TOWN OF AMENIA
TOWN BOARD

4988 Route 22, AMENIA, NY 12501
(845) 373-8860 www.amenia.gov

RESOLUTION No. 58 of 2017
Approving an Agreement Between the Town of Amenia and SEBI Environmental Services Inc. for Operation and Maintenance of the Town of Amenia Water Facilities

WHEREAS, the Town is the owner of certain water district facilities located in the Town of Amenia, Dutchess County, New York, known as "Town of Amenia Water District #1", and provides water services to residents of the Town of Amenia; and

WHEREAS, SEBI Environmental Services Inc. (the "Contractor") is a full services environmental company which is willing, able and qualified to provide water and wastewater operations repair and maintenance, among other things, to support the Town's needs; and

WHEREAS, the Town and the Contractor are desirous of entering into an agreement which sets forth in more detail the scope of services that Contractor is to provide the Town and the terms pursuant to which Contractor will be reimbursed for such services (the "Agreement"); and

WHEREAS, the services that Contractor is to provide to the Town constitute professional services which are exempt from the bidding requirements under General Municipal Law Section 103; and

WHEREAS, this is a Type II action under the State Environmental Quality Review Act ("SEQRA") and therefore not subject to review under SEQRA.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby approves the form and terms of Agreement Between the Town of Amenia and Contractor for Operation and Maintenance of the Town of Amenia Water Facilities;

BE IT FURTHER RESOLVED, that the Town Board hereby authorizes the Supervisor to execute the said Agreement.

Motion made by Councilwoman Doyle, seconded by Supervisor Perotti. The foregoing resolution was voted upon with all councilwomen/councilmen voting as follows:

Supervisor Perotti	Yes
Councilwoman Doyle	Yes
Councilman Morris	Yes
Councilman Gutierrez	Yes
Councilman DeLango	Absent

DATED: Amenia, New York
December 14, 2017

Dawn Marie Klingner
DAWN MARIE KLINGNER, TOWN CLERK

TOWN OF AMENIA
TOWN BOARD

4988 Route 22, AMENIA, NY 12501
TEL: 845-373-8860 www.amenianv.gov

AGREEMENT BETWEEN THE TOWN OF AMENIA AND SEBI ENVIRONMENTAL SERVICES INC. FOR OPERATION AND MAINTENANCE OF THE TOWN OF AMENIA WATER FACILITY

THIS AGREEMENT, made this 14th day of ~~November~~ December 2017, by and between the **TOWN OF AMENIA**, 4988 Route 22, Amenia, New York 12501 (hereinafter sometimes "the Town"), and **SEBI Environmental Services Inc., (FIN 47-4461185)** having its branch office location at 17 Vickys Way, Amenia, New York 12501 (hereinafter sometimes "Contractor"),

W I T N E S S E T H :

WHEREAS, the Town is the owner of certain water district facilities located in the Town of Amenia, Dutchess County, New York, known as "Town of Amenia Water District #1", and provides water services to residents of the Town of Amenia; and

WHEREAS, the Town is desirous of entering into a contract for the operation and maintenance of such water district facilities; and

WHEREAS, Contractor is desirous of providing such services to the Town of Amenia.

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

SEBI Environmental Services Inc. is a full services environmental company which provides water and wastewater operations repair and maintenance, remediation of hazardous and non-hazardous chemicals and products, disposal of hazardous and non-hazardous waste, PBS and CBS compliance. SEBI Environmental Services Inc. and Strategic Environmental Business Insight Services DPC (NYS 0014363) which is certified as an NYS Professional Engineering Service firm are partner companies which can provide full services to support the Town's needs.

