

CITY OF JOHNSTOWN,  
CAMBRIA COUNTY, PENNSYLVANIA  
RESOLUTION NO. 10313

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 ENTER INTO AN AGREEMENT WITH BISHOP MCCORT CATHOLIC SCHOOL FOR USE OF SARGENT'S STADIUM AND ROXBURY PARK.

WHEREAS, the City owns and operates Sargent's Stadium and Roxbury Park; and

WHEREAS, the Bishop McCort Catholic School has a need to use both Sargent's Stadium and Roxbury Park for their athletic programs; and

WHEREAS, the City has developed a fee structure for use of Sargent's Stadium and Roxbury Park; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Johnstown, Cambria County hereby authorizes and directs the Interim City Manager and/or his designee to execute on behalf of the City of Johnstown an agreement with Bishop McCort Catholic School for use of Sargent's Stadium and Roxbury Park.

ADOPTED: August 12, 2020

By the following Vote:

Yeas: Mr. Vitovich, Mr. Arnone, Mr. Capriotti, Mayor Janakovic, Rev. King, Mrs. Mock. (6)

Nays: None (0)

Absent: Mr. Britt (1)




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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. 10313 as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA

RENTAL/USE AGREEMENT

THIS AGREEMENT is made between the CITY OF JOHNSTOWN, (the City), located at 401 Main Street, Johnstown, PA and Bishop McCort Catholic High School, Inc., with principal offices located at 25 Osborne Street (User).

The City hereby agrees and authorizes the Bishop McCort Catholic High School to lease and make use of Sargents' Stadium at the Point ("Point Stadium") and Roxbury Park located at Washington and Johns Streets and Franklin and Derby Street, respectively, in accordance with the terms and conditions outlined below:

A. **TERM** The term of this Lease for the use of the City-owned facilities outlined below shall be for a period commencing on August 13, 2020, and expiring on June 30, 2021.

B. **RENTAL AND USAGE FEES**

- a. The user agrees to pay to the City a fee for the use of City-owned facilities as specified and made applicable to the uses, events and locations outlined in this agreement.
- b. Any/all such uses shall remain subject to a Five percent (5%) Amusement tax where applicable.
- c. The User is also responsible to reimburse the City for any/all staff time- incurred by City employees for purposes that exceed the -opening, closing, and maintaining the facilities beyond the events covered by this agreement.
- d. Payment of applicable fees shall be made by User within 30 days of User's event/activity.

C. **CITY RESERVATION OF RIGHT TO DENY USE/ACCESS** The City of Johnstown reserves the right to deny play if the Public Works Director, the City Manager, or a designated City of Johnstown official determines that play would damage the field(s), in accordance with the terms and conditions of this Agreement addressing advanced notice to the User.

D. **POINT STADIUM**

1. **Fee for Varsity Football Games.** The rental fee for the Point Stadium will be **\$1,900.00 per VARSITY FOOTBALL** game. This price includes use of the first-base locker rooms and in-season storage.

2. **Other Fees/Usage.** Fees for other activities at the Point Stadium are as follows:

a. The following activities shall subject to a Rental/Usage Fee of \$250 per event:

- **JUNIOR VARSITY FOOTBALL** – Afternoon Games

- **JUNIOR HIGH FOOTBALL** – Afternoon Games
- **SOCCER**
- **PAROCHIAL LEAGUE FOOTBALL**– 9 weeks of football games on consecutive Saturdays or Sundays, as needed. Please note, there will be 3-4 semi-pro games on Saturdays that will begin at 11am.

b. The following activities shall subject to a Rental/Usage Fee of \$450 per event:

- **PRE-SEASON CONDITIONING EVENTS:** Any pre-season conditioning program event

c. The following activities shall subject to a Rental/Usage Fee of \$300 per event:

- **SPRING BASEBALL at the POINT STADIUM** - Games start in March and can occur during the evening and night. Spring Baseball practices are free of charge and based on availability.

