

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10165

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA, AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN A CONTRACT WITH AMERICAN ROCK SALT DEPARTMENT OF GENERAL SERVICES COSTARS PROGRAM, 5520 NY-63 MT. MORRIS, NY 14510 TO PROVIDE AND DELIVER TO THE CITY, ROCK SALT FOR THE CALENDAR YEAR AUGUST 2018 THRU AUGUST 2019.

WHEREAS, The Council of Governments has notified the City that it will not be bidding salt this year; and

WHEREAS, American Rock Salt's fiscal calendar year is August to August; and

WHEREAS, American Rock Salt's salt price was lower than the bid prices obtained through COG, with a bid amount of \$76.85 a ton delivered; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Pennsylvania, that the City Manager is hereby authorized and directed to execute a Contract with American Rock Salt Department of General Services Costars Program to provide Rock Salt for the calendar year August 2018- August 2019.

ADOPTED:

March 13, 2019

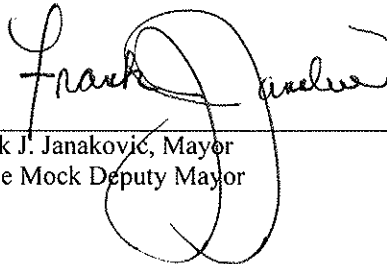
By the following vote:

Yeas: Mr. Vitovich, Mayor Janakovic, Rev. King, Mrs. Mock.

Nays: None (0)

Abstain: Mr. Williams, Mrs. Stanton. (2)

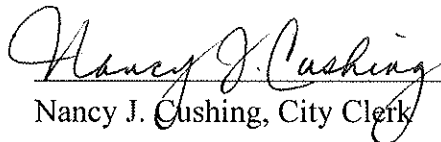
Absent: Mr. Britt. (1)



Frank J. Janakovic, Mayor
Marie Mock Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10165** as the same adopted by the City Council of the City of Johnstown, PA.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10166

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA, AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN A CONTRACT WITH HOMER R. SLEEK & SONS, INC., 132 MOSSY LANE, JOHNSTOWN, PA 15905 TO PROVIDE AND DELIVER TO THE CITY, ANTI-SKID MATERIAL, AS4 SLAG FOR THE CALENDAR YEAR 2018-2019.

WHEREAS, bids to provide and deliver Anti-Skid Material, AS4 Slag to the City of Johnstown, were opened for the calendar year 2018-2019; and

WHEREAS, the single responsible bid was received from Homer R. Sleek & Sons, Inc., 132 Mossy Lane, Johnstown, PA 15905 with a bid of \$25.50 a ton delivered; and

WHEREAS, the City Council desires to accept the bid price of Homer R. Sleek. & Sons, Inc., to provide and deliver Anti-Skid Material, AS4 Slag to the City for the calendar year 2018 — 2019 and will be paid through the Liquid Fuel Account.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Pennsylvania, that the City Manager is hereby authorized and directed to execute a Contract with Homer R. Sleek & Sons, Inc., to provide Anti-Skid Material, AS4 Slag for the calendar year 2018-2019.

ADOPTED:

March 13, 2019


By the following vote:

Yeas: Mayor Janakovic, Rev. King, Mrs. Mock, Mr. Vitovich. (4)

Nays: None (0)

Abstain: Mr. Williams, Mrs. Stanton. (2)

Absent: Mr. Britt. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10166** as the same adopted by the City Council of the City of Johnstown, PA.



Nancy J. Cushing, City Clerk

Homer R. Sleek & Sons, Inc.

"Sleek Trucking"

132 Mossy Lane
Johnstown, PA 15905

(814)288-1903

(814)288-5671 Fax

Proposal Submitted To:

City of Johnstown
City Hall Room 401 Main Street
Johnstown PA 15901

Attn: Joe

Date: 12-4-2018

Phone#

Job Name

Job Location

Letting

We are pleased to provide a quote on the following:

Material	Source	Price per Ton
Limestone Ant Skid	Granmas	\$75.50

Minimum delivery of 22 tons per truckload.

Contractor to provide suitable access for Homer R. Sleek & Sons trucks to enter jobsite.

Contractor responsible for obtaining permission for Sleek trucks to travel on weight-limited or bonded roads.

Material must be suitable for aluminum body truck.

Proposal subject to credit approval.

Trucks are to move under their own power throughout the job site.

If tailgating or discharge into a machine is required, add \$.50 per ton to the above prices.

Homer R. Sleek & Sons, Inc. is pleased to offer you a quote on this project.

Terms: Net 30 days, 1.5% service charge per month on all delinquent invoices.

Accepted this date 3/18/19

George Hanfield
Customer's Signature

City of Johnstown
Company Name

Thank you,
Homer R. Sleek & Sons, Inc.

Earl E. Sleek, II
President

CITY OF JOHNSTOWN, PENNSYLVANIA
RESOLUTION NO. 10167

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA, APPROVING FREDERICK ADAMSON'S REQUEST TO PURCHASE FIVE YEARS OF MILITARY SERVICE COMPLETED PRIOR TO EMPLOYMENT WITH THE CITY OF JOHNSTOWN TO INCREASE HIS LENGTH OF SERVICE TO THE CITY FOR FIRE PENSION CALCULATIONS.

WHEREAS, Ordinance 4441 of the Administrative Code of the City of Johnstown, passed finally on October 28, 1987, requires City Council's approval of a Firefighter request for credit of up to five years of military service, where the member is making contributions to the Fire Pension Fund and served in the Armed Forces of the United States after September 1, 1940, and who was not a member of the Fire Pension Fund prior to such military service, upon payment to the Pension Fund of an amount equal to that which he or she would have paid had he or she been a member during the period for which he or she desires credit, and upon his or her payment to the Pension Fund of an additional amount as the equivalent of the contribution of the employer on account of such military service; and

WHEREAS, the purchase of prior military service is further authorized by the Pennsylvania Municipal Retirement Law, as amended, 53 P.S. § 881.305; and

WHEREAS, the current collective bargaining agreement between the City of Johnstown and the International Association of Fire Fighters further authorizes the purchase of up to a maximum of five years of military service to extend the length of service to the City of Johnstown for purposes of measuring pension benefits, pending payments of necessary pension contributions; and

WHEREAS, Frederick Adamson has satisfactorily provided documentation in support of his request to purchase five years of military service performed prior to his employment with the City of Johnstown in 2016, and the Pension Board has approved his request; and

WHEREAS, Frederick Adamson shall make total contributions to the Pension Fund in the amount of \$13,039.61; and

WHEREAS, the City of Johnstown's Administrative Code nonetheless requires City Council's approval of Frederick Adamson's request for credit of five years of military service.

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby authorizes and approves Frederick Adamson's request for credit of five years of military service to increase his length of service to the City for fire pension calculations.

ADOPTED:


March 13, 2019

By the following vote:

Yeas: Mayor Janakovic, Rev. King, Mrs. Mock, Mrs. Stanton, Mr. Vitovich, Mr. Williams. (6)

Nays: None (0)

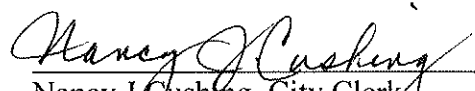
Absent: Mr. Britt. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10167** as the same was adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA
RESOLUTION NO. 10168

A RESOLUTION OF THE CITY OF JOHNSTOWN AUTHORIZING THE CITY MANAGER TO SIGN THE SHARED USE TRAIL MAINTENANCE AGREEMENT FOR THE JAMES WOLFE SCULPTURE TRAIL WITH THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION IN CONJUNCTION WITH THE POINT STADIUM BRIDGE REHABILITATION PROJECT, ROOSEVELT BOULEVARD (PA 56).

