

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10221

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA, AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN A CONTRACT WITH AMERICAN ROCK SALT DEPARTMENT OF GENERAL SERVICES COSTARS PROGRAM, 5520 NY-63 MT. MORRIS, NY 14510 TO PROVIDE AND DELIVER TO THE CITY, ROCK SALT FOR THE CALENDAR YEAR AUGUST 2019 THRU AUGUST 2020.

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

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

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

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Pennsylvania, that the City Manager is hereby authorized and directed to execute a Contract with American Rock Salt Department of General Services Costars Program to provide Rock Salt for the calendar year August 2019- August 2020.

ADOPTED:

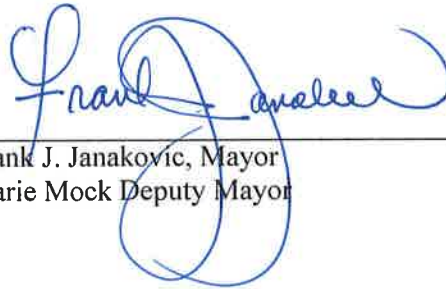
November 13, 2019

By the following vote:

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

Nays: None. (0)

Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10221** as the same adopted by the City Council of the City of Johnstown, PA.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10222

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA, AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN A CONTRACT WITH HOMER R. SLEEK & SONS, INC., 132 MOSSY LANE, JOHNSTOWN, PA 15905 TO PROVIDE AND DELIVER TO THE CITY, ANTI-SKID MATERIAL, AS4 SLAG FOR THE CALENDAR YEAR 2019-2020.

WHEREAS, bids to provide and deliver Anti-Skid Material, AS4 Slag to the City of Johnstown, were opened for the calendar year 2019-2020; and

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

WHEREAS, the City Council desires to accept the bid price of Homer R. Sleek. & Sons, Inc., to provide and deliver Anti-Skid Material, AS4 Slag to the City for the calendar year 2019 — 2020 and will be paid through the Liquid Fuel Account.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Pennsylvania, that the City Manager is hereby authorized and directed to execute a Contract with Homer R. Sleek & Sons, Inc., to provide Anti-Skid Material, AS4 Slag for the calendar year 2019-2020.

ADOPTED:

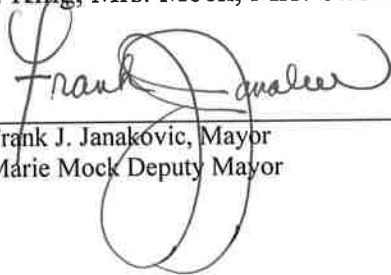
November 13, 2019

By the following vote:

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

Nays: None. (0)

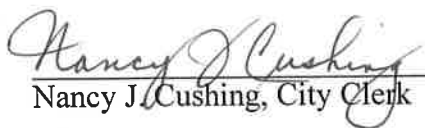
Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10222 as the same adopted by the City Council of the City of Johnstown, PA.



Nancy J. Cushing, City Clerk

Homer R. Sleek & Sons, Inc.

"Sleek Trucking"

132 Mossy Lane
Johnstown, PA 15905

(814)288-1903

(814)288-5671 Fax

Proposal Submitted To:

City of Johnstown

Attn: Joe Slus

Date: 10/8/19

Phone# 533-2090

Job Name Winter Anti-Skid

Job Location City

Letting Winter 2019-2020

We are pleased to provide a quote on the following:

Material	Source	Price per-Ton
✓ AS 2 Anti-Skid	Limestone	# 25.50
1B Anti-Skid	Limestone	# 23.75

Minimum delivery of 22 tons per truckload.

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

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

Material must be suitable for aluminum body truck.

Proposal subject to credit approval.

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

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

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

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

Accepted this date _____

Customer's Signature _____

Company Name _____

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

Earl E. Sleek, II

Earl E. Sleek, II

President

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10223

A RESOLUTION OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO EXECUTE AN AGREEMENT WITH SNYDER ENVIRONMENTAL SERVICES, INC. AWARING CONTRACT 2018-02 FOR THE CONSTRUCTION OF THE OLD CONEMAUGH BOROUGH SANITARY/STORM SEWER SEPARATION PROJECT.

WHEREAS, City Council of the City of Johnstown has entered into a Consent Order and Agreement with the Pennsylvania Department of Environmental Protection, and

WHEREAS, major repairs and rehabilitation are necessary to comply with the mandates of the Consent Order and Agreement, and

WHEREAS, the EADS Group Inc. on behalf of the City of Johnstown advertised and opened bids for the construction of the Old Conemaugh Borough Sanitary/Storm Sewer Separation Project, and

WHEREAS, bids were advertised in a paper of general circulation and the bids were opened at 10:00 am on September 18, 2019, and

WHEREAS, Snyder Environmental Services, Inc. is the apparent low bidder for Contract 2018-02, Old Conemaugh Borough Sanitary/Storm Sewer Separation Project, with a Total Base Bid with Backfill Material Alternate and Pipe Material Alternate 2 for a total of \$2,567,005.00.

NOW THEREFORE BE IT RESOLVED, CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZES THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO AWARD CONTRACT NO. 2018-02 TO SNYDER ENVIROMENTAL SERVICES, INC. TO CONSTRUCT THE OLD CONEMAUGH BOROUGH SANITARY/STORM SEWER SEPARATION PROJECT.

ADOPTED:


November 13, 2019

By the following vote:

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

Nays: Mrs. Stanton. (1)

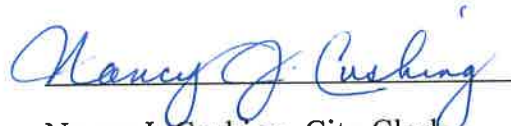
Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10223** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

NOTICE OF AWARD

Date of Issuance: November 13, 2019

Owner:	The City of Johnstown	Owner's Contract No.:	2018-02
Engineer:	The EADS Group, Inc.	Engineer's Project No.:	0620-14-465
Project:	Old Conemaugh Sanitary/Storm Sewer Separation	Contract Name:	2018-02
Bidder:	Snyder Environmental Services, Inc.		
Bidder's Address:	270 Industrial Blvd. Kearneysville, WV 25430		

TO BIDDER:

You are notified that Owner has accepted your Bid dated September 18, 2019 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Contract No. 2018-02 Base Bid with Slag Material Alternate and Pipe Material Alternate 2

The Contract Price of the awarded Contract is: \$ 2,567,005.00 *subject to unit prices and actual quantities provided.*

[4] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award.

You must comply with the following conditions precedent within **ten (10)** days of the date of this Notice of Award:

1. Deliver to Owner [4] counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security [*ie. Performance and Payment Bonds*] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within **ten (10)** days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: The City of Johnstown



Authorized Signature

By: Robert Ritter

Title: Acting City Manager

Date Issued: November 13, 2019

Copy: Engineer

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between The City of Johnstown (“Owner”) and
Snyder Environmental Services, Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

OLD CONEMAUGH Sanitary/Storm Sewer Separation Project – Contract No. 2018-02 Base Bid with Slag Material Alternate and Pipe Material Alternate 2

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Contract No. 2018-02 consists of the construction of approximately 2,694 linear feet of 8 inch sanitary sewer pipe via open-trench, approximately 26 linear feet of 10 inch sanitary sewer pipe via open-trench, approximately 275 linear feet of 12 inch sanitary sewer pipe via open-trench, rehabilitation of approximately 4,994 linear feet of 8 inch sanitary sewer pipe via trenchless construction methods, rehabilitation of approximately 480 linear feet of 10 inch sanitary sewer pipe via trenchless construction methods, rehabilitation of approximately 452 linear feet of 12 inch sanitary sewer pipe via trenchless construction methods, 29 precast concrete manholes, rehabilitation of 34 existing manholes, approximately 2,128 linear feet of 6 inch service laterals, and related work. The storm sewer separation includes installation of storm sewer, inlets, and restoration. The project is located in the Old Conemaugh area of the City of Johnstown.

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by The EADS Group, Inc. (“Engineer”), 227 Franklin Street, Suite 300, Johnstown, Pennsylvania 15901.

3.02 The Owner has retained The EADS Group, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

- A. The Work will be substantially completed within 335 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 365 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner **\$1,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,000.00** for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as **Exhibit A**.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **90%** percent of Work completed (with the **10%** balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, retainage may be reduced to **5%** percent of the total work completed and stored.
 - b. **90%** percent of cost of materials and equipment not incorporated in the Work (with the **10%** balance being retainage).
 - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of 6% percent per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - G. Contractor is aware of the general nature of work to be performed by others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 - J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:

1. This Agreement (pages 005213.12-1 to 005213.12-7, inclusive).
 2. Performance bond (pages 006113.13-1 to 006113.13-4, inclusive).
 3. Payment bond (pages 006113-1 to 006113-4, inclusive).
 4. General Conditions (pages 007213.12-1 to 007213.12-61, inclusive). Not attached but incorporated by reference.
 5. Supplementary Conditions (pages 007314-1 to 007314-20, inclusive). Not attached but incorporated by reference.
 6. Administration Documents and Specifications as listed in the table of contents of the Project Manual. Not attached but incorporated by reference.
 7. Contractor's Bid Package (pages 1 to 64, inclusive). Not attached but incorporated by reference.
 8. Drawings (not attached but incorporated by reference) consisting of 85 sheets with each sheet bearing the following general title: **OLD CONEMAUGH Sanitary/Storm Sewer Separation Project**
 9. Addenda (numbers 1 to 2, inclusive). Not attached but incorporated by reference.
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid Form (pages 004143-1 to 004143-21, inclusive).
 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and

unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on November 13, 2018 (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

The City of Johnstown

By:



Robert Ritter

Title:

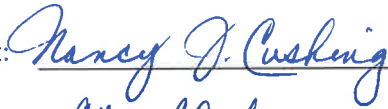
Acting City Manager

By: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:



Title:

City Clerk

Attest: _____

Title: _____

Address for giving notices:

401 Main St.

City Hall Rm 102

Johnstown PA 15901

Address for giving notices: _____

License No.: _____

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

City of Johnstown
 Old Conemaugh Borough Sanitary/Storm Sewer Separation Project
 Contract No. 2018-02
 Bid Opening Sept 18, 2019 10:00AM
 BID SUMMARY

BIDDERS	Total Base Bid Amount	Base Bid Sing Material All	Base Bid Rehab Pipe Material All 1	Base Bid Sing Material All & Rehab Pipe Material All 1	Base Bid Rehab Pipe Material All 2	Base Bid Sing Material All & Rehab Pipe Material All 2	10% Bid Bond	Additional Bid
1 A.Liberoni, Inc. 409 Dordman Rd. Penn. PA 15209 412-796-2098 ren@aliberoni.com	\$2,979,291.15	\$2,783,621.15	\$3,034,114.50	\$2,836,444.50			X	X
4 Green Johnston, Inc. 1055 Center St. Hempstead Pa 15122 Contact: Carl Haysler / 412-351-4642 www.greenjohnston.com	\$4,063,845.00	\$3,919,345.00	\$3,932,108.00	\$3,787,608.00	\$4,008,169.00	\$3,863,669.00	X	X
6 Greentland Construction, Inc. 800 Oldfield Cornerstone Highway P.O. Box 287 Cherryfield, PA 16800 Contact: Rob Grunwald / 814-746-6446 www.greentlandconstruction.com	\$4,985,535.00	\$4,977,035.00	\$5,085,890.00	\$5,077,390.00	\$5,012,790.00	\$5,004,290.00	X	X
9 Kolonin Contracting, Inc. 1169 Route 286 Bryant, PA 15622 Contact: Sandy Hubler / 724-325-5156 ext. 201 www.kolonincontracting.com	\$3,873,378.00	\$3,745,878.00	\$3,804,115.00	\$3,676,615.00			X	X
10 Ligotner Construction, Co. 3320 Route 30 P.O. Box 277 Lampeter, PA 15655 Contact: Tom Wipperfurth / 724-235-9782 www.ligotnerconstruction.com	\$3,485,850.00	\$3,400,850.00	\$3,356,890.00	\$3,271,890.00			X	X
11 Snyder Environmental Services, Inc. 270 Industrial Boulevard Kearnyville, West Virginia 25430 Contact: William Lardner / 304-725-9140 wladner@snyderenv.com	\$2,988,483.00	\$2,720,733.00	\$2,894,396.75	\$2,626,646.75	\$2,834,755.00	\$2,567,005.00 <i>Low Bidder</i>	X	X
12 Terra Works, Inc. 49 S. Sheridan Rd. Clinton, PA 16214 Contact: Ryan W. Miley / 814-226-0702 www.terra-works.com	\$2,999,527.00	\$2,931,442.00	\$2,892,343.00	\$2,824,258.00			X	X

Amounts listed in "red" font indicate a mathematical error was found when preparing this tabulation

I hereby certify that this Bid Tabulation was prepared from individual Bid Proposals received, opened, and read aloud on September 18, 2019 at 10:00 A.M., prevailing time is true and correct.

Certified by: *Brandon L. Palmer*
 Brandon L. Palmer, P.E.

9/30/19



CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10224

A RESOLUTION OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO EXECUTE AN AGREEMENT WITH A. LIBERONI, INC. AWARING CONTRACT 2018-01 FOR THE CONSTRUCTION OF THE OLD CONEMAUGH BOROUGH SANITARY/STORM SEWER SEPARATION PROJECT.

WHEREAS, City Council of the City of Johnstown has entered into a Consent Order and Agreement with the Pennsylvania Department of Environmental Protection, and

WHEREAS, major repairs and rehabilitation are necessary to comply with the mandates of the Consent Order and Agreement, and

WHEREAS, the EADS Group Inc. on behalf of the City of Johnstown advertised and opened bids for the construction of the Old Conemaugh Borough Sanitary/Storm Sewer Separation Project, and

WHEREAS, bids were advertised in a paper of general circulation and the bids were opened at 10:00 am on September 18, 2019, and

WHEREAS, A. Liberoni, Inc. is the apparent low bidder for Contract 2018-01, Old Conemaugh Borough Sanitary/Storm Sewer Separation Project, with a Total Base Bid, Alternate 1, Alternate 2, and Alternate 3 with Backfill Material Alternate for a total of \$5,935,247.87.

NOW THEREFORE BE IT RESOLVED, CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZES THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO AWARD CONTRACT NO. 2018-01 TO A. LIBERONI, INC. TO CONSTRUCT THE OLD CONEMAUGH BOROUGH SANITARY/STORM SEWER SEPARATION PROJECT.

ADOPTED:


October 9, 2019

By the following vote:

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

Nays: Mrs. Stanton. (1)


Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10224** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

NOTICE OF AWARD

Date of Issuance: November 13, 2019

Owner:	The City of Johnstown	Owner's Contract No.:	2018-01
Engineer:	The EADS Group, Inc.	Engineer's Project No.:	0620-14-465
Project:	Old Conemaugh Sanitary/Storm Sewer Separation	Contract Name:	2018-01
Bidder:	A. Liberoni, Inc.		
Bidder's Address:	459 Davidson Road Plum, PA 15239		

TO BIDDER:

You are notified that Owner has accepted your Bid dated September 18, 2019 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Contract No. 2018-01 Base Bid with Slag Material Alternate, Additive Alternate 1 with Slag Material Alternate, Additive Alternate 2 with Slag Material Alternate, and Additive Alternate 3 with Slag Material Alternate

The Contract Price of the awarded Contract is: \$ 5,935,247.87 *subject to unit prices and actual quantities provided.*

[4] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award.

You must comply with the following conditions precedent within **ten (10)** days of the date of this Notice of Award:

1. Deliver to Owner [4] counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security [*ie. Performance and Payment Bonds*] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within **ten (10)** days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: The City of Johnstown



Authorized Signature

By: Robert Ritter

Title: Acting City Manager

Date Issued: November 13, 2019

Copy: Engineer

Notice of Award

005100 - 1

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between The City of Johnstown ("Owner") and
A. Liberoni, Inc. ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

OLD CONEMAUGH Sanitary/Storm Sewer Separation Project – Contract No. 2018-01 Base Bid with Slag Material Alternate, Additive Alternate 1 with Slag Material Alternate, Additive Alternate 2 with Slag Material Alternate, and Additive Alternate 3 with Slag Material Alternate

THE PROJECT

- 1.02 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Contract No. 2018-01 consists of the construction of approximately 11,976 linear feet of 8 inch sanitary sewer pipe via open-trench, approximately 107 linear feet of 6 inch sanitary sewer pipe via open-trench, rehabilitation of approximately 7,789 linear feet of existing 8 inch sanitary sewer pipe via trenchless construction methods, 93 precast concrete manholes, rehabilitation of 34 existing manholes, approximately 5,123 linear feet of 6 inch service laterals, and related work. The storm sewer separation includes installation of storm sewer, inlets, and restoration. The project is located in the Old Conemaugh and Hornerstown areas of the City of Johnstown.

ARTICLE 2 – ENGINEER

- 2.01 The part of the Project that pertains to the Work has been designed by The EADS Group, Inc. ("Engineer"), 227 Franklin Street, Suite 300, Johnstown, Pennsylvania 15901.
- 2.02 The Owner has retained The EADS Group, Inc. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 3 – CONTRACT TIMES

- 3.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 3.02 *Contract Times: Days*

A. The Work will be substantially completed within 335 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and

completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 365 days after the date when the Contract Times commence to run.

3.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner **\$1,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,000.00** for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

3.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 4 – CONTRACT PRICE

- 4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as **Exhibit A**.

ARTICLE 5 – PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. 90% percent of Work completed (with the 10% balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, retainage may be reduced to 5% percent of the total work completed and stored.
 - b. 90% percent of cost of materials and equipment not incorporated in the Work (with the 10% balance being retainage).
 - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

5.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 6 – INTEREST

- 6.01 All amounts not paid when due shall bear interest at the rate of 6% percent per annum.

ARTICLE 7 – CONTRACTOR’S REPRESENTATIONS

- 7.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - G. Contractor is aware of the general nature of work to be performed by others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 - J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 *Contents*

- A. The Contract Documents consist of the following:

1. This Agreement (pages 005213.12-1 to 005213.12-7, inclusive).
 2. Performance bond (pages 006113.13-1 to 006113.13-4, inclusive).
 3. Payment bond (pages 006113-1 to 006113-4, inclusive).
 4. General Conditions (pages 007213.12-1 to 007213.12-61, inclusive). Not attached but incorporated by reference.
 5. Supplementary Conditions (pages 007314-1 to 007314-20, inclusive). Not attached but incorporated by reference.
 6. Administration Documents and Specifications as listed in the table of contents of the Project Manual. Not attached but incorporated by reference.
 7. Contractor's Bid Package (pages 1 to 64, inclusive). Not attached but incorporated by reference.
 8. Drawings (not attached but incorporated by reference) consisting of 85 sheets with each sheet bearing the following general title: ***OLD CONEMAUGH Sanitary/Storm Sewer Separation Project***
 9. Addenda (numbers 1 to 2, inclusive). Not attached but incorporated by reference.
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid Form (pages 004143.02-1 to 004143.02-9, inclusive).
 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 9 – MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and

unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

9.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on November 13, 2018 (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

The City of Johnstown

By: 

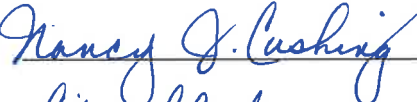
Robert Ritter

Title: Acting City Manager

By: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: 

Title: City Clerk

Attest: _____

Title: _____

Address for giving notices:

401 Main St.
City Hall Rm 102
Johnstown PA 15901

Address for giving notices:

License No.: _____
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

BIDDERS	Total Base Bid Amount	Base Bid Sewer Material /A/	Base Bid Storm Material /A/	Base Bid Storm Material /A/ & /B/ 1	Base Bid Storm Material /A/ & /B/ 2	/A/ 1	A/1 Sewer Material /A/	A/1 Storm Material /A/	A/1 Storm Material /A/ & /B/ 1	A/1 Storm Material /A/ & /B/ 2	A/1 Storm Material /A/ & /B/ 2
1 A.L. Oberon, Inc. 1701 Bowers Rd. New PA 15278 Contact: Tom Spencer / 412-798-3000 tospencer@oberon.com	\$3,002,022.39	\$2,725,782.39	\$3,016,662.39	\$2,740,422.39	---	\$1,190,960.15	\$1,064,350.15	\$1,192,542.95	\$1,065,932.95	---	
4 Greenland Construction, Inc. 1000 Chestnut St. 1172 Holtwood PA 17320 Contact: Eric Wagner / 412-271-4442 greenlandconstruction.com	\$4,181,814.00	\$3,980,814.00	\$4,085,451.00	\$3,884,451.00	\$4,156,989.00	\$1,610,028.00	\$1,516,528.00	\$1,572,447.00	\$1,478,947.00	\$1,599,768.00	
6 Greenland Construction, Inc. 1000 Chestnut St. 1172 Holtwood PA 17320 Contact: Eric Wagner / 412-271-4442 greenlandconstruction.com	\$5,551,842.00	\$5,539,842.00	\$5,682,162.00	\$5,670,162.00	\$5,608,413.00	\$2,795,702.00	\$2,790,202.00	\$2,824,280.00	\$2,826,780.00	\$2,801,402.00	
9 Kochman Construction, Inc. 1189 Bannock Brynar, PA 15222 Contact: Sandy Pablar / 724-322-1114 ext. 201 kochmanconstruction.com	\$4,044,440.00	\$3,864,440.00	\$4,026,350.00	\$3,846,350.00	---	\$1,468,468.00	\$1,385,968.00	\$1,459,798.00	\$1,377,298.00	---	
11 Shnyder Environmental Services, Inc. 270 Industrial Boulevard Kamerynville, West Virginia 25420 Contact: William Lankster / 204-273-4146 wlanlankster@sewcon.com	\$3,182,994.75	\$2,828,994.75	\$3,106,457.00	\$2,752,457.00	\$3,095,544.75	\$1,324,365.25	\$1,162,115.25	\$1,297,134.25	\$1,134,804.25	\$1,299,285.25	
12 Terra Works, Inc. 49 S. Sherman Rd. Chardon, PA 16014 Contact: Ryan W. Nelson / 814-226-0702 terra-works.com	\$3,205,301.00	\$3,109,181.00	\$3,132,551.00	\$3,036,431.00	---	\$1,287,201.00	\$1,243,146.00	\$1,262,301.00	\$1,218,246.00	---	

Amounts listed in "red" font indicate a mathematical error was found when preparing this tabulation

I hereby certify that this Bid Tabulation was prepared from individual Bid Proposals received, opened, and read aloud on September 18, 2019 at 10:00 A.M., prevailing time is true and correct.

Certified by: Brandon L. Palmer, P.E.

9/30/19



City of Hanover
 Old Conestoga Borough Sanitary/Storm Sewer Separation Project
 Contract No. 2018-01
 Bid Opening Sept 14, 2019 10:00AM
 BID #20180483

BIDDERS	AB 1	AB 2	AB 3	AB 4	AB 5	AB 6	AB 7	AB 8	AB 9	AB 10	10% Bid Bond	Available to Bid
1 A.L. Brown, Inc. 107 Drexel Rd. P.O. Box 1027 Lancaster, PA 17303 Tel: 717-533-8888 Fax: 717-533-8899 www.albrown.com	\$1,567,632.48	\$1,406,492.48	\$1,575,590.48	\$1,414,450.48	-----	\$849,118.85	\$738,622.85	X	X			
4 Greenland Contracting, Inc. 1011 Center St. P.O. Box 101 Hanover, PA 17331 Phone: 717-531-1444 www.greenlandcontracting.com	\$2,221,580.00	\$2,102,580.00	\$2,177,405.00	\$2,058,405.00	\$2,206,880.00	\$1,341,251.00	\$1,259,651.00	X	X			
6 Greenland Contracting, Inc. 1011 Center St. P.O. Box 101 Hanover, PA 17331 Phone: 717-531-1444 www.greenlandcontracting.com	\$3,663,069.00	\$3,656,069.00	\$3,710,419.00	\$3,673,569.00	-----	\$2,223,349.00	\$2,247,349.00	X	X			
9 Kolumb Contracting, Inc. 1189 Route 216 Spring, PA 17322 Contract Bids Only / 717-323-2116 ext. 201 www.kolumbcontracting.com	\$2,004,004.00	\$1,899,004.00	\$1,981,829.00	\$1,876,829.00	-----	\$1,116,611.00	\$1,044,611.00	X	X			
11 Snyder Environmental Services, Inc. 279 Industrial Blvd Kannapolis, Wisc. Virginia 24500 Contract/Written Quotes / 704-725-9140 www.snyderenvironment.com	\$1,834,345.60	\$1,629,595.60	\$1,793,095.60	\$1,588,345.60	\$1,788,145.60	\$962,940.25	\$822,240.25	X	X			
12 F. C. C. W. Co., Inc. 49 S. Shenandoah Rd. Clinton, PA 16114 Contract Bids Only / 814-226-0702 www.fcccw.com	\$1,837,446.00	\$1,781,376.00	\$1,803,946.00	\$1,747,876.00	-----	\$891,715.00	\$853,267.00	X	X			

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10225

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 1269338 AND 1274790 WITH NORFOLK SOUTHERN RAILWAY COMPANY 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 NORFOLK SOUTHERN RAILWAY COMPANY AT THE BELOW DESCRIBED LOCATIONS.

1. FACILITY ENCROACHMENT AGREEMENT 1269338 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, JOHNSTOWN I.T., MILEPOST JA-1.55, LATITUDE N40.326050, LONGITUDE W78.913427 AND;

2. FACILITY ENCROACHMENT AGREEMENT 1274790 HAS ONE (1) EXISTING PREVIOUSLY UNDOCUMENTED TWENTY FOUR INCH (24") DIAMETER SUB-GRADE PIPELINE CROSSING FOR CONVEYANCE OF STORMWATER DISCHARGE, LOCATED AT OR NEAR JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA, JOHNSTOWN I.T., MILEPOST JA-1.34, LATITUDE N40.3274314, LONGITUDE W78.909894.

WHEREAS, THE NORFOLK SOUTHERN RAILWAY COMPANY 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 1269338 AND 1274790 WITH NORFOLK SOUTHERN RAILWAY COMPANY FOR PROPERTY, AS DESCRIBED ABOVE, LOCATED IN JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA

ADOPTED:


November 13, 2019

BY THE FOLLOWING VOTE:

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

Nays: Mrs. Stanton. (1)

Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10225** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk



AECOM
1700 Market Street
Suite 1600
Philadelphia, PA 19103
www.aecom.com

215 735 0832 tel
215 736 0883 fax

October 02, 2019

George Hayfield
City Manager
City of Johnstown
401 Main Street
Johnstown, PA 15901

Subject: Johnstown, Cambria County, Pennsylvania
Milepost JA-1.34, Johnstown I.T., Pittsburgh Division

Norfolk Southern Activity No. 1274790

Proposed installation of an underground crossing of a 24-inch plastic stormwater pipeline

Dear Mr. Hayfield:

AECOM, as consultant for Norfolk Southern Railway Company, has reviewed the occupancy permit application for City of Johnstown regarding the proposed installation of an underground pipe, submitted on August 26, 2019, your project number Contract 2018-01 & 2018-02.

Enclosed are two original counterparts of the Standard Pipe License Agreement for signature on behalf of City of Johnstown. Please return to **this AECOM office** the following:

- A check in the amount of \$2,500.00 (payable to AECOM) to cover the administrative, engineering and agreement preparation fee.
- Two originals of the Standard Pipe License Agreement signed and witnessed (in BLUE ink). DO NOT date this agreement as it will not go into effect until it has been executed by Railway.
- A check in the amount of \$5,000.00 (payable to NORFOLK SOUTHERN RAILWAY COMPANY) to cover the one-time license and Risk Management Fees. Payment of the Risk Management Fee will satisfy all requirements for Railroad Protective Liability Insurance for the installation of the facility.
- The Certificate of Commercial General Liability Insurance as required in Paragraph 11, a, ii. of the agreement.
 - In order to avoid delay to your project, please ensure the certificate is completed exactly as indicated on the attached sample. The description of operations must state "NORFOLK SOUTHERN RAILWAY COMPANY is included as additional insured - Activity Number 1274790"
 - Certificate Holder must be in the name of:
NORFOLK SOUTHERN RAILWAY COMPANY
Attn: Director Risk Management
Three Commercial Place
Norfolk, VA 23510

After receipt of all of the above items in this office, you should anticipate approximately two weeks for receipt of authorization to proceed with construction. **Please do not schedule your construction until you are in receipt of a fully executed agreement.** No work on Norfolk Southern property is authorized until you are in receipt of a fully executed agreement and instructions are obtained from Railway's designated construction representative. The contact information for Railway's construction representative(s) will be provided upon return of the fully executed counterpart.

The terms and conditions of this agreement shall be valid for 60 calendar days after the date of this letter. If you are unable to execute the agreement within this 60 calendar day time frame, please advise this office in writing of your intent. This activity will be automatically cancelled in 60 calendar days if the items requested above are not returned, or we do not receive your request for a time extension. Reactivation of cancelled activities may require a new application along with appropriate application fees, and license agreements will be re-drafted in accordance with the current Norfolk Southern terms and conditions.

Very truly yours,

Angelina Discienzo
Contract Administrator
215-789-2168
angelina.discienzo@aecom.com

Sample CGL Certificate

ACORD		CERTIFICATE OF INSURANCE		ISSUE DATE	
PRODUCER		This certificate is issued as a matter of information only and confers no rights upon the Certificate Holder. This Certificate does not amend, extend or alter the insurance described by the policies herein.			
INSURED		COMPANIES AFFORDING COVERAGE			
		Company A			
		Company B			
		Company C			
		Company D			
		Company E			
This is to certify that the policies of Insurance described herein have been issued to the insured named herein for the policy period specified. Notwithstanding any requirement, term or condition of coverage or other document with reference to the policies herein, the insured hereby certifies that no insurance afforded by the policies described herein is subject to a self-insured retentions, co-insurance or a deductible of such policies. Limits shown may have been reduced by policy slabs.		LIMITS OF LIABILITY			
CO	TYPE OF INSURANCE	FOUR NUMBER	EXCEPTIVE EXPLANATION		
10	GENERAL LIABILITY				
A	<input type="checkbox"/> General Liability <input type="checkbox"/> Contract Liability <input type="checkbox"/> Contract and Distributor Transaction <input type="checkbox"/> Products and Completed Operations <input type="checkbox"/> Automobile Liability <input type="checkbox"/> Fire <input type="checkbox"/> Theft <input type="checkbox"/> Excess Liability				
A	<input type="checkbox"/> Automobile Liability <input type="checkbox"/> Fire <input type="checkbox"/> Theft <input type="checkbox"/> Excess Liability <input type="checkbox"/> Contract and Distributor Transaction <input type="checkbox"/> Products and Completed Operations <input type="checkbox"/> Fire <input type="checkbox"/> Theft <input type="checkbox"/> Excess Liability				
A	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS LIABILITY <input type="checkbox"/> Excess Liability				
B	<input type="checkbox"/> Excess Liability				
		EACH OCCURRENCE BODILY DAMAGE MEDICAL EXPENSE PERSONAL AND ADJUTANT DAMAGE GENERAL AGGREGATE PRODUCTS AND COMP OPER. AGG COMBINED SINGLE LIMIT WORKERS SALES PERSONS SOCIAL INJURY (PER POLICY) PROPERTY DAMAGE (PER POLICY) COMPLETION COLLISION AIR POLLUTANT B. EACH ACCIDENT B. DISEASE (EACH EMPLOYE) EACH OCCURRENCE AGGREGATE			
CERTIFICATE HOLDER		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE HEREOF, THE ISSUING INSURER WILL ENGAGE AT THE MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER AND TO THE LEFT, BUT HOLDERS FOR RECORD, OF THE POLICY NUMBER OR NUMBER OF ANY POLICY UPON THE INSURER'S AGENTS OR REPRESENTATIVES.			
Three Commercial Pools Norfolk, VA 23510		Authorized Representative DATE			

Licensee/Lessee/Industry identified in the agreement must be the named insured. Norfolk Southern also requires the prime contractors CGL certificate

The amount in this "Each Occurrence" box must be at least \$1,000,000.00 or the amount in this box combined with the "Each Occurrence" coverage of any Excess Liability must be at least \$1,000,000.00

This box should contain the Name of the Railroad included as an additional insured. This certificate applies to all contracts/agreements between the named insured and Railway. Add Railway activity #

Name of Railway must be the exact name of Railway on Agreement: Example, Central of Georgia Railroad Company, Florida Railway Company ect.

Use this address

Please do NOT purchase Railroad Protective Liability Insurance

NORFOLK SOUTHERN RAILWAY COMPANY

**ACKNOWLEDGMENT FORM FOR WIRE AND/OR PIPE OCCUPATION
WITHIN THE LIMITS OF A PUBLIC RIGHT OF WAY**

APPLICANT: City of Johnstown
401 Main Street
Johnstown, Pennsylvania 15901

SUBJECT: Johnstown, Cambria County, Pennsylvania
Milepost JA-1.55, Johnstown IT, Pittsburgh Division
Latitude N 40.326050, Longitude W 78.913427

Norfolk Southern Activity No. 1269338

Proposed installation of lining of an existing 8-inch vitrified clay sewer pipe located entirely within the confines of Matthew Street (No DOT# Assigned)

In response to Applicant's submittal dated March 4, 2019, regarding the proposed construction of the subject project, Norfolk Southern Railway Company ("Railway") does not object to the installation of the Facilities as shown on the attached Drawings marked Exhibits A and B, received by Railway on March 4, 2019, provided Applicant adheres to the following terms and conditions:

- The Facilities shall be installed, maintained, repaired and renewed by and at the sole risk, cost and expense of the Applicant.
- The Facilities must conform with all Federal, State and local laws, rules and regulations and will not be attached to any railroad structure or appurtenance and will not be located on any private property of Railway.
- The design and construction of aerial Facilities shall comply with Railway's NSCE-4 Specification, latest edition, and underground Facilities shall comply with Railway's NSCE-8 Specification, latest edition.
- Insurance

(a) Without limiting in any manner the liability and obligations assumed by Applicant under any other provision of this Agreement, and as additional protection to Railway, Applicant shall, at its expense, pay the Risk Financing Fee set forth in subparagraph (i) below and shall procure and maintain with insurance companies satisfactory to Railway, the insurance policies described in subparagraphs (ii) and (iii).

(i) Upon execution of this Agreement, Applicant shall pay Railway a risk financing fee of \$1,000 per installation (herein called the "Risk Financing Fee") to provide Railroad Protective Liability Insurance or such supplemental insurance (which may be self-insurance) as Railway, in its sole discretion, deems to be necessary or appropriate.

(ii) Prior to commencement of installation or maintenance of the Facilities or entry on Railway's property, Applicant, and its contractor if it employs one, shall procure and maintain for the course of said installation and maintenance, a general liability insurance policy naming Railway as an additional insured, and containing products and completed operations and contractual liability coverage, with a combined single limit of not less than \$1,000,000 for each occurrence.

(iii) Prior to commencement of any subsequent maintenance of the Facility during the term of this Agreement, unless Railway elects to make available and Applicant pays the then current risk financing fee for each affected installation, Applicant, or its contractor if it employs one, shall furnish Railway with an original Railroad Protective Liability Insurance Policy naming Railway as the named insured and having a limit of not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 aggregate. Such policy shall be written using Insurance Services Offices Form Numbers CG 00 35 01 10 01.

(b) All insurance required under preceding subsection (a) shall be underwritten by insurers and be of such form and content as may be acceptable to Railway. Prior to commencement of installation or maintenance of the Facilities or any entry on Railway's property, Applicant, or its contractor if it employs one, shall furnish to Railway's Risk Manager, Three Commercial Place, Norfolk, Virginia 23510-2191 (or such other representative and/or address as subsequently given by Railway to Applicant in writing), for approval, the original policy described in subsection (a)(iii) and a certificate of insurance evidencing the existence of a policy with the coverage described in subsection (a)(ii).

- Prior to commencement of any work to be performed, Applicant shall notify the appropriate Division Engineer for the scheduling of protection and inspection. Within seventy-two (72) hours after the Division Engineer's actual receipt of such notification, the Division Engineer shall review the necessity and availability of flagmen for the proposed work and advise Applicant of such matters and the estimated cost therefor. No work shall be permitted without the presence of Railway's flagman or the Division Engineer's waiver of the requirement for flag protection. Entry on or about any Railway right-of-way without the Division Engineer's prior approval shall be deemed trespassing. Applicant agrees to pay Railway, within thirty (30) days after delivery of an invoice therefor, for any protection and inspection costs incurred by Railway, in Railway's sole judgment, during any such entry.
- If Railway deems it advisable during the progress of any work of construction, maintenance, repairs and renewals, alterations, adjustments or removal of the Applicant's Facilities to place watchmen, flagmen, inspectors or any other employees deemed necessary by Railway for the protection of its train traffic and the protection of the property owned or in possession or control of Railway, or its employees, patrons, or licensees, Railway shall have the right to do so and Applicant agrees to bear full cost and expense thereof and to promptly reimburse Railway upon demand.
- All cost or expense resulting from any and all loss of life or property, or injury or damage to the person or property of any person, firm or corporation (including the parties hereto and their respective officers, agents and employees) and any and all claims, demands or actions for such loss, injury or damage, caused by or growing out of the presence or use, or the construction, maintenance, renewal, change or relocation and subsequent removal of the Facilities and appurtenances herein referred to shall be borne by Applicant unless caused solely by the negligence or willful misconduct of Railway.
- In the event of any revision, renewal, addition, removal or alteration of said facilities, prior approval of the Railway must be secured. Applicant must also furnish Railroad Protective Liability Insurance for this work.
- Upon abandonment of the Facilities by Applicant, Applicant shall seek direction from Railway's Chief Engineer, or his representative, regarding the method of abandonment if the Facilities will be abandoned in place.
- In the event the Facilities consist of electrical power or communication wires and appurtenances, Applicant shall promptly remedy any inductive interference growing out of, or resulting from the presence of, the Facilities.
- In the event the Facilities consist of an underground occupation, Applicant will be responsible for any settlement caused to the roadbed, right of way and/or tracks, facilities and appurtenances of Railway arising from or as a result of the installation of the Facilities, and Applicant shall pay to Railway on demand the full cost and expense therefore.
- All rights and obligations conferred hereby shall extend to the successors and assigns of the parties hereto, provided that the Applicant shall in no event transfer or assign its rights hereunder without the written consent of Railway, which will not be unreasonably withheld.
- If the public road is abandoned by the appropriate governmental authority and the Facilities remain within the limits of Railway's right of way after such abandonment, as a condition for the continuing presence of the Facilities within Railway's right of way, Railway and Applicant shall agree upon an appropriate occupancy fee or rental for the Facilities and execute an amendment to this Agreement within ninety (90) days after the date upon which such public road is abandoned.
- Any and all notices, demands or requests by or from Railway to Applicant, or Applicant to Railway, shall be in writing and shall be sent by (a) postage paid, certified mail, return receipt requested, or (b) a reputable

national overnight courier service with receipt therefor, or (c) personal delivery, and addressed in each case as follows:

If to Railway: c/o Norfolk Southern Corporation
1200 Peachtree Street, NE - 12th Floor
Atlanta, Georgia 30309-3504
Attention: Director Real Estate

If to Applicant: City of Johnstown
401 Main Street
Johnstown, Pennsylvania 15901
Attention: City Manager

Either party may, by notice in writing, direct that future notices or demands be sent to a different address. All notices hereunder shall be deemed given upon receipt (or, if rejected, upon rejection).

ACCEPTED BY:

NORFOLK SOUTHERN RAILWAY COMPANY

Real Estate Manager

DATE _____

CITY OF JOHNSTOWN

Title _____

DATE _____

Activity Number: 1269338
AD: May 07, 2019
File No. 1738769v1

THIS AGREEMENT, dated as of the ____ day of _____, 20__ is made and entered into by and between

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, whose mailing address is Three Commercial Place, Norfolk, Virginia 23510 (hereinafter called "Railway"); and

CITY OF JOHNSTOWN, a political subdivision of the Commonwealth of Pennsylvania, whose mailing address is 401 Main Street, Johnstown, Pennsylvania 15901 (hereinafter called "Licensee").

WITNESSETH

WHEREAS, Licensee proposes to install, construct, maintain, operate and remove an underground crossing of a 24-inch plastic stormwater pipeline (hereinafter called the "Facilities") located in, under and across the right-of-way or property and any tracks of Railway, at or near:

- Milepost JA-1.34, Johnstown I.T.
- Latitude N 40.327431, Longitude W 78.909894
- Johnstown, Cambria County, Pennsylvania
- Valuation Section 18.018, Map 2, Stationing 70+05

the same to be located in accordance with and limited to the installation shown on print of drawings marked Exhibits A and B, received by Railway on August 26, 2019, and Pipe Data Sheet, attached hereto and made a part hereof; and

WHEREAS, Licensee desires a license to use such right-of-way or property of Railway for the installation, construction, maintenance, operation and removal of the Facilities.

NOW, THEREFORE, for and in consideration of the premises, the payment of a non-refundable, non-assignable one-time fee in the amount of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00) to cover the Risk Financing Fee (as hereinafter defined) in the amount of \$1,000.00 and a one-time license fee in the amount of \$4,000.00, and the covenants hereinafter set forth, Railway hereby permits and grants to Licensee, insofar as Railway has the right to do so, without warranty and subject to all encumbrances, covenants and easements to which Railway's title may be subject, the right to use and occupy so much of Railway's right-of-way or property as may be necessary for the installation, construction, maintenance, operation and removal of the Facilities (said right-of-way or property of Railway being hereinafter collectively called the "Premises"), upon the following terms and conditions:

1. Use and Condition of the Premises. The Premises shall be used by Licensee only for the installation, construction, maintenance, operation and removal of the Facilities and for no other purpose without the prior written consent of Railway, which consent may be withheld by Railway in its sole discretion. Licensee accepts the Premises in their current "as is" condition, as suited for the operation of the Facilities, and without the benefit of any improvements to be constructed by Railway.

2. Installation of the Facilities; Railway Support. Licensee shall, at its expense, install, construct, maintain and operate the Facilities on a lien-free basis and in such a manner as will not interfere with the operations of Railway, or endanger persons or property of Railway. Such installation, construction, maintenance and operation of the Facilities shall be in accordance with (a) the plans and specifications (if any) shown on the prints attached hereto and any other specifications prescribed by Railway, (b) applicable laws, regulations, ordinances and other requirements of federal, state and local governmental authorities, and (c) applicable specifications of the American Railway Engineering and Maintenance-of-Way Association, when not in conflict with the applicable plans, specifications, laws, regulations, ordinances or requirements mentioned in (a) and (b), above. All underground pipes must have secondary pipe containment if the material flowing through the pipeline poses a safety or environmental hazard. Any change to the character, capacity or use of the Facilities shall require execution of a new agreement.

3. Railway Support. Railway shall, at Railway's option, furnish, at the sole expense of Licensee, labor and materials necessary, in Railway's sole judgment, to support its tracks and to protect its traffic (including, without limitation, flagging) during the installation, construction, maintenance, repair, or removal of the Facilities.

4. Electronic Interference. Licensee will provide Railway with no less than sixty (60) days advance written notice prior to the installation and operation of cathodic protection in order that tests may be conducted on Railway's signal, communications and other electronic systems (hereinafter collectively called the "Electronic Systems") for possible interference. If the Facilities cause degradation of the Electronic Systems, Licensee, at its expense, will either relocate the cathodic protection or modify the Facilities to the satisfaction of Railway so as to eliminate such degradation. Such modifications may include, without limiting the generality of the foregoing, providing additional shielding, reactance or other corrective measures deemed necessary by Railway. The provisions of this paragraph 4 shall apply to the Electronic Systems existing as of the date of this Agreement and to any Electronic Systems that Railway may install in the future.

5. Corrective Measures. If Licensee fails to take any corrective measures requested by Railway in a timely manner, or if an emergency situation is presented which, in Railway's judgment, requires immediate repairs to the Facilities, Railway, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

6. Railway Changes. If Railway shall make any changes, alterations or additions to the line, grade, tracks, structures, roadbed, installations, right-of-way or works of Railway, or to the character, height or alignment of the Electronic Systems, at or near the Facilities, Licensee shall, upon thirty (30) days prior written notice from Railway and at its sole expense, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of Railway, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of Railway.

7. Assumption of Risk. Unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway, Licensee hereby assumes all risk of damage to the Facilities and Licensee's other property relating to its use and occupation of the Premises or business carried on the Premises and any defects to the Premises; and Licensee hereby indemnifies Railway, its officers, directors, agents and employees from and against any liability for such damage.

8. Entry Upon Premises. Prior to commencement of any work to be performed on or about the Premises, Licensee shall notify the appropriate Division Engineer for the scheduling of protection and inspection. Within seventy-two (72) hours after the Division Engineer's actual receipt of such notification, the Division Engineer shall review the necessity and availability of flagmen for the proposed work and advise Licensee of such matters and the estimated cost therefor. No work shall be permitted on or about the Premises without the presence of Railway's flagman or the Division Engineer's waiver of the requirement for flag protection. Entry on or about the Premises or any other Railway right-of-way without the Division Engineer's prior approval shall be deemed trespassing. Licensee agrees to pay Railway, within thirty (30) days after delivery of an invoice therefor, for any protection and inspection costs incurred by Railway, in Railway's sole judgment, during any such entry.

9. Liens; Taxes. Licensee will not permit any mechanic's liens or other liens to be placed upon the Premises, and nothing in this Agreement shall be construed as constituting the consent or request of Railway, express or implied, to any person for the performance of any labor or the furnishing of any materials to the Premises, nor as giving Licensee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that could give rise to any mechanic's liens or other liens against the Premises. In addition, Licensee shall be liable for all taxes levied or assessed against the Facilities and any other equipment or other property placed by Licensee within the Premises. In the event that any such lien shall attach to the Premises or Licensee shall fail to pay such taxes, then, in addition to any other right or remedy available to Railway, Railway may, but shall not be obligated to, discharge the same. Any amount paid by Railway for any of the aforesaid purposes, together with related court costs, attorneys' fees, fines and penalties, shall be paid by Licensee to Railway within ten (10) days after Railway's demand therefor.

10. Indemnification. Licensee hereby agrees to indemnify and save harmless Railway, its officers, directors, agents and employees, from and against any and all liabilities, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and property damage to whomsoever, including, but not limited to, Licensee's agents, workmen, servants or employees, or whatsoever occurring (hereinafter collectively called "Losses") that arise in any manner from (a) the installation, construction, maintenance, operation, presence or removal of, or the failure to properly install, construct, maintain, operate or remove, the Facilities, or (b) any act, omission or neglect of Licensee, its agents, servants, employees or contractors in connection therewith, unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway.

11. Insurance.

(a) Without limiting in any manner the liability and obligations assumed by Licensee under any other provision of this Agreement, and as additional protection to Railway, Licensee shall, at its expense, pay the Risk Financing Fee set forth in subparagraph (i) below and shall procure and maintain with insurance companies satisfactory to Railway, the insurance policies described in subparagraphs (ii) and (iii).

(i) Upon execution of this Agreement, Licensee shall pay Railway a risk financing fee of \$1,000.00 per installation (herein called the "Risk Financing Fee") to provide Railroad Protective Liability Insurance or such supplemental insurance (which may be self-insurance) as Railway, in its sole discretion, deems to be necessary or appropriate.

(ii) Prior to commencement of installation or maintenance of the Facilities or entry on Railway's property, Licensee, and its contractor if it employs one, shall procure and maintain for the course of said installation and maintenance, a general liability insurance policy naming Railway as an additional insured, and containing products and completed operations and contractual liability coverage, with a combined single limit of not less than \$1,000,000 for each occurrence.

(iii) Prior to commencement of any subsequent maintenance of the Facility during the term of this Agreement, unless Railway elects to make available and Licensee pays the then current risk financing fee for each affected installation, Licensee, or its contractor if it employs one, shall furnish Railway with an original Railroad Protective Liability Insurance Policy naming Railway as the named insured and having a limit of not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 aggregate. Such policy shall be written using Insurance Services Offices Form Numbers CG 00 35 01 10 01.

(b) All insurance required under preceding subsection (a) shall be underwritten by insurers and be of such form and content as may be acceptable to Railway. Prior to commencement of installation or maintenance of the Facilities or any entry on Railway's property, Licensee, or its contractor if it employs one, shall: furnish to Railway's Risk Manager, Three Commercial Place, Norfolk, Virginia 23510-2191 (or such other representative and/or address as subsequently given by Railway to Licensee in writing), for approval, the original policy described in subsection (a)(iii) and a certificate of insurance evidencing the existence of a policy with the coverage described in subsection (a)(ii).

12. Environmental Matters. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations, ordinances or other requirements of federal, state and local governmental authorities relating to (a) the installation, construction, maintenance, operation or removal of the Facilities, including notification and reporting of any releases, and (b) any contamination of any property, water, air or groundwater arising or resulting, in whole or in part, from Licensee's operation or use of the Premises pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to install, construct, maintain, operate or remove the Facilities. Licensee agrees to indemnify and hold

harmless Railway from and against any and all fines, penalties, demands or other Losses (including attorneys' fees) incurred by Railway or claimed by any person, company or governmental entity relating to (a) any contamination of any property, water, air or groundwater due to the use or presence of the Facilities on the Premises, (b) Licensee's violation of any laws, regulations or other requirements of federal, state or local governmental authorities in connection with the use or presence of the Facilities on the Premises or (c) any violation of Licensee's obligations imposed under this paragraph. Without limitation, this indemnity provision shall extend to any cleanup and investigative costs relating to any contamination of the Premises arising or resulting from, in whole or in part, Licensee's use of the Facilities or any other activities by or on behalf of Licensee occurring on or about the Premises. Licensee further agrees not to dispose of any trash, debris or wastes, including hazardous waste, on the Premises and will not conduct any activities on the Premises which would require a hazardous waste treatment, storage or disposal permit.

13. Assignments and Other Transfers.

(a) Licensee shall not assign, transfer, sell, mortgage, encumber, sublease or otherwise convey (whether voluntarily, involuntarily or by operation of law) this Agreement or any interest therein, nor license, mortgage, encumber or otherwise grant to any other person or entity (whether voluntarily, involuntarily or by operation of law) any right or privilege in or to the Premises (or any interest therein), in whole or in part, without the prior written consent of Railway, which consent may be withheld by Railway in its sole discretion. Any such assignment or other transfer made without Railway's prior written consent shall be null and void and, at Railway's option, shall constitute an immediate default of this Agreement. Notwithstanding the foregoing, upon prior written notice to Railway, Licensee may assign this Agreement to a parent, a wholly-owned subsidiary of Licensee or a wholly-owned subsidiary of Licensee's parent without Railway's consent; provided, however, that no such assignment shall relieve Licensee of its obligations under this Agreement.

(b) Railway shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in or to the Premises. From and after the effective date of any such assignment or transfer, Railway shall be released from any further obligations hereunder; and Licensee shall look solely to such successor-in-interest of Railway for the performance of the obligations of "Railway" hereunder.

14. Meaning of "Railway". The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's officers, directors, agents and employees, and any parent company, subsidiary or affiliate of Railway and their respective officers, directors, agents and employees.

15. Default; Remedies.

(a) The following events shall be deemed to be events of default by Licensee under this Agreement:

(i) Licensee shall fail to pay the Fee or any other sum of money due hereunder and such failure shall continue for a period of ten (10) days after the due date thereof;

(ii) Licensee shall fail to comply with any provision of this Agreement not requiring the payment of money, all of which terms, provisions and covenants shall be deemed material, and such failure shall continue for a period of thirty (30) days after written notice of such default is delivered to Licensee;

(iii) Licensee shall become insolvent or unable to pay its debts as they become due, or Licensee notifies Railway that it anticipates either condition;

(iv) Licensee takes any action to, or notifies Railway that Licensee intends to file a petition under any section or chapter of the United States Bankruptcy Code, as amended from time to time, or under any similar law or statute of the United States or any State thereof; or a petition shall be filed against Licensee under any such statute; or

(v) A receiver or trustee shall be appointed for Licensee's license interest hereunder or for all or a substantial part of the assets of Licensee, and such receiver or trustee is not dismissed within sixty (60) days of the appointment.

(b) Upon the occurrence of any event or events of default by Licensee, whether enumerated in this paragraph 15 or not, Railway shall have the option to pursue any remedies available to it at law or in equity without any additional notices to Licensee. Railway's remedies shall include, but not be limited to, the following: (i) termination of this Agreement, in which event Licensee shall immediately surrender the Premises to Railway; (ii) entry into or upon the Premises to do whatever Licensee is obligated to do under the terms of this License, in which event Licensee shall reimburse Railway on demand for any expenses which Railway may incur in effecting compliance with Licensee's obligations under this License, but without rendering Railway liable for any damages resulting to Licensee or the Facilities from such action; and (iii) pursuit of all other remedies available to Railway at law or in equity, including, without limitation, injunctive relief of all varieties.

16. Railway Termination Right. Notwithstanding anything to the contrary in this Agreement, Railway shall have the right to terminate this Agreement and the rights granted hereunder, after delivering to Licensee written notice of such termination no less than sixty (60) days prior to the effective date thereof, upon the occurrence of any one or more of the following events:

(a) If Licensee shall discontinue the use or operations of the Facilities; or

(b) If Railway shall be required by any governmental authority having jurisdiction over the Premises to remove, relocate, reconstruct or discontinue operation of its railroad on or about the Premises; or

(c) If Railway, in the good faith judgment of its Superintendent, shall require a change in the location or elevation of its railroad on or about the location of the Facilities or the Premises that might effectively prohibit the use or operation of the Facilities; or

(d) If Railway, in the good faith judgment of its Superintendent, determines that the maintenance or use of the Facilities unduly interferes with the operation and maintenance of the facilities of Railway, or with the present or future use of such property by Railway, its lessees, affiliates, successors or assigns, for their respective purposes.

17. Condemnation. If the Premises or any portion thereof shall be taken or condemned in whole or in part for public purposes, or sold in lieu of condemnation, then this Agreement and the rights granted to Licensee hereunder shall, at the sole option of Railway, forthwith cease and terminate. All compensation awarded for any taking (or sale proceeds in lieu thereof) shall be the property of Railway, and Licensee shall have no claim thereto, the same being hereby expressly waived by Licensee.

18. Removal of Facilities; Survival. The Facilities are and shall remain the personal property of Licensee. Upon the expiration or termination of this Agreement, Licensee shall remove the Facilities from the Premises within thirty (30) days after the effective date thereof. In performing such removal, unless otherwise directed by Railway, Licensee shall restore the Premises to the same condition as existed prior to the installation or placement of Facilities, reasonable wear and tear excepted. In the event Licensee shall fail to so remove the Facilities or restore the Premises, the Facilities shall be deemed to have been abandoned by Licensee, and the same shall become the property of Railway for Railway to use, remove, destroy or otherwise dispose of at its discretion and without responsibility for accounting to Licensee therefor; provided, however, in the event Railway elects to remove the Facilities, Railway, in addition to any other legal remedy it may have, shall have the right to recover from Licensee all costs incurred in connection with such removal and the restoration of the Premises. Notwithstanding anything to the contrary contained in this Agreement, the expiration or termination of this Agreement, whether by lapse of time or otherwise, shall not relieve Licensee from Licensee's obligations accruing prior to the expiration or termination date, and such obligations shall survive any such expiration or other termination of this Agreement.

19. Entire Agreement. This Agreement contains the entire agreement of Railway and Licensee and supersedes any prior understanding or agreement between Railway and Licensee respecting the subject matter hereof; and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of any force or effect.

20. Attorneys' Fees. If Railway should bring any action under this Agreement, or consult or place the Agreement or any amount payable by Licensee hereunder, with an attorney concerning or for the enforcement of any of Railway's rights hereunder, then Licensee agrees in each and any such case to pay to Railway all costs, including but not limited to court costs and attorneys' fees, incurred in connection therewith.

21. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby; and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

22. Modifications; Waiver; Successors and Assigns. This Agreement may not be altered, changed or amended, except by instrument in writing signed by both parties hereto. No provision of this Agreement shall be deemed to have been waived by Railway unless such waiver shall be in a writing signed by Railway and addressed to Licensee, and no such waiver shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of this Agreement shall continue in full force and effect. No nor shall any custom or practice that may evolve between the parties in the administration of the terms hereof shall be construed to waive or lessen the right of Railway to insist upon the performance by Licensee in strict accordance with the terms hereof. The terms and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. If there shall be more than one Licensee, the obligations hereunder imposed upon Licensee shall be joint and several.

23. Notice. Any and all other notices, demands or requests by or from Railway to Licensee, or Licensee to Railway, shall be in writing and shall be sent by (a) postage paid, certified mail, return receipt requested, or (b) a reputable national overnight courier service with receipt therefor, or (c) personal delivery, and addressed in each case as follows:

If to Railway:

c/o Norfolk Southern Corporation
1200 Peachtree Street, NE – 12th Floor
Atlanta, Georgia 30309-3504
Attention: Director Real Estate

If to Licensee:

City of Johnstown
401 Main Street
Johnstown, Pennsylvania 15901
Attention: City Manager

Either party may, by notice in writing, direct that future notices or demands be sent to a different address. All notices hereunder shall be deemed given upon receipt (or, if rejected, upon rejection).

24. Miscellaneous. All exhibits, attachments, riders and addenda referred to in this License are incorporated into this Agreement and made a part hereof for all intents and purposes.

AD

Time is of the essence with regard to each provision of this Agreement. This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State in which the Premises are located. Each covenant of Railway and Licensee under this Agreement is independent of each other covenant under this Agreement. No default in performance of any covenant by a party shall excuse the other party from the performance of any other covenant. The provisions of Paragraphs 7, 9, 10, 12 and 18 shall survive the expiration or earlier termination of this Agreement.

25. Limitations of Grant. Licensee acknowledges that the license granted hereunder is a quitclaim grant, made without covenants, representations or warranties with respect to Railway's (a) right to make the grant, (b) title in the Premises, or (c) right to use or make available to others the Premises for the purposes contemplated herein. Railway is the owner and/or holder of the Premises subject to the terms and limitations under which it is owned or held, including without limitation conditions, covenants, restrictions, easements (including any pre-existing fiber optic easements or licenses), encroachments, leases, licenses, permits, mortgages, indentures, reversionary interests, fee interests, zoning restrictions and other burdens and limitations, of record and not of record, and to rights of tenants and licensees in possession, and Licensee agrees that the rights licensed hereunder are subject and subordinate to each and all of the foregoing. Licensee accepts this grant knowing that others may claim that Railway has no right to make it, and Licensee agrees to release, hold harmless and indemnify (and, at Railway's election, defend, at Licensee's sole expense, with counsel approved by Railway) Railway, its affiliated companies, and its and their respective officers, directors, agents and employees, from and against any detriments to, or liabilities of, any type or nature arising from such claims, including punitive damages and any forfeitures declared or occurring as a result of this grant.

26. Limitations Upon Damages. Notwithstanding any other provision of this Agreement, Railway shall not be liable for breach of this Agreement or under this Agreement for any consequential, incidental, exemplary, punitive, special, business damages or lost profits, as well as any claims for death, personal injury, and property loss and damage which occurs by reason of, or arises out of, or is incidental to the interruption in or usage of the Facilities placed upon or about the Premises by Licensee, including without limitation any damages under such claims that might be considered consequential, incidental, exemplary, punitive, special, business damages or lost profits.

27. This License is authorized by Licensee to be entered into by Resolution / Ordinance Number _____, adopted by _____, a certified copy of which is attached hereto and made a part hereof.

28. This Agreement shall become effective as of the expiration of thirty (30) days from the date when a copy thereof shall be filed by Railway in the office of the Secretary of the Pennsylvania Public Utility Commission ("PA PUC"), provided that, if the PA PUC shall, prior to the expiration of such period institute a proceeding affecting its validity under the provisions of Section 507 of the Public Utility Law, this Agreement shall only become effective upon its approval by the PA PUC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the date first above written.

Witness:

**NORFOLK SOUTHERN RAILWAY
COMPANY**

As to Railway

By: _____
Real Estate Manager

Witness:

CITY OF JOHNSTOWN

Nancy J. Cushing
As to Licensee *City Clerk*

By: *Robert S. Ritter*
Title: *ACTING CITY MANAGER*

Activity Number 1274790
AD: October 02, 2019
File No. 1787253v1

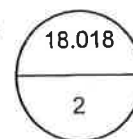


PIPE DATA SHEET

	CARRIER PIPE	CASING PIPE
CONTENTS TO BE HANDLED	STORM RUNOFF	
MAX. ALLOWABLE OPERATING PRESSURE		
NOMINAL SIZE OF PIPE	24"	
OUTSIDE DIAMETER		
INSIDE DIAMETER	24"	
WALL THICKNESS		
WEIGHT PER FOOT		
MATERIAL	SLCPP	
PROCESS OF MANUFACTURE		
SPECIFICATION		
GRADE OR CLASS (Specified Minimum Yield Strength)		
TEST PRESSURE		
TYPE OF JOINT	B/S	
TYPE OF COATING		
DETAILS OF CATHODIC PROTECTION		
DETAILS OF SEALS OR PROTECTION AT END OF CASING		
CHARACTER OF SUBSURFACE MATERIAL		
APPROXIMATE GROUND WATER LEVEL		
SOURCE OF INFORMATION ON SUBSURFACE CONDITIONS		

Proposed method of installation:

- Bore and jack (per Section 5.1.3 of NSCE-8)
- Jacking (per Section 5.1.4 of NSCE-8)
- Tunneling (with Tunnel Liner Plate) (per Section 5.1.5 of NSCE-8)
- Directional Bore/Horizontal Direction Drilling – Method A (per Section 5.1.6 of NSCE-8)
- Directional Bore/Horizontal Direction Drilling – Method B (per Section 5.1.6 of NSCE-8)
- Open Cut (per Section 5.1.2 of NSCE-8). *All installations directly under any track must be designed as a bored installation. Open cut installations will be considered on a case-by-case basis by Norfolk Southern's Division Superintendent at the time of installation.*
- Other (Specify): _____



A-1 Received 8/26/19
Johnstown, Pennsylvania
Penn RR Co
Lat: N 40.327431
Long: W 78.909894

Last Revised: 12/20/17

1274798 - AD



DATE	DESCRIPTION	BY	CHECKED

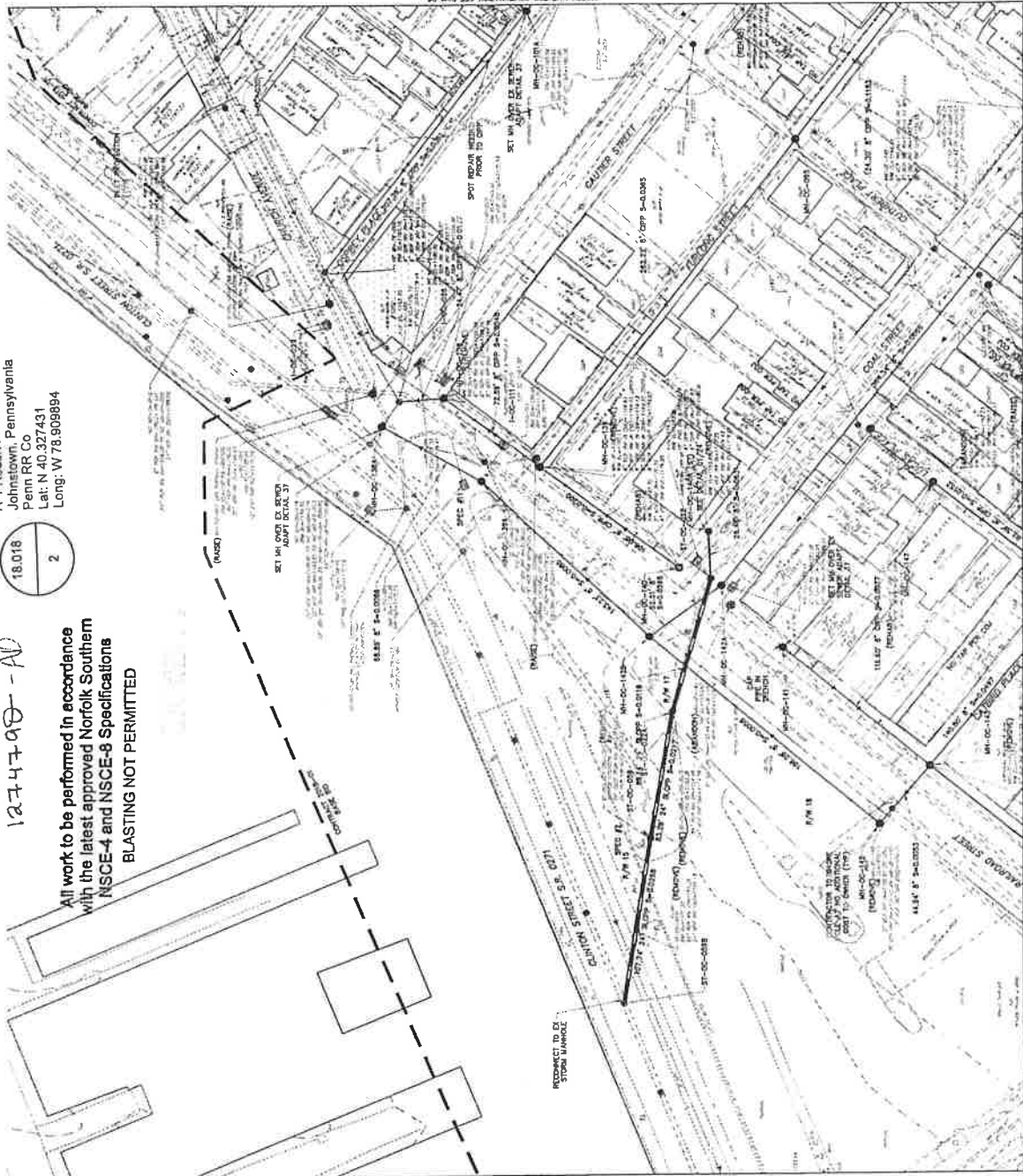
CITY OF JOHNSTOWN
 OLD CONEMAUGH BOROUGH
 SANITARY / STORM SEWER SEPARATION PROJECT
 CONTRACT 2018-01
 CITY OF JOHNSTOWN
 CAMBRIA COUNTY, PENNSYLVANIA
 PLAN - BASE BID
 WWW.CITYOFJOHNSTOWN.PA.GOV

Drawing No.
04

A-1 Received 6/26/19
 Johnstown, Pennsylvania
 Penn RR Co
 Lat: N 40.327431
 Long: W 78.909894



1274790-AC
 All work to be performed in accordance
 with the latest approved Norfolk Southern
 NSCE-4 and NSCE-8 Specifications
 BLASTING NOT PERMITTED



PROFILE REFERENCE TABLE

STRUCTURE	STATION	START ELEVATION	END ELEVATION
ST-00-001	ST-00-000	63.72	63.72
ST-00-002	ST-00-001	63.72	63.72
ST-00-003	ST-00-002	63.72	63.72
ST-00-004	ST-00-003	63.72	63.72
ST-00-005	ST-00-004	63.72	63.72
ST-00-006	ST-00-005	63.72	63.72
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ST-00-016	ST-00-015	63.72	63.72
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ST-00-019	ST-00-018	63.72	63.72
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ST-00-197	ST-00-196	63.72	63.72
ST-00-198	ST-00-197	63.72	63.72
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STORM SEWER INLETS

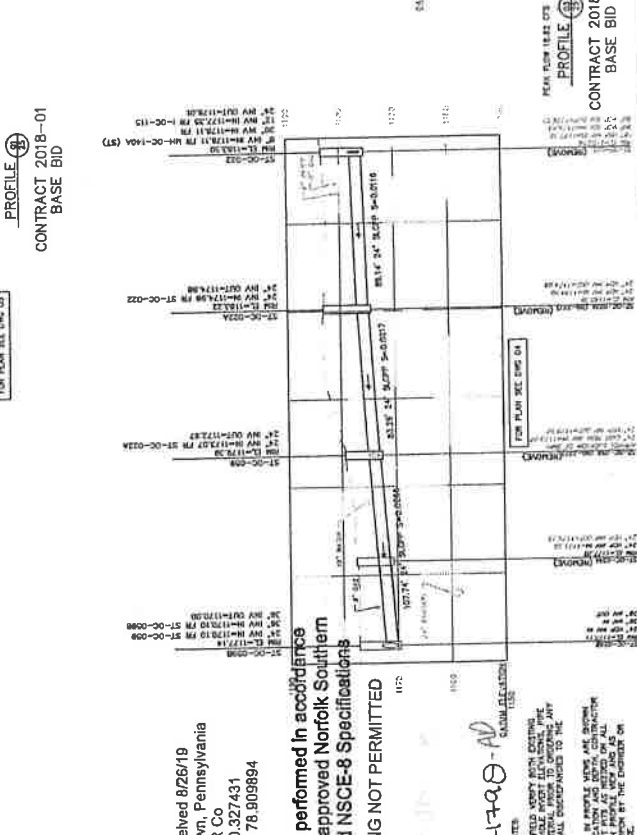
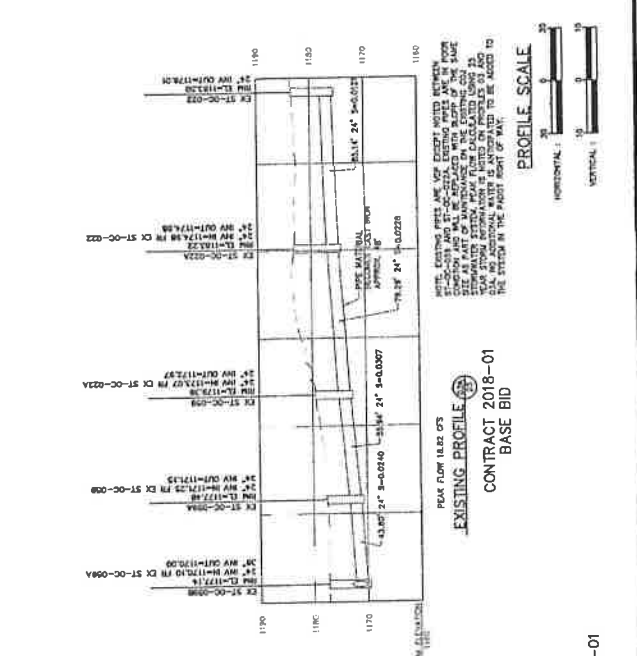
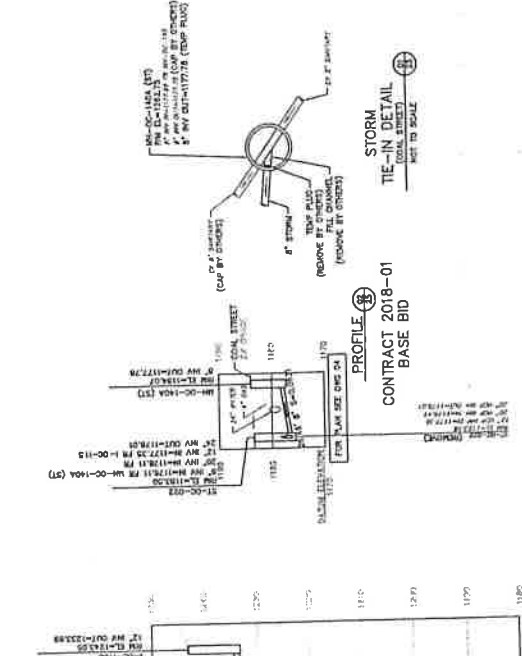


NO.	DATE	REVISIONS

EADS
 ENGINEERING & ARCHITECTURE
 227 FRANKLIN ST. SUITE 300
 JOHNSTOWN, PA 15701
 Phone: 814-333-2388
 Fax: 814-333-7088
 www.eadseng.com

CITY OF JOHNSTOWN
 OLD COMAUGH BOROUGH
 SANITARY / STORM SEWER SEPARATION PROJECT
 CONTRACT 2018-01
 CITY OF JOHNSTOWN
 CAMBRIA COUNTY, PENNSYLVANIA
 PROFILES-BASE BID

Drawing No.
25



A-1 Received 8/26/19
 Johnstown, Pennsylvania
 Penn RR Co
 Lat. N. 40.327431
 Long. W. 78.809884

All work to be performed in accordance with the latest approved Norfolk Southern NSCE-4 and NSCE-8 Specifications
 BLASTING NOT PERMITTED

PROFILE GENERAL NOTES
 CONTRACTOR SHALL FIELD VERIFY EXISTING PIPE SIZES AND MATERIALS FROM THE EXISTING MANHOLE REPORT ALL DISCREPANCIES TO THE ENGINEER.
 ALL APPROPRIATE LOCATION AND EXISTING CONTRACTOR CHANGES SHOWN IN PROFILE VIEW AND AS NOTED INDICATED SHALL BE MADE BY THE CONTRACTOR AT HIS OWN RISK.

1271799-AD



AECOM
1700 Market Street
Suite 1600
Philadelphia, PA 19103
www.aecom.com

215 735 0832 tel
215 735 0883 fax

May 07, 2019

George Hayfield
City Manager
City of Johnstown
401 Main Street
Johnstown, PA 15901

Subject: Johnstown, Cambria County, Pennsylvania
Milepost JA-1.55, Johnstown IT, Pittsburgh Division

Norfolk Southern Activity No. 1269338

Proposed installation of lining of an existing 8-inch vitrified clay sewer pipe located entirely within the confines of Matthew Street (No DOT# Assigned)

Dear Mr. Hayfield:

AECOM, as consultant for Norfolk Southern Railway Company, has reviewed the occupancy permit application for City of Johnstown regarding the proposed installation of lining of an existing 8-inch vitrified clay sewer pipe, submitted on March 4, 2019, your project number 0620-14-465.

Enclosed are two original counterparts of the Public Street Acknowledgement Form for signature on behalf of the City of Johnstown. Please return to this AECOM office the following:

- A check in the amount of \$2,500.00 (payable to AECOM) to cover the administrative, engineering and agreement preparation fee.
- Two originals of the Public Street Acknowledgement Form signed and dated (in BLUE ink).
- A check in the amount of \$1,000.00 (payable to NORFOLK SOUTHERN RAILWAY COMPANY) to cover the Risk Management Fee. Payment of the Risk Management Fee will satisfy all requirements for Railroad Protective Liability Insurance for the installation of the facility.
- The Certificate of Commercial General Liability Insurance as required in Paragraph 5 of the agreement.
 - In order to avoid delay to your project, please ensure the certificate is completed exactly as indicated on the attached sample. The description of operations must state "NORFOLK SOUTHERN RAILWAY COMPANY is included as additional insured - Activity Number 1269338"
 - Certificate Holder must be in the name of:
NORFOLK SOUTHERN RAILWAY COMPANY
Attn: Director Risk Management
Three Commercial Place
Norfolk, VA 23510

After receipt of all of the above items in this office, you should anticipate approximately two weeks for receipt of authorization to proceed with construction. **Please do not schedule your construction until you are in receipt of a fully executed agreement.** No work on Norfolk Southern property is authorized until you are in receipt of a fully executed Acknowledgment Form and instructions are obtained from Railway's designated construction representative. The contact information for Railway's construction representative(s) will be provided upon return of the fully executed counterpart.

The terms and conditions of this agreement shall be valid for 60 calendar days after the date of this letter. If you are unable to execute the agreement within this 60 calendar day time frame, please advise this office in writing of your intent. This activity will be automatically cancelled in 60 calendar days if the items requested above are not returned, or we do not receive your request for a time extension. Reactivation of cancelled activities may require a new application along with appropriate application fees, and license agreements will be re-drafted in accordance with the current Norfolk Southern terms and conditions.

Very truly yours,

Angelina DiScienzo
Contract Administrator
angelina.discienzo@aecom.com

Sample CGL Certificate

Licensee/Lessee/Industry identified in the agreement must be the named insured. Norfolk Southern also requires the prime contactors CGL certificate

The amount in this "Each Occurrence" box must be at least \$1,000,000.00 or the amount in this box combined with the "Each Occurrence" coverage of any Excess Liability must be at least \$1,000,000.00

This box should contain the Name of the Railroad included as an additional insured. This certificate applies to all contracts/agreements between the named insured and Railway. Add Railway activity #

Name of Railway must be the exact name of Railway on Agreement: Example, Central of Georgia Railroad Company, Florida Railway Company ect.

ACORD		CERTIFICATE OF INSURANCE		ISSUE DATE
PRODUCER		<p>This certificate is issued as a means of information only and does not affect upon the Certificate holder. This Certificate does not amend, extend or alter the coverage described by the policy below.</p> <p style="text-align: center;">COMBINED AFFORDING COVERAGE</p>		
INSURED		<p>Company A</p> <p>Company B</p> <p>Company C</p> <p>Company D</p> <p>Company E</p>		
<p>This is to certify that the policies described herein have been issued to the named insured herein for the policy period indicated. Notwithstanding any other provision of contract or other document with respect to which this certificate may be issued or may pertain, the insurance provided by the policies described herein is subject to all the terms, conditions and exclusions of such policies. Limits shown may have been reduced by paid claims.</p>				
COI	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	LIMITS OF LIABILITY
A	<input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> Commercial General Liability <input type="checkbox"/> Chain Mail <input type="checkbox"/> Contractual <input type="checkbox"/> Errors and Omissions/Professional <input type="checkbox"/> Personal and Household <input type="checkbox"/> Other			EACH OCCURRENCE FIRE DAMAGE MEDICAL EXPENSE PERSONAL AND ADVERTISING INJURY GENERAL AGGREGATE PRODUCTS AND COMPLETION AGG. COVERED SINGLE LIMIT SOCIAL SAFETY (Professional) SOCIAL SAFETY (Personal) PROPERTY DAMAGE (Professional) PROPERTY DAMAGE (Personal) COLLISION VEHICLE LIABILITY AIRCRAFT ACCIDENT EL DISEASE (Personal) EL DISEASE (Professional) EACH OCCURRENCE AGGREGATE
A	<input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Employers' Liability <input type="checkbox"/> Other			
B	<input type="checkbox"/> Excess Liability <input type="checkbox"/> Insurance <input type="checkbox"/> Other			

Use this address

Please do NOT purchase Railroad Protective Liability Insurance

NORFOLK SOUTHERN RAILWAY COMPANY

**ACKNOWLEDGMENT FORM FOR WIRE AND/OR PIPE OCCUPATION
WITHIN THE LIMITS OF A PUBLIC RIGHT OF WAY**

APPLICANT: City of Johnstown
401 Main Street
Johnstown, Pennsylvania 15901

SUBJECT: Johnstown, Cambria County, Pennsylvania
Milepost JA-1.55, Johnstown IT, Pittsburgh Division
Latitude N 40.326050, Longitude W 78.913427

Norfolk Southern Activity No. 1269338

Proposed installation of lining of an existing 8-inch vitrified clay sewer pipe located entirely within the confines of Matthew Street (No DOT# Assigned)

In response to Applicant's submittal dated March 4, 2019, regarding the proposed construction of the subject project, Norfolk Southern Railway Company ("Railway") does not object to the installation of the Facilities as shown on the attached Drawings marked Exhibits A and B, received by Railway on March 4, 2019, provided Applicant adheres to the following terms and conditions:

- The Facilities shall be installed, maintained, repaired and renewed by and at the sole risk, cost and expense of the Applicant.
- The Facilities must conform with all Federal, State and local laws, rules and regulations and will not be attached to any railroad structure or appurtenance and will not be located on any private property of Railway.
- The design and construction of aerial Facilities shall comply with Railway's NSCE-4 Specification, latest edition, and underground Facilities shall comply with Railway's NSCE-8 Specification, latest edition.
- Insurance

(a) Without limiting in any manner the liability and obligations assumed by Applicant under any other provision of this Agreement, and as additional protection to Railway, Applicant shall, at its expense, pay the Risk Financing Fee set forth in subparagraph (i) below and shall procure and maintain with insurance companies satisfactory to Railway, the insurance policies described in subparagraphs (ii) and (iii).

(i) Upon execution of this Agreement, Applicant shall pay Railway a risk financing fee of \$1,000 per installation (herein called the "Risk Financing Fee") to provide Railroad Protective Liability Insurance or such supplemental insurance (which may be self-insurance) as Railway, in its sole discretion, deems to be necessary or appropriate.

(ii) Prior to commencement of installation or maintenance of the Facilities or entry on Railway's property, Applicant, and its contractor if it employs one, shall procure and maintain for the course of said installation and maintenance, a general liability insurance policy naming Railway as an additional insured, and containing products and completed operations and contractual liability coverage, with a combined single limit of not less than \$1,000,000 for each occurrence.

(iii) Prior to commencement of any subsequent maintenance of the Facility during the term of this Agreement, unless Railway elects to make available and Applicant pays the then current risk financing fee for each affected installation, Applicant, or its contractor if it employs one, shall furnish Railway with an original Railroad Protective Liability Insurance Policy naming Railway as the named insured and having a limit of not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 aggregate. Such policy shall be written using Insurance Services Offices Form Numbers CG 00 35 01 10 01.

(b) All insurance required under preceding subsection (a) shall be underwritten by insurers and be of such form and content as may be acceptable to Railway. Prior to commencement of installation or maintenance of the Facilities or any entry on Railway's property, Applicant, or its contractor if it employs one, shall furnish to Railway's Risk Manager, Three Commercial Place, Norfolk, Virginia 23510-2191 (or such other representative and/or address as subsequently given by Railway to Applicant in writing), for approval, the original policy described in subsection (a)(iii) and a certificate of insurance evidencing the existence of a policy with the coverage described in subsection (a)(ii).

- Prior to commencement of any work to be performed, Applicant shall notify the appropriate Division Engineer for the scheduling of protection and inspection. Within seventy-two (72) hours after the Division Engineer's actual receipt of such notification, the Division Engineer shall review the necessity and availability of flagmen for the proposed work and advise Applicant of such matters and the estimated cost therefor. No work shall be permitted without the presence of Railway's flagman or the Division Engineer's waiver of the requirement for flag protection. Entry on or about any Railway right-of-way without the Division Engineer's prior approval shall be deemed trespassing. Applicant agrees to pay Railway, within thirty (30) days after delivery of an invoice therefor, for any protection and inspection costs incurred by Railway, in Railway's sole judgment, during any such entry.
- If Railway deems it advisable during the progress of any work of construction, maintenance, repairs and renewals, alterations, adjustments or removal of the Applicant's Facilities to place watchmen, flagmen, inspectors or any other employees deemed necessary by Railway for the protection of its train traffic and the protection of the property owned or in possession or control of Railway, or its employees, patrons, or licensees, Railway shall have the right to do so and Applicant agrees to bear full cost and expense thereof and to promptly reimburse Railway upon demand.
- All cost or expense resulting from any and all loss of life or property, or injury or damage to the person or property of any person, firm or corporation (including the parties hereto and their respective officers, agents and employees) and any and all claims, demands or actions for such loss, injury or damage, caused by or growing out of the presence or use, or the construction, maintenance, renewal, change or relocation and subsequent removal of the Facilities and appurtenances herein referred to shall be borne by Applicant unless caused solely by the negligence or willful misconduct of Railway.
- In the event of any revision, renewal, addition, removal or alteration of said facilities, prior approval of the Railway must be secured. Applicant must also furnish Railroad Protective Liability Insurance for this work.
- Upon abandonment of the Facilities by Applicant, Applicant shall seek direction from Railway's Chief Engineer, or his representative, regarding the method of abandonment if the Facilities will be abandoned in place.
- In the event the Facilities consist of electrical power or communication wires and appurtenances, Applicant shall promptly remedy any inductive interference growing out of, or resulting from the presence of, the Facilities.
- In the event the Facilities consist of an underground occupation, Applicant will be responsible for any settlement caused to the roadbed, right of way and/or tracks, facilities and appurtenances of Railway arising from or as a result of the installation of the Facilities, and Applicant shall pay to Railway on demand the full cost and expense therefore.
- All rights and obligations conferred hereby shall extend to the successors and assigns of the parties hereto, provided that the Applicant shall in no event transfer or assign its rights hereunder without the written consent of Railway, which will not be unreasonably withheld.
- If the public road is abandoned by the appropriate governmental authority and the Facilities remain within the limits of Railway's right of way after such abandonment, as a condition for the continuing presence of the Facilities within Railway's right of way, Railway and Applicant shall agree upon an appropriate occupancy fee or rental for the Facilities and execute an amendment to this Agreement within ninety (90) days after the date upon which such public road is abandoned.
- Any and all notices, demands or requests by or from Railway to Applicant, or Applicant to Railway, shall be in writing and shall be sent by (a) postage paid, certified mail, return receipt requested, or (b) a reputable

national overnight courier service with receipt therefor, or (c) personal delivery, and addressed in each case as follows:

If to Railway: c/o Norfolk Southern Corporation
1200 Peachtree Street, NE - 12th Floor
Atlanta, Georgia 30309-3504
Attention: Director Real Estate

If to Applicant: City of Johnstown
401 Main Street
Johnstown, Pennsylvania 15901
Attention: City Manager

Either party may, by notice in writing, direct that future notices or demands be sent to a different address. All notices hereunder shall be deemed given upon receipt (or, if rejected, upon rejection).

ACCEPTED BY:

NORFOLK SOUTHERN RAILWAY COMPANY

Real Estate Manager

DATE _____

CITY OF JOHNSTOWN

Title _____

DATE _____

Activity Number: 1269338
AD: May 07, 2019
File No. 1738769v1

THIS AGREEMENT, dated as of the _____ day of _____, 20__ is made and entered into by and between

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, whose mailing address is Three Commercial Place, Norfolk, Virginia 23510 (hereinafter called "Railway"); and

CITY OF JOHNSTOWN, a political subdivision of the Commonwealth of Pennsylvania, whose mailing address is 401 Main Street, Johnstown, Pennsylvania 15901 (hereinafter called "Licensee").

WITNESSETH

WHEREAS, Licensee proposes to install, construct, maintain, operate and remove an underground crossing of a 24-inch plastic stormwater pipeline (hereinafter called the "Facilities") located in, under and across the right-of-way or property and any tracks of Railway, at or near:

- Milepost JA-1.34, Johnstown I.T.
- Latitude N 40.327431, Longitude W 78.909894
- Johnstown, Cambria County, Pennsylvania
- Valuation Section 18.018, Map 2, Stationing 70+05

the same to be located in accordance with and limited to the installation shown on print of drawings marked Exhibits A and B, received by Railway on August 26, 2019, and Pipe Data Sheet, attached hereto and made a part hereof; and

WHEREAS, Licensee desires a license to use such right-of-way or property of Railway for the installation, construction, maintenance, operation and removal of the Facilities.

NOW, THEREFORE, for and in consideration of the premises, the payment of a non-refundable, non-assignable one-time fee in the amount of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00) to cover the Risk Financing Fee (as hereinafter defined) in the amount of \$1,000.00 and a one-time license fee in the amount of \$4,000.00, and the covenants hereinafter set forth, Railway hereby permits and grants to Licensee, insofar as Railway has the right to do so, without warranty and subject to all encumbrances, covenants and easements to which Railway's title may be subject, the right to use and occupy so much of Railway's right-of-way or property as may be necessary for the installation, construction, maintenance, operation and removal of the Facilities (said right-of-way or property of Railway being hereinafter collectively called the "Premises"), upon the following terms and conditions:

1. Use and Condition of the Premises. The Premises shall be used by Licensee only for the installation, construction, maintenance, operation and removal of the Facilities and for no other purpose without the prior written consent of Railway, which consent may be withheld by Railway in its sole discretion. Licensee accepts the Premises in their current "as is" condition, as suited for the operation of the Facilities, and without the benefit of any improvements to be constructed by Railway.

2. Installation of the Facilities; Railway Support. Licensee shall, at its expense, install, construct, maintain and operate the Facilities on a lien-free basis and in such a manner as will not interfere with the operations of Railway, or endanger persons or property of Railway. Such installation, construction, maintenance and operation of the Facilities shall be in accordance with (a) the plans and specifications (if any) shown on the prints attached hereto and any other specifications prescribed by Railway, (b) applicable laws, regulations, ordinances and other requirements of federal, state and local governmental authorities, and (c) applicable specifications of the American Railway Engineering and Maintenance-of-Way Association, when not in conflict with the applicable plans, specifications, laws, regulations, ordinances or requirements mentioned in (a) and (b), above. All underground pipes must have secondary pipe containment if the material flowing through the pipeline poses a safety or environmental hazard. Any change to the character, capacity or use of the Facilities shall require execution of a new agreement.

3. Railway Support. Railway shall, at Railway's option, furnish, at the sole expense of Licensee, labor and materials necessary, in Railway's sole judgment, to support its tracks and to protect its traffic (including, without limitation, flagging) during the installation, construction, maintenance, repair, or removal of the Facilities.

4. Electronic Interference. Licensee will provide Railway with no less than sixty (60) days advance written notice prior to the installation and operation of cathodic protection in order that tests may be conducted on Railway's signal, communications and other electronic systems (hereinafter collectively called the "Electronic Systems") for possible interference. If the Facilities cause degradation of the Electronic Systems, Licensee, at its expense, will either relocate the cathodic protection or modify the Facilities to the satisfaction of Railway so as to eliminate such degradation. Such modifications may include, without limiting the generality of the foregoing, providing additional shielding, reactance or other corrective measures deemed necessary by Railway. The provisions of this paragraph 4 shall apply to the Electronic Systems existing as of the date of this Agreement and to any Electronic Systems that Railway may install in the future.

5. Corrective Measures. If Licensee fails to take any corrective measures requested by Railway in a timely manner, or if an emergency situation is presented which, in Railway's judgment, requires immediate repairs to the Facilities, Railway, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

6. Railway Changes. If Railway shall make any changes, alterations or additions to the line, grade, tracks, structures, roadbed, installations, right-of-way or works of Railway, or to the character, height or alignment of the Electronic Systems, at or near the Facilities, Licensee shall, upon thirty (30) days prior written notice from Railway and at its sole expense, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of Railway, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of Railway.

7. Assumption of Risk. Unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway, Licensee hereby assumes all risk of damage to the Facilities and Licensee's other property relating to its use and occupation of the Premises or business carried on the Premises and any defects to the Premises; and Licensee hereby indemnifies Railway, its officers, directors, agents and employees from and against any liability for such damage.

8. Entry Upon Premises. Prior to commencement of any work to be performed on or about the Premises, Licensee shall notify the appropriate Division Engineer for the scheduling of protection and inspection. Within seventy-two (72) hours after the Division Engineer's actual receipt of such notification, the Division Engineer shall review the necessity and availability of flagmen for the proposed work and advise Licensee of such matters and the estimated cost therefor. No work shall be permitted on or about the Premises without the presence of Railway's flagman or the Division Engineer's waiver of the requirement for flag protection. Entry on or about the Premises or any other Railway right-of-way without the Division Engineer's prior approval shall be deemed trespassing. Licensee agrees to pay Railway, within thirty (30) days after delivery of an invoice therefor, for any protection and inspection costs incurred by Railway, in Railway's sole judgment, during any such entry.

9. Liens; Taxes. Licensee will not permit any mechanic's liens or other liens to be placed upon the Premises, and nothing in this Agreement shall be construed as constituting the consent or request of Railway, express or implied, to any person for the performance of any labor or the furnishing of any materials to the Premises, nor as giving Licensee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that could give rise to any mechanic's liens or other liens against the Premises. In addition, Licensee shall be liable for all taxes levied or assessed against the Facilities and any other equipment or other property placed by Licensee within the Premises. In the event that any such lien shall attach to the Premises or Licensee shall fail to pay such taxes, then, in addition to any other right or remedy available to Railway, Railway may, but shall not be obligated to, discharge the same. Any amount paid by Railway for any of the aforesaid purposes, together with related court costs, attorneys' fees, fines and penalties, shall be paid by Licensee to Railway within ten (10) days after Railway's demand therefor.

10. Indemnification. Licensee hereby agrees to indemnify and save harmless Railway, its officers, directors, agents and employees, from and against any and all liabilities, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and property damage to whomsoever, including, but not limited to, Licensee's agents, workmen, servants or employees, or whatsoever occurring (hereinafter collectively called "Losses") that arise in any manner from (a) the installation, construction, maintenance, operation, presence or removal of, or the failure to properly install, construct, maintain, operate or remove, the Facilities, or (b) any act, omission or neglect of Licensee, its agents, servants, employees or contractors in connection therewith, unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway.

11. Insurance.

(a) Without limiting in any manner the liability and obligations assumed by Licensee under any other provision of this Agreement, and as additional protection to Railway, Licensee shall, at its expense, pay the Risk Financing Fee set forth in subparagraph (i) below and shall procure and maintain with insurance companies satisfactory to Railway, the insurance policies described in subparagraphs (ii) and (iii).

(i) Upon execution of this Agreement, Licensee shall pay Railway a risk financing fee of \$1,000.00 per installation (herein called the "Risk Financing Fee") to provide Railroad Protective Liability Insurance or such supplemental insurance (which may be self-insurance) as Railway, in its sole discretion, deems to be necessary or appropriate.

(ii) Prior to commencement of installation or maintenance of the Facilities or entry on Railway's property, Licensee, and its contractor if it employs one, shall procure and maintain for the course of said installation and maintenance, a general liability insurance policy naming Railway as an additional insured, and containing products and completed operations and contractual liability coverage, with a combined single limit of not less than \$1,000,000 for each occurrence.

(iii) Prior to commencement of any subsequent maintenance of the Facility during the term of this Agreement, unless Railway elects to make available and Licensee pays the then current risk financing fee for each affected installation, Licensee, or its contractor if it employs one, shall furnish Railway with an original Railroad Protective Liability Insurance Policy naming Railway as the named insured and having a limit of not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 aggregate. Such policy shall be written using Insurance Services Offices Form Numbers CG 00 35 01 10 01.

(b) All insurance required under preceding subsection (a) shall be underwritten by insurers and be of such form and content as may be acceptable to Railway. Prior to commencement of installation or maintenance of the Facilities or any entry on Railway's property, Licensee, or its contractor if it employs one, shall: furnish to Railway's Risk Manager, Three Commercial Place, Norfolk, Virginia 23510-2191 (or such other representative and/or address as subsequently given by Railway to Licensee in writing), for approval, the original policy described in subsection (a)(iii) and a certificate of insurance evidencing the existence of a policy with the coverage described in subsection (a)(ii).

12. Environmental Matters. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations, ordinances or other requirements of federal, state and local governmental authorities relating to (a) the installation, construction, maintenance, operation or removal of the Facilities, including notification and reporting of any releases, and (b) any contamination of any property, water, air or groundwater arising or resulting, in whole or in part, from Licensee's operation or use of the Premises pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to install, construct, maintain, operate or remove the Facilities. Licensee agrees to indemnify and hold

harmless Railway from and against any and all fines, penalties, demands or other Losses (including attorneys' fees) incurred by Railway or claimed by any person, company or governmental entity relating to (a) any contamination of any property, water, air or groundwater due to the use or presence of the Facilities on the Premises, (b) Licensee's violation of any laws, regulations or other requirements of federal, state or local governmental authorities in connection with the use or presence of the Facilities on the Premises or (c) any violation of Licensee's obligations imposed under this paragraph. Without limitation, this indemnity provision shall extend to any cleanup and investigative costs relating to any contamination of the Premises arising or resulting from, in whole or in part, Licensee's use of the Facilities or any other activities by or on behalf of Licensee occurring on or about the Premises. Licensee further agrees not to dispose of any trash, debris or wastes, including hazardous waste, on the Premises and will not conduct any activities on the Premises which would require a hazardous waste treatment, storage or disposal permit.

13. Assignments and Other Transfers.

(a) Licensee shall not assign, transfer, sell, mortgage, encumber, sublease or otherwise convey (whether voluntarily, involuntarily or by operation of law) this Agreement or any interest therein, nor license, mortgage, encumber or otherwise grant to any other person or entity (whether voluntarily, involuntarily or by operation of law) any right or privilege in or to the Premises (or any interest therein), in whole or in part, without the prior written consent of Railway, which consent may be withheld by Railway in its sole discretion. Any such assignment or other transfer made without Railway's prior written consent shall be null and void and, at Railway's option, shall constitute an immediate default of this Agreement. Notwithstanding the foregoing, upon prior written notice to Railway, Licensee may assign this Agreement to a parent, a wholly-owned subsidiary of Licensee or a wholly-owned subsidiary of Licensee's parent without Railway's consent; provided, however, that no such assignment shall relieve Licensee of its obligations under this Agreement.

(b) Railway shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in or to the Premises. From and after the effective date of any such assignment or transfer, Railway shall be released from any further obligations hereunder; and Licensee shall look solely to such successor-in-interest of Railway for the performance of the obligations of "Railway" hereunder.

14. Meaning of "Railway". The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's officers, directors, agents and employees, and any parent company, subsidiary or affiliate of Railway and their respective officers, directors, agents and employees.

15. Default; Remedies.

(a) The following events shall be deemed to be events of default by Licensee under this Agreement:

(i) Licensee shall fail to pay the Fee or any other sum of money due hereunder and such failure shall continue for a period of ten (10) days after the due date thereof;

(ii) Licensee shall fail to comply with any provision of this Agreement not requiring the payment of money, all of which terms, provisions and covenants shall be deemed material, and such failure shall continue for a period of thirty (30) days after written notice of such default is delivered to Licensee;

(iii) Licensee shall become insolvent or unable to pay its debts as they become due, or Licensee notifies Railway that it anticipates either condition;

(iv) Licensee takes any action to, or notifies Railway that Licensee intends to file a petition under any section or chapter of the United States Bankruptcy Code, as amended from time to time, or under any similar law or statute of the United States or any State thereof; or a petition shall be filed against Licensee under any such statute; or

(v) A receiver or trustee shall be appointed for Licensee's license interest hereunder or for all or a substantial part of the assets of Licensee, and such receiver or trustee is not dismissed within sixty (60) days of the appointment.

(b) Upon the occurrence of any event or events of default by Licensee, whether enumerated in this paragraph 15 or not, Railway shall have the option to pursue any remedies available to it at law or in equity without any additional notices to Licensee. Railway's remedies shall include, but not be limited to, the following: (i) termination of this Agreement, in which event Licensee shall immediately surrender the Premises to Railway; (ii) entry into or upon the Premises to do whatever Licensee is obligated to do under the terms of this License, in which event Licensee shall reimburse Railway on demand for any expenses which Railway may incur in effecting compliance with Licensee's obligations under this License, but without rendering Railway liable for any damages resulting to Licensee or the Facilities from such action; and (iii) pursuit of all other remedies available to Railway at law or in equity, including, without limitation, injunctive relief of all varieties.

16. Railway Termination Right. Notwithstanding anything to the contrary in this Agreement, Railway shall have the right to terminate this Agreement and the rights granted hereunder, after delivering to Licensee written notice of such termination no less than sixty (60) days prior to the effective date thereof, upon the occurrence of any one or more of the following events:

(a) If Licensee shall discontinue the use or operations of the Facilities; or

(b) If Railway shall be required by any governmental authority having jurisdiction over the Premises to remove, relocate, reconstruct or discontinue operation of its railroad on or about the Premises; or

(c) If Railway, in the good faith judgment of its Superintendent, shall require a change in the location or elevation of its railroad on or about the location of the Facilities or the Premises that might effectively prohibit the use or operation of the Facilities; or

(d) If Railway, in the good faith judgment of its Superintendent, determines that the maintenance or use of the Facilities unduly interferes with the operation and maintenance of the facilities of Railway, or with the present or future use of such property by Railway, its lessees, affiliates, successors or assigns, for their respective purposes.

17. Condemnation. If the Premises or any portion thereof shall be taken or condemned in whole or in part for public purposes, or sold in lieu of condemnation, then this Agreement and the rights granted to Licensee hereunder shall, at the sole option of Railway, forthwith cease and terminate. All compensation awarded for any taking (or sale proceeds in lieu thereof) shall be the property of Railway, and Licensee shall have no claim thereto, the same being hereby expressly waived by Licensee.

18. Removal of Facilities; Survival. The Facilities are and shall remain the personal property of Licensee. Upon the expiration or termination of this Agreement, Licensee shall remove the Facilities from the Premises within thirty (30) days after the effective date thereof. In performing such removal, unless otherwise directed by Railway, Licensee shall restore the Premises to the same condition as existed prior to the installation or placement of Facilities, reasonable wear and tear excepted. In the event Licensee shall fail to so remove the Facilities or restore the Premises, the Facilities shall be deemed to have been abandoned by Licensee, and the same shall become the property of Railway for Railway to use, remove, destroy or otherwise dispose of at its discretion and without responsibility for accounting to Licensee therefor; provided, however, in the event Railway elects to remove the Facilities, Railway, in addition to any other legal remedy it may have, shall have the right to recover from Licensee all costs incurred in connection with such removal and the restoration of the Premises. Notwithstanding anything to the contrary contained in this Agreement, the expiration or termination of this Agreement, whether by lapse of time or otherwise, shall not relieve Licensee from Licensee's obligations accruing prior to the expiration or termination date, and such obligations shall survive any such expiration or other termination of this Agreement.

19. Entire Agreement. This Agreement contains the entire agreement of Railway and Licensee and supersedes any prior understanding or agreement between Railway and Licensee respecting the subject matter hereof; and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of any force or effect.

20. Attorneys' Fees. If Railway should bring any action under this Agreement, or consult or place the Agreement or any amount payable by Licensee hereunder, with an attorney concerning or for the enforcement of any of Railway's rights hereunder, then Licensee agrees in each and any such case to pay to Railway all costs, including but not limited to court costs and attorneys' fees, incurred in connection therewith.

21. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby; and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

22. Modifications; Waiver; Successors and Assigns. This Agreement may not be altered, changed or amended, except by instrument in writing signed by both parties hereto. No provision of this Agreement shall be deemed to have been waived by Railway unless such waiver shall be in a writing signed by Railway and addressed to Licensee, and no such waiver shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of this Agreement shall continue in full force and effect. No nor shall any custom or practice that may evolve between the parties in the administration of the terms hereof shall be construed to waive or lessen the right of Railway to insist upon the performance by Licensee in strict accordance with the terms hereof. The terms and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. If there shall be more than one Licensee, the obligations hereunder imposed upon Licensee shall be joint and several.

23. Notice. Any and all other notices, demands or requests by or from Railway to Licensee, or Licensee to Railway, shall be in writing and shall be sent by (a) postage paid, certified mail, return receipt requested, or (b) a reputable national overnight courier service with receipt therefor, or (c) personal delivery, and addressed in each case as follows:

If to Railway:
c/o Norfolk Southern Corporation
1200 Peachtree Street, NE – 12th Floor
Atlanta, Georgia 30309-3504
Attention: Director Real Estate

If to Licensee:
City of Johnstown
401 Main Street
Johnstown, Pennsylvania 15901
Attention: City Manager

Either party may, by notice in writing, direct that future notices or demands be sent to a different address. All notices hereunder shall be deemed given upon receipt (or, if rejected, upon rejection).

24. Miscellaneous. All exhibits, attachments, riders and addenda referred to in this License are incorporated into this Agreement and made a part hereof for all intents and purposes.

Time is of the essence with regard to each provision of this Agreement. This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State in which the Premises are located. Each covenant of Railway and Licensee under this Agreement is independent of each other covenant under this Agreement. No default in performance of any covenant by a party shall excuse the other party from the performance of any other covenant. The provisions of Paragraphs 7, 9, 10, 12 and 18 shall survive the expiration or earlier termination of this Agreement.

25. Limitations of Grant. Licensee acknowledges that the license granted hereunder is a quitclaim grant, made without covenants, representations or warranties with respect to Railway's (a) right to make the grant, (b) title in the Premises, or (c) right to use or make available to others the Premises for the purposes contemplated herein. Railway is the owner and/or holder of the Premises subject to the terms and limitations under which it is owned or held, including without limitation conditions, covenants, restrictions, easements (including any pre-existing fiber optic easements or licenses), encroachments, leases, licenses, permits, mortgages, indentures, reversionary interests, fee interests, zoning restrictions and other burdens and limitations, of record and not of record, and to rights of tenants and licensees in possession, and Licensee agrees that the rights licensed hereunder are subject and subordinate to each and all of the foregoing. Licensee accepts this grant knowing that others may claim that Railway has no right to make it, and Licensee agrees to release, hold harmless and indemnify (and, at Railway's election, defend, at Licensee's sole expense, with counsel approved by Railway) Railway, its affiliated companies, and its and their respective officers, directors, agents and employees, from and against any detriments to, or liabilities of, any type or nature arising from such claims, including punitive damages and any forfeitures declared or occurring as a result of this grant.

26. Limitations Upon Damages. Notwithstanding any other provision of this Agreement, Railway shall not be liable for breach of this Agreement or under this Agreement for any consequential, incidental, exemplary, punitive, special, business damages or lost profits, as well as any claims for death, personal injury, and property loss and damage which occurs by reason of, or arises out of, or is incidental to the interruption in or usage of the Facilities placed upon or about the Premises by Licensee, including without limitation any damages under such claims that might be considered consequential, incidental, exemplary, punitive, special, business damages or lost profits.

27. This License is authorized by Licensee to be entered into by Resolution / Ordinance Number _____, adopted by _____, a certified copy of which is attached hereto and made a part hereof.

28. This Agreement shall become effective as of the expiration of thirty (30) days from the date when a copy thereof shall be filed by Railway in the office of the Secretary of the Pennsylvania Public Utility Commission ("PA PUC"), provided that, if the PA PUC shall, prior to the expiration of such period institute a proceeding affecting its validity under the provisions of Section 507 of the Public Utility Law, this Agreement shall only become effective upon its approval by the PA PUC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the date first above written.

Witness:

**NORFOLK SOUTHERN RAILWAY
COMPANY**

As to Railway

By: _____
Real Estate Manager

Witness:

CITY OF JOHNSTOWN

Nancy J. Cushing
As to Licensee *City Clerk*

By: *Robert S. Ritter*
Title: *ACTING CITY MANAGER*

Activity Number 1274790
AD: October 02, 2019
File No. 1787253v1



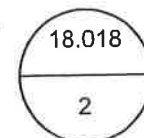
PIPE DATA SHEET

	CARRIER PIPE	CASING PIPE
CONTENTS TO BE HANDLED	STORM RUNOFF	
MAX. ALLOWABLE OPERATING PRESSURE		
NOMINAL SIZE OF PIPE	24"	
OUTSIDE DIAMETER		
INSIDE DIAMETER	24"	
WALL THICKNESS		
WEIGHT PER FOOT		
MATERIAL	SLCPP	
PROCESS OF MANUFACTURE		
SPECIFICATION		
GRADE OR CLASS (Specified Minimum Yield Strength)		
TEST PRESSURE		
TYPE OF JOINT	B/S	
TYPE OF COATING		
DETAILS OF CATHODIC PROTECTION		
DETAILS OF SEALS OR PROTECTION AT END OF CASING		
CHARACTER OF SUBSURFACE MATERIAL		
APPROXIMATE GROUND WATER LEVEL		
SOURCE OF INFORMATION ON SUBSURFACE CONDITIONS		

Proposed method of installation:

- Bore and jack (per Section 5.1.3 of NSCE-8)
- Jacking (per Section 5.1.4 of NSCE-8)
- Tunneling (with Tunnel Liner Plate) (per Section 5.1.5 of NSCE-8)
- Directional Bore/Horizontal Direction Drilling – Method A (per Section 5.1.6 of NSCE-8)
- Directional Bore/Horizontal Direction Drilling – Method B (per Section 5.1.6 of NSCE-8)
- Open Cut (per Section 5.1.2 of NSCE-8). *All installations directly under any track must be designed as a bored installation. Open cut installations will be considered on a case-by-case basis by Norfolk Southern's Division Superintendent at the time of installation.*
- Other (Specify): _____

Last Revised: 12/20/17



A-1 Received 8/26/19
 Johnstown, Pennsylvania
 Penn RR Co
 Lat: N 40.327431
 Long: W 78.909894

1274790 - A0



DATE	
REVISION	
BY	
CHECKED	
APPROVED	
SCALE	

EAOP
 ENGINEERING ARCHITECTURAL OPERATIONS
 200 PENNSYLVANIA AVE. SUITE 200
 JOHNSTOWN, PA 15901
 PHONE: 814-538-3333
 FAX: 814-538-3334
 WWW.EAOP.COM

CITY OF JOHNSTOWN
OLD CONEYBACH BOROUGH
SEWER / STORM SEWER SEPARATION PROJECT
CONTRACT 2018-02
CITY OF JOHNSTOWN
CAMBERG COUNTY, PENNSYLVANIA
PLAN - BASE BID

Drawing No. **70**

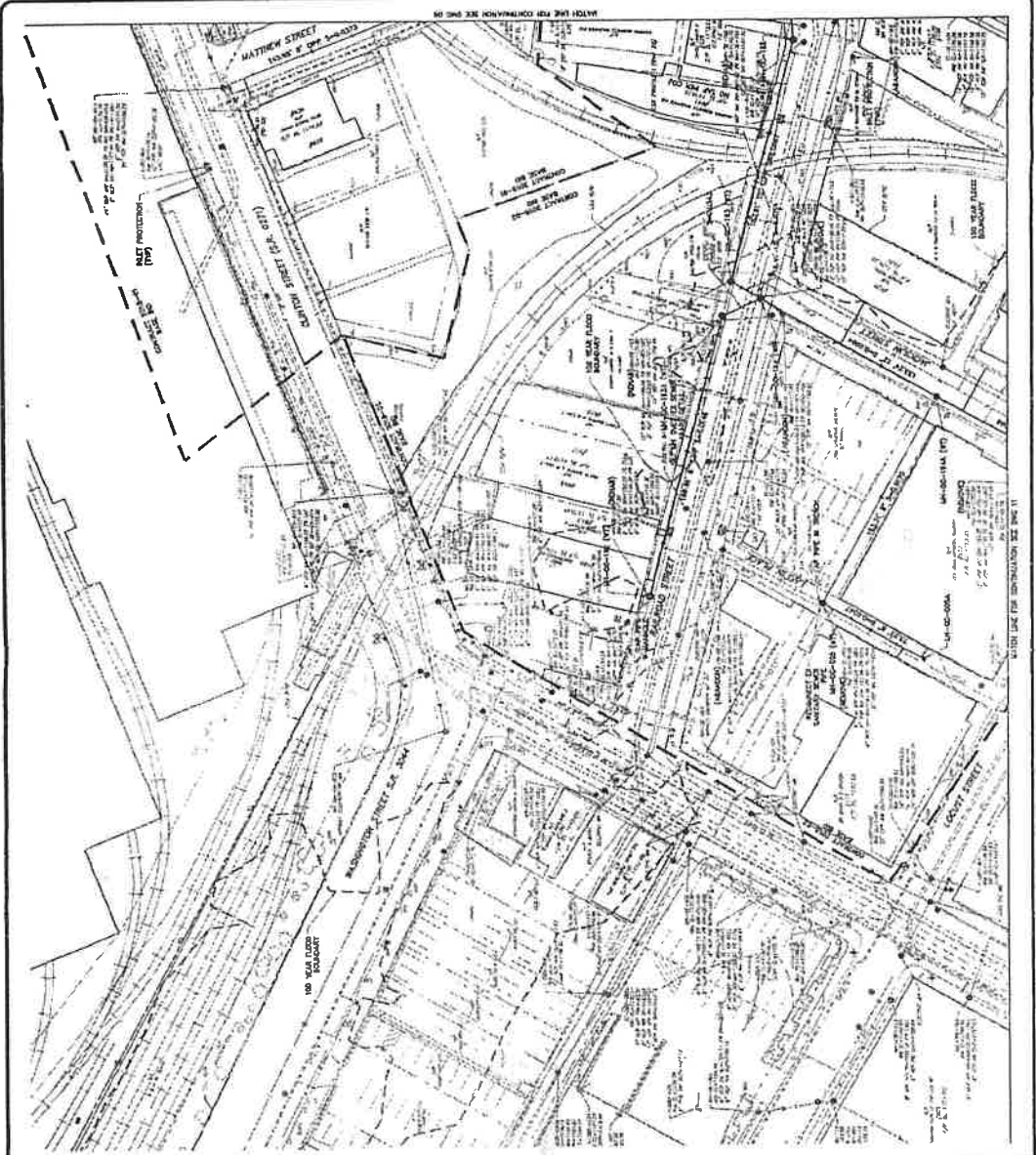


EXHIBIT A
1269338 AD

A-1 received 3/4/2019
 Johnstown, Pennsylvania
 Pennsylvania Railroad Co.
 Lat: N 40.326050
 Long: W 78.913427



DATE	11/11/11
SCALE	AS SHOWN
PROJECT	SEWER MAIN
DISTRICT	11
SHEET NO.	18.018
TOTAL SHEETS	18
DESIGNED BY	J. B. HUNTER
CHECKED BY	J. B. HUNTER
APPROVED BY	J. B. HUNTER
DATE	11/11/11
PROJECT	SEWER MAIN
DISTRICT	11
SHEET NO.	18.018
TOTAL SHEETS	18
DESIGNED BY	J. B. HUNTER
CHECKED BY	J. B. HUNTER
APPROVED BY	J. B. HUNTER
DATE	11/11/11

CITY OF JOHNSTOWN
OLD CONNAUGH BOROUGH
SANITARY / STORM SEWER SEPARATION PROJECT
CONTRACT 2018-02
CITY OF JOHNSTOWN
CAMERON COUNTY, PENNSYLVANIA
PLAN - BASE BID

Drawing No. **08**

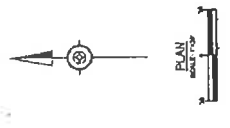
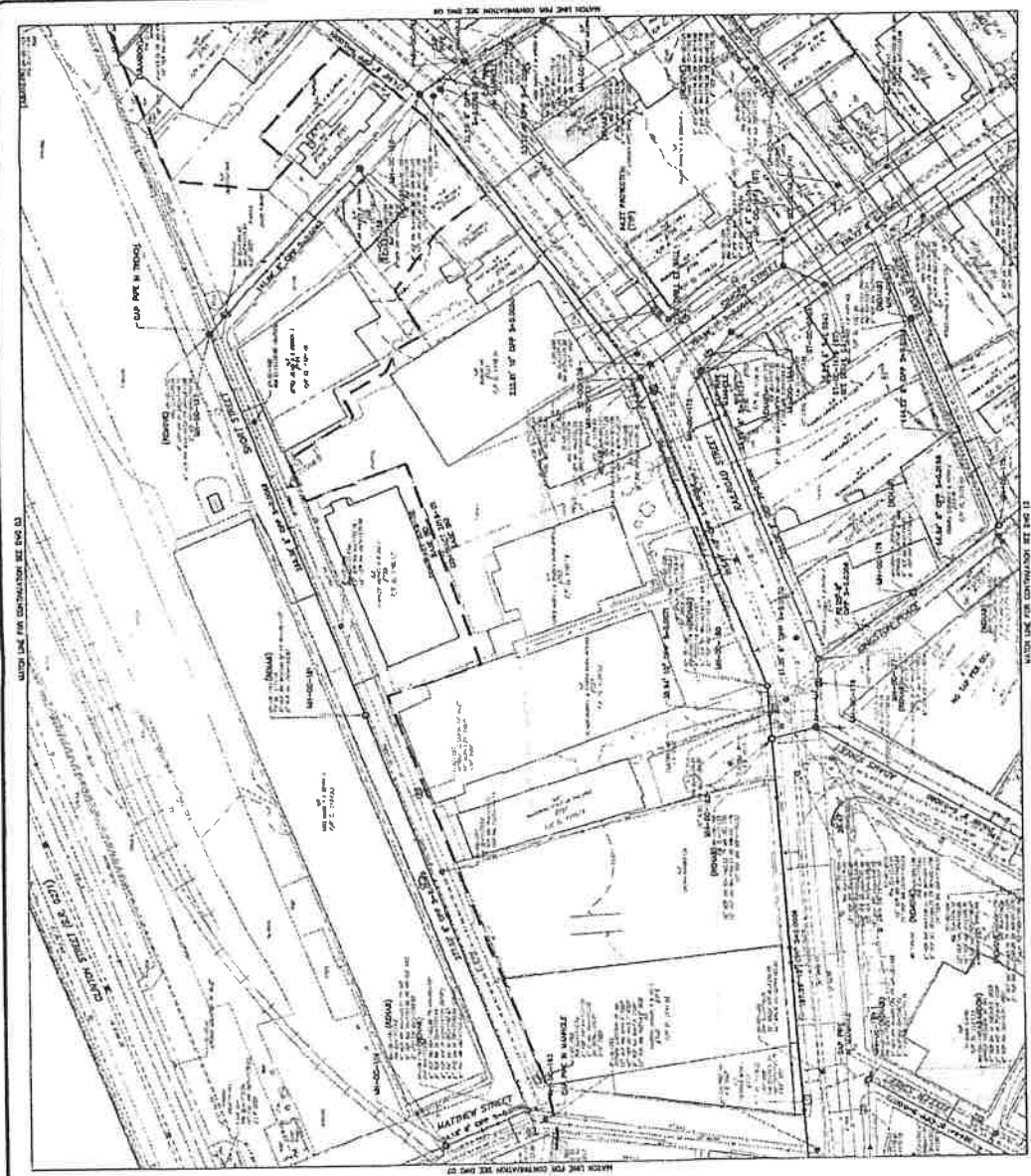


EXHIBIT B
1269338 AD

A-1 received 3/4/2019
Johnstown, Pennsylvania
Pennsylvania Railroad Co.
Lat: N 40.326950
Long: W 78.913427

CITY OF JOHNSTOWN,
CAMBRIA COUNTY, PENNSYLVANIA
RESOLUTION NO. 10226

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA AUTHORIZING THE ACTING CITY MANAGER TO SIGN ALL DOCUMENTS REQUIRED IN SUBMISSION OF THE ATTACHED APPLICATION FOR TRAFFIC SIGNAL APPROVAL TO THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION AND TO SIGN SAID APPLICATION ON BEHALF OF THE CITY OF JOHNSTOWN.

WHEREAS, the City desires to own, operate, and maintain a City-wide traffic control system and to make improvement on devices at the following locations within city limits:

SR 0756 (Ohio St) & Linden Ave
SR 0756 (Ohio St) & Grove Ave
SR 0403 (Cooper Ave) & Davis St
SR 0403 (Broad St) & Laurel Ave & Wire Mill
SR 0056 (Strayer St) & Laurel Ave

WHEREAS, a signed application for Traffic Signal Approval (TE 160) must be submitted and Traffic Signal Permit must be issued before any work can begin.

WHEREAS, the City shall provide Preventive Maintenance as covered by the application at set required intervals. The City shall provide Response Maintenance or work necessary to restore a traffic signal system to proper and safe operation.

WHEREAS, the City shall provide in its annual budget funds sufficient to cover the cost of personnel, training, contractors, and equipment which are required by virtue of this application.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Johnstown, hereby authorizes the Acting City Manager to sign and submit application for Traffic Signal Approval to the Pennsylvania Department of Transportation

ADOPTED:

November 13, 2019

By the following Vote:

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

Nays: None (0)

Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10226 as the same by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10227

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA, AUTHORIZING THE ACTING CITY MANAGER TO SIGN DOCUMENTS TO APPLY FOR A FISCAL YEAR 2020 BROWNFIELD ASSESSMENT COALITION GRANT FOR HAZARDOUS SUBSTANCE AND PETROLEUM SITES FROM THE U.S. EPA.

WHEREAS, the City of Johnstown and its coalition partners of the Johnstown Redevelopment Authority and Cambria County Redevelopment Authority, are ambitious to apply for an EPA Grant; and

WHEREAS, as an obligation of this funding, the City has no obligated financial match; and

WHEREAS, these funds would be used for the completing of environmental site investigations at targeted brownfield sites throughout the City, preparing remediation/reuse plans for targeted sites, and community engagement and marketing; and

WHEREAS, the application for funding under this grant is due December 3, 2019.

THEREFORE, BE IT RESOLVED, that the Acting City Manager be authorized and directed to execute, on behalf of the City of Johnstown, any and all administrative documents pertaining to this application.

ADOPTED:

November 13, 2019

By the following vote:

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

Nays: None (0)

Absent: Mr. Williams (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify the forgoing is true and correct copy of Resolution No. **10227** as the same adopted by City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA

RESOLUTION NO. 10228

A RESOLUTION OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE ACTING 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.

Be it RESOLVED, that the City of Johnstown of Cambria County hereby request a PA Small Water and Sewer Program grant from the Pennsylvania Department of Community and Economic Development to be used for retaining wall and stream bank repairs on the St Clair Run Flood Protection Project in the Morrellville neighborhood of the City of Johnstown.

Be it FURTHER RESOLVED, that the Applicant does hereby designate Robert Ritter, Acting City Manager, as the official(s) 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.

ADOPTED:

November 13, 2019

By the following vote:

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

(6)

Nays: None (0)

Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10228 as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA

RESOLUTION NO. 10229

A RESOLUTION OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE ACTING CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO APPLY FOR A GRANT THROUGH THE PA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT TO ASSIST WITH SILT AND DEBRIS REMOVAL AT THE ELK RUN DEBRIS BASIN AT STACKHOUSE PARK.

Be it RESOLVED, that the City of Johnstown of Cambria County hereby request a PA Small Water and Sewer Program grant from the Pennsylvania Department of Community and Economic Development to be used for silt and debris removal at the Elk Run Debris Basin.

Be it FURTHER RESOLVED, that the Applicant does hereby designate Robert Ritter, Acting City Manager, as the official(s) 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.

ADOPTED:

November 13, 2019

By the following vote:

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

Nays: None (0)

Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10229 as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA

RESOLUTION NO. 10230

A RESOLUTION OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE ACTING 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 CONCRETE RETAINING WALL ON SAM'S RUN.

Be it RESOLVED, that the City of Johnstown of Cambria County hereby request a PA Small Water and Sewer Program grant from the Pennsylvania Department of Community and Economic Development to be used for concrete retaining wall repairs on the Sam's Run Flood Protection Project in the Moxham neighborhood of the City of Johnstown.

Be it FURTHER RESOLVED, that the Applicant does hereby designate Robert Ritter, Acting City Manager, as the official(s) 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.

ADOPTED:

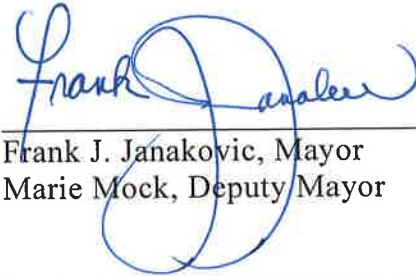
November 13, 2019

By the following vote:

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

Nays: None (0)

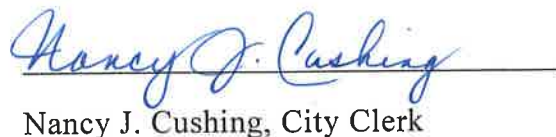
Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 10230 as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10231

A RESOLUTION OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE ACTING CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO EXECUTE AN AGREEMENT WITH TERRA WORKS, INC. AWARDED CONTRACT 2018-03 FOR THE CONSTRUCTION OF THE FAIRFIELD AVE. INTERCEPTOR REHABILITATION AND STORM WATER SEPARATION PROJECT.

WHEREAS, City Council of the City of Johnstown has entered into a Consent Order and Agreement with the Pennsylvania Department of Environmental Protection, and

WHEREAS, major repairs and rehabilitation are necessary to comply with the mandates of the Consent Order and Agreement, and

WHEREAS, the EADS Group Inc. on behalf of the City of Johnstown advertised and opened bids for the construction of the Fairfield Ave. Interceptor Rehabilitation and Storm Water Separation Project, and

WHEREAS, bids were advertised in a paper of general circulation and the bids were opened at 11:00 am on October 29, 2019, and

WHEREAS, Terra Works, Inc. is the apparent low bidder for Contract 2018-03, Fairfield Ave. Interceptor Rehabilitation and Storm Water Separation Project, with a Total Base Bid for a total of \$3,171,244.41.

NOW THEREFORE BE IT RESOLVED, CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZES THE ACTING CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO AWARD CONTRACT NO. 2018-03 TO TERRA WORKS, INC. TO CONSTRUCT THE FAIRFIELD AVE. INTERCEPTOR REHABILITATION AND STORM WATER SEPARATION PROJECT.

ADOPTED:

November 13, 2019

By the following vote:

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

Nays: Mrs. Stanton. (1)

Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10231** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between The City of Johnstown ("Owner") and
Terra Works, Inc. ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

FAIRFIELD AVE. Interceptor Rehabilitation and Storm Water Separation Project – Contract No. 2018-03 - Base Bid

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Contract No. 2018-03 consists of the construction of approximately 1,880 linear feet of 8 inch sanitary sewer pipe via open-trench, rehabilitation of approximately 960 linear feet of existing 8 inch sanitary sewer pipe via trenchless construction methods, 20 precast concrete manholes, 20 manhole rehabilitations, approximately 4,050 linear feet of 6 inch service laterals, and related work. The storm sewer separation includes installation of storm sewer, inlets, and restoration. The project is located in the West End area of the City of Johnstown.

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by The EADS Group, Inc. ("Engineer"), 227 Franklin Street, Suite 300, Johnstown, Pennsylvania 15901.

3.02 The Owner has retained The EADS Group, Inc. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

A. The Work will be substantially completed within 520 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and

completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 550 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner **\$1,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,000.00** for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as **Exhibit A**.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **90%** percent of Work completed (with the **10%** balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, retainage may be reduced to **5%** percent of the total work completed and stored.
 - b. **90%** percent of cost of materials and equipment not incorporated in the Work (with the **10%** balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of 6% percent per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:

1. This Agreement (pages 005213.12-1 to 005213.12-7, inclusive).
 2. Performance bond (pages 006113.13-1 to 006113.13-4, inclusive).
 3. Payment bond (pages 006113-1 to 006113-4, inclusive).
 4. General Conditions (pages 007213.12-1 to 007213.12-61, inclusive). Not attached but incorporated by reference.
 5. Supplementary Conditions (pages 007314-1 to 007314-20, inclusive). Not attached but incorporated by reference.
 6. Administration Documents and Specifications as listed in the table of contents of the Project Manual. Not attached but incorporated by reference.
 7. Contractor's Bid Package (pages 1 to 64, inclusive). Not attached but incorporated by reference.
 8. Drawings (not attached but incorporated by reference) consisting of 85 sheets with each sheet bearing the following general title: ***FAIRFIELD AVE. Interceptor Rehabilitation and Storm Water Separation Project***
 9. Addenda (numbers 1 to 2, inclusive). Not attached but incorporated by reference.
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid Form (pages 004143-1 to 004143-21, inclusive).
 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and

unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on November 13, 2019 (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

The City of Johnstown

By:

Robert Ritter

Robert Ritter

Title:

Acting City Manager

By:

Title:

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

Nancy J. Cushing

Title:

City Clerk

Attest:

Title:

Address for giving notices:

401 Main St.

City Hall Rm 102

Johnstown PA 15901

Address for giving notices:

License No.:

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

Fairfield Avenue Interceptor Rehabilitation and Storm Water Separation Project
 Contract 2018-03 City of Johnston Summary Sheet

BIDDER	A. Liberoni, Inc.	Excavating Associates, Inc.	Glen Johnston, Inc.	Greenland Construction, Inc.	Gayler Brothers, Inc.	Insight Pipe Contracting, LLC	Kukurin Contracting, Inc.	Ligonier Construction Co.	Snyder Environmental Services	Terra Works, Inc.	W.A. Petrakis Contracting
Base Bid	\$3,616,494.54	No Bid	\$3,722,036.00	\$3,360,000.00	No Bid	No Bid	\$4,028,820.00	\$4,329,750.00	\$3,799,272.00	\$3,171,244.41	No Bid
Base Bid with Slings Alternate #1	\$3,154,294.54	No Bid	\$3,402,036.00	\$2,900,000.00	No Bid	No Bid	\$3,768,820.00	\$4,129,750.00	\$3,134,272.00	\$3,031,244.41	No Bid
Base Bid with Sandstone Alternate #2	\$3,616,494.54	No Bid	\$3,822,036.00	\$3,360,000.00	No Bid	No Bid	\$4,028,820.00	\$4,229,750.00	\$3,799,272.00	\$3,171,244.41	No Bid
Base Bid with Sandstone Alternate #3	\$3,600,144.54	No Bid	\$3,727,036.00	\$3,360,000.00	No Bid	No Bid	\$4,028,820.00	\$4,324,750.00	\$3,799,272.00	\$3,166,244.41	No Bid
Base Bid with Rehabilitated Pipe Alternate #4	No Bid	No Bid	\$3,718,487.00	\$3,360,000.00	No Bid	No Bid	No Bid	No Bid	\$3,798,936.00	\$3,170,194.41	No Bid
Base Bid with Slings Alternate #1 with Rehabilitated Pipe Alternate #4	No Bid	No Bid	\$3,398,487.00	\$2,900,000.00	No Bid	No Bid	No Bid	No Bid	\$3,133,936.00	\$3,030,194.41	No Bid
Base Bid with Sandstone Alternate #2 with Sandstone Alternate #3	\$3,137,944.54	No Bid	\$3,407,036.00	\$2,900,000.00	No Bid	No Bid	\$3,768,820.00	\$4,124,750.00	\$3,134,272.00	\$3,026,244.41	No Bid
Base Bid with Sandstone Alternate #2 with Rehabilitated Pipe Alternate #3	\$3,600,144.54	No Bid	\$3,827,036.00	\$3,360,000.00	No Bid	No Bid	\$4,028,820.00	\$4,224,750.00	\$3,799,272.00	\$3,166,244.41	No Bid
Base Bid with Sandstone Alternate #3 with Rehabilitated Pipe Alternate #3	No Bid	No Bid	\$3,818,487.00	\$3,360,000.00	No Bid	No Bid	No Bid	No Bid	\$3,798,936.00	\$3,170,194.41	No Bid
Base Bid with Sandstone Alternate #3 with Sandstone Alternate #4	No Bid	No Bid	\$3,723,487.00	\$3,360,000.00	No Bid	No Bid	No Bid	No Bid	\$3,798,936.00	\$3,165,194.41	No Bid
Base Bid with Slings Alternate #1 with Sandstone Rehabilitated Pipe Alternate #3	No Bid	No Bid	\$3,403,487.00	\$2,900,000.00	No Bid	No Bid	No Bid	No Bid	\$3,133,936.00	\$3,025,194.41	No Bid
Base Bid with Sandstone Alternate #2 with Sandstone Alternate #3 with Rehabilitated Pipe Alternate #4	No Bid	No Bid	\$3,823,487.00	\$3,360,000.00	No Bid	No Bid	No Bid	No Bid	\$3,798,936.00	\$3,165,194.41	No Bid

= Apparent Low Bidder for COI

I hereby certify that this Bid Tabulation was prepared from individual Bid Proposals received, opened, and read aloud on October 29, 2019, at 11:00 AM, prevailing time is true and correct.

Certified by:

Brandon L. Palmer, P.E.

11/6/19



CITY OF JOHNSTOWN, PENNSYLVANIA
RESOLUTION NO. 10232

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF JOHNSTOWN CAMBRIA COUNTY, PENNSYLVANIA, APPROVING CIVIL SERVICE RULES AND REGULATIONS FOR THE CITY OF JOHNSTOWN FIRE AND POLICE DEPARTMENTS, EFFECTIVE JANUARY 1, 2020.

WHEREAS, the Civil Service Board for the City of Johnstown Police and Fire Departments is required to adopt Rules and Regulations to govern its operations, subject to the approval of the Johnstown City Council; and

WHEREAS, the Civil Service Board adopted updated Civil Service Rules and Regulations for the Police and Fire Departments on October 21, 2019; and

WHEREAS, the City Council desires to approve and adopt the attached Civil Service Rules and Regulations for the Fire Department and Police Department to become effective January 1, 2020;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Cambria County, Pennsylvania that the City hereby approves the Civil Service Rules and Regulations adopted for the City of Johnstown Fire Department and Police Department as adopted by the Civil Service Board on October 21, 2019, to be effective January 1, 2020.

ADOPTED:


November 13, 2019

By the following Vote:

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

Nays: None (0)


Absent: Mr. Williams. (1)



Frank J. Janakovic, Mayor
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10232** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy Cushing, City Clerk

CITY OF JOHNSTOWN

**Cambria County
Pennsylvania**

FIRE

CIVIL SERVICE RULES AND REGULATIONS

**ADOPTED BY:
THE CIVIL SERVICE BOARD
[DATE]
AND
THE JOHNSTOWN CITY COUNCIL
[DATE]**

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CHAPTER 1. DEFINITION OF TERMS.

1.1 Definitions.

Unless otherwise specifically stated, the following words and phrases, wherever used in these rules and regulations, shall be construed to have the meaning indicated herein:

Applicant: – Any individual who applies in writing to the board in response to a legally advertised notice of a vacancy and/or examination for any position in the department.

Background Investigation: An investigation of a firefighter applicant conducted after the eligibility list has been posted, but prior to inclusion on the “Certified List of Three.”

Board: – The Civil Service Board of the City of Johnstown, Cambria County, Pennsylvania, appointed by the city council.

Board Member-(Alternate): An individual appointed by the city council to serve as an “Alternate” member of the Civil Service Board. Properly appointed “Alternate” board member shall have all the same powers and duties as a “Primary” appointed board member set forth in the Third Class City Code and as outlined in these rules and regulations.

Board Member-(Primary): (Optional Provision) An individual appointed by the city council to serve as an “Primary” board member of the civil service board with traditional duties as set forth in the Third Class City Code and as outlined in these civil service rules and regulation.

Certified List of Three: – The submission to the city manager pursuant to a request of top three names taken from the eligibility list developed by the civil service board.

Chairperson: –The Chairperson of the Civil Service Board of the City of Johnstown, Pennsylvania.

City Council: – The elected Mayor and City Council of Johnstown, Pennsylvania.

City Manager – The appointing authority, as hereby appointed by the City Council of the City of Johnstown, Cambria County, Pennsylvania, pursuant to the act of July 15, 1957, P.L. 901, No. 399, Cl. 11, the Optional Third Class City Charter Law, of the City of Johnstown, shall have the authority to appoint, suspend, remove and reduce in rank, any member of the Johnstown Fire Department.

Eligible: –A person whose name is recorded on a current eligibility list or furlough list.

Eligibility List: – The list of names of persons who have passed all tests and/or examinations, except for the physical and psychological tests and/or examinations, for a particular position in the fire department, unless otherwise indicated.

Examinations: – The series of tests and/or examinations given to candidates to determine their qualifications for a position in the fire department.

Fire Chief: A promoted firefighter who is appointed by the city manager and not appointed under the provisions of the civil service rules and regulations.

Firefighter: Any firefighter employed in the fire department, except as specifically noted.

Full-Time Firefighter: A qualified firefighter hired or promoted under the provisions of these Civil Service Rules and Regulations.

Furlough List: The list containing the names of persons temporarily laid off from positions in the fire department because of a reduction in the number of officers.

Medical Examinations: - Any examination, procedure, inquiry or test designed to obtain information about medical history or a physical or mental condition which might disqualify an applicant if it would prevent the applicant from performing, with or without a reasonable accommodation, all of the essential functions of the position.

Part-Time Firefighter: A qualified firefighter hired under the provisions of these civil service rules and regulations.

Physician: - Shall have the meaning given to it in 1 Pa.C.S. § 1991, that relates to definitions.

Probationer: – A selected candidate in the fire department who has been appointed from an eligibility list, but who has not yet completed the work-test period.

Promotion: Part-Time Firefighter to Full-Time Firefighter: A qualified Part-Time Firefighter appointed to a Full-Time Firefighter, under the provisions of these civil service provisions.

Promotion: Ranking Firefighter: A qualified Full-Time Firefighter in the fire department appointed to a “ranking position” under the provisions of these civil service rules and regulations.

Qualified Medical Professional: - An individual, in collaboration with or under the supervision or direction of a physician, as may be required by law, who is licensed: as a physician assistant pursuant to the act of December 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act of 1985," or the act of October 5, 1978 (P.L.1109, No.261), known as the "Osteopathic Medical Practice Act"; or as a certified registered nurse practitioner pursuant to the act of May 22, 1951 (P.L.317, No.69), known as "The Professional Nursing Law."

Reduction in Rank: – A change to a different position or rank where the firefighter fulfilled all of the requirements of these rules and regulations for both the prior and current position or rank. However, a decrease in salary without a change to a different position or rank shall not necessarily constitute a reduction in rank.

Removal: – The permanent separation of a member from the fire department.

Secretary: – The Secretary of the Civil Service Board of the City of Johnstown, Cambria County, Pennsylvania.

Secretary (Compensated) - Person or city department appointed by the board, not a member of the civil service board, to provide additional administrative assistance.

Suspension: – The temporary separation of any member in the Johnstown Fire Department, from his or her position for disciplinary reasons.

Vice Chairperson: - The Vice Chairperson of the Civil Service Board of the City of Johnstown, Pennsylvania.

1.2 Gender: The words “he,” “his,” “him,” and “men” when used in these rules and regulations represent both the masculine and feminine genders

CHAPTER 2. THE BOARD.

2.1 Civil Service Board.

There shall be one civil service board that shall provide for and oversee the examination of applicants for appointment to and promotion to any position in the police department or fire department, except to the position of Chief of Police or Fire Chief, without having first passed all the examinations herein provided for and without having been appointed in the manner and according to the strict terms and provision and conditions of these civil service rules and regulations. Thus, there shall be one civil service board for both the police and fire uniformed positions in the city. However, the city will promulgate separate civil service rules and regulations for police and fire to better enforce and administer the civil service rules and regulations for the police and fire department.

- a) **Board (Primary).** The board shall consist of three board members who shall be qualified electors of the city and shall be appointed by the city council initially to serve for the terms of two, three and four years, and as terms thereafter expire shall be appointed for terms of four years.

Any vacancy occurring on the board (Primary) for any reason whatsoever shall be filled by the city council for the unexpired term.

Each member of the board (Primary) created by this subdivision, before entering upon the discharge of the duties of his office, shall take an oath or affirmation of office pursuant to 53 Pa.C.S. § 1141 (relating to form of oaths of office), and file the same, duly certified by the officer administering it, with the city manager.

- b) **Board (Alternate).** The city council may appoint no more than three qualified electors of the city to serve as alternate members of the board. The term of office shall be four years. An alternate shall be entitled to participate in all proceedings and discussions of the board to the same and full extent as provided by law for board members, but shall not be entitled to vote as a member of the board unless designated as a voting alternate member, pursuant to Section 4403.1 of the Third Class City Code and outlined in *Section 2.3, c), d)*, of these civil service rules and regulations. "Alternate" members shall hold no other office in the city.

Each member of the board (Alternates) created by this subdivision, before entering upon the discharge of the duties of his or her office, shall take an oath or affirmation of office pursuant to 53 Pa.C.S. § 1141 (relating to form of oaths of office).

The civil service board shall receive no salary or compensation.

2.2 Office Incompatible with Position of Board Member.

No city officer, official or employee shall be eligible for appointment to the civil service board.

2.3 Organization of Board – Quorum.

- a) The board shall organize for the purpose of transacting all business immediately after the first appointment and thereafter as new appointments to the board are made. After organizing, the board shall appoint one of its members as its chairperson, one as vice chairperson, and one as its secretary.
- b) Two members of the board shall constitute a quorum and no action of the board shall be valid unless it shall have the concurrence of at least two members.
- c) If by reason of absence or disqualification of a member, a quorum is not reached, the chairman shall designate as many alternate members of the board to sit on the board as may be needed to provide a quorum. Any alternate member of the board shall continue to serve on the board in all proceedings involving the matter or case for which the alternate was initially designated until the board has made a final determination of the matter or case. Designation of an alternate shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.
- d) For purposes of hiring and promoting firefighters under these rules and regulations, each step of the hiring or promotional process requiring official action by the board shall be considered a separate “matter or case” under Subsection (c), above, and each step of the hiring or promotional process need not be voted upon or approved by the same composition of “Primary” board members or “Alternate” board members, as the case may be, provided that the quorum requirement has been satisfied.

2.4 Duties of Chairperson.

The chairperson, or in his or her absence, the vice chairperson, shall preside at all meetings and hearings of the board, decide all points of order or procedure and perform all duties required by law including these rules and regulations, and be a voting member.

2.5 Duties of Vice Chairperson.

The Board Vice Chairperson shall act in the absence of the Board Chairperson in carrying out the duties of the Board Chairperson and shall be a voting member.

2.6 Duties of the Secretary.

The Board Secretary, under the direction of the board, shall work in conjunction with the compensated secretary (*Section 2.7*) in handling all official correspondence of the board, including the recording of votes cast by the board, send out all notices required by law including these rules and regulations, keeping a record of each examination or other official action of the board, and perform all other duties required by law including these rules and regulations and shall be a voting member.

2.7 Duties of Secretary (Compensated).

The board shall appoint a compensated secretary or designated city department, who is not a member of the board, and prescribe the duties, and shall have the power to change these duties. The compensated secretary or designated city department, shall be subject to removal at any time by the board. The city council shall establish the compensation, if any, to be paid to the compensated secretary or city department, and all necessary stationary and supplies for use of the board shall be supplied by the city.

2.8 Meetings.

All meetings shall be held either at the call of the chairperson or at the call of two members of the board. The board shall have the discretion to determine whether meetings shall be open to the public when not specifically regulated by law or these rules and regulations. Each board member shall be notified in writing of each and every meeting. In all cases regarding meetings, including scheduling, the board shall follow the provisions provided for pursuant to 65 Pa.C.S. Ch. 7, as amended and commonly known as the "Sunshine Law. The order of business for all meetings shall be as follows:

- (a) Roll Call
- (b) Public Comments (Agenda Items)
- (c) Approval of Previous Meeting's Minutes
- (d) Communications and Reports
- (e) Unfinished Business
- (f) Hearing of Cases
- (g) New Business
- (h) Public Comments (General)
- (i) Adjourn

2.9 Clerical Assistance, Legal Counsel & Supplies.

The city shall furnish to the board, on its requisition, clerical assistance that may be necessary for the work of the board. The city shall provide a suitable and convenient room for the use of the board. The board shall order from the city the necessary stationery, postage, printing and supplies. The city shall also

provide the services of a solicitor for the board to be appointed by the board and paid by the city. The city shall have the authority to place a reasonable limit on the amount allowed each year for the services of the Board Solicitor. The elected and appointed officials of the city shall aid the board in all proper ways in carrying out the provisions of these civil service rules and regulations.

2.10 Rules and Regulations/Examinations.

No person or persons shall be appointed to any uniformed position in the fire department, except the Fire Chief, without having first passed all the examinations herein provided for and without having been appointed in the manner and according to the terms and provisions and conditions provided herein.

The board shall prepare and adopt rules and regulations, subject to approval of the city council, which in the board's discretion, are best adapted to securing and maintaining the best services for the public for the selection, appointment and promotion of persons who are qualified to perform the work which is subject to the civil service examinations, as provided herein, and who are to be employed, appointed or promoted by the city. The rules and regulations adopted by the board shall provide for ascertaining and determining, so far as possible, the knowledge, skills, aptitude, mental and physical abilities, experience, education and character of all applicants as these criteria would reasonably apply to the respective positions; and the rules and regulations shall provide for examinations upon any and all subjects deemed proper or necessary by the board for the purpose of determining the qualifications of applicants for the respective positions sought and for which application is made.

2.11 Appointment of Examiners.

The board shall appoint qualified written examination administrators, oral examination administrators and physical agility examination administrators to conduct appropriate examinations required by these rules and regulations.

The city manager shall have the responsibility to appoint the physical and psychological examiner, as outlined in *Section 4.20*, of these rules and regulations.

The civil service board shall not directly participate in any of the testing procedures, but shall co-ordinate all of the hiring processes to assure compliance with these civil service rules and regulations.

2.12 Amendment of Rules & Regulations.

The board may amend, revise, void or replace these rules and regulations for any reason by action of a majority of the board. Before any changes to these rules and regulations become effective,

those changes must be approved by the city council. These rules and regulations, and any amendments thereto, once approved, by the city council, shall be made available to the public for distribution or inspection.

2.13 Minutes and Records.

The board shall keep minutes of its proceedings and records of examinations and other official action. All records of the board shall be preserved and disposed of according to the Retention and Disposition Schedule for Records of Pennsylvania Municipalities issued by the Local Government Records Committee under the authority of the Municipal Records Act of 1968, P.L. 961, No. 428, 53 P.S. 9001, as amended.

Any and all records relating to any hearing requested by applicants, shall be open to the public inspection subject to applicable regulations. The secretary shall keep minutes of the proceedings showing the vote of each member upon each question. If the member is absent or fails to vote, the secretary shall indicate that fact in the minutes.

2.14 Investigations.

The board shall have the power to make investigations concerning all matters relating to the administration and enforcement of these rules and regulations. The chairperson of the board is authorized to administer oaths and affirmations for witnesses testifying in matters before the board.

2.15 Subpoenas.

The board shall have the power to make investigations concerning all matters relating to the administration and enforcement of its rules and regulations. The chairperson shall be authorize to administer oaths and affirmations for witnesses testifying before the board.

The board shall have the power to issue subpoenas over the signature of the chairperson or designee and to require the attendance of witnesses and the production of records and papers pertaining to matters before the board, including any background investigations conducted pursuant to any applicable rules and regulations.

2.16 Annual Report.

The board shall make an annual report to the city council containing a brief summary of its work during the year, and shall make a full accounting for any expenditure of public monies. The annual report shall be then available for public inspection.

CHAPTER 3. PART-TIME FIREFIGHTER AND FULL-TIME FIREFIGHTER INITIAL HIRINGS

3.1 Hiring Process Defined.

The Johnstown City Collective Bargaining Agreement has authorized the hiring of Part-Time Firefighters. In compliance with the Third Class City Code, all firefighters must be hired under civil service provisions of the code. However, it shall be the decision of the city council to authorize the civil service board to develop a separate Part-Time Firefighter Eligibility List and hiring process, as described below and in Chapter 4, in conjunction with developing a corresponding Full-Time Firefighter Eligibility List, as also described below and in Chapter 4. Thus, the city council may authorize the civil service board to start the process of developing an eligibility list for Part-Time Firefighters, Full-Time Firefighters or both, whose applicants shall meet the same initial hiring requirements as outlined in these civil service rules and regulations, to be eligible to continue in the process. Thus, in Chapter 4, the word "Full-Time" can be substituted for the word "Part-Time," if used in that context, as the requirements are the same.

- a) If two eligibility lists are authorized, as described above, candidates shall indicate on their application form if they are applying for a Full-Time Firefighter position or Part-Time Firefighter position or both.
- b) The applicants shall, after having met the qualifications described herein, be placed on their respective eligibility list.
- c) If a candidate's name appears on both the Full-Time Eligibility List and the Part-Time Eligibility List and accepts a position as a Part-Time Firefighter, their name shall be removed from the Full-Time Firefighter Eligibility List. However, a candidate on the Part-Time Firefighter list who declines the position of a Part-Time Firefighter, and their name is on the Full-Time Firefighter Eligibility List, may keep their name on the Full-Time Firefighter Eligibility List for future consideration as a Full-Time Firefighter. In addition, once a candidate, who accepts the position of Full-Time Firefighter, from the Full-Time Firefighter Eligibility List, and name appears on both eligibility lists, their name will be removed from the Part-Time Firefighter Eligibility List. In all cases, when a candidate's name is removed from any eligibility list, as indicated above, they will be notified in writing.
- d) If the city council authorizes the advertising for the development of a Part-Time Firefighter and a Full-Time Firefighter Eligibility List, at the same time, the testing process and the development of the eligibility list for each, will be held simultaneously. Thus, the testing process ("General Hiring Requirements") outlined

in *Section 4.10*, will be administered at the same time, to determine both eligibility lists. Candidate for a Full-Time or Part-Time firefighter position will be tested together in each component of the general hiring requirements and no candidate will be tested separately for a Full-Time or Part-Time Firefighter entry level positions.

- e) Part-Time Firefighters shall be first hired from the initial eligibility list and when first hired be first eligible for a promotion to Full-Time Firefighter position, if they apply and meet the qualifications described in *Sections 5.1, 5.6 and 5.7*, of these rules and regulations. The movement from Part-Time Firefighter to Full-Time Firefighter, under the provisions of these rules and regulations, shall be a promotion and the eligible candidates shall be subject to a merit selection process as outlined in these rules and regulations.

- f) The hiring of Full-Time Firefighters from the Full-Time Firefighter's Eligibility List, if one is currently valid or subsequently developed, will only be executed if the following conditions exist:
 - 1) There are no Part-Time Firefighters employed, or
 - 2) No employed Part-Time Firefighter applies for promotion to a Full-Time Firefighter Position, or
 - 3) There are no employed Part-Time Firefighters eligible/qualified for promotion to a Full-Time Firefighter position, as outlined in these civil service rules and regulations, or
 - 4) There are not enough qualified Part-Time Firefighters employed to meet the number of Full-Time Firefighters authorized to be hired by the city manager.

- g) **Veteran's Preference:** A qualified veteran, initially applying for the "Entry Level" position for both Part-Time Firefighter and Full-Time Firefighter can initially claim veteran's preference for both positions. Further, if this veteran meets the qualification standards, outlined in these rules and regulations, his veteran preference points can be added to both the Full-Time and Part-Time Firefighter Eligibility Lists. However, as indicated above, once that applicant accepts a Part-Time Firefighter's position, that applicant's name shall be removed from the Full-Time Firefighter's Eligibility List. Likewise, once that applicant accepts a Full-Time Firefighter position, that applicant's name shall be removed from the Part-Time Firefighter's Eligibility List. Thus, veteran's preference can only be used once, in the appointment of an "Entry Level" firefighter position, from the Certified List of Three," as outlined in these rules and regulations, whether it be a Full-Time or Part-Time Firefighter position.

CHAPTER 4. PART-TIME AND FULL-TIME FIREFIGHTERS - INITIAL HIRINGS

A. APPLICATIONS AND QUALIFICATIONS

4.1 Eligibility for Examinations.

In order to be eligible for participation in the initial examinations for Part-Time Firefighter and/or Full-Time Firefighter position with the City of Johnstown Fire Department, every applicant must submit a completed application form, either by mail or in person, to the board or other offices or agencies designated by the board and received by the deadline stated for that specific examination. The applicant must make an oath or affirmation that the application has been completed truthfully, and that the applicant is subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

4.2 Discrimination.

The City of Johnstown is an equal opportunity employer. It is the city council and the board's policy to grant equal employment opportunities to qualified persons without regard to race, religion, color, national origin, gender, lesbian, gay, bisexual, transgender, age, veteran's status, marital status, or non-job related physical or mental handicap or disability. The city council and the board will provide equal opportunities in employment and promotion. The date and time of receipt of each application will be noted on the application.

4.3 Applications.

Application forms shall be available to all interested persons at city hall and from such other offices and firefighters that the board may choose to designate. Application forms may be mailed to a potential candidate upon written or telephone request. However, the board assumes no responsibility for missing filing deadline dates due to a delay in the mails or for any other reason.

4.4 Age and Residency Requirements.

All applicants must have reached their eighteenth (18th) birthday before the deadline for submitting a completed application. Currently there is no residency requirement.

4.5 General Qualifications.

At the time of application, every applicant for any Firefighter in the Johnstown City Fire Department (Full-Time and Part-Time) must possess the following initial qualifications:

- a) A diploma from an accredited high school or a graduate equivalency diploma (GED).

- b) Be a United States Citizen.
- c) Be Certified as Firefighter II
- d) Qualified in Hazmat Operations
- e) Be a PA Emergency Medical Technician (EMT)
- f) Be physically and mentally fit to perform the full duties of a Firefighter for the City of Johnstown Fire Department as determined by the physical and psychological testing.
- g) Be eligible to legally operate a motor vehicle in the Commonwealth of Pennsylvania.

4.6 Public Notice - Notification.

The board shall conspicuously post in the Johnstown City Building, or other conspicuous locations, an announcement of the hiring and set forth the time and place of every examination, together with the information as to the type of position to be filled, the requirements for that position, where applications may be obtained for the examination, and the deadline for filing those applications. At least two (2) weeks prior to the initial examination for Full-Time and Part-Time Firefighter, publication of the notice shall be placed in at least one newspaper of general circulation in the City of Johnstown.

The city manager, or other designated person, shall give, in writing, to each applicant qualified for the next step in the examination process, if applicable, a notice which shall include the date, time and place the applicant shall report for the next examination in the process. In the case of physical and psychological examinations, the city manager, or other designated person, shall notify the firefighter candidate who has been conditionally offered a position in the fire department by a written notice of the date, time and place of the examination as well as the name of the physical and psychological examiners.

Every such notice shall be mailed or otherwise delivered at least seven (7) days prior to the date fixed for examination. Only applicants receiving notices to report for any examination shall be permitted to participate in such examination, and each applicant shall present his or her notice to the examiner before he or she shall be examined. Failure to report for an examination in accordance with the instructions contained in the written notice shall disqualify the applicant, except that in the case of a physical or psychological examinations, the physician and psychologist designated in the notice may fix another date or time for such examination (firefighter), provided, however, that any such date or time shall be written within the period of at least seven (7) days of the date and time established in the written notice.

4.7 Recording and Filing Applications.

Applications for positions of Full-Time Firefighter and Part-Time Firefighter shall be received at the city building or other offices or agencies designated by the board, only after the firefighter position(s) have been properly advertised and before the deadline for receiving the applications, which must be set forth in the advertisement. That person(s) shall record the receipt of all applications, indicating the time and date received and advises each applicant with notice of the time and place for the first portion of the testing process. A non-refundable application fee, if determined by the board, will be required to be paid, by the applicant, at the time the application is submitted. If the city advertises for Full-Time Firefighter and Part-Time Firefighter, at the same time, and the applicant applies for both positions, the applicant will only be required to pay one application fee. No new applications or amended applications or supporting documents will be accepted after the advertised closing time and date.

Penalty for False Statement: The statements made by the applicant in the official application shall contain no falsification, omissions or concealment of material fact. Should any investigation disclose any material misstatement, falsification or concealment with respect to an application, the following shall apply:

- (a) The application shall be invalid and the applicant shall be disqualified from examination, or
- (b) If the applicant has been examined, the name of such applicant shall be removed from the eligibility list, or
- (c) If the applicant has been appointed, such material misstatement, falsification or concealment shall constitute grounds for dismissal from the Johnstown City Fire Department.
- (d) No person who has made a material false application shall be permitted in the future to be an applicant for any position in the Johnstown City Fire Department.

4.8 Rejection of Applicant.

The board may refuse to examine, or, if examined, may refuse to certify as eligible after examination, any applicant who is found to lack any of the minimum qualifications for examination prescribed in these rules and regulations for the particular position for which the applicant has applied. In addition, the board may refuse to examine, or if examined, may refuse to certify any applicant who is:

- a) Found to have furnished incomplete, inaccurate, misleading or false information on the official application or in response to any portion of the hiring process,
- b) Physically unfit for the performance of the duties of the position of which the candidate seeks employment,
- c) Illegally using a controlled substance, as defined in section 102 of the Controlled Substance Act (Public Law 91-513, 12 U.S.C. § 802),
- d) Guilty of any crime involving moral turpitude, or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct of office,
- e) Affiliated with any group whose policies or activities are subversive to the forms of government set forth in the constitution and laws of the United States and the Commonwealth of Pennsylvania.

4.9 Hearing for Disqualified Applicants.

Any applicant or other persons who believe that they are aggrieved by the actions of the board, in refusing to examine or to certify them as eligible after examination, may request a hearing before the board, within ten (10) days of receiving written notice of what is perceived as the alleged error. Within ten days after such request, the board shall designate a time and place for the hearing which shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 Pa. C.S. §101, et seq., with or without counsel, at which time the board shall take testimony and review its refusal to provide examination or certification.

The deliberations of the board, including interim rulings on evidentiary or procedural issues, may be held in the nature of a closed executive session. The board's disposition of the matter shall constitute official action which shall occur at a public meeting held pursuant to 65 Pa.C.S. Ch. 7 (relating to open meetings). The decision of the board shall be final.

B. EXAMINATION AND GRADING PROCEDURE.

4.10 General Examination Requirements.

The examination for Full-Time Firefighter and Part-Time Firefighter (same examination for both if advertised simultaneously) shall consist of a physical agility test, written examination, oral examination, and background investigation. The written examination and the oral examination will be graded individually on a one hundred (100%) scale. The written examination will represent sixty percent (60%) of the final score. The oral examination will represent forty percent (40%) of the final score. The physical agility test and the background investigation will be graded pass/fail.

The testing process will be as follows:

- a) Physical Agility Test: Those candidates passing the physical agility test, as outlined in *Section 4.11*, will qualify to take the written examination.
Note: At the discretion of the civil service board, the written examination may precede the physical agility testing.
- b) Written Examination: Those candidates passing the written test as outlined in *Section 4.12* will qualify for the oral examination.
- c) Oral Examination: Those candidates passing the oral examination, as outlined in *Section 4.13* will then be placed on the eligibility list, after those qualifying for veteran's preference points, as outlined in *Section 4.14*, have been awarded those preference points.
- d) Background Investigation: Prior to being considered for appointment on the "Certified List of Three" the applicant will undergo a complete background investigation as outlined in *Section 4.18*. Although a requirement, only a sufficient number of top scoring candidates necessary for consideration, as determined by the civil service board will need to have a background investigation performed.

Thus, any individual appearing on either initial eligibility list (full-time or part-time) is subject to background investigation and no one will be certified as eligible on the "Certified List of Three" until they have successfully completed a background investigation and received a written recommendation that the applicant is appropriate for consideration in accordance with *Section 4.19*, of these rules and regulations.

4.11 Physical Agility Testing.

An applicant for the entry level position of Full-Time Firefighter and/or Part-Time Firefighter shall meet the physical agility requirements, in accordance with the criteria established by the board or other agencies designated by the board. In all cases, candidates shall be provided with the physical agility requirements prior to the time of physical agility testing. The physical agility test shall be pass/fail.

Applicants who have either successfully passed, or failed the physical agility test will be so notified at the completion of the physical agility test, or within thirty (30) days by the board. If the candidate passes the physical agility test, the candidate will be notified of the time and place for the next step of the hiring process, the written examination.

4.12 Written Examination.

The written examination shall be graded on a 100 point scale, and an applicant must score seventy percent 70% or higher and receives one of the top twenty (20) highest scores or a lesser number who may have passed the written test, including ties in order to continue in the application process. Applicants scoring less than seventy percent (70%) or not receiving one of the top twenty (20) highest scores or a less number who may have passed the written test, shall be rejected. Within thirty (30) days after the administration of the written examination, all applicants shall be given written notice of their test results and passing applicants shall be scheduled for an oral examination appointment.

4.13 Oral Examination.

Every applicant who scored seventy percent (70%) or higher on the written examination and received one of the top twenty (20) highest scores or a lesser number who may have passed the written test, including ties in order to continue in the application process shall be given an oral examination. The oral examination will be graded on a 100 point scale with a score of seventy percent (70%) or higher necessary for passing. The oral examination shall include questioning applicants on how they would handle situations relevant to a firefighter's position. Within thirty (30) days after the applicants' oral examination, they shall be informed of the score in their oral examination and total overall score.

4.14 Veterans' Preference Points.

Pursuant to the Veterans' Preference Act, any applicant for the position of Full-Time Firefighter or Part-Time Firefighter, who qualifies as a military veteran, under this Act, shall receive an additional ten (10) points on top of their final score if that applicant qualifies under *Sections 4.10, 4.11, 4.12 and 4.13*, of these rules and regulations. Applicants claiming veteran's preference shall have submitted satisfactory proof of service and honorable discharge with their application form.

C. ELIGIBILITY LIST AND BACKGROUND INVESTIGATION

4.15 Creation of Eligibility List.

At the completion of the examination requirements set forth in *Sections 4.10, 4.11, 4.12, and Section 4.13*, that includes the physical agility test, the written examination and the oral examination, the Board shall rank all passing candidates on the eligibility list. The applicants having received the highest score shall be at the top of their respective lists, with all other candidates being listed in descending order of their scores. Applicants who qualify for veteran's preference points, as outlined in *Section 4.14*, shall have those ten (10) points added to their final score prior to being ranked on the eligibility list.

In the case of tied scores, the tie will be broken by giving preference to the applicant who received the highest score on the written test. In the event the qualifying applicant received identical scores, the order of listing shall be determined by the order in which they were numbered for recording purposes as set forth in *Section 4.7*.

Any individual appearing on the eligibility list, as described above, is subject to a background investigation and no one will be certified in accordance with *Section 4.18*, of these rules and regulations until they have successfully completed these investigations and received a written recommendation that the applicant is appropriate for consideration in accordance with *Section 4.19*, of these rules and regulations.

4.16 Duration of Eligibility List.

The board shall furnish to the city council a certified copy of the eligibility list so prepared and kept. The eligibility list shall be maintained for a period of two (2) years or until a new list is certified to the city council, whichever occurs first and are public records.

4.17 Review of Eligibility List.

The eligibility list shall be annually examined by the board for the purpose of deleting therefrom persons who are permanently unavailable for or disqualified for the position of Full-Time Firefighter and/or Part-Time Firefighter, either by death, permanent removal of the area, written desire to be removed therefrom, or from other permanent cause. The board shall, by every reasonable cause, get a written notice from the candidate removed from the list and provide a notice to that candidate, in writing that the candidate will no longer be considered for the position.

4.18 Background Investigation.

The board shall request the Chief of Police to conduct a background investigation on the top scoring eligible applicants, on the eligibility list(s), as determined by the civil service board, prior to inclusion on the certified list of those eligible as set forth in *Section 4.19*, of these rules and regulations.

The background investigation must be consistent for each applicant. The applicant may be interviewed directly when the information collected requires clarification or further explanation. The Chief of Police or chief's designee may use his/her own discretion in the expansion of these items and time frames.

After the background investigation is completed, the Chief of Police or the chief's designee, after consultation with the Fire Chief, shall make a written recommendation to the board on whether the applicant is appropriate for consideration for appointment as a firefighter for the City of Johnstown.

The recommendation by the Chief of Police or the chief's designee, after consultation with the Fire Chief, shall be based on the criteria set forth in *Section 4.8*, of these rules and regulations and on any other relevant information developed during the background investigation. This report to the board shall be in writing and in compliance with the Americans with Disabilities Act and must not include any physical history information on a candidate. If the recommendation is to disqualify, then a detailed, written explanation of the reasons for disqualification must be included. The board shall then make a final determination on whether additional information is required or if the information collected and reported warrants acceptance or rejection of the candidate.

Within thirty (30) days after the board considers the recommendation based on the background investigation, each applicant shall be notified as to whether they have passed or failed this portion of the examination process.

D. APPOINTMENT PROCEDURE

4.19 Appointing Authority.

Furloughed firefighters shall be given first consideration for re-employment, prior to any other hiring procedure and shall be reinstated in order of their seniority as outlined in *Section 7.5*, of these rules and regulations.

Except as provided above and below (Veterans Preference), the following appointment procedure will be separately followed when hiring a Firefighter from the Full-Time Eligibility List or the Part-Time Eligibility List:

Whenever any vacancy shall occur in the fire department for the position of Full-Time Firefighter or Part-Time Firefighter, (separate eligibility lists) the city manager shall notify the board of any vacancy which is to be filled and shall request certification (Certified List of Three) from the eligibility list (Full-Time or Part-Time, as appropriate.)

- 1) If three (3) names are not available, then the board shall certify the name(s) remaining on the relevant eligibility list.
 - 2) The city manager shall make an appointment, from the relevant eligibility list, contingent upon the appointees passing a psychological and medical exam.
 - 3) At the time of the appointment of a Full-Time or Part-Time Firefighter, from the relevant eligibility list, the city manager shall advise the city council of such appointment.
- a) Veterans Preference: The exception to the above procedure is when a qualified veteran is on the "Certified List of Three," the city manager shall appoint the veteran, conditioned upon passing a psychological and medical examination. If two or more of the names on the "Certified List of Three" are veterans, the city manager shall have the discretion to appoint anyone of those veterans, conditioned upon successfully passing a medical and psychological examination.

- b) The name of the candidate appointed shall be immediately stricken from the “Certified List of Three” or a lesser number if three names are not on the certified list. The names of the non-appointed candidates shall then immediately be restored to their proper place on the certified list and an additional candidate, with the highest score on the eligibility list, shall then be elevated to the “Certified List of Three,” if qualified names remain on the eligibility list.

4.20 Physical and Psychological Medical Examinations.

After the city manager selects a candidate from the “Certified List of Three” for appointment to the vacant position, that candidate shall receive a conditional offer of employment. The offer of employment shall be conditioned upon the conditional appointee undergoing a physical and psychological medical examination and a determination that the conditional appointee is capable of performing all the essential functions of the position. Physical medical examinations shall be under the direction of a physician or other qualified medical professional. Psychological medical examinations shall be under the direction of a psychiatrist or psychologist.

The physician or other qualified medical professional and the psychiatrist or psychologist shall be appointed by city manager and shall render an opinion within a reasonable degree of medical certainty as to whether the conditional appointee has physical or mental condition which calls into question the person’s ability to perform all of the essential functions of the position for which the person was conditionally appointed.

Drug testing shall be included as one component of the requirements. In addition, the respective examiners will be given a copy of the job description and the “Essential Functions of the Job” for performing the duties of firefighter. The completed forms will be certified by the examining physician(s) indicating that the candidate is physically or psychologically fit, as the case may be, to perform the duties of a firefighter and as outlined below. The completed forms shall be confidential and submitted to the appropriate city official for disposition.

If the opinion rendered by the physician, other qualified medical professional, psychiatrist or psychologist calls into question the conditional appointee's ability to perform all essential functions of a position, the city manager, or designee, shall meet with the conditional appointee for the purpose of having one or more interactive discussions on whether the conditional appointee can, with or without reasonable accommodation, perform all the essential functions of the position.

If, at the conclusion of the interactive discussion the city manager determines that the conditional appointee is not qualified, the city manager shall give written notice to the conditional appointee, the city council and the board of that decision. This written notice shall also notify the conditional appointee of their right to appeal the city managers decision to the board within ten (10) working days from the date of the written notice.

The rejected candidate may appeal this decision under *Section 4.9*, of these rules and regulations. If the candidate fails to timely exercise the rights of appeal, or if the board declines to uphold the appeal,

the board shall strike the name from the eligibility list and certify the next highest name for inclusion on the "Certified List of Three."

4.21 Probationary Period.

Every successful applicant for the position of firefighter shall serve a twelve (12) month probationary period. For newly hired firefighters, the probationary period will begin on the first day the new firefighter reports for work. During this probationary period, a newly hired firefighter may be dismissed for cause for the reasons set forth in *Sections 4.8*, of these rules and regulations, or because of incapacity for duty due to the use of alcohol or drugs. In addition, a probationary firefighter may be dismissed, if the probationary firefighter does not meet the requirement expectations of the position and documentation is accurately documented.

During the probationary period, the Fire Chief shall monitor and review the progress of the probationer in order to further determine the probationer's qualifications for permanent employment and the Fire Chief shall report to the city manager regarding the performance and conduct of the probationer at least once during each consecutive three (3) month period of the probationary employment. In addition to all other requirements, the probationer shall, during this period, be required to satisfactorily complete a field training and evaluation program developed and administered by the Fire Chief or the chief's designee.

The Fire Chief shall submit to the city manager a final probationary report, not less than ten (10) days nor more than fifteen (15) calendar days before the next regular meeting of the city council, immediately preceding the end of the probationary period. Each report shall be submitted in writing to the city manager. Within five (5) calendar days after receiving a probationary report from the city manager, and after consultation with the city council, if the conduct of the probationer has not been satisfactory to the city manager, the probationer shall be notified in writing by the city manager that the appointment will not be permanent. Following receipt of this notification by the probationer, a newly hired firefighter's employment shall end.

Any probationer who is notified in writing by the city manager, prior to completion of the twelve (12) month probation period, that his appointment will not be made permanent, has no rights of appeal under these rules and regulations.

The city manager shall notify the board, in writing, of its decision to retain or remove the probationer of such decision within five (5) calendar days and in no event beyond the last day of the probationary period.

At the end of the twelve (12) month probationary period, if the probationer is not notified or dismissed in accordance with this section, a newly hired firefighter shall receive permanent status within the fire department.

CHAPTER 5. PROMOTION FROM PART-TIME FIREFIGHTER TO FULL-TIME FIREFIGHTER

A. APPLICATION AND QUALIFICATIONS

5.1 Eligibility for Examinations.

Part-Time Firefighters initially hired under the provisions of these rules and regulations who meets the requirements of these civil service rules and regulations shall be first eligible for a Full-Time Firefighter's position. For the purpose of these rules and regulations the movement from a Part-Time Firefighter to Full-Time Firefighter shall be considered a promotion and be subject to the following qualifications:

- a) All employed Part-Time Firefighters to be eligible for promotion to a Full-Time Firefighter position shall not have received a formal written reprimand for one (1) year prior to the deadline for submitting application. Such restrictions also includes that they have not been suspended without pay at any time one year prior to the deadline for submitting an application. Any formal written reprimand or suspension to which the applicant has timely appealed pursuant to a grievance procedure of these rules and regulations shall be disregarded unless the appeal is resolved prior to the creation of the eligibility list.
- b) All applicants shall have continuous prior service with the Johnstown City Fire Department as follows:
 - (1) An applicant for the promotion from Part-Time Firefighter to Full-Time Firefighter shall have at least one year (1) of service with the department. This may include their probationary period outlined in *Section 4.21*, of these rules and regulations.
 - (2) The probationary period, as outlined in *Section 4.21*, shall be waived if no other Part-Time Firefighters qualify for promotion to Full-Time Firefighter, as described above.
 - (3) If a probationary Part-Time Firefighter is promoted to Full-Time Firefighter as described above, that appointed Full-Time Firefighter will be required to serve a one year probationary period, as a Full-Time Firefighter, and be subject to the probationary requirements of these rules and regulations.

5.2 Discrimination.

The City of Johnstown is an equal opportunity employer. It is the city council and the board's policy to grant equal employment opportunities to qualified persons without regard to race, religion, color, national origin, gender, age, veteran's status, marital status, or non-job related physical or mental handicap or disability. The city council and the board will provide equal opportunities in promotions to ranking positions.

5.3 Notification.

At least two weeks prior to the close of the application period, publication of a notice outlining the qualifications for the position, and requesting application forms, to apply for the position, shall be conspicuously posted in the fire department and the city manager's office. At the discretion of the civil service board, the board may receive documentation from the city of those eligible for a promotional exam and may notify them, in writing, of the notice and the deadline for filing applications. It is important that all applicants that meet the qualifications for promotion from Part-Time Firefighter to Full-Time Firefighter be notified, by the city manager or other individual designated by the board.

The city manager, or other designated person, shall give, in writing, to each applicant qualified for the next step in the examination process, a notice which shall include the date, time and place the applicant shall report for the next examination in the process.

Every such notice shall be mailed or otherwise delivered at least seven (7) days prior to the date fixed for examination. Only applicants receiving notices to report for any examination shall be permitted to participate in such examination, and each applicant shall present his or her notice to the examiner before he or she shall be examined. Failure to report for an examination in accordance with the instructions contained in the written notice shall disqualify the applicant.

5.4 Rejection of Applicants.

The board may refuse to examine, or, if examined, may refuse to certify as eligible after examination, any applicant who is found to lack any of the minimum qualifications for examination prescribed in these rules and regulations for the particular position for which the applicant has applied. In addition, the board may refuse to examine, or if examined, may refuse to certify any applicant who is:

- a) Found to have furnished incomplete, inaccurate, misleading or false information on the official application or in response to any portion of the promotional process,
- b) Physically unfit for the performance of the duties of the position of which the candidate seeks employment,

- c) Illegally using a controlled substance, as defined in section 102 of the Controlled Substance Act (Public Law 91-513, 12 U.S.C. § 802),
- d) Guilty of any crime involving moral turpitude, or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct of office,
- e) Affiliated with any group whose policies or activities are subversive to the forms of government set forth in the constitution and laws of the United States and the Commonwealth of Pennsylvania.

5.5 Hearing for Disqualified Applicants.

Any applicants or other persons who believe that they are aggrieved by the actions of the board, in refusing to examine or to certify them as eligible after examination, may request a hearing before the board, within ten (10) days of receiving written notice of what is perceived as the alleged error. Within ten days after such request, the board shall designate a time and place for the hearing which shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 Pa. C.S. §101, et seq., with or without counsel, at which time the board shall take testimony and review its refusal to provide examination or certification.

The deliberations of the board, including interim rulings on evidentiary or procedural issues, may be held in the nature of a closed executive session. The board's disposition of the matter shall constitute official action which shall occur at a public meeting held pursuant to 65 Pa.C.S. Ch. 7 (relating to open meetings). The decision of the board shall be final.

B. EXAMINATION AND GRADING PROCEDURE

5.6 General Examination Requirements.

The examination for the promotion from Part-Time Firefighter to Full-Time Firefighter shall consist of an oral examination, which will be graded on a one hundred (100) point scale.

5.7 Oral Examination.

An applicant must score at least seventy percent (70%) to qualify and continue in the application process. Any applicant who scores less than seventy percent (70%) will be disqualified. The oral examination shall involve questioning applicants on fire oriented issues, including how they would handle situations relevant to fire work. Within thirty (30) days after the administration of the oral they shall be informed of the score in their oral examination.

C. CERTIFICATION OF THE LIST OF ELIGIBLES AND APPOINTMENT

5.8 Creation of Eligibility List.

At the successful completion of the examination requirements set forth in *Sections 5.6 and 5.7*, the board shall rank all passing applicants on a list with the applicant receiving the highest score at the top of the list and the applicant receiving the lowest passing score at the bottom of the list.

In the case of tied scores, the tie will be broken by giving preference to the applicant who received the highest score on the written test. In the event the qualifying applicant received identical scores, the order of listing shall be determined by the earliest application received.

5.9 Duration of the Eligibility List.

The board shall furnish to the city council a certified copy of the eligibility list so prepared and kept. The eligibility list shall be maintained for a period of two (2) years or until a new list is certified to the city council, whichever occurs first and are public records.

5.10 Appointment Procedure.

For promotion from the position of Part-Time Firefighter to Full-Time Firefighter, the position shall be filled only in the following manner:

- a) The board, after having established an eligibility list, furnish to the city manager, a copy of the eligibility list for all promotion positions that shall have included only those that have passed all of the components of the testing processes as outlined above.
- b) When a vacancy for any promotional position is to be filled, the city manager shall notify the civil service board of a civil service vacancy promotional position and request the names of the top three candidates on the eligibility of the respective promotional list (Certified List of Three.)
- c) The board shall then certify the top three candidates on the respective promotional list that have received the highest average in the last preceding promotional exam held within the period of two years preceding the date of the request for the eligibility list.
- d) If three (3) names are not available, then the board shall certify the name(s) remaining on the list.
- e) The city manager shall make an appointment from one of the three names certified with sole reference to the merits and fitness of the candidates.

- f) At the time of appointment of a promotional position, the city manager shall advise the city council of such appointment.
- g) The name of the candidate appointed shall be immediately stricken from the "Certified List of Three" or a lesser number if three names are not on the certified list. The names of the non-appointed candidates shall then immediately be restored to their proper place on the certified list and an additional candidate, with the highest score on the eligibility list, shall be elevated to the "Certified List of Three," if qualified names remain on the eligibility list.

5.11 Probationary Period.

Every successful applicant for the promotional position of Full-Time Firefighter within the fire department shall serve a twelve (12) month probationary period. The probationary period will begin on the first day the promoted Part-Time Firefighter reports to work as Full-Time Firefighter.

A promoted Full-Time Firefighter, during probation, may be returned to the rank from which he was promoted, for cause for the reasons set forth in *Section 5.4*, of these rules and regulations or because of incapacity for duty due to the use of alcohol or drugs.

In addition, a probationary Full-Time Firefighter may be returned to the position of Part-Time Firefighter, if the probationary Full-Time Firefighter does not meet the requirement expectations of the position and documentation is accurately noted. Depending on the severity of the reasons, as listed in *Section 5.4*, a probationer may be recommended for suspension or removal from service.

The Fire Chief shall submit to the city manager a final probationary report, not less than ten (10) days nor more than fifteen (15) calendar days before the next regular meeting of the city council, immediately preceding the end of the probationary period. Each report shall be submitted in writing to city council. Within five (5) calendar days after receiving a probationary report from the city manager, and after consultation with the city council, if the conduct of the probationer has not been satisfactory to the city manager, the probationer shall be notified in writing by the city manager that the appointment will not be permanent. Following receipt of this notification by the probationer, the probationary Full-Time Firefighter will be returned to his/her position of Part-Time Firefighter, for the city.

Any probationer who is notified in writing by the city, prior to completion of the twelve (12) month probation period, that his appointment will not be made permanent, has no rights of appeal under these rules and regulations.

The city manager shall notify the board, in writing, of its decision to retain or remove the probationer within five (5) calendar days and in no event beyond the last day of the probationary period.

At the end of the twelve (12) month probationary period, if the probationer is not notified in accordance with this section, the probationer shall receive permanent status as a Full-Time Firefighter within the fire department.

CHAPTER 6. PROMOTIONS (RANKING POSITIONS)

A. APPLICATION AND QUALIFICATIONS

6.1 Eligibility for Examinations.

All applicants for a promotional ranking position, except Fire Chief, shall not have received a formal written reprimand for one (1) year prior to the deadline for submitting applications and shall not have been suspended without pay for more than five (5) days in the three (3) years prior to the deadline for submitting applications. Any suspension to which the applicant has timely appealed pursuant to a contractual grievance procedure or these rules shall be disregarded unless the appeal is resolved prior to the creation of the eligibility list.

At the time of application, all applicants for the following promotions (ranking positions) shall have had continuous prior service as a Full-Time Firefighter with the City of Johnstown Fire Department as follows:

- 1) An applicant for the position of Fire Captain shall have at least five (5) years of continuous prior service as a Full-Time Firefighter with the City of Johnstown Fire Department.
- 2) An applicant for the position of Assistant Chief shall have at least one (1) year of continuous prior service as a Fire Captain with the City of Johnstown Fire Department.

6.2 Discrimination.

The City of Johnstown is an equal opportunity employer. It is the city council and the board's policy to grant equal employment opportunities to qualified persons without regard to race, religion, color, national origin, gender, lesbian, gay, bisexual, transgender, age, veteran's status, marital status, or non-job related physical or mental handicap or disability. The city council and the board will provide equal opportunities in employment and promotion.

6.3 Notification.

For promotions, at least two weeks prior to the close of the application period, publication of a notice outlining the qualifications for the position, and requesting application forms, to apply for the position, shall be conspicuously posted in the fire department and the city office. At the discretion of the civil service board, the board may receive documentation from the city of those eligible for a promotional exam and may notify them, in writing, of the notice and the deadline for filing applications. It is important that all applicants that meet the qualifications for promotion be notified, by the city manager or other individuals designated by the board.

The city manager, or other designated person, shall give, in writing, to each applicant qualified for the next step in the examination process, a notice which shall include the date, time and place the applicant shall report for the next examination in the process.

Every such notice shall be mailed or otherwise delivered at least seven (7) days prior to the date fixed for examination. Only applicants receiving notices to report for any examination shall be permitted to participate in such examination, and each applicant shall present his or her notice to the examiner before he or she shall be examined. Failure to report for an examination in accordance with the instructions contained in the written notice shall disqualify the applicant.

6.4 Rejection of Applicants.

The board may refuse to examine, or, if examined, may refuse to certify as eligible after examination, any applicant who is found to lack any of the minimum qualifications for examination prescribed in these rules and regulations for the particular position for which the applicant has applied. In addition, the board may refuse to examine, or if examined, may refuse to certify any applicant who is:

- a) Found to have furnished incomplete, inaccurate, misleading or false information on the official application or in response to any portion of the promotional ranking process,
- b) Physically unfit for the performance of the duties of the position of which the candidate seeks employment,
- c) Illegally using a controlled substance, as defined in Section 102, of the Controlled Substance Act (Public Law 91-513, 12 U.S.C. § 802),
- d) Guilty of any crime involving moral turpitude, or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct of office,
- e) Affiliated with any group whose policies or activities are subversive to the forms of government set forth in the constitution and laws of the United States and the Commonwealth of Pennsylvania.

6.5 Hearing for Disqualified Applicants.

Any applicants or other persons who believe that they are aggrieved by the actions of the board, in refusing to examine or to certify them as eligible after examination, may request a hearing before the board, within ten (10) days of receiving written notice of what is perceived as the alleged error. Within ten days after such request, the board shall designate a time and place for the hearing which shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 Pa. C.S.

§101, et seq., with or without counsel, at which time the board shall take testimony and review its refusal to provide examination or certification.

The deliberations of the board, including interim rulings on evidentiary or procedural issues, may be held in the nature of a closed executive session. The board's disposition of the matter shall constitute official action which shall occur at a public meeting held pursuant to 65 Pa.C.S. Ch. 7 (relating to open meetings). The decision of the board shall be final.

B. EXAMINATION AND GRADING PROCEDURE.

6.6 General Examination Requirements.

The examination for the positions of each promotional ranking position shall include a written examination and an oral examination, which will be graded on a one hundred (100) point scale with the written examination representing seventy percent (70%) of the final score, the oral examination representing thirty percent (30%).

Every applicant for promotion, who has satisfied all of the written examination requirements, as stated above, shall be given an oral examination. An applicant must score at least seventy percent (70) % to qualify and continue in the application process. Any applicant who scores less than seventy percent (70%) will be disqualified. The oral examination shall involve questioning applicants on fire oriented issues, including how they would handle situations relevant to fire work.

6.7 Written Examination.

The written examination shall be graded on a one hundred (100) point scale. An applicant must score at least seventy percent (70%) to be eligible for the oral exam and continue in the promotional process. Applicants who score less than seventy percent (70%) shall be disqualified. Within thirty (30) days after the administration of the written examination, all applicants shall be given written notice of their examination results.

6.8 Oral Examination.

Every applicant who has satisfied all of the written examination requirements provided in *Section 6.7*, above, shall be given an oral examination. An applicant must score at least seventy percent (70%) to qualify and continue in the application process. Any applicant who scores less than seventy percent (70%) will be disqualified. The oral examination shall involve questioning applicants on fire oriented issues, including how they would handle situations relevant to fire work. Within thirty (30) days after the administration of the oral they shall be informed of the score in their oral examination and total overall score.

C. CERTIFICATION OF THE LIST OF ELIGIBLES AND APPOINTMENT

6.9 Creation of Eligibility List.

At the completion of the examination requirements set forth in *Sections 6.6, 6.7, and 6.8*, the board shall rank all passing applicants on a list with the applicant receiving the highest score at the top of the list and the applicant receiving the lowest passing score at the bottom of the list.

In the case of tied scores, the tie will be broken by giving preference to the applicant who submitted a final completed application first. If both tied applicants submitted their complete applications on the same day, then the applicants shall be ranked in alphabetical order by surname.

6.10 Duration of Eligibility List.

The board shall furnish to the city council a certified copy of the eligibility list so prepared and kept. The eligibility list shall be maintained for a period of two (2) years or until a new list is certified to the city council, whichever occurs first and are public records.

6.11 Appointment Procedure.

All promotional ranking positions in the fire department, except the Fire Chief shall be filled only in the following manner:

- a) The board, after having established an eligibility list, furnish to the city manager, a copy of the eligibility list for all promotion positions that shall have included only those that have passed all of the components of the testing processes as outlined above.
- b) When a vacancy for any promotional position is to be filled, the city manager shall notify the civil service board of a civil service vacancy promotional position and request the names of the top three candidates on the eligibility of the respective promotional list (Certified List of Three.)
- c) The board shall then certify the top three candidates on the respective promotional list that have received the highest average in the last preceding promotional exam held within the period of two years preceding the date of the request for the eligibility list.
- d) If three (3) names are not available, then the board shall certify the name(s) remaining on the list.
- e) The city manager shall make an appointment from one of the three names certified with sole reference to the merits and fitness of the candidates.

- f) At the time of appointment of a promotional position, the city manager shall advise the city council of such appointment.
- g) The name of the candidate appointed shall be immediately stricken from the "Certified List of Three" or a lesser number if three names are not on the certified list. The names of the non-appointed candidates shall then immediately be restored to their proper place on the certified list and an additional candidate, with the highest score on the eligibility list, shall be elevated to the "Certified List of Three," if qualified names remain on the eligibility list.

6.12 Probationary Period.

Every successful applicant for the promotion to a ranking position, except that of the Fire Chief, within the fire department, shall serve a twelve (12) month probationary period. The probationary period will begin on the first day of the promotion to the respective ranking position.

A Full-Time Firefighter promoted to a ranking position, during probation, may be returned to the position from which they were promoted, for cause for the reasons set forth in *Section 6.4*, of these rules and regulations or because of incapacity for duty due to the use of alcohol or drugs.

In addition, a probationary ranking firefighter, except the Fire Chief, may be returned to their previous position, if the probationary ranking firefighter does not meet the requirement expectations of the position and documentation is accurately noted. Depending on the severity of the reasons, as listed in *Section 6.4*, a probationer may be recommended for suspension or removal from service.

The Fire Chief shall submit to the city manager a final probationary report, not less than ten (10) days nor more than fifteen (15) calendar days before the next regular meeting of the city council, immediately preceding the end of the probationary period. Each report shall be submitted in writing to city manager. Within five (5) calendar days after receiving a probationary report from the city manager, and after consultation with the city council, if the conduct of the probationer has not been satisfactory to the city manager, the probationer shall be notified in writing by the city manager that the appointment will not be permanent. Following receipt of this notification by the probationer, the probationary Full-Time Firefighter will be returned to his/her position of a Full-Time Firefighter, for the city.

Any probationer who is notified in writing by the city manager, prior to completion of the twelve(12) month probation period, that his appointment will not be made permanent, has no rights of appeal under these rules and regulations.

The city manager shall notify the board, in writing, of its decision to retain or remove the probationer within five (5) calendar days and in no event beyond the last day of the probationary period.

At the end of the twelve (12) month probationary period, if the probationer is not notified in accordance with this section, the probationer shall receive permanent status in their respective promotional ranking position.

D. Fire Chief

6.13 Appointment of Fire Chief

The Fire Chief shall be designated by the city manager from within the ranks and may be demoted without cause in the same manner, but not to any rank lower than the rank which was held at the time of designation as Fire Chief. In the event that no qualified firefighter, from within the ranks, has applied for such designation, the Fire Chief shall be designated by the city manager from without the ranks.

Note: As defined in Article XX of the Third Class City Code)

CHAPTER 7. SUSPENSIONS, REMOVALS AND REDUCTION IN RANK AND FURLOUGHS

7.1 Grounds for Disciplinary Action.

- a) Any firefighter subject to the civil service provisions herein, shall be subject to suspension, discharge and discipline, by the city manager for misconduct or violation of any law of the Commonwealth, ordinance of the city, or regulations of the department.
- b) No firefighter, including Fire Chief or ranking officer, shall be discriminated against by being removed, censured or reprimanded for any religious, racial or political reasons.

7.2 Hearings on Suspension, Removal or Reduction in Rank.

- a) Any firefighter aggrieved by the suspension, discharge or discipline imposed by the city manager, more serious than a suspension of three days without pay, may request a hearing before the city council, or by the civil service board, if designated by ordinance.
- b) At the hearing, the firefighter may be represented by counsel.

7.3 Appeal Procedure.

- a) Any firefighter aggrieved by the decision of the city manager or the civil service board shall have the right to appeal in accordance with 2 Pa.C.S. Ch 7 Subch. B (relating to judicial review of local agency action).

- b) This review shall be exclusive.
- c) Where no such appeal is taken within the time prescribed by law, the decision of the city manager or the civil service board shall become final in accordance with the law.
- d) The issue before the court shall be whether the action of the city manager or the civil service board shall be affirmed or modified in any respect or whether the charges should be dismissed or whether the suspension or demotion made by the director shall be affirmed or rescinded. Where a firefighter has been suspended and the charges are dismissed or the suspension suspended on appeal, the firefighter shall receive full compensation for the entire period of suspension.

7.4 Election of Remedies.

Where a firefighter who is a member of the bargaining unit, is subject to suspension, discharge or discipline, the firefighter shall have the option of challenging the suspensions, discharge or discipline imposed, by selecting the due process procedure outlined above or by proceeding with grievance arbitration, as outlined in the Collective Bargaining Agreement. A choice to proceed either by the due process outlined above or by grievance arbitration shall foreclose the opportunity to proceed in the alternative method.

7.5 Furloughs.

- a) If it should become necessary to reduce the number of firefighters in the fire department for purposes of economy, seniority rights shall prevail, and any and all removals for such cause or causes shall be from the members last appointed, and the member or members serving the shortest time shall be removed first; but members with longer times of service may be discharged for cause.
- b) In the event that the city council decides to increase the size of the fire department personnel, the furloughed firefighters shall be reinstated in order of their seniority in the fire department. Firefighters so notified of reinstatement must accept reinstatement within thirty (30) days of receipt of such notice, otherwise such firefighters shall be deemed to have waived any right to reinstatement.

CHAPTER 8. REVOCATION/SEVERABILITY

- a) Revocations/Repeal of prior Fire Civil Service Rules and Regulations. These rules and regulations shall become effective upon the approval of same by the Johnstown City Council, whereupon all prior rules and regulations of the commission shall be revoked and repealed.

- b) Validity/Severability. Should any section, clause, part or word of these rules and regulations be declared by a court of competent jurisdiction invalid, illegal or unconstitutional, such decision of the court shall not affect the validity or impair any of the remaining sections, clauses, parts or words of these rules and regulations; the provisions of these rules and regulations being thus severable, same are declared valid to the extent any section, subsection, subparagraph, clause, part or word is not specifically declared by the decision of the court invalid, illegal or unconstitutional.

CHAPTER 9. RESOLUTION FOR ADOPTION

The foregoing Fire Civil Service Rules and Regulations, which are in accordance with powers granted by the Civil Service Section of the Third Class City Code (Act 22 of 2014), Sections 4401-4410, enacted by the General Assembly of the Commonwealth of Pennsylvania, pursuant to the act of July 15, 1957, P.L. 901, No. 399, Cl. 11, the Optional Third Class City Charter Law,, and in accordance with the authority granted by the municipal governing body of City of Johnstown, Cambria County, Pennsylvania, are hereby adopted by the Civil Service Board of the City of Johnstown.

Chairperson

Vice Chairperson

Secretary

Approved by the City Council of Johnstown, Pennsylvania [Date].

ATTEST:

SIGNED:

City Manager

Mayor

CITY OF JOHNSTOWN

**Cambria County
Pennsylvania**

POLICE CIVIL SERVICE RULES AND REGULATIONS

**ADOPTED BY:
THE CIVIL SERVICE BOARD
[Date]
AND
THE CITY COUNCIL OF JOHNSTOWN
[Date]**

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CHAPTER 1. DEFINITION OF TERMS

1.1 Definitions.

Unless otherwise expressly stated, the following words and phrases, wherever used in these rules and regulations, shall be construed to have the meaning indicated herein:

Applicant: Any individual who applies in writing to the Board in response to a legally advertised notice of vacancy and/or examination for any position in the police department.

Background Investigation: An investigation of a police officer applicant conducted after the eligibility list has been posted, but prior to inclusion on the “Certified List of Three.

Board: The Civil Service Board of the City of Johnstown, Cambria County, Pennsylvania.

Board Member-(Alternate): An individual appointed by the city council to serve as an “Alternate” member of the Civil Service Board. Properly appointed “Alternate” Board member shall have all the same powers and duties as a “Primary” appointed Board member set forth in the Third Class City Code and as outlined in these rules and regulations.

Board Member-(Primary): (Optional Provision) An individual appointed by the city council to serve as a “Primary” Board member of the Civil Service Board with traditional duties as set forth in the Third Class City Code and as outlined in these civil service rules and regulations.

Certified List of Three: The submission to the city manager, pursuant to his/her request for three names taken from the police officer’s eligibility lists developed by the Civil Service Board.

Chairperson: The Chairperson of the Civil Service Board of the City of Johnstown, Pennsylvania.

Chief of Police: A promoted sworn officer who is appointed by the city manager and not appointed under the provisions of these civil service rules and regulations.

City Council: The elected Mayor and City Council of the City of Johnstown, Pennsylvania.

City Manager – The appointing authority, as hereby appointed by the City Council of the City of Johnstown, Cambria County, Pennsylvania, pursuant to the act of July 15, 1957, P.L. 901, No. 399, Cl. 11, the Optional Third Class City Charter Law, of the City of Johnstown, shall have the authority to appoint, suspend, remove and reduce in rank, any member of the Johnstown Police Department.

Eligible: A person whose name is recorded on a current eligibility list or furlough list.

Eligibility List: The list of names of persons who have passed all examinations for a particular position in the police department.

Examinations: The series of tests given to applicants to determine their qualifications for a position in the police department.

Full-Time Police Officer: A qualified police officer hired under the provisions of these civil service rules and regulations.

Furlough List: The list containing the names of persons temporarily laid off from positions in the police department because of a reduction in the number of personnel.

MPOETC: The Pennsylvania Municipal Police Officers Education and Training Commission.

Medical Examinations: Any examination, procedure, inquiry or test designed to obtain information about medical history or a physical or mental condition which might disqualify an applicant if it would prevent the applicant from performing, with or without a reasonable accommodation, all of the essential functions of the position.

Physician: Shall have the meaning given to it in 1 Pa.C.S. § 1991 that relates to definitions.

Police Officer: Any sworn qualified police officer serving in the police department, except as specifically noted.

Probationer: A Full-Time Police Officer who has been promotionally appointed from their respective eligibility list, but who has not yet completed the work-test period.

Promotion: Ranking Police Officer: A qualified Full-Time Police Officer appointed to a "ranking position" in the police department, under the provisions of these civil service rules and regulations.

Qualified Medical Professional: An individual, in collaboration with or under the supervision or direction of a physician, as may be required by law, who is licensed: as a physician assistant pursuant to the act of December 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act of 1985," or the act of October 5, 1978 (P.L.1109, No.261), known as the "Osteopathic Medical Practice Act"; or as a certified registered nurse practitioner pursuant to the act of May 22, 1951 (P.L.317, No.69), known as "The Professional Nursing Law."

Reduction in Rank: A decrease in both the employees rank and salary. A change in position with no decrease in salary shall not constitute a reduction in rank.

Removal: The permanent separation of a police officer from the police department.

Secretary: The Secretary of the Civil Service Board of the City of Johnstown, Pennsylvania.

Secretary (Compensated): Person or city department appointed by the Board, not a member of the Civil Service Board, to provide additional administrative assistance.

Suspension: The temporary separation without pay of a police officer from the police department.

Vice Chairperson: The Vice Chairperson of the Civil Service Board of the City of Johnstown.

1.2 Gender

The words “he,” “his,” “him,” and “men” when used in these rules and regulations represent both the masculine and feminine genders.

CHAPTER 2. THE BOARD.

2.1 The Civil Service Board.

There shall be a civil service Board that shall provide for and oversee the examination of applicants for appointment to and promotion to any position in the police or fire department, except to the position of Police Chief or Fire Chief, without having first passed all the examinations herein provided for and without having been appointed in the manner and according to the strict terms and provision and conditions of these civil service rules and regulations. Thus, there shall be one civil service Board for both police and fire uniformed positions in the city. However, the city will promulgate separate civil service rules and regulations for police and fire to better enforce and administer the civil service rules and regulations for the police and fire department.

- a) **Board (Primary).** The Board shall consist of three Board members who shall be qualified electors of the city and shall be appointed by the city council initially to serve for the terms of two, three and four years, and as terms thereafter expire shall be appointed for terms of four years.

Any vacancy occurring on the Board (Primary) for any reason whatsoever shall be filled by the city council from the alternate board members for the unexpired term.

Each member of the Board (Primary) created by this subdivision, before entering upon the discharge of the duties of his office, shall take an oath or affirmation of office pursuant to 53 Pa.C.S. § 1141 (relating to form of oaths of office), and file the same, duly certified by the officer administering it, with the city manager.

- b) **Board (Alternate).** City Council may appoint no more than three qualified electors of the city to serve as alternate members of the Board. The term of office shall be four years. An alternate shall be entitled to participate in all proceedings and discussions of the Board to the same and full extent as provided by law for Board members, but shall not be entitled to vote as a member of the Board unless designated as a voting alternate member, pursuant to Section 4403.1 of the Third Class City Code and outlined in *Section 2.3, c), d)*, of these civil service rules and regulations. “Alternate” members shall hold no other office in the city.

Each member of the Board (Alternates) created by this subdivision, before entering upon the discharge of the duties of his office, shall take an oath or affirmation of office pursuant to 53 Pa.C.S. § 1141 (relating to form of oaths of office).

The Civil Service Board shall receive no salary or compensation.

2.2 Office Incompatible with Position of Board Member.

No city officer, official or employee shall be eligible for appointment to the Civil Service Board.

2.3 Organization of Board – Quorum.

- a) The Board shall organize for the purpose of transacting all business immediately after the first appointment and thereafter as new appointments to the Board are made. After organizing, the Board shall appoint one of its members as its chairperson, one as vice chairperson, and one as its secretary.
- b) Two members of the Board shall constitute a quorum and no action of the Board shall be valid unless it shall have the concurrence of at least two members.
- c) If by reason of absence or disqualification of a member, a quorum is not reached, the chairman shall designate as many alternate members of the Board to sit on the Board as may be needed to provide a quorum. Any alternate member of the Board shall continue to serve on the Board in all proceedings involving the matter or case for which the alternate was initially designated until the Board has made a final determination of the matter or case. Designation of an alternate shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.
- d) For purposes of hiring and promoting police officers under these rules and regulations, each step of the hiring or promotional process requiring official action by the Board shall be considered a separate “matter or case” under Subsection c), above, and each step of the hiring or promotional process need not be voted upon or approved by the same composition of “Primary” Board members or “Alternate” Board members, as the case may be, provided that the quorum requirement has been satisfied.

2.4 Duties of Board Chairperson.

The Board Chairperson, shall preside at all meetings and hearings of the Board, decide all points of order or procedure and perform all duties required by law including these rules and regulations and shall be a voting member.

2.5 Duties of Board Vice Chairperson.

The Board Vice Chairperson shall act in the absence of the Board Chairperson in carrying out the duties of the Board Chairperson and shall be a voting member.

2.6 Duties of the Board Secretary.

The Board Secretary, under the direction of the Board, shall work in conjunction with the compensated secretary (*Section 2.7*) in handling all official correspondence of the Board, including the recording of votes cast by the Board, send out all notices required by law including these rules and regulations, keeping a record of each examination or other official action of the Board, and perform all other duties required by law including these rules and regulations and shall be a voting member.

2.7 Duties of Secretary (Compensated).

The Board may appoint a compensated secretary or designated city department, who is not a member of the Board, and prescribe the duties, and shall have the power to change these duties. The compensated secretary or designated city department, shall be subject to removal at any time by the Board. The council may establish the compensation, if any, to be paid to the compensated secretary or city department, and all necessary stationary and supplies for use of the Board shall be supplied by the city.

2.8 Meetings.

All meetings shall be held either at the call of the chairperson or at the call of two members of the Board. The Board shall have the discretion to determine whether meetings shall be open to the public when not specifically regulated by law or these rules and regulations. Each Board member shall be notified in writing of each and every meeting. In all cases regarding meetings, including scheduling, the Board shall follow the provisions provided for pursuant to 65 Pa.C.S. Ch. 7, as amended and commonly known as the "Sunshine Law. The order of business for all meetings shall be as follows:

- a) Roll Call
- b) Public Comments (Agenda Items)
- c) Approval of Previous Meeting's Minutes
- d) Communications and Reports
- e) Unfinished Business
- f) Hearing of Cases
- g) New Business
- h) Public Comments (General)
- i) Adjourn

2.9 Clerical Assistance, Supplies, Solicitor, etc.

The city shall furnish to the Board, on its requisition, clerical assistance that may be necessary for the work of the Board. The city shall provide a suitable and convenient room for the use of the Board. The Board shall order from the city the necessary stationery, postage, printing and supplies. The city shall also provide the services of a solicitor for the Board to be appointed by the Board and paid by the city. The city shall have the authority to place a reasonable limit on the amount allowed each year for the services of the Board Solicitor. The elected and appointed officials of the city shall aid the Board in all proper ways in carrying out the provisions of these civil service rules and regulations.

2.10 Rules and Regulations/Examinations.

No person or persons shall be appointed to any uniformed position in the police department, except the Chief of Police, without having first passed all the examinations herein provided for and without having been appointed in the manner and according to the terms and provisions and conditions provided herein.

The Board shall prepare and adopt rules and regulations, subject to approval of the city council, which in the Board's discretion, are best adapted to securing and maintaining the best services for the public for the selection, appointment and promotion of persons who are qualified to perform the work which is subject to the civil service examinations, as provided herein, and who are to be employed, appointed or promoted by the city. The rules and regulations adopted by the Board shall provide for ascertaining and determining, so far as possible, the knowledge, skills, aptitude, mental and physical abilities, experience, education and character of all applicants as these criteria would reasonably apply to the respective positions; and the rules and regulations shall provide for examinations upon any and all subjects deemed proper or necessary by the Board for the purpose of determining the qualifications of applicants for the respective positions sought and for which application is made.

2.11 Appointment of Examiners.

The Board shall appoint qualified written examination administrators, oral examination administrators and physical agility examination administrators to conduct appropriate examinations required by these rules and regulations.

The city manager shall have the responsibility to appoint the physical and psychological examiner, as outlined in *Section 3.20*, of these rules and regulations.

The Civil Service Board shall not directly participate in any of the testing procedures, but shall co-ordinate all of the hiring processes to assure compliance with these civil service rules and regulations.

2.12 Amendment of Rules & Regulations.

The Board may amend, revise, void or replace these rules and regulations for any reason by action of a majority of the Board. Before any changes to these rules and regulations become effective, those changes must be approved by the city council. These rules and regulations, and any amendments thereto, once approved, by the city council, shall be made available to the public for distribution or inspection.

2.13 Minutes and Records.

The Board shall keep minutes of its proceedings and records of examinations and other official action. All records of the Board shall be preserved and disposed of according to the Retention and Disposition Schedule for Records of Pennsylvania Municipalities issued by the Local Government Records Committee under the authority of the Municipal Records Act of 1968, P.L. 961, No. 428, 53 P.S. 9001, as amended.

Any and all records relating to any hearing requested by applicants, shall be open to the public inspection subject to applicable regulations. The secretary shall keep minutes of the proceedings showing the vote of each member upon each question. If the member is absent or fails to vote, the secretary shall indicate that fact in the minutes.

2.14 Investigations.

The Board shall have the power to make investigations concerning all matters relating to the administration and enforcement of these rules and regulations.

2.15 Subpoenas.

The Board shall have the power to issue subpoenas over the signature of the chairperson, or designee, to acquire the attendance of witnesses and the production of records and papers pertaining to matters before the Board, including any background investigation conducted pursuant to any applicable rules and regulations. Any fees of such witnesses for attendance and travel shall be the same as for witnesses appearing in the courts and shall be paid from appropriations for the incidental expense of the Board.

If any person shall refuse or neglect to obey any subpoena, the Board may apply by petition to the Court of Common Pleas of Cambria County, Pennsylvania, for its subpoena, requiring the attendance of such persons before the Board or the court to testify and to produce any records and

papers as necessary, and in default, may be held in contempt of court and may be fined or imprisoned by the court as previously indicated.

2.16 Annual Report.

The Board shall make an annual report to the city council containing a brief summary of its work during the year, and shall make a full accounting for any expenditure of public monies. The annual report shall be then available for public inspection.

CHAPTER 3. FULL-TIME POLICE OFFICER

A. APPLICATIONS AND QUALIFICATIONS

3.1 Eligibility for Examinations.

In order to be eligible for participation in any examination for any full-time position with the Johnstown Police Department, every applicant must submit a completed application form to the Board or other offices or agencies designated by the Board, before the deadline stated for that specific examination. The applicant must make an oath or affirmation that the application has been completed truthfully, and that the applicant is subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

3.2 Discrimination.

The City of Johnstown is an equal opportunity employer. It is the city council and the Board's policy to grant equal employment opportunities to qualified persons without regard to race, religion, color, national origin, gender, lesbian, gay, bisexual, transgender, age, veteran's status, marital status, or non-job related physical or mental handicap or disability. The city council and the Board will provide equal opportunities in employment.

3.3 Applications.

Application forms shall be available to all interested persons in city hall and from such other offices that the Board may choose to designate. Application forms may be mailed to a potential candidate upon written or telephone request. However, the Board assumes no responsibility for missed filing deadline dates due to a delay in the mail or for any other reason.

3.4 Age and Residency Requirements.

All applicants must have reached their twenty-first (21st) birthday before the deadline for submitting completed applications. Police Officers residency requirements will be in compliance with the current Collective Bargaining Agreement.

3.5 General Qualifications.

At the time of application, every applicant for a position in the police department shall possess the following qualifications:

- a) Possess a diploma from an accredited high school or a graduate equivalency diploma (GED).
- b) Be Act 120 Certified under the Municipal Police Officers Education and Training Commission (Act 120), (MPOETC) 53 Pa. C.S.A. §2161 et seq. or shall have successfully completed Act 120 Training and passed the final exam, prior to the certification of the eligibility list, thus being eligible for Act 120 Certification once hired by the city.
- c) Be a United States Citizen.
- d) Be physically and mentally fit to perform the full duties of a police officer.
- e) Possess a valid motor vehicle operator's license issued by the Commonwealth of Pennsylvania.

3.6 Public Notice – Notification.

The Board shall conspicuously post in the Johnstown City Building, or other conspicuous locations, an announcement of the hiring and set forth the time and place of every examination, together with the information as to the type of position to be filled, the requirements for that position, where applications may be obtained for the examination, and the deadline for filing those applications. At least two (2) weeks prior to the initial examination for Full-Time Police Officer, publication of the notice shall be placed in at least one newspaper of general circulation in the City of Johnstown.

The city manager, or other designated person, shall give, in writing, to each applicant qualified for the next step in the examination process, if applicable, a notice which shall include the date, time and place the applicant shall report for the next examination in the process. In the case of physical and psychological examinations, the city manager shall notify the candidate who has been conditionally offered a position in the police department by a written notice of the date,

time and place of the examinations as well as the name of the physical and psychological examiners.

Every such notice shall be mailed or otherwise delivered/notified at least seven (7) days prior to the date fixed for examination. Only applicants receiving notices to report for any examination shall be permitted to participate in such examination, and each applicant shall present his or her notice to the examiner before he or she shall be examined. Failure to report for an examination in accordance with the instructions contained in the written notice shall disqualify the applicant, but in the case of a physical or psychological examinations, the physician and psychiatrist/psychologist designated in the notice may fix another date or time for such examination, provided, however, that any such date or time shall be written with the period of at least seven (7) days of the date and time established in the written notice.

3.7 Recording and Filing Applications.

Applications for positions of Full-Time Police Officer shall be received at the city building or other offices or agencies designated by the Board, only after the police officer position(s) have been properly advertised and before the deadline for receiving the applications, which must be set forth in the advertisement. That person(s) shall record the receipt of all applications, indicating the time and date received and advises each applicant with notice of the time and place for the first portion of the testing process. A non-refundable application fee, if determined by the Board, will be required to be paid, by the applicant, at the time the application is submitted.

Penalty for False Statement: The statements made by the applicant in the official application shall contain no falsification, omissions or concealment of material fact. Should any investigation disclose any material misstatement, falsification or concealment with respect to an application;

- a) The application shall be invalid and the applicant shall be disqualified from examination, or
- b) If the applicant shall have been examined, the name of such applicant shall be removed from the eligibility list, or
- c) If the applicant shall have been appointed, such material misstatement, falsification or concealment shall constitute grounds for dismissal from the Johnstown Police Department.
- d) No person who has made a material false application shall be permitted in the future to be an applicant for any position in the Johnstown Police Department.

3.8 Rejection of Applicant.

The Board may refuse to examine, or, if examined, may refuse to certify as eligible after examination, any applicant who is found to lack any of the minimum qualifications for examination prescribed in these rules and regulations for the particular position for which the applicant has applied. In addition, the Board may refuse to examine, or if examined, may refuse to certify any applicant who is:

- a) Found to have furnished incomplete, inaccurate, misleading or false information on the official application or in response to any portion of the hiring process,
- b) Physically unfit for the performance of the duties of the position of which the candidate seeks employment,
- c) Illegally using a controlled substance, as defined in section 102 of the Controlled Substance Act (Public Law 91-513, 12 U.S.C. § 802),
- d) Guilty of any crime involving moral turpitude, or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct of office,
- e) Affiliated with any group whose policies or activities are subversive to the forms of government set forth in the constitution and laws of the United States and the Commonwealth of Pennsylvania.

3.9 Hearing for Disqualified Applicant.

Any applicant or other persons who believe that they are aggrieved by the actions of the Board, in refusing to examine or to certify them as eligible after examination, may request a hearing before the Board, within ten (10) days of receiving written notice of what is perceived as the alleged error. Within ten days after such request, the Board shall designate a time and place for the hearing which shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 Pa. C.S. §101, et seq., with or without counsel, at which time the Board shall take testimony and review its refusal to provide examination or certification.

The deliberations of the Board, including interim rulings on evidentiary or procedural issues, may be held in the nature of a closed executive session. The Board's disposition of the matter shall constitute official action which shall occur at a public meeting held pursuant to 65 Pa.C.S. Ch. 7 (relating to open meetings). The decision of the Board shall be final.

B. EXAMINATION AND GRADING PROCEDURE.

3.10 General Examination Requirements.

The examination for Full-Time Police Officer shall consist of a physical agility test, written examination, oral examination and a background investigation. The written examination and the oral examination will be graded individually on a one hundred (100%) scale. The written examination will represent seventy percent (70%) of the final score. The oral examination will represent thirty percent (30%) of the final score. The physical agility test and the background investigation will be graded pass/fail.

The testing process will be as follows:

- a) Physical Agility Test: Those candidates passing the physical agility test, as outlined in *Section 3.11*, will qualify to take the written examination.
Note: At the discretion of the Civil Service Board, the written examination may precede the physical agility testing.
- b) Written Examination: Those candidates passing the written test as outlined in *Section 3.12*, will qualify for the oral examination.
- c) Oral Examination: Those candidates passing the oral examination, as outlined in *Section 3.13* will then be placed on the eligibility list, after those qualifying for veteran's preference points, as outlined in *Section 3.14*, have been awarded those preference points.
- d) Background Investigation: Prior to being considered for appointment on the "Certified List of Three" the applicant will undergo a complete background investigation, as outlined in *Section 3.18*. Although a requirement, only a sufficient number of top scoring candidates necessary for consideration, as determined by the Civil Service Board, will need to have a background investigation performed.

3.11 Physical Agility Testing.

An applicant for the entry level position shall meet the physical agility requirements, in accordance with the criteria established by the Board or other agencies designated by the Board. In all cases, the physical agility examination shall be job related and consistent with business necessity and the candidates shall be provided with the physical agility requirements prior to the time of physical agility testing. The physical agility test shall be pass/fail.

Applicants who have either successfully passed, or failed the physical agility test will be so notified at the completion of the physical agility test, or within thirty days (30) by the Board. If the candidate passes the physical agility test, the candidate will be notified of the time and place for the next step of the hiring process, the written examination.

3.12 Written Examination.

The written examination shall be graded on a 100 point scale, and an applicant must score seventy percent 70% or higher and receives one of the top twenty (20) highest scores or a lesser number who may have passed the written test, including ties in order to continue in the application process. Applicants scoring less than seventy percent (70%) or not receiving one of the top twenty (20) highest scores or a less number who may have passed the written test, shall be rejected. Within thirty (30) days after the administration of the written examination, all applicants shall be given written notice of their test results and passing applicants shall be scheduled for an oral examination appointment.

3.13 Oral Examination.

Every applicant who scored seventy percent (70%) or higher on the written examination in order to continue in the application process shall be given an oral examination. The oral examination will be graded on a 100 point scale with a score of seventy percent (70%) or higher necessary for passing. The oral examination shall involve questioning applicants on how they would handle situations relevant to police work. Within thirty (30) days after the applicants' oral examination, they shall be informed of the score in their oral examination and total overall score.

3.14 Veterans' Preference Points.

Pursuant to the Veterans' Preference Act, any applicant for the position of police officer who qualifies as a military veteran under this Act shall receive an additional ten (10) points on top of their final score if that applicant qualifies under *Sections 3.10, 3.11, 3.12, and 3.13*, of these rules and regulations. Applicants claiming veteran's preference shall have submitted satisfactory proof of service and honorable discharge therefrom with their application form.

C. ELIGIBILITY LIST AND BACKGROUND INVESTIGATION

3.15 Creation of Eligibility List.

At the completion of the examination requirements set forth in *Sections 3.10, 3.11, 3.12, and 3.13*, the physical agility test, the written examination and the oral examination, the Board shall rank all passing candidates on the eligibility list. The applicants having received the highest score shall be at the top of the list, with all other candidates being listed in descending order of their scores. Applicants who qualify for veteran's preference points, as outlined in *Section 3.14*, shall have those ten (10) points added to their final score prior to being ranked on the eligibility list.

In the case of tied scores, the tie will be broken by giving preference to the applicant who received the highest score on the written test. In the event the qualifying applicant received identical scores, the order of listing shall be determined by the earliest application received.

Any individual appearing on the eligibility list is subject to a background investigation and no one will be certified in accordance with *Section 3.18*, of these rules and regulations until they have successfully completed a background investigation and received a written recommendation that the applicant is appropriate for consideration in accordance with *Section 3.19*, of these rules and regulations.

3.16 Duration of Eligibility List.

The Board shall furnish to council a certified copy of the eligibility list so prepared and kept. The eligibility list shall be maintained for a period of two (2) years or until a new list is certified to council, whichever occurs first and are public records.

3.17 Review of Eligibility List.

The eligibility list shall be annually examined by the Board for the purpose of deleting therefrom persons who are permanently unavailable for or disqualified for the position of Full-Time Police Officer, either by death, permanent removal of the area, written desire to be removed therefrom, or from other permanent cause. The Board shall, by every reasonable cause, get a written notice from the candidate removed from the list and provide a notice to that candidate, in writing that the candidate will no longer be considered for the position.

The Board, at the request of the Appointing Authority, may void an eligibility list at any time for any reason.

3.18 Background Investigation.

The Board shall request the Chief of Police or the chief's designee to conduct a background investigation on the top scoring eligible applicants, as determined by the Civil Service Board, prior to inclusion on the "Certified List of Three" of those eligible as set forth in *Section 3.19*, of these rules and regulations.

The background investigation must be consistent for each applicant and shall meet, at a minimum, all the specific requirements of the MPOETC, as required by law. The applicant may be interviewed directly when the information collected requires clarification or further explanation. The Chief of Police or chief's designee may use his/her own discretion in the expansion of these items and time frames.

After the background investigation is completed, the Chief of Police or the chief's designee shall make a written recommendation to the Board on whether the applicant is appropriate for consideration for appointment as a Full-Time Police Officer for the City of Johnstown.

The recommendation by the Chief of Police or the chief's designee shall be based on the criteria set forth in *Section 3.8*, of these rules and regulations and on any other relevant information developed during the background investigation. This report to the Board shall be in writing and in compliance with the Americans with Disabilities Act and must not include any medical history information on a candidate. If the recommendation is to disqualify, then a detailed, written explanation of the reasons for disqualification must be included. The Board shall then make a final determination on whether additional information is required or if the information collected and reported warrants acceptance or rejection of the candidate.

Within thirty (30) days after the Board considers the recommendation based on the background investigation, each applicant shall be notified as to whether they have passed or failed this portion of the examination process.

D. APPOINTMENT PROCEDURE

3.19 Appointing Authority.

Furloughed police officers shall be given first consideration for re-employment, prior to any other hiring procedure and shall be reinstated in order of their seniority as outlined in *Section 5.5*, of these rules and regulations.

Except as provided above and below (Veterans Preference), the following appointment procedure will be separately followed when hiring a Full-Time Police Officer.

The city manager shall notify the Board of any vacancy which is to be filled and shall request certification (Certified List of Three) from the eligibility list.

- 1) If three (3) names are not available, then the Board shall certify the name(s) remaining on the list.
 - 2) The city manager shall make an appointment, contingent upon the appointees passing a psychological and medical exam.
 - 3) At the time of the appointment of a Full-Time Police Officer, the city manager shall advise the city council of such appointment.
- a) Veterans Preference: The exception to the above procedure is when a qualified veteran is on the "Certified List of Three," the city manager shall appoint the veteran, conditioned upon passing a psychological and medical examination. If two or more of the names on the "Certified List of Three" are veterans, the city manager shall have the discretion to appoint

anyone of those veterans, conditioned upon successfully passing a medical and psychological examination.

- b) The name of the candidate appointed shall be immediately stricken from the “Certified List of Three” or a lesser number if three names are not on the certified list. The names of the non-appointed candidates shall then immediately be restored to their proper place on the certified list and an additional candidate, with the highest score on the eligibility list, shall then be elevated to the “Certified List of Three,” if qualified names remain on the eligibility list.
- c) If the name of any applicant has appeared on the “Certified List of Three,” and not appointed and been rejected three times or the conditional applicant has been determined by the medical examination process to be unqualified, the applicants names shall be stricken from the certified list as eligible for appointment.

3.20 Physical and Psychological Medical Examinations.

After the city manager selects a candidate from the “Certified List of Three” for appointment to the vacant position, that candidate shall receive a conditional offer of employment. The offer of employment shall be conditioned upon the appointee undergoing a physical and psychological medical examination and a determination that the conditional appointee is capable of performing all the essential functions of the position. Physical medical examinations shall be under the direction of a physician or other qualified medical professional. Psychological medical examinations shall be under the direction of a psychiatrist or psychologist.

The physician or other qualified medical professional and the psychiatrist or psychologist shall be appointed by city manager and shall render an opinion within a reasonable degree of medical certainty as to whether the conditional appointee has physical or mental condition which calls into question the person’s ability to perform all of the essential functions of the position for which the person was conditionally appointed.

Drug testing shall be included as one component of the requirements. In addition, the respective examiners will be given a copy of the job description and the “Essential Functions of the Job” for performing the duties of police officer. The completed forms will be certified by the examining physician(s) indicating that the candidate is physically or psychologically fit, as the case may be, to perform the duties of a police officer and as outlined below. The completed forms shall be confidential and submitted to the appropriate city official for disposition.

The physical and psychological exams will be conducted in compliance with the MPOETC regulations. The completion of the required MPOETC physical and psychological forms will be provided by the city. Drug testing shall be included as one component of the requirements. In addition, the respective examiners will be given a copy of the job description and the “Essential Functions of the Job” for performing the duties of police officer. The completed forms will be certified by the

examining physician(s) indicating that the candidate is physically or psychologically fit, as the case may be, to perform the duties of a Full-Time Police Officer. The completed forms shall be confidential and submitted to the appropriate city official for disposition.

If the opinion rendered by the physician, other qualified medical professional, psychiatrist or psychologist calls into question the conditional appointee's ability to perform all essential functions of a position, the city manager or designee, shall meet with the conditional appointee for the purpose of having one or more interactive discussions on whether the conditional appointee can, with or without reasonable accommodation, perform all the essential functions of the position.

If, at the conclusion of the interactive discussion the city manager determines that the conditional appointee is not qualified, the city manager shall give written notice to the conditional appointee and the Board. This written notice shall also notify the conditional appointee of their right to appeal the council's decision to the Board within 10 working days from the date of the written notice.

The rejected candidate may appeal this decision under *Section 3.9*, of these rules and regulations. If the candidate fails to timely exercise the rights of appeal, or if the Board declines to uphold the appeal, the Board shall strike the name from the eligibility list and certify the next highest name for inclusion on the "Certified List of Three."

3.21 Probationary Period

Every successful applicant for the position of Full-Time Police Officer shall serve a twelve (12) month probationary period. The probationary period may be extended by the Chief of Police but the extension may not exceed six (6) months. During this probationary period, a newly hired police officer may be dismissed for cause for the reasons set forth in *Section 3.8*, of these rules and regulations or because of incapacity for duty due to the use of alcohol or drugs. In addition, a probationary police officer may be dismissed if the probationary police officer does not meet the required expectations of the position supported by accurate documentation.

During the probationary period, the Chief of Police shall monitor and review the progress of the probationer in order to further determine the probationer's qualifications for permanent employment and the Chief of Police shall report to the city manager regarding the performance and conduct of the probationer at least once during each consecutive three (3) month period of the probationary employment. In addition to all other requirements, the probationer shall, during this period, be required to satisfactorily complete a field training and evaluation program developed and administered by the Chief of Police or the chief's designee.

The Chief of Police shall submit to the city manager a final probationary report, not less than ten (10) days nor more than fifteen (15) calendar days before the next regular meeting of the city council, immediately preceding the end of the probationary period. Each report shall be submitted in writing to the city manager. Within five (5) calendar days after receiving a probationary report from the city manager, and after consultation with the city council, if the conduct of the probationer has not been satisfactory to the city manager, the probationer shall be notified in writing by the city manager

that the appointment will not be permanent. Following receipt of this notification by the probationer, a newly hired police officer's employment shall end.

Any probationer who is notified in writing by the city manager, prior to completion of the twelve (12) month probation period, that his appointment will not be made permanent, has no rights of appeal under these rules and regulations.

The city manager shall notify the Board, in writing, of its decision to retain or remove the probationer of such decision within five (5) calendar days and in no event beyond the last day of the probationary period.

At the end of the twelve (12) month probationary period, if the probationer is not notified or dismissed in accordance with this section, a newly hired police officer shall receive permanent status within the police department.

CHAPTER 4. POLICE PROMOTIONS (RANKING POSITIONS)

A. APPLICATION AND QUALIFICATIONS

4.1 Eligibility for Examinations.

All applicants for a promotional position, except the Chief of Police, shall have not received a formal written reprimand for one (1) year prior to the deadline for submitting applications, or have not been suspended without pay, demoted, or reduced in rank at any time three (3) years prior to the deadline for submitting applications. If a formal written reprimand, reduction in rank, demotion, or suspension has been timely appealed by a prospective applicant pursuant to a grievance procedure or these rules and regulations, it shall be disregarded unless the appeal is resolved prior to the creation of the eligibility list.

(a) All applicants for promotion, except the Chief of Police, shall have continuous prior service in the Johnstown City Police Department , as indicated below:

- (1) Police Sergeant: An applicant for the position of Police Sergeant shall have at least three (3) years of experience as a Full-time Police Officer with the Johnstown City Police Department.
- (2) Police Lieutenant: An applicant for the position of Police Lieutenant shall have at least two (2) years of experience as a Police Sergeant with the Johnstown City Police Department.
- (3) Police Captain: An applicant for the position of Police Captain shall have at least two (2) years of experience as a Police Lieutenant with the Johnstown City Police Department. If no one holds the position of Police Lieutenant when a Police

Captain's position comes open, applicants must have at least three (3) years of experience as a Police Sergeant with the Johnstown city Police Department.

4.2 Discrimination.

The City of Johnstown is an equal opportunity employer. It is the city council's and the Board's policy to grant equal employment opportunities to qualified persons without regard to race, religion, color, national origin, gender, lesbian, gay, bisexual, transgender, age, veteran's status, marital status, or non-job related physical or mental handicap or disability. The city council and the Board will provide equal opportunities in promotions.

4.3 Notification.

For promotions, at least two weeks prior to the close of the application period, posting of a notice outlining the qualifications for the position, and requesting application forms and/or "Letters of Intent," to apply for the position, shall be conspicuously posted in the police department and the City Manager's Office. At the discretion of the Civil Service Board, the Board may receive documentation from the city of those eligible for a promotional exam and may notify them, in writing, of the notice and the deadline for filing applications. It is important that all applicants that meet the qualifications for promotion be notified, by the city manager or other individuals designated by the Board.

The city manager, or other designated person, shall give, in writing, to each applicant qualified for the next step in the examination process, a notice which shall include the date, time and place the applicant shall report for the next examination in the process.

Every such notice shall be mailed or otherwise delivered at least seven (7) days prior to the date fixed for examination. Only applicants receiving notices to report for any examination shall be permitted to participate in such examination, and each applicant shall present his or her notice to the examiner before he or she shall be examined. Failure to report for an examination in accordance with the instructions contained in the written notice shall disqualify the applicant.

4.4 Rejection of Applicant.

The Board may refuse to examine, or, if examined, may refuse to certify as eligible after examination, any promotional applicant who is found to lack any of the minimum qualifications for examination prescribed in these rules and regulations for the particular position for which the applicant has applied. In addition, the Board may refuse to examine, or if examined, may refuse to certify any applicant who is:

- a) Found to have furnished incomplete, inaccurate, misleading or false information on the official application or in response to any portion of the hiring process,

- b) Physically unfit for the performance of the duties of the position of which the candidate seeks employment,
- c) Illegally using a controlled substance, as defined in section 102 of the Controlled Substance Act (Public Law 91-513, 12 U.S.C. § 802),
- d) Guilty of any crime involving moral turpitude, or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct of office,
- e) Affiliated with any group whose policies or activities are subversive to the forms of government set forth in the constitution and laws of the United States and the Commonwealth of Pennsylvania.

4.5 Hearing for Disqualified Applicants.

Any police ranking promotional applicant, except the police chief, who believes that they are aggrieved by the actions of the Board, in refusing to examine or to certify them as eligible after examination, may request a hearing before the Board, within ten (10) days of receiving written notice of what is perceived as the alleged error. Within ten days after such request, the Board shall designate a time and place for the hearing which shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 Pa. C.S. §101, et seq., with or without counsel, at which time the Board shall take testimony and review its refusal to provide examination or certification.

The deliberations of the Board, including interim rulings on evidentiary or procedural issues, may be held in the nature of a closed executive session. The Board's disposition of the matter shall constitute official action which shall occur at a public meeting held pursuant to 65 Pa.C.S. Ch. 7 (relating to open meetings). The decision of the Board shall be final.

B. EXAMINATION AND GRADING PROCEDURE

4.6 General Examination Requirements.

The examination for a police ranking promotional position shall include a written examination and an oral examination, which will be graded on a one hundred (100) point scale with the written examination representing sixty percent (60%) of the final score, the oral examination representing forty percent (40%) of the final score.

4.7 Written Examination.

The written examination shall be graded on a one hundred (100) point scale. An applicant must score at least seventy percent (70%) to be eligible for the oral exam and continue in the promotional process. Applicants who score less than seventy percent (70%) shall be disqualified.

Within thirty (30) days after the administration of the written examination, all applicants shall be given written notice of their examination results.

4.8 Oral Examination.

Every applicant for promotion who has satisfied all of the written examination requirements provided in *Section 4.7*, above, shall be given an oral examination. An applicant must score at least seventy percent (70%) to qualify and continue in the promotion process. Any applicant who scores less than seventy percent (70%) will be disqualified.

The oral examination shall involve questioning applicants on police oriented issues, including how they would handle situations relevant to police work. Within thirty (30) days after the administration of the oral they shall be informed of the score in their oral examination and total overall score.

C. CERTIFICATION OF THE LIST OF ELIGIBLES AND APPOINTMENT

4.9 Creation of Eligibility List.

At the completion of the examination requirements set forth in *Sections 4.6, 4.7 and 4.8*, the Board shall rank all passing applicants on a list with the applicant receiving the highest score at the top of the list and the applicant receiving the lowest passing score at the bottom of the list.

In the case of tied scores, the tie will be broken by giving preference to the applicant's first "Date of Hire."

4.10 Duration of Eligibility List.

The Board shall furnish to council a certified copy of the eligibility list so prepared and kept. The eligibility list shall be maintained for a period of two (2) years or until a new list is certified to council, whichever occurs first and are public records.

4.11 Appointment Procedure.

All promotional ranking positions in the police department, except the Chief of Police shall be filled only in the following manner:

- a) The Board, after having established an eligibility list, furnish to the city manager, a copy of the eligibility list for all promotion positions that shall have included only those that have passed all of the components of the testing processes as outlined above.

- b) When a vacancy for any promotional position is to be filled, the city manager shall notify the Civil Service Board of a civil service vacancy promotional position and request the names of the top three candidates on the eligibility of the respective promotional list (Certified List of Three.)
- c) The Board shall then certify the top three candidates on the respective promotional list that have received the highest average in the last preceding promotional exam held within the period of two years preceding the date of the request for the eligibility list.
- d) If three (3) names are not available, then the Board shall certify the name(s) remaining on the list.
- e) The city manager shall make an appointment from one of the three names certified with sole reference to the merits and fitness of the candidates.
- f) At the time of appointment of a promotional position, the city manager shall advise the city council of such appointment.
- g) The name of the candidate appointed shall be immediately stricken from the "Certified List of Three" or a lesser number if three names are not on the certified list. The names of the non-appointed candidates shall then immediately be restored to their proper place on the certified list and an additional candidate, with the highest score on the eligibility list, shall be elevated to the "Certified List of Three," if qualified names remain on the eligibility list.

D. CHIEF OF POLICE

4.12 Appointment of Chief of Police.

The Chief of Police shall be appointed by the city manager from within the ranks and may be demoted without cause in the same manner, but not to any rank lower than the rank which was held at the time of designation as Chief of Police. In the event that no qualified officer from within the ranks has applied for such designation, the Chief of Police shall be designated by the city manager, from without the ranks.

**CHAPTER 5. SUSPENSIONS, REMOVALS AND REDUCTION IN RANK –
FURLOUGHS**

5.1 Grounds for Disciplinary Action.

- a) Any police officer subject to the civil service provisions herein, shall be subject to suspension, discharge and discipline, by the department head for the police department for misconduct or violation of any law of the Commonwealth, ordinance of the city, or regulations of the department.
- b) No police officer, including Chief of Police, shall be discriminated against by being removed, censured or reprimanded for any religious, racial, political or discriminatory reasons.

5.2 Hearings on Suspension, Removal or Reduction in Rank.

- a) Any police officer aggrieved by the suspension, discharge or discipline imposed by the city manager, more serious than a suspension of three days without pay, may request a hearing before the city council, or by the Civil Service Board, if designated by ordinance.
- b) At the hearing, the police officer may be represented by counsel.

5.3 Appeal Process.

- a) Any police officer aggrieved by the decision of the city manager or the Civil Service Board shall have the right to appeal in accordance with 2 Pa.C.S. Ch 7 Subch. B (relating to judicial review of local agency action).
- b) This review shall be exclusive.
- c) Where no such appeal is taken within the time prescribed by law, the decision of the city council or the Civil Service Board shall become final in accordance with the law.
- d) The issue before the court shall be whether the action of the council or the Civil Service Board shall be affirmed or modified in any respect or whether the charges should be dismissed or whether the suspension or demotion made by the city manager, shall be affirmed or rescinded. Where any employee has been suspended and the charges are dismissed or the suspension suspended on appeal, the employee shall receive full compensation for the entire period of suspension.

5.4 Election of Remedies.

Where a police officer, who is a member of the bargaining unit, is subject to suspension, discharge or discipline, the police officer shall have the option of challenging the suspensions, discharge or discipline imposed, by selecting the due process procedure outlined above or by a proceeding with grievance arbitration as outlined in the Collective Bargaining Agreement. A choice to proceed either by the due process outlined above or by grievance arbitration shall foreclose the opportunity to proceed in the alternative method.

5.5 Furloughs.

If for reasons of economy or other reasons it shall be deemed necessary by the city to reduce the number of paid police officers, the following procedure shall be followed:

- 1) The city shall first furlough the person or persons, including probationers, last appointed to the police department. Such removal shall be accomplished by furloughing in numerical order commencing with the person last appointed until such reduction shall have been accomplished.
- 2) In the event that the city council decides to increase the size of the police department, as the case may be, the furloughed police officer shall be reinstated in order of their seniority in their respective departments. Police officers so notified of reinstatement must accept reinstatement within thirty (30) days of receipt of such notice, otherwise such employee shall be deemed to have waived any right to reinstatement.
- 3) In addition, those furloughed officers reinstated, as outlined above, must be in compliance, or become compliant with the certification or recertification requirements of the MPOETC, before discharging the duties of a police officer.

CHAPTER 6. RETENTION OF EXISTING POSITIONS

All police officers and promotional appointments, except the position of Chief of Police, prior to the formal approval of these civil service rules and regulations, shall continue to hold their positions and shall not be required to take any examinations under the provisions of these civil service rules and regulations. These positions shall remain intact, until and unless the individual shall transfer, be promoted in line with these newly adopted civil service rules and regulations, resign, retire, be terminated, or be demoted for cause.

CHAPTER 7. REVOCATION/SEVERABILITY

- a) Revocations/Repeal of prior rules and regulations. These Police Civil Service Rules and Regulations shall become effective upon the approval of same by the Johnstown City Council, whereupon all prior rules and regulations of the commission shall be revoked and repealed.

- b) Validity/Severability. Should any section, clause, part or word of these rules and regulations be declared by a court of competent jurisdiction invalid, illegal or unconstitutional, such decision of the court shall not affect the validity or impair any of the remaining sections, clauses, parts or words of these rules and regulations; the provisions of these rules and regulations being thus severable, same are declared valid to the extent any section, subsection, subparagraph, clause, part or word is not specifically declared by the decision of the court invalid, illegal or unconstitutional.

CHAPTER 8. RESOLUTION FOR ADOPTION

The foregoing Police Civil Service Rules and Regulations, which are in accordance with powers granted by the Civil Service Section of the Third Class City Code (Act 22 of 2014), Sections 4401-4410, enacted by the General Assembly of the Commonwealth of Pennsylvania, pursuant to the act of July 15, 1957, P.L. 901, No. 399, Cl. 11, the Optional Third Class City Charter Law,, and in accordance with the authority granted by the municipal governing body of the City of Johnstown, Cambria County, Pennsylvania, are hereby adopted by the Civil Service Board of the City of Johnstown.

Chairperson

Vice Chairperson

Secretary

Approved by the City Council of City of Johnstown, Pennsylvania

[Date].

ATTEST:

SIGNED:

City Manager

Mayor