3. **Light Usage.** Lights will not be provided for practices or afternoon/day games. Usage of Lights for other events will cost an additional fee of \$100 per hour, per event during this the term of this agreement. The Point Stadium grounds crew must be notified by User approximately 24 hours in advance of any intent or request to use lights.

4. **Access to Facilities.** Bishop McCort will have full use of and access to the Point Stadium facilities during their events, including both locker rooms for varsity football games, spring varsity baseball practices and games and girls and boys varsity soccer games during the contracted period, with the exception of special events for which the City provides two weeks' advance notice.

a. During the Spring Varsity Baseball season, specifically, the City shall provide no less than a minimum 2-day advance notice if the Point Stadium is or becomes unavailable for a previously scheduled game or practice day.

b. Bishop McCort will have full use/access of the Point Stadium for the June, July and August pre-season conditioning program at pre-established times agreed upon and approved by the City of Johnstown.

**E. ROXBURY PARK**

1. **Game/Event Fees.** Fees for the following events shall be **\$200 per game/event:**

**SOFTBALL GAMES  
TENNIS MATCH**

2. **Practice Fees.** Practices at Roxbury Park for softball, tennis, and soccer are free of charge.

**F. ADDITIONAL TERMS AND CONDITIONS**

1. **Use of Facilities.** Bishop McCort, as User, is further subject to and agrees to abide by the following conditions:
  - a. User may use school banners around the field but are prohibited from displaying advertisements.
  - b. User must not drive any vehicles onto the artificial turf field at the Point Stadium. Violation of this restriction leading to damage of the artificial turf will be the responsibility of Bishop McCort to pay for the repair of the damage caused.
  - c. User is responsible for the remediation of any vandalism that occurs to the Point Stadium locker rooms during their events.
  - d. User is permitted to sell programs during games.
  - e. User will follow any and all CDC, Pennsylvania Department of Health, and PIAA guidelines issued to provide a safe environment for athletes, coaches, and event attendees.
  
2. **Advertising and Concession Rights.** The City of Johnstown retains the following exclusive rights at the facility:
  - a. Any/all advertising, as contracted, appearing at the facility.
  - b. Any/all food concessions, as contracted, at the facility.
  
3. **Maintenance, Safety and Security.**
  - a. No Additional City Services. This Agreement does not include or cover the provision of security, police, fire, or the provision of any other such services by the City other than those provided by the City's grounds crew in the ordinary course of maintaining the stadium and facilities.
  
  - b. Safety and Security Plan. The User shall be responsible for the provision of all security and the arrangement of their duties. The User will consult and work with the City of Johnstown Police Chief as to an approved security plan, and, where applicable, Police officer compensation, the number employed and the hours of duty. Any/all fees for such services are to be addressed via a separate agreement and shall be paid by the User.
  
  - c. Sanitation. The City will provide both the Point Stadium and Roxbury Park in safe, and sanitary condition to the User. The City will follow any and all CDC and Pennsylvania Department of Health guidelines in regards to sanitizing both facilities.
  
4. **Compliance with all applicable laws.** The User hereby agrees to abide by all appropriate City Ordinances and Regulations including Codified Ordinance 610.01 which prohibits alcoholic beverages in any park area in the City of Johnstown.

5. **Insurance.** The User agrees to provide the City with a certificate of insurance indicating liability coverage in the amount of \$1,000,000 general liability for bodily injury and property damages, which might result or arise from the activity or sporting event.

**6. INDEMNIFICATION AND RELEASE OF THE CITY**

- a. In consideration for the permission by the City of Johnstown, Pennsylvania, to the undersigned for use of the above mentioned facilities, the undersigned agrees to indemnify, defend, and hold harmless the City of Johnstown, its agents, officers, employees, successors, and assigns from and against all claims for injury or damage to persons or property arising out of or caused by the use of such property.
- b. The undersigned User further agrees to hold harmless the City of Johnstown and is to defend at its own expense the City of Johnstown from any action or proceeding against the City of Johnstown arising out of or caused by the use of such property.

