

BINGHAMTON-JOHNSON CITY JOINT SEWAGE TREATMENT FACILITIES INTERMUNICIPAL AGREEMENT

[HISTORY: IMA I adopted 7-14-1965 by the City of Binghamton and the Village of Johnson City; amended 12-7-1967 by IMA II, adopted by the City of Binghamton and the Village of Johnson City; amended 4-24-1968 by IMA III, adopted by the City of Binghamton and the Village of Johnson City; amended 3-5-1973 by IMA IV, adopted by the City of Binghamton and the Village of Johnson City; amended 12-1989 by IMA V, adopted by the City of Binghamton and the Village of Johnson City; amended 10-17-2001 by IMA VI, adopted by the City of Binghamton and the Village of Johnson City; amended 9-1-2009 by IMA VII, adopted by the City of Binghamton and the Village of Johnson City; amended 5-6-2013 by IMA IX, adopted by the City of Binghamton and the Village of Johnson City; amended by IMA X, adopted by the City of Binghamton on 12-20-2013 and adopted by the Village of Johnson City on 4-15-2014. Amendments noted where applicable.]

ARTICLE I. ESTABLISHMENT AND OPERATION OF THE BINGHAMTON-JOHNSON CITY JOINT SEWAGE TREATMENT FACILITIES.

Section 1. Definitions. [Added 4-15-2014 by IMA X]

BINGHAMTON TERMINAL PUMPING STATION—The pumping station on the Binghamton-Johnson City Joint Sewage Treatment Facilities site, serving the Binghamton Service Area

BOARD or SEWAGE BOARD—The Binghamton-Johnson City Joint Sewage Board

BUDGET or JOINT SEWAGE TREATMENT FACILITIES BUDGET—The annual appropriations for operating expenses and capital projects approved by the Owners for the Joint Sewage Treatment Facilities.

CITY—The City of Binghamton

FACILITIES – The Binghamton-Johnson City Joint Sewage Treatment Facilities

FISCAL OFFICER or BOARD FISCAL OFFICER—The Comptroller of the City of Binghamton

JOHNSON CITY TERMINAL PUMPING STATION—The terminal pumping station at the intersection of Gates Road and a private road in the Town of Vestal

MUNICIPALITY—This term shall include the City of Binghamton or the Village of Johnson City

OWNERS—The City of Binghamton and the Village of Johnson City

PHASE III PROJECT—The remediation, repair and reconstruction of the deficiencies and defects in the design and construction of the Phase III Improvements, collapse of the C-Cell wall, and damage caused by flooding at the Binghamton-Johnson City Joint Sewage Treatment Facilities.

PROJECT or JOINT SEWAGE PROJECT—The construction of the original Joint Sewage Treatment Facilities, as established by Intermunicipal Agreement I, adopted 7-14-1965 by the City of Binghamton and the Village of Johnson City.

SERVICE AREA—Areas other than Binghamton University, Town of Vestal, City of Binghamton and Village of Johnson City receiving sewage treatment service.

VILLAGE—The Village of Johnson City

Section 2. Establishment of Binghamton-Johnson City Joint Sewage Treatment Facilities & Binghamton-Johnson City Joint Sewage Board. [Added 7-14-1965 by IMA I; amended 4-15-2014 by IMA X]

Pursuant to Article 5G of the General Municipal Law, the City of Binghamton and the Village of Johnson City hereby establish a Joint Sewage Project. This Project shall be administered by a board hereby established to be known as Binghamton-Johnson City Joint Sewage Board. The Board shall operate a jointly-owned sewage treatment facility, known as the Binghamton-Johnson City Joint Sewage Treatment Facilities. The sewage treatment and pumping facilities presently located in the Town of Vestal, Broome County, New York, and owned by the City shall, upon the 13th day of August, 1965, or such other date as the parties may agree, become jointly owned by the City and the Village. The details of the transfer of ownership are more specifically set forth in Section 3. After the transfer of ownership of such facilities, certain capital improvements shall be made to such facilities and such capital improvements shall also be jointly owned. In addition, a terminal pumping station serving the Village shall be constructed in the Town of Vestal at a point in the trunk sewer line of the Village, and this station shall also be jointly owned. The details of the construction of such capital improvements shall be governed by Sections 5 and 7. The proportions in which the parties shall jointly own the facilities encompassed in the Project shall be as set forth in Section 4. The Project shall not include any trunk sewer lines except

those on the sewage treatment facilities premises, nor shall it include the force main to be constructed by the Village from the proposed terminal pumping station to the sewage treatment facilities site.