1. **Scope of Services to be Performed**

Contractor agrees to perform the following services for the Town:

a) Contractor will operate and maintain the Town of Amenia water district facilities, including but not limited to, water treatment facilities and the distribution system, in accordance with all regulations of the Departments of Health of the State of New York and the County of Dutchess (the "Departments of Health") and any applicable federal regulations. Contractor will provide such services 24 hours per day, 7 days per week, 365 days per year (366 days in a leap year) by a properly-certified operator as required by the Departments of Health, and so as to maintain compliance with all regulations of the Departments of Health and any applicable federal regulations. At all times, Contractor will provide services by employees knowledgeable, experienced, and properly certified or under direct supervision of a properly certified operator in the operation of water treatment facilities and with levels of certification consistent with, and so as to comply with, all regulatory requirements. Contractor's staffing plan shall promote the proper and efficient operation of the Town's water facilities and distribution system. Contractor is responsible for ensuring its employees are properly certified and/or trained to perform the duties assigned to them by Contractor, and that they are properly trained, instructed, and compliant with all safety measures, requirements, and regulations.

b) Contractor will maintain compliance with all permits and applicable regulations, including but not limited to, those relating to inspections, all testing, maintenance, and preparation and filing of reports, as required by the Departments of Health and any applicable federal agencies. Contractor will maintain a professional and cooperative relationship with all local, New York State, and any applicable federal regulatory agencies.

c) Contractor will comply with all applicable federal, New York State, and local laws, and with applicable rules and regulations, as the same apply to the Town's water system.

d) Contractor will be available for any necessary inspections and meetings with the Departments of Health, and any federal agencies that may have jurisdiction or regulation authority over the Town's water facilities.

e) The Town shall have the right to make inspections of any of its water facilities within forty-eight (48) hours' notice, including the distribution system, at any time, and Contractor shall make such facilities available to Town personnel upon notice from the Town Supervisor. Contractor shall maintain the Town's pump houses, treatment facilities, and exterior areas of the same in a clean and safe condition, free of debris.

f) In addition to the foregoing, Contractor's services will include:

i. Water sampling, testing, and reporting as required by all federal, State, County and local laws;

ii. Assisting the Town in water billing up to a total of four (4) hours per quarter;

iii. Performing one mass water meter reading of all Town water district customers per quarter;

iv. Performing final water meter reads;

v. Replacement of up to three (3) defective water meters per quarter that are accessible;

vi. Performing hydrant flushing as required by federal, state, county or local laws or regulations;

vii. Performing non-emergency mark-outs of water mains when requested by Dig Safely New York; and

viii. Attending Water Committee and Town Board meetings as requested, upon reasonable advance notice, and depending on reasonable availability of Contractor.

g) Not included in monthly operations pricing and which will be billed at a separate rate (see section 2): (i) Emergency calls after hours, (ii) during hours, non-emergency calls, for distribution repair, alteration, customer calls, or (iii) any other requests outside the duties of the Contractor listed above.

h) Contractor will properly manage and direct all actions deemed appropriate and necessary to accomplish the goals and objectives of the Town, as Owner, and to meet and fulfill the requirements of the Departments of Health and any federal agencies having jurisdiction over such water facilities.

i) Contractor shall furnish monthly written reports to the Town Supervisor, Town Water Committee, regulatory agencies, as required or requested, reflecting monthly activities, issues, repairs, replacements, test results, reports filed, violations, recommended repairs, replacements, and/or upgrades deemed appropriate and/or necessary by Contractor, and any other significant matters that should be brought to the attention of the Town and the Town Water Committee to keep the Town apprised of the condition of the Town water facilities and water system.

j) Contractor's normal business hours of Monday through Friday from 8:00 a.m. to 4:00 p.m. is included as part of Contractor's base compensation under this Agreement. Emergency call service provided outside Contractor's normal business hours as set forth herein must pertain to calls of an actual, true emergency situation and shall be billed as additional charges as set forth in Section 2, below.

k) Contractor will assure that a comprehensive repair and preventative maintenance program is in place as well as monthly operation reports. Repairs and preventative maintenance shall be performed in accordance with manufacturers' recommendations, and Contractor shall maintain and provide the Town with reports of the same as applicable under law, and as requested. Contractor shall maintain documentation of spare parts inventory. Contractor shall provide to the Town Board, and keep the Town Board apprised of, Contractor's suggestions on recommended repairs and/or recommended upgrades to the Town water system, as requested.

l) Contractor shall keep, preserve, and maintain all manufacturers' warranties on existing Town water facility equipment and on any new equipment that may be purchased by the Town for use in its water facility and/or water distribution system, and Contractor shall assist the Town in enforcing existing equipment warranties.

m) Contractor shall provide necessary data and reports required by or to assist the Town in budget preparation relating to the various water facilities and distribution system.

n) Contractor shall, in consultation with the Town Clerk as the Town's official record keeper, keep, preserve, maintain, and protect all records pertaining to the Town water facilities and the operation and maintenance of the same. Contractor acknowledges and agrees that all such records are the property of

the Town and that Contractor has no right to withhold the same from the Town Supervisor, the Town Clerk, or their official designees, at any time.

