

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, is between the BINGHAMTON-JOHNSON CITY JOINT SEWAGE BOARD, 4480 Vestal Road, Vestal, New York 13850 ("the Board") and Consultant Name, Consultant Address ("the Consultant").

WHEREAS, the Board duly authorized an agreement with the Consultant for professional services in relation to the Project described in Section 1.1.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Board and the Consultant do hereby agree as follows:

1.0 BASIC CONTRACT PROVISIONS

1.1 The Project: Professional Auditing Services

1.2 Date of Commencement: January 1, 2025

1.3 Date of Completion: One (1) year with the option of (2) two (1) year extensions; annually, last business day of July deadline for draft audit report and last business day of August deadline for final draft audit report.

1.4 Not-to-exceed fee:

(a) for years in which no federal grant monies were received, and no federal Single Audit is required, _____ and

(b) for years in which federal Single Audit is required _____.

1.5 Consultant's Schedule of Hourly Rates:

_____	_____
_____	_____
_____	_____

1.6 Reimbursable expenses. The Consultant shall be allowed reimbursement for the following expenses only:

_____	_____
_____	_____
_____	_____

1.7 Retainage: (not applicable)

1.8 Liquidated Damages: (not applicable)

1.9 Insurance:

Worker's Compensation	Statutory
Errors and Omissions	\$ 2 Million, Combined Single Limit
Public Liability, and Property Damage	\$ 2 Million, Combined Single Limit
Automobile Liability	\$750,000 Combined Single Limit

The Board shall be named an additional insured on all liability policies. All policies shall be non-cancelable without thirty (30) days prior written notice to the Board. The Consultant shall deliver to the Board, within ten (10) days of the Date of Commencement, a certificate of insurance demonstrating that such insurance is in effect.

2.0 CONSULTANT'S SERVICES

2.1 Scope of Services

- A. The services to be rendered under this Agreement shall include all of those professional services necessary for Consultant to complete the Project.
- B. All work on the Project shall be performed in accordance with the detailed description of such work as contained in the "Proposal" of the Consultant attached to this Agreement as Exhibit "A". All statements and conditions stated in that Proposal shall apply and be part of this Agreement, provided, however, that in the event of any conflict between any part or parts of said Proposal and the terms and conditions of this Agreement, it is understood and agreed that the terms and conditions of this Agreement shall control.

2.2 Revision of Scope of Services

The Board may, at any time, by written order (the "Order"), make changes within the general scope of the Project or the scope of services. If the Consultant claims that such changes will cause an increase or decrease in the Consultant's cost of, or time required for, performance of its services, the Consultant may apply for an equitable adjustment to the Not-to-Exceed fee and/or the Date at Completion. Any claim of the Consultant for such adjustment must be asserted in accordance with Section 2.3. No services for which an additional compensation will be charged by the Consultant shall be furnished without the written authorization of the Board. All orders to the Consultant directing changes in the Project or the scope of services, authorizing payments representing increases or decreases in compensation due to changes or revisions, or modifying the Date of

Completion, shall be made only by the Board.

2.3 Claims and Disputes

- A. If the Consultant claims (i) that any work it has been ordered to do is outside the Scope of Services, or (ii) that any action or omission of the Board is contrary to the terms and provisions of this Agreement, it shall within five (5) working days after being ordered to perform the work claimed by it to be revised work, or within five (5) working days after the act or omission to act by the Board complained of, request consultation with the Chairperson of the Board regarding such complaint. Within five (5) working days after receipt of such request the said Chairperson, or the Chairperson's designee, shall meet with the Consultant for the purpose of negotiating, in good faith, changes, if any be required, in the Scope of Services, the compensation, the Date of Completion, or other resolution of Consultant's complaint. If, as a result of such consultation, the Consultant and the Chairperson (or the Chairperson's designee), agree to proposed changes in the scope of services or compensation required under this Agreement, such proposed changes shall be set forth in writing on a document signed and dated by both the Consultant and the Chairperson (or the Chairperson's designee), and then submitted to the Board for approval. Pending Board approval, the Consultant shall promptly comply with the Board's order, unless the Chairperson gives written direction to the Consultant to await Board approval. In the event that: (i) the Consultant and the Chairperson (or the Chairperson's designee) are unable to agree on mutually acceptable changes in the scope of services, compensation, Date of Completion, or such other resolution of Consultant's complaint, or (ii) the Board fails to approve the proposed changes agreed to by the Consultant and the Chairperson (or the Chairperson's designee) within thirty (30) calendar days of the date of the document setting forth the proposed changes is signed by the Consultant and the Chairperson (or the Chairperson's designee) (if more than one date, then the later of the dates), the Consultant shall:
- (i) Promptly comply or continue to comply with such order,
 - (ii) File with the Board, within (i) thirty (30) working days after being ordered to perform the work claimed by it to be revised work, or (ii) thirty (30)

working days after the claimed action or omission on the part of the Board occurred, or iii) forty five (45) working days after the date of the document setting forth proposed changes negotiated by the Consultant and the Chairperson (or the Chairperson's designee) is signed by the Consultant and the Chairperson (or the Chairperson's designee) (if more than one date, then the later of the dates), whichever date is latest, a written, verified detailed statement, with documentary evidence, of the items and basis of its claim.

- (iii) Produce for the Board's examination, upon notice from the Board, all its books of account, bills, invoices, payrolls, subcontracts, time books, progress records, daily reports, bank deposit books, bank statements, checkbooks and canceled checks, showing all of its actions and transactions in connection with or relating to or arising by reason of its claim, and submit itself and persons in its employ and in its subcontractor's employ, if appropriate, for examination under oath by any person designated by the Board to investigate any claims made against the Board under this Agreement, such examination to be made at a place in Broome County designated by the Board.
- (iv) Proceed diligently, pending and subsequent to the determination of the Board with respect to any such disputed matter, with the performance of this Agreement and in accordance with all instructions of the Board.

B. The value of any work which the Consultant is required to do as a result of either (i) an order of the Board requiring work outside the Scope of Services; or ii) an act or omission of the Board which is contrary to the terms and provisions of this Agreement, shall be determined by the methods set forth in Section 4.3 in accordance with the rates set forth in Section 1.5.

C. The Consultant's failure to comply with any or all parts of Subsection A of this section shall be deemed to be:

- (i) A conclusive and binding determination on the Consultant for its part that said order, work, action or omission does not involve revised work and it is not contrary to the terms and provisions of

this Agreement; and

- (ii) A waiver by the Consultant of all claims for additional compensation or damages as a result of said Order, work, action or omission. The provisions of Section 2.3 are for the purpose of enabling the Board to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any work, change its plans, mitigate or remedy the effects or circumstances giving rise to a claim, or take such other action as may seem desirable, and to verify any claimed expenses or circumstances as they occur. Compliance with such provisions is essential whether or not the Board is aware of the circumstances of any work or other circumstances which might constitute a basis for a claim, and whether or not the Board has indicated it will consider a claim in connection therewith.

- D. No person has power, individually, to waive or modify any of the foregoing provisions. In any action against the Board to recover the sum claimed by the Consultant to be due under or by reason of this Agreement, the Consultant must allege in its complaint and prove at trial compliance with the provisions of this section.
- E. Nothing contained in this section shall in any way affect the Board's right to obtain discovery in any action that might be instituted by or against the Board.

2.4 Responsibility of the Consultant

- A. The Consultant shall be responsible for the quality, technical accuracy, timely completion, and the coordination of all plans, studies, designs, drawings, specifications, reports and other services furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its plans, studies, designs, drawings, specifications, reports and other services.
- B. The Board acknowledges that the documents, drawings, plans, specifications, field data, notes/memoranda, and/or other instruments (hereinafter, collectively "the deliverables") to be developed, prepared, and/or delivered by the Consultant

pursuant to this Agreement constitute instruments of professional service.

Nevertheless, all deliverables, which are developed, prepared, and/or delivered under this Agreement shall become the property of the Board upon completion of the Project and payment in full of the monies due the Consultant. The Consultant may not thereafter use or re-use the Board-specific data or contents of such deliverables for the benefit of any other without the advance written approval of the Board. The Board reserves the right to charge and receive a licensing fee as a condition of granting such approval for re-use or derivative use.

- C. Unless stated otherwise in this Agreement or other written document subscribed by the Consultant, the Consultant does not represent that the "deliverables" are suitable for re-use by the Board or others with respect to any extension of the work or services covered by this Agreement or, otherwise, on any other work. Unless the Board obtains written verification from or adaption by the Consultant for the specific purpose intended (for which the Consultant reserves the right to charge and receive a fee for providing such additional service), the Board agrees to waive any claims against the Consultant arising from the Board's re-use or modification of any deliverables. Should the Board use or modify the deliverables without first obtaining the written consent of the Consultant, then the Board agrees to hold harmless and indemnify the Consultant from any such use or modification of the deliverables.
- D. The Consultant shall furnish to the Board, prior to the final payment, all deliverables in electronic form, with at least one paper record copy and one electronic record copy on electronic media (which electronic record copy shall not be encrypted or password-protected in any way). When requested, an electronic copy of deliverables shall also be provided in an editable format (for example, Microsoft Word, Microsoft Excel, AutoCAD, etc.) specified by the Board. The Board will inform the Consultant of e-mail addresses and software formats/versions to be used for submitting deliverables in electronic form and shall update the Consultant periodically as e-mail address changes are required.
- E. The compensation which the Board agrees to pay to the Consultant includes compensation for all licensing fees, royalties, and costs arising from copyrights,

patents, and trademarks in any way involved in the Consultant's services or required to access deliverables furnished in electronic format. All licenses required for such access shall be assigned or transferred to the Board prior to submission by the Consultant of its final bill under the Agreement. Whenever the Consultant is required or desires to use any design, device, material, or process covered by copyright, letters patent or trademark, the Consultant shall indemnify and save harmless the Board from any and all claims for infringement by reason of the use of any such copyrighted or patented design, device, material or process in the performance of the work covered by the Agreement, and shall indemnify the Board for any costs, expenses and damages which it may be obliged to pay, by reason of any such infringement, at any time during the prosecution or after the completion of the work, services, or project covered by the Agreement.

- F. The Consultant shall ensure that all its vehicles, subcontractors, agents and employees comply with all DOT and OSHA/PESH regulations applicable to the work, including any requirements for personal protective equipment/clothing. Provision of all personal protective gear, devices, equipment, and clothing for all personnel involved with the work shall be the responsibility of the Consultant.
- G. Approval by the Board of plans, studies, designs, specifications, reports, and incidental work furnished hereunder shall not in any way relieve the Consultant of responsibility for the technical adequacy of its work. The Board's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- H. The Consultant shall be and remain liable in accordance with applicable law for all damages to the Board to the extent caused by the Consultant's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the Board, Board-furnished data or any third party employed by the Board to provide said services to the Consultant.

3.0 TIME OF PERFORMANCE

3.1 Date of Commencement and Completion

Consultant agrees that it will begin work upon the Date of Commencement stated in Section 1.2, and that it will diligently proceed with said work such that the same shall be completed by the Date of Completion stated in Section 1.3.

3.2 Best Efforts

The Consultant acknowledges that the services to be performed are essential to the effective operation of the Board's functions and that, therefore, the Consultant will exercise its best efforts to complete the services called for under this Agreement in the minimum time possible. In the event that the Consultant, for good cause shown, cannot complete the services within the time agreed to, the Consultant shall make a written request to the Board, in accordance with the sections which follow.

3.3 Applications For Modification of The Date of Completion

- A. If the Consultant claims that adjustment of the Date of Completion is warranted on account of (i) work that has been ordered to do is outside the scope of services, or (ii) an action or omission of the Board is contrary to the terms and provisions of this Agreement, the Consultant shall "proceed" in accordance with Section 2.3.
- B. If the Consultant claims that, on account of conditions other than those stated in Subsection A above, adjustment of the Date of Completion is warranted, the Consultant shall proceed in accordance with Sections 3.4 and 3.5.

3.4 Notice of Conditions Causing Delay

- A. Within five (5) working days after the commencement of any condition which is causing or may cause delay in completion, the Consultant shall notify the Board in writing of the effect, if any, of such condition upon the Date of Completion, and shall state why and in what respects, if any, the condition is causing or may cause such delay.
- B. Failure to strictly comply with this requirement may, in the discretion of the Board, be deemed sufficient cause to deny any extension of time arising out of or resulting from such condition.

3.5 Extension of Time

- A. An extension or extensions of time for the completion of the work may be granted by the Board, but only upon written application therefor by the Consultant to the Board.
- B. An application for an extension of time shall set forth in detail the source and nature of each alleged cause of delay in the completion of the work, the date upon which each such cause of delay began, ended, or will end, and the number of days delay attributable to each of such causes. Such application shall be submitted prior to completion of the work.
- C. If such an application is made, the Consultant shall be entitled to an extension of time for delay and completion of the work caused solely:
 - (i) By the acts or omissions of the Board, its officers, agents or employees; or
 - (ii) By unforeseeable supervening conditions entirely beyond the control of the Consultant, such as, but not limited to, Acts of God or the public enemy, war or other national emergency making performance temporarily impossible, and strikes or labor disputes.
- D. The Consultant shall be entitled to an extension of time for such causes only for the number of calendar days of delay which the Board may determine to be due solely to such causes, and then only if the Consultant shall have strictly complied with all the requirements of this Section and Section 3.4. The Board shall make such determination within thirty (30) calendar days after receipt of the Consultant's application for an extension of time, provided, however, said application complies with the requirements of this section and Section 3.4.
- E. The Consultant shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the work as determined by the Board, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault, or omission of the Consultant or of its subcontractor, if any, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or

omission.

- F. The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Board.

3.6 Delay Claims

Consultant represents and warrants that the provisions herein contained for extension of time are fair and adequate, and that Consultant has had an opportunity to make provision for any and all delays within the contemplation of the parties. Accordingly, it is understood and agreed that Consultant shall not have or assert any claim for damages, or prosecute any suit, action, cause of action, arbitration claim or other proceeding against the Board for such damages arising from any delay or hindrance in the completion of the work called for in this Agreement due to any act or omission on the part of the Board its agents, servants and employees, or otherwise.

3.7 Liquidated Damages

The Consultant acknowledges that the services to be performed are essential to the effective operation of the Board's functions. The Consultant further acknowledges that it is difficult, if not impossible, to assess the value of the damage the Board will experience in the event Consultant fails to complete its services within the time allowed by this Agreement. Therefore, to liquidate those damages, if the Consultant fails to complete the work by the Date of Completion, or any extension thereafter granted pursuant to this Agreement, the Consultant shall pay to the Board the Liquidated damages set forth in Section 1.8. The payment of liquidated damages shall be in addition to other remedies available to the Board pursuant to this Agreement, at law, or in equity. The Board may unilaterally elect to take payment of the liquidated damages, in whole or in part, as a credit against any amount owed by the Board to the Consultant pursuant to this Agreement.

4.0 COMPENSATION TO THE CONSULTANT

4.1 Amount of Compensation

For the faithful performance of the work of this Agreement and its acceptance by the Board, the Board shall pay to the Consultant an amount not to exceed the "Not-to-Exceed Fee" stated in Section 1.4. This fee includes, but is not limited to, compensation for professional, technical and non-technical personnel time, equipment, materials,

insurance, travel expenses, overhead and any other expenses, including reimbursable expenses, which the Consultant incurs during the performance of said work.

4.2 Method of Payment

- A. The Consultant shall, no more than once in each calendar month, submit to the Board a requisition for payment for both services which have been performed and reimbursable expenses incurred, provided the services and reimbursable expenses were not included in an earlier requisition. Each requisition shall include: (i) the Consultant's written invoice, which shall include a detailed statement of the services for which payment is requisitioned, the hours worked to accomplish those services, a breakdown of the hours according to the positions/categories/employees set forth in Section 1.5, and the reimbursable expenses for which payment is requisitioned, (ii) a fully completed and signed voucher in duplicate on a form (known as a "Claim for Payment" form) available from the Board, and (iii) a fully completed and signed progress payment form (known as a "Consultant Application for Payment Summary Sheet") available from the Board. The value of each requisition shall be based upon:
- i) Actual or reasonable (whichever is less) hours of work necessary to complete the services, multiplied by the appropriate hourly rate(s) included in the Schedule of Hourly Rates set forth in Section 1.5; and
 - ii) Reimbursable expenses of a type described in Section 1.6, valued at the amount set forth in Section 1.6 or if no amount is set forth in Section 1.6, then the actual or reasonable (whichever is less) cost thereof.
- B. The quantity of work done and the value thereof, as indicated in the requisition for payment, shall be subject to verification by the Board. Payment by the Board will be made within sixty (60) days of the last day of the calendar month in which a requisition is received by the Board, provided that the Board verifies the quality of services and the value thereof, and the Board's Fiscal Officer is satisfied that the requisition is complete and that payment is due the Consultant in the amount stated in the requisition. The Board will pay the Consultant the verified amount. Final payment for all services shall be made upon completion of services and delivery of deliverables under this Agreement, upon submission of a requisition

by the Consultant in the form specified in Subsection A, above, conspicuously marked "FINAL BILL" and provided final payment for said services is authorized by the Board and, further provided, no lawful or proper direction given by the Board regarding said services remains uncomplied with. Prior to final payment for said services, or prior settlement upon termination of this Agreement, and as a condition precedent thereto, the Consultant shall execute and deliver to the Board a release of all claims against the Board arising under and by virtue of this Agreement, other than such claims, if any, as may be specifically reserved by the Consultant from the operation of the release in stated amounts to be set forth therein.

4.3 Value of Additional Work

- A. The amount by which the Agreement consideration is to be increased or decreased by any revision of the Scope of Services or an act or omission of the Board resulting in additional work of the Consultant shall be determined by one or more of the following methods:
- (i) By accepting an amount agreed upon by the parties; or
 - (ii) By estimating the fair and reasonable cost of (1) labor, including all wages, required wage supplements and insurance required by law (Workers' Compensation, Social Security, Disability, Unemployment, etc.) employed pursuant to the work; (2) reasonable and necessary technical subcontractors and (3) three reimbursable expenses; or
 - (iii) By determining the actual cost of the revision in the same manner as in the above Subdivision (ii) except that actual costs of the Consultant shall be utilized in lieu of estimated costs.
- B. Irrespective of the method used or to be used by in determining the value of a revision, the Consultant, within thirty (30) working days after a request for the same, must submit to the Board a detailed breakdown of the Consultant's estimate of the value of the revision.
- C. Unless otherwise specifically provided for in a revision, the compensation specified therein for revised work includes full payment for both the revised work covered thereby and for any damage or expense caused the Consultant by any

delays to other work to be done under this Agreement resulting from or on account of said revised work, and the Consultant waives all rights to any other compensation for said revised work, damage or expense.

5.0 INSURANCE

Consultant shall procure and thereafter maintain in full force and effect until final acceptance of the project insurance of the kind and in the amounts specified in Section 1.9.

6.0 TERMINATION

6.1 Termination For Cause

The Consultant's services may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided, that no such termination may be effected unless the other party is given (i) not less than seven (7) calendar days' notice of intent to terminate, and (ii) an opportunity for consultation with the terminating party prior to termination.

6.2 Termination For Convenience

The Consultant's service may be terminated in whole or in part in writing by the Board for its convenience, provided, that such termination is for good cause and that the Consultant is given (i) not less than seven (7) calendar days' notice of intent to terminate, and (ii) an opportunity for consultation with the Board prior to termination.

6.3 Adjustments Upon Termination

- A. If termination for cause is effected by the Board, an equitable adjustment in the fee provided for in this Agreement shall be made, but: (i) no amount shall be allowed for anticipated profits on unperformed services; and (ii) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs occasioned to the Board by reason of the Consultant's default.
- B. If termination for cause is effected by the Consultant, or if termination for convenience is effected by the Board, an equitable adjustment, in the fee shall be made, including a reasonable profit on unperformed services. The equitable adjustment for any termination shall provide for payment to the Consultant for services rendered and reimbursable expenses incurred prior to the termination.

C. Upon termination either for cause or convenience, the Board may take over the Project and prosecute the same to completion, by agreement with another party or otherwise. Any work taken over by the Board for completion will be completed at the Board's risk, and the Board will hold harmless the Consultant from all claims and damages arising out of improper use of the Consultant's work.

If, after termination by the Board, for cause, it is determined that the Board did not have cause to terminate, the termination shall be deemed to have been effected for the convenience of the Board.

6.4 Postponement or Suspension of Commencement of The Project

The Board may postpone commencement of the Project or suspend work on all or part of the Project, provided, that no such postponement or suspension may be effected unless the Board gives the Consultant (i) not less than seven (7) calendar days written notice of its intention, and (ii) an opportunity for consultation with the Board prior to postponement or suspension. If such suspension is effected by the Board after commencement of the Consultant's performance of services hereunder, an equitable adjustment in the price provided for in this Agreement shall be made as if the services had been terminated by the Board for its convenience. If, after a substantial lapse of time, the Board directs the resumption of performance of services by the Consultant, the Consultant if it is caused to do extra work which it would not have otherwise had to do, will be entitled to an equitable adjustment to be made in accordance with Section 4.3 of this Agreement.

6.5 Consultant's Obligations Upon Termination, Postponement or Suspension

Either upon giving notice of termination to the Board, or receiving from the Board a notice of termination, postponement or suspension, the Consultant shall (i) promptly discontinue all services effected (unless the Board directs otherwise), and (ii) deliver or otherwise make available to the Board all data, plans, studies, drawings, specifications, reports, estimates, summaries and such other information as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process.

7.0 ACTIONS AND PROCEEDINGS

7.1 Limitation of Action

A. No action or proceeding shall lie or be maintained by the Consultant, or anyone claiming under or through the Consultant, against the Board upon any claim

arising out of or based upon this Agreement or any breach hereof or by reason of any act or omission or requirement of the Board or its individual members, agents, servants or employees, unless:

- (i) Such action or proceeding is instituted in a court of competent jurisdiction in the State of New York; and
- (ii) The Consultant or the person claiming under or through it shall have strictly complied with all requirements relating to the giving of notices and information with respect to such claim; and
- (iii) If this Agreement is terminated for cause or for convenience, such action is commenced within six (6) months after the date of such termination. Otherwise, such action or proceeding shall be commenced within one (1) year after the submission to the Board of the final application for payment or, if the claim is based upon monies retained for any period after the date of the final application for payment, such action is commenced within six (6) months after such monies become due and payable under the terms of this Agreement.

- B. Notwithstanding anything in the laws of the State of New York to the contrary, the Consultant or anyone claiming under or through the Consultant, shall not be entitled to any additional time to begin anew any other action if an action commenced within the times herein specified be dismissed or discontinued for any reason whatsoever.

7.2 No Estoppel or Waiver

- A. The Board shall not be precluded or estopped by an inspection, acceptance, application for payment, final or otherwise, issued or made under this Agreement or otherwise issued or made by it, or any member, agent or employee of the Board, from showing at any time the true amount and character of the work performed, or from showing that any such inspection, acceptance, application or payment or payments is incorrect, or was improperly issued or made; and the Board shall not be precluded or estopped, notwithstanding any such inspection, acceptance, application for payment or payments, from recovering from the Consultant any damages which it may sustain by reason of any monies which may

be paid to it or for its account in access of those to which it is lawfully entitled.

- B. Neither the Board's acceptance of all or any part of the work covered by this Agreement, nor any payment therefor, nor any payment by the Board, nor any permission or direction by the Board for the Consultant to continue with the performance of this Agreement before or after the Date of Completion, nor any performance by the Board of any of the Consultant's duties or obligations, nor any aid lent to the Consultant by the Board in its performance of such duties or obligations, nor any delay or omission by the Board to exercise a right or remedy accruing to it under the terms of this Agreement or existing at law or in equity or by statute or otherwise, nor any other thing done or omitted to be done by the Board, its members, agents, or employees, shall be deemed to be a release to the Consultant from any obligations, liabilities, or undertakings in connection with this Agreement, or a waiver of any provision of this Agreement or of any rights or remedies to which the Board may be entitled because of any breach thereof, excepting only a written instrument expressly providing for such release or waiver. No termination, revision or annulment hereof, in whole or as to any part of this Agreement, because of any breach hereof, shall be deemed a waiver of any damages to which the Board may be entitled because of such breach. No waiver by the Board of any breach of this Agreement shall be deemed to be a waiver of any other or any subsequent breach.

7.3 Indemnification

The Consultant shall indemnify and hold the Board and its members, agents, servants and employees free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with, or arising directly or indirectly out of, errors and/or omissions and/or negligent acts by the Consultant (including its employees, agents and/or contractors) in the performance of this Agreement. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, death, damage to property, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any

court, in connection with, or arising directly or indirectly out of, errors and/or negligent acts by the Consultant, as aforesaid, shall be included in the indemnity hereunder. The Consultant further agrees to investigate, handle, respond to, provide defense for and defend any such claim at its sole expense even if such claim is groundless, false or fraudulent. In any case in which such indemnification would violate Section 5-322.1 of the New York General Obligations Law, or any other applicable legal prohibition, the foregoing provisions concerning indemnification shall not be construed to indemnify the Board for damage arising out of bodily injury to persons or damage to property contributed to, caused by or resulting from the negligence of the Board, its members, agents or employees.

7.4 Costs

The Consultant shall be responsible for and will pay to the Board all reasonable costs, including attorney's fees, incurred by the Board in the event that:

- (i) The Consultant breaches its duty to defend the Board as required by this Agreement.
- (ii) The Consultant brings an action or proceeding against the Board for an alleged breach of this Agreement and the Consultant fails to prevail in the litigation; or
- (iii) The Board brings an action against the Consultant for an alleged breach of the Agreement and the Board prevails in the litigation.

8.0 MISCELLANEOUS PROVISIONS

8.1 (not applicable – prevailing wage requirements)

8.2 Exemption From Sales and Use Taxes

The Board is exempt from paying New York State or local sales taxes on any material which it purchases. The Consultant shall not include sales taxes or compensating use taxes of the State of New York or of any city or county in the State of New York for any supplies or materials to be used by the Consultant for or on behalf of the Board which are exempt from such taxes.

8.3 Captions

The titles or captions of articles and paragraphs of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof or of the Agreement or in any way affect the Agreement.

8.4 Nomenclature

Materials, equipment, methodologies or other work described in words which have a well-known, technical or trade meaning shall be interpreted as having such meaning in connection with this Agreement.

8.5 Entire Agreement

This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

8.6 Successors and Assigns

This Agreement shall bind the successors, assigns, and representatives of the parties hereto. The Consultant shall not assign any right or interest in this Agreement or delegate, sublet or transfer any obligation hereunder without the written permission of the Board. Any assignment or delegation attempted by the Consultant without written permission of the Board shall be wholly void and totally ineffective for all purposes.

8.7 Invalid Provisions

If any term or provision of this Agreement or the application thereof to any agency, person, firm or corporation or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Agreement, or the application of such terms or provisions to agencies, persons, firms or corporations or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

8.8 Notices

Any written notice required hereunder shall be deemed properly given, delivered and service thereof completed: (i) when said notice is deposited in any Post Office or Post Office Box in a post-paid envelope properly addressed; or (ii) when said notice is delivered in person to the party to whom it is addressed or their authorized representatives, or (iii) when said notice is delivered to a nation-wide overnight delivery service for next-day (excluding week-ends and holidays) delivery and a receipt for such delivery is issued by the carrier. The addresses of the Board and the Consultant set forth

in the beginning of this Agreement shall be deemed the place to which written notice to them shall be directed; provided, however, that either party may by written notice to the other, given pursuant to this section, designate a different address to which notices to it shall be directed or designate the name and address of another person, firm or corporation to whom notices to it may be directed.

8.9 Provisions Required by Law

Each and every provision required by law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein. In the event any such provision is not inserted or is not correctly inserted, then, upon the application of either party, this Agreement shall forthwith be physically amended to make such insertion or correction.

8.10 Audit; Access to Records

The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles, consistently applied and in effect on the date of execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year stated below.

BINGHAMTON-JOHNSON CITY
JOINT SEWAGE BOARD

(Consultant)

by: _____
(name), Chairperson

by: _____
(name/title of officer)

Date: _____

Date: _____