Section 3. Joint Ownership of Binghamton-Johnson City Joint Sewage Treatment Facilities. [Added 7-14-1965 by IMA I; amended 4-24-1968 by IMA III; amended 4-15-2014 by IMA X]

As of the 13th day of August, 1965, the sewage treatment and pumping facilities presently owned by the City, together with the land and all furnishings and equipment, shall be conveyed to the joint ownership of the City and the Village in proportions as set forth in Section 4. The net worth of the facilities to be transferred as of such date is agreement to be \$2,784,146.00. As of such date the Village shall pay to the City the sum of Five Hundred Fifty Thousand Dollars (\$550,000). In addition, as further consideration for its ownership rights in the present facilities and the proposed improvements, the Village shall pay the cost of construction of the proposed improvements described in Section 5, including the cost for interest during construction. Should the capital cost for construction of the terminal pumping station and the primary treatment 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 facilities 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 4. Title of Property. [Added 7-14-1965 by IMA I; amended 12-7-1967 by IMA II; amended 4-15-2014 by IMA X]

Title to all real property and improvements thereon, including existing sewage treatment and pumping facilities and proposed construction, as described in Section 5, shall vest in the parties hereto as tenants in common in the following proportions: the City of Binghamton, an undivided fifty-four and eight tenths per cent (54.8%) interest; the Village of Johnson City, an undivided forty-five and two tenths per cent (45.2%) interest.

The Village, however, shall continue to own the force main connecting the Johnson City Terminal Pumping Station (which pumping station is more specifically described in Section 9) with the sewage treatment facilities, and the sewer line or lines connecting the sewer system of the Village with such terminal pumping station. The City shall continue to own the interceptor sewer line or lines connecting the sewer system of the City of Binghamton with the sewage treatment facilities.

Section 5. Construction of Facilities. [Added 7-14-1965 by IMA I; amended 4-15-2014 by IMA X]

- A. As part of the Project, both municipalities shall construct the following facilities:
- i. Improvements to the existing sewage treatment facilities, to consist of settling basins and chlorine detention tanks; thickeners and sludge pumping station; grit chamber; and miscellaneous work; and
 - ii. Terminal pumping station to serve the Village.
- B. This construction is set forth in a report of Clinton Bogert Associates dated June 1964, and entitled "Joint Disposal of Sewage for the Village of Johnson City and the City of Binghamton". The Village shall be the responsible construction agent for such construction.

Section 6. Secondary Treatment Facilities. [Added 12-7-1967 by IMA II; amended 4-24-1968 by IMA III; amended 4-15-2014 by IMA X]

A. The City and the Village agree to construct, own, operate, and repair the secondary treatment facilities in accordance with Alternative B of the report of Clinton Bogert Associates entitled "Binghamton-Johnson City Joint Sewage Project: Report on Secondary Treatment Facilities: January 16, 1967" and a supplementary letter dated March 9, 1967. The City and the Village agree to establish and maintain a schedule of charges to outside users for sewage treatment computed substantially as recommended by the report referenced above, or as subsequently modified by majority votes of the governing bodies of both municipalities. The City and the Village agree to establish and maintain a system of sewer rents for users within each municipality in order to collect the amounts which will be billed to each municipality by the Board under Section 27.

The Village, however, shall continue to own the force main connecting the Johnson City Terminal Pumping Station (which pumping station is more specifically described in Section 9) with the sewage treatment facilities, and the sewer line or lines connecting the sewer system of the Village with such terminal pumping station. The City shall continue to

own the interceptor sewer line or lines connecting the sewer system of the City of Binghamton with the sewage treatment facilities.

B. In the absence of any specific agreement to the contrary, prior to any advertising for competitive bids, the applicable plans and specifications prepared by Clinton Bogert Associates shall be approved by Binghamton City Council, the Board of Trustees of the Village of Johnson City, and other New York State agencies as may be required.

C. Bid proposals may be submitted to either the Secretary of the Binghamton Board of Contract and Supply or the Village Clerk of the Village.

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 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 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 included in the Joint Sewage Treatment Facilities annual budget, or transferred to it by the City and the Village, in accordance with their respective prescribed shares.

Section 7. Village of Johnson City Force Main & Interceptor Sewer Extensions. [Added 7-14-1965 by IMA I; amended 4-15-2014 by IMA X]

The Village at its expense shall construct the following facilities: force main and any interceptor sewer extensions that are necessary to make its sewer system complete to the existing sewage treatment facilities site. This construction is set forth in a report of Clinton Bogert Associates dated June 1964, and entitled "Joint Disposal of Sewage for the Village of Johnson City and the City of Binghamton".

