

CITY OF JOHNSTOWN, PENNSYLVANIA  
RESOLUTION NO. 10175

A RESOLUTION, AS AMENDED, OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS REQUIRED TO FACILITATE AN EXTENSION OF CURRENT CONTRACT FOR WASTE COLLECTION SERVICES WITH ADVANCED DISPOSAL, CURRENT CONTRACT ENDING APRIL 30, 2019, AND EXTENDING CONTRACT END DATE TO AUGUST 31, 2019. CUSTOMER RATE FOR THE FOUR MONTH CONTRACT EXTENSION IS 62.92 (15.73 PER MONTH)

WHEREAS, THE CITY HAS PROVIDED WASTE COLLECTION AND RECYCLING SERVICES TO THE CITY OF JOHNSTOWN BY CONTRACTED AGREEMENT WITH ADVANCED DISPOSAL WITH CONTRACT EXPIRATION APRIL 30, 2019.

WHEREAS, REQUEST FOR PROPOSALS (RFB) FOR CONTRACTED WASTE COLLECTION AND RECYCLING SERVICES ARE CURRENTLY BEING SOUGHT FOR 2019 THROUGH 2024.

WHEREAS, THE INDIVIDUAL CUSTOMER RATE SHALL BE 62.92 FOR THE FOUR MONTH PERIOD OF CONTRACT EXTENSION OR 15.73. AN INCREASE FROM THE CURRENT COST OF FOUR MONTH SERVICE OF 50.92 OR 12.73 PER MONTH.

WHEREAS, THIS RATE INCREASE SHALL APPLY ONLY FOR THE CONTRACT EXTENSION PERIOD FROM MAY 1, 2019 TO AUGUST 31, 2019.

WHEREAS, THE CITY REQUIRES AN EXTENSION OF CONTRACTED SERVICES BY ADVANCED DISPOSAL FROM MAY 1, 2019 TO AN END DATE OF AUGUST 31, 2019 TO ALLOW FOR RFB PROCESS AND WASTE AND RECYCLING COLLECTION TRANSITION PERIOD COMPLETION.

WHEREAS, DEADLINE FOR RECEIVING BIDS FOR WASTE AND RECYCLING SERVICES FOR 2019-2024 IS APRIL 30<sup>TH</sup>, 2019 AND COUNCIL APPROVAL OF THE MOST RESPONSIBLE BID IS PROJECTED TO BE MAY, 8, 2019.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA THAT AUTHORIZATION IS GIVEN TO THE CITY MANAGER TO SIGN ALL DOCUMENTS REQUIRED TO FACILITATE AN EXTENSION OF CONTRACTED WASTE COLLECTION AND RECYCLING SERVICES BY ADVANCED DISPOSAL FROM APRIL 30, 2019 UNTIL AN END DATE OF AUGUST 31, 2019. AT A RATE OF 62.92 FOR FOUR PERIOD PER RESIDENTIAL CUSTOMER OR 15.73 PER MONTH.

ADOPTED:

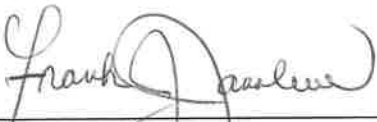
April 10, 2019

By the following vote:

Yeas: Mr. Vitovich, Mayor Janakovic, Mrs. Mock. (3)

Nays: Rev. King, Mrs. Stanton. (2)

Absent: Mr. Williams, Mr. Britt. (2)

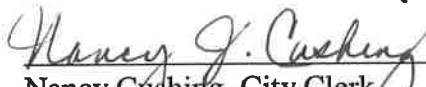


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Frank J. Janakovic, Mayor  
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10175 as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



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Nancy Cushing, City Clerk



March 1, 2019

**ORIGINAL BY CERTIFIED MAIL / COPY BY EMAIL**

Mr. George Hayfield, City Manager  
City of Johnstown - City Hall, Room 102  
401 Main St  
Johnstown, PA 15902

RE: Waste Services Agreement - Temporary Extension 5/1 - 8/31/19

Dear Mr. Hayfield:

**This letter serves as follow-up to our 2/28-3/1/19 email communications regarding an additional City requested temporary continuation of waste collection services by Advanced Disposal Services ("ADS") on behalf of the City of Johnstown ("The City"). As I stated in my email reply, ADS is willing to agree to an additional 120-day temporary extension from 5/1/19 to 8/31/19.**

- Issue a new public Request for Proposal (RFP) for said services, on or before April 30, 2019; and
- The rate charged by Advanced Disposal to the City/Residents during such additional 120-day temporary extension period (5/1-8/31/19) shall be \$15.73 per unit per month in accordance with this referenced letter agreement. The new rate will take effect on May 1, 2019.

Kindly acknowledge the City's agreement with the foregoing by signing below and returning a copy of this letter to me. Should you have any questions or concerns, please feel free to contact me at (724) 737-7479. Thank you for your time and consideration.

The foregoing is hereby accepted and agreed to by the City of Johnstown this 10<sup>th</sup> day of April 2019.

CITY OF JOHNSTOWN

BY George Hayfield  
(Printed Name)

George Hayfield  
(Signature)

Its City Manager  
(Title)



Best Regards,

A handwritten signature in black ink, appearing to read "Ernie J. Pavan, Jr.", written over a horizontal line.