**G. LEASE RENEWAL, MODIFICATION, AND/OR TERMINATION**

1. **Lease Renewal Options.** User, so long as it is not then in default beyond any applicable cure period, at its option, upon thirty (30) day advance written notice to the City, shall have the right to request a renewal of this Lease for additional terms/years (each separate "Renewal Term" to be exercised independently) and may be granted said renewal, upon mutual agreement of the City and the User, and subject to the terms and conditions mutually agreed upon for said renewal.
2. **Modification.** This Agreement may be modified by mutual consent. All such changes or modification shall be in writing.
3. **Termination of Agreement.**
  - a. Either party may terminate this Agreement, for any reason, by providing 90 days' advance written notice.
  - b. If at any time the User becomes more than 60 days in default of payment due to the City may void and immediately terminate this Lease Agreement by issuing a written Cancellation Notice.

**H. GENERAL TERMS AND CONDITIONS**

1. **Effective Date.** This Agreement shall become effective as of the latest date of the signatures appearing below, and once made effective shall apply to the entirety of term identified herein.

2. The parties agree and commit to perform such additional acts and execute such additional documents as are reasonably necessary to effectuate or carry out this Agreement.
3. This Agreement may be executed in counterparts separately by each party, each of which counterpart shall be deemed an original, and all of which shall constitute one (1) in the same instrument.
4. All activities performed by any party hereunder shall be performed in accordance with all applicable statutes and ordinances.
5. This Agreement constitutes the full and complete understanding and agreement among the parties. No provision of this Agreement shall be construed to create any rights in anyone who is not a party to this Agreement. This Agreement may be amended or revised in writing signed by all of the parties hereto. This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania. The resolution of any conflicts or disputes arising hereunder shall be under the jurisdiction and venue of the Cambria County Court of Common Pleas.

This Agreement has been duly authorized, executed and delivered by the parties hereto and constitutes a legal, valid, and binding obligation of such parties, enforceable in accordance with its terms. Each individual's signature hereto represents warrants that the signatory is duly authorized to execute this Agreement on behalf of the party indicated.

IN WITNESS WHEREOF, the undersigned parties, have caused this Agreement to be executed by their duly authorized signatures.

CITY OF JOHNSTOWN, PENNSYLVANIA

BY:   
Interim CITY MANAGER

\_\_\_\_\_  
BISHOP MCCORT

  
WITNESS

\_\_\_\_\_  
PRINTED NAME OF ABOVE

Address of User:

CITY OF JOHNSTOWN,  
CAMBRIA COUNTY, PENNSYLVANIA  
RESOLUTION NO. 10314

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA ACKNOWLEDGING AND APPROVING THE 2021-2025 CAPITAL IMPROVEMENT PLAN OUTLINING PROPOSED AND/OR PENDING CAPITAL IMPROVEMENTS TO BE UNDERTAKEN DURING THE NEXT FIVE FISCAL YEARS WITHIN THE CITY OF JOHNSTOWN, AS DULY SUBMITTED TO COUNCIL.

WHEREAS, the City of Johnstown's Home Rule Charter provides in Section 1006 that the City Manager shall prepare and submit to the Council a Five Year Capital Program at least 3 months prior to the final date for submission of the annual budget, including certain content further specified in Section 1006; and

WHEREAS, the attached Five Year Capital Improvement Plan identifying capital improvements which are in the process of acquisition or construction, pending, or proposed to be undertaken during the next five fiscal years, as further detailed therein was submitted to Council on/about July 23, 2020; and

WHEREAS, the City Council desires to acknowledge receipt of and approve the Five Year Capital Improvement Plan as submitted, for purposes of memorializing same.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, Cambria County, Pennsylvania that the 2021-2025 Five Year Capital Improvement Plan is hereby acknowledged and approved.