2. **Contractor's Additional Services, Reports and Rates**

a) **Additional Services**. Additional charges over and above Contractor's base compensation for the Scope of Services set forth in Section 1 of this Agreement shall include, but are not limited to:

i. Labor to perform water main/service line repairs, or to perform curb valve repair or replacement, or main valve repairs, or any defects, enhancements or repairs to the distribution or injection system, structure(s), landscape;

ii. Distribution system modifications;

iii. Resamples or additional samples not stated in sample plans;

iv. CAD services, Professional Engineering Service, additional hours for water billing;

v. Extra quarterly water meter reads or replacement of more than three (3) defective water meters per quarter;

vi. Any other services not covered under the Scope of Services in Section 1.

It is at the discretion of the Contractor to waive any of these additional charges.

b) **Subcontractors**. Contractor may select other subcontractors to perform duties under the direction of this Contractor, subject to the Town's approval. If rates differ from rates stated, Contractor may submit an invoice at cost plus 20% to the Town of Amenia as compensation.

c) **Reports.** Prices vary per report type.

d) **Equipment Rates.** Equipment of Contractor necessarily used in maintenance and repair of the Town's water facilities, including the distribution system, will be billed by Contractor to the Town by monthly invoice at the following rates:

- Mobilization and demobilization of equipment: Combined total of $250.00 per equipment per job;
- Mini excavator including operator: $150.00 per hour, with a minimum charge of $600.00 per day;
- Skid steer including operator: $120.00 per hour, with a minimum charge of $550.00 per day;

Any additional equipment, or attachments for machines, needed for repairs and/or maintenance of the Town's water facilities and/or water distribution system will be billed at the rate of local rental fees plus 20%, if such equipment is available; provided, however, that, except in emergency situations requiring urgent action, prior to Contractor renting any such equipment, Contractor shall first submit a written request to the Town Supervisor, for consideration by the Town Board, setting forth the reason for the necessity of such rental(s), the location of the particular job or jobs for which the equipment is needed, the particular equipment to be rented and the estimated time period of the rental, the names and addresses of the proposed lessors of such equipment, the specific hourly, daily, weekly, or monthly rental cost of such rental(s), and the method of delivery or transport of the equipment to the job site. In the event of an emergency situation requiring urgent action on the part of the Contractor, Contractor shall telephone the Town Supervisor with the above information to obtain appropriate authorization for such rental. Upon receipt and consideration of a request from the Contractor for the rental of equipment, the Town shall have the options of (i) providing equipment for Contractor's use to perform the necessary work, or (ii) providing Town personnel and equipment to perform the necessary work, or (ii) contracting with another entity to perform the necessary work.

e) **Labor Rate.** Labor services necessarily provided by Contractor beyond the scope of services included in the base compensation of Contractor pursuant to this Agreement so as to properly maintain and operate the Town's water facilities, and/or for emergency calls requiring immediate response, shall be billed to the Town by Contractor on a monthly basis as additional charges at the rate of $100.00 per hour. Other specialized services necessarily engaged to properly maintain and operate the Town's water facilities, and/or for emergency calls requiring immediate response (e.g., electrician, plumber, pump specialist, etc.) shall be arranged by Contractor and shall be billed at cost plus 20%. Professional Engineering services will be billed at a rate of $150 per hour. For non-emergency, Contractor shall submit an advance written proposal to the Town Supervisor for additional charges to be incurred over and above Contractor's base compensation pursuant to this Agreement.

f) **Fuel.** Contractor shall be reimbursed for fuel charges incurred when Contractor picks up parts required for repair and maintenance of the Town's water system, equipment for use in maintaining or repairing the Town's water system, re-sampling as required upon sample failures, and deliveries for laboratory testing. Contractor shall be reimbursed for the above fuel charges at the rate of $.56 per mile currently, or at the mileage reimbursement rate approved or allowed by the United States Internal Revenue Service at the time such charges are incurred.