Ernie J. Pavan, Jr.  
General Manager

cc: Mike Yelinek  
Carl (Alan) Barnhart  
Ron Carlson

CITY OF JOHNSTOWN,  
CAMBRIA COUNTY, PENNSYLVANIA  
RESOLUTION NO. 10176

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA, AUTHORIZING THE CITY MANAGER TO INITIATE THE TRANSFER OF FUNDS FROM INSURANCE DEDUCTIBLE/ ACCIDENT EXPENSES ACCOUNT TO BE TRANSFERRED INTO THE FLOOD INSURANCE ACCOUNT AS DETAILED HEREIN

WHEREAS, budget transfers are required from time to time between departments to maintain positive City budget account balance;

WHEREAS, the following interdepartmental transfer is required to maintain said balance;

GENERAL FUND				Adjusted Budget
Department	TR to line Item	TR from line item	Amount	Balance
Flood Insurance	01.481.35.123.00	01.489.11.126.00	\$4,189	0.00

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, that the City of Johnstown hereby authorizes the City Manager to initiate the transfer of funds from the Insurance Deductible/ Accident Expenses account to the Flood Insurance Account.

ADOPTED:

April 10, 2019


By the following Vote:

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

Nays: None (0)

Abstain: Mrs. Stanton. (1)

Absent: Mr. Williams, Mr. Britt. (2)

  
\_\_\_\_\_  
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. 10176 as the same by the City Council of the City of Johnstown, Pennsylvania.

  
\_\_\_\_\_  
Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA  
RESOLUTION NO. 10177

A RESOLUTION, AS AMENDED, OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN, UPON SOLICITOR APPROVAL, ALL DOCUMENTS NECESSARY TO EXECUTE A LEASE AND LICENSE AGREEMENT WITH CAPRI PIZZA AND RESTAURANT THROUGH DECEMBER 31, 2019.

WHEREAS, the City of Johnstown owns Sargent's Stadium at the Point and the concession stands within the Stadium; and

WHEREAS, Capri Pizza and Restaurant wishes to use the concession stands at Point Stadium to sell food and beverage products to the general public; and

WHEREAS, the City wishes to lease the concession stands at the stadium and grant an exclusive license to Capri Pizza and Restaurant pursuant to the terms and conditions of the attached lease and license agreement; and

WHEREAS, Capri Pizza and Restaurant shall pay the City of Johnstown a rental fee equal to twenty-five percent (25%) of total net profits or five percent (5%) of total sales, whichever is greater. Payments to the City will be made monthly, on or before the thirtieth (30<sup>th</sup>) day following the end of each month. Along with payment, Capri Pizza and Restaurant is required to provide monthly financial statements outlining the calculation of net profit and total sales. The City may also require financial statements for single events.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Cambria County, Pennsylvania that the City Manager is authorized and directed to sign, upon Solicitor review, all documents necessary to execute a lease agreement with Capri Pizza and Restaurant through December 31, 2019.

ADOPTED:


April 10, 2019

By the following vote:

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

Nays: Mrs. Stanton. (1)

Absent: Mr. Britt, Mr. Williams. (2)

  
\_\_\_\_\_  
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. 10177 as the same adopted by the City Council of the City of Johnstown, Pennsylvania.

  
\_\_\_\_\_  
Nancy J. Cushing, City Clerk

LEASE and LICENSE

CONCESSION OPERATIONS at POINT STADIUM

THIS LEASE dated the 1st day of January, 2019, by and between THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, a municipal corporation under the laws of the Commonwealth of PA, with its principal place of business located at 401 Main Street, Johnstown, Pennsylvania, 15901 (hereinafter "CITY")

AND

CAPRI PIZZA AND RESTAURANT, 500 Salmon Avenue, Johnstown, PA 15904 (hereinafter "RENTER")

PREAMBLE

WHEREAS, the City of Johnstown owns the Point Stadium and the concession stands within the Stadium, and;

WHEREAS, the RENTER wishes to use the concession stand to sell food and beverage products to the general public, and;

WHEREAS, the City wishes to lease the concession stand to the Renter pursuant to the terms and conditions of this lease.

NOW THEREFORE, with the intent to be legally bound, the City and Renter hereto agree as follows:

I. PREMISES AND TERM

- a. The City hereby grants Renter the exclusive license to sell food and beverages at the Point Stadium and leases the concession stands located at the Point Stadium beginning as of January 1, 2019, and continuing thereafter until December 31, 2019. Renter shall have the exclusive use of the concession stands for the above term and the exclusive right to sell food and beverages at the Point Stadium for the above term. During this term, approval of any outside vendor may be authorized upon mutual agreement of the parties.
- b. Upon expiration of the initial term hereof, the parties may mutually agree to extend the term for one, one-year period. If the City agrees to extend the initial term with the Renter, it shall be pursuant to the same conditions and terms contained herein.
- c. Nothing contained herein shall prohibit the City from seeking and awarding requests for proposals for the concession site at the expiration of the initial term.

II. PROVISION OF SUPPLIES AND EQUIPMENT

- a. All equipment, personnel, supplies, and preparation incidental to the establishment, maintenance, and operation of the concession stands are the responsibilities of the Renter.