Section 8. Future Expansion of Binghamton-Johnson City Joint Sewage Treatment Facilities. [Added 7-14-1965 by IMA I; amended 4-15-2014 by IMA X]

During the term of this agreement, all sewage from each of the parties shall be pumped into the facilities of the Joint Sewage Project. The parties recognize that it may be advantageous to expand the facilities of the Joint Sewage Project beyond the maximum use contemplated by this agreement. In the event such expansion appears advantageous, to service a new community or to service additional capacity of one of the parties, such expansion shall require the agreement of both parties, and shall be based upon a report prepared by an engineer acceptable to both parties.

Section 9. Service Areas. [Added 12-7-1967 by IMA II; amended 4-15-2014 by IMA X]

Two service areas shall be established, one known as the Binghamton Service Area and the other known as the Johnson City Service Area. Sewage treatment shall be provided to the Binghamton Service Area through sewer lines connected to the pumping station on the sewage facilities site, the "Binghamton Terminal Pumping Station". Sewage treatment shall be provided to the Johnson City Service Area through sewer lines connected to the terminal pumping station presently being construction at the intersection of Gates Road and a private road in the Town of Vestal, the "Johnson City Terminal Pumping Station". The boundaries of each service area and of the region to be served by the sewage treatment facilities shall be as shown on the map provided by Clinton Bogert Associates, entitled "Report on Secondary Treatment Facilities, Plate 2". Such map shall be filed with the Clerks of the City and Village. Neither the City nor the Village shall, without the approval of the other party, permit sewer lines to be connected to its terminal pumping station which carry sewage originating in the service area for which the other party has responsibility, or originating in any area outside the above-described service areas.

Section 10. Outside User Agreements. [Added 12-7-1967 by IMA II; amended 4-15-2014 by IMA X]

Sewage treatment service may be provided to areas other than Binghamton University, Town of Vestal, City of Binghamton and Village of Johnson City if an agreement is duly authorized and executed. Such agreement shall be authorized and executed on behalf of the area to be served by the governing body of such municipality as has the power to tax the area benefited by the service or to impose sewer rents to raise funds to pay the obligations incurred by the agreement. Such agreement shall be authorized and executed on behalf of the parties to this agreement by such of the parties hereto as has responsibility for the "service area" in which the region to be served is located.

ARTICLE II. BINGHAMTON-JOHNSON CITY JOINT SEWAGE BOARD REGULATIONS.

Section 11. Retention of Powers. [Added 7-14-1965 by IMA I; amended 5-6-2013 by IMA IX; amended 4-15-2014 by IMA X]

The City and the Village shall retain the following powers:

- A. To acquire, lease or sell real estate.
- B. To accept gifts, grants and bequest.
- C. To apply for and receive state or federal aid, except that the Village shall have the right to apply for and receive state or federal aid in connection with the improvements described in Sections 5 and 7.
- D. To transfer funds in the Joint Sewage Treatment Facilities 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 transfer shall not require approval of the Board; the legislative bodies will establish new budget lines for such unanticipated expenses, and will determine the person to entity authorized to approve and audit such payments, which shall be subject to approval of the fiscal officer of the Joint Sewage Treatment Facilities. 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.
- E. Such other powers as are not specifically delegated to the Board.

Section 12. Board Composition and Duties. [Added 7-14-1965 by IMA I; amended 12-1989 by IMA V; amended 9-1-2009 by IMA VII; amended 4-15-2014 by IMA X]

- A. The Board shall operate and maintain the facilities of the Joint Sewage Project. The Board shall consist of six members, three appointed by the Mayor of the City of Binghamton, and three appointed by the Mayor of the Village of Johnson City. 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. Vacancies in the office of member of the Board shall be filled by appointment by the mayor of the appointing municipality, and at all times except during the period of such vacancies there shall be three members of the Board serving by the appointment of each of the municipalities through its mayor. 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.
- B. All Board members are required to comply with Article 18 of the General Municipal Law.
- C. Members of the Board shall serve with compensation as approved and determined by the City Council of the City of Binghamton and the Board of Trustees of the Village of Johnson City as part of the Joint Sewage Treatment Facilities annual budget, and that ordinary and necessary expenses incurred in the performance of their duties shall be proper expenses and may be reimbursed by the Board.
- D. The Board shall elect one of its members as Chairman. The Board shall appoint such employees as it determines are necessary to adequately operate and maintain the facilities of the Joint Sewage Project, and shall establish their salaries. All monies received or collected by the Board or its employees shall be paid over to the fiscal officer within ten

days after they are received. Such monies shall be credited to the Board, and paid out only upon the order of the Board. The Board shall be charged with the following duties:

