

---

**THE VILLAGE OF BLOOMINGDALE**  
DUPAGE COUNTY, ILLINOIS

---

**RESOLUTION**  
NUMBER 2024-R-45

---

**A RESOLUTION  
APPROVING AND AUTHORIZING THE EXECUTION OF A  
PROFESSIONAL SERVICES AGREEMENT WITH BAXTER  
& WOODMAN CONSULTING ENGINEERS, INC., FOR  
2024-2025 PRETREATMENT ASSISTANCE**

---

FRANCO A. COLADIPIETRO, Mayor

PAMELA S. HAGER, Village Clerk

VINCE ACKERMAN  
WILLIAM BELMONTE  
FRANK BUCARO  
PATRICK SHANNON  
JUDI VON HUBEN

Village Board

---

Published in pamphlet form by authority of the  
President and the Board of Trustees of the Village of Bloomingdale  
on this the \_\_th day of May, 2024

---

**RESOLUTION NO. 2024-R-45**

**A RESOLUTION  
APPROVING AND AUTHORIZING THE EXECUTION OF A PROFESSIONAL  
SERVICES AGREEMENT WITH BAXTER & WOODMAN CONSULTING  
ENGINEERS, INC., FOR 2024-2025 PRETREATMENT ASSISTANCE**

**WHEREAS**, the Village of Bloomingdale (hereinafter referred to as the “Village”) is a home rule unit of local government with authority granted pursuant to the Illinois Constitution of 1970, to exercise certain powers and perform certain functions pertaining to its local government and affairs;

**WHEREAS**, the Illinois Constitution of 1970 provides that a Home Rule Unit may exercise any power and perform any function pertaining to its government and affairs, including but not limited to the power to regulate for the protection of the public health, safety, morals and welfare; to license, to tax; and to incur debt;

**WHEREAS**, the Village upon approval of the President and Board of Trustees of the Village (the “Corporate Authorities”) may waive competitive bidding requirements in certain circumstances in accordance with the provisions of the Village Code of Ordinances;

**WHEREAS**, Title 3 (Finance and Taxation) Chapter 2 (Purchasing, Procurement and Disposal Procedures) Section 9 (Exemptions from Certain Provisions) provides that purchase contracts for professional services which by their nature are not adaptable to award by competitive bidding may be exempt from the requirements of open bidding;

**WHEREAS**, the administration of the Village’s Industrial Pretreatment Program requires a significant amount of skill;

**WHEREAS**, Public Works Department respectfully recommends the Village Board waive the advertising of bids and authorize entering into a Professional Services Agreement (THE “Agreement”, attached hereto and incorporated herein as Exhibit A) with Baxter & Woodman Consulting Engineers, Inc of Crystal Lake, IL for the 2024-2025 Pretreatment Program Assistance in the amount of \$71,000 for Program Administration, an additional \$10,000 for Enforcement Assistance and \$12,000 per Industrial User requiring a new Pretreatment Permit; and

**WHEREAS**, the Corporate Authorities of the Village of Bloomingdale are of the opinion that the foregoing actions are in the best interest of the public safety, health and welfare of the residents of the Village of Bloomingdale.

**NOW, THEREFORE, BE IT RESOLVED** by the Village President and Board of Trustees of the Village of Bloomingdale, DuPage County, Illinois as follows:

### **Section One – Recitals**

The Corporate Authorities hereby find that all of the recitals hereinbefore stated as contained in the preamble to the Resolution are full, true and correct and do hereby, by reference, incorporate and make them part of this Resolution as legislative findings.

### **Section Two –Approval**

The Village hereby approves the entering into a Professional Services Agreement with Baxter & Woodman Consulting Engineers, Inc of Crystal Lake, IL for the 2024-2025 Pretreatment Assistance, a true and accurate copy of which is attached hereto and incorporated herein as Exhibit A.

