

AGREEMENT NO. VII

BINGHAMTON-JOHNSON CITY JOINT SEWAGE PROJECT

AGREEMENT, made as of this 1st day of September, 2009, by and between the City of Binghamton, a municipal corporation, 38 Hawley Street, Binghamton, County of Broome, New York 13901 (the "City") and the Village of Johnson City, a municipal corporation, 243 Main Street, Johnson City, County of Broome, New York 13790 (the "Village").

WHEREAS, the City and the Village (collectively the "Owners"), pursuant to Article 5(g) of the General Municipal Law, established a joint sewage project by "Agreement No. I" dated July 14, 1965; and

WHEREAS, the joint sewage project is administered by a board established by such agreement and known as the Binghamton-Johnson City Joint Sewage Board (the "Board"), and

WHEREAS, the Owners entered into "Agreement No. II" on December 7, 1967; and

WHEREAS, the Owners entered into "Agreement No. III" on April 24, 1968; and

WHEREAS, the Owners entered into "Agreement No. IV" on March 5, 1973; and

WHEREAS, the Owners entered into "Agreement No. V" in December, 1989; and

WHEREAS, the Owners entered into an intermunicipal agreement pertaining to construction financing and future bonding from the Clean Water State Revolving Loan Funds for the Phase III Project at the Joint Sewage Treatment Facility commonly know as the "Phase III Lead Agency Agreement" on May 1, 2000; and

WHEREAS, the Owners entered into "Agreement No. VI" on October 17, 2001; and

WHEREAS, the Owners agreed to amend the residency requirements for Board members in November 2006 (the above Agreements are referred to herein collectively as the "Intermunicipal Agreement"); and

WHEREAS, portions of Intermunicipal Agreement and the amended residency requirement are antiquated, ambiguous, and in need of review to be more consistent with current operations and for this purpose a Joint Sewage Task Force ("Task Force") was created by the Mayors of the City and Village in December 2008; and

WHEREAS, the Task Force recommended amendments to the Intermunicipal Agreement in a report dated May 13, 2009.

NOW THEREFORE, in consideration of the mutual promises and covenants of the parties set forth herein, it is hereby agreed that:

1. Notwithstanding any agreement to the contrary, the Board shall present its proposed budget to the Owners on or before August 14 of each year. The combined legislators (seven from the City and five from the Village) shall hold a joint public meeting to

review the proposed budget on or before September 10. The combined legislators shall vote to approve or amend the budget, at a joint or separate meeting, on or before September 24.

2. The Owners shall adopt those portions of the budget pertaining to non-capital items unless a total of 75% of the combined legislators vote to reject or amend such non-capital lines, *i.e.*, if 9 of the 12 combined legislators vote to reject or amend such non-capital lines.
3. The Owners shall adopt those portions of the budget pertaining to "capital items" unless a total of 50% of the combined legislators vote to reject or amend such capital lines, *i.e.*, if 6 of the 12 combined legislators vote to reject or amend such capital lines. A "capital item" shall mean any purchase or project for construction which a) adds to or improves the physical plant, b) has an expected use of more than three years, and c) has a cost in excess of three years.
4. Notwithstanding any agreement to the contrary, nothing shall prevent the Board from presenting a budget which includes a budget line (or lines) for specific capital projects that will not occur during the year for which the budget is to be implemented. The request shall include the estimated cost of each specific capital project, how each project will be funded, and the anticipated start and completion dates of the project. Once established, these capital budget lines may not be used for any other purpose, without consent of a majority of each legislative body.
5. If any portion of the budget is rejected or amended by the Owners as provided above, then the budget shall be adopted as approved by the combined legislators.
6. Notwithstanding any agreement to the contrary, the Owners shall have sole authority to bond for the project.
7. The Board shall be authorized to make mid-year budget transfers which do not increase the Board's total budgeted expenses for the year under the following conditions:
 - a. The Board will give the City Clerk and the Village Clerk not less than 10 days prior written notice of every proposed budget transfer, whether the budget transfer requires legislative approval or not.
 - b. Non-capital items. The Board may transfer up to \$2,000 to another budget line without legislative approval (the Board may transfer more than \$2,000 *from* a budget line to various other budget lines). Any transfer of more than \$2,000 to another budget line shall be accepted unless 75% of the combined legislators vote to reject such budget transfer. Such vote shall be made within 35 days of receipt of the proposed budget transfer as required in paragraph "a" above and may be made at a separate or a joint meeting of the combined legislators. During any calendar year where the cumulative amount of budget transfers equals \$20,000 or more, then any proposed budget transfer shall be subject to the same procedures as budget transfers of more than \$2,000.

