

AGREEMENT NO. IX

BINGHAMTON-JOHNSON CITY JOINT SEWAGE PROJECT

AGREEMENT, made this 6th day of May, 2013, 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 know as the Binghamton-Johnson City Joint Sewage Board (the "Sewage 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 known 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 entered into "Agreement No. VII" on October 14, 2009 effective retroactively to September 1, 2009; and

WHEREAS, the Owners entered into "Agreement No. VIII" (the "Lead Agency Agreement") on June 26, 2012, (the above Agreements are referred to herein collectively as the "Intermunicipal Agreement"); and

WHEREAS, the Owners wish to amend the Intermunicipal Agreement as provided herein.

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

A. Agreement No. I is amended to replace paragraph 15 as follows:

15. The comptroller of the City shall be the fiscal officer of the Board. In addition to his official bond as such Comptroller, he shall file, during his term of office as fiscal officer, a bond

in favor of both parties in such penal sum as may be determined by the Owners, conditioned upon his faithful performance of the trust imposed upon him. He shall at all times be deemed an employee of the City. The cost of same shall be paid from the joint sewage project budget.

The fiscal officer shall deposit all monies received by him on account of the Board in a special account in a bank or trust company in the City of Binghamton designated as an official depository by the Board. Claims against the Board shall be in such form as the fiscal officer shall prescribe and shall be approved by the Board, or its designee[s] as set forth by the Board in writing. No such approved claim shall be paid unless it shall have been presented to the fiscal officer and shall have been audited by the fiscal officer in accordance with Section 119-o of the General Municipal Law.

B. Agreement No. VII is amended to replace paragraphs 3 and 7 as follows:

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 out of 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 or improves the physical plant, b) has an expected use of more than three years, and c) has a cost in excess of \$10,000.00.

7. The Board may be permitted to make budget transfers during the year or within 30 days thereafter so long as such transfers do not increase the joint sewage project budgeted expenses for the year under the following conditions:

a. The Board will give the City Clerk and Village Clerk written notice via email of any proposed budget transfer approved by the Board. The written notice will state if the proposed budget transfer is (i) for a non-capital item up to \$2,500, (ii) a non-capital item of more than \$2,500 or cumulative transfers of \$20,000 or more in the calendar year; or (iii) a capital item. The notice will include a copy of the Board’s minutes or resolution approving the proposed budget transfer and a RL (request for legislation). The Board will copy said email to the (i) Mayor, President of City Council, Corporation Counsel, and Comptroller of the City and (ii) Mayor, Trustees, Attorney, and Treasurer of the Village.

b. Non-capital items. The Board may transfer up to \$2,500 from one budget line to another budget line without legislative approval, except all transfers to increase salary or benefits for any personnel shall require legislative approval. The Board may transfer more than \$2,500 from the contingency budget line to another or various other budget lines, except all transfers to increase salary or benefits for any personnel shall require legislative approval. Any transfer of more than \$2,500 from any budget line or cumulative transfers of \$20,000 or more in the calendar year shall be deemed denied unless a majority of the members of both legislative bodies vote to approve such budget transfer within thirty five (35) days from the date of receipt of the written notice and RL (request for legislation) from the Board as required in paragraph “a” above.

c. Capital items. Any request for a budget transfer shall be deemed denied unless a majority of the members of both legislative bodies vote to approve such budget transfer within

thirty five (35) days from the date of receipt of the written notice and RL (request for legislation) from the Board as required in paragraph "a" above. This provision shall apply to all capital budget lines, whether established before or after this Agreement.

d. No new budget lines will be established without approval of a majority of the members of both legislative bodies.

e. Any legislative vote required above may be made at a separate or a joint meeting of the legislative bodies.

C. Agreement No. VIII is amended to replace paragraph 3.f as follows:

3.f. Pay claims for Phase III Remedial Project expenses approved by (i) the fiscal officer of the Joint Sewage Treatment Plant and (ii) the Lead Agency, including by the City Engineer or a designated Clerk of the Works for all design and construction contracts and by the City Corporation Counsel for all legal, accounting, consulting, and related expert fees and expenses. Such claims for project expenses may be paid from the approved budget for the Phase III Remedial Project or from funds transferred by the City and Village within the Joint sewage treatment project budget for such expenses. The Lead Agency shall prepare a monthly report of the finances of the Phase III Remedial Project and provide copies or access to such information to the Village and Sewage Board (a/k/a the "Board") not later than the 15th day of the month following the month covered by the report. The Lead Agency will provide the Sewage Board with a copy of claims for project expenses approved by the Lead Agency.

All payments for the Phase III Remedial Project expenses approved by the fiscal officer of the Joint Sewage Treatment Plant and the Lead Agency through March 20, 2013 are hereby ratified.

D. The City and the Village further agree as Agreement No. IX to the following:

1. Notwithstanding any provisions in the Intermunicipal Agreement (Agreement No. I) dated July 14, 1965, or amendments known as Agreements No. II through No. VIII to the contrary, by a majority vote of the members of both legislative bodies, the City and the Village shall have the following additional authority: To transfer funds in the joint sewage project budget to pay for any unanticipated expenses, and all associated costs, including, but not limited to, legal, accounting, consulting, and expert fees and expenses; such transfers shall not require approval of the Board (a/ka/ the "Sewage Board"); the legislative bodies will establish new budget lines for such unanticipated expenses, and will determine the person or entity authorized to approve and audit such payments, which shall be subject to approval of the fiscal officer of the Joint Sewage Treatment Plant. Notice of any proposed transfer(s) will be given to the Board Chairman, Superintendent, and Business Manager, or such similar positions as may be designated from time to time, by written notice via email at least fifteen (15) days prior to any legislative vote.

2. Notwithstanding any provisions in the Intermunicipal Agreement (Agreement No. I) dated July 14, 1965, or amendments known as Agreements No. II through No. VIII to

the contrary, the fiscal officer of the Joint Sewage Treatment Plant, *i.e.*, the Comptroller of the City of Binghamton, is authorized to hold any claim for payment or expense approved by the Board or the Lead Agency which the fiscal officer believes does not comply with proper accounting practices or has not been properly approved and to submit such claim or expense for approval by a majority of the members of both legislative bodies. The fiscal officer shall give the Board Chairman, Superintendent, and Business Manager, or such similar positions as may be designated from time to time, written notice via email at least fifteen (15) days prior to submitting the disputed claim to the legislative bodies. The fiscal officer's failure to refer any claim for payment or expense approved by the Board or the Lead Agency to the legislative bodies shall not be deemed negligent.

3. The Board shall not commence any action against any person employed by either Owner without the consent of the Owners evidenced by a majority of the members of both legislative bodies.

E. The provisions of the Intermunicipal Agreement shall remain in full force and effect except to the extent that such provision(s) are inconsistent with or amended by or superseded by this Agreement.

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

CITY OF BINGHAMTON

By: Matthew T. Ryan

Dated: 5/6/13

VILLAGE OF JOHNSON CITY

By: Cory Ann

Dated: 5/8/13

ATTEST:

Adriana Thomas
City Clerk

Dated: 5/6/13

Thomas A. Johnson
Village Clerk/Treasurer

Dated: 5/8/13