### **Section Three – Authorization and Direction**

The Village President and/or Village Administrator is hereby authorized to execute the Agreement with Baxter & Woodman Consulting Engineers, Inc of Crystal Lake, IL for the 2024-2025 Pretreatment Assistance.

### **Section Four -- Other Actions Authorized**

The officers, employees and/or agents of the Village shall take all actions necessary or reasonably required to carry out and give effect to the intent of the Approval and otherwise to consummate the transactions contemplated therein, and shall take all actions necessary in conformity therewith including, without limitation, the execution and delivery of all documents required to be delivered in connection with the transaction contemplated herein.

### **Section Five – Authorization of Expenditures**

The Corporate Authorities hereby authorize and direct the expenditure of all costs related to the execution of the Approval, additionally, the Village is authorized and directed to allocate and spend all necessary funds to fulfill the requirements of the Agreement and of this Resolution.

### **Section Six -- Waiver of Bidding Requirements**

To the extent that any requirement of bidding would be applicable to the transaction(s) contemplated hereunder, the same is hereby waived.

### **Section Seven - Acts of Village Officials**

That all past, present and future acts and doings of the officials of the Village that are in conformity with the purpose and intent of the Agreement are hereby, in all respects, ratified, approved, authorized and confirmed.

**Section Eight– Effective Date**

This Resolution shall be in full force and effect from and after its passage, approval and publication as provided by law.

**Section Nine – Publication**

This Resolution shall be published in book or pamphlet form as provided by the Illinois Municipal Code.

**Section Ten – Conflict Clause**

All resolutions in conflict herewith are hereby repealed to the extent of such conflict.

**Section Eleven – Saving Clause**

If any section, paragraph, clause or provision of this Resolution is declared by a court of law to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity of any other provisions of this Resolution, which are hereby declared to be separable.

**Section Twelve – Recording**

This Resolution shall be entered into the minutes and upon the journals of the Board of Trustees of the Village of Bloomingdale.

***[Remainder of Page intentionally left blank; roll call vote to follow]***

**DECIDED** pursuant to a Roll Call Vote as follows:

	YES	NO	ABSENT	PRESENT
Vince Ackerman	X			
William Belmonte	X			
Frank Bucaro	X			
Patrick Shannon	X			
Judi Von Huben	X			
Franco A. Coladipietro (only if necessary)				
<b>TOTAL</b>	<b>5</b>	<b>0</b>	<b>0</b>	

**PASSED AND APPROVED** by the Village of Bloomingdale Board of Trustees on  
the 28th day of May 2024:

  
\_\_\_\_\_  
Franco A. Coladipietro  
Village President

ATTEST:

  
\_\_\_\_\_  
Pamela S. Hager  
Village Clerk

EXHIBIT A

April 25, 2024

Mr. Ken Lindhorn  
Village of Bloomingdale  
305 Glen Ellyn Road  
Bloomingdale, IL 60108

**Subject: Village of Bloomingdale – 2024-2025 Pretreatment Assistance**

Dear Mr. Lindhorn:

Baxter & Woodman, Inc. is pleased to provide the Village with this Proposal to assist with running the Village's federally approved Industrial Pretreatment Program (IPP) for the 2024-2025 fiscal year.

**SCOPE OF SERVICES**

The following outlines our scope of work:

1. PROJECT COORDINATION AND DATA COLLECTION

A. Project Management

- 1) Plan, schedule, and control the activities that must be performed to complete the Project including budget, schedule, and scope.
- 2) Coordinate with the Village and Project team to ensure the goals of the Project are achieved.
- 3) Prepare and submit monthly invoices, coordinate invoices from subconsultants, and provide a monthly status report via email describing tasks completed the previous month and outlining goals for the subsequent month.