- c. The Renter will assume the right of being the only vendor to sell or ask for a donation of all food and beverage at the Point Stadium . Any outside vendors must, as discussed above, be mutually approved by the Renter and the City collectively.

IX. STAFFING REQUIREMENTS

- a. The Renter is required to adequately staff the concession stand at all relevant times.

X. DEFAULT AND CANCELLATION

- a. The Renter is required to comply with all stated requirements of this lease. If the Renter violates this lease, and after ten (10) days written notice by the City, has not corrected the violation, the City shall have the right to terminate the lease.

XI. MISCELLANEOUS

- a. The Renter shall comply with all applicable laws, ordinances, regulations, and current City vendor contracts. The Renter shall obtain all required permits. Upon the discovery of any violation of the law or local ordinance and regulation, and the City retains the right to immediately void this Lease and License Agreement and to prosecute the responsible party to the fullest extent available.
- b. The Renter shall keep the concession stands and surrounding areas clean and free of litter and debris, as well as, discarded food and drink.
- c. The Renter shall be responsible at its sole cost for any damages to the facilities that are a result of their activities, outside of normal wear and tear.
- d. Utilities shall be the responsibility of the City of Johnstown.
- e. At the end of each season, the Renter shall empty, clean, and unplug all appliances kept in the facilities. The Renter will also make arrangements with Pepsi to have the fountain machines flushed and winterized. The City shall give the Renter adequate time at the end of each season to fulfill this requirement.
- f. The City shall provide the Renter with appropriate keys for access to the Point Stadium and its concession stand. The City will ensure that only the appropriate, authorized person(s) have keys and access to concession stand and that no one shall enter the concession stand without direct supervision by an authorized individual.

XII. MODIFICATION

- a. This contract may be modified by mutual consent. All such changes or modifications shall be in writing as addendums to this lease.

XIII. NOTICES

- a. Notice here under shall be given only by certified letter and shall be deemed given when the notice is mailed to the party to which it is addressed. Any notices shall be addressed as follows:

To City:           City Manager  
                      City Hall  
                      401 Main Street  
                      Johnstown, PA 15901

To Renter:        Capri Pizza and Restaurant  
                      ATTN: Daniella DiRosa



CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10178

A RESOLUTION OF CITY COUNCIL, OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE CITY MANAGER AND CITY SOLICITOR TO EXECUTE THE ATTACHED SETTLEMENT AGREEMENT WITH RICHARD I. AND STELLA A. SOMIARI TO RESOLVE A TAX ASSESSMENT APPEAL REGARDING A PROPERTY LOCATED AT 633 NAPOLEON STREET JOHNSTOWN, PA 15901, AND TO TAKE ANY/ALL ACTIONS NECESSARY TO EFFECTUATE SAME.

WHEREAS, Richard I. and Stella A. Somiari, filed a Tax Assessment Appeal in the Court of Common Pleas of Cambria County at Docket No. 2018-4316, challenging the estimated fair market value of \$600,408.00 assigned to its property located at 633 Napoleon Street, Johnstown, PA 15901, and

WHEREAS, after the parties exchanged appraisals, the parties, to include the City, the Cambria County Tax Assessment Office and the Greater Johnstown School District have engaged in settlement discussions with Richard I. and Stella A. Somiari, and identified a value on the property of \$540,000 as a reasonable value upon which to resolve the matter; and

WHEREAS, the proposed settlement agreement is attached hereto as Attachment A;

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA TO AUTHORIZE THE CITY MANAGER AND CITY SOLICITOR TO EXECUTE AND TAKE ANY/ALL ACTIONS NECESSARY TO EFFECTUATE THE ATTACHED SETTLEMENT AGREEMENT TO RESOLVE THE TAX ASSESSMENT APPEAL ADDRESSING THE LITIGATION FILED BY RICHARD I. AND STELLA A. SOMIARI, IN RELATION TO PROPERTY LOCATED AT 633 NAPOLEON STREET JOHNSTOWN, PA 15901, FOR A FAIR MARKET VALUE OF \$540,000.

ADOPTED: April 10, 2019

By the following Vote:

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

Nays: Mrs. Stanton. (1)

Absent: Mr. Williams, Mr. Britt. (2)

  
\_\_\_\_\_  
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. **10178** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.

  
\_\_\_\_\_  
Nancy Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10179

A RESOLUTION OF CITY COUNCIL, OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE CITY MANAGER AND CITY SOLICITOR TO EXECUTE THE ATTACHED SETTLEMENT AGREEMENT WITH SALEM FAMILY LIMITED PARTNERSHIP TO RESOLVE A TAX ASSESSMENT APPEAL REGARDING A PROPERTY LOCATED AT 81 OSBOURN STREET JOHNSTOWN, PA 15905, AND TO TAKE ANY/ALL ACTIONS NECESSARY TO EFFECTUATE SAME.

