persons and/or addresses.

17. Consent to Jurisdiction and Venue; Governing Law. Jurisdiction for all claims or actions with respect to this **LICENSE** shall be in the Supreme Court in Nassau County in New York State. This **LICENSE** is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State.

18. Entire Agreement. This **LICENSE** represents the entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this **LICENSE**.

19. Executory Clause. This **LICENSE** shall have no validity until same has been approved by the governing body of each party. Execution of the **LICENSE** by **LICENSOR**’s Mayor and a Member of **LICENSEE** shall be presumptive evidence that this **LICENSE** has been duly and properly executed.

20. Holdover Clause. To the extent that this **LICENSE** is terminated and **LICENSEE** fails to remove all of

its vehicles from PARKING FIELD #16 **LICENSEE** shall pay to **LICENSOR** a holdover fee of fifty dollars (\$50.00) per vehicle per day for each day beyond the date specified in the termination notice. Nothing in the paragraph shall be construed as permission for any such holdover use but rather just as a penalty to discourage any such holdover.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the LICENSEE and the LICENSOR have executed this LICENSE as of the date first above written.

INCORPORATED VILLAGE OF HEMPSTEAD

Donald L. Ryan Mayor

(Date)

STATE OF NEW YORK

ss:

COUNTY OF NASSAU

On this day of , 20 , before me personally came Donald L. Ryan personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as the Mayor of the **LICENSOR**, and that by his signature on the instrument, he executed the instrument.

Notary Public

[Tenant]

Corporate Officer (Sign)

(Date)

Corporate Officer Print Name and Title)

STATE OF NEW YORK

ss:

COUNTY OF NASSAU

On this day of , 20 , before me personally came _____
personally known to me or proved to me on the basis of satisfactory evidence to be the
individual whose name is subscribed to the within instrument and acknowledged to me that
he/she executed the same in his capacity as an authorized signatory of the **LICENSEE**, and that
by his /her signature on the instrument, he executed the instrument.

Notary Public

EXHIBIT "A"

PAYMENT TERMS

<u>Period</u>	<u>Rate</u>	<u>#of Spaces</u>	<u>#of Days</u>	<u>Payment Per Month</u>
Jan 1, 2019- June 30, 2019	\$3.00	35	130	\$2,275.00

Total payment for six (6) months
\$13,650.00

RESOLVED, that upon the recommendation of Larry, Lutz, Purchasing Agent and Lt. Kirichenko that Bid # 9 HEMV 2018/2019 Three (3) 2019 Harley Davidson FLHP Road King Solo Law Enforcement Motorcycles in the in the Inc. Village of Hempstead be awarded to the only bidder: South Shore Cycles, Inc. d/b/a Harley Davidson of Nassau County 2428 Sunrise Highway, Bellmore, New York 11710 in the amount of \$68,417.00?

Seconded by Trustee _____

RESOLVED, that upon the recommendation of Bijan Farahani, Engineering Department that authorization hereby be granted for proposal award to Cameron Engineering & Associates, LLP 177 Crossway Park Drive, Woodbury, New York 11797 to provide professional engineering services including design, construction administration and inspection for the construction of a bypass pumping valve vault at Harrison Avenue Pumping Station in the total amount of #12,725.00?

Moved by Trustee _____

Seconded by Trustee _____

RESOLVED, that upon the recommendation Paul Johnson, Chief of Police that authorization hereby by the Board to approve the Grant agreement for the US Department of Justice Office of Justice Program Bullet Proof Vest Program NIJ#SLTII for the fiscal year 2018/2019 effective October 3, 2018 through September 30, 2020 in the amount of \$12,375.00?

Moved by Trustee _____

Seconded by Trustee _____

RESOLVED, that upon the recommendation of Joseph Simone, Superintendent of the Building Department that the Board of Trustees wish to approve the recommendation by the Electrical Licensing Board of the Incorporated Village of Hempstead to issue a license as a Master or Employing Electrician to:

Ron Ebel
10 Hull Street
Oceanside, New York

Moved by Trustee _____

Seconded by Trustee _____

RESOLVED, by the recommendation of Mayor Don Ryan that the designation of Danny Leo as Chairman of the Board of Zoning Appeals commencing on February 5, 2019.

The compensation to be paid to the Chairman of the Board is \$175.00 per meeting. And further, no compensation will be paid for a meeting, which a member does not attend. There shall be no more than 12 regular meetings during the fiscal year.