- i. To fix and collect the annual costs as provided in Sections 22 and 24.
- ii. To keep all necessary records, including records of receipts and disbursements and records of its proceedings. For this purpose the Board shall retain a secretary who shall not be a member of the Board.
- iii. To make necessary purchases and execute necessary contracts.
- iv. To take possession of and retain in its custody the real and personal property comprising the Joint Sewage Project, and to keep the same in good order and repair.
- v. To make and publish rules and regulations for the operation, preservation, protection and care of the property and facilities of the Joint Sewage Project.
- vi. To reject any discharges of sewage or industrial wastes which, in its opinion, would have deleterious effect upon the facilities of the Joint Sewage Project or the operation of such facilities. However, nothing in this agreement shall limit the rights of the parties to restrict the discharge of sewage or wastes into their respective sewer systems.
- vii. To provide copies of minutes from all official proceedings to the City of Binghamton and the Village of Johnson City at least on an annual basis.
- viii. To maintain general liability, fire and casualty insurance, naming the City and the Village as additional insured. The limits of coverage shall be at least as follows:
 - General liability (personal injury): \$1,000,000/\$3,000,000
 - Automobile liability (personal injury): \$500,000/\$1,000,000
 - Automobile liability (property damage): \$25,000
 - Hazard insurance (on facilities when improvements are complete): Replacement Value
- ix. To retain consulting engineers, but the contract of retainer shall first be approved by each party by at least a majority vote of the voting strength of its governing body.
- x. To appoint and dismiss employees within its jurisdiction.
- xi. To exercise such other powers and duties as may be delegated and assigned by the concurrent action of the parties. A minimum of four affirmative votes shall be required to decide any questions considered by the Board.

Section 13. Establishing City of Binghamton Comptroller as Board Fiscal Officer. [Added 7-14-1965 by IMA I; amended 5-6-2013 by IMA IX; amended 4-15-2014 by IMA X]

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 Treatment Facilities 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.

The fiscal officer of the Joint Sewage Treatment Facilities 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 Lead Agency to the legislative bodies shall not be deemed negligent.

Section 14. Employees of the Board. [Added 7-14-1965 by IMA I; amended 9-1-2009 by IMA VII; amended 4-15-2014 by IMA X]

Employees of the Board shall be designated as employees of the Board and not as employees of the City or of the Village. All persons employed at the Binghamton sewage disposal facilities at the effective date of this agreement shall continue such employment and become employees of the Board; they shall retain the same salaries or wages, fringe benefits and employment rights as they possess on the effective date of this agreement. The residency requirements for employees of the Joint Sewage Treatment Facilities shall be expanded to permit residency in the counties of Tioga, Tompkins, Cortland, Chenango, Otsego, Delaware, New York and Susquehanna, Pennsylvania.

The Binghamton Civil Service Commission shall be the administrative body for the enforcement of the Civil Service Law of the State of New York and the rules of the Civil Service of the City of Binghamton, which shall apply to the employees of the Board.

Section 15. Retention of Consulting Engineer for Original Project. [Added 7-14-1965 by IMA I; eliminated 4-15-2014 by IMA X]

Reserved.

Section 16. Clerk of the Works. [Added 9-1-2009 by IMA VII; amended 4-15-2014 by IMA X]

The Owner shall have authority to jointly develop a procedure to oversee any project or portion of a project at the Joint Sewage Treatment Facilities, including, but not limited to, appoint 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.

Section 17. Awarding Contracts. [Added 4-24-1968 by IMA III; amended 9-1-2009 by IMA VII; amended 4-15-2014 by IMA X]

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.

ARTICLE III. FINANCIAL REGULATIONS.

Section 18. Capital Costs of Construction for Original Joint Sewage Treatment Facilities. [Added 7-14-1965 by IMA I; amended 4-15-2014 by IMA X]

A. Capital costs for the construction described in Section 5 shall be paid by the parties in the following proportions: the City of Binghamton, fifty-four and eight tenths per cent (54.8%); the Village of Johnson City, forty-five and two tenths per cent (45.2%). Capital costs shall include the following:

- i. Net worth of existing sewage treatment and pumping facilities as of January 1, 1965.
- ii. Cost of construction of facilities described in Section 5.
- iii. Cost of equipment and furnishings in connection with such construction.
- iv. Cost of professional engineering fees in connection with such construction.
- v. Cost of preliminary planning fees in connection with the Project, including the sum of \$5,000 paid by the Village to Clinton Bogert Associates prior to the execution of this agreement.
- vi. Such other expenses as are ordinarily connected with the construction of the facilities described in Section 5.

B. Capital costs shall not include the internal sewer systems of the parties or any part thereof other than those parts specifically named above.

Section 19. Cost of Secondary Treatment Facilities. [Added 12-7-1967 by IMA II; amended 4-15-2014 by IMA X]

The City agrees to provide 54.8% of the cost of such secondary treatment facilities. The Village agrees to provide 45.2% of the cost of such facilities. Each shall pay such percentage of the construction and incidental costs as they become due

and payable. The estimated cost of the original construction prior to deduction of amounts expected to be received as state or federal aid is Six Million Five Hundred Thousand Dollars (\$6,500,000.00). Long-term financing shall be by issuance of several (separate) serial bonds having forty-year maturities. Such bonds shall be in the amount of the total cost less state or federal aid received, with 54.8% of such total issued by the City and 45.2% of such total issued by the Village. Total amortizations of both bond issues shall be scheduled so that the greater portion of the amortization is paid in the latter years, in a manner similar to the manner in which amortization is scheduled in the report of Clinton Bogert Associates entitled "Binghamton-Johnson City Joint Sewage Project: Report on Secondary Treatment Facilities: January 16, 1967" and a supplementary letter dated March 9, 1967 (such schedule, however, having been calculated for a thirty-year joint serial bond issue).

Section 20. Village to Issue Bonds. [Added 7-14-1965 by IMA I; amended 4-15-2014 by IMA X]

The Village shall issue bonds to finance the payment to the City and the cost of construction of the original proposed improvements to the Joint Sewage Treatment Facilities, as such payment and cost are more particularly described in Section 3. Such bonds shall be obligations of the Village only, and the City shall have no obligations whatsoever in connection with such bonds.

Section 21. Referendum for Approval of Agreement or Bond. [Added 7-14-1965 by IMA I; amended 4-15-2014 by IMA X]

In the event that it is necessary for the Village to conduct a referendum for the approval of this agreement or of a bond issue to finance payments to be made for the original construction of the Joint Sewage Treatment Facilities, the Village will conduct such referendum within the shortest period permitted by law, insofar as practicable.

Section 22. Cost of Future Capital Improvements. [Added 7-14-1965 by IMA I; amended 4-15-2014 by IMA X]

The cost of capital improvements, other than those listed in Section 18, and not to include repair or replacement of existing facilities, shall be paid by the parties in such proportions as may be determined by a consulting engineer retained to establish proper proportions of contribution based upon prospective use of such capital improvements as of the date of determination of such proportions. In establishing such proportions, the consulting engineering shall follow the same principles, as far as practicable, as were followed by Clinton Bogert Associates in establishing the proportions of contribution of initial capital cost in the report dated June 1964, and entitled "Joint Disposal of Sewage for the Village of Johnson City and the City of Binghamton" and supplemental reports dated July 22, 1964 and September 29, 1964. However, the Board shall have the right to include in its budget such costs of capital improvements as it may determine, apportioned as it may determine, provided such apportionment, at the time the parties approve the budget, is accepted by each municipality by a majority vote of the voting strength of its governing body.

Section 23. Joint Sewage Board Fiscal Year & Budget. [Added 7-14-1965 by IMA I; amended 9-1-2009 by IMA VII; amended 5-6-2013 by IMA IX; amended 4-15-2014 by IMA X]

A. The fiscal year of the Board shall be January 1 to December 31. 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.

B. 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.

C. 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 facilities, (b) has an expected use of more than three years, and (c) has a cost in excess of \$10,000.00.

D. 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.

E. 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.

F. Notwithstanding any agreement to the contrary, the Owners shall have sole authority to bond for a project.

G. 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:

- i. 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.
- ii. 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 Section 23.G(i) above.
- iii. 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 Section 23.G(i) above. This provision shall apply to all capital budget lines, whether established before or after this Agreement.
- iv. No new budget lines will be established without approval of a majority of the members of both legislative bodies.
- v. Any legislative vote required above may be made at a separate or a joint meeting of the legislative bodies.

Section 24. Budget Assessments to be Delivered in Quarterly Installments. [Added 7-14-1965 by IMA I; amended 4-15-2014 by IMA X]

Budget assessments shall be paid to the Board by the City and the Village in a series of four (4) equal installments payable on or before the first day of each quarter of the fiscal year of the Board. The fiscal officer of the Board shall compute the total amount of the budget, based upon the proportion of assessments as determined under the provisions of Section 22; shall compute the amount of each quarterly installment to be paid by each of the parties; and shall file his warrant with the clerk of each party on or before December 1st of the year preceding the fiscal year of the Board. Such warrant shall indicate the total assessment to be paid by the party, and the amount of each of the four quarterly installments.