WHEREAS, Salem Family Limited Partnership, filed a Tax Assessment Appeal in the Court of Common Pleas of Cambria County at Docket No. 2018-4476, challenging the estimated fair market value of \$725,000.00 assigned to its property located at 81 Osbourn Street, Johnstown, PA 15905, and

WHEREAS, after the parties exchanged appraisal values, the parties, to include the City, the Cambria County Tax Assessment Office and the Greater Johnstown School District have engaged in settlement discussions with Salem Family Limited Partnership, and identified a value on the property of \$685,000 as a reasonable value upon which to resolve the matter; and

WHEREAS, the proposed settlement agreement is attached hereto as Attachment A;

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA TO AUTHORIZE THE CITY MANAGER AND CITY SOLICITOR TO EXECUTE AND TAKE ANY/ALL ACTIONS NECESSARY TO EFFECTUATE THE ATTACHED SETTLEMENT AGREEMENT TO RESOLVE THE TAX ASSESSMENT APPEAL ADDRESSING THE LITIGATION FILED BY SALEM FAMILY LIMITED PARTNERSHIP, IN RELATION TO PROPERTY LOCATED AT 81 OSBOURN STREET JOHNSTOWN, PA 15905, FOR A FAIR MARKET VALUE OF \$685,000.

ADOPTED:

April 10, 2019

By the following Vote:

Yeas: Mrs. Mock, Mrs. Stanton, Mr. Vitovich, Mayor Janakovic, Rev. King. (5)

Nays: None (0)

Absent: Mr. Williams, Mr. Britt. (2)



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. 10179 as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA  
RESOLUTION NO. 10180

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO EXECUTE AN IMPLEMENTATION AGREEMENT WITH THE PENNSYLVANIA HIGHLANDS COMMUNITY COLLEGE FOR ADMINISTRATION AND IMPLEMENTATION OF THE CURE FOR VIOLENCE PROGRAM AS 100% FUNDED UNDER A \$150,000 GRANT FROM THE PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY AWARDED TO THE CITY OF JOHNSTOWN.

WHEREAS, the City of Johnstown has received proposals (RFP's) pertinent to the needs of the City in implementation of the Cure For Violence Program and chosen the proposal of Pennsylvania Highlands Community College as the most responsive; and

WHEREAS, the Cure For Violence Program as administered by Pennsylvania Highlands Community College shall operate a program designed to prevent and therefore reduce violent crime in the City for a one year grant period with renewal of one year upon receipt of additional grant funding; and

WHEREAS, the grant administrator shall implement a model program that may be sustainable in the community; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, that the City of Johnstown hereby selects Pennsylvania Highlands Community College to implement and administer the Cure For Violence Program as funded by the Pennsylvania Commission on Crime and Delinquency in a grant award of \$150,000 and further hereby authorizes the City Manager to execute any/all agreements and notices necessary to effectuate same.

ADOPTED:

April 10, 2019

By the following Vote:

Yeas: Mayor Janakovic, Rev. King, Mrs. Mock, Mrs. Stanton, Mr. Vitovich. (5)

Nays: None (0)

Absent: Mr. Britt, Mr. Williams. (2)

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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. **10180** as the same by the City Council of the City of Johnstown, Pennsylvania.

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Nancy J. Cushing, City Clerk

## Cure for Violence Implementation Agreement

This Cure for Violence Implementation Agreement (this "Agreement"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, to be effective as of April 1, 2019 (the "Effective Date"), by and between PENNSYLVANIA HIGHLANDS COMMUNITY COLLEGE., a Pennsylvania postsecondary educational institution, with offices at 101 Community College Way, Johnstown, Pennsylvania 15904 ("College"), and the City of Johnstown, a municipal corporation, with offices at 401 Main Street, Johnstown, Pennsylvania 15901 (the "City"), and together with the College the "Parties", and each, a "Party").

WHEREAS, the College has been awarded the vendor for the Cure Violence Program (collectively, the "Program"); and

WHEREAS, the College and the City desire to reduce their understanding to writing.

NOW, THEREFORE, in consideration of the aforesaid premises, mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Services. College shall advertise and contract with the position of Program Manager, Outreach Caseworker and two (2) Violence Interrupters as required by the Cure for Violence Program. The College will also provide mobile phones for all program positions and will provide identifying clothing for the Violence Interrupters.
2. Location and Equipment. College shall provide office space for the Program Manger and Outreach Caseworker at its Downtown Center and at the Main Campus in Richland. In addition, both the Program Manager and Outreach Caseworker will have access to a computer, printer, and office phone.
3. College's Covenants. In addition to other obligations of College set forth elsewhere in this Agreement:
  - 3.1 College's Obligations. College shall:
    - (a) appoint:
      - (i) a College employee to serve as a primary contact with respect to this Agreement and who will have the authority to act on behalf of College in connection with matters pertaining to this Agreement (the "College Contract Manager"); and
      - (ii) personnel, who shall be suitably skilled, experienced and qualified to perform the interact with the Cure Violence program personnel and act as liaison to the Hope 4 Johnstown organization (the "College Personnel").

(b) maintain the same College Contract Manager throughout the Term (as defined in Section 6) of this Agreement except for changes in such personnel due to:

(i) the City's request pursuant to Section 3.1(c); or

(ii) the death, disability, resignation or termination of such personnel or other circumstances outside of College's reasonable control.

(c) upon the reasonable written request of the City, promptly replace the College Contract Manager and any other College Personnel;

(d) maintain complete and accurate records relating to the provision of the Cure for Violence program information including clients served, services provided, meetings held and any other relevant information that documents aspects of the program's implementation.