Moved by Trustee _____

Seconded by Trustee _____

RESOLVED, that upon the recommendation Paul Johnson, Chief of Police that authorization hereby be approved for salary changes for full-time employee of the Incorporated Village of Hempstead as reviewed as follows:

Name	Department/Title/Grade	Salary
Anthony Cousins 99 James A. Garner Way Hempstead, NY (Title Change)	Police Department Detective I	\$139,876 yr upon approval

Justification: Recommendation is hereby to be approved of these officer be designated Detective as per Civil Service Law, section 58a, sub 4-c, which states if a police officer has performed the duties of a Detective for 18 continuous months, he/and or she will receive Detective Status, along with compensation ordinarily paid to a Detective.

Seconded by Trustee _____

RESOLVED, that upon the recommendation Paul Johnson, Chief of Police that authorization hereby be approved for salary changes for full-time employee of the Incorporated Village of Hempstead as reviewed as follows:

Name	Department/Title/Grade	Salary
John Rogers 99 James A. Garner Way Hempstead, NY (Title Change)	Police Department Detective I	\$139,876 yr upon approval

Justification: Recommendation is hereby to be approved of these officer be designated Detective as per Civil Service Law, section 58a, sub 4-c, which states if a police officer has performed the duties of a Detective for 18 continuous months, he/and or she will receive Detective Status, along with compensation ordinarily paid to a Detective.

Seconded by Trustee _____

_____ Clerks offers the following resolution for adoption:

RESOLVED, that upon the recommendation Paul Johnson, Chief of Police that authorization hereby be approved for salary changes for full-time employee of the Incorporated Village of Hempstead as reviewed as follows:

Name	Department/Title/Grade	Salary
Christopher Cohen 99 James A. Garner Way Hempstead, NY (Title Change)	Police Department Detective I	\$139,876 yr upon approval

Justification: Recommendation is hereby to be approved of these officer be designated Detective as per Civil Service Law, section 58a, sub 4-c, which states if a police officer has performed the duties of a Detective for 18 continuous months, he/and or she will receive Detective Status, along with compensation ordinarily paid to a Detective.

Seconded by Trustee _____

The Village Attorney would like enter into executive session regarding potential litigation and a personal matter.

EXECUTIVE SESSION: February 5, 2019

Moved by Trustee _____ to enter an executive session regarding Personnel matter.

Time In _____

Time Out _____

Seconded by Trustee _____

	ayes	no
Trustee Johnson	_____	_____
Trustee Pettus	_____	_____
Trustee Daniels	_____	_____
Trustee Renfroe	_____	_____
Mayor Ryan	_____	_____

Moved by Trustee _____ to come out of executive session. Time: _____

Seconded by Trustee _____

RESOLVED, by the Board of Trustees that authorization is granted for the item discussed in Executive Session for Comite Parada Festival/Centro American de NY In., PO Box 2401, Hempstead, NY to host a Parade and Festival on Sunday, September 15, 2019 from 12:00 p.m. to 7:00 p.m. at Municipal Parking Field #1 with a total cost of \$-----.

Moved By Trustee _____

Seconded by Trustee _____

Addendum 1 - Tuesday, February 5, 2019

_____ Authorization by Board to approve the item discussed in Executive Session to enter into litigation against Dow Chemical Corp. for the (1) Contamination of groundwater supplies by the following compounds: (i) 1,4 dioxane and associated compounds, including 1,1,1 trichloroethane (TCA), 1,1, dichloroethane (DCA) and 1,1, dichloroethylene (DCE); and/or (ii) other contaminants of concern identified by Client and approved by Attorney (collectively, the “Contaminants”) and/or (2) any claims and/or actions for damages sustained by the Village of Hempstead as a result of actual or threatened contamination of groundwater by the Contaminants, the loss of use of groundwater and the past, present, and any future cost incurred to remove the Contaminants from drinking water and/or groundwater, and/or location of alternative drinking water supplies, including all writs and appeals related thereto on a contingency fee basis.

Moved by Trustee _____

Seconded by Trustee _____

- b. Defending any legal action(s) against Client commenced by any person with the exception of any cross complaints or counter claims filed in the Dioxane Action described in Paragraph 3.
- c. Defending any claim against Client for unreasonable use of water and/or waste of water.
- d. Defending any action concerning water rights.
- e. Any action with respect to any dispute arising under or concerning this Agreement.

If Client wishes to retain Attorney to provide any legal services for matters excluded from this Agreement, a separate written agreement between Attorney and Client may be required which may require additional compensation to Attorney. Alternatively, Client would always have the option to engage other counsel to provide such legal services.

5. **RESPONSIBILITIES OF ATTORNEY AND CLIENT.** Attorney will perform the legal services called for under this Agreement, keep Client informed of material progress and developments, and respond to Client's inquiries and communications. Client will be truthful and cooperative with Attorney and keep Attorney informed of developments. A status report shall be presented to Client as events reasonably warrant or at the reasonable request of Client. Attorney and Client mutually acknowledge that (i) nothing in this Agreement is intended to interfere with Client's decisions or judgments concerning the design, operation, or maintenance of its water system consistent with its obligations to its ratepayers; and (ii) Attorney needs to be informed about Client's plans and anticipated operational decisions that may materially affect the Dioxane Action. Accordingly, Attorney and Client will work to assure that each keeps the other fully and timely informed about matters that affect the other.

6. **CLIENT RETENTION OF DOCUMENTS.** Client acknowledges its responsibility to undertake all necessary effort to identify, preserve, and retain documents concerning potential claims or defenses related to the Dioxane Action as soon as it suspects litigation is possible. Additionally, Client has suspended all document destruction policies and implemented a litigation hold to ensure the preservation of relevant documents. This litigation hold applies to hard-copy documents; electronically stored data, including backup tapes, legacy systems, and metadata; calendars and planners; and data from text messaging, blogs and social networking sites. This includes preserving all relevant data, regardless of whether it is contained on business or personal computers, personal digital assistants, cell phones etc. The documents need to be preserved in the form in which they currently exist. Client represents that it has not altered or destroyed any relevant documents relating to the subject matter of the litigation since the time it first suspected that litigation on its behalf was likely.

7. **ATTORNEY'S FEES.** The compensation that Attorney will receive for the legal services to be provided under this Agreement will consist of a contingent fee.

a. **The Contingent Fee**

Attorney will receive the following contingent fee from any Gross Recovery (as defined below):

- (i) Twenty-three percent (23%) of the Gross Recovery if such Gross Recovery is obtained before the commencement of the first formal exchange of expert witness designations provided, however, that
 - (a) If 17 or more Long Island Municipal Water Providers participate in an independent Cost Allocation and Common Interest Agreement (the “CIA”) and participate in a group recovery pursuant to the CIA, Attorney’s fee under this paragraph 7(a)(i) shall be Twenty percent (20%) of each Client’s Gross Recovery, provided further, however, that
 - (b) if 20 or more such Water Providers so participate, Attorney’s fee under this paragraph 7(a)(i) shall be Eighteen percent (18%) of each Client’s Gross Recovery.

Attorney will provide Client with reasonable notice of the date on which formal exchange will be required in the case.

- (ii) Twenty-five percent (25%) of any Gross Recovery obtained thereafter, provided, however, that
 - (a) If 17 or more Long Island If 17 or more Long Island Municipal Water Providers participate in an independent Cost Allocation and Common Interest Agreement (the “CIA”) and participate in a group recovery pursuant to the CIA, then Attorney’s fee under this paragraph 7(a)(ii) shall be Twenty-Three and One-Half percent (23.5%) of each Client’s Gross Recovery; provided, however, that
 - (b) If 20 or more such Long Island Municipal Water Provides participate in the CIA, Attorney’s fee under this paragraph 7(a)(ii) shall be Twenty-Two and One-Half percent (22.5%) of each Client’s Gross Recovery.
- (iii) Notwithstanding the foregoing, for any Gross Recovery greater than one hundred million dollars (\$100 million) but less than \$150 million, Attorney’s fee shall be calculated as follows:
 - a. For the amount of the Gross Recovery up to and including \$100 million, the fee shall be as set forth in subparagraphs (i) – (ii) above; plus
 - b. For the amount of the Gross Recovery greater than \$100 million, Attorney shall receive seventeen percent (17%) on the amount of the Gross Recovery greater than \$100 million, regardless of the time at which the Gross Recovery occurs.
- (iv) For any Gross Recovery greater than \$150 million, Attorney’s fee shall be calculated as follows:
 - a. For the amount of the Gross Recovery up to and including \$150 million, the fee shall be as set forth in subparagraphs (i) – (iii) above; plus

- b. For the amount of the Gross Recovery greater than \$150 million, Attorney shall receive eleven percent (11%) on the amount of the Gross Recovery greater than \$150 million, regardless of the time at which the Gross Recovery occurs.

b. **Gross Recovery**

- (i) The term “Gross Recovery” shall include, without limitation: (1) the then present value of any monetary payments agreed or ordered to be made by the adverse parties or their insurance carriers as a result of Attorney’s Legal Services, whether by settlement, arbitration award, court judgment (after all appeals exhausted), or otherwise (“Monetary Recovery”); and/or (2) the fair market value of any non-monetary property and/or services to be transferred and/or tendered for the benefit of the Client (“In-Kind Recovery”). “Gross Recovery” shall not include any court awarded costs or attorney’s fees received by Client from any third party, except as otherwise provided in Section 7(e) below.
- (ii) A “Recovery” may come from any source, including, but not limited to, the adverse parties to the Client and/or their insurance carriers and/or any third party, whether or not a party to formal litigation.
- (iii) Gross Recovery is applied differently if obtained after a Contested Judgment or Settlement. Each application is described below.
- (iv) **Gross Recovery After Contested Judgment**
 - 1. Definition. For purposes of this Agreement, “Contested Judgment” refers to any contested court order or judgment or contested arbitration award.
 - 2. The Client shall not be obligated to pay Attorney any fee in a Contested Judgment unless Attorney is successful either in collecting a Monetary Recovery on the Client’s behalf as a result of the Services or in collecting on an award of fees from the court pursuant to statute, a common fund recovery, or otherwise.
 - 3. Client shall be obligated to pay the then-present value of any Monetary Recovery to be made to Client pursuant to a Contested Judgment. The contingent fee is calculated by multiplying the Monetary Recovery by the fee percentage. This calculation is performed on the Gross Recovery amount before the deduction of expenses as provided below. Should the value of the contingent fee owed to Attorney exceed the payment made to Client at the time of the Contested Judgment (as, for example, in a series of future structured payments), any outstanding balance owed to Attorney shall be paid over time so that payments to Attorney *only* come from monies recovered and collected from adverse parties or their insurers.

4. If, by Contested Judgment, the Client is awarded an In-Kind Recovery, the value of such property and services shall not be included for purposes of calculating the Gross Recovery.
5. If pursuant to a Contested Judgment there is *no* Monetary Recovery and the Client receives only an In Kind Recovery, Client is not obligated to pay attorneys' fees from public funds for the value of the In Kind Recovery. If Client is awarded only In Kind Recovery by Contested Judgment, Attorney's sole source of contingent fees will come from a common fund or court ordered attorney's fees, if any.

(v) Gross Recovery Through Settlement

1. Definition. For the purposes of this Agreement, "Settlement" refers to Gross Recovery obtained pursuant to any voluntary agreement, whether by settlement, mediation, court stipulation, or otherwise.
2. "Gross Recovery," through settlement, includes (1) the then-present value of any monetary payments to be made to the Client ("Monetary Recovery"); and (2) the fair market value of any non-monetary property and/or services to be transferred and/or tendered for the benefit of the Client ("In-Kind Recovery").
3. Client shall be obligated to pay Attorney the fee based on then-present value of any Monetary Recovery plus any In-Kind Recovery to be made to Client pursuant to a settlement. The contingent fee is calculated by multiplying the present value of the total Gross Recovery at the time received by the fee percentage. This calculation is performed on the Gross Recovery amount before the deduction of expenses as provided below.
4. If the Gross Recovery at the time of settlement includes an agreement for future possible monetary payments and/or future possible non-monetary property and/or services to be transferred and/or tendered for the benefit of the Client for wells that are not contaminated by Contaminants at levels that qualify for a Monetary Recovery and/or In-Kind Recovery at the time of settlement and may therefore never occur, then the portion of Attorney's contingent fee related to such uncontaminated wells shall be calculated and paid only if and when those wells become contaminated so as to qualify for monetary payment and/or services to be transferred, not at the time of the original settlement.

c. Reasonable Fee if Contingent Fee Unenforceable.

In the event the contingent fee portion of this Agreement is determined to be unenforceable for any reason or Attorney is prevented from representing Client on a contingent fee basis, Client shall pay a reasonable fee for the services rendered if there is a Recovery. The parties shall use best efforts to negotiate a reasonable fee. If they cannot do so, the fee shall be determined by mediation proceedings before the Judicial Arbitration and Mediation Services (JAMS), with any costs of such

proceedings born equally by the Client and Attorney. Such reasonable fee shall take into account, among other things, the specific expertise of Attorney with regard to the Dioxane Action as well as the risk that Attorney took on by agreeing to represent Client and advance all litigation costs in return for a contingency fee.

d. **Disagreements Concerning Value of Recoveries.**

In the event the parties disagree with respect to the value of any Monetary or In-Kind Recovery they shall proceed as follows: Each party shall within 45 days select an appraiser qualified to conduct an appraisal of the value of the Recovery or settlement offer. Each party's selected appraiser shall then confer and within 30 days select a third qualified appraiser, who shall determine the value of the Recovery within 90 days. The third appraiser's valuation shall be final and binding on the parties regardless of the fact that such valuation may be an estimate or may be subject to further refinement or analysis. Client and Attorney shall each bear the expense of its own selected appraiser, and Client and Attorney shall share equally the expenses of the third appraiser.

e. **Court-Awarded Attorneys' Fees.**

Client may obtain an award from the court of attorneys' fees and/or costs in the Dioxane Action. For example, certain claims may arise under statutes that provide for an award of attorneys' fees. Attorney agrees that if such an award is allowed for under the law then it will endeavor to pursue such an award from the Court on behalf of Client. Any order awarding fees and/or costs shall not affect Client's obligation to pay attorney's fees and Costs under this Agreement. Any attorney's fee awarded by the court in connection with the Dioxane Action shall not be considered part of the "Gross Recovery" for purposes of calculating Attorney's contingent fee. Any court-awarded costs shall also not be considered part of the "Gross Recovery" for purposes of calculating Attorney's contingent fee. Any court award of fees shall be applied as a credit against Client's obligation to pay Attorneys' contingent fee under this Agreement, and any court award of costs shall be applied as a credit against Client's obligation to reimburse Attorneys for costs under this Agreement. If the court-awarded fees exceed the fee to which Attorneys would otherwise be entitled, Attorneys' fee shall be the amount of the court-awarded fee.

f. **Negotiated Fee.**

Client understands that the attorney's fee set forth in this Agreement is not set by law but rather is negotiable between Attorney and Client.

8. **DIVISION OF ATTORNEY'S FEES.** Attorney may decide to retain another attorney or law firm as associate counsel. Such other attorney or law firm may be compensated by Attorney for the reasonable value of the services performed such as on an hourly or per diem basis and not necessarily on a contingency basis; such payment shall be the sole responsibility of Attorney and shall not be charged back to Client as a Cost or otherwise. Such a division will be made only with Client's written consent after a full disclosure to Client in writing that a division of fees will be made and of the terms of such division.

A decision by Attorney to retain associate counsel shall be subject to Client's approval, which shall not be unreasonably withheld.

9. **COSTS.**

a. Attorney will advance the Costs (as defined in this paragraph 9) incurred in connection with Attorney's representation of Client under this Agreement. Costs will be advanced by Attorney and then paid by Client from any Recovery.

b. Attorney will be reimbursed for any unreimbursed Costs before any distribution of fees to Attorney and before any distribution to Client. To the extent permitted by law, Attorney will bear the risk of any unreimbursed Costs beyond the Cash Recovery in the Dioxane Action. In addition, to the extent permitted by law, Attorney will bear the risk of any defense costs taxed against Client in the event of a Contested Judgment for defendants in the Action.

c. Costs include, but are not limited to, court filing fees, deposition costs, expert, consultant, and investigator fees and expenses, investigation costs, transportation, meals and lodging for out of town travel, messenger service fees, photocopying expenses, and process server fees. Items that are not to be considered costs, and that must be paid by Client without being either advanced or contributed to by Attorney, include, but are not limited to, Client's expense incurred in providing information to counsel or defendants and damages claimed by others in the litigation and other parties' costs, if any, that Client is ultimately required to pay.

d. Attorney and Client shall meet and confer regarding selection and retention of experts in the Dioxane Action and Client shall be informed of the persons chosen and their charges. Client shall not unreasonably withhold approval of selection and retention of such experts.

e. Attorney will provide Client with periodic statements of Costs incurred in the Dioxane Action at approximately quarterly intervals or at such other frequency as mutually agreed between Client and Attorney. At any time, Client may communicate with Attorney regarding Attorney's estimates with regard to Costs that may be incurred in the future.