3. **Term of Agreement**

The term of this Agreement shall be five (5) years, effective from **December 31, 2017 to December 31, 2022**, unless otherwise terminated as hereinafter set forth.

4. **Payment**

a) The Town shall pay Contractor for the scope services described in Section 1 of this Agreement, as included in Contractor's base compensation, in the amount of TWO THOUSAND EIGHT HUNDRED FIFTY AND N0/100 DOLLARS ($2,850.00) each month of service, payable within thirty (30) days of the Town's receipt of Contractor's invoice. Contractor shall send the Town an invoice every thirty (30) days.

b) In each succeeding year, Contractor shall be entitled to request an increase in its base compensation as set forth above ($2,850.00 per month) equal to the Consumer Price Index (CPI) as published by the United States Department of Labor for the Northeastern Section of the United States based on the commencement date figures for each year or increase to Contractor's operation cost. Contractor agrees to provide the Town with a copy of the United States Department of Labor report for the relevant year, if applicable.

c) Contractor shall provide to the Town an invoice every thirty (30) days setting forth any and all additional charges, over and above the base compensation set forth herein, with specific detail and itemized cost of each additional charge.

5. **Late Fees**

Late payments by the Town shall be subject to interest at the rate of nine (9) percent per annum from the due date until the amount is paid in full, including interest.

6. Insurance

a) At all times during the term of this Agreement, Contractor shall maintain the following insurance, with the Town of Amenia named as an unrestricted additional insured and containing a thirty (30) day notice of cancellation, which notice must be provided to the Town in writing at the address set forth in this Agreement, and which shall state that the coverage provided by such policies shall be primary coverage for the Town of Amenia:

(1) General liability insurance in the amount of not less than One Million Dollars ($1,000,000.00) for each occurrence and Three Million Dollars ($3,000,000.00) in the general aggregate.

(2) Workers' Compensation insurance, as required by applicable law, for all of Contractor's employees employed in the management, operation, maintenance, and repair of the Town's water facilities, including the water distribution system, and/or in the performance of the Contractor's duties pursuant to this Agreement in an amount not less than One Hundred Thousand Dollars ($100,000.00) for each accident, and One Hundred Thousand Dollars ($100,000.00) for disease for each employee, and Five Hundred Thousand Dollars ($500,000.00) for disease as a policy limit.

(3) Disability insurance, as required by applicable law, for all of Contractor's employees employed in the management, operation, maintenance, and repair of the Town's water facilities, including the water distribution system, and/or in the performance of the Contractor's duties pursuant to this Agreement.

(4) Automobile liability insurance in the amount of One Million Dollars ($1,000,000.00), combined single limit.

b) Not later than the date of commencement of the term of this Agreement, Contractor shall provide the Town with satisfactory proof of such insurance being in full force and effect, effective no later than the date of commencement of the term of this Agreement, with the Town of Amenia named as an unrestricted additional insured and a thirty (30) day notice of cancellation, which notice must be

provided in writing to the Town at the address set forth in this Agreement. Contractor shall provide the Town with all such proofs of insurance for each year of the term of this Agreement and for any extension periods. Contractor agrees to indemnify the Town for any applicable deductibles in such policies.

c) Contractor agrees that failure to obtain such insurance on behalf of the Town constitutes a material breach of this Agreement and subjects Contractor to liability for damages, indemnification, and all other legal remedies available to the Town.

d) Failure of the Town to object to the contents of any certificate of insurance or the absence of it shall not be deemed a waiver of any and all rights of the Town.

e) Contractor is obligated to notify the Town, in writing, and to provide copies of, any changes in the above required insurance, including, but not limited to, change in insurers, amounts of coverage, terms of coverage, named insureds, extent of coverages, notices of cancellation, and notices of reinstatement. Contractor is obligated to notify the Town, in writing, of all such changes on the date(s) of such change(s), on the date(s) of Contractor's receipt of any such notifications from the insurers, and/or on the date(s) Contractor becomes aware that insurance coverage(s) will be cancelled, terminated, changed, or suspended.