2. 2024-2025 PRETREATMENT ASSISTANCE

A. Pretreatment Compliance Monitoring

- 1) The Village's Industrial Pretreatment Program is operated with the Village conducting all the compliance monitoring and analyses required at the three permitted industries. The Village has hired Teklab as their contract laboratory to conduct the industrial user discharge compliance monitoring and analyses. Baxter & Woodman will:
  - a. Coordinate semi-annual sampling with Teklab.
  - b. Coordination with Teklab regarding sampling issues at the industries and laboratory quality control questions.
  - c. Review all sampling data for conformance with 40 CFR 136 sampling procedures, holding times, analytical methods, and Method Detection Limits.
  - d. Track and summarize sampling data in each industrial user results spreadsheet.

- e. Perform field audit of Teklab during industry sampling once per year and when there is a change in sampling staff.
- B. Industrial User Reports
- 1) The industry's compliance monitoring analytical data is submitted to the industries semi-annually as a Semi-Annual Self-Monitoring Report (SASMR) for them to review, complete, and return. Baxter & Woodman will:
    - a. Prepare the SASMRs that include:
      - i. Cover Letter
      - ii. Industry's summarized data
      - iii. Certification forms
      - iv. Toxic Organic Management Plan Certification (if needed)
      - v. Zero Discharge Certification (if needed)
      - vi. Emergency contact information
    - b. Mail SASMRs to industries via UPS (signature required)
    - c. Track submittal of SASMRs
  - 2) Review reports for completeness and correct signatures
  - 3) The permitted industries are required to develop and submit an Accidental Discharge and Slug Control Plan by May 31, 2024. Baxter & Woodman will:
    - a. Review plans
    - b. Provide review comments to industries (if any)
    - c. Review resubmitted plans (if any)
  - 4) Review change notices, authorized representative changes, and transfers as identified by the industry.
- C. Industrial User (IU) Site Inspections
- 1) Annual site inspections are required at the permitted industries, currently three industries. Baxter & Woodman will:
    - a. Coordinate with Village staff on which inspections they will be attending.
    - b. Schedule site inspections with industry.
    - c. Prepare site inspection form, review file/reports and compile information needed for inspection.
    - d. Conduct site inspection and document information collected during inspection.
  - 2) Prepare and send a follow-up site inspection letter to the permitted IU that will outline the required information to submit along with a due date.

- 3) Track site inspection follow-up submittals, review submittals for completeness, and follow up with the industry to obtain additional information as needed.

D. Annual Pretreatment Report

- 1) The Annual Pretreatment Report is due by April 28, 2025, for the previous calendar year's data. For the 2024 Annual Pretreatment Report, Baxter & Woodman will:
  - a. Review and input semi-annual metals and annual organics data for the WWTP.
  - b. Prepare Annual Pretreatment Report.
  - c. Provide a draft to the Village for review and address any Village comments.
  - d. Submit the report electronically to USEPA and IEPA.

3. INDUSTRIAL USER ENFORCEMENT

Enforcement actions may be required when an industry is in apparent non-compliance with its industrial user permit. The scope of services for enforcement are:

- A. Identify pollutant violations and notify the industry within 24 hours of becoming aware of the violation.
- B. Schedule resampling with Teklab.
- C. Prepare Notice of Violation (NOV) and mail it to the industry by UPS (signature required).
- D. Schedule a compliance meeting with the industry and Village for the first violation of a pollutant to discuss the violation and actions to be taken by the industry to resolve the violation; document compliance meeting.
- E. Prepare and issue Reporting NOVs as needed and defined by the Village's Enforcement Response Plan (ERP).
- F. Review NOV response and file.
- G. Once three violations of an individual pollutant occur within a year of the initial violation, the industry must attend the Village's Adjudication Court, coordinate issuance of court ticket(s) with Village staff, attend court, and document court findings if an industry has received three violations of an individual pollutant in the same year of the initial violation and is required to attend the Village's Adjudication Court.
- H. Discuss the enforcement actions with the Village before proceeding with any work if enforcement escalates above the issuance of NOVs.

4. NEW PERMITS FOR INDUSTRIES FOUND DURING INDUSTRIAL USER SURVEY

Baxter & Woodman is currently working on an Industrial User Survey for the Village (under a separate project number 2326006.00). This survey will determine if there are any Significant Industrial Users or Categorical Industrial Users that must be permitted as part of the Village's IPP. The scope of services to permit a new industrial user are:

- A. Prepare and submit a permit application to industry.
- B. Answer any questions from the industry.
- C. Review completed permit application and prepare industrial user permit.
- D. Submit draft permit to the Village and industry for review and comment; incorporate comments received.
- E. Finalize and issue permit to industry.
- F. Review Accidental Discharge and Slug Control Plan, provide review comments and review updated plan.

Based on the timing of the Industrial User Survey, we anticipate permits will be issued near the end of 2024. Once the industry is permitted, the tasks outlined in the 2024-2025 Pretreatment Assistance scope of services will apply to the permitted industry.

**PROJECT SCHEDULE**

This work will be performed during the Village’s 2024-2025 fiscal year.

**ENGINEERING FEE**

Our engineering fee for the above-stated scope of services will be based on our 2024 hourly billing rates for actual work time performed plus reimbursement of out-of-pocket expenses including travel, which will not exceed:

Scope Item:	Fee:
Project Coordination / 2024-2025 Pretreatment Assistance	\$71,000
Industrial User Enforcement <sup>1</sup>	\$10,000
New Industry Permitting & Pretreatment Assistance <sup>2</sup>	\$12,000/industry

<sup>1</sup> The Enforcement budget consists of earmarked funds available to conduct enforcement activities. It will only be used if enforcement activities with an industry are needed.

<sup>2</sup> This fee is for each new industry that needs to be permitted. It includes preparing the permit and the pretreatment assistance tasks for six months of the fiscal year. This is based on the timing of issuing permits after the completion of the Industrial User Survey.

We appreciate the opportunity to submit our proposal for this Project. Please contact Nichole Schaeffer at 815-444-3372 or [nschaeffer@baxterwoodman.com](mailto:nschaeffer@baxterwoodman.com) if you have any questions or need additional information.




The attached Standard Terms and Conditions apply to this proposal. If you find this proposal acceptable, please sign and return one copy for our files.

Sincerely,

BAXTER & WOODMAN, INC.  
CONSULTING ENGINEERS

Daniel G. Bounds, PE  
Associate Vice President  
Attachment

**VILLAGE OF BLOOMINGDALE, ILLINOIS**

ACCEPTED BY:   
TITLE: Village President  
DATE: \_\_\_\_\_

P:\BLOMD\2400824-2024-2025 Pretreat\Contracts\Work\2400824.00\_Proposal\_PretreatmentAssist.docx

## STANDARD TERMS AND CONDITIONS

PLEASE READ THESE STANDARD TERMS AND CONDITIONS ("TERMS") CAREFULLY BEFORE EXECUTING THE LETTER PROPOSAL PRESENTED BY BAXTER & WOODMAN, INC. ("BW"). BY EXECUTING THE LETTER PROPOSAL, OWNER AGREES TO BE BOUND BY THESE TERMS, THE PROVISIONS OF THE LETTER PROPOSAL, AND THE PROVISIONS OF ANY DOCUMENT REFERRING TO THESE TERMS OR THE LETTER PROPOSAL, ALL OF WHICH SHALL COLLECTIVELY CONSTITUTE THE "AGREEMENT".

**Owner's Responsibility** - Provide BW with all criteria and full information for the "Project", which is generally otherwise identified in the Letter Proposal. BW will rely, without liability, on the accuracy and completeness of all information provided by the Owner (as defined in the Letter Proposal) including its consultants, contractors, specialty contractors, subcontractors, manufacturers, suppliers and publishers of technical standards ("Owner Affiliates") without independently verifying that information. The Owner represents and warrants that all known hazardous materials on or beneath the site have been identified to BW. BW and their consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, unidentified or undisclosed hazardous materials unless this service is set forth in the Letter Proposal.

**Schedule for Rendering Services** - The agreed upon services shall be completed within a reasonable amount of time. If BW is hindered, delayed or prevented from performing the services as a result of any act or neglect of the Owner, any Owner Affiliate, or force majeure event, BW's work shall be extended and the rates and amounts of BW's compensation shall be equitably adjusted in a written instrument executed by all Parties.

**Invoices and Payments** - The fees to perform the proposed scope of services constitutes BW's estimate to perform the agreed upon scope of services. Circumstances may dictate a change in scope, and if this occurs, an equitable adjustment in compensation and time shall be agreed upon by all Parties by written agreement. No service for which added compensation will be charged will be provided without first obtaining written authorization from the Owner. BW invoices shall be due and owing by Owner in accordance with the terms and provisions of the State of Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.).

**Opinion of Probable Construction Costs** - BW's opinion of probable construction costs represents its reasonable judgment as a professional engineer. Owner acknowledges that BW has no control over construction costs or contractor's methods of determining prices, or over competitive bidding, or market conditions. BW cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from BW's opinion of probable construction costs.

**Standards of Performance** - (1) The standard of care for all services performed or furnished by BW will be the same care and skill ordinarily used by professionals practicing under similar circumstances, at the same time and in the same locality on similar projects. BW makes no warranties, express or implied, in connection with its services; (2) BW shall be responsible for the technical accuracy of its services and documents; (3) BW shall use reasonable care to comply with applicable laws, regulations, and Owner-mandated standards; (4) BW may employ such sub-consultants as BW deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objection by Owner; (5) BW shall not supervise, direct, control, or have authority over any contractors' work, nor have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the site, nor for any failure of any contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work; (6) BW neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents; (7) BW is not acting as a municipal advisor as defined by the Dodd-Frank Act. BW shall not provide advice or have any responsibility for municipal financial products or securities; (8) BW is not responsible for the acts or omissions of any contractor, subcontractor, or supplier, or any of their agents or employees or any other person at the site or otherwise furnishing or performing any work; (9) Shop drawing and submittal review by BW shall apply only to the items in the submissions and only for the purpose of assessing if, upon installation or incorporation in the Project work, they are generally consistent with the contract documents. Owner agrees that the contractor is solely responsible for the submissions (regardless of the format in which provided, i.e. hard copy or electronic transmission) and for compliance with the construction documents. Owner further agrees that BW's review and action in relation to these submissions shall not constitute the provision of means, methods, techniques, sequencing or procedures of construction or extend to safety programs or precautions. BW's consideration of a component does not constitute acceptance of the assembled item; (10) BW's site observation during construction shall be at the times agreed upon in the Project scope. Through standard, reasonable means, BW will become generally familiar with observable completed work. If BW observes completed work that is inconsistent with the construction documents, information shall be communicated to the contractor and Owner for them to address.

**Insurance** - BW will maintain insurance coverage with the following limits and Certificates of Insurance will be provided to the Owner upon written request:

Worker's Compensation:	Statutory Limits	Excess Umbrella Liability:	\$10 million per claim and aggregate
General Liability:	\$1 million per claim	Professional Liability:	\$5 million per claim
	\$2 million aggregate		\$10 million aggregate
Automobile Liability:	\$1 million combined single limit		

In no event will BW's collective aggregate liability under or in connection with this Agreement or its subject matter, based on any legal or equitable theory of liability, including breach of contract, tort (including negligence), strict liability and otherwise, exceed the contract sum to be paid to BW's under this Agreement. Any claim against BW arising out of this Agreement may be asserted by the Owner, but only against the entity and not against BW's directors, officers, shareholders or employees, none of whom shall bear any liability and may not be subject to any claim.

**Indemnification and Mutual Waiver** - (1) To the fullest extent permitted by law, BW shall indemnify and hold harmless the Owner and its officers and employees from claims, costs, losses, and damages ("Losses") arising out of or relating to the Project, provided that such Losses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any grossly negligent act or omission of BW; (2) To the fullest extent permitted by law, Owner shall indemnify and hold harmless BW and its officers, directors, employees, agents and consultants from and against any and all Losses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project provided that any such Losses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent arising out of or occurring in connection with the Owner's, or Owner's officers, directors, employees, consultants, agents, or others retained by or under contract to the Owner, negligent act or omission, willful misconduct, or breach of this Agreement; (3) To the fullest extent permitted by law, Owner and BW waive against each other, and the other's employees, officers, directors, insurers, and consultants, any and all claims for or entitlement to special, incidental, indirect, enhanced, punitive, or consequential damages, in each case regardless of whether such party was advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable, and notwithstanding the failure of any agreed or other remedy of its essential purpose; (4) In the event Losses or expenses are caused by the joint or concurrent fault of the BW and Owner, they shall be borne by each party in proportion to its respective fault, as determined by a mediator or court of competent jurisdiction; (5) The Owner acknowledges that BW is a business corporation and not a professional service corporation, and further acknowledges that the corporate entity, as the party to this contract, expressly avoids contracting for individual responsibility of its officers, directors, or employees. The Owner and BW agree that any claim made by either party arising out of any act of the other party, or any officer, director, or employee of the other party in the execution or performance of the Agreement, shall be made solely against the other party and not individually or jointly against such officer, director, or employee.

**Termination** - Either party may terminate this Agreement upon ten (10) business days' written notice to the other party in the event of failure by the other party to comply with the terms of the Agreement through no fault of the terminating party. A condition precedent to termination shall be conformance with the Dispute Resolution terms below. If this Agreement is terminated, Owner shall receive reproducible copies of drawings, developed applications and other completed documents upon written request. Owner shall be liable, and shall promptly pay BW, for all services and reimbursable expenses rendered through the effective date of suspension/termination of services.

**Use of Documents** - All BW documents (data, calculations, reports, Drawings, Specifications, Record Drawings and other deliverables, whether in printed form or electronic media format, provided by BW to Owner pursuant to this Agreement) are instruments of service and BW retains ownership and property interest therein (including copyright and right of reuse). Owner shall not rely on such documents unless in printed form, signed or sealed by BW or its consultant. Electronic format of BW's design documents may differ from the printed version and BW bears no liability for errors, omissions or discrepancies. Reuse of BW's design documents is prohibited and Owner shall defend and indemnify BW from all claims, damages, losses and expenses, including attorney's fees, consultant/expert fees, and costs arising out of or resulting from said reuse. Project documents will be kept for time periods set forth in BW's document retention policy after Project closeout.

**Successors, Assigns, and Beneficiaries** - Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or BW to any third party, including any lender, contractor, subcontractor, supplier, manufacturer, other individual, entity or public body, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the Owner and BW and not for the benefit (intended, unintended, direct or indirect) of any other entity or person.

**Dispute Resolution** - All disputes between the Parties shall first be negotiated between executives who have authority to settle the dispute for a period of thirty (30) days. If unresolved, disputes shall be then submitted to mediation as a condition precedent to litigation. The mediation session shall be held within forty-five (45) days of the retention of the mediator, and last for at least one (1) full mediation day, before any party has the option to withdraw from the process. If mediation is unsuccessful in resolving a Dispute, then the parties may seek to have the Dispute resolved by a court of competent jurisdiction.

**Miscellaneous Provisions** - (1) This Agreement is to be governed by the law of the state or jurisdiction in which the project is located; (2) all notices must be in writing and shall be deemed effectively served upon the other party when sent by certified mail, return receipt requested; (3) all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion and/or termination for any reason; (4) any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and BW, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that expresses the intention of the stricken provision; (5) a party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement; (6) to the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion, which is the point where the Project can be utilized for the purposes for which it was intended; (7) this Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter; (8) no amendment to or modification of this Agreement is effective unless it is in writing and signed by each party.