- c. Capital items. Any request for mid-year budget transfer shall be accepted unless a majority of the members of either legislative body votes to reject such budget transfer. Such vote shall be made within 35 days of receipt of the proposed budget transfer as required in paragraph "a" above and may be made at a separate or a joint meeting of the combined legislators. This provision shall not apply to any capital budget line established pursuant to paragraph 4 above.
- d. No new budget lines will be established mid-year without approval of 75% of the combined legislators.

8. Agreement No. III, Section 4 is hereby amended to read as follows:

"Any and all City, Village and/or Board contracts for public works and purchase contracts shall be awarded in compliance with the provisions of the General Municipal Law Article 5-A. However, nothing in this section shall prevent the Joint Sewage Board from adopting procurement policies more stringent than those set forth in the General Municipal Law."

- 9. The residency requirements for employees of the Joint Sewage Treatment Plant shall be expanded to permit residency in the counties of Tioga, Tompkins, Cortland, Chenango, Otsego, Delaware, New York and Susquehanna, Pennsylvania.
- 10. Each member of the Board shall be appointed as provided in the Intermunicipal Agreement. The residency requirements for Board members shall be expanded to permit residency in Broome County. Each Board member shall be appointed for three years. A Board member may be reappointed without term limits.
- 11. The appointing Mayor, a member of the legislative body of the appointing Mayor, or any Board member from the same municipality may recommend removal of a Board member appointed by such Owner. A Board member shall be removed if such removal is approved by the appointing Mayor and a majority of the legislative body of the appointing Mayor.
- 12. All Board members are required to comply with Article 18 of the General Municipal Law.
- 13. The term limit of the Intermunicipal Agreement shall be up to thirty (30) years, or for the life of bonds issued. Every five (5) years from the date of this agreement, the legislative body of each Owner shall appoint two members and the Mayor of each Owner shall appoint one member to a Joint Sewage Task Force for the purpose of reviewing the terms of the Intermunicipal Agreement. However, nothing herein shall preclude the Owners from reviewing or amending the Intermunicipal Agreement at any other time.
- 14. The Owners shall have authority to jointly develop a procedure to oversee any project or portion of a project at the joint sewage plant, including, but not limited to, appointing a "Clerk of the Works". A Clerk of the Works shall be appointed to ensure independent oversight of the project, that the project is completed in a cost-

effective, safe manner and consistent with good practice. The Board shall have supervisory authority over the project; however, the Owners shall have the sole authority to appoint and terminate the Clerk of the Works and the Owners shall have access to all reports prepared by the Clerk of the Works. The Owners will not delegate to the Board decisions regarding Change Orders that affect the cost of the project. The cost of a Clerk of the Works will be borne by the Board.

15. In the event a project requires prosecution of a warranty claim or litigation, the Owners shall have the authority to jointly develop a plan to adequately protect the interests of the joint sewage plant, the Board, and the Owners. The costs of such plan shall be borne by the Board.
16. The Board and the Owners shall have authority to pursue grant funding. A copy of any grant application and award letter will be provided to the Owners and/or the Board, as the case may be. All copies to the Owners will be provided to the City Clerk and the Village Clerk.
17. The Board shall not have any authority to bring any action or proceeding against an Owner, except for the collection of approved expenses under the budget or related to an Owner's use of the joint sewage plant as a user. Any other alleged violation of the Intermunicipal Agreement must be commenced by the other Owner.
18. Except as set forth herein, all of the terms, conditions, and obligations of the existing Inter-municipal Agreement, and the amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this instrument the day and year first above written

CITY OF BINGHAMTON

By: _____

Dated: _____

JOHNSON CITY

By: _____

Dated: _____

Attest: _____

City Clerk

Dated: _____

Village Clerk

Dated: _____