7. <u>Equipment and Supplies</u>

a) Any equipment, tools and supplies owned or subsequently purchased by the Town for operation and maintenance of the Town's water facilities and system shall be provided for Contractor's use, and Contractor agrees the same will be used in the operation and maintenance of the Town's water facilities and system only. Contractor acknowledges and agrees that such equipment, tools and supplies owned or purchased by the Town shall remain the property of the Town.

b) The Town may authorize Contractor to use such other equipment and tools owned by the Town in the sole discretion of the Town. When so authorized, Contractor may use such additional equipment and tools in the normal daily operation, maintenance and emergency repair of the Town's water facilities.

c) Contractor agrees to properly care for and maintain all such equipment and tools of the Town. On an ongoing basis and at the termination of this Agreement, Contractor shall maintain an inventory and account for such equipment and tools of the Town in writing. At the termination of this Agreement, Contractor shall return all equipment and tools owned by the Town to the Town in essentially the same condition as prior to Contractor's use, normal wear and tear excepted.

8. Expenses

Contractor shall be responsible for all expenses required for the performance of the scope of services described in this Agreement, except for the following, which shall be paid for by the Town:

a) Any costs associated with the maintenance, fuel, replacement or calibration of the Town's water facilities equipment under normal use;

b) Any laboratory, chemical or parts costs will be billed to the Town at cost plus 20%. Contractor shall promptly submit to the Town an itemized statement of these expenses, together with all invoices for such costs incurred for laboratory, chemicals, parts, etc. The Town shall pay Contractor within thirty (30) days from the date of receipt each statement.

9. Termination of this Agreement

a) This Agreement will become effective when signed by both parties, to commence on December ____, 2017, and will terminate on the earlier of December 31, 2022 or the date either party terminates the Agreement as provided below.

b) With reasonable cause, either party may terminate this Agreement by giving seven (7) days' advance written notice of termination for cause by either (a) in person delivery to the other party at the address set forth in this Agreement, or such other address subsequently designated in writing, or (b) by certified mail, return receipt requested, to the other party at the address set forth in this Agreement, or such other address subsequently designated in writing.

c) Reasonable cause for such termination includes, but is not limited to:

- A material violation of this Agreement; or

- The Town's failure to pay Contractor's fees as provided in this Agreement, where Contractor has demanded payment, in writing, and has not received payment within fifteen (15) days after the due date of such payment, provided, however, the Contractor has fully performed its duties under this Agreement; or
- Contractor's failure to perform its duties and obligations pursuant to this Agreement; or
- The Town's violation of Independent Contractor rights as set forth in this Agreement.

d) In addition, either party may terminate this Agreement at any time, without cause, by giving ninety (90) days written notice of termination.

e) Contractor shall be entitled to payment for actual services performed prior to the date this Agreement is terminated, provided, however, Contractor has properly and fully performed the same.

10. Independent Contractor Status

The parties intend Contractor to be an independent contractor in the performance of the services set forth in this Agreement. None of the employees of Contractor shall be considered employees of the Town. Contractor and the Town agree to the following rights consistent with an independent contractor relationship:

a) Contractor will have the right to control and determine the methods and means of performing the contractual services.

b) Contractor has the right to perform services for others during the term of this Agreement, provided Contractor fulfills all of its duties and obligations pursuant to this Agreement in a timely and proper manner.

c) Contractor has the right to use its employees, or to choose and hire assistants as subcontractors provided such subcontractors are properly insured consistent with the insurance provisions in this Agreement, to provide the services required by this Agreement.

d) Contractor may request the Town to provide employees to help assist in services required by this Agreement; however, the Town shall have complete discretion in granting or denying such request.

e) The Town shall not require Contractor or Contractor's employees or subcontractors to be devoted full-time to performing the services required by this Agreement; however, Contractor shall devote full

efforts during Contractor's normal business hours (as stated in this Agreement) to the performance of all duties and services required to be performed by this Agreement and shall not defer such duties and services to after its normal business hours so as to charge the Town additional costs.

f) Contractor acknowledges and agrees that neither Contractor nor Contractor's employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay or any other fringe benefit plan of the Town.