WHEREAS, The Pennsylvania Department of Transportation is rehabilitating the Point Stadium Bridge; and

WHEREAS, A Shared Use Path consisting of a multi-use trail will be constructed by PennDOT on a portion of the existing Department right of way, Roosevelt Boulevard, PA 56; and

WHEREAS, The Trail will connect with the existing trail known as the James Wolfe Sculpture Trail on the south end of the project; and

WHEREAS, The Trail will be constructed utilizing state funds; and

WHEREAS, The City of Johnstown (Sponsor) has agreed to assume year-round maintenance of the Trail upon completion.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Cambria County, that the City Manager is hereby authorized and directed to sign the Agreement accepting responsibility for maintenance of the Trail.

ADOPTED:


March 13, 2019

By the following vote:

Yeas: Rev. King, Mrs. Mock, Mrs. Stanton, Mr. Vitovich, Mr. Williams, Mayor Janakovic. (6)

Nays: None (0)

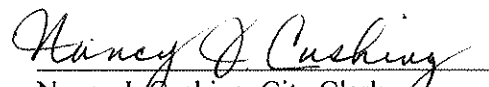
Absent: Mr. Britt (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10168 as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

SHARED USE TRAIL MAINTENANCE AGREEMENT

This Shared Use Trail Maintenance Agreement (“Agreement”), is made by and between the Commonwealth of Pennsylvania, Department of Transportation, with an office located at [1620 N. Juniata Street, Hollidaysburg, PA 16648] (“Department”),

and

City of Johnstown, a municipality duly and properly formed under the laws of the Commonwealth of Pennsylvania, located at 401 Main Street, Johnstown, PA 15901, acting through its proper officials (“Trail Sponsor”).

BACKGROUND

The Department has jurisdiction and control over State-designated highways throughout the Commonwealth.

The parties have determined that a Shared Use Path consisting of a multi-use trail, with appurtenances, will be constructed on a portion of existing Department right of way, located on State Route 0056, Station/Segment 0120, Offset 0050 to State Route 0000, Station/Segment 0120, Offset 0675 in the City of Johnstown, Cambria County (“Trail”).

A Shared Use Path is defined as any paved or unpaved trail located within the highway right of way and physically separated from motorized vehicular traffic by an open space or barrier, designed, built, cleared, marked and maintained for use by pedestrians, pedacyclists, wheelchair users, and other non-motorized users, but not for use by any all-terrain vehicles or snowmobiles.

The Trail is being constructed to serve pedestrian and limited non-motorized traffic, including bicycles, strollers, skateboards, skates, and roller blades, as well as very limited motorized vehicles for emergency and maintenance purposes only.

The Trail will connect with the existing trail known as the James Wolfe Sculpture Trail on the south end of the project. Upon completion the Trail will become a part of the James Wolfe Sculpture Trail.

At this time, the Trail will not connect to the James Wolfe Sculpture Trail on the north end of the project.

The Trail will be constructed utilizing state funds.

The Trail Sponsor has agreed to assume year-round responsibility for maintenance of the Trail upon the completion of construction.

The Department and Trail Sponsor wish to reduce their understanding of the terms and conditions for the work in this Agreement. The parties intending to be legally bound, agree as follows:

1. **Trail Construction.** The Department will, with its own forces or by contract, construct the Trail in accordance with plans entitled MPMS #96514 Point Stadium Bridge and attached as Exhibit "A".

The Department will, with its own forces or by contract, barricade the Trail on the north end of the project until such time as a new connection is built to connect the Trail with the existing James Wolfe Sculpture Trail.

2. **Notice Procedure.** All notices and reports arising out of, or from, the provisions of this Agreement will be in writing and given to the Parties at the address provided below, either by overnight mail, regular mail, or delivery in person, or to such other person or address as the parties may provide to each other in writing. The Parties may agree to exchange information by email.

The following representatives are authorized to receive notice on behalf of the Department and the Trail Sponsor:

DEPARTMENT

District Executive
PennDOT District 9-0
1620 N. Juniata Street
Hollidaysburg, PA 16648
814-696-7250

TRAIL SPONSOR

George Hayfield, City Manager
401 Main Street
Johnstown, PA 15901
814-533-2001

3. **Notice of Completion and Trail Acceptance.** Department will send written notice to the Trail Sponsor when construction of the Trail is completed. Following notice of completion by the Department, the Trail Sponsor will provide written notice to the Department, within forty-five (45) days of receipt concerning whether the Trail Sponsor accepts the Trail. The Trail Sponsor will not unreasonably refuse to accept the Trail, however if the Trail Sponsor does not accept the Trail, the Trail Sponsor will indicate the reasons for its position in the written notice.

4. **Trail Maintenance.** Upon the Trail Sponsor's acceptance of the Trail and until such time as this Agreement may be terminated, the Trail Sponsor will, at its sole cost and expense, be responsible for all year-round maintenance and repair of the Trail, its appurtenances, and all Department right of way, except as set forth below, including but not limited to, any and all maintenance, repair and replacement of gates, bollards, plantings, planted areas, pedestrian cross walks, pavement markings, Trail signing, local road signing, parking areas, trash removal, fencing, and any work zone traffic control.

The Department will maintain the barricade on the north end of the Trail until such time as the Trail is connected to the existing James Wolfe Sculpture Trail.

5. **Financial Ability.** The Trail Sponsor has provided satisfactory evidence to the Department of its ability to completely discharge construction, maintenance and financial duties imposed upon on it by this Agreement because it is a municipal corporation organized and operating under the laws of the Commonwealth of Pennsylvania, vested with the powers to levy taxes and fees, and such power demonstrates its ability to discharge relevant duties under this Agreement.

6. **Termination of Agreement by Trail Sponsor.** The Trail Sponsor may not terminate this Agreement within the first five (5) years following the written notice of acceptance. Thereafter, the Trail Sponsor may terminate this Agreement upon thirty (90) days written notice to the Department.

Once proper notice of termination has been received, the Trail Sponsor must barricade and secure access points to the Trail, if requested by the Department and to the satisfaction of the Department.

7. **Termination by Department.** The Department reserves the right to revoke, rescind, or otherwise terminate this Agreement for any or no reason by giving the Trail Sponsor ninety (90) days written notice of termination, sent by certified mail. Upon expiration of the ninety (90) days' notice by the Department, the Trail Sponsor's responsibilities under this Agreement, except those pertaining to liability, whether financial, in tort or otherwise, will terminate.

The Department specifically reserves the right to terminate this Agreement in whole or in part under this Section if the Department determines that any of the right of way upon which the Trail is located is needed for transportation-related purposes. The Department specifically reserves the right to terminate this Agreement in part under this Section if it decides to vacate any portion of the right of way not necessary for the Trail or other transportation purposes. The Department will do this only after consultation with the Trail Sponsor.

8. **Required Permits and Approvals.** The Trail Sponsor will be responsible for obtaining all federal, state or local approvals, permits or permissions of any nature required to operate the Trail and perform those responsibilities assumed by the Trail Sponsor. The Department will assist the Trail Sponsor in obtaining any highway occupancy permits needed from the Department.

9. **Trail to be Open to the Public.** The Trail Sponsor will keep the Trail open for use of the public, subject to reasonable rules and regulations concerning that use.

10. **Trail Maintenance and Failure to Maintain.** If the Department determines that Trail repair, maintenance, or other required action is necessary, the Department will notify the Trail Sponsor in writing by overnight mail. Within ten (10) days of the receipt by the Trail Sponsor of the Department's written notice, the Trail Sponsor will acknowledge its intent to commence and perform the necessary work within a reasonable period of time. In the event that the Trail Sponsor fails to commence the necessary work within a reasonable period of time or fails to execute said work diligently to completion within a reasonable period of time, the Department may perform said repair, maintenance or other necessary action at the Trail Sponsor's sole cost and expense. Failure by the Trail Sponsor to pay the Department within forty five (45) days of receipt of an invoice for work performed by the Department will constitute a default, and the Department may terminate this Agreement as set forth below or pursue such other remedies as set forth in this Agreement or under applicable law.

11. **Interim Use of Right of Way.** The Trail is an interim use of right of way until said right of way is required for transportation related purposes. The Trail will not be considered a resource – recreational or otherwise – under the National Environmental Policy Act, 42 U.S.C. §§ 4321, et. al, Section 4(f) of the U.S. Department of Transportation Act, 49 U.S.C. § 303 and 23 C.F.R. § 774.11(h), or the Pennsylvania Administrative Code, 71 P.S. § 512.

12. **Liability.** The Trail Sponsor will be principally liable to the Department for any failure to comply with the terms and conditions of this Agreement. The principal liability of the Trail Sponsor to the Department will not preclude the Trail Sponsor or the Department from bringing any action against the Trail Sponsor's contractor, subcontractor, engineer, architect, or any other person involved in the design, construction, or maintenance of the Trail and its appurtenances.

13. **Rights for Future Change.** The Department, in executing this Agreement, does not waive any of its powers or rights to require the future change in operation, removal, relocation, or proper maintenance of any access within the right of way.

14. **Insurance.** The Trail Sponsor will obtain and keep in force and effect during the term of this Agreement adequate public liability and property damage insurance covering any injury, death or property damage resulting in any way from use of the Trail and the Trail Sponsor's performance of or failure to perform any responsibilities under this Agreement. Such insurance will provide bodily injury, including death, and property damage coverage in the minimum amounts of two hundred fifty thousand dollars (\$250,000.00) per person, one million dollars (\$1,000,000.00) per occurrence. The insurance will be occurrence-based and the certificate will list the Department as an additional insured. Failure to maintain the insurance coverage required by this section during the term of this Agreement will be cause for termination of this Agreement.

15. **Indemnification.** The Trail Sponsor hereby indemnifies, saves harmless, and agrees to defend (if requested) the Department, their officers, agents and employees from any and all suits, actions or claims of any character, name or description brought for or on account of any injuries to or damages received or sustained by any person, persons or property by or on account of any act or omission by the Trail Sponsor, its contractors, their officers, agents and employees as a result of use of the Trail and the obligations assumed by the Trail Sponsor under this Agreement.

The Trail Sponsor hereby indemnifies, saves harmless, and agrees to defend (if requested) the Department, their officers, agents and employees from all suits, actions or claims of any character, name or description brought for or on account of any injuries to or damages received or sustained by any person, persons or property by or on account of the status of the Department's title to the right of way upon which the Trail is to be located.

16. **Scope of Trail Use.** Trail use is limited to pedestrian and limited non-motorized traffic, including bicycles, strollers, skateboards, skates, and roller blades, and for very limited motorized vehicles for emergency and maintenance purposes only.

17. **Occupancy of Right of Way.** The Department, in executing this Agreement, does not waive any of its powers or rights to grant a co-existing occupancy of the Trail and its appurtenances.

18. **Standard Commonwealth Contracting Provisions.** The Trail Sponsor will comply, and will cause its consultant(s) and contractor(s), if any, to comply with the current versions

of the provisions set forth below. As used in these provisions, the term "Contractor" means the Trail Sponsor:

- a. Contractor Integrity Provisions, attached as Exhibit "B";
- b. Contractor Responsibility Provisions, attached as Exhibit "C";
- c. Provisions Concerning the Americans with Disabilities Act, attached as Exhibit "D";
- d. Provisions concerning Nondiscrimination and Sexual Harassment, attached as Exhibit "E"; and
- e. The Pennsylvania Right-to-Know Law provisions, attached as Exhibit "F".

19. **Successors and Assigns.** All covenants and obligations of the parties under this Agreement will bind their successors and assigns, whether or not expressly assumed by such successors and assigns.

20. **Compliance.** The Trail Sponsor will be responsible for causing its employees, agents, and contractors to comply with the terms and conditions of this Agreement.

21. **Debarred Contractors.** The Trail Sponsor agrees not to employ or utilize, for any work related to the Trail, a contractor, subcontractor or individual debarred by the Department. 67 Pa. Code § 457.13.

22. **Assignment.** The Agreement may not be assigned by the Trail Sponsor, either in whole or in part, without the written consent of the Department.

23. **Trail Management.** The Trail Sponsor, after consultation and approval by the Department, may hire a third party to manage the Trail.

24. **Independence of the Parties.** The parties understand by and between themselves that nothing contained in this Agreement is intended or will be construed to, in any respect, create or establish the relationship of partners between the Trail Sponsor and the Department, or as constituting the Department as the representative or general agent of the Trail Sponsor for any purpose.

25. **Appurtenances to the Trail.** The Trail Sponsor may add appurtenances to the Trail, but only upon consultation with, and after the approval of, the Department.

26. **Necessary Ordinances and/or Resolutions.** The Trail Sponsor will enact and/or adopt such ordinances and/or resolutions as may be necessary to affect the purposes of this Agreement.

27. **Choice of Law.** This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of Pennsylvania courts. The Trail Sponsor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Trail Sponsor acknowledges that any such court will have in personam jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.

28. **Severability.** The provisions of this Agreement are severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance will not be affected.

29. **Rights Reserved.** Any remedies granted to the Department under this Agreement are not exclusive and do not preclude any other remedy the Department may otherwise have.

30. **No Waiver.** Either party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by other parties of any term or condition of this Agreement. In any event, the failure by either party to enforce its rights and remedies under this Agreement will not be construed as a waiver of any subsequent breach of the same or any other term or condition of this Agreement.

31. **No Third-Party Beneficiaries.** The parties to this Agreement understand that this Agreement does not create or intend to confer any rights in or on persons or entities not a party to this Agreement.

32. **Titles Not Controlling.** Titles of sections are for reference only and will not be used to construe the language in this Agreement.

33. **Force Majeure.** Neither party will be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision becomes effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision will not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

34. **Integration and Merger.** Upon execution, this document, together with all exhibits and attachments annexed to it, constitutes the entire agreement between the parties and completely expresses their intent. All prior or contemporaneous agreements are hereby merged into this document. No amendment or modification of this document will be valid unless it is in writing and duly executed and approved by the parties.

35. **Effective Date.** This Agreement will become effective on the date that it is fully executed by the Trail Sponsor and by the Department and all approvals required by Commonwealth of Pennsylvania contracting procedures have been obtained. The effective date will be the date of the last signature. The Agreement will extend until terminated.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

The Parties have executed this Agreement to be effective as of the date of the last Commonwealth signature affixed below.

ATTEST:

City of Johnstown

Nancy J. Cushing 3/20/19
Title Date

BY George Hayfield
Title: City Manager Date 3/20/19

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

DO NOT WRITE BELOW THIS LINE--FOR DEPARTMENT USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary of Transportation Date

APPROVED AS TO LEGALITY
AND FORM:

PRELIMINARILY APPROVED:

BY _____
for Chief Counsel Date

BY _____
Assistant Counsel Date

BY _____
Deputy Attorney General Date

FUNDS COMMITMENT DOC. NO. _____
CERTIFIED FUNDS AVAILABLE UNDER
SAP NO _____
SAP COST CENTER _____
GL ACCOUNT _____
AMOUNT _____

BY _____
Deputy General Counsel Date

BY _____
for Comptroller Operations Date

CITY OF JOHNSTOWN, PENNSYLVANIA
RESOLUTION NO. 10169

A RESOLUTION OF THE CITY OF JOHNSTOWN AUTHORIZING THE CITY MANAGER TO SIGN THE LIGHTING AGREEMENT WITH THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION ACCEPTING MUNICIPAL OWNERSHIP AND MAINTENANCE RESPONSIBILITY OF THE LIGHTING SYSTEM TO BE INSTALLED ON ROOSEVELT BOULEVARD (PA 56) FOR THE POINT STADIUM BRIDGE REHABILITATION PROJECT.

WHEREAS, The Pennsylvania Department of Transportation is rehabilitating the Point Stadium Bridge; and

WHEREAS, PennDOT, by contract and without cost to the City, will construct an electrical roadway lighting system for SR 56, Point Stadium Bridge; and

WHEREAS, The City of Johnstown will take ownership of the lighting system upon completion and has agreed to assume responsibility for the maintenance of the system.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Cambria County, that the City Manager is hereby authorized and directed to sign the Agreement accepting responsibility for the lighting system, subject to the terms and conditions of the Agreement.

ADOPTED:


March 13, 2019

By the following vote:

Yeas: Mrs. Mock, Mrs. Stanton, Mr. Vitovich, Mr. Williams, Mayor Janakovic, Rev. King. (6)

Nays: None (0)

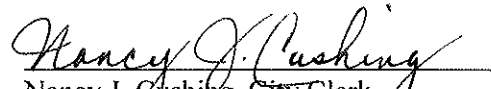
Absent: Mr. Britt. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10169** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

County ("Bridge"), consisting of sufficient poles, arms, bases, conduit, junction boxes, wire, cables, luminaires, controls and related equipment ("Lighting System"), at the places and positions and in the intensities shown on the drawings and provided for in the specifications prepared for or approved by PennDOT attached to this Agreement as Exhibit A (the drawings and specifications are collectively referred to in this Agreement as the "Lighting Plan").

2. **Highway Occupancy Permit.** In conjunction with the transfer of the Lighting System under Section 3 below, PennDOT shall grant the Municipality a highway occupancy permit in accordance with 67 Pa. Code Chapter 459, relating to the occupancy of highways by utilities, pursuant to the terms and conditions contained herein, and contingent upon the Municipality's proper application for the highway occupancy permit. Furthermore, the Municipality shall comply not only with the terms and conditions of the highway occupancy permit but also with the terms and conditions contained in this Agreement, made part of and incorporated into the highway occupancy permit by reference as though physically attached, and with all applicable requirements of 67 Pa. Code Chapter 459, including, but not limited to, indemnification and maintenance and protection of traffic.
3. **Transfer of Right, Title and Interest.** Upon completion of the installation of the Lighting System in an operable condition satisfactory to PennDOT, by this Agreement, shall transfer to the Municipality all of PennDOT's right, title and interest in and to the Lighting System, at the places and positions and in the intensities shown on the Lighting Plan. This transfer is subject to the conditions set forth in Section 4.
4. **Conditions of Transfer.** Upon completion of the Lighting System, the Municipality shall assume ownership, custody and control of it, as authorized in the resolution attached to and made part of this Agreement as Exhibit B, subject to the following terms and conditions:

- a. **Operation and Maintenance.** Except as provided in (c) below, the Municipality, at its sole cost and expense, subject to reimbursement by PennDOT of fifty percent (50%) of the cost as set forth in Section 5 below, shall energize, operate and maintain the Lighting System, in a good state of repair, satisfactory to PennDOT, so as not to constitute an impediment, either horizontally or vertically, to the vehicular use of the entire traveled width of the roadway. After the Municipality assumes ownership, custody, and control of the Lighting System, the Municipality shall also provide such safeguards, at the site of any maintenance or repair work undertaken under this Agreement, as needed to protect the safety of the traveling public during the work.

- b. **Specifications and Approval.** Upon expiration of the guarantee to be furnished by PennDOT's contractor in accordance with PennDOT's Specifications, Publication 408 (current edition), its amendments and supplements ("Publication 408"), the Municipality, at its cost and expense, subject to reimbursement by PennDOT of fifty percent (50%) of the cost as set forth in Section 5 below, shall replace all defective units, poles, bases, arms, junction boxes, wire, cables, conduit, luminaires, controls and other components of the Lighting System, in accordance with Publication 408. The Municipality shall not make any replacement without first securing PennDOT approval, in accordance with 67 Pa. Code Chapter 459.

- c. **PennDOT Repairs.** PennDOT reserves the right, and the Municipality gives to PennDOT the right, to repair, subject to reimbursement by the Municipality of fifty percent (50%) of the cost, any or all parts of the Lighting System not maintained in a condition satisfactory to PennDOT.

- d. **Third Party Contracts.** The Municipality is solely responsible for making all contractual arrangements with the electric utility(ies) and (if involved) the maintenance contractor(s), to make certain the performance of all services and supply of all materials as required.

- e. **Prohibited Use.** All agreements into which the Municipality enters with the electrical utility(ies) and (if involved) the maintenance contractor(s) shall contain a clause prohibiting the use of the Lighting System for any purpose other than highway lighting.
5. **Reimbursement.** PennDOT will reimburse the Municipality for fifty percent (50%) of the cost of energizing and maintaining the Lighting System, in accordance with the following:
- a. The electric utility(ies) and (if involved) maintenance contractor(s) shall bill the Municipality for all energy and maintenance costs.
 - b. The Municipality shall make prompt payment of each bill (and will receive discounts for prompt payment, if applicable).
 - c. The Municipality shall submit a copy of each bill to PennDOT, in accordance with Section 17 below, requesting reimbursement by PennDOT in accordance with the terms of this Agreement.
 - d. PennDOT will review the bill and if approved, submit the bill to the Office of Comptroller Operations for the processing of payment to the Municipality.
 - e. All of the Municipality's records, including but not limited to, its electrical utility(ies) and contractor(s), shall be maintained for a period of three (3) years from the date of payment by PennDOT and the records shall be subject to examination by PennDOT. The records maintained by the Municipality include, but are not limited to, time records for personnel performing work to be included in the direct labor costs and for the time included in any computation for overhead costs.

6. **Automated Clearing House Provisions.** Because PennDOT shall make payments under this Agreement through the Automated Clearing House ("ACH") Network, the Municipality shall comply with the following provisions governing payments through ACH:
- a. PennDOT will make payments to the Municipality through ACH. Within 10 days of executing this Agreement, the Municipality must submit or must have already submitted its ACH information on a ACH enrollment form (obtained at www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf) and electronic addenda information, if desired, to the Commonwealth's Payable Service Center, Vendor Data Management Unit at 717-214-0140 (FAX) or by mail to the Office of Comptroller Operations, Bureau of Payable Services, Payable Service Center, Vendor Data Management Unit, 555 Walnut Street - 9th Floor, Harrisburg, PA 17101.
 - b. The Municipality must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Municipality to properly apply the state agency's payment to the respective invoice or program.
 - c. It is the responsibility of the Municipality to ensure that the ACH information contained in the Commonwealth's central vendor master file is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.
7. **Indemnification.** The Municipality shall indemnify and (if requested) defend the Commonwealth of Pennsylvania, PennDOT and all of their officers, agents and employees from all suits, actions or claims of any character, name or description, brought for or on account of any injuries or damages received or sustained by any person, persons or property, arising out of, resulting from or connected with the performance of any of the work of energizing, operating, maintaining, repairing or replacing the Lighting

System or any part of it, by the Municipality, its contractor(s) or their officers, agents and employees, whether the injuries or damages be due to the use of defective materials, defective workmanship or neglect in safeguarding the work, or by or on account of any act, omission, neglect or misconduct of the Municipality, its contractor(s) or their officers, agents and employees during the performance of the work and during the effective period of this Agreement.

8. **Liquid Fuels Tax Fund.** If the Municipality fails to perform any of the terms, conditions or provisions of this Agreement, including, but not limited to, any default in maintenance requirements, for a period of forty-five (45) days, the Municipality authorizes PennDOT to withhold so much of the Municipality's Liquid Fuels Tax Fund allocation as may be necessary to maintain the Lighting System or to reimburse PennDOT in full for all costs due or incurred under this Agreement and to apply such funds or a portion of them to remedy the default.
9. **Term.** The term of this Agreement shall commence on the Effective Date (as defined below) and shall remain in effect in accordance with the Highway Occupancy Permit identified in this Agreement. The Effective Date shall be the date that this Agreement is fully executed by the Municipality and PennDOT and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature. Following full execution, the Commonwealth will insert the Effective Date at the top of Page 1.
10. **Offset Provision.** The Municipality agrees that the Commonwealth of Pennsylvania ("Commonwealth") may set off the amount of any state tax liability or other obligation of the Municipality or its subsidiaries to the Commonwealth against any payments due the Municipality under any contract with the Commonwealth.
11. **Required Commonwealth Provisions.** The Municipality shall comply with the following Commonwealth Provisions. As used in these provisions, "Contractor" refers to the Municipality:

- a. **Contractor Integrity Provisions.** The current version of the Contractor Integrity Provisions, which are attached to this Agreement as Exhibit C;
 - b. **Americans with Disabilities Act.** The current version of the Commonwealth Provisions Concerning the Americans with Disabilities Act, which are attached to this Agreement as Exhibit D;
 - c. **Contractor Responsibility Provisions.** The current version of the Commonwealth Contractor Responsibility Provisions, which are attached to this Agreement as Exhibit E; and
 - d. **Commonwealth Nondiscrimination/Sexual Harassment Clause.** The current version of the Commonwealth Nondiscrimination/Sexual Harassment Clause, which is attached to this Agreement as Exhibit F.
12. **Right-to-Know Law.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101–3104, applies to this Agreement. Therefore, this Agreement is subject to, and the Municipality shall comply with, the clause entitled Contract Provisions – Right to Know, attached as Exhibit G to this Agreement. As used in this exhibit, the term “Contractor” refers to the Municipality.
 13. **Administrative Agency Law.** The Municipality agrees that any actions arising under the highway occupancy permit to be issued to the Municipality, as set forth in Section 3 above, shall be governed by the Administrative Agency Law, 2 Pa. C.S. Sections 501-508 and 701-704; 1 Pa. Code Chapters 31, 33 and 35, known as the General Rules of Administrative Practice and Procedure; and 67 Pa. Code Chapters 459 and 491.
 14. **Choice of Law.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to conflict of laws provisions) and the decisions of the Pennsylvania courts. The Municipality consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Municipality acknowledges that any such

court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.

15. **Merger with Highway Occupancy Permit.** Upon completion of the construction of the Lighting System and the assumption of ownership, custody and control of it by the Municipality, this Agreement shall be merged with the highway occupancy permit to be issued to the Municipality, whereupon any terms, conditions or provisions of this Agreement that have not yet been performed or whose performance continues after construction shall become terms, conditions and provisions of the highway occupancy permit.

16. **Records and Audit Requirements.** The Municipality shall maintain, and shall require its consultant(s) and contractor(s) to maintain all books, documents, papers, records, supporting cost proposals, accounting records, employees' time cards, payroll records and other evidence pertaining to costs incurred under this Agreement for a period of seven (7) years. The Municipality shall make such materials available at all reasonable times and shall furnish copies, if requested.

17. **Notice.** All notices and reports arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. The parties shall deliver notice to each other at the following addresses:

To PennDOT:

Title: PennDOT District 9-0, District Executive

Address: 1620 North Juniata Street, Hollidaysburg, PA 16648

E-mail: jurbas@pa.gov

To the Municipality:

Title: City Mananger

Address: 401 Main Street, Johnstown, PA 15901

E-mail: ghayfield@cojtwm.com

or to such other address as either party may designate to the other in writing from time to time.

18. **Amendments and Modifications.** No alterations or variations to this Agreement shall be valid unless made in writing and signed by the parties. Amendments to this Agreement shall be accomplished through a formal written document signed by the parties with the same formality as this Agreement.
19. **Titles not Controlling.** Titles of sections are for reference only, and shall not be used to construe the language in this Agreement.
20. **Severability.** The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.
21. **No Waiver.** Either party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by the other party of any term or condition of this Agreement. In any event, the failure by either party to enforce its rights and remedies under this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other term or condition of this Agreement.
22. **Independence of the Parties.** It is understood by and between the parties that nothing contained herein is intended or shall be construed to, in any respect, create or establish the relationship of partners between the Municipality and PennDOT, or as constituting

PennDOT as the representative or general agent of the Municipality for any purpose whatsoever.

23. **Assignment.** This Agreement may not be assigned by the Municipality, either in whole or part, without the written consent of the Commonwealth.
24. **Third Party Beneficiary Rights.** The parties to this Agreement understand that this Agreement does not create or intend to confer any rights in or on persons or entities not a party to this Agreement.
25. **Integration and Merger.** This Agreement and, if applicable, any attachment and exhibits, when executed, approved and delivered, shall constitute the final, complete and exclusive agreement between the parties containing all the terms and conditions agreed on by the parties. All representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement unless specifically accepted by any other term or provision of this Agreement. There are no conditions precedent to the performance of this Agreement except as expressly set forth herein.

[The remainder of this page is intentionally left blank.]

The parties have executed this Agreement to be effective as of the date of the last signature affixed below.

ATTEST:

*

Nancy J. Cushing 3/20/19
Title: City Clerk Date

BY George Hayfield 3/20/19
Title: City Manager Date

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary or Designee Date

APPROVED AS TO LEGALITY
AND FORM

BY _____
for Chief Counsel Date

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date

BY _____
Office of Comptroller Operations Date

*Municipality's resolution authorizing execution and attestation must accompany this agreement.

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10170

A RESOLUTION OF THE CITY OF JOHNSTOWN AUTHORIZING THE CITY MANAGER TO SIGN THE SIDEWALK MAINTENANCE AGREEMENT WITH THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION ACCEPTING OWNERSHIP AND RESPONSIBILITY OF THE SIDEWALKS TO BE INSTALLED ON ROOSEVELT BOULEVARD (PA 56) FOR THE POINT STADIUM BRIDGE REHABILITATION PROJECT.

WHEREAS, The Pennsylvania Department of Transportation is rehabilitating the Point Stadium Bridge; and

WHEREAS, PennDOT, by contract, will construct new sidewalks on the Point Stadium Bridge (PA 56); and

WHEREAS, The City of Johnstown has agreed, upon completion of the sidewalk construction, to assume year-round responsibility for maintenance of said sidewalk.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Cambria County, that the City Manager is hereby authorized and directed to sign the Agreement with the Pennsylvania Department of Transportation for sidewalk maintenance on the Point Stadium Bridge, PA 56.

ADOPTED:


March 13, 2019

By the following vote:

Yeas: Mrs. Stanton, Mr. Vitovich, Mr. Williams, Mayor Janakovic, Rev. King, Mrs. Mock. (6)

Nays: None (0)

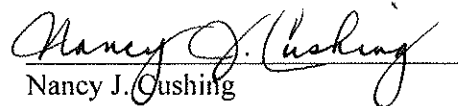
Absent: Mr. Britt. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10170 as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing

Effective Date: _____
(PennDOT will insert)

County(ies):	<u>Cambria</u>	Agreement #:	<u>097191</u>
Project Short Title:	<u>Point Stadium Bridge Rehabs</u>	MPMS #:	<u>96514</u>
Project (SR & Sec):	<u>SR 0056 - Section 01B</u>	Federal ID #:	<u>25-6000865</u>

SIDEWALK MAINTENANCE AGREEMENT

This Sidewalk Maintenance Agreement (“Agreement”) is made by and between the Commonwealth of Pennsylvania (“Commonwealth”), acting through the Department of Transportation (“PennDOT”)

and

The City of Johnstown, of the Commonwealth of Pennsylvania, (“Municipality”).

BACKGROUND

PennDOT is authorized to cooperate with political subdivisions of the Commonwealth in the coordination of plans and policies for the development of ground facilities, and is authorized to enter into all necessary contacts and agreements with political subdivisions of the Commonwealth pursuant to Sections 2002(a)(7) and 2001.1 of the Administrative Code of 1929, as amended, 71 P.S. §§512(a)(7) and 511.1.

PennDOT and the Municipality recognize that new construction must be accessible and usable by persons with disabilities; that alterations to existing facilities, within the scope or limits of a project, must provide usability by persons with disabilities to the maximum extent feasible; that existing facilities that have not been altered must not deny access to persons with disabilities; and, that all alteration type projects such as reconstruction, milling, resurfacing, must assess pedestrian needs and improve or upgrade altered existing facilities to the latest ADA standards.

The parties, intending to be legally bound, agree as follows:

1. **Project Location.** PennDOT shall design and construct a project involving improvements at the locations shown below (“Project”). PennDOT has determined sidewalk is appropriate as part of the Project:

County	State Route	Beginning Segment/Offset	Ending Segment/Offset
Cambria	SR 56	0120/0105	0120/0620
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

2. **Construction Plan.** PennDOT shall, with its own forces or by contract, install sidewalk in accordance with plans prepared by PennDOT. Such plans and installation shall comply with the Americans with Disabilities Act (“ADA”), as amended, and its related regulations, and in accordance the guidance set forth in PennDOT Publication 13M, Chapter 6, unless it is structurally impracticable to meet the requirements of the ADA and its related regulations, or there are insurmountable site or technical infeasibilities involved in the design or construction of the pedestrian facilities. Where existing such constraints limit the ability to fully meet the latest ADA standards, the improvements or upgrades must be done to provide access to the maximum extent feasible.
3. **Notice of Completion.** Upon completion of the Project by PennDOT or its contractors, PennDOT will send to the Municipality a written notice of completion.
4. **Maintenance.**
 - a. **Scope.** All references to sidewalk in this Agreement shall include curb ramps and blended transitions included as part of the Project.
 - b. **Municipality to Maintain Sidewalk.** Upon receipt of the written notice of completion the Municipality shall, at its sole cost and expense, provide for year-round maintenance of the sidewalk(s).
 - c. **Level of Service.** Sidewalk shall remain in operable working condition. The Municipality shall maintain those features of facilities and equipment required to be readily accessible to

and usable by persons with disabilities in accordance with 28 CFR § 35.133. The Municipality shall adopt standards and practices ensuring the Municipality's day-to-day operations to keep the pedestrian path of travel open and usable for all persons, including those with disabilities, throughout the year (including snow and debris removal, and maintenance of accessible pedestrian walkways in work zones).

- d. **Service Interruptions.** While isolated or temporary interruptions in service or access due to maintenance or repairs may be allowed, the Municipality shall ensure reasonable alternative pedestrian access accommodations for long-term disruptions.
- e. **Municipal Sidewalk Ordinances.** The Municipality, by ordinance, may provide its sidewalk maintenance responsibilities under this Agreement shall be performed by adjacent property owners.
- f. ***This provision is only applicable if the following box is checked:*** **Retaining Walls.**

PennDOT shall be responsible for structural maintenance of retaining walls supporting the travelled portion of the state highway available to motor vehicles, and the Municipality shall be responsible for structural maintenance of retaining walls exclusively supporting or whose sole purpose is to support curbing, footways, and sidewalk. The Municipality, to the extent provide for by law, may provide this maintenance responsibility shall be performed by adjacent property owners.

- g. ***This provision is only applicable if the following box is checked:*** **Sidewalks on Bridge.**

PennDOT shall maintain the structural integrity and substructure of the pedestrian facilities to ensure structural integrity of the sidewalk. The Municipality shall remove snow and debris from the sidewalk to ensure the path of travel on pedestrian facilities on the bridge is open and usable for all persons throughout the year. PennDOT and the Municipality shall also maintain accessible pedestrian walkways on bridges in their respective work zones and correct other disruptions each party may cause to such pedestrian walkways with only isolated or temporary disruptions in accessibility. Reasonable alternative pedestrian access accommodations shall be made for long-term disruptions. The Municipality, by ordinance, may provide its sidewalk maintenance responsibilities under this Agreement be performed by abutting property owners.

5. **Term and Termination.**

- a. **Term.** This Agreement shall continue in full force and effect indefinitely, unless terminated as provided in this Agreement. The effective date of this Agreement shall be the date this Agreement is fully executed by the Municipality and PennDOT and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature. Following full execution, PennDOT shall insert the effective date at the top of Page 1.
 - b. **Termination for Convenience of Non-Appropriation.** The parties may cancel or terminate this Agreement for convenience or non-appropriation until the date the Project is awarded, but not after that date. Each party shall bear the costs it incurred during the time this Agreement was in effect.
 - c. **Termination for Cause.** This Agreement shall not terminate for cause unless the cause renders it void or otherwise unenforceable. If one party alleges an event of default has occurred resulting in termination, and the other party disputes whether a breach has occurred, then this Agreement shall not terminate until and unless the dispute is resolved and this Agreement is determined to be void or otherwise unenforceable.
 - d. **Accrued Rights and Obligations.** Termination of this Agreement for any reason shall not release either party from any liability which, at the time of termination, has already accrued to the other party or which is attributable to a period prior to termination, nor preclude either party from pursuing any rights and remedies it may have with respect to any breach of this Agreement.
6. **Liquid Fuels Funds.** If the Municipality fails to perform the terms, conditions, or provisions of this Agreement, PennDOT may withhold the Municipality's Liquid Fuels Tax Fund Allocation to complete necessary work and reimburse PennDOT for the costs due.
7. **Notification of Required Action.** If PennDOT determines repair, maintenance, or other required action is necessary with respect to the sidewalk, PennDOT shall notify the Municipality in writing. The Municipality shall begin necessary work within five calendar days of receipt of PennDOT's notice. The Municipality or its contractor shall provide safeguards to protect the

safety of the traveling public during the work (including work zone traffic control in accordance with PennDOT regulations and publications). The Municipality shall be responsible for promptly completing the necessary work, even if the general maintenance responsibility for the sidewalk has been delegated to adjacent property owners or other parties; however, if a municipal ordinance makes the adjacent property owners financially responsible for the cost of the work, nothing shall prevent the Municipality from seeking reimbursement from them. If the Municipality fails to commence necessary work within this five-day period or fails to prosecute the work diligently to completion, PennDOT may perform the repair, maintenance, or other necessary action at the Municipality's sole cost and expense.

8. **Failure to Make Payment.** Failure by the Municipality to pay PennDOT within 45 days of receipt of an invoice for work performed by PennDOT shall constitute a default. Payment shall be deemed made as follows, according to the manner chosen:
 - a. If made in person, when tendered;
 - b. If made by electronic transfer, as provided by state and federal banking laws and regulations;
 - c. If made by U.S. First Class Mail, postage prepaid, when posted; or
 - d. If made by overnight delivery service having positive tracking, when picked up.

9. **Responsibility for Liability.** PennDOT shall pay for loss, liability or expense, which arises out of or relates to PennDOT's acts or omissions with respect to its obligations under this Agreement, where a final determination of liability on the part of PennDOT is established by a court of law or where settlement has been agreed to by PennDOT. This provision shall not be construed to limit PennDOT's rights, claims or defenses which arise as a matter of law or pursuant to this Agreement. This provision shall not be construed to limit the sovereign immunity of the Commonwealth or PennDOT. The Municipality shall pay for loss, liability or expense, which arises out of or relates to the Municipality's acts or omissions with respect to its obligations under this Agreement, where a final determination of liability on the part of the Municipality is established by a court of law or where settlement has been agreed to by the Municipality. This provision shall not be construed to limit the Municipality's rights, claims or defenses which arise as a matter of law or pursuant to this Agreement. This provision shall not be construed to limit immunity or defense of the Municipality (including those under the Political Subdivision Tort Claims Act, 42 Pa.C.S. §§ 8541-8564).

10. **Resolutions and Ordinances.** The Municipality shall pass ordinances or resolutions as may be necessary to accomplish the purposes of this Agreement.
11. **Notice.** Notices and reports arising out of, or from, this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Except for payments made in accordance with this Agreement, notice shall be deemed given when received.

If to PennDOT:
PennDOT District 9-0
Name
1620 North Juntia Street
Street
Hollidaysburg
City
PA 16648
State Zip
814-696-6834
Telephone
814-696-7149
Fax
jurbas@pa.gov
Email Address

If to Municipality:

City of Johnstown
Name
401 Main Street
Street
Johnstown
City
PA 15901
State Zip
814-533-2001
Telephone
N/A
Fax
aliston@cojtown.com
Email Address

A party may change its contact information by providing written notice to the other party.

12. **Amendments and Modifications.** No alterations or variations to this Agreement shall be valid unless made in writing and signed by the parties. Amendments to this Agreement shall be accomplished through a formal written document signed by the parties with the same formality as the original Agreement.
13. **Titles Not Controlling.** The titles of sections are for reference only, and shall not be used to construe the language in this Agreement.
14. **Severability.** The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.
15. **No Waiver.** Either party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by the other party of any term or condition of this Agreement. In any event, the failure by either party to enforce its rights and remedies under this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other term or condition of this Agreement.
16. **Independence of the Parties.** Nothing contained in this Agreement is intended or shall be construed to, in any respect, create or establish the relationship of partners between the Municipality and PennDOT, or as constituting PennDOT as the representative or general agent of the Municipality for any purpose whatsoever.
17. **Assignment.** This Agreement may not be assigned by the Municipality, either in whole or in part, without the written consent of PennDOT. This provision shall not apply to the transfer of maintenance responsibilities or obligations by the Municipality pursuant to an ordinance as provided for above.
18. **No Third-party Beneficiary Rights.** This Agreement does not create or intend to confer any rights in or on persons or entities not a party to this Agreement.
19. **Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if failure to perform arises out of causes beyond the control and without the fault or negligence of

the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions or freight embargoes. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

20. **Integration and Merger.** This Agreement and, if applicable, any attachments or exhibits when executed, approved and delivered, shall constitute the final, complete and exclusive Agreement between the parties containing the terms and conditions agreed on by the parties. Representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement unless specifically accepted by any other term or provision of this Agreement. No conditions precedent to the performance of this Agreement exist, except as expressly set forth in this Agreement.

[The remainder of this page is left blank intentionally.]

The parties have executed this Agreement to be effective as of the date of the last signature affixed below.

Attest: Municipality

BY Nancy J. Cushing
Title: City Clerk Date 3/20/19

BY Donna Hayfield
Title: City Manager Date 3/20/19

Please attach a resolution providing proof of signature authority for the signer to sign on behalf of the Municipality, Authority or other governmental entity. Signers need to indicate titles and date signatures.

DO NOT WRITE BELOW THIS LINE--FOR DEPARTMENT USE ONLY

APPROVED AS TO LEGALITY
AND FORM

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
for Chief Counsel Date

BY _____
Deputy Secretary or designee Date

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date

City Solicitor's Review and Approval
Pursuant to Home Rule Charter Article VIII. City Solicitor Duties

Date: _____

RESOLUTION NO. 10171

For consideration on March 13, 2019

Submitted by Councilpersons Stanton & Williams

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY PENNSYLVANIA, DIRECTING THE CITY MANAGER TO CONTACT, IN WRITING, THE ILLEGAL DUMP FREE PA PROGRAM TO SUBMIT AN APPLICATION FOR THE SURVEILLANCE CAMERA LOAN PROGRAM TO BE UTILIZED AT ROXBURY PARK RECYCLING CENTER.

Whereas, illegal dumping is unsightly, it also negatively affects the environment and the community.

Whereas, the Roxbury Park Recycling Center has become a site for frequent illegal dumping. Illegally dumped items have consisted of couches, chairs, mattresses, wood pallets, trash filled plastic crates, recycling containers from other municipalities, liquor and beer bottles, automobile tires, bags of household garbage etc.

Whereas, The ongoing Illegal Dump Free PA Surveillance Camera Loan Program is designed to provide surveillance cameras to eligible organizations in Pennsylvania to help capture evidence at active, illegal dumpsites. Keep Pennsylvania Beautiful (KPB) will loan three high quality surveillance cameras and provide training and assistance to selected applicants. Grant recipients will work with local enforcement agencies to ultimately reduce illegal dumping through public education and enforcement.

Through this grant program, municipalities receive a camera surveillance kit which includes three concealable, lockable cameras and accessories that capture usable, conviction worthy footage of license plates and illegal dumpers-even at night. Technical assistance for camera installation is provided.

ADOPTED: March 13, 2019

By the following vote:

Yeas: Mr. Williams, Mayor Janakovic, Rev. King, Mrs. Mock, Mrs. Stanton, Mr. Vitovich. (6)

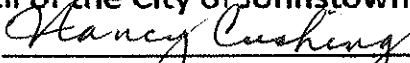
Nays: None (0)

Absent: Mr. Britt: (1)

Frank Janakovic, Mayor 

Marie Mock, Deputy Mayor _____

ATTEST: I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10171 as the same by the City Council of the City of Johnstown, Pennsylvania.


Nancy Cushing, City Clerk

City Solicitor's Review and Approval
Pursuant to Home Rule Charter Article VIII. City Solicitor Duties

Date: _____

RESOLUTION NO. 10172

For consideration on March 13, 2019

Submitted by Councilpersons Stanton & Williams

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY PENNSYLVANIA, DIRECTING THE CITY MANAGER TO CONTACT, IN WRITING, THE PENNSYLVANIA COUNTERDRUG TASK FORCE TO SEEK THEIR ASSISTANCE IN BOARDING UP AND DEMOLISHING DILAPITATED, UNSAFE, ABANDONED, VACANT RESIDENTIAL STRUCTURES IN THE CITY.

Whereas, The City of Johnstown is battling an opioid epidemic.

Whereas, the City of Johnstown has an overwhelming number of blighted abandoned structures, which have the potential to attract illegal activity, to include illicit drugs.

Whereas, the City of Johnstown has an obligation to provide for the health, safety and welfare of its residents.

Whereas, The Pennsylvania Counterdrug Joint Task Force (CJTF) is operated by the National Guard and provides Counterdrug support to government agencies that request assistance at no-cost to the agency supported.

Whereas, "The mission of the PA CJTF directly supports the Commonwealth of Pennsylvania's mission to improve the safety and welfare of Citizens of the Commonwealth of Pennsylvania. CJTF leverages unique National Guard capabilities to support community efforts against illicit drugs and emerging threats".

Whereas, assistance from the Pennsylvania Counterdrug Task Force would make our community safer by preventing abandoned structures from being used for illegal drug activity; In addition to revitalizing the neighborhood resulting from the demolition/board up of vacant, unsafe structures.

ADOPTED: March 13, 2019

By the following vote:

Yeas: Mayor Janakovic, Rev. King, Mrs. Mock, Mrs. Stanton, Mr. Vitovich, Mr. Williams. (6)


Nays: None (0)

Abstain Absent: Mr. Britt. (1)

Frank Janakovic, Mayor 

Marie Mock, Deputy Mayor _____

ATTEST: I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10172 as the same by the City Council of the City of Johnstown, Pennsylvania.


Nancy Cushing, City Clerk

CITY OF JOHNSTOWN,
CAMBRIA COUNTY, PENNSYLVANIA
RESOLUTION NO. 10173

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS REQUIRED TO AUTHORIZE A RIGHT-OF-WAY AGREEMENT AND EASEMENT BETWEEN THE CITY OF JOHNSTOWN AND THE UPPER YODER TOWNSHIP AUTHORITY.

WHEREAS, the City recognizes the public need being served by continued improvement of a public sanitary sewer system which serves the City of Johnstown owned Berkley Hills Golf Course property located in Upper Yoder Township

WHEREAS, said Right of Way Agreement and Easement as attached herein is in consideration of One Dollar and other good and valuable consideration to the City of Johnstown.

WHEREAS, the City shall grant a ten foot wide temporary construction easement and a fifteen foot permanent easement across City real property as shown on attached drawings.

WHEREAS, these easements shall run with the land and be binding upon the successors and assigns of the City of Johnstown

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Johnstown, hereby authorizes the City Manager to sign Right-Of-Way Agreement and Easement Agreement between the City of Johnstown and the Upper Yoder Township Authority, as written and attached herein.

ADOPTED: March 13, 2019

By the following Vote:

Yeas: Mayor Janakovic, Rev. King, Mrs. Mock, Mrs. Stanton, Mr. Vitovich, Mr. Williams. (6)

Nays: None (0)

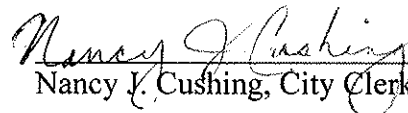
Absent: Mr. Britt. (1)



Frank. J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10173 as the same by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

UPI NO.: 62-008.-114.000

RIGHT-OF-WAY AGREEMENT AND EASEMENT

This Agreement made this _____ day of _____, 2019, by and between **The CITY of JOHNSTOWN, a City of the Third Class and organized under the laws of the Commonwealth of Pennsylvania** with its principal place of business located at 401 Main Street, Johnstown, Pennsylvania, 15901, hereinafter called the "Grantor"

AND

UPPER YODER TOWNSHIP AUTHORITY, a municipal authority, organized under the laws of the Commonwealth of Pennsylvania having offices located at 110 Sunray Drive, Suite 1, Johnstown, Pennsylvania 15905, hereinafter called the "Grantee"

WITNESSETH, that for and in the consideration of the sum of ONE AND 00/100 (\$1.00) DOLLAR paid to Grantor, receipt of which is hereby acknowledged, and other good and valuable consideration, and also in consideration of the benefits which will inure to the Grantor and the general public through continuation and improvement of Grantee's ability to provide public sanitary sewer service, said Grantor does hereby give, grant and convey unto the said Grantee, Upper Yoder Township Authority, its successors and assigns, a temporary and permanent easement to construct, install, operate and maintain its sanitary sewer lines together with necessary appurtenances, including but not limited to replacement of its pump station and wet well, for use by its present and future customers including Grantor, with the right of ingress, egress and regress; in, through, under, and across lands of the Grantor situated at the Southwesterly corner of Grantor's golf course (Deed Book Volume 370, Page 132) located at 361 Goucher Street in the Township of Upper Yoder, County of Cambria, and Commonwealth of Pennsylvania, more particularly described and shown on the drawing of Mesko & Associates, Inc., dated January 17, 2019, and attached hereto.

UPI NO.: 62-008.-114.000

The permanent easement is fifteen (15) feet wide and runs seventy-five (75) feet along the Easterly side of a Service Court which is adjacent to property lines of lands now or formerly of Raymond Kucera, et ux. at 467 Girard Street and lands now or formerly of John Lamb et ux. at 469 Girard Street. The temporary construction easement is ten (10) feet in width and fifty (50) feet in length adjacent to the Southeasterly side of the permanent easement. The temporary easement shall expire and shall extinguish upon completion of the initial construction of the sewer line, pump station and wet well and restoration of the property of Grantor. Grantee currently holds a permanent easement running from Girard Street and in between the aforementioned 467 and 469 Girard Street

properties. Said easement no longer meets the Pennsylvania Department of Environmental Protection standards for reconstruction of a pump station and wet well, however, the same will be utilized for ingress and egress to the permanent and temporary easements described herein.

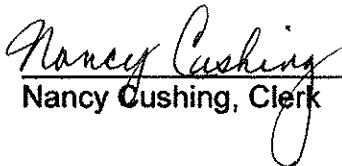
Grantee agrees to indemnify defend and hold harmless, the Grantor, its officials, officers, directors, agents, employees, successors, contractors, lessees and assigns (collectively, the "Grantor Parties"), for any claims, suits, demands, injuries, death, losses, damages (including consequential damages), costs, expenses, deficiencies, judgments and liabilities, including reasonable legal fees and other costs and expenses related thereto with regard to any person or property (collectively, a "Liability") as a result of issuing these easements or any permits related to the property covered by these easements, or the acts or failure to act by Grantee, its agents, employees, contractors, successors and assigns, or any person claiming under Grantee (collectively, the "Grantee Parties"), except for any Liability which is proximately caused by or results proximately from the negligence of Grantor in its maintenance, use and control of the land over which these easements pass.

Grantee shall have the right to hold said Permanent Right-of-Way and Easement for all purposes aforementioned, for so long as the easements are utilized for sanitary sewage conveyance provided, however, that the Grantee, its successors and assigns, shall promptly restore and replace the grounds and property affected by the reconstruction, maintenance and repair and replacement of said sewer line, pump station, and wet well to the same condition as the grounds surrounding the same were immediately prior to the re-construction project. Grantor reserves the right to landscape the affected area and to use the same for ingress, egress and its intended recreational activities, but Grantor shall not construct any other permanent improvements or substantially obstruct Grantee's access to the sewer line, pump station or wet well or place fill in the easement area.

This Easement will run with the land and will be binding upon the successors and assigns of the Grantor.

IN WITNESS WHEREOF, we, the City Manager and City Clerk, being duly authorized by action of the City of Johnstown Council and Mayor and intending to be legally bound hereby have hereto set our hands and seals.

ATTEST:

 (SEAL)
Nancy Cushing, Clerk

CITY OF JOHNSTOWN

By: 
George Hayfield - Manager

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10174

A RESOLUTION OF CITY COUNCIL, OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE WEST END LIONS CLUB TO PLACE A LION AND LAMB STATUE IN THE FLAG PLAZA.

WHEREAS, THE LIONS CLUB IS A LONG ESTABLISHED CIVIC ORGANIZATION SERVING CHARITABLE CAUSES IN THE CITY OF JOHNSTOWN AND THE REGION.

WHEREAS, THE WEST END LIONS CLUB WISHES TO MAKE PERMANENT IMPROVEMENT TO THE FLAG PLAZA BY PLACEMENT OF A STATUE FIXED AND ENCLOSED IN PLEXIGLASS. DEDICATION TO TAKE PLACE IN THE SPRING.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA TO AUTHORIZE THE WEST END LIONS CLUB TO PLACE A LION AND LAMB STATUE IN THE FLAG PLAZA.

ADOPTED:

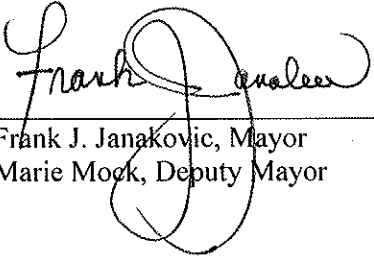
March 13, 2019

By the following Vote:

Yeas: Rev. King, Mrs. Mock, Mrs. Stanton, Mr. Vitovich, Mr. Williams, Mayor Janakovic. (6)

Nays: None (0)

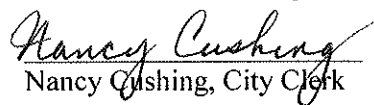
Absent: Mr. Britt. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10174** as the same by the City Council of the City of Johnstown, Pennsylvania.



Nancy Cushing, City Clerk