10. **REPRESENTATION OF ADVERSE INTERESTS.** If Attorney had a relationship with another party involved in the Dioxane Action, or with someone who would be substantially affected by the Dioxane Action, the Rules of Professional Conduct would require Attorney to disclose that to Client so that Client could evaluate whether that relationship causes Client to have any concerns over Attorney's loyalty, objectivity or ability to protect Client's confidential information. Attorney is not aware of having any relationship with anyone who is a party to the Dioxane Action, or who would be affected substantially by the Dioxane Action.

Client understands that currently, and from time to time, Attorney represents other municipalities, governmental agencies, governmental subdivisions, or investor-owned public water utilities in other actions or similar litigation involving Dioxane and other contaminants and where the defendants may be the same or similar to the defendants in the Dioxane Action, and that such work is a focus of Attorney's practice. Client understands that Attorney would not take on this engagement if it required Attorney to forego representations like those described above. However, Client understands that damages collected from one or more of the same defendants in other suits prosecuted by Attorney could, theoretically, reduce the amount of money available from these same defendants in the Dioxane Action. Client has conferred with its own separate and independent counsel about this matter, and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest which may occur as the result of Attorney's current and continuing representation of cities and other water suppliers in similar litigations, because it enables Client to obtain the benefits of Attorney's expertise. Therefore, Client consents that Attorney may continue to handle such work, and may take on similar new clients and matters, without disclosing each such new matter to Client or seeking the consent of Client while representing Client. Attorney would not, of course, take on such other work if it required Attorney to be directly adverse to Client while Attorney was still representing

Client in the Dioxane Action.

11. **SETTLEMENT.** Attorney will not settle Client's claim without the approval of Client, who will have the absolute right to accept or reject any settlement. Attorney will notify Client of the terms of any settlement offer received by Attorney.

12. **ORDER OR AGREEMENT FOR PAYMENT OF ATTORNEY'S FEES OR COSTS BY ANOTHER PARTY.** The court may order, or the parties to the dispute may agree, that another party will pay some or all of Client's attorney's fees, costs, or both. Any such order or agreement will not affect Client's obligation to pay attorney's fees and Costs under this Agreement. However, subject to Paragraph 7 (contingent fee), any such amounts actually received by Attorney will be credited against attorney's fees or Costs, respectively, incurred by Client.

13. **DISCHARGE OF ATTORNEY.** Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services and advance no further Costs on Client's behalf after receipt of the notice. If Attorney is Client's attorney of record in any proceeding, Client will execute and return a substitution-of-attorney form immediately on its receipt from Attorney.

In the event Attorney is discharged before the termination of the litigation, Client shall (1) reimburse Attorney for any and all Costs advanced by Attorney not later than thirty (30) days from receipt of a final cost accounting from Attorney, and (2) upon termination of the litigation, pay Attorney a fee consisting of the reasonable value of Attorney's services performed up to the point of the discharge. Nothing herein shall be construed to limit Client's rights and remedies in the event of a discharge of Attorney for cause.

14. **WITHDRAWAL OF ATTORNEY.** Attorney may withdraw from representation of Client (a) with Client's consent, (b) upon court approval, or (c) if no court action is filed, for good cause upon reasonable notice to Client. Good cause includes, but is not limited to, Client's breach of this Agreement, Client's refusal to cooperate with Attorney or to follow Attorney's advice on a material matter, or any other fact or circumstance that would render Attorney's continuing representation unlawful or unethical. Notwithstanding Attorney's withdrawal for cause, Client will remain obligated to pay Attorney out of the Recovery a reasonable attorney's fee for all services provided, and to reimburse Attorney for all reasonable Costs advanced before the withdrawal.

Attorney may terminate this Agreement at any time, without cause, by giving to Client not less than sixty (60) days prior written notice of termination, said notice to specify the effective date of the termination. Where Attorney terminates this Agreement without cause, Attorney shall not be entitled to the recovery of any attorney fee or Costs, regardless of the status of the Dioxane Action, and regardless of whether or not any amounts of Recovery have been or are subsequently received by Client.

15. **CONCLUSION OF SERVICES.** When Attorney's services conclude, whether by completing the terms of this Agreement or by discharge (under Paragraph 13) or withdrawal (under paragraph 14), all unpaid charges (including fees under Paragraph 7 and Costs under Paragraph 9) will immediately become due and payable. Attorney is authorized to use any funds held in Attorney's trust account as a deposit against Costs to apply to such unpaid charges.

16. **LIEN.** Client hereby grants Attorney a lien on any and all claims or causes of action that are the subject of Attorney's fee and/or Costs advanced under this Agreement. Attorney's lien

will be for any sums owing to Attorney for any unpaid Costs (under Paragraph 9) or fees (under Paragraph 7) at the conclusion of Attorney's services. The lien will attach to any Recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise.

17. **RELEASE OF CLIENT'S PAPERS AND PROPERTY.** At the termination of services under this Agreement, Attorney will release to Client on request all of Client's papers and property. Client's papers and property include correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items in possession of Attorney reasonably necessary to Client's representation.

18. **NOTICES.** All written notice and communications to Client relating to this Agreement shall be mailed to or personally delivered to:

Town/Village/Water District
Address
Phone Number

Written notices and communications to Attorney relating hereto shall be mailed to or personally delivered to Attorney at their offices addressed, (1) Sher Edling LLP, 100 Montgomery Street, Suite 1410, San Francisco, CA 94104, unless and until Attorney shall have given written notice to Client of such change in such office address(es).

19. **CONFIDENTIALITY.** This Agreement establishes the relation of attorney-client between the parties hereto. Attorney shall hold all money and property of Client in trust for Client's benefit, with all funds deposited and managed in Attorney's client trust account as required by law, shall not divulge Client's confidences, and shall be entitled to the candid cooperation of all Client's employees in all matters related to the assigned files and any related actions.

This Agreement is an attorney client communication and shall not be disclosed by Client or Attorney to any third party, except as may otherwise be required by law. In the event of a request to Client to provide a copy of this Agreement or a description of its terms, as a public record or otherwise, Attorney will work with Client to provide an appropriate response. Nothing herein shall preclude Attorney and Client from agreeing together to disclose the Agreement or its terms.

20. **DISCLAIMER OF GUARANTEE.** Although Attorney may offer an opinion about possible results regarding the subject matter of this Agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guaranty.

21. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

22. **SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.** If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

23. **MODIFICATION BY SUBSEQUENT AGREEMENT.** This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing, approved and executed in the same manner as the initial Agreement.

24. **MEDIATION CLAUSE.** If a dispute arises out of or relating to any aspect of this Agreement between Client and Attorney, or the breach thereof, and if the dispute cannot be settled through negotiation, Attorney and Client agree to discuss in good faith the use of mediation before resorting to arbitration, litigation, or any other dispute resolution procedure.

25. **NO AWARD OF ATTORNEY'S FEES OR COSTS IN ACTION ON AGREEMENT.** Each party shall bear its own attorney's fees and costs incurred in any action or proceeding concerning or arising out of this Agreement, or efforts to negotiate the matter, and the parties shall share equally the costs of any mediator, or other decision maker in any forum.

26. **GOVERNING LAW.** The terms and provisions of this Agreement and the performance of the parties hereunder shall be interpreted in accordance with, and governed by, the laws of the State of New York.

27. **EFFECTIVE DATE OF AGREEMENT.** The effective date of this Agreement will be the date when, having been executed by Client, one copy of the agreement is received by Attorney. Once effective, this Agreement will, however, apply to services provided by Attorney on this matter before its effective date.

28. **AUTHORITY OF PARTIES.** Each of the signatories to this Agreement warrants that he or she has the authority to enter into and execute this Agreement and to bind the entity or entities on whose behalf each signs.

29. **EXECUTION.** This Agreement may be executed by transmittal of facsimile signature counterparts.

The foregoing is agreed to by:

_____ WATER DISTRICT

Dated: _____

By _____

Approved as to form:

By _____

General Counsel

SHER EDLING LLP (Attorney)

Dated: _____

By _____
Victor M. Sher
Partner

RESOLVED, that all meeting bills, including self-insurance funds, audited by the Board of Trustees on check warrant dated February 5, 2019 be approved as previously reviewed.

Moved by Trustee _____

Seconded by Trustee _____