4. City Covenants. In addition to other obligations of the City set forth elsewhere in this Agreement:

4.1 City Contract Manager. The City shall appoint a City employee to serve as a primary contact with respect to this Agreement and who will have the authority to act on behalf of the City in connection with matters pertaining to this Agreement (the "City Contract Manager").

5. Payment Terms.

5.1 Payments to College for Services. The College shall invoice the City for reimbursement of costs incurred in implementing the Cure for Violence program. This includes costs associated with contracted personnel and other expenditures.

6. Term and Termination.

6.1 Initial Term. The term of this Agreement commences on the Effective Date and continues for a period of one (1) year, unless and until earlier terminated as provided under this Agreement (the "Initial Term").

6.2 Renewal Terms. Upon expiration of the Initial Term, this Agreement could be extended to an additional year pending securing of additional funds to sustain it.

6.3 College's Right to Terminate. College may terminate this Agreement upon written notice to the City:

(a) if the City fails to pay any amount when due under this Agreement ("Payment Failure") and such failure continues for five (5) days after the City's receipt of written notice of nonpayment;

(b) if the City breaches any other provision of this Agreement, and either the breach cannot be cured or, if the breach can be cured, it is not cured by the City within thirty (30) days after the City's receipt of written notice of such breach.

6.4 City's Right to Terminate. The City may terminate this Agreement upon written notice to College:

(a) if College materially breaches any material provision of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by College within thirty (30) days after College's receipt of written notice of such breach; or

6.5 Effect of Termination; Survival.

(a) Expiration or termination of the Agreement will not affect any rights or obligations of the Parties that:

(i) come into effect upon or after expiration or termination of this Agreement; or

(ii) by their nature should apply beyond the Term of this Agreement.

(b) Any notice of termination under this Agreement automatically operates as a cancellation of any Services that are scheduled to take place subsequent to the effective date of termination.

(c) Subject to Section 6.5(a), the Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of either Party's rights, remedies or defenses under this Agreement, at law, in equity, or otherwise.

7. Governing Law. This Agreement and all related documents including all schedules attached hereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Pennsylvania, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Pennsylvania.

8. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the Court of Common Pleas of Cambria County, Pennsylvania, and any appellate court from thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the Court of Common Pleas of Cambria County, Pennsylvania. Each Party agrees that a final judgment in any

such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

9. No Subcontracting. College may not subcontract the performance of any of its duties or obligations under this Agreement to any person or entity.

10. Force Majeure. College shall not be liable or responsible to the City, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the College's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) laws and regulations; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

12. Further Assurances. Each of the Parties hereto shall execute and deliver, at the reasonable request of the other Party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other Party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

13. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand; (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) or by email if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section 13).

If to College:

Pennsylvania Highlands Community College  
101 Community College Way  
Johnstown, PA 15904



Facsimile: 814-269-9744

Email: [bzabor@pennhighlands.edu](mailto:bzabor@pennhighlands.edu)

Attention: Barbara Zaborowski

If to the City:

\_\_\_\_\_ City

\_\_\_\_\_

\_\_\_\_\_, PA \_\_\_\_\_

Facsimile:

Email:

Attention:

14. Integration. This Agreement and all related exhibits and schedules, 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 the subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

WITNESS:

\_\_\_\_\_ CITY

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

PENNSYLVANIA HIGHLANDS  
COMMUNITY COLLEGE.

\_\_\_\_\_

By: \_\_\_\_\_

Walter J. Azonevich, Ph.D., President

CITY OF JOHNSTOWN, PENNSYLVANIA  
RESOLUTION NO. 10181

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA REPEALING RESOLUTION NO. 10156 ADDRESSING THE TRANSFER OF CERTAIN CITY PROPERTY ON THE INCLINED PLANE HILLSIDE DUE TO THE ACCOMPLISHMENT OF SAID TRANSFER VIA ORDINANCE.

WHEREAS, Resolution No. 10156 regarding a proposed transfer of certain City property on the Inclined Plane Hillside to Conemaugh Valley Conservancy for the price of \$1.00 was previously adopted by the City Council at its February 2019 regular meeting; and

WHEREAS, the City Council subsequently introduced an Ordinance to confirm and approve said transfer, in lieu of a Resolution; and

WHEREAS, the City wishes to clarify, procedurally, that this matter was accomplished via Ordinance and not through the previously adopted Resolution; and

WHEREAS, the adoption of this Resolution repealing Resolution No. 10156 shall not serve to invalidate the transfer in any fashion, but rather eliminate procedural questions;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Cambria County, Pennsylvania that Resolution No. 10156 is hereby repealed.

ADOPTED:

April 10, 2019

By the following vote:

Yeas: Mrs. Stanton, Mr. Vitovich, Mayor Janakovic, Rev. King, Mrs. Mock. (5)

Nays: None (0)

Absent: Mr. Williams, Mr. Britt. (2)




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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. **10181** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN,  
CAMBRIA COUNTY, PENNSYLVANIA  
RESOLUTION NO. 10182

A RESOLUTION OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA SUPPORTING BRIDGE REHABILITATION PROJECTS WITHIN THE CITY OF JOHNSTOWN AND AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS AS REQUIRED BY THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION TO IMPLEMENT BRIDGE REHABILITATION ON BRIDGES AT D STREET/ ST. CLAIR RUN AND MINE PLACE STREET/ SOLOMON RUN.