Section 25. Operating Costs. [Added 7-14-1965 by IMA I; eliminated 12-7-1967 by IMA II; amended 4-15-2014 by IMA X]

Reserved.

Section 26. Calculations of Maximum Use of Binghamton-Johnson City Joint Sewage Treatment Facilities Capacity. [Added 7-14-1965 by IMA I; eliminated 12-7-1967 by IMA II; amended 4-15-2014 by IMA X]

Reserved.

Section 27. Debt Service Calculations. [Added 12-7-1967 by IMA II; amended 4-24-1968 by IMA III; amended 3-5-1973 by IMA IV; amended 4-15-2014 by IMA X]

On and after the date that the Johnson City Terminal Pumping Station is placed in actual service, charges for sewage services shall be determined by the Board according to the following formulae:

- A. Debt service charges for primary treatment facilities shall be charged according to the formula:

$$B + JC = C_1Q_1 + 1.25 C_1Q_2$$

Where:

B = Binghamton debt service—primary facilities

JC = Johnson City debt service—primary facilities

Q_1 = Total annual dry-weather sewage flow from City of Binghamton, Village of Johnson City, Town of Vestal and Binghamton University

Q_2 = Total annual dry-weather sewage flow from other municipalities

C_1 = Primary debt service charge per unit of dry-weather sewage flow from Town of Vestal and Binghamton University

$1.25 C_1$ = Primary debt service charge per unit of dry-weather sewage flow from all other outside communities

Dry-weather flow = The flow of sewage or industrial wastes in the sewer during dry weather; it shall normally be measured as the amount of water supplied to users discharging sewage to the Binghamton-Johnson City Joint Sewage Project; provided however, that in the case of users who discharge into the sewage system an amount of sewage substantially less than or substantially more than the amount of water supplied to them, the amount of sewage discharged into the sewer system shall be determined by sewer meters, gages or other suitable measuring devices or methods acceptable to the Board and installed by such users at the users' expense and at no cost or expense to the Board, the City or the Village.

- B. Debt service charges for secondary treatment facilities shall be charged in the same manner as debt service charges for primary treatment facilities.

- C. Debt service for sewer construction shall be charged to users in the Johnson City Service Area according to the following formula:

$$D_1 = C_2Q_3 + 1.25 C_2Q_4$$

Where:

D_1 = Debt service for construction of the extension of the Johnson City Trunk Sewer and the force main from the Johnson City Terminal Pumping Station to the sewage treatment facilities

Q_3 = Total annual dry-weather flow from Village of Johnson City and Town of Vestal drainage area V-2 as shown in the report of Clinton Bogert Associates entitled "Binghamton-Johnson City Joint Sewage Project: Report on Secondary Treatment Facilities: January 16, 1967" and a supplementary letter dated March 9, 1967.

Q_4 = Total annual dry-weather sewage flow from Town of Maine, Union and Chenango and from Town of Dickinson drainage area JC-1 as shown in the report of Clinton Bogert Associates entitled "Binghamton-Johnson City Joint Sewage Project: Report on Secondary Treatment Facilities: January 16, 1967" and a supplementary letter dated March 9, 1967.

C_2 = Charge per unit of dry-weather sewage flow from Town of Vestal drainage area V-2 as shown in the report of Clinton Bogert Associates entitled "Binghamton-Johnson City Joint Sewage Project: Report on Secondary Treatment Facilities: January 16, 1967" and a supplementary letter dated March 9, 1967, and from Johnson City.

$1.25 C_2$ = Charge per unit of annual dry-weather flow from Towns of Maine, Union and Chenango and Town of Dickinson drainage area JC-1 as shown in the report of Clinton Bogert Associates entitled "Binghamton-Johnson City Joint Sewage Project: Report on Secondary Treatment Facilities: January 16, 1967" and a supplementary letter dated March 9, 1967.

Dry-weather flow = Same definition as set forth in Section 27.A.

D. Debt service charges for sewer construction shall be charged to users of the Binghamton Service Area according to the following formula:

$$D_2 = C_3Q_5 + 1.25 C_3Q_6$$

Where:

D_2 = Debt service for construction of the existing City of Binghamton Interceptor Sewers

Q_5 = Total annual dry weather flow from City of Binghamton and Town of Vestal drainage Area V-1 as shown in the report of Clinton Bogert Associates entitled "Binghamton-Johnson City Joint Sewage Project: Report on Secondary Treatment Facilities: January 16, 1967" and a supplementary letter dated March 9, 1967.

