

SEWER USAGE AGREEMENT

THIS AMENDED AGREEMENT made and entered into this ___ day of October, 2019, by and between AGRI-MARK, INC., a Delaware corporation having its principal place of business at Milk Street Office Park, Methuen, Massachusetts 01844 (hereinafter referred to as "Agri-Mark") and TOWN OF MIDDLEBURY, a municipal corporation situated in the County of Addison and State of Vermont (hereinafter referred to as the "Town");

WITNESSETH:

WHEREAS, the Legislature of the State of Vermont by 24 VSA § 3506, has designated the Selectboard of a Town to be the Board of Sewage Disposal Commissioners, and

WHEREAS, the Charter of the Town in Section 501 has delegated to the Selectboard such powers as authorized by the Laws of the State of Vermont, and

WHEREAS, the Town has adopted an Ordinance regulating the use of public and private sewers and specified that the Selectboard shall have the authority pursuant to Article V, Section 19 of said Ordinance to enter into special agreements and arrangements with industrial concerns provided that such agreements do not contravene any requirements of existing Federal or State laws and regulations promulgated thereunder, and

WHEREAS, the Town's Selectboard has adopted a policy regarding surcharge assessments for the discharge of high strength waste to the Town's sewer system (Exhibit "A"), which is applicable to the discharge of Agri-Mark's wastewater,

NOW, THEREFORE, the parties for the consideration herein set forth, mutually covenant and agree as follows:

1. The Town agrees to reserve for Agri-Mark's use for the term of this Agreement and any extension thereof, flow and treatment capacity in the Wastewater Treatment Facility adequate to properly treat and dispose of wastewater with effluent characteristics as permitted by the State of Vermont and Town of Middlebury, as follows:
 - BOD – 4,000 lbs
 - TSS – 1,100 lbs
 - TP – 100 lbs
 - Flow – 450,000 gallons
2. Sewer Usage Billings.
 - A. Basis for Billing. The Town's monthly billing is based on the daily flow, Biochemical Oxygen Demand (BOD) loading, and Total Suspended Solids (TSS).
 - B. Form of Billing. The Town's monthly billing shall consist of the sum of the (1) BOD Surcharge Cost, (2) TSS Surcharge Cost, and (3) Industrial User Surcharge Cost as provided in the Town's Policy Regarding Surcharge Assessments for Discharge of High-Strength Waste to the Town's Sewer System; and (4) a Flow Component Cost as follows:
 - January 1, 2019 to September 30, 2019: \$5.52 per 1,000 gallons of wastewater;
 - October 1, 2019 to December 31, 2019: \$5.68 per 1,000 gallons of wastewater;
 - January 1, 2020 to December 31, 2020: \$5.91 per 1,000 gallons of wastewater; and
 - January 1, 2021 to December 31, 2021: \$6.14 per 1,000 gallons of wastewater.

Domestic wastewater discharged will be charged at the rate charged all other sewer users, currently \$6.78/1,000 gallons of domestic discharge.

3. Term. The term of this Agreement shall be three years, beginning on January 1, 2019 and ending on December 31, 2021, unless sooner terminated pursuant to Section 5.
4. Permits, Policy and Testing. Agri-Mark recognizes that this Agreement does not waive or otherwise modify any Town, State, or Federal permit requirements for industrial discharges. This agreement does not relieve Agri-Mark from complying with applicable Town Ordinances and Selectboard policies regarding the discharge of wastewater and other wastes and materials to the wastewater treatment facility.

Agri-Mark shall have primary responsibility for testing on a schedule in order to determine the waste loading levels actually discharged as prescribed by its State or Town permit. Agri-Mark shall have the right to select an independent laboratory to compute and furnish the Town the required data for waste billings.

At Town expense, the Town shall have the prerogative of conducting periodic samples and tests to confirm waste loading data, but may not include the test results in the monthly billing calculation, unless the Town confirms the waste loadings by submitting such samples to an independent laboratory.

The Town shall use all qualified test results in order to determine the monthly average BOD and TSS in its computations for both the usage charge, surcharge and exceedance charges, if applicable.

5. Termination. Either party may terminate this Agreement by giving notice to the other party at least 90 days in advance of the termination date.
6. Entire Agreement. This Agreement, together with the attachment referenced above, contains the entire agreement between the parties concerning matters herein set forth and supersedes all prior agreements between them respecting such matters.
7. Notices. Any notice which any party is required or may desire to give hereunder shall be in writing and may be personally delivered, transmitted by facsimile machine, or delivered by the United States Postal Service or private delivery service to the following addresses. Notice is deemed given when received.

Town of Middlebury
Attn: Kathleen Ramsay, Town Manager
77 Main Street
Middlebury, VT 05753

Agri-Mark, Inc.
Attn: Frank Mehm, Senior Vice President - Finance
Milk Street Office Park
Methuen, MA 01844

8. Assignment; Binding Effect. Agri-Mark may only assign its rights under this Agreement to a third party with the prior written consent of the Town, which shall not unreasonably withheld. One the Town approves the assignment of the Agreement and the assignee accepts the terms, Agri-Mark shall be released from its obligations hereunder beginning as of the date of the assumption. Except as limited by the foregoing terms, this Agreement shall be binding upon, and inure to the benefit of, both parties and their respective representatives, successors and assigns.
9. Modifications. This Agreement may be modified only by a written document signed by representatives of both parties. A purported oral modification shall not be effective.

10. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Vermont.

DATED at Middlebury, Vermont, this ___ day of October, 2019.

TOWN OF MIDDLEBURY

Witness

By: _____
Town Manager, Agent Duly Authorized

AGRI-MARK, INC.

Witness

By: _____
Agent Duly Authorized

Name & Title