ADOPTED: August 12, 2020

By the following Vote:

Yeas: Mr. Arnone, Mr. Capriotti, Mayor Janakovic, Rev. King, Mrs. Mock, Mr. Vitovich. (6)

Nays: None (0)

Absent: Mr. Britt. (1)

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

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10314** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.

  
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Nancy J. Cushing, City Clerk



CITY OF JOHNSTOWN,  
CAMBRIA COUNTY, PENNSYLVANIA  
RESOLUTION NO. 10315

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 ENTER INTO AND TAKE ANY/ALL ACTIONS NECESSARY TO EFFECTUATE AN AGREEMENT WITH NATIONAL SPORTS SERVICES, LLC FOR USE OF SARGENT'S STADIUM AT THE POINT FOR PURPOSES OF A PROSPECT LEAGUE SUMMER COLLEGE BASEBALL TEAM, CONTINGENT UPON FINAL REVIEW AND APPROVAL OF THE CITY SOLICITOR.

WHEREAS, the City owns and operates Sargent's Stadium at the Point; and

WHEREAS, National Sports Services, LLC ("NSS") a Kansas formed limited liability company with expertise in operating and managing sports teams desires to enter into a binding Agreement for use of Sargent's Stadium at the Point ("Stadium") located in Johnstown, PA for the purpose and use by a Prospect League ("League") summer college baseball team of the Stadium for the 2021 season and beyond; and

WHEREAS, the parties have agreed to certain terms and conditions which will permit NSS to utilize the stadium for these purposes during the months of May through August for an initial five year term commencing May 1, 2021 and continuing through August of 2025, with options for renewal for an additional five year term, in exchange for a \$15,000 annual usage fee, as further detailed in the Agreement between the parties; and

WHEREAS, the Stadium will remain available for other recreational, entertainment and civic uses, including accommodation of the annual AAABA Tournament that occurs within Sargent's Stadium in early August; and

WHEREAS the parties desire to enter into an agreement at this time to allow sufficient time for planning and development of the activities to be undertaken in accordance with said agreement.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Johnstown, Cambria County hereby authorizes and directs the Interim City Manager and/or his designee to execute, on behalf of the City and to take all actions necessary to effectuate an agreement with National Sports Services, LLC to use the Sargent's Stadium at the Point for purposes and use of a Prospect League summer college baseball team, contingent upon final review and approval of the City Solicitor.

ADOPTED:

August 12, 2020

By the following Vote:

Yeas: Mr. Capriotti, Mayor Janakovic, Rev. King, Mrs. Mock, Mr. Vitovich, Mr. Arnone. (6)

Nays: None (0)

Absent: Mr. Britt (1)



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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. **10315** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



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Nancy J. Cushing, City Clerk

**USE AGREEMENT**

**BETWEEN**

**CITY OF JOHNSTOWN, PENNSYLVANIA**

**AND NATIONAL SPORTS SERVICES, LLC**

**IN WITNESS WHEREOF**, National Sports Services, LLC (“NSS”) a Kansas formed limited liability company and the City of Johnstown, Pennsylvania (“CITY”), (collectively referred to herein as the “Parties”), have agreed to this Use Agreement (“Agreement”) as of the day and year indicated below.

**WHEREAS**, NSS has developed expertise in operating and managing sports teams and desires to enter into a binding Agreement for Point Stadium d/b/a Sargent Stadium (“Stadium”) located in Johnstown, PA; and,

**WHEREAS**, the City expressly agrees that NSS may assign this Agreement to a Pennsylvania limited liability company which includes among its members the owners of NSS; and,

**WHEREAS**, NSS and the City are entering into this Agreement for the purpose of placing a Prospect League (“League”) summer college baseball team in the Stadium for the 2021 season and beyond; and

**WHEREAS**, the Stadium will be available for other recreational, entertainment and civic uses as set forth herein;

**WHEREAS**, the following terms are binding between the parties.

**NOW THEREFