

CITY OF JOHNSTOWN,  
CAMBRIA COUNTY, PENNSYLVANIA  
RESOLUTION NO. 10284

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA AUTHORIZING AND DIRECTING THE INTERIM CITY MANAGER AND/OR HIS DESIGNEE TO EXECUTE AND TAKE ANY/ALL ACTIONS NECESSARY TO EFFECTUATE A CONTRACT FOR STABILIZATION WORK TO BE PERFORMED ON A BUILDING LOCATED AT 303 FRANKLIN STREET, JOHNSTOWN, PENNSYLVANIA BY STEEL VALLEY CONTRACTORS, CONTINGENT UPON FINAL REVIEW AND APPROVAL OF SAID CONTRACT BY THE CITY SOLICITOR.

WHEREAS, the building located at 303 Franklin Street, Pennsylvania, 15901 is in poor condition and requires stabilization of certain conditions as soon as practicable; and

WHEREAS, the City solicited proposals for the removal of loose bricks and further work to stabilize the building to prevent bricks from falling from the top of the building; and

WHEREAS, Steel Valley Contractors submitted the lowest qualified bid for the proposed project; and

WHEREAS, the City desires to expedite the performance of said work by authorizing the Interim City Manager to execute and take any/all actions necessary to effectuate a Contract with Steel Valley Contractors for payment in the amount of \$10,000.00 to be paid out of Line Account Number 01.434.37.073.00, in exchange for the furnishing of all materials and labor required to stabilize the building as outlined in the bid submitted, to include removal of loose bricks and related debris, demolition of a building parapet wall and final grading on all areas of disturbance, contingent upon review and final approval of the contract between the parties by the City Solicitor;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Johnstown authorizes and directs the Interim City Manager and/or his designee to execute and take any and all actions necessary to effectuate a Contract with Steel Valley Contractors for the building stabilization of 303 Franklin Street in Johnstown, Pennsylvania, for a the total Contract amount of \$10,000.00, contingent upon review and final approval by the City Solicitor.

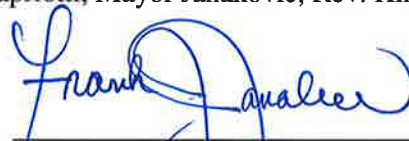
ADOPTED:

May 13, 2020

By the following Vote:

Yeas: Mrs. Mock, Mr. Vitovich, Mr. Arnone, Mr. Britt, Mr. Capriotti, Mayor Janakovic, Rev. King. (7)

Nays: None (0)

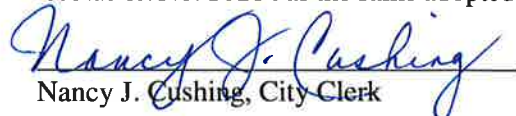


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Frank J. Janakovic, Mayor  
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10284** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk

4/20/2020

Proposal

### Steel Valley Contractors

1834 Lawrence St  
Youngstown Ohio, 44506

City of Johnstown  
401 Main Street  
Johnstown, PA 15901

**Description:**

- The removal of all construction debris & all of clean hard fill
- Demolition of Conrad building parapet wall
- Final grade disturbed areas

<b>Total:</b>	<b>\$10,000</b>
<b>Deposit Due:</b>	<b>\$ -0-</b>
<b>Balance due upon completion:</b>	<b>\$10,000</b>

**Contractor:**

**Client:**

\_\_\_\_\_



440 Donruth Lane  
 Johnstown, PA 15909  
 (814) 322-4545

# LECKEY'S DEMOLITION SERVICE

DATE 3-6-20	PHONE 814-525-1793
JOB NAME/LOCATION Conrad Building	

TO: City of Johnstown  
401 Main St.  
Johnstown, Pa 15901

• JOB DESCRIPTION •

Knock loose bricks inward on top of  
 the Conrad Building 2 feet down to different  
 color of bricks. This will be done on 3 sides  
 of the building only.

Price: \$14,900.00

ESTIMATED JOB COST \$14,900.00

ESTIMATED BY Douglas A. Lecky

Authorized by: \_\_\_\_\_

## **303 Franklin Street, City-Contractor Agreement**

**THIS AGREEMENT**, is made this \_\_\_\_\_ day of, May 2020, by and between the City of Johnstown, Cambria County, a Municipal Corporation, having its principal place of business at City Hall, 401 Main Street, Johnstown, Pennsylvania, 15901 and hereinafter referred to as the "City",

**AND**

An Individual/Sole Proprietorship doing business within the Commonwealth of Pennsylvania under the trade name of Steel Valley Contractors, and having its principal place of business at 1834 Lawrence Street, Youngstown, OH 44506; Hereinafter referred to as the "Contractor".

### **WITNESSETH:**

**WHEREAS**, the City owns the property located at 303 Franklin Street, Johnstown Pa 15901 hereinafter referred to as the "property": and

**WHEREAS**, the building located at 303 Franklin Street, Johnstown, Pennsylvania, 15901 is in poor condition and requires stabilization of certain conditions as soon as practicable; and

**WHEREAS**, the City solicited proposals for the removal of loose bricks and further work to stabilize the building to prevent bricks from falling from the top of the building; and

**WHEREAS**, Contractor submitted the lowest qualified bid for the proposed project; and

**WHEREAS**, the City desires to expedite the performance of said work to stabilize the building as outlined in the bid submitted, to include removal of loose bricks and related debris; and

**WHEREAS**, said Contractor has agreed, and by these presents does agree, for consideration of \$10,000.00 to furnish all materials and labor required to stabilize the property as noted in the List of Work attached to this agreement, to furnish evidence of insurance as requested and outlined herein, and to complete all of the work required by this contract; and

**WHEREAS**, Contractor agrees that the work set forth in the List of Work shall commence within fifteen (15) days of written Notice to Proceed dated \_\_\_\_\_ from the City and shall be completed within thirty (30) calendar days thereafter, subject, however, to extensions of time arising out of unavoidable causes beyond the Contractor's control as determined by the City.

**NOW, THEREFORE**, intending to be legally bound, the parties hereby mutually agree as follows:

### **SECTION 1. TIME FOR PERFORMANCE**

The Contractor shall within fifteen (15) calendar days from the date of the Proceed Order begin actual performance hereunder and all work to be performed by the Contractor shall be completed in accordance with the List of Work and terms of this Agreement within thirty (30) calendar days thereafter. An extension on the start date of this project may occur in accordance with the Pennsylvania Governor's Non-Life Sustaining Businesses to Close Order if mandated or deemed necessary.

The said Contractor, for the consideration hereinafter mentioned and referred to, hereby covenants and agrees with the City, in a good and workmanlike manner, and according to said list of Work, and the terms of this Contract, to the satisfaction of the City to do and perform all of the work mentioned and referred to in said List of Work, and to furnish and supply all the labor and materials mentioned and referred to in said List of work, necessary for the proper performance of the work which the Contractor has undertaken to do as set forth, mentioned and referred to in the List of Work annexed hereto and made a part of this Contract.

Notwithstanding the aforesaid, the Contractor is excused from the performance time requirement if, during the progress of the work, delay is authorized in writing by the City or of any employee either, or by any separate Contractor employed by the City, or by authorized changes in the work, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties, or any causes completely beyond the Contractor's control, and the time of completion shall be extended for such reasonable time as the City may decide. The City shall be empowered to make final decisions on the justifiability of causes offered as basis for extensions of time.

### **SECTION 2. THE CONTRACTOR SHALL:**

1. Provide evidence of comprehensive public liability insurance coverage, protecting the City for not less than \$50,000/\$100,000 in the event of bodily injury or death of any person, and \$25,000/\$50,000 in the event of a claim for damages because of injury to or destruction of property, including loss of use arising there from, due to or arising out of the work performed by the contractor. Additionally, Contractor shall provide evidence of compensation insurance covering claims under workers or workman's compensation, disability benefit and other similar employee benefit acts or claims for damages because of bodily injury, occupational sickness or disease or death of his employees.

2. Carry, during the life of this Agreement, contractual liability insurance to protect and hold harmless the City.

3. Agree to comply with all laws and municipal rules, ordinances and building codes, whenever the same apply to Contractor's said work. The Contractor also agrees to comply with the requirements of all public authorities whenever they affect said work, to save the City from all annoyance and fines with respect to said work to give the property authorities all requisite notice relative to said work and to procure and pay for all necessary official licenses and permits necessary for the completion of the work to be performed.
4. Keep the premises as clean and orderly as possible during the course of the work, and remove all debris, tools, equipment, machinery and surplus materials at the completion of the work. Material and equipment that have been removed and replaced as part of the work shall belong to the Contractor, unless otherwise specified.
5. Guarantee City against any loss or damage arising from any defect of materials and workmanship furnished by Contractor under this Contract for a period of one (1) year from the date of completion and final acceptance of said work by the City. During this period, upon written notice from City, Contractor shall proceed with due diligence, at his expense, to properly replace any defective material or perform any labor necessary to correct any defect in the work. Furnish the City with all manufacturers and suppliers written guarantees and warranties covering materials and equipment furnished under the Agreement.
6. Permit the U.S. Government, the city, or their designees to examine and inspect the rehabilitation work.
7. Repair all surfaces damaged by the Contractor resulting from the work under this agreement at no additional cost to the City. Repair of existing work shall mean the item is to be replaced in equal to new condition, either by patching or replacing.
8. Not begin work until a contract agreement signed by the Contractor and City is in effect, and not prior to receiving a Notice to Proceed Order from the City. If the Contractor begins work prior to receiving both a signed Contract and Notice to Proceed Order signed by the City, payment for the project will be refused by the City.
9. Shall comply with Lead Base Paint Provisions, ACT 24 CFR 35, to the extent applicable.
10. Shall certify that no Owner or employee connected with this firm, company or business is listed as a debarred, suspended or ineligible contractor in accordance with the Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees, as issued by the Department of Housing and Urban Development or suspended from the City of Johnstown Contractor List.
11. Shall certify on forms provided by the City that he will not subcontract any portion of this project to any individual, company or corporation listed on the Consolidated List of debarred, Suspended or Ineligible Contractors or Grantees.

12. Will give immediate written notice to the City of any alleged breach of this Contract by the City and shall give the City a reasonable time within which to procure the correction of the same. In the absence of such notice, it will be presumed conclusively as against the Contractor and all parties under him that said City is not in default to said Contractor.

### **SECTION 3. DEBARRED:**

In the case where the contractor/subcontractor, officer or employee appears on the published consolidated list of Debarred, Suspended and Ineligible Contractors and Grantees, the contractor shall be liable to repay to the City all monies received under this contract.

### **SECTION 4. THE CITY SHALL:**

The City, in consideration of the true and faithful performance by the Contractor of the Covenants and agreements herein contained or mentioned and referred to on his part to be kept and observed and done and performed, hereby covenants and agrees with the Contractor to pay the sum or sums of money and other consideration mentioned and specified, and in the manner and from set forth hereinafter in the Agreement.

Additionally, the City shall:

1. Cooperate with the Contractor to facilitate the performance of work as necessary.
2. Permit the contractor to use, at no cost, existing utilities such as light, heat, power and water necessary to carry out the complete work.

### **SECTION 5. PROHIBITION OF EXTRA COSTS:**

The List of Work attached hereto and made a part of shall be used as a guide only because no extra costs will be paid when the contractor has neglected to properly evaluate the extent of the stabilization work. It shall be the responsibility of the contractor to check all measurements and estimates and to bid accordingly.

### **SECTION 6. METHOD OF PAYMENT:**

The contractor will be paid the agreement price of \$10,000 in one (1) payment. The payment will be made available to the contractor upon completion of all contracted work, paid up to thirty (30) days after the City receives a request for payment.

Final payments on the Contract agreement price will only be made after an inspection and acceptance by the City of all work to be performed by the Contractor. Additionally, before making final payments, the City shall have the right to request from the Contractor a full and complete release of all liens for all materials furnished and for all work done by said Contractor all parties under him and this Contract, and an absolute release from claims of any kind that might result from the performance thereof.

## **SECTION 7: VACATED PREMISES**

The premises are to be vacant during the course of the construction work. Only the contractor, or materials supplier, and/or designated representatives of the City may be present at the project site during the performance contract.

## **SECTION 8. TERMINATION:**

In the event that the contractor fails to furnish materials or execute work in accordance with the provisions of this contract or fails to proceed with or complete the work within the time limit specified in this contract, or if the provisions of the contract are otherwise violated by the contractor, the City, shall have the right to declare the contractor in default in the performance of his obligations under the contract. Said notice shall contain the reasons for the City's intent to declare the contractor at fault and unless within ten (10) days after service of said notice, the violation shall cease or satisfactory arrangements shall be made for its correction, the contractor, by written notice, may be declared in default and his right to proceed under the contract terminated.

## **SECTION 9. DEFAULT:**

In the event of any default by the contractor as described in Section 9 above, the City may procure the articles or services required to finish the project from another contractor, with whom a new contract is executed. The City shall apply any monies that remain to be paid for the completion of the project to the substitute contractor, and the City may then hold the original contractor responsible for any excess cost or damages resulting to the City by reasons of the original contractor's default.

## **SECTION 10. NOTICES:**

Notices to be given by the City to the Contractor shall be considered given for the purposes of this Agreement if mailed by regular mail to the Contractor at:

NAME: Steel Valley Contractors  
ADDRESS: 1834 Lawrence Street  
CITY/STATE/ZIP: Youngstown, OH 44506

## **SECTION 11. GENERAL PROVISIONS**

This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and any disputes arising thereunder shall be resolved through the Court of Common Pleas of Cambria County, Pennsylvania.

The terms of this Agreement are severable. In the event a Court of competent jurisdiction determines that any term, provision or clause contained herein is void or invalid, then the remaining provisions, terms and clauses of this Agreement shall continue in full force and



effect.

It is understood and agreed that this Agreement contains the entire agreement between the parties hereto and there have been no oral or other agreements of any kind whatsoever, as a condition precedent or to induce anyone to the signing of this Agreement or otherwise, concerning this Agreement or the subject matter thereof between the parties hereto, nor shall any change, addition, or amendment be made hereto or to any of the terms, covenants or conditions hereof except by written agreement signed by the parties hereto.

It is understood and agreed that the terms "City", and "Contractor" and the masculine pronoun, singular member as may be used throughout this Agreement shall include the appropriate parties hereto, whether singular or plural or whether individuals, partnership, associations, corporations or otherwise.

**IN WITNESS WHEREOF**, the parties hereto have set forth their hands and seals the date and year first above written.

**WITNESS:**

\_\_\_\_\_  
Secretary

**CONTRACTOR:**

By: \_\_\_\_\_  
Steel Valley Contractors

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

**ATTEST:**

\_\_\_\_\_

**THE CITY OF JOHNSTOWN:**

By: \_\_\_\_\_  
City Manager

## **List of Work**

The contractor will complete the following stabilization work to the building located at 303 Franklin Street, Johnstown, PA.

### **Work Tasks:**

- Removal of loose bricks from the top level of the building – within three feet of the top of the building (parapet wall) and related debris to secure/stabilize building brick area

CITY OF JOHNSTOWN,  
CAMBRIA COUNTY, PENNSYLVANIA  
RESOLUTION NO. 10285

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA, AUTHORIZING THE INTERIM CITY MANAGER AND/OR HIS DESIGNEE TO EXECUTE AN AGREEMENT FOR THE TRANSFER, FOR PURPOSES OF DEMOLITION, OF PROPERTY REFERENCED HEREIN AS 303 FRANKLIN STREET, JOHNSTOWN, PENNSYLVANIA FROM CRAIG BACHIK AND RENEE REGAL, OF 303 FRANKLIN STREET, LP FOR AN AMOUNT OF \$1.00 AND SUBSEQUENT DEMOLITION OF THE STRUCTURES EXISTING ON SAID PROPERTY, CONTINGENT UPON FINAL REVIEW AND APPROVAL OF THE CITY SOLICITOR.

WHEREAS, the City of Johnstown and Craig Bachik and Renee Regal of 303 Franklin Street, LP (“Property Owner”) recognize and acknowledge that the property and building located at 303 Franklin Street, commonly known as the Conrad Building, is in a state of disrepair that amounts to a public nuisance detrimental to the general health and welfare of the community which must be abated; and

WHEREAS, the City has undertaken efforts to apply for and is confident of the likelihood of receiving a Grant for purposes of payment to demolish the existing building and redevelop the premises for public use; and

WHEREAS the Grant Application requires the City to own the property as a condition of its receipt of the Grant Funds; and

WHEREAS, the City and property owner have developed a proposed Agreement by which the Property Owner shall consent to the transfer of the property and subsequent demolition of the existing structure(s) and any other improvements located upon said premises and/or the restoration thereof to be completed by the City of Johnstown; and

WHEREAS, the proposed Agreement of Transfer as attached to this Resolution provides that the ownership of the property shall revert back to the property owner in the event the City is not able to secure Grant funding for purposes of the demolition and/or redevelopment of the site for public use; and

WHEREAS, the parties desire to enter into an Agreement for the transfer of said property, for purposes of demolition and redevelopment wherein the City’s continued ownership of said property shall remain contingent upon the City’s receipt of said Grant funds;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown that the City of Johnstown hereby authorizes and directs the Interim City Manager and/or his designee to execute an Agreement for the transfer and subsequent demolition of property located at 303 Franklin Street, in the amount of \$1.00 and coverage of related demolition costs, with Craig Bachik

and Renee Regal, owners of 303 Franklin Street, LP, contingent upon final review and approval of said transfer agreement by the City Solicitor.


ADOPTED:

May 13, 2020

By the following Vote:

Yeas: Mr. Vitovich, Mr. Arnone, Mr. Britt, Mr. Capriotti, Mayor Janakovic, Rev. King, Mrs. Mock. (7)

Nays: None (0)

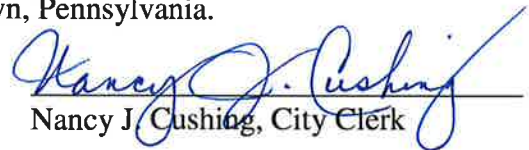


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Frank J. Janakovic, Mayor  
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10285** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk

## AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between:

**CRAIG BACHIK and RENEE REGAL, of 303 Franklin Street, LP** sole/owners,  
hereinafter referred to as "Grantor(s)"

AND

The CITY OF JOHNSTOWN, a body politic, organized and existing under the Home Rule Charter, hereinafter referred to as, hereinafter referred to as "Grantee."

**WHEREAS**, Grantors are the owner of certain real property comprised as follows:  
Premises located in the 4th Ward of the City of Johnstown, Cambria County and Commonwealth of Pennsylvania, known and numbered **303 Franklin Street, Johnstown, Pennsylvania, TAX MAP # 74-001-200.**

**NOW THEREFORE**, Grantors desires to transfer and Grantee desires to take ownership of the Property upon the terms and conditions hereinafter set forth;

1. The Grantors hereby consent to the transfer, for the amount of one (\$1.00) dollar, and subsequent demolition of the existing structure(s) noted above and any other improvements located upon said premises and/or the restoration thereof by the City of Johnstown, its agents, workmen, employees or contractors in consideration of the City of Johnstown causing said demolition and/or restoration to be performed.
2. Should the City of Johnstown (grantee) not be able to secure a grant to demolish the existing building said property may revert back to the grantors.
3. Grantors acknowledge that the property and building contributes to a dangerous public nuisance detrimental to the general health and welfare of the community and must be abated and agrees to work with the City of Johnstown to sign any necessary documents to complete same.
4. The consent of the Grantors is given voluntarily with the full knowledge and understanding that the premises will be deeded to the City of Johnstown in order to secure a grant to help cover costs and that said building shall be demolished.

5. With this knowledge and understanding the Owners of the Conrad Building, Craig Bachik and Renee Regal, through 303 Franklin Street, LP, shall voluntarily transfer the property to the City of Johnstown and sign all necessary documents, including, but not limited to, the deed to transfer and any and all paper work. Should the owners of the Conrad Building fail to sign off on all necessary documents this agreement and such transfer is null and void.
6. Further, the undersigned, for the above mentioned consideration, releases, quitclaims and forever discharges the City of Johnstown, its successors and assigns, its agents, workmen, employees or contractors, from all actions, suits payments, accountings, claims and demands whatsoever, including demands we now have or may have in the future arising out of said transfer, including any claims for salvage.
7. Pennsylvania Law to Apply. This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania. Proper Venue for any cause or claim of action arising out of this Agreement is the Court of Common Pleas of Cambria County, Pennsylvania.
8. Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the aforesaid subject matter.
9. Additional Documents. The parties agree to execute any and all documents which may become necessary in the future to effectuate the provisions of this Agreement.
10. Time of Essence. Time is of the essence for the performance by each of the parties of any and all of the obligations contained in this Agreement.
11. Headings. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.
12. Person. Whenever used in this Agreement, the singular shall include the plural, the plural the singular, and use of any gender may be applicable to all genders.
13. Non-Waiver. The failure of any party to insist on strict performance by any party hereto, of the terms of this Agreement shall not be construed as a waiver, release, or relinquishment thereof.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WITNESS:

SIGNED:

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

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

**COMMONWEALTH OF PENNSYLVANIA            )**  
**)**       **SS:**  
**COUNTY OF CAMBRIA                                )**

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2020 before me the undersigned officer and owner of Franklin Street, LP, who personally appeared, **CRAIG BACHIK**, to be satisfactorily proven to me to be the person whose names subscribed to the within instrument and acknowledges that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**COMMONWEALTH OF PENNSYLVANIA            )**  
**)**       **SS:**  
**COUNTY OF CAMBRIA                                )**

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2020 before me the undersigned officer and owner of Franklin Street, LP, who personally appeared, **RENEE REGAL**, to be satisfactorily proven to me to be the person whose names subscribed to the within instrument and acknowledges that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10286

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN PENNSYLVANIA AUTHORIZING THE INTERIM CITY MANAGER AND/OR THE FINANCE DIRECTOR TO SIGN ALL DOCUMENTS NECESSARY TO APPLY FOR FUNDING ASSISTANCE FROM THE COMMONWEALTH FINANCE AUTHORITY IN THE AMOUNT OF \$197,450.00 FROM THE GREENWAYS, TRAILS AND RECREATION PROGRAM TO BE USED TOWARDS THE DEMOLITION OF THE CONRAD BUILDING AND THE DEVELOPMENT OF A NEW PUBLIC PARK IN THE CITY OF JOHNSTOWN.

WHEREAS, The City Council of the City of Johnstown has agreed to submit a grant application to the Commonwealth Finance Authority, and

WHEREAS, demolition of the Conrad Building located in Downtown Johnstown would create an opportunity to develop a new park, and

WHEREAS, it is the desire of the City Council to access funding opportunities to help us provide recreational assets to residents and visitors to the City of Johnstown; and

WHEREAS, if awarded the grant will require a City match in the amount of \$35,000 which is included in the City of Johnstown 2020 Budget to be paid from UDAG Demolition Line Item Account Number: 08.676.00.367.00;

NOW THEREFORE IT BE RESOLVED, that the City of Johnstown (the Governing Body”) shall be, and the same hereby are authorized to submit a Grant Application to the Commonwealth Finance Authority in the form presented at this meeting for the purpose of partially financing the demolition of the existing Conrad Building and the development a new public park in its place. Appropriate officers of the Governing Body are hereby authorized to execute all certifications and documentation required in connection with the application.




ADOPTED:

May 13, 2020

By the following vote:

Yeas: Mr. Arnone, Mr. Britt, Mr. Capriotti, Mayor Janakovic, Rev. King, Mrs. Mock,  
Mr. Vitovich. (7)

Nays: None (0)



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Frank J. Janakovic, Mayor  
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10286**  
as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk

**Conrad Park Grant Request**

**Funding Agency:** Pennsylvania Commonwealth Finance Authority

**Funding Program:** Greenways, Trails and Recreation Program

**Grant Application Due Date:** May 31, 2020

**Grant Award Date:** Fall 2020

**Project Total Cost:** \$232,450

**Grant Request Amount:** \$197,450

**Matching Funds Required:** \$35,000

**Matching Funds Secured/Budgeted:** Yes

**Matching Funds Source:** City UDAG Demolition Funds

**Matching Funds Source City Account Number:** 08.676.00.367.00

**Project Description:** The Conrad Building located at 303 Franklin Street in Downtown Johnstown is a vacant commercial structure in disrepair and is a safety hazard to pedestrians walking near the building. Through this grant request we are seeking funds to demolish the building and create in its place a small park. The park will be a green space and consist of several benches for visitors to utilize.

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10287

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA, APPROVING AND ADOPTING A REVISED CITIZEN PARTICIPATION PLAN FOR THE CITY'S COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP PROGRAMS EFFECTIVE MAY 13, 2020.

WHEREAS, the Office of Housing and Urban Development Guidelines for the Community Development Block Grant and Home Investment Partnership Programs require the City to adopt and amend, every 5 years a Citizen Participation Plan setting forth the City's policies and procedures for Citizen's Participation in the Development of the City's 5-year Consolidated Plan and Annual Action Plans, any amendments to those plans, applications for Section 108 Loan Guarantees, the Consolidated Annual Performance and Evaluation Report (CAPER) and all other programs, where applicable; and

WHEREAS, the City of Johnstown Citizen Participation Plan was previously amended on April 8, 2015 and an updated and amended Citizen Participation Plan has been developed for purposes of approval and adoption by the City Council; and

WHEREAS, the City has made the proposed Citizen Participation Plan available for public comment and review in accordance with HUD guidelines requiring public notice published in a local newspaper for a period of 30 calendar days and posting of the Citizen Participation Plan on the City website, in addition to making said plan available at the City of Johnstown Department of Community and Economic Development; and

WHEREAS, the City Administration has advised that final adoption and approval of the Citizen Participation Plan attached to this Resolution is appropriate;


NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Pennsylvania that the City of Johnstown Revised Citizen Participation Plan is hereby approved and adopted effective May 13, 2020.

ADOPTED: May 13, 2020

By the following Vote:

Yeas: Mr. Britt, Mr. Capriotti, Mayor Janakovic, Rev. King, Mrs. Mock, Mr. Vitovich, Mr. Arnone. (7)

Nays: None (0)

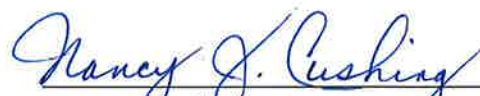


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Frank J. Janakovic, Mayor  
Marie Mock, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10287** as the same by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk

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# CITY OF JOHNSTOWN

*City Hall, 401 Main Street, Johnstown, PA 15901*

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## **Citizen Participation Plan**

*In Accordance with the HUD Guidelines for the  
Community Development Block Grant and  
HOME Investment Partnership Programs*

Amended: April 8, 2015  
Amended: May 13, 2020

**Mayor:**

Frank J. Janakovic

**Community and Economic  
Development Director:**

John Dubnansky





**CITIZEN PARTICIPATION PLAN  
FOR THE CITY OF JOHNSTOWN, PENNSYLVANIA  
COMMUNITY DEVELOPMENT BLOCK GRANT AND  
HOME INVESTMENT PARTNERSHIP PROGRAMS**

**SECTION I – GENERAL:**

This Citizen Participation Plan is prepared in compliance with 24 CFR Part 91.105, *Citizen Participation Plan; Local Governments; as amended at 71 FR6962, February 9, 2006*. This Citizen Participation Plan sets forth the City of Johnstown's policies and procedures for citizen participation by encouraging citizens to participate in the development of the City's Five Year Consolidated Plan and Annual Action Plans, any amendments to these plans, applications for Section 108 Loan Guarantees, and the Consolidated Annual Performance and Evaluation Report (CAPER) and all other programs, if applicable.

**SECTION II – STANDARDS OF PARTICIPATION & GOALS FOR PARTICIPATION:**

The Standards of Participation and Goals for Citizen Participation in the City of Johnstown, Pennsylvania, are as follows:

- A. All aspects of the Community Development Block Grant (CDBG), HOME Investment Partnership Programs and all other Federal programs, if applicable, shall be conducted in an open manner with freedom of access for all interested persons, groups and/or organizations.
- B. To the greatest extent possible, there shall be involvement of: (1) low- and moderate-income persons, especially those living in slum and blighted areas; (2) in areas where CDBG and HOME funds are proposed to be used; (3) by residents of predominantly low- and moderate-income neighborhoods; (4) members of minority groups; (5) residents of comprehensive neighborhood revitalization strategy areas; (6) the elderly; (7) persons with disabilities; and (8) all persons directly or indirectly impacted or affected by the Community Development Block Grant Program, HOME Investment Partnership Program, and Section 108 Loan Guarantee Program and/or all other Federal programs, if applicable.
- C. Public Hearings shall be held in areas occupied by and accessible to low- and moderate-income individuals. In addition, the City of Johnstown's Department of Community and Economic Development staff will speak to any group about the City's Community Development Block Grant and HOME Investment Partnership Programs, its past performance and its proposed or future activities.



- D. There shall be, to the greatest extent possible, and throughout all stages of planning and development of the CDBG, HOME Programs, Section 108 Loan Guarantee Program and all other programs, if applicable, a continuity of participation by citizen representatives.
- E. Citizens shall be provided, to the greatest extent possible, with timely and adequate information for the purpose of meaningful input into the CDBG and HOME Programs, and Section 108 Loan Guarantee Program and all other Federal programs, if applicable.
- F. Low- and moderate-income persons, residents of slum and blighted neighborhoods, residents of predominantly low- and moderate-income neighborhoods; members of minority groups; residents of neighborhood revitalization strategy areas (NRSAs); the elderly; persons with disabilities; and all persons directly or indirectly impacted or affected by the Community Development Block Grant Program, HOME Investment Partnership Program, and Section 108 Loan Guarantee Program and all other programs, if applicable, shall be encouraged to submit their views and proposals regarding the these programs.
- G. The City of Johnstown will explore alternative public involvement techniques and quantifiable was to measure efforts to encourage citizen participation in a shared vision for changes in the City and its neighborhoods, and review of the City's program performance.
- H. Consultation will be made, in conjunction with the Johnstown Housing Authority, the participation of residents of public housing and assisted housing developments, during the process of developing and implementing the Five Year Consolidated Plan and One Year Annual Action Plans, Section 108 Loan Guarantee, and residents of areas within which developments are proposed.
- I. The City of Johnstown shall provide information to the Johnstown Housing Authority about consolidated plan activities related to the Housing Authority's developments and surrounding communities so that the housing authority can make this information available in its annual Public Housing Comprehensive Grant Program.
- J. The City will take appropriate actions to encourage participating of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.



**SECTION III – SCOPE OF PARTICIPATION:**

**A. Application Development:**

Prior to the submission of the Five Year Consolidated Plan, Annual Action Plan, any application for CDBG funds, HOME funds, application for Section 108 Loan Guarantee funds, and any other Federal funds, if applicable, and prior to the submission of an application amendment, the City of Johnstown’s Department of Community and Economic Development, in addition to meeting the minimum requirements, shall provide the following for public comment:

1. application requirements;
2. eligibility of project activities;
3. time table for submission;
4. funding amounts of both CDBG and HOME funds, and program income;
5. range of activities that may be undertaken with available funds;
6. estimated amount of benefit to persons of low- and moderate-income; and
7. any other information necessary to involve citizens in the development of plans and applications

Information provided to the public will be in conformance with Section II above. Furthermore, prior to the development of an annual application for CDBG and HOME funds, the progress of the City’s Community Development Block Grant Program and HOME Investment Partnership Program will be made available to the public at meetings, public hearings and through the local news media.

**B. Program Implementation:**

Citizen involvement may take the form of advisory committees, direct involvement, self-help efforts or other types of citizen participation during program implementation. The Consolidated Annual Performance and Evaluation Report (CAPER) of the City of Johnstown’s Department of Community and Economic Development will be made available to the general public for the purpose of reviewing the accomplishments of the City’s CDBG, HOME and other Federal programs, as applicable.

The roles that citizens of the area will play in the implementation of the CDBG and HOME programs are as follows:



1. "direct involvement and self-help" in project development and implementation
2. "continued advisory role" via call-ins, write-ins, and group meetings with organized and recognized groups.

**C. Monitoring Evaluation:**

Opportunities for citizens to monitor and evaluate the CDBG and HOME programs shall be consistent and continuous. Methods available to further these objectives are as follows:

1. direct contact with staff
2. direct contact between staff and groups
3. direct contact between citizens and the Mayor

**D. Submission of Views and Proposals:**

The submission of views and proposals from low- and moderate-income persons, minority groups, non-English speaking residents, and any other person or organized groups can be on a continuous basis and shall be encouraged to the greatest extent possible. Submissions can be in the form of:

1. personal contact;
2. mail, email, and telephone contact;
3. petitions;
4. attendance at public meetings/hearings;
5. through questionnaires; and
6. other available means

The submission of views and proposals shall be an on-going process and at a minimum during the following stages:

1. the planning process
2. the annual HUD application process
3. the implementation process

Responses to all submissions shall be in a timely fashion and shall not exceed a period of fifteen (15) days after the voicing of a comment, or the date of receipt of a written comment or inquiry.





**E. Complaints:**

All complaints regarding any aspect of the Community Development Block Grant Program, HOME Investment Partnership Grant Program, Section 108 Loan Guarantee Program and all other Federal programs, if applicable, shall be provided in a timely manner and a written response will be provided within fifteen (15) working days after the voicing of a complaint or the date that the written comment was received by the City.

**F. Technical Assistance:**

The staff of the City of Johnstown's Department of Community and Economic Development shall provide technical assistance to groups/organizations which are representative of persons of low- and moderate-income that request such assistance in developing proposals for funding assistance under any of the programs covered by the City's Consolidated Plan.

The City's staff will assist these groups to prepare their proposals and will provide assistance in preparing cost estimates for projects proposed by low- and moderate income groups.

**G. Adequate Information:**

The City shall provide full public access to the CDBG and HOME programs information and affirmative efforts to provide adequate information to citizens, especially those who are low- and moderate-income, those who are residing in predominantly low- and moderate-income neighborhoods or slum and blighted neighborhoods, the disabled, and non-English speaking residents. Information shall be provided on the Community Development Block Grant Program, HOME Investment Partnership Program, Section 108 Loan Guarantee Program and all other Federal programs, if applicable, including at a minimum the following:

1. At the time when the City begins its Community Development Block Grant Program, HOME Investment Partnership Grant Program, Section 108 Loan planning process and any other Federal programs, if applicable, including:
  - a. total amount of funds available, including program income;
  - b. the range of activities that are eligible or ineligible, including the estimated amount that will benefit persons who are low- and moderate-income;



- c. plans to minimize displacement and to assist any persons displaced, specifying the types and levels of assistance the City will make available to persons displaced, even if the City anticipates no displacement. The Five Year Consolidated Plan must state when and how the City will make this information available;
  - d. the process that will be followed in developing and approving projects, activities, or programs;
  - e. the standards of participation and goals of the Citizen Participation Program; and
  - f. summary of important program requirements
2. Upon request, copies of all materials relating to the Community Development Block Grant Program, HOME Investment Partnership Grant Program, Section 108 Loan Guarantee Program, and all other Federal programs, if applicable, will be made available to any person and/or group for the cost of copying only, particularly documentation concerning the following:
- a. all mailing, promotional material and news releases;
  - b. key documents, including all prior applications, letters of approval, performance and program evaluation reports, and any other applications, proposed or approved, or reports required by HUD;
  - c. copies of the CDBG and HOME regulations;
  - d. information on contracting and purchasing procedures, environmental policies, fair housing, equal opportunity, relocation provisions, the 24 CFR Part 58 environmental review process, affirmative action and any other requirements or regulations relating to the CDBG and HOME programs; and
  - e. cost of copying will be as established by local and state laws, as outlined in the City's Freedom of Information Policy.

**H. Meetings:**

All meetings shall be held in a timely fashion and shall be accessible to all segments of the city's population including accommodations for persons with disabilities, an non-English speaking residents. These meetings shall



be held at a time and place that is convenient and accessible to potential or actual beneficiaries.

1. Public meeting/hearings shall be held on a continuous basis, at least two (2) times per year at different stages of the program year for the purpose of obtaining citizen views on the development of needs, the review of proposed activities and review of program performance. At least one (1) public hearing must be held during the planning process for the proposed Five Year Consolidated Plan, Annual Action Plan, Section 108 Loan Guarantee Application and all other Federal program applications. The second public hearing must be held on the proposed plans, or applications for funds prior to City Council approval and submission to HUD.
2. Public meeting/hearing notices shall be published at least ten (10) calendar days prior to the hearing date and shall be advertised in the local newspaper of general circulation in the area.

**I. Public Notice:**

1. A notice will be published in the local newspaper of general circulation in the City that the proposed Five Year Consolidated Plan and Annual Action Plans will be on public display for a period of not less than thirty (30) days in order to receive citizen comments prior to approval by the City Council.
2. Copies of the proposed plans will be available at the following:
  - a. **City Hall**  
401 Main Street, Room 200  
Johnstown, PA 15901
  - b. **Cambria County Public Library**  
248 Main Street  
Johnstown, PA 15901
  - c. **Johnstown Housing Authority**  
501 Chestnut Street  
Johnstown, PA 15906
  - d. On the website at: <http://cityofjohnstownpa.net>
3. Included in the Plans will be an Executive Summary of the proposed plan which describes the contents, purpose, and a list of the locations where copies of the entire proposed Five Year Consolidated Plan and Annual Action Plans may be examined. In addition, a reasonable number of free copies of



these Plans will be made available to citizens or groups that request it.

4. The City of Johnstown will consider any comments or views of citizens received in writing or orally at the public meetings/hearings, in preparing the final Five Year Consolidated Plan and Annual Action Plans. A summary of all comments, including those comments not accepted and the reason therefore, shall be attached to the final Five Year Consolidated Plan and Annual Action Plans.
5. Final copies of the Five Year Consolidated Plan and Annual Action Plans will be available for public inspection at the following locations:
  - a. **City Hall**  
401 Main Street, Room 200  
Johnstown, PA 15901
  - b. **Cambria County Public Library**  
248 Main Street  
Johnstown, PA 15901
  - c. **Johnstown Housing Authority**  
501 Chestnut Street  
Johnstown, PA 15906
  - d. On the website at: <http://cityofjohnstownpa.net>
6. The Department of Community and Economic Development will mail/distribute notices for public meetings/hearings to all city departments, city council members, libraries, local churches and organizations, and will be posted at City Hall and in the offices of the Department of Community and Economic Development.

**J. Continuing Activities:**

All continuing activities shall be subject to the citizen participation process as herein outlined.

**K. Copies of Substantial Amendments to the Five Year Consolidated Plan, Annual Action Plans and Consolidated Annual Performance Evaluation Reports:**

Copies of the above will be available for reading upon request at the offices of the City of Johnstown's Department of Community and Economic Development and via the website at <http://cityofjohnstownpa.net>.



**L. Access to Records:**

The City shall provide full and timely disclosures of its program records. The City will provide these disclosures within a reasonable period of time. Additionally, all public, and non-private records and documentation concerning the Community Development Block Grant Program, HOME Investment Partnership Grant Program and all other applicable Federal programs shall be made available by appointment during the hours of 9:00 AM to 4:00 PM, Monday through Friday. Personnel records, and the personal financial records of program participants/applicants are not available for public inspection.

**M. Substantial Amendments to the Five Year Consolidated Plan and Annual Action Plans:**

**1. Definition:**

A substantial amendment to the Five Year Consolidated Plan and Annual Action Plans is:

- a. A change in the allocation of priorities, National Objectives, or a change in the method of distribution of funds
- b. A proposal to undertake a new activity, using funds from any program covered by the Five Year Consolidated Plan (including program income received from previous year's funds), and not previously described in the annual action plan;
- c. A change in the purpose, scope, location or beneficiaries of a previously approved activity;
- d. The use of Program Income that was not previously allocated to an eligible activity;
- e. Deletion or elimination of a previously approved activity;
- f. A change of 50% or more of a line item amount of an approved activity, either increased or decreased; or
- g. The use of contingency or unprogrammed funds, based on the following criteria.

**2. Criteria:**

The criteria used to determine what constitutes an amendment are based on the following:



- a. **Purpose** - the original purpose for which the activity was selected has changed, including the category of the National Objective selected.
- b. **Scope** – the size or scope of work of the project activity has increased or decreased which changes the cost of the activity by more than 50% of the total original budgeted dollar amount for that activity.
- c. **Location** - the location of the project activity is different from that originally proposed, or the size of the project service area has increased or decreased by 25% in size, or the location of the activity had to be relocated to another area.
- d. **Beneficiaries** - the number of beneficiaries has been reduced by 25% or more, and/or the activity no longer serves at least 51% low- and moderate-income persons.
- e. **Cost** – the total cost of the activity has increased or decreased by 50% or more than the original budget amount.
- f. **New Activity** – a new activity is proposed which was not previously approved.
- g. **Deleted or Canceled Activity** – a previously approved activity is proposed to be deleted/canceled from the approved plan.

If any one of the above criteria applies, then a substantial amendment to a project activity has occurred.

**3. Procedure:**

A description of the substantial amendment to the Five Year Consolidated Plan or the Annual Action Plan will be published in the local newspaper of general circulation. A period of no less than thirty (30) days will be provided to receive citizen comments prior to the approval of the amendment. The date, time, and place of the public meeting/hearing shall be listed. The public meeting/hearing shall be published at least ten (10) calendar days prior to the hearing date and shall be advertised in the local newspaper of general circulation in the area.

- a. The City will consider any comments or views of citizens received in writing or orally at the public hearing, in preparing the substantial amendment of the Five Year Consolidated



Plan or Annual Action Plans. A summary of any comments or views, as well as a summary of any comments or views not accepted and reasons therefore, shall be attached to the substantial amendment of the Five Year Consolidated Plan and Annual Action Plan.

- b. The substantial amendment will be presented to the Johnstown City Council after the public meeting for review and approval of the substantial amendment.
- c. The substantial amendment must be presented to and approved by the City Council of Johnstown.

**N. Emergency Activities:**

During the course of implementation of the CDBG program, if the City makes an emergency declaration as a result of a situation or condition that has arisen through no fault of the City, immediate action or remediation may be taken. If CDBG funds are not available to resolve or remediate that situation or condition, the City may proceed with corrective action during the 30 day comment period. The City must publish a notice concurrently, in the newspaper of general circulation in the area, and allow citizens to respond to the expenditure of CDBG funds during the 30 day comment period.

**O. Consolidated Annual Performance and Evaluation Report (CAPER):**

A notice will be published in the local newspaper of general circulation in the area informing the public of the availability of the City's CDBG and HOME Consolidated Annual Performance Evaluation Report (CAPER) and providing the opportunity to comment on the CAPER. A period of no less than fifteen (15) calendar days will be provided to receive citizen comments prior to adoption by the City Council City of Johnstown.

The City will consider any comments or views of citizens, received in writing or orally, concerning its Consolidated Annual Performance Evaluation Report. A summary of these comments or views shall be attached to the CAPER.

**P. Non-English Speaking Residents:**

The City of Johnstown Department of Community and Economic Development will need to be notified at least three (3) days in advance of a public meeting/hearing that special accommodations are needed



including a translator, for any person who is disabled and non-English speaking residents, so that arrangements can be made to accommodate the resident to participate in the public meeting/hearing. Also, a summary of the minutes of the hearing will be transcribed, when applicable, for the benefit of non-English speaking persons.

**P. Declaration of an Emergency:**

When a Declaration of an Emergency has been ordered by the President of the United States, or the Governor of Pennsylvania, the City of Johnstown will follow the following process concerning public hearings and public display of plans.

- a. If the City is unable to hold open public hearings in person, the City will be allowed to instead hold virtual public hearings through conference calls or an online video conference call platforms as long as the public is able to provide public comments during the virtual public hearing.
- b. If the City is not able to publicly place the plans on public display at the locations referenced in the Citizen Participation Plan, the City will put the plans on the City's website (<https://cityofjohnstownpa.net>) and will also email copies of the plans to any person who will request a copy of the plans via email upon request.
- c. If the City Council is unable to conduct an open public forum type meeting, the City then can approve the plans at a City Council meeting through an on-line virtual City Council meeting, if an in-person Council meetings are not happening because of the Emergency.

**Q. Citizens Comment on the Citizens Participation Plan:**

The City of Johnstown will provide citizens with the opportunity to comment on this Citizen Participation Plan. Copies of this proposed Citizen Participation plan will be available at the City of Johnstown Department of Community and Economic Development and on the website at <http://cityofjohnstownpa.net>. A public notice will be published in the local newspaper of general circulation in the City for a period of thirty (30) calendar days prior to the adoption of the Citizens Participation Plan by the City Council in order for Citizens to comment on the Plan. Copies of the Citizens Participation Plan will be made available upon request, in a format accessible to persons with disabilities. Substantial amendments to this plan will follow the same procedure as the adoption of the original plan.





**THIS REVISED CITIZEN PARTICIPATION PLAN WAS ADOPTED BY THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, AT ITS SPECIAL MEETING HELD ON THE 13<sup>th</sup> DAY OF MAY, 2020.**

**CITY OF JOHNSTOWN, PA**

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Mayor

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City Manager

**DRAFT**

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10288

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, AUTHORIZING AND DIRECTING THE INTERIM CITY MANAGER TO TAKE ANY AND ALL ACTIONS NECESSARY TO SEEK AND OBTAIN PROPOSALS FOR THE PURPOSES OF THE SALE OF REAL PROPERTY IDENTIFIED AS SURFACE PARCEL: 76-003. -123.000 OF JOHNSTOWN, PA WHICH IS NOT NEEDED FOR PUBLIC USE BY THE CITY OF JOHNSTOWN

WHEREAS, the City of Johnstown has determined that there is a need to seek and obtain bids for the purposes of the sale of real property not needed for public use by the City of Johnstown; and

WHEREAS, the City of Johnstown, its City Council and its Administrators have found that such property identified as Tax Map Number 76-003. -123.000 of Johnstown, PA is undevelopable; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, directs and authorizes the Interim City Manager to take any and all actions necessary to seek and obtain proposals for the purposes of the sale of real property not needed for public use by the City of Johnstown, which shall be contingent upon the final passage of an ordinance by the City Council of the City of Johnstown authorizing such sale.


ADOPTED:

May 13, 2020

By the following Vote:

Yeas: Mr. Capriotti, Mayor Janakovic, Rev. King, Mrs. Mock, Mr. Vitovich, Mr. Arnone, Mr. Britt. (7)

Nays: None (0)



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Frank J. Janakovic, Mayor  
Marie Mock, Deputy Mayor

ATTEST:

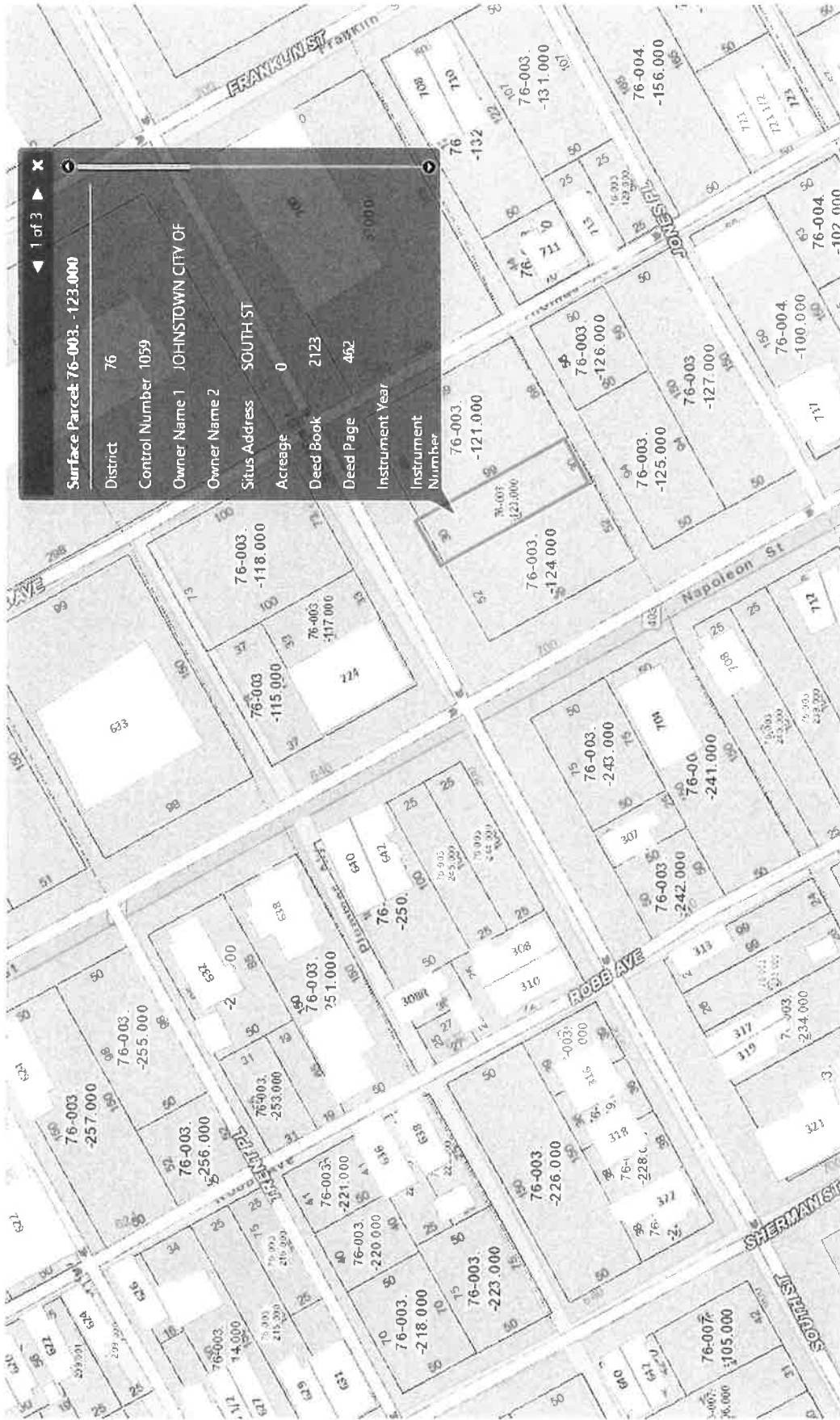
I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10288** as the same by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk

City Property Sale Location – Vacant Lot in Kernville on South Street



CITY OF JOHNSTOWN,  
CAMBRIA COUNTY, PENNSYLVANIA  
RESOLUTION NO. 10289

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA AUTHORIZING AND DIRECTING THE INTERIM CITY MANAGER AND/OR HIS DESIGNEE TO REQUEST PROPOSALS FOR, AND TAKE ANY/ALL ACTIONS NECESSARY TO EFFECTUATE AN AGREEMENT FOR COMMUNICATION STRATEGY AND CONSULTING SERVICES CONTINGENT UPON REVIEW AND FINAL APPROVAL OF THE CITY SOLICITOR AND CITY COUNCIL.

WHEREAS, the City has recognized a current yet temporary need for assistance with the development and implementation of a communications strategy for the City; and

WHEREAS, the City desires to retain and engage the services of a Communications Consultant, for these purposes; and

WHEREAS, the City has developed a proposed agreement providing for the communications strategy and consulting services to be provided to the City, on a month-to-month basis up to a maximum one-year , with payment made at a rate of \$25.00 per hour, subject to a minimum of 10 hours of services performed per week and a maximum amount of 50 hours per month, with payment to be made from line item account 01.401.31.000.00 Government Executive Other Professional Services; and

WHEREAS City Council and the City Administration recognized a need to expedite the proceed of identifying and retaining the aforementioned Communications Consultant subject to the terms and conditions of the attached proposed contract; and

WHEREAS, there currently exists a state of emergency occasioned by the proliferation of the COVID-19 virus, which via proclamation of the Governor and local proclamation of a state of emergency by the City of Johnstown, has resulted in the suspension of the provisions of any regulatory Ordinance proscribing the conduct of City business, or the rules, orders, regulations and work directives of any City department if strict compliance with the provisions of the same would in any way hinder, prevent, or delay necessary action in coping with this state of emergency; and

WHEREAS, any contract entered will be contingent upon final approval by the City Solicitor and City Council. The Interim City Manager will present any contract entered to Council for approval

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown that the Interim City Manager and/or his designee is hereby authorized and directed to request proposals for and execute and take any/all actions necessary to effectuate a Communications Strategy and Consulting Services Agreement subject to the terms and conditions outlined within the proposed agreement for said services, and contingent upon final review and approval of the City Solicitor and City Council.

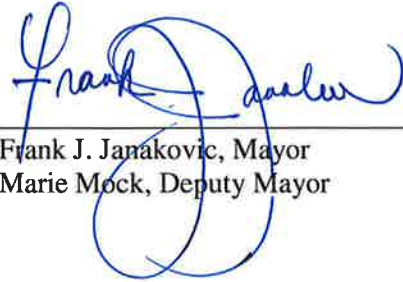
ADOPTED:

May 13, 2020

By the following Vote:

Yeas: Mayor Janakovic, Rev. King, Mrs. Mock, Mr. Vitovich, Mr. Arnone, Mr. Britt, Mr. Capriotti. (7)

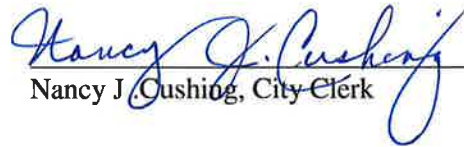
Nays: None (0)

A handwritten signature in blue ink, appearing to read "Frank J. Janakovic", written over a horizontal line.

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. **10289** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.

A handwritten signature in blue ink, appearing to read "Nancy J. Cushing", written over a horizontal line.

Nancy J. Cushing, City Clerk

**INDEPENDENT CONTRACTOR AGREEMENT  
FOR COMMUNICATIONS STRATEGY AND CONSULTING SERVICES**

THIS AGREEMENT, is made this by and between **the City of Johnstown**, a municipal corporation, having offices at 401 Main Street, Johnstown, PA 15901 (hereinafter referred to as "City") and \_\_\_\_\_ having offices at \_\_\_\_\_ --  
\_\_\_\_\_ (hereinafter referred to as "Consultant").

WHEREAS, the City recognizes a current, yet temporary need for assistance with the **development and implementation of a communications strategy for the City** (Project); and

WHEREAS, the City desires to retain Consultant to perform Project work as more fully described herein;

NOW THEREFORE, in consideration of the mutual promises set forth herein and intending to be legally bound hereby, the parties hereto agree as follows:

**ARTICLE I  
Engagement of Consultant**

**1.1 Engagement.** City hereby engages Consultant to furnish, and Consultant agrees to furnish professional services in connection with the development of a Communication Strategy for the City.

**1.2 Services.** During the term of this Agreement, Consultant agrees to provide the following services to the City as its Communications Consultant:

- a. Develop effective external communication strategy for all departments.
- b. Meet with City Manager, department heads, and Mayor as needed to determine news worthy events/initiatives.
- c. Compose external communications (press releases, brochures, memos, newsletters etc.) to be distributed by City officials.
- d. Draft content using provided information for municipal website and other on-line communications.
- e. Other written communication, public outreach, and public relations services as needed.

**ARTICLE II  
Terms of Engagement**

**2.1 Term.** The term of this Agreement and engagement of Consultant shall commence upon the date of execution by both parties and continue on a month to month basis up to a maximum period of one (1) year or until such time as either party terminates this Agreement upon 10 days' advance written notice submitted to the other Party.

**2.2 Standard of Performance.** Consultant shall perform the Services to the satisfaction of City.

**2.3 Compensation.** Consultant shall be compensated for the Services rendered in connection with the Project at the rate of **\$25 per hour with a minimum of 10 hours per week, and not to exceed 50 hours per month.**

**2.4 Invoicing.** Consultant in providing Services shall record time expended recording same in no less than .10/hour increments and, accordingly, invoice City for Services plus mileage (at the IRS rate) no less frequently than monthly on the thirtieth (30<sup>th</sup>) of each successive month during the Term of this Agreement.

**2.5 Independent Contractor Relationship.** The Consultant, in all matters relating to this Subcontract shall be an independent contractor. Neither the Consultant nor any of the persons Consultant may retain or employ in performing this Agreement are employees of the City within the meaning of any Federal or State Unemployment Law, Social Security, Workmen's Compensation or other employment or labor law, nor is Consultant an official, or agent of the City of Johnstown.

- a. Consultant shall be responsible for the payment of all federal, state, and local taxes; social security and FICA withholdings, where applicable; and all other deductions required by local, state, or federal law, from any compensation paid for the Work addressed under this Agreement. At the conclusion of each fiscal year, the City shall issue a federal tax form 1099 to Consultant, reflecting the compensation paid for the preceding fiscal year.
- b. As an independent contractor, Consultant, is entitled only to payments for services rendered as provided herein and shall not be entitled to any benefits whatsoever provided by the City to its employees. Consultant has no claim against the City hereunder for benefits, including but not limited to, vacation pay, sick leave, retirement benefits, social security, health or disability benefits, or any other employee benefits of any kind.
- c. Consultant will be responsible for procuring and maintaining Consultant's own insurances in connection with the Work performed under this Agreement, and the City will not procure any Workers' Compensation or other general liability insurance on behalf of Consultant. Consultant understands and agrees that Consultant is solely and wholly responsible for maintaining any and all such insurances.
- d. Consultant acknowledges and agrees that Consultant is not an employee, partner, joint venture with, or subsidiary to the City. Except as specifically provided herein relative to the Work, Consultant has no independent right or authority to assume or create any obligation, responsibility, express or implied, on behalf of or in the name of the City, or to bind the City in any manner or thing whatsoever. Notwithstanding the foregoing, Consultant may be authorized by the City Manager to act on behalf of the City, when the scope of the work and duties assigned under this Agreement require or otherwise call for such authorization in the ordinary course of City business and/or as otherwise authorized by City Council.

### **ARTICLE III Payment**

**3.1 When due.** City shall render payment to Consultant for all invoices timely submitted by Consultant to City in accordance with the preceding subparagraph 2.4 respecting City's invoice/payment requisition comprising, including or encompassing Consultant's Services.

**3.2 Withholding Payment.** Payment otherwise due to Consultant may be withheld by City on account of any of the following events of default ("Events of Default"):

- a. Unsatisfactory performance of Services in the sole judgment of City.
- b. Commencement by or against Consultant of a proceeding for relief under the United States bankruptcy law or an insolvency proceeding under other applicable law.
- c. The appointment of a receiver for or on behalf of Consultant respecting its assets.
- d. Failure of the Consultant to perform or adhere to any other provision of this Agreement.

**3.3 Notice of Default.** In the event any payment otherwise due Consultant is withheld pursuant to subparagraph 3.2 hereinabove, City will notify Consultant in writing of the Event(s) of Default causing payment to be withheld. Upon cure of the Default by Consultant, City will pay the sum withheld provided Consultant promptly commences action to cure the Default and diligently proceeds to effectuate cure of the Default.

**3.4 Set-Off.** City shall be entitled to set-off at any time any sums owed by Consultant to City against any sums payable to Consultant hereunder.

#### **ARTICLE IV Covenants of Consultant**

**4.1 Non-Assignable.** Consultant shall not assign this Agreement nor delegate its duties hereunder to any party without City's prior written consent.

**4.2 Compliance with law.** Consultant will comply with all applicable Federal, State, Municipal and local laws, rules and regulations in performing the Services.

**4.3 Publicity.** Consultant will not without prior written consent from the City publish, publicize and/or advertise the existence or subject matter of this Agreement, nor shall Contractor publish any communications addressed by this Agreement on the City's behalf without prior consent of the City Manager and/or his designee.

**4.4. Ownership of Documents.** Consultant acknowledges that all documents, notes and other materials or copies thereof made available to Consultant by City or generated by Consultant using City's information shall remain the sole and exclusive property of City and will be returned at the completion or termination of the Work, or when requested by City.

**4.5 Confidentiality.** Consultant agrees that she may be provided with confidential information in advance of publication of certain aspects of City business and understands that any such information is not to be disclosed unless and until directed by the City. Contractor shall not otherwise use or disclose to others during or subsequent to the term of this contract any information regarding City's plans, programs, processes, systems, products, costs, equipment, operations or customers which may come within the knowledge of or may be developed by Contractor. Consultant shall restrict the knowledge of any information regarding the Project to as few as possible and upon request shall sign any individual confidentiality agreements in a form satisfactory to City relative to particular matters deemed to require such a separate agreement. Nothing contained



herein shall prevent Consultant from disclosing to others or using information which Consultant can show (1) became part of the public domain other than by acts or omissions of Consultant or its employees, (2) has been revealed to Consultant by third parties as a matter of right and without restriction on disclosure or use, or (3) was in Consultant's possession on the date of this Contract and was not acquired directly or indirectly from City or her employees.

**ARTICLE V  
Miscellaneous**

**5.1 Notices.** Where any provision of this Agreement requires the giving of notice to either party such notice shall be deemed sufficient if sent by registered first class U.S. Mail, postage prepaid, return receipt requested, addressed as follows:

If to City:  
City Manager  
City of Johnstown  
401 Main Street  
Johnstown, PA 15901

If to Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5.2 Integration.** This writing constitutes the entire agreement between the parties and there are no understandings or representations not contained herein. All prior understandings between the parties related to the subject matter of this Agreement are merged herein and extinguished hereby.

**5.3 No Oral Modification.** This agreement may not be modified or supplemented except by an amendment in writing signed by the parties hereto.

**5.4 Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the successors, permitted assigns, heirs and personal representatives of the parties hereto.

**5.5 Headings.** The headings herein are for the convenience of reference only and do not define or limit the provisions hereof.

**5.6 Choice of Law.** This writing shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

**5.7 Severability.** The provisions of this Agreement shall be severable so that the invalidity, unenforceability or waiver of any of the provisions hereof shall not affect the remaining provisions herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WITNESS:



City Manager  
City of Johnstown



John J. Trant, Jr. Interim City Manager

WITNESS:

---

Communications Consultant

---

CITY OF JOHNSTOWN,  
CAMBRIA COUNTY, PENNSYLVANIA  
RESOLUTION NO. 10290

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA AUTHORIZING AND DIRECTING THE INTERIM CITY MANAGER AND/OR HIS DESIGNEE TO EXECUTE AND TAKE ANY/ALL ACTIONS NECESSARY TO EFFECTUATE A CABLE FRANCHISE AGREEMENT BETWEEN THE CITY AND ATLANTIC BROADBAND (PENN), LLC**

**WHEREAS**, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the “FCC”) and Pennsylvania law, the City of Johnstown (the “City”) is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the City’s jurisdiction; and

**WHEREAS**, Atlantic Broadband (Penn), LLC (“Atlantic Broadband”) currently holds a franchise to operate a Cable System within the City previously granted to Atlantic Broadband or a predecessor entity; and

**WHEREAS**, the aforesaid Public Rights-of-Way used by Atlantic Broadband are public properties acquired and maintained by the City on behalf of the citizens of the City, and the right to use said rights-of-way is a valuable property right; and

**WHEREAS**, the City desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for Atlantic Broadband’s use of the City’s rights-of-ways as provided by federal law, reserve the right to request use of a public, educational and governmental channel, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the City, and meet the current and future cable-related needs of its residents; and

**WHEREAS**, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

**WHEREAS**, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by granting Atlantic Broadband’s franchise according to the terms and conditions contained herein;

**NOW THEREFORE, BE IT RESOLVED** that the City Council of the City of Johnstown, Cambria County, Pennsylvania does hereby authorize and direct the Interim City Manager and/or his designee to execute and take any/all actions necessary to effectuate the cable franchise agreement negotiated with Atlantic Broadband, including all of the terms and conditions contained therein.


ADOPTED:

May 13, 2020

By the following Vote:

Yeas: Rev. King, Mrs. Mock, Mr. Vitovich, Mr. Arnone, Mr. Britt, Mr. Capriotti, Mayor  
Janakovic. (7)

Nays: None (0)




---

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. **10290** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



---

Nancy J. Cushing, City Clerk

**CABLE FRANCHISE AGREEMENT**

**BETWEEN**

**CITY OF JOHNSTOWN**

**AND**

**ATLANTIC BROADBAND (PENN), LLC**

With assistance from:

Cohen Law Group  
413 South Main Street  
Pittsburgh, PA 15215  
Phone: (412) 447-0130  
[www.cohenlawgroup.org](http://www.cohenlawgroup.org)

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## **CABLE FRANCHISE AGREEMENT**

This Cable Franchise Agreement (hereinafter referred to as the “Agreement”) is executed as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (hereinafter referred to as the “Effective Date”) by and between the City of Johnstown, Cambria County, Pennsylvania (hereinafter referred to as the “City”) and Atlantic Broadband (Penn), LLC (hereinafter referred to as “Atlantic Broadband”).

**WHEREAS**, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the “FCC”) and Pennsylvania law, the City is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the City’s jurisdiction; and

**WHEREAS**, Atlantic Broadband currently holds a franchise to operate a Cable System within the City previously granted to Atlantic Broadband or a predecessor entity; and

**WHEREAS**, the aforesaid Public Rights-of-Way used by Atlantic Broadband are public properties acquired and maintained by the City on behalf of the citizens of the City, and the right to use said rights-of-way is a valuable property right; and

**WHEREAS**, the City desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for Atlantic Broadband’s use of the City’s rights-of-ways as provided by federal law, reserve the right to request use of a public, educational and governmental channel, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the City, and meet the current and future cable-related needs of its residents; and

**WHEREAS**, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

**WHEREAS**, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by granting Atlantic Broadband’s franchise according to the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Atlantic Broadband agree as follows:

### **SECTION 1** **DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

(a) Affiliated Entity – Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Atlantic Broadband.

(b) Basic Service – The service tier that includes at least the retransmission of local broadcast television signals and any Public, Educational and Governmental (“PEG”) access channel.

(c) Cable Act – Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

(d) Cable Service – The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(c) Cable System – A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City. Such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers; (4) an open video system that complies with Section 653 of the Cable Act; (5) any facilities of any electric utility used solely for operating its electric utility systems; or (6) any equipment or facilities used to transmit wireless video, telecommunications, or broadband service.

(f) Channel – Means a time or frequency slot or technical equivalent on the Cable System, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.

(g) Complaint – Any written (including electronic) or oral communication by a Subscriber expressing dissatisfaction with any aspect of Atlantic Broadband’s business or the operation of its Cable System.

(h) Communications Act – The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(i) Conveniently Located – Located within ten (10) miles of the jurisdictional limits of the Local Franchising Authority.

(j) Drop – The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(k) Emergency – A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable System in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(l) FCC – Federal Communications Commission.

(m) Force Majeure – Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the State (as defined herein) or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; hurricanes; volcanic activity; floods; washouts; explosions.

(n) Franchise – The right granted by the City to construct, operate and maintain a Cable System within the corporate limits of the City as embodied in the terms and conditions of this Agreement.

(o) Franchise Fee – The fee that Atlantic Broadband remits to the City for the use of the City's Public Rights-of-Way pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(p) Gross Revenues – All revenue received directly or indirectly by Atlantic Broadband or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of Atlantic Broadband's Cable System in the City to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any service tier other than Basic Service;
- (3) fees charged for premium services;
- (4) fees for all digital video tiers;
- (5) fees for video-on-demand;
- (6) fees charged to Subscribers for any optional, per-channel or per-program services;
- (7) revenue from the provision of any other Cable Services;
- (8) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
- (9) fees for changing any level of Cable Service programming;
- (10) fees for service calls;
- (11) inside wire maintenance fees;
- (12) service plan protection fees;
- (13) convenience fees;
- (14) early termination fees;
- (15) fees for Leased Access Channels;
- (16) charges based on the sale or lease of any portion of the Cable System for Cable Service;

- (17) rental or sales of any and all equipment, including converters and remote control devices;
- (18) any and all locally-derived advertising revenues;
- (19) revenues or commissions from locally-derived home shopping channels;
- (20) revenue from interactive television services;
- (21) fees for any and all music services;
- (22) broadcast retransmission fees;
- (23) regional sports programming fees;
- (24) late payment fees;
- (25) billing and collection fees;
- (26) NSF check charges; and
- (27) Franchise Fees.

Gross Revenues shall not include bad debts, investment income, refunded deposits, or any taxes on services furnished by Atlantic Broadband and imposed directly upon any Subscriber or user by the City, State, federal or other governmental unit. In the event of any dispute over the classification of revenue, the City and Atlantic Broadband agree that reference should be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB").

- (q) HD – High-definition format.
- (r) Leased Access or Commercial Access Channel – Any channel on Atlantic Broadband's Cable System designated for use by any entity that is unaffiliated with Atlantic Broadband pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.
- (s) Multiple Dwelling Units or MDUs – Any building, buildings or area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be owned, occupied or leased for occupation, or actually occupied, as individual homes or residences for three (3) or more households.
- (t) Normal Business Hours – Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.
- (u) Normal Operating Conditions – Business conditions within Atlantic Broadband's service department which are within the control of Atlantic Broadband. Those conditions that are not within the control of Atlantic Broadband include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.
- (v) Outlet – An interior receptacle that connects a television set to the Cable System.
- (w) Public, Educational and Governmental (PEG) Channel – An access channel that consists of local public, educational and/or governmental programming.

(x) Programming – Any video or audio signal carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

(y) Public Rights-of-Way – The surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, boulevard, parkway, drive or easement now or hereafter held by the City for the purpose of public travel and shall include other similar easements or rights-of way as shall be now held or hereafter held by the City which shall, within their proper use and meaning, entitle Atlantic Broadband to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

(z) Service Interruption – The loss of picture or sound on one or more Channels.

(aa) State – The Commonwealth of Pennsylvania.

(bb) Subscriber – A person or entity who contracts with Atlantic Broadband for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

## **SECTION 2** **GRANT OF FRANCHISE**

### **2.1 GRANT OF AUTHORITY**

Pursuant to the Cable Act, the regulations of the FCC and Pennsylvania law, the City hereby grants a non-exclusive and revocable franchise to Atlantic Broadband. Subject to the terms and conditions contained herein, the City hereby grants to Atlantic Broadband the right to own, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other equipment as is necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way, including property over which the City has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video and audio signals to provide Cable Services as permitted by applicable law.

### **2.2 TERM OF FRANCHISE**

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date and expiring on \_\_\_\_\_, unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

### **2.3 SERVICE CLASSIFICATION AND RELATED AUTHORITY**

Atlantic Broadband acknowledges and agrees that the system over which its video service is delivered is a Cable System for which the terms and conditions shall apply for at least the term

of this Agreement. Atlantic Broadband further acknowledges and agrees that the grant of authority to operate a wired Cable System does not include authority to provide wireless video services.

## **2.4 REPRESENTATIONS AND WARRANTIES**

(a) Atlantic Broadband represents, warrants and acknowledges that, as of the Effective Date:

(1) Atlantic Broadband is duly organized, validly existing and in good standing under the laws of the State;

(2) Atlantic Broadband has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date, to enter into and legally bind Atlantic Broadband to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement;

(3) This Agreement is enforceable against Atlantic Broadband in accordance with the provisions herein, subject to applicable State and federal laws and regulations;

(4) There is no action or proceeding pending or threatened against Atlantic Broadband which would interfere with its performance or its ability to perform the requirements of this Agreement;

(5) Pursuant to Section 625(f) of the Cable Act, as of the Effective Date, the performance of all terms and conditions in this Agreement is commercially practicable.

## **2.5 NON-EXCLUSIVITY**

This Franchise granted to Atlantic Broadband shall be non-exclusive. Nothing in this Agreement shall affect the right of the City to grant other Franchises to construct, operate or maintain a Cable System.

## **2.6 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS**

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state and local laws and regulations. This Franchise is further subject to all applicable ordinances and resolutions of the City. Without waiving any of its rights, the City agrees that, to the extent any term of this Agreement is inconsistent with the terms of any City cable franchise ordinance existing as of the Effective Date, this Agreement shall control.

**SECTION 3**  
**SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

**3.1 AREA TO BE SERVED**

(a) Atlantic Broadband shall make Cable Service available to every dwelling occupied by a person requesting Cable Service provided that Atlantic Broadband is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. Atlantic Broadband shall extend the Cable System into all areas within the City where there is a minimum of five (5) dwelling units per linear mile of cable, calculated from the end of the nearest trunk line. Atlantic Broadband shall complete said extensions within three (3) months of written notification to Atlantic Broadband by the City that an area has met the minimum density standard set forth herein (weather permitting). Atlantic Broadband's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Any dwelling unit within five hundred (500) feet aerial distance from the main distribution line shall be entitled to a standard installation rate. For any dwelling unit further than five hundred (500) feet aerial distance from the main distribution line, Atlantic Broadband shall extend the Cable Service and the Subscriber and Atlantic Broadband shall share equally the actual cost of installation from the main distribution line.

(c) The City has the right to require Atlantic Broadband to place wires and/or equipment underground, provided that the City imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by Atlantic Broadband shall be underground in those areas of the City where the wires and/or equipment of similarly situated entities (i.e. telephone and electric utilities) are underground; provided, however, that such underground locations are capable of accommodating Atlantic Broadband's facilities without technical degradation of the Cable System's signal quality. Atlantic Broadband shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals.

**3.2 CABLE SYSTEM SPECIFICATIONS**

(a) Atlantic Broadband's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 870 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio, including SD and HD video on the Effective Date of the Franchise. The Cable System shall deliver no less than 300 Channels of SD and/or HD video on the Effective Date and be capable of delivering Channels in successor formats (such as HD4k) to Subscribers throughout the term of the Franchise, provided that Atlantic Broadband reserves the right to use the bandwidth in the future for other uses based on local market factors. Atlantic Broadband's Cable System shall be capable of providing consistent, high-quality reception to Subscribers in the City. For any use that reduces the amount of bandwidth available for Cable Services after the Effective Date,

Atlantic Broadband shall provide a detailed explanation of the relevant local market factors to the City, upon request.

(b) Atlantic Broadband shall continue to operate, maintain, construct, and extend the Cable System so as to offer one-way and two-way Cable Services for all programming services throughout all parts of the City where the density requirements of Section 3.1 are met. The Cable Service provided by the Cable System shall be delivered in accordance with FCC standards. The Cable System shall meet or exceed all technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the State and the generally applicable laws, ordinances and construction standards of the City.

(c) Atlantic Broadband shall maintain motorized standby power generators capable of powering all headend equipment for at least twenty-four (24) hours and indefinitely with a continuous or replenished fuel supply. All power supplies serving the System shall be stand-by ready and capable of providing power to the System for not less than four (4) hours per occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage. Atlantic Broadband shall maintain sufficient portable motorized generators to be deployed in the event that the duration of a power disruption is expected to exceed four (4) hours.

(d) Atlantic Broadband reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, provided that no alteration, adjustment, modification, rebuild, upgrade, redesign or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System as set forth in this Section.

### **3.3 SYSTEM TESTS**

(a) Atlantic Broadband shall conduct proof of performance and other system tests as set forth below. Atlantic Broadband shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the City within thirty (30) days of a written request from the City; provided, however, that Atlantic Broadband shall not be required to submit such reports more than one (1) time in any calendar year.

(b) Atlantic Broadband shall perform the following tests on its Cable System:

(1) All tests required by the FCC; and

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC including, FCC 47 C.F.R. § 76.640(b)(1)(i) and any other standards adopted by the FCC at any time during the term of this Agreement or in response to Subscriber complaints.

(c) At a minimum, Atlantic Broadband's tests shall include:

(1) Proof of performance when activating any new construction;



(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Cable System tests at intervals required by FCC regulations.

(d) Atlantic Broadband shall maintain written records of all results of its Cable System tests performed by or for Atlantic Broadband. Such test results shall be available for inspection by the City upon request.

(e) Tests may be witnessed by representatives of the City, and, upon request, Atlantic Broadband shall inform the City of the time and place of each test. The City may conduct independent tests of the system for which Atlantic Broadband shall give its fullest cooperation. Atlantic Broadband shall be required to take prompt corrective measures to correct any system deficiencies and to prevent the recurrence of such deficiencies.

### **3.4 EMERGENCY ALERT SYSTEM**

Atlantic Broadband shall comply with the Emergency Alert System requirements of the FCC.

### **3.5 RATE DISCRIMINATION**

All Atlantic Broadband residential Subscriber rates and charges shall be published and shall not discriminate among persons in the City under similar circumstances and conditions. Atlantic Broadband shall establish similar rates and charges for all residential Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital status, income or economic status, national origin, sexual orientation, physical or mental disability, or geographic location within the City. Nothing in this Section shall be construed to prohibit:

(a) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;

(b) The offering of reasonable discounts to senior citizens or discounts to economically disadvantaged citizens;

(c) The establishment of different and nondiscriminatory rates and charges and classes of services for commercial Subscribers, as well as different, nondiscriminatory monthly rates for classes of commercial Subscribers; or

(d) The establishment of reduced bulk rates for residential Subscribers residing in Multiple Dwelling Units.

### **3.6 SERVICES FOR SUBSCRIBERS WITH DISABILITIES**

(a) For any Subscriber with a disability or who is otherwise mobility-impaired, Atlantic Broadband shall, at no charge to the Subscriber, deliver and pick up converters and other equipment at the Subscriber's home at the Subscriber's request. In the case of a malfunctioning converter or such other equipment, the technician shall provide another converter or such other equipment, connect such equipment, and ensure that the equipment is working properly, and shall return the defective converter or such other equipment to Atlantic Broadband.

(b) Atlantic Broadband shall work cooperatively with any services that allow hearing-impaired Subscribers to contact Atlantic Broadband by telephone.

### **3.7 SERVICE TO MULTIPLE DWELLING UNITS ("MDUs")**

Atlantic Broadband and the City hereby acknowledge and agree that installation and provision of Cable Service to MDUs are subject to a separate negotiation between the landlord, owner or governing body of any such MDU and Atlantic Broadband, which negotiations shall be conducted in accordance with the procedures set forth in the Cable Act, as amended, applicable FCC regulations and the applicable laws of the State.

### **3.8 REPAIRS AND RESTORATION**

(a) Prior to any work in the Public Rights-of-Way, Atlantic Broadband shall apply to the City for all applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit, except for emergency repairs, without receipt of such permit, the issuance of which shall not be unreasonably withheld by the City. In the event Atlantic Broadband or any agent, including contractors or subcontractors must make emergency repairs, prior to receiving a permit from the City, Atlantic Broadband must apply for all applicable permits within five (5) business days of such emergency activities.

(b) Whenever Atlantic Broadband or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private property, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. Upon failure of Atlantic Broadband to comply within the time specified and the City having notified Atlantic Broadband in writing of the restoration and repairs required, the City may cause proper restoration and repairs to be made and the expense of such work shall be paid by Atlantic Broadband upon demand by the City.

(c) Whenever Atlantic Broadband or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the City if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Atlantic Broadband shall promptly repair and restore any public or private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(d) Atlantic Broadband's operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Cable System shall be inspected in accordance with such applicable federal, state and local laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. Atlantic Broadband shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City or any Public Utility serving the City.

(e) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by Atlantic Broadband personnel, including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(f) Whenever Atlantic Broadband or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. Atlantic Broadband shall adhere to any additional undergrounding requirements which the State may establish in the future.

(g) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair in accordance with customary industry standards and practices.

### **3.9 SERVICE AREA MAPS**

Within thirty (30) days of the Effective Date of this Agreement, and on an annual basis thereafter, Atlantic Broadband shall provide to the City for its exclusive use and shall maintain at its local offices a complete set of Atlantic Broadband service area as-built maps of the City on which shall be shown those areas in which its facilities exist and the location of all streets. The as-built maps shall be provided to the City in hardcopy and also, if requested and available, in an electronic GIS format which is compatible with the City's GIS format. The as-built maps shall also designate where the cable wires and other equipment are aerial and where they are underground. Atlantic Broadband shall provide the City with updated maps within thirty (30) days after any request by the City.

### **3.10 DISCONNECTION AND RELOCATION**

(a) Atlantic Broadband shall, at no cost to the City, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the City or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety and welfare.

(b) In requiring Atlantic Broadband to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Atlantic Broadband the same as, and require no more of Atlantic Broadband than, any similarly situated entity.

### **3.11 EMERGENCY REMOVAL OF EQUIPMENT**

(a) If, at any time, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give Atlantic Broadband notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the City shall treat Atlantic Broadband the same as, and require no more of Atlantic Broadband than, any other similarly situated entity.

### **3.12 TREE TRIMMING**

(a) Atlantic Broadband, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of Atlantic Broadband. Any such tree trimming shall only be performed in accordance with applicable laws and regulations, and shall require City approval. Atlantic Broadband shall fully bear the costs associated with tree trimming.

(b) If Atlantic Broadband or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and/or maintenance of its equipment, it shall apply to the City for permission, with the exception of Emergency situations as defined in Section 1(k), and if permission is granted, shall perform such cutting and removal in accordance with the regulations of the City.

### **3.13 CHANNEL CAPACITY**

Atlantic Broadband shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

### **3.14 BROADCAST CHANNELS**

To the extent required by federal law, Atlantic Broadband shall provide all Subscribers with Basic Service including, but not limited to, the following: (a) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; (b) the signals of qualified non-commercial educational television signals carried in fulfillment of the requirements of Section 615 of the Cable Act; and c) any Public, Educational and Governmental Channel pursuant to Section 611 of the Cable Act. All such signals shall be delivered to Subscribers in accordance with FCC technical specifications.

### **3.15 SIGNAL SCRAMBLING**

Atlantic Broadband shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

### **3.16 CONTINUITY OF SERVICE**

Subscribers shall continue to receive service from Atlantic Broadband provided their financial and other obligations to Atlantic Broadband are honored. Subject to Force Majeure provisions in Section 9.1, Atlantic Broadband shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Atlantic Broadband shall use its best efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more than six (6) hours can be anticipated, Atlantic Broadband shall notify Subscribers in advance of such service interruption along with providing Subscribers with a pro-rata credit for the time of such service interruption.

### **3.17 PARENTAL CONTROL CAPABILITY**

Atlantic Broadband shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System pursuant to Section 641 of the Cable Act.

## **SECTION 4** **SUBSCRIBER SERVICE STANDARDS**

### **4.1 OFFICE HOURS AND TELEPHONE AVAILABILITY**

(a) Atlantic Broadband shall maintain a business office that is Conveniently Located and shall be open during Normal Business Hours.

(b) Atlantic Broadband shall provide and maintain a toll-free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall respond to Subscriber telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(c) Under Normal Operating Conditions and during Normal Business Hours, telephone answering time by a Subscriber representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis. Under Normal Operating Conditions, the Subscriber shall receive a busy signal less than three percent (3%) of the time.

(d) Atlantic Broadband shall maintain and organize statistics on a monthly basis for all telephone calls received in each month, whether the calls are received directly by Atlantic Broadband or by an answering service. The statistics shall address telephone answer time, including wait time; telephone transfer time; percentage of customers receiving a busy signal; and number of cases where trained customer service representatives did not respond by the next business day to telephone inquiries received after Normal Business Hours. The statistics shall be specific to the City and in a form sufficient to enable the City to determine whether the standards specified in this chapter are being met. The statistics shall be submitted in a report to the City by the tenth day of the month succeeding each calendar quarter.

#### **4.2 INSTALLATIONS AND SERVICE CALLS**

(a) Atlantic Broadband shall maintain a staff of employees sufficient to provide adequate and prompt service to its Subscribers. Atlantic Broadband shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Atlantic Broadband employee or agent, including any subcontractor, shall prominently display the Atlantic Broadband logo.

(b) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those aerial installations that are located up to two hundred fifty (250) feet from the existing main distribution line.

(c) Upon scheduling of appointments with the Subscriber for installations, service calls and other activities, Atlantic Broadband shall provide the Subscriber with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. Atlantic Broadband may schedule service calls and installation activities outside of Normal Business Hours at a time that is convenient for the Subscriber.

(d) Atlantic Broadband may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the Subscriber must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the Subscriber.

#### **4.3 NOTICES**

(a) Atlantic Broadband shall provide written notice to each Subscriber upon initial subscription, at intervals not less than one (1) per year thereafter to each Subscriber and at any time upon request, regarding each of the following areas:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;

- (3) Channel positions of programming carried on the Cable System;
- (4) Installation and service maintenance policies;
- (5) Instructions on how to use the Cable Service and any converters;
- (6) Billing and Subscriber Complaint procedures;
- (7) Atlantic Broadband's address, telephone number and office hours; and
- (8) A notice of Subscriber privacy rights as required by federal law.

(b) In accordance with applicable law, Atlantic Broadband shall notify Subscribers and the City in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes provided that such change is within the control of Atlantic Broadband. Atlantic Broadband shall not be required to provide prior notice to Subscribers of any rate change that is the result of a regulatory fee, Franchise Fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the State or the City on the transaction between Atlantic Broadband and the Subscriber.

(c) In accordance with federal law, Atlantic Broadband shall maintain a file available to the public containing all written notices provided to Subscribers pursuant to the requirements contained herein by Atlantic Broadband during the previous twelve (12) months.

#### **4.4 BILLING**

(a) Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including all applicable service tiers, equipment charges and any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

(b) Atlantic Broadband shall not assess late fees for non-payment of a current bill until at least thirty (30) days have elapsed since the mailing of the bill by Atlantic Broadband.

(c) The City hereby requests that Atlantic Broadband omit the City's name, address, and telephone number from Subscriber bills as permitted by 47 C.F.R. § 76.952.

#### **4.5 SUBSCRIBER COMPLAINT PROCEDURES**

Atlantic Broadband shall establish clear written procedures for resolving all Subscriber Complaints, which shall include at least the following:

(a) Atlantic Broadband shall provide the Subscriber with a written response to a written Complaint within thirty (30) days of its receipt at the local business office. Such response shall include the results of its inquiry into the subject matter of the Complaint, its conclusions based on the inquiry, and its decision in response to the Complaint.

(b) If the City is contacted directly about a Subscriber Complaint, it shall notify Atlantic Broadband promptly and in writing. When Atlantic Broadband receives such notification, the time period for Atlantic Broadband to respond as required by Section 4.5(a) shall commence. If the City notifies Atlantic Broadband in writing, then Atlantic Broadband shall respond in writing within the time period specified in Section 4.5(a).

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by Atlantic Broadband has the option of withholding the disputed amount, without a late fee or disconnection, until Atlantic Broadband has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

(1) The Subscriber provides a written Complaint to Atlantic Broadband in a timely fashion and includes identifying information;

(2) The Subscriber pays all undisputed charges; and

(3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(d) Atlantic Broadband shall maintain Subscriber Complaint records for inspection by the affected Subscriber, which shall contain the date each Complaint is received, the name and address of the affected Subscriber, a description of the Complaint, the date of resolution of the Complaint, and a description of the resolution.

(e) Atlantic Broadband shall complete for each calendar quarter and submit to the City by the tenth day of the month succeeding the calendar quarter a report containing the following information pertaining to Subscribers in the City only:

(1) A summary of service requests, identifying the number and nature of the requests and their disposition;

(2) A summary showing the number and nature of service calls during the quarter;

(3) The total number of Subscribers at the end of the quarter;

(4) Results of any proof of performance tests conducted on the Cable System during the quarter; and

(5) The status of any rebuild or major new construction in progress during the quarter.

(f) Atlantic Broadband shall provide an e-mail address on all monthly Subscriber bills, to be used by Subscribers for the submission of Complaints.

#### **4.6 DISCONNECTION**



Atlantic Broadband may disconnect or terminate a Subscriber's service for cause:

(a) If at least sixty (60) days have elapsed from the due date of the bill that Subscriber has failed to pay; and

(b) If Atlantic Broadband has provided at least ten (10) days written notice to the affected Subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection; and

(c) If there is no pending written dispute with Atlantic Broadband regarding the bill;  
or

(d) If at any time and without notice, Atlantic Broadband determines in good faith that Subscriber has tampered with or abused Atlantic Broadband's equipment or service or is engaged in theft of Cable Service.

#### **4.7 SERVICE INTERRUPTIONS**

(a) Excluding conditions beyond its control, Atlantic Broadband shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known and shall diligently pursue to completion. Notice of a Service Interruption of a single Subscriber shall give rise to this obligation on behalf of Atlantic Broadband. All other service calls not affecting public health, safety or welfare shall occur within a maximum of forty-eight (48) hours after notice to Atlantic Broadband or scheduled at the convenience of the Subscriber.

(b) In the event that there is a Service Interruption to any Subscriber for six (6) or more consecutive hours and upon receipt of written or credible oral request, Atlantic Broadband shall grant such Subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or, at its option, apply such credit to any outstanding balance that is currently due.

#### **4.8 PRIVACY**

(a) Atlantic Broadband shall respect the rights of privacy of every Subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. Atlantic Broadband shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations.

(b) Atlantic Broadband shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personally-identifiable Subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.

(c) Absent a court order or requirement of federal law, neither Atlantic Broadband nor its designee shall tap, monitor, arrange for the tapping or monitoring of any cable, line, signal, input device, or Subscriber outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber; provided, however, that Atlantic Broadband may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, billing for pay services or monitoring channel usage in a manner consistent with the federal law. Atlantic Broadband shall report to the affected parties any instances of monitoring or tapping of the Cable System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by Atlantic Broadband. Atlantic Broadband shall not record or retain any information transmitted between a Subscriber and any third party, except as required for lawful business purposes.

(d) Except as permitted by Section 631 of the Cable Act as amended, neither Atlantic Broadband nor its designee nor its employees shall make available to any third party, including the City, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure, Atlantic Broadband shall notify the Subscriber prior to disclosure, unless such notification is otherwise prohibited by applicable law or the court.

(e) Upon a request by a Subscriber, Atlantic Broadband shall make available for inspection at a reasonable time and place all personal Subscriber information that Atlantic Broadband maintains regarding said Subscriber. Atlantic Broadband shall ensure that all information related to billing and service requests is accurate and up to date and shall promptly correct any errors upon discovery.

(f) Atlantic Broadband shall not make its Subscriber list or lists, or any portion thereof, available to any other person or entity, with or without remuneration in conformance with Section 631 of the Cable Act.

## **SECTION 5**

### **REGULATION BY THE COUNTY**

#### **5.1 RIGHT TO INSPECT**

(a) The City shall have the option, upon thirty (30) business days' written notice and during Normal Business Hours, to inspect at the notice location for Atlantic Broadband specified in Section 9.3, all documents, records and other pertinent information maintained by Atlantic Broadband which relate to the terms of this Agreement.

(b) In addition, Atlantic Broadband shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

(c) Upon thirty (30) days written request to Atlantic Broadband, the City may inspect the Cable System at any time to ensure compliance with this Agreement and applicable law, including to ensure that the Cable System is constructed and maintained in a safe condition. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Atlantic Broadband, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition within a reasonable time established by the City.

## **5.2 RIGHT TO CONDUCT COMPLIANCE REVIEW**

The City or its representatives may conduct a full compliance review with respect to whether Atlantic Broadband has complied with the material terms and conditions of this Agreement so long as it provides Atlantic Broadband with thirty (30) days written notice in advance of the commencement of any such review or public hearing. Such notice shall specifically reference the section(s) or subsection(s) of the Agreement that is (are) under review, so that Atlantic Broadband may organize the necessary records and documents for appropriate review by the City. Within thirty (30) days of a written request, Atlantic Broadband shall provide the City with copies of records and documents related to the cable compliance review.

## **5.3 RESERVED AUTHORITY**

The City reserves the regulatory authority arising from the Cable Act and any other applicable federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the City's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way.

## **5.4 POLICE POWERS**

Atlantic Broadband's rights under this Agreement are subject to the police powers of the City to adopt and enforce general laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement.

## **5.5 NO LIMITATION ON TAXING OR FEE AUTHORITY**

Nothing in this section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability. Such taxes, fees or assessments shall be in addition to Franchise Fees.

## **5.6 PERMITS**

Atlantic Broadband shall apply to the City for all required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the City. Atlantic Broadband shall not be required to obtain permits for Cable Service drops for individual

Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. Atlantic Broadband shall pay any and all required permit fees.

## **5.7 REPORTING**

In addition to the other reporting requirements contained in this Agreement, Atlantic Broadband shall provide the following reports to the City:

### (a) Subscriber Complaint Reports

Within thirty (30) days of a written request, Atlantic Broadband shall submit to the City a report showing the number of Complaints, as defined in Section 1(g), that required a work order and/or service call, originating from the City and received during the previous 12-month reporting period, the dates they were received, summary descriptions of the Complaints, the dates the Complaints were resolved and summary descriptions of the resolutions.

In addition and upon request, Atlantic Broadband shall provide a report containing at least the following statistical information for the previous 12-month period:

- (1) Number of repair service requests received;
- (2) Breakdown by type of Complaint received (i.e. complete outage, snowy picture, etc.);
- (3) Breakdown by cause of problem (i.e. subscriber equipment, drop/converter, system, etc.);
- (4) Number of known service interruptions and the approximate length of time of each such interruption;
- (5) Average hold time for Subscriber service telephone calls that were received in the previous quarter;
- (6) Percentage of telephone calls answered within thirty (30) seconds during the previous quarter;
- (7) Percentage of telephone calls received within the previous quarter that were abandoned before being answered by a live operator; and
- (8) Percentage of time when all incoming telephone trunk lines were in a busy condition.

### (b) Annual Reports

Within thirty (30) days of a written request, Atlantic Broadband shall submit to the City its current financial statement, including a statement of income, balance sheet and a statement of sources and applications of funds which shall be verified by Atlantic Broadband's Chief Financial Officer in accordance with Generally Accepted Accounting Principles. Submission by Atlantic Broadband of the most recent U.S. Securities and Exchange Commission Annual Report Form 10-K prepared by Atlantic Broadband shall be deemed as satisfactory compliance with this Section 5.7(b). Such report shall additionally address services, changes, customer service and operational changes.

(c) Government Reports

Atlantic Broadband shall provide to the City, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Atlantic Broadband has submitted to any federal, state or local regulatory agencies if such documents relate specifically to Atlantic Broadband's Cable System within the City. Atlantic Broadband shall provide copies of such documents no later than thirty (30) days after their request.

(c) Operational Reports

Upon written request, Atlantic Broadband shall provide the City with copies of reports, documents, logs, or related written materials pertaining to the operation of the Cable System serving the City. Such reports may include, but are not limited to, outage logs, preventative maintenance logs, results of technical performance tests, and trouble call reports.

**5.8 SENIOR CITIZEN DISCOUNT**

Upon the Effective Date, Atlantic Broadband shall offer eligible senior citizen Subscribers a discount on Basic Service only of no less than five percent (5%) per month. Senior citizen Subscribers shall qualify for this discount if they are aged sixty-five (65) or over and are head of household.

**SECTION 6**  
**COMPENSATION TO THE COUNTY**

**6.1 FRANCHISE FEES**

Atlantic Broadband shall pay to the City an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the City. Atlantic Broadband shall not deduct or otherwise credit against the Franchise Fee any tax, fee or assessment of general applicability. The City may amend the Franchise Fee upon written notice to Atlantic Broadband provided that the Franchise Fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the Franchise Fee rate adjustment by the City shall accompany such written notice. Any change in Atlantic

Broadband's Franchise Fee obligation contained herein shall commence within sixty (60) days from such written notice.

## **6.2 QUARTERLY PAYMENTS**

Franchise Fee payments to the City under this provision shall be computed at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due, then interest calculated at the then-current prime rate, as published by the Wall Street Journal, shall be added to the amount of Franchise Fee revenue due to the City. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the City may have for additional sums payable under this Agreement. Upon request and if mutually agreeable, Atlantic Broadband shall deposit the Franchise Fee payments electronically into an account as designated by the City. If the quarterly Franchise Fee payment is late by 45 days or more, Atlantic Broadband shall pay interest at a rate of five percent (5%) of the amount due as a charge incidental to enforcement of the Franchise.

## **6.3 QUARTERLY REPORTS**

Each Franchise Fee payment shall be accompanied by a written report containing an accurate statement of Atlantic Broadband's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Atlantic Broadband's Cable System and showing the basis for the computation of fees. Specifically, the report shall contain line items for sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Atlantic Broadband.

## **6.4 FRANCHISE FEE REVIEW**

(a) The City shall have the right to conduct a Franchise Fee review or audit of Atlantic Broadband's records reasonably related to the sources, amounts and computation of Gross Revenues. Any such review or audit shall occur within sixty (60) months from the date the City receives such payment, after which period any such payment shall be considered final. Within thirty (30) days of a written request, Atlantic Broadband shall provide the City with copies of financial records related to the Franchise Fee review or audit. Atlantic Broadband shall pay the reasonable cost of such a Franchise Fee review or audit.

(b) In the event of an alleged underpayment, the City shall provide Atlantic Broadband with a written statement indicating the basis for the alleged underpayment. Based on this exchange of information, the City shall make a final determination of the underpayment(s), if any, within thirty (30) days of Atlantic Broadband's objection and shall provide Atlantic Broadband with written notice of the determination.

(c) Any Franchise Fee payment due to the City as a result of the Franchise Fee review shall be paid to the City by Atlantic Broadband within forty-five (45) days from the date the City notifies Atlantic Broadband of its final determination. If the Franchise Fee review shows that Franchise Fees have been underpaid, then Atlantic Broadband shall pay the underpaid amount plus monetary fines of ten percent (10%) of the underpayment.

## **6.5 BUNDLED SERVICES**

If Cable Services subject to the Franchise Fee required under this Section 6.5 are provided to Subscribers in conjunction with non-Cable Services and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, then the Franchise Fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount.

## **6.6 FRANCHISE FEE REVENUE ALLOCATION**

For purposes of Franchise Fee revenue pertaining to any revenue sources that is allocated among cable, telecommunications, and/or information services, Atlantic Broadband agrees to determine the allocation of revenue among these services based upon the actual number of subscribers in the City that subscribe to each respective service.

# **SECTION 7** **SERVICES TO THE COMMUNITY**

## **7.1 FREE SERVICES TO COMMUNITY FACILITIES**

Upon request, Atlantic Broadband shall, at no charge to the City, provide one (1) complimentary standard installation and complimentary services as described herein below to all facilities listed in Exhibit 1 and all existing and future public facilities including, but not limited to, the following: each public school and other public educational facility, each library, each City office and agency and other governmental facility within the City, and each City-owned and City-leased facility designated by the City within the franchise area.

(a) Atlantic Broadband shall provide or maintain one (1) standard cable Drop, outlet, converter box (and any other required end user equipment) and Standard Cable level Services (or equivalent) package to each location designated in Appendix 1.

(b) Atlantic Broadband shall, at no charge to the City, provide one (1) standard installation and complimentary Internet service through its business-oriented cable modem service to the locations so designated in Appendix 1.

(c) For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*, as amended, and does not include "home schools" or "cyber schools," or any other educational situation that does not meet the specific criteria set

forth herein. During the term of this Agreement, new public facilities shall be eligible to receive such complimentary service to the extent that they meet the qualifications as set forth herein above as Permitted Free Locations.

## **7.2 EDUCATIONAL AND GOVERNMENTAL (EG) CHANNEL**

(a) Atlantic Broadband shall provide to the City, within one hundred eighty (180) days of a written request and as set forth herein, the use of one (1) dedicated Educational and Governmental (“EG”) Access Channel in accordance with Section 611 of the Cable Act. Such EG Channel shall be used for community programming related to educational and/or governmental activities. The City shall have complete control over the content, scheduling, administration and all other programming aspects of the EG Channel, and may delegate such functions, or a portion of such functions, to an appropriate designee. Atlantic Broadband shall not exercise any editorial control over EG Channel programming. Atlantic Broadband shall cablecast the activated EG Channel so that it may be received by all Atlantic Broadband Subscribers in the City.

(b) To enable the City to utilize the EG Channel, the City shall select one (1) location within the City’s boundaries and Atlantic Broadband shall provide and install, within one hundred eighty (180) days of a written request by the City direct fiber links, including activation equipment capable of transmitting HD quality video and audio between the video origination location and the Atlantic Broadband headend such that live programming can originate from this selected location and be distributed via the Cable System to Subscribers in the City. This fiber link and equipment shall be collectively known as the “Return Line.”

(c) Any expenditure made in connection with the construction and maintenance of the Return Line shall be born solely by Atlantic Broadband. The City and Atlantic Broadband further agree that all costs incurred by Atlantic Broadband for supporting such EG Channel, including any and all equipment and EG support grants may be designated as “costs of franchise requirements” or “external costs” as defined by the FCC and Atlantic Broadband reserves its right to pass these costs through to the Subscribers pursuant to federal law.

(d) Atlantic Broadband shall be responsible for maintaining the Return Line to the video origination point of the EG Channel so long as the City provides Atlantic Broadband with access to such location and access to the EG Channel equipment within such location. Atlantic Broadband shall provide, install and maintain in good working order the equipment and the cable necessary for transmitting the signal to the channel aggregation site for further processing and distribution to Subscribers. Atlantic Broadband shall maintain the EG Channel in accordance with the same FCC technical specifications that are comparable to the specifications used to maintain commercial channels transmitted to Subscribers on the Cable system, except that it shall not be responsible for the technical signal quality of programming produced by any EG channel programmer.

(e) At the time that the City and/or its designee begin to produce EG programming in high definition (“HD”) format, Atlantic Broadband shall distribute the EG channel signals in HD format through the cable system. Atlantic Broadband shall distribute the signals in HD format



within sixty (60) days of receipt of notice from the City that the City and/or its designee has upgraded its PEG production equipment to HD format.

(f) The City or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the EG channel. The City and Atlantic Broadband agree to work cooperatively in implementing the EG channel through such means and in such manner as shall be mutually satisfactory.

(g) Within one hundred eighty (180) days of a written request by the City, Atlantic Broadband shall, at its own cost and expense, relocate the EG origination site and the associated Return Line one time during the term of this Agreement as follows: (i) the new location must be located within two hundred fifty (250) feet of Atlantic Broadband's main distribution line; (ii) Atlantic Broadband's obligation shall be subject to the same terms and conditions that apply to the original EG origination site in this Section; and (iii) the City shall provide access to such site at least ninety (90) days prior to anticipated use of the new EG origination site. The timeline for relocation of the EG origination site shall be subject to the timely granting of any and all required permits, walk-out, make ready, and the detection of all underground utilities.

(h) Atlantic Broadband shall include the EG Channels and programming information in all electronic program menus in a substantially similar manner and placement as the broadcast channels, including individual program listings and descriptions as provided by the City.

(i) In the event the City or its designee does not program any EG Channel, Atlantic Broadband may request the use of this channel subject to written approval by the City. If the City approves Atlantic Broadband's use of an EG Channel and, subsequent to such approval, the City requests the utilization of the EG Channel being programmed by Atlantic Broadband, Atlantic Broadband shall relinquish such use no later than sixty (60) days after receipt of written notification from the City that it requires such channel for educational and/or governmental use.

### **7.3 EG CAPITAL GRANT**

Atlantic Broadband shall provide the City with a one-time EG capital grant to be used in support of the production of local EG Channel programming. The City shall ensure the use of the EG capital grant is consistent with federal law. The EG grant provided by Atlantic Broadband shall be in the amount of \$11,580. Such grant is to be paid to the City within ninety (90) days of the Effective Date of this Agreement. Atlantic Broadband and the City agree that the cost of such grant may be designated as a "cost of franchise requirements" or "external cost" as defined by the FCC and Atlantic Broadband reserves its right to pass these costs through to the Subscribers over the entire term of the Agreement pursuant to federal law.

## **SECTION 8** **ENFORCEMENT, INSURANCE AND INDEMINIFICATION**

### **8.1 VIOLATIONS AND OPPORTUNITY TO CURE**

(a) If the City has reason to believe that Atlantic Broadband violated any provision of this Agreement, it shall notify Atlantic Broadband in writing of the nature of such violation and the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the City does not notify Atlantic Broadband of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

(b) Atlantic Broadband shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which Atlantic Broadband must cure the violation shall be extended by the City in writing for such additional time necessary to complete the cure, provided that Atlantic Broadband shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the City.

(c) If the violation has not been cured within the time allowed under Section 8.1(b) and, in the City's judgment, Atlantic Broadband has not taken reasonable steps to cure the violation, then the City may deem that Atlantic Broadband is liable for liquidated damages and/or any other right or remedy and the City's costs in accordance with Section 8.2.

## **8.2 LIQUIDATED DAMAGES**

(a) Because Atlantic Broadband's failure to comply with provisions of this Agreement will result in injury to the City and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Atlantic Broadband in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each day the violation continues, provided Atlantic Broadband has had an opportunity to cure in accordance with Section 8.1(b). Such damages shall not be a substitute for specific performance by Atlantic Broadband or legal action by the City, but shall be in addition to such specific performance or legal action.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The City may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction before, during, or after the assessment of liquidated damages.

## **8.3 REVOCAION**

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that Atlantic Broadband practiced any fraud or deceit upon the City in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) Atlantic Broadband repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1;

(3) Atlantic Broadband repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement;

(4) Upon the appointment of a receiver or trustee to take over and conduct the business of Atlantic Broadband whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(i) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(ii) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all defaults under this Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

(1) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Atlantic Broadband or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. Atlantic Broadband shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the City Council after an appropriate public hearing that shall afford Atlantic Broadband due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the State. All notice requirements shall be met by providing Atlantic Broadband at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The City, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Atlantic Broadband of mitigating circumstances or good cause for the existence of such grounds. The City shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified or overnight mail to Atlantic Broadband.

#### **8.4 PERFORMANCE BOND**

(a) Atlantic Broadband shall obtain and maintain, within thirty (30) days of the Effective Date and throughout the term of this Agreement, at its sole cost and expense, a

performance bond with a surety company licensed to do business in the State to ensure Atlantic Broadband's faithful performance of its obligations. The performance bond shall provide that the City may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the City for Atlantic Broadband's violations of this Agreement, after notice and opportunity to cure, in accordance with Sections 8.1 and 8.2. An original copy of the bond shall be delivered to the City.

(b) The performance bond shall be in the amount of One Hundred Thousand Dollars (\$100,000). Atlantic Broadband shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the City. Atlantic Broadband shall restore the bond to its original level within thirty (30) days after any amount has been paid to the City from the performance bond.

## **8.5 INSURANCE**

(a) Atlantic Broadband shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, the following minimum insurance coverage with an insurance company that is authorized to conduct business in Pennsylvania and which has an A.M. Best rating (or equivalent) no less than A-minus VII, indemnifying the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable system by Atlantic Broadband or any of its contractors, subcontractors, agents or employees in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.

(2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) The City, its officials and employees, shall be designated as additional insureds under each of the insurance policies required in this Section 8.5.

(c) Atlantic Broadband shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.5 and without submitting insurance certificates to the City verifying that Atlantic Broadband has obtained such alternative insurance. Atlantic Broadband shall provide the City with at least thirty (30) days prior written notice in the event there is an adverse material change in coverage or the policies are cancelled or not renewed.

(d) Atlantic Broadband shall deliver to the City Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, on an annual basis.

## **8.6 INDEMNIFICATION**

(a) Atlantic Broadband shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense arising in whole or in part from, caused by or connected with any act or omission of Atlantic Broadband, its officers, agents, contractors, subcontractors or employees, arising out of, but not limited to, the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities of Atlantic Broadband. The City shall give Atlantic Broadband timely written notice of its obligation to indemnify and defend the City. The obligation to indemnify, defend, save and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, and reasonable attorneys' fees. If the City determines that it is necessary for it to employ separate counsel, in addition to that provided by Atlantic Broadband, the cost for such separate counsel shall be the responsibility of the City. Atlantic Broadband shall not indemnify the City for any claims resulting solely from acts of willful misconduct or negligence on the part of the City.

(b) Nothing in this Franchise Agreement is intended to express or imply a waiver of statutory provisions, of any kind or nature, as set for in State statutes, including the limits of liability of the City as exists presently or may be increased from time to time by the State legislature.

## **8.7 WORKERS' COMPENSATION INSURANCE**

Atlantic Broadband shall obtain and maintain workers' compensation insurance for all of its employees, and in case any work is sublet, Atlantic Broadband shall require any subcontractor similarly to provide workers' compensation insurance for all of such subcontractors' employees, all in compliance with State laws, and to fully protect the City from any and all claims arising out of occurrences at work. Atlantic Broadband hereby indemnifies the City for any damages resulting to it from failure of either Atlantic Broadband or any subcontractor to take out and maintain such insurance. Atlantic Broadband shall provide the City with a certificate of insurance indicating workers' compensation coverage prior to commencing construction or reconstruction of the Cable System.

## **SECTION 9** **MISCELLANEOUS**

### **9.1 FORCE MAJEURE**

If for any reason of Force Majeure, Atlantic Broadband is unable in whole or in part to carry out its obligations hereunder, Atlantic Broadband shall not be deemed in violation of this Agreement during the continuance of such inability.

## **9.2 REMOVAL OF SYSTEM**

(a) Upon lawful termination or revocation of this Agreement, Atlantic Broadband shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such lawful termination or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may remove it at Atlantic Broadband's cost.

(b) During the term of the Agreement, if Atlantic Broadband decides to abandon or no longer use all or part of its Cable System, it shall give the City written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. The City shall have the right to either require Atlantic Broadband to remove the property, remove the property itself and charge Atlantic Broadband with the costs related thereto, or transfer ownership of the property to the City's designee provided fair market value is paid to Atlantic Broadband.

(c) Notwithstanding the above, Atlantic Broadband shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Atlantic Broadband from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

(d) If Atlantic Broadband abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may either: (1) designate another entity to operate the Cable System temporarily until Atlantic Broadband restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or (2) obtain an injunction requiring Atlantic Broadband to continue operations. If the City designates another entity to operate the Cable System, Atlantic Broadband shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred. The City shall be entitled to exercise options (1) and (2) above if:

(1) Atlantic Broadband fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for seven (7) consecutive days, unless the City authorizes a longer interruption of service; or

(2) Atlantic Broadband, for any period, willfully and without cause, refuses to provide Cable Service in accordance with this Franchise.

## **9.3 NOTICES**

Every notice or payment to be served upon or made to the City shall be sent to:

City of Johnstown  
401 Main Street  
Johnstown, PA 15901  
Attn: City Manager

The City may specify any change of address in writing to Atlantic Broadband. Every notice to be served upon Atlantic Broadband shall be sent to:

Atlantic Broadband  
2 Batterymarch Park  
Suite 205  
Quincy, MA 02169

With copies to:

Atlantic Broadband  
General Counsel  
2 Batterymarch Park  
Suite 205  
Quincy, MA 02169

and

Atlantic Broadband  
Attn: VP/GM of Maryland Region  
2 Batterymarch Park  
Suite 205  
Quincy, MA 02169

Atlantic Broadband may specify any changes of address in writing to the City. Each delivery to Atlantic Broadband or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

#### **9.4 EQUAL EMPLOYMENT OPPORTUNITY**

Atlantic Broadband is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment.

#### **9.5 CAPTIONS**

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

## **9.6 GOVERNING LAW; VENUE**

This Agreement shall be governed and construed by and in accordance with the laws of the State. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, Cambria County, or in the United States District Court for the Middle District of Pennsylvania.

## **9.7 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL**

(a) Neither Atlantic Broadband nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(b) Neither Atlantic Broadband nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(c) Neither Atlantic Broadband nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than twenty-five percent (25%) of its equitable ownership in the Cable System without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Atlantic Broadband in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by Atlantic Broadband.

(e) Atlantic Broadband shall make written application to the City of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The City shall have thirty (30) days from the receipt of FCC Form 394 to notify Atlantic Broadband of any additional information it needs to make an informed decision on the transfer or assignment. The City shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment. Atlantic Broadband shall reimburse the City for all reasonable out-of-pocket costs up to Five Thousand Dollars (\$5,000), including attorneys' and consultants' fees and costs, incurred by the City as part of the City's review and processing of Atlantic Broadband's transfer or assignment request. Payments of such costs and expenses shall not be deemed to be Franchise Fees within the meaning of Section 622 of the Cable Act, 47 U.S.C. § 542.

(f) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding



document stating that it shall be bound by all the terms and conditions contained in this Agreement.

**9.8 ENTIRE AGREEMENT**

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Atlantic Broadband. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, that are in conflict with the provisions herein.

**9.9 SEVERABILITY**

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

**9.10 NO WAIVER OF RIGHTS**

No course of dealing between the City and Atlantic Broadband, nor any delay on the part of the City in exercising any rights hereunder, shall operate as a waiver of any such rights of the City or acquiescence in the actions of Atlantic Broadband in contravention of such rights, except to the extent expressly waived by the City.

**9.11 CHANGE OF LAW**

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the City or Atlantic Broadband may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and Atlantic Broadband may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the City and Atlantic Broadband.

**9.12 COMPLIANCE WITH LAWS**

Atlantic Broadband shall comply with all federal, state and local laws and regulations.

**9.13 THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

**9.14 APPLICABILITY OF AGREEMENT**

All of the provisions in this Agreement shall bind Atlantic Broadband, the City and their respective successors and assigns. This Agreement is authorized by Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, 2020 of the City Council.

**WITNESS** our hands and official seals to this Cable Franchise Agreement.

**CITY OF JOHNSTOWN**

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

Name: John K. Trant, Jr.

Title: Interim City Manager

Date: May 17, 2020

**ATLANTIC BROADBAND (PENN), LLC**

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

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

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

Date: \_\_\_\_\_

**Exhibit 1**  
**Free Services Locations**