Q_6 = Total annual dry weather flow from the Towns of Binghamton, Kirkwood, Conklin and Town of Dickinson Drainage Area D as shown in the report of Clinton Bogert Associates entitled "Binghamton-Johnson City Joint Sewage Project: Report on Secondary Treatment Facilities: January 16, 1967" and a supplementary letter dated March 9, 1967.

C_3 = Charge per unit of dry-weather sewage flow from Town of Vestal Drainage Area V-1 as shown in the report of Clinton Bogert Associates entitled "Binghamton-Johnson City Joint Sewage Project: Report on Secondary Treatment Facilities: January 16, 1967" and a supplementary letter dated March 9, 1967, and the City of Binghamton

$1.25 C_3$ = Charge per unit of annual dry weather sewage flow from the Towns of Binghamton, Kirkwood, Conklin and Town of Dickinson Drainage Area D as shown in the report of Clinton Bogert Associates entitled "Binghamton-Johnson City Joint Sewage Project: Report on Secondary Treatment Facilities: January 16, 1967" and a supplementary letter dated March 9, 1967.

Dry-weather flow = Same definition as set forth in Section 27.A.

E. Debt service for construction of future interceptor sewer lines or reconstruction of existing interceptor sewer lines by the City of Binghamton or the Village of Johnson City shall be charged to the respective Service Areas by formulae similar to those set forth in subparagraphs C and D above. Interceptor sewer lines, as used in this subparagraph, shall refer only to a sewer, including appurtenances and pumping stations, which receives or will receive sewage flow, directly or indirectly, from a number of other sewers and from more than one municipality; as used herein

the term municipality shall include the City or the Village.

F. Operating and maintenance costs shall be charged to the various users of the facilities, based upon their annual dry-weather sewage flow, as such flow is determined by the Board. Cost of operation and maintenance of the sewage treatment facilities shall be distributed in this manner to all users. Cost of operation and maintenance of the Binghamton Terminal Pumping Station and the Binghamton Sewage System shall be distributed among users in the Binghamton Service Area, including the City of Binghamton. Cost of operation and maintenance of the Johnson City Terminal Pumping Station and the Johnson City Sewer System shall be distributed among users in the Johnson City Service area, including the Village of Johnson City. Charges to the Town of Union in the Johnson City Service Area shall include 125% of that portion of debt service for the cost of construction of the North Side Trunk Storm Drainage Elimination Project (1964-1966) as the Village of Johnson City and the Town of Union shall agree upon.

G. It is recognized that a prior agreement exists between the City and the Town of Kirkwood whereby the City is obligated to accept sewage flows not exceeding in total gallonage for any one day a flow of one million gallons from Sewer District No. 1 of the Town of Kirkwood. That agreement extends through the year 1994 and provides that charges for sewer service are based upon 125% of the equivalent city tax levy. Because of the large industrial waste flow originating in Kirkwood Sewer District No. 1, charges to that district, on the basis of the existing Binghamton-Kirkwood agreement, are estimated to result in a smaller sum than charges based upon the formulae set forth in the preceding subparagraphs. The difference, if any, in revenue between that obtained under the existing Binghamton-Kirkwood agreement or any agreement modifying or amending same, and that computed according to the formulae set forth in the preceding subparagraphs, shall be distributed among users in the following manner:

- i. For all users except Kirkwood Sewer District No. 1, on the basis of annual dry-weather flow;
- ii. Only in case of a loss of revenue, for Kirkwood Sewer District No. 1, on the basis of 125% of the equivalent city tax levy.

Neither party hereto shall agree to an extension of Kirkwood Sewer District No. 1, nor to the provision of sewage treatment service to any area in the Town of Kirkwood not presently within the boundaries of Kirkwood Sewer District No. 1, nor to modification or amendment of the existing Binghamton-Kirkwood agreement without the approval of the other party hereto. Any sewage flows which exceed the amount of flow the City is obligated to accept under the existing agreement between the City and the Town of Kirkwood or according to the formulae in Section 27, whichever results in a higher charge. The Board shall determine annually which method will result in a higher charge, and shall use whichever method results in a higher charge for that particular year.

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:

- i. Obligations authorized and issued by the City pursuant to the provisions of a 1952 ordinance (Permanent No. 86) adopted May 19, 1952.
- ii. Obligations authorized and issued by the City pursuant to the provisions of a 1958 ordinance (Permanent No. 56) adopted April 21, 1958.
- iii. 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.
- iv. 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:

- i. 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.
- ii. 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 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 facility use and the **actual** amount of the City's use, bear to the total facility 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 facility use and the actual amount of the Village's use, bears to the total facility 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.