11. State and Federal Taxes

a) The Town will not withhold Federal, State, local, Social Security, Unemployment, Medicare, disability, or any other taxes, from Contractor's payments or make any such payments or contributions on Contractor's, or its employees' behalf.

b) Contractor is responsible for and will pay all applicable taxes and/or withholding amounts related to the performance of services under this Agreement, including, but not limited to, Federal and State income taxes, Social Security, Unemployment, self-employment, Medicare, disability taxes, withholding, or charges.

12. No Partnership

This Agreement does not create a partnership relationship. Neither party has authority to enter into contracts on the other's behalf.

13. Force Majeure

The Town and Contractor agree that Contractor shall not be deemed to be in default if performance of the obligations required by this Agreement is delayed, disrupted or becomes impossible because of an act of God, war, earthquake, fire, accident, civil commotion, epidemic, act of government, its agencies or officers, or any cause beyond the control of the parties. Upon the occurrence of such event of "force majeure", Contractor shall operate the Town's water facilities, including the water distribution system, with due diligence and on a best effort basis (at no additional cost to Contractor) and shall not be responsible for damages, fines, penalties or claims resulting from the "force majeure" events, provided Contractor acts with due diligence and on a best effort basis. If any additional expense is necessary under such circumstances of "force majeure", Contractor

shall promptly notify the Town in writing of such additional expense; any additional expenses incurred by Contractor upon consent of the Town in writing shall be an additional cost and shall be reimbursed by the Town.

14. Entire Agreement

This Agreement constitutes the entire agreement between the parties and replaces and supersedes any and all oral agreements between the parties, and neither party is relying on any oral or other representations made by the other party or its representatives.

15. Modification of this Agreement

This Agreement may be modified only by subsequent written Agreement signed by both parties.

16. Assignment

This Agreement shall not be assigned by either party without the prior written consent of the other party.

17. Notices

All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing, and shall be deemed duly given if delivered by hand or mailed by registered or certified mail, return receipt requested, or by overnight courier, to the parties at their respective addresses hereinabove stated or to such other addresses as may be designated by written notice complying as to delivery with the terms of this Section.

18. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of New York. The County of Dutchess in the State of New York is hereby designated as the place of trial for any action or proceeding arising from or in any way connected to this Agreement.

19. Counterparts

This Agreement may be signed by the parties in different counterparts and the signature pages combined to create a document binding on all parties.

20. Waiver

If one party waives compliance with or performance of any term or provision of this Agreement at any time, such waiver will be effective only for the specific instance and specific purpose for which the waiver was given and shall not constitute a subsequent waiver of any terms or provisions of this Agreement. If either party fails to exercise or delays exercising any of its rights or remedies under this agreement, that party retains the right to enforce that term or provision at a later time.

21. Severability

If any court determines that any provision of this Agreement is invalid or unenforceable, any invalidity or unenforceability will affect only that provision and will not make any other provision of this Agreement invalid or unenforceable and such provision shall be modified, amended or limited only to the extent necessary to render it valid and enforceable.

22. **Indemnification**

To the fullest extent permitted by law, the Contractor, shall and hereby does, indemnify, defend and hold the Town harmless against and from: (i) any and all claims arising or resulting from (a) Contractor's conduct in, on or about the Town's water facilities, (b) any act or omission of Contractor or Contractor's subcontractors, or (c) any accident, incident, injury, damage occurring in or about the Town's water facilities resulting from the Contractor's scope of services, except to the extent such accident, incident, injury, or damage is caused by the willful or gross negligent acts or omissions of the Town; and (ii) any and all costs, expenses and liabilities incurred, including reasonable attorneys' fees, in or in conjunction with any such claim or action or proceeding brought thereon or in any way connected with Contractor's scope of services, except for such claims, costs, expenses and liabilities that arise solely due to the gross negligence of the Town.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth above.

TOWN OF AMENIA

By: _____
Victoria Perotti, Town Supervisor
Town of Amenia
4988 Route 22
Amenia, New York 12501

SEBI ENVIRONMENTAL SERVICES INC.

By: _____
Marco D'Antonio, President
17 Vickys Way
Amenia, New York 12501