WHEREAS; The Pennsylvania Department of Transportation (PennDOT) has proposed and is now undertaking the Cambria County Local Non-Composite Bridge Rehabilitation Project in the following locations within The City of Johnstown:

Ash Street Bridge  
D Street Bridge  
McMillan Street Bridge  
Mine Place Street Bridge  
Oak Street Bridge

WHEREAS; the bridge projects proposed for 2019 are at D street over St. Clair Run and Mine Place Street over Solomon Run

WHEREAS; one hundred percent of the cost of removing, rehabilitating, or replacing these eligible bridges shall be funded by state or federal funds or a combination of both.

WHEREAS; these bridge rehabilitation projects will involve replacement of the existing bituminous bridge decks with composite concrete bridge decks and minimal approach roadway work.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Johnstown, hereby authorizes the City Manager to sign all documents as required by the Pennsylvania Department of Transportation to implement the rehabilitation of bridges in the City of Johnstown under the Cambria County Local Non-Composite Bridge Rehabilitation Project.

ADOPTED:

April 15, 2019

By the following Vote:

Yeas: Mr. Vitovich, Mayor Janakovic, Rev. King, Mrs. Mock, Mrs. Stanton. (5)

Nays: None (0)

Absent: Mr. Williams, Mr. Britt. (2)



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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. **10182** as the same by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10183

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO EXECUTE FACILITY ENCROACHMENT AGREEMENTS CSX882230 AND CSX882235 WITH CSX TRANSPORTATION, INC FOR PROPERTY LOCATED IN JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA.

WHEREAS, THE CITY OF JOHNSTOWN WISHES TO CONSTRUCT, USES AND MAINTAIN THE BELOW DESCRIBED FACILITY(IES) HEREIN AFTER CALLED "FACILITIES", OVER, UNDER OR ACROSS PROPERTY OWNED OR CONTROLLED BY CSX TRANSPORTATION, INC. AT THE BELOW DESCRIBED LOCATIONS.

1. FACILITY ENCROACHMENT AGREEMENT CSX882230 HAS ONE (1) EXISTING PREVIOUSLY UNDOCUMENTED EIGHT INCH (8") DIAMETER SUB-GRADE PIPELINE CROSSING FOR CONVEYANCE OF RAW/UNTREATED SANITARY SEWAGE, LOCATED AT OR NEAR JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA, BALTIMORE DIVISION, S & C SUBDIVISION, MILEPOST BFC-44.86, LATITUDE N40:19:28.00, LONGITUDE W78:54:50.00 AND;

2. FACILITY ENCROACHMENT AGREEMENT CSX882235 HAS ONE (1) EXISTING PREVIOUSLY UNDOCUMENTED TWELVE INCH (12") DIAMETER SUB-GRADE PIPELINE CROSSING FOR CONVEYANCE OF RAW/UNTREATED SANITARY SEWAGE, LOCATED AT OR NEAR JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA, BALTIMORE DIVISION, S & C SUBDIVISION, MILEPOST BFC-44.92, LATITUDE N40:19:31.00, LONGITUDE W78:54:49.00.

WHEREAS, THE CSX TRANSPORTATION, INC. WILL ALLOW THE MAINTENANCE AND CONSTRUCTION TO OCCUR ONLY AFTER AN AGREEMENT IS SIGNED WITH BOTH PARTIES LEGAL COUNSEL HAVING THE ABILITY TO REVIEW AND COMPOSE A FACILITY ENCROACHMENT AGREEMENT.

NOW THEREFORE IT BE RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZES THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO EXECUTE FACILITY ENCROACHMENT AGREEMENTS CSX882230 AND CSX882235 WITH CSX TRANSPORTATION, INC FOR PROPERTY, AS DESCRIBED ABOVE, LOCATED IN JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA

ADOPTED:

April 10, 2019

BY THE FOLLOWING VOTE:

YEAS: Mayor Janakovic, Rev. King, Mrs. Mock, Mrs. Stanton, Mr. Vitovich. (5)

NAYS: None (0)

ABSENT: Mr. Williams, Mr. Britt. (2)



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FRANK J. JANAKOVIC, MAYOR  
MARIE MOCK, DEPUTY MAYOR

ATTEST:

I DO HEREBY CERTIFY THAT THE FOREGOING IS TRUE AND CORRECT COPY OF RESOLUTION NO. **10183** AS THE SAME ADOPTED BY THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA.



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Nancy J. Cushing, City Clerk

## FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective as of March 6, 2019, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF JOHNSTOWN, a municipal corporation, political subdivision or state agency, under the laws of the State of Pennsylvania, whose mailing address is 401 Main Street, Johnstown, Pennsylvania 15901, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) previously existing and undocumented eight inch (8") diameter sub-grade pipeline crossing, to be rehabbed and brought under agreement, solely for the conveyance of raw/treated sewage, located at or near Johnstown, Cambria County, Pennsylvania, Baltimore Division, S & C Subdivision, Milepost BFC-44.86, Latitude N40:19:28.00, Longitude W78:54:50.00;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

### 1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

(A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes;

(B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and

(C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.



1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

## **2. ENCROACHMENT FEE; TERM:**

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of FIVE HUNDRED AND 00/100 U.S. DOLLARS (\$500.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part.

## **3. CONSTRUCTION, MAINTENANCE AND REPAIRS:**

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives of any type or perform or cause any blasting without the

separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

3.10 In the event it becomes necessary for the Licensee to deviate from the approved Exhibit, Licensee shall seek prior approval from CSXT, or when applicable, an official field representative of CSXT permitted to approve changes, authorizing the necessary field changes and Licensee shall provide CSXT with complete As-Built Drawings of the completed work. As-Built Drawings shall be submitted to Licensor in either electronic or hard copy form upon the substantial completion of the project and upon Licensor's request.

3.11 In the event of large scale maintenance/construction work to railroad bridges Licensee is required to protect power lines with insulated covers or comparable safety devices at their costs during construction/maintenance for safety of railroad employees.

#### **4. PERMITS, LICENSES:**

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s)

and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

## 5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

(A) support track(s) and roadbed in a manner satisfactory to Licensor;

(B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and

(C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

(A) Restore any track(s), roadbed and other disturbed property; and

(B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

## 6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

**7. FACILITY CHANGES:**

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

**8. INTERFERENCE WITH RAIL FACILITIES:**

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of the rail corridor, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

**9. RISK, LIABILITY, INDEMNITY:**

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence,

operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.3 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.

9.4 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.5 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

## 10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

- (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against CSXT and its Affiliates;
- (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Licensor, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to [RenewalCO1@csx.com](mailto:RenewalCO1@csx.com).
- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;
- (iv) Such other insurance as Licensor may reasonably require.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any

railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor, Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

(B) At Licensor's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

## **11. GRADE CROSSINGS; FLAGGING:**

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, inspectors or supervisors for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

## **12. LICENSOR'S COSTS:**

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or wire changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within



thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

### **13. DEFAULT, BREACH, WAIVER:**

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

### **14. TERMINATION, REMOVAL:**

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

**15. NOTICE:**

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:  
[https://propertyportal.csx.com/pub\\_ps\\_res/ps\\_res/jsf/public/index.faces](https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces)

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 814-533-2001.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

**16. ASSIGNMENT:**

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its

option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

**17. TITLE:**

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement. such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for

any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

## **18. GENERAL PROVISIONS:**

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at

eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 Within thirty (30) days of an overpayment in a cumulative total amount of One Hundred Dollars (\$100.00) or more by Licensee to Licensor, Licensee shall notify Licensor in writing with documentation evidencing such overpayment. Licensor shall refund the actual amount of Licensee's overpayment within 120 days of Licensor's verification of such overpayment.

**[Signatures on the following page]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

**Witness for Licensors:**

**CSX TRANSPORTATION, INC.**

\_\_\_\_\_

By: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

**Witness for Licensee:**

**CITY OF JOHNSTOWN**

\_\_\_\_\_

By: \_\_\_\_\_

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

Tax ID No.: \_\_\_\_\_

## FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective as of March 6, 2019, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF JOHNSTOWN, a municipal corporation, political subdivision or state agency, under the laws of the State of Pennsylvania, whose mailing address is 401 Main Street, Johnstown, Pennsylvania 15901, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) previously existing and undocumented twelve inch (12") diameter sub-grade pipeline crossing, to be rehabbed and brought under agreement solely for the conveyance of raw/treated sewage, located at or near Johnstown, Cambria County, Pennsylvania, Baltimore Division, S & C Subdivision, Milepost BFC-44.92, Latitude N40:19:31.00, Longitude W78:54:49.00;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

### 1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

(A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes;

(B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and

(C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.



1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

## **2. ENCROACHMENT FEE; TERM:**

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of FIVE HUNDRED AND 00/100 U.S. DOLLARS (\$500.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part.

## **3. CONSTRUCTION, MAINTENANCE AND REPAIRS:**

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

3.10 In the event it becomes necessary for the Licensee to deviate from the approved Exhibit, Licensee shall seek prior approval from CSXT, or when applicable, an official field representative of CSXT permitted to approve changes, authorizing the necessary field changes and Licensee shall provide CSXT with complete As-Built Drawings of the completed work. As-Built Drawings shall be submitted to Licensor in either electronic or hard copy form upon the substantial completion of the project and upon Licensor's request.

3.11 In the event of large scale maintenance/construction work to railroad bridges Licensee is required to protect power lines with insulated covers or comparable safety devices at their costs during construction/maintenance for safety of railroad employees.

**4. PERMITS, LICENSES:**

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

**5. MARKING AND SUPPORT:**

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

- (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

- (A) Restore any track(s), roadbed and other disturbed property; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

**6. TRACK CHANGES:**

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event

future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

**7. FACILITY CHANGES:**

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

**8. INTERFERENCE WITH RAIL FACILITIES:**

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of the rail corridor, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

**9. RISK, LIABILITY, INDEMNITY:**

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal. EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.3 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.

9.4 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.5 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

## 10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

(i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against CSXT and its Affiliates;

(ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Licensor, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to [RenewalCOI@csx.com](mailto:RenewalCOI@csx.com).

(iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;

(iv) Such other insurance as Licensor may reasonably require.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor, Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

(B) At Licensor's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

## **11. GRADE CROSSINGS; FLAGGING:**

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, inspectors or supervisors for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

**12. LICENSOR'S COSTS:**

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or wire changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

**13. DEFAULT, BREACH, WAIVER:**

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

**14. TERMINATION, REMOVAL:**

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the



time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

**15. NOTICE:**

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:  
[https://propertyportal.csx.com/pub\\_ps\\_res/ps\\_res/jsf/public/index.faces](https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces)

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 814-533-2001.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

**16. ASSIGNMENT:**

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of

Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensors expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

**17. TITLE:**

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

## **18. GENERAL PROVISIONS:**

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have

no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 Within thirty (30) days of an overpayment in a cumulative total amount of One Hundred Dollars (\$100.00) or more by Licensee to Licensor, Licensee shall notify Licensor in writing with documentation evidencing such overpayment. Licensor shall refund the actual amount of Licensee's overpayment within 120 days of Licensor's verification of such overpayment.

**[Signatures on the following page]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

**Witness for Licensor:**

**CSX TRANSPORTATION, INC.**

\_\_\_\_\_

By: \_\_\_\_\_

Print/Type

Name: \_\_\_\_\_

Print/Type

Title: \_\_\_\_\_

**Witness for Licensee:**

**CITY OF JOHNSTOWN**

\_\_\_\_\_

By: \_\_\_\_\_

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type

Name: \_\_\_\_\_

Print/Type

Title: \_\_\_\_\_

Tax ID

No.: \_\_\_\_\_

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10184

A RESOLUTION OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO APPLY FOR A GRANT THROUGH THE PA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT TO ASSIST WITH REMEDIATION EFFORTS PERTAINING TO ROXBURY PARK PHASE II IN THE AMOUNT OF \$250,000.00.

Be it RESOLVED, that the City of Johnstown of Cambria County hereby requests a Greenways, Trails and Recreation grant of \$250,000.00 from the PA Department of Community and Economic Development to be used for Phase II of the Roxbury Park Upgrade Project to consist of improvements at the playground, as well as, general repairs and updates throughout the park.

Be it FURTHER RESOLVED, that the Applicant does hereby designate the City Manager as the official to execute all documents and agreements between the City of Johnstown and the PA Department of Community and Economic Development to facilitate and assist in obtaining the requested grant.

I, Nancy J. Cushing, duly qualified Secretary of the City of Johnstown (Name of Applicant), Cambria County, (Name of County), Pennsylvania, hereby certify that the forgoing is a true and correct copy of a Resolution duly adopted by a majority vote of the City Council (Governing Body) at a regular meeting held April 10, 2019 and said Resolution has been recorded in the Minutes of the City of Johnstown (Applicant) and remains in effect as of this date.

IN WITNESS THEREOF, I affix my hand and attach the seal of the City of Johnstown (Applicant), this 10<sup>th</sup> day of April, 2019.

ADOPTED:


April 10, 2019

By the following vote:

Yeas: Mayor Janakovic, Rev. King, Mrs. Mock, Mrs. Stanton, Mr. Vitovich. (5)

Nays: None (0)

Absent: Mr. Britt, Mr. Williams. (2)




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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. **10184** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10185

A RESOLUTION OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO APPLY FOR A GRANT THROUGH THE PA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT TO ASSIST WITH REMEDIATION AND REPAIR EFFORTS OF THE RETAINING WALLS AND STREAM BANK ON ST. CLAIR RUN IN THE AMOUNT OF \$500,000.00.

Be it RESOLVED, that the City of Johnstown of Cambria County hereby requests a Flood Mitigation grant of \$500,000.00 from the PA Department of Community and Economic Development to be used for repairs and remediation of the collapsed retaining walls and stream bank along St. Clair Run in the Morrellville neighborhood.

Be it FURTHER RESOLVED, that the Applicant does hereby designate the City Manager as the official to execute all documents and agreements between the City of Johnstown and the PA Department of Community and Economic Development to facilitate and assist in obtaining the requested grant.

I, Nancy J. Cushing, duly qualified Secretary of the City of Johnstown (Name of Applicant), Cambria County, (Name of County), Pennsylvania, hereby certify that the forgoing is a true and correct copy of a Resolution duly adopted by a majority vote of the City Council (Governing Body) at a regular meeting held April 10, 2019 (Date) and said Resolution has been recorded in the Minutes of the City of Johnstown (Applicant) and remains in effect as of this date.

IN WITNESS THEREOF, I affix my hand and attach the seal of the City of Johnstown (Applicant), this 10th day of April, 2019.



ADOPTED:


April 10, 2019

By the following vote:

Yeas: Mayor Janakovic, Rev. King, Mrs. Mock, Mrs. Stanton, Mr. Vitovich. (5)

Nays: None (0)

Absent: Mr. Williams, Mr. Britt. (2)

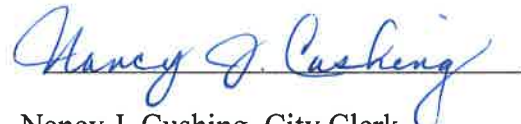


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Frank J. Janakovic, Mayor  
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10185** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk