

III

AGREEMENT NO. III
BINGHAMTON-JOHNSON CITY
JOINT SEWAGE PROJECT

THIS AGREEMENT, dated *APRIL 24*, 1968, by and between The City of Binghamton, a municipal corporation in the County of Broome and State of New York (referred to hereinafter as City), and the Village of Johnson City, a municipal corporation in the County of Broome and State of New York (referred to hereinafter as Village),

WITNESSETH as follows:

WHEREAS, the City and the Village entered into an agreement dated July 14, 1965 (referred to hereinafter as Agreement I) pertaining to the treatment of sewage, Binghamton-Johnson City Joint Sewage Project; and

WHEREAS, the City and Village entered into an agreement dated December 7, 1967 (referred to hereinafter as Agreement II) entitled, "Agreement No. 2 Binghamton-Johnson City Joint Sewage Project."

NOW, THEREFORE, the City and the Village do hereby mutually agree as follows:

Section 1. The last two (2) sentences of Section 8 of Agreement I be and the same are hereby superseded and replaced by the following sentences:

"Should the capital cost for construction of the terminal pumping station and the primary treatment plant facilities constructed by the Village of Johnson City plus the extension of the Johnson City Interceptor Sewer and the Force Main from the Terminal Pumping Station to the treatment plant site exceed

the amount of \$2,244,600, then 21.92% of the difference shall be paid by the City to the Village. Should such capital cost be less than the amount of \$2,244,600, then 21.92% of the difference shall be paid by the Village to the City."

Section 2. The first portion of Section 8 (the preamble thereof containing 5 lines and preceding subdivision A thereof) of Agreement II is hereby amended so that the same shall read as follows:

"On and after the date that the Johnson City Terminal Pumping Station is placed in actual service, the provisions of Sections 12 and 16 of Agreement I shall be null and void and shall no longer be applicable or effective, and charges for sewage service shall be determined by the Board according to the following formulae:"

Section 3. Subdivision H of Section 8 of Agreement II be and the same hereby is amended so that the same shall read as follows:

"H. Charges shall be billed by the Board to all users, including the City and the Village, and all payments shall be made to the Board. The Board shall pay to the City the amount of debt service collected from outside users and required to be paid by the City on the following obligations:

(1) Obligations authorized and issued by the City pursuant to the provisions of a 1952 ordinance (Permanent No. 86) adopted May 19, 1952.

(2) Obligations authorized and issued by the City pursuant to the provisions of a 1958 ordinance (Permanent No. 56) adopted April 21, 1958.

*This change
made for 1967
to June 30 start
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Same

(3) Obligations authorized and to be issued by the City pursuant to the provisions of a 1967 ordinance (Permanent No. 248) adopted November 6, 1967, or as the same may hereafter be amended or modified.

(4) Various capital notes issued by The City in connection with interceptor sewer line construction. The Board shall pay to the Village the amount of debt service collected from outside users and required to be paid by the Village on the following obligations:

(1) Serial bonds authorized in the amount of \$3,000,000.00 on June 10, 1965, as such authorization may be subsequently amended or superseded, and bond anticipation notes issued in anticipation of such serial bonds.

(2) Serial bonds authorized November 6, 1967 in the amount of \$2,938,000.00, as such authorization may be subsequently amended or superseded, and bond anticipation notes issued in anticipation of such serial bonds.

The City may collect and retain from the proceeds of sewer rents imposed on and collected from City users the amount of debt service required to be paid by the City on the aforementioned City obligations.

The Village may collect and retain from the proceeds of sewer rents imposed on and collected from Village users the amount debt service required to be paid by the Village on the

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aforementioned Village obligations.

The Board shall pay to the City the amounts collected for the operation and maintenance of the Binghamton Sewer System. The Board shall pay to the Village the amounts collected for the operation and maintenance of the Johnson City Sewer System. The Board shall pay to the Village the amounts, if any, collected from Town of Union users for debt service for the cost of construction of the North Side Trunk Storm Drainage Elimination Project (1964-1966). The Board shall pay to the City or to the Village, respectively, any amounts collected on their behalf for debt service for construction or reconstruction of interceptor sewer lines in accordance with subdivision E of this Section.

The Board shall pay to the City that proportion of the debt service collected by the Board (from users other than the City and the Village) for primary treatment facilities, which the difference between 54.8% of total plant use and the actual amount of the City's use, bears to the total plant use by others than the City and the Village.

The Board shall pay to the Village that proportion of the debt service collected by the Board (from users other than the City and the Village) for primary treatment facilities, which the difference between 45.2% of total plant use and the actual amount of the Village's use, bears to the total plant use by other than the City and the Village.

Should either of the differences, obtained as described above, prove a negative value, the entire amount of the primary debt service collected from outside users shall be paid to the other municipality.

cc # 11 agreement

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The Board shall retain the remainder of funds collected and expend them for the operation and maintenance of the sewage treatment plant and terminal pumping stations."

Section 4. Any and all City, Village and/or Board joint sewage project contracts for public work involving an expenditure of more than twenty-five hundred dollars and any and all joint sewage project purchase contracts involving an expenditure of more than one thousand dollars shall be awarded to the lowest responsible bidder furnishing the required security after advertisement for sealed bids, in the manner provided by Article 5-A of the General Municipal Law.

Any and all City, Village and/or Board joint sewage project contracts must be approved in writing by the Binghamton Corporation Counsel and by the Village Attorney for the Village.

Section 5. Any and all claims or applications for federal or state aid, Federal Water Pollution Control Administration grants, and/or State of New York grants for construction of sewage treatment works shall be signed and executed by the City and the Village.

The payments received from the State of New York and/or the United States of America together with any and all revenues associated with the capital construction and received from any source shall be ultimately paid to the City and the Village in the proportion of 54.8% to the City and 45.2% to the Village. In the event that such payments and/or revenues are initially received by the City or the Village or the Board or any of their agents, such payments and/or revenues shall be distributed to the City or the Village, as the case may be, so that ultimately the City shall receive 54.8% thereof and the Village 45.2% thereof.

*Contracts
&
Purchase*

*Approved
by
Village
C*

*54.8% City
45.2% Village*

After such payments and revenues are ultimately received by and/or distributed to the City and the Village, they, together with any interest, shall be used by the recipients to pay capital costs, including payment of obligations issued with respect to such capital costs or issued in anticipation of the receipt of such payments or revenues,

No part of such payments or revenues shall be used by the City, Village or the Board for any purpose other than the joint sewage project. No part of such payments or revenues shall be invested in obligations of the City or Village, or transferred to or loaned to any City or Village account or fund or project other than the joint sewage project. Any such payments or revenues not immediately needed shall, where practicable, be otherwise invested in accordance with applicable provisions of law.

Section 6. The following provisions in this Section shall apply to construction of secondary sewage treatment facilities as outlined in the Engineer's Report (as defined in Section 2 of Agreement II):

Secretary

(A) Prior to any advertising for competitive bids, the applicable plans, specifications and contract documents prepared by Clinton Bogert Associates (referred to hereinafter as the Engineers) shall be approved by Binghamton City Council and the Board of Trustees of The Village of Johnson City and shall be submitted to the New York State Department of Health for its prior written approval and to Federal Water Pollution Control Administration for its prior written approval.

(B) Bid proposals may be submitted to either the Secretary of the Binghamton Board of Contract and Supply or the Village Clerk of the Village. No bids

shall be opened except at a joint meeting of the Binghamton Board of Contract and Supply and the Board of Trustees of the Village.

(C) With respect to bids received, the written approval by the Engineers, the Binghamton Corporation Counsel and the Village Attorney shall be required before such Board of Contract and Supply and Board of Trustees shall request approval of such bids from the New York State Commissioner of Health (referred to hereinafter as State Commissioner) and the Federal Water Pollution Control Administration (referred to hereinafter as FWPCA). The two Boards shall then request permission of the State Commissioner and FWPCA for the award of construction contracts.

(D) No joint sewage project contract shall be awarded and no contract shall be deemed to have been awarded without the approval of such award by the Binghamton Board of Contract and Supply and by the Board of Trustees of the Village of Johnson City.

(E) The City and the Village shall both be parties to any and all contracts for construction of the secondary treatment facilities.

(F) No construction contractor's claim for payment and no payment shall be made to any construction contractor unless such claim and payment are approved in writing by the Engineers, the City, the Village and the Binghamton-Johnson City Joint Sewage Board.

(G) To the extent practicable, payments to construction contractors shall be made by the Board from funds transferred to it by the City and the Village, in accordance with their respective prescribed shares.

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Section 7. This Agreement shall be effective immediately and shall continue to remain in effect until December 7, 2112. To the extent permitted by law, Agreement I, Agreement II and this Agreement shall be automatically renewable for five (5) year periods, unless one party gives written notice of termination signed by the chief executive officer by personally serving such notice upon the clerk of the other party at least one year prior to the end of the original term or of any renewal term.

2
year
renewal
for

Section 8. The provisions of Agreement I and Agreement II shall remain in full force and effect except to the extent that such provisions are inconsistent with or amended by or superseded by this Agreement.

Section 9. This Agreement shall not be assigned by either party without the prior written approval of the other party.

Section 10. Unless otherwise provided herein, whenever the approval or agreement of a party is required herein, such approval or agreement shall be construed to mean at least a three-fourths affirmative vote of the voting strength of the governing body of such party.

S.C. or the city

Section 11. This agreement may be modified or amended by an instrument in writing, duly executed and acknowledged by the authorized representative of each party, after approval by a three-fourths vote of the voting strength of the governing body of each party.

Section 12. This Agreement shall be executed by the mayor of each party, and the seal of each party shall be affixed and attested by the clerk of each party, after adoption of the agreement by a three-fourths vote of the voting strength of the governing body of each party.

IN WITNESS WHEREOF, the said City of Binghamton has caused its corporate seal to be affixed hereto, and these presents to be signed by its Mayor, and to be attested by its City Clerk, both duly authorized so to do, and the said Village of Johnson City has caused its corporate seal to be affixed hereunto and these presents to be signed by its Mayor, and to be attested by its Village Clerk, both duly authorized so to do, the day and year first above mentioned.

ATTEST:

Walter Spring
City Clerk

THE CITY OF BINGHAMTON

BY: *James W. McLaughlin*
Mayor

ATTEST:

Paul Sweet
Village Clerk

VILLAGE OF JOHNSON CITY

BY: *James W. McLaughlin*
Mayor

STATE OF NEW YORK)
COUNTY OF BROOME) ss:
CITY OF BINGHAMTON)

On the 24th day of APRIL, 1968, before me, the subscriber, personally came and JOSEPH W. ESWORTHY, who being by me duly sworn, deposes and says: That he is the Mayor of the City of Binghamton, the municipal corporation named in and which executed the foregoing instrument; that he knows the seal of said City, and that the seal affixed to said instrument is such corporate seal and that it was so affixed by order of the Common Council of the City of Binghamton, and that he signed his name thereto by like order.

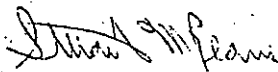
And on the same day, before me personally appeared WALTER V. IRVING City Clerk of said corporation, who, being by me duly sworn, did depose and say that he is the City Clerk of the City of Binghamton, that he knows the seal of said City and that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Common Council of the City of Binghamton; that the said Joseph W. Esworthy is Mayor of said City and that the signature on said instrument is the signature of said Joseph W. Esworthy as Mayor.

Alice Toman
Notary Public

ALICE TOMAN
Notary Public, State of New York
Residence in Broome County
My commission expires March 30, 1969

I DO HEREBY CERTIFY that Joseph W. Esworthy, Mayor of the City of Binghamton, who executed the foregoing contract on behalf of the City of Binghamton had authority and power to make such contract and that such contract is in proper form and properly executed.

Dated at the City of Binghamton on this 24TH day of APRIL, 1968.



Stuart M. Pearis
Corporation Counsel of the
City of Binghamton, New York

STATE OF NEW YORK)
COUNTY OF BROOME)ss:
CITY OF BINGHAMTON)

On this 24th day of April, 1968,

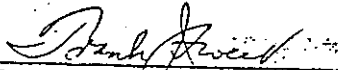
before me the undersigned, personally appeared _____

JAMES W. McCABE who being by me

duly sworn deposes and says: That he is the MAYOR

of the corporation named in and which executed the foregoing instrument; that he knows the seal of said corporation and that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Village Board

_____ of said corporation, and that he signed his name thereto by like order.

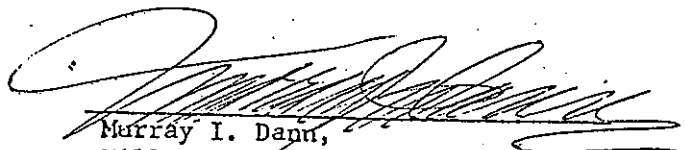


Notary Public

FRANK J. SWEET
Notary Public, State of New York
Residing in Broome County
My commission expires March 30, 1972.

I DO HEREBY CERTIFY that James W. McCabe, Mayor of the Village of Johnson City, who executed the foregoing contract on behalf of the Village of Johnson City had authority and power to make such contract and that such contract is in proper form and properly executed.

Dated at the Village of Johnson City on this 24th day of 1968.



Murray I. Dann,
Village Attorney of the
Village of Johnson City, New York

City Engz.

III

Intro. Ord. No. 24

Permanent Ord. No. 23

IN COUNCIL OF THE CITY OF BINGHAMTON

By Councilmen Connerton, Libous, Cahill

March 4, 1968

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT (AGREEMENT NO. III) BY AND BETWEEN THE CITY AND THE VILLAGE OF JOHNSON CITY WITH RESPECT TO THE BINGHAMTON--JOHNSON CITY JOINT SEWAGE PROJECT

The Council of the City of Binghamton, duly convened in regular session, does hereby ordain as follows:

Section 1. That the Mayor of the City of Binghamton be and he hereby is authorized, empowered and directed to execute an agreement (Agreement No. III) by and between the City of Binghamton and the Village of Johnson City with respect to the Binghamton-Johnson City Joint Sewage Project, said agreement to be substantially the form of Exhibit A Attached hereto and made a part hereof.

Section 2. This ordinance shall take effect immediately.

I HEREBY CERTIFY the above to be a true copy of an ordinance adopted by the Council of the City of Binghamton, at a regular meeting held March 18, 1968; and approved by the Mayor March 20, 1968.

3/20/1968

Edith C. Lewis, Deputy City Clerk

At a Regular Meeting of the Board of Trustees of the VILLAGE OF JOHNSON CITY, Broome County, New York, duly called and held at the Council Chamber in the Municipal Building at the corner of Willow Street and Corliss Avenue in said Village, on the 15th day of April, 1968, at 7:30 o'clock in the evening of said day, the following members were present:

HON. JAMES W. McCABE, Mayor

and Trustees:

PAUL SILVANIC
MICHAEL R. SAVICH
LOUIS P. AUGOSTINI
FRED A. GREENE

The following Resolution was duly offered by Trustee

SAVICH, who moved its adoption, and seconded by Trustee

AUGOSTINI, to wit:

RESOLUTION DATED APRIL 15,
1968, AUTHORIZING EXECUTION OF
AGREEMENT NO. III BETWEEN THE
CITY OF BINGHAMTON AND THE VILLAGE
OF JOHNSON CITY RESPECTING THE
BINGHAMTON-JOHNSON CITY JOINT
SEWAGE PROJECT

WHEREAS, there has been submitted to the Mayor and Trustees of the VILLAGE OF JOHNSON CITY proposed Agreement No. III, BINGHAMTON-JOHNSON CITY JOINT SEWAGE PROJECT, and

WHEREAS, the Mayor and Trustees have duly considered and deliberated thereupon, and

WHEREAS, the Council of the CITY OF BINGHAMTON, at a regular meeting held March 18, 1968, did adopt an ordinance, (Intro. Ord. No. 24, Permanent Ord. No. 23), which was approved by the Mayor of the CITY OF BINGHAMTON on March 20, 1968, by which ordinance the Mayor of the CITY OF BINGHAMTON was authorized, em-

powered and directed to execute Agreement No. III herein concerned by and between the CITY OF BINGHAMTON and the VILLAGE OF JOHNSON CITY with respect to the BINGHAMTON-JOHNSON CITY JOINT SEWAGE PROJECT, said agreement to be substantially in the form of Exhibit "A" attached to said ordinance and also attached to this Resolution, now therefore

Be it resolved by the Board of Trustees of the VILLAGE OF JOHNSON CITY as follows:

SECTION I. The Board of Trustees of the VILLAGE OF JOHNSON CITY hereby approves an agreement (Agreement No. III) by and between the CITY OF BINGHAMTON and the VILLAGE OF JOHNSON CITY with respect to the BINGHAMTON-JOHNSON CITY JOINT SEWAGE PROJECT, said agreement to be substantially in the form of Exhibit "A" attached hereto and made a part hereof.

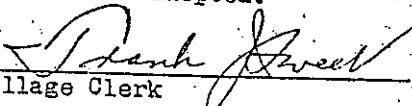
SECTION II. The Mayor and the Clerk of the VILLAGE OF JOHNSON CITY are hereby authorized, empowered and directed to execute on behalf of the VILLAGE OF JOHNSON CITY, Agreement No. III, by and between the CITY OF BINGHAMTON and the VILLAGE OF JOHNSON CITY with respect to the BINGHAMTON-JOHNSON CITY JOINT SEWAGE PROJECT, said agreement to be substantially in the form of Exhibit "A" attached hereto and made a part hereof.

SECTION III. This Resolution shall take effect immediately.

The Motion for the adoption of said Resolution was duly put to vote upon the Roll Call, resulting as follows:

MAYOR JAMES W. McCABE	<u>VOTING</u>	<u>AYE</u>
PAUL SILVANIC	<u>VOTING</u>	<u>AYE</u>
MICHAEL R. SAVICH	<u>VOTING</u>	<u>AYE</u>
LOUIS P. AUGOSTINI	<u>VOTING</u>	<u>AYE</u>
FRED A. GREENE	<u>VOTING</u>	<u>AYE</u>

The Resolution was then declared adopted.

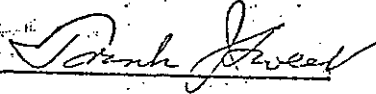

Village Clerk

STATE OF NEW YORK)
) ss:
COUNTY OF BROOME)

I, FRANK J. SWEET, Village Clerk of the Village of Johnson City, Broome County, New York, DO HEREBY CERTIFY that I have compared the foregoing copy of a resolution duly adopted by the Board of Trustees of said Village at a regular meeting held on on the 15th day of April, 1968, with the original of said resolution on file in my office as Clerk of said Village and that the same is a true and exact copy thereof and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Village this 16th day of April, 1968

(SEAL)



Frank J. Sweet