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

I. Surcharge for wastes with strength in excess of the normal standards of 300 parts per million Suspended Solids and 240 parts per million of BOD. Surcharge shall be based on average unit cost per pound chargeable to BOD and Suspended Solids. Unit costs shall be determined by dividing Annual Debt Service Costs and Annual Operations and Maintenance Costs attributable to BOD or Suspended Solids by the respective annual facilities load. Costs attributable to BOD and Suspended Solids shall be based on the following allocation of cost:

- i. Debt Service
Flow: 50%
Suspended Solids: 11%
BOD: 39%

- ii. Treatment Facility Operation and Maintenance Costs
Flow: 20%
Suspended Solids: 24%
BOD: 56%

Average unit cost as defined above shall be applied in accordance with the following surcharge formula:

$$\text{Daily Surcharge} = 8.33Q_i [C_{\text{BOD}} (\text{BOD}_i - 240) + C_{\text{SS}} (\text{SS}_i - 300)]$$

Where:

Q_i = Flow from surcharged user in million gallons per day

BOD_i = Raw waste BOD in surcharged user discharge in parts per million

SS_i = Raw waste Suspended Solids in surcharged user discharge in parts per million

C_{BOD} = Average unit cost attributable to BOD in dollars per pound

C_{SS} = Average unit cost attributable to Suspended Solids in dollars per pound

The Board shall, with the approval of the municipal user, be empowered to perform all tests necessary to establish the effluent characteristics of facilities located within the geographical boundaries of the municipal user for the purpose of determining whether a surcharge should be imposed on said facilities.

Should a facility default in payment of any surcharge imposed by the Board for more than thirty (30) days after such surcharge imposed by the Board for more than thirty (30) days after such surcharge is due and payable, then and in such event the Board shall have the right to refuse to accept further sewage for treatment from said facility until such surcharge is paid by said facility.

Section 28. Federal or State Aid. [Added 4-24-1968 by IMA III; amended 4-15-2014 by IMA X]

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 sources 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.

After such payments and revenue 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 29. Grant Funding. [Added 9-1-2009 by IMA VII; amended 4-15-2014 by IMA X]

The Board and the Owner 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.

ARTICLE IV. TERMS AND CONDITIONS.

Section 30. Term of Agreement. [Added 7-14-1965 by IMA I; ; amended 12-7-1967 by IMA II; amended 4-24-1968 by IMA III; amended 10-17-2001 by IMA VI; amended 9-1-2009 by IMA VII; amended 4-15-2014 by IMA X]

The term limit of the Intermunicipal Agreement shall be up to thirty (30) years, or for the life of bonds issued, whichever is longer. 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.

Section 31. Modifications. [Added 7-14-1965 by IMA I; amended 12-7-1967 by IMA II; amended 4-24-1968 by IMA III; amended 4-15-2014 by IMA X]

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

Section 32. Execution of Agreement. [Added 7-14-1965 by IMA I; amended 4-15-2014 by IMA X]

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 adopted of the agreement by a three-fourths vote of the voting strength of the governing bodies of the City and the Village.

Section 33. Votes Required for Approval. [Added 7-14-1965 by IMA I; amended 12-7-1967 by IMA II; amended 4-15-2014 by IMA X]

Unless otherwise provided herein, whenever the agreement of both parties is required herein, such agreement shall be constructed to mean at least a three-fourths affirmative vote of the voting strength of the governing bodies of the City and the Village.

Unless otherwise agreed upon, neither of the parties hereto shall enter into an agreement, or modify or amend an existing or future agreement relative to sewage treatment or an agreement set forth in Section 37 hereof, without the approval of the other party hereto.

Section 34. Rights or Favors. [Added 12-7-1967 by IMA II; amended 4-15-2014 by IMA X]

Nothing in this agreement is intended to create any rights for or in favor of any persons not parties to this agreement.

Section 35. Assignment of Agreement. [Added 12-7-1967 by IMA II; amended 4-24-1968 by IMA III; amended 4-15-2014 by IMA X]

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

Section 36. Litigation. [Added 9-1-2009 by IMA VII; amended 5-6-2013 by IMA IX; amended 4-15-2014 by IMA X]

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 facilities, the Board, and the Owners. The costs of such plan shall be paid from the Joint Sewage Treatment Facilities budget.

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 facilities as a user. Any other alleged violations of the Intermunicipal Agreement must be commenced by the other Owner.

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

ARTICLE V. EXHIBITS

Section 37. Exhibits. [Added 7-14-1965 by IMA I; amended 12-7-1967 by IMA II; amended 4-15-2014 by IMA X]

In addition to the amendments that have been made to this agreement from time to time, the Owners have also agreed upon certain exhibits or other agreements which supplement this agreement. Such supplements are maintained by the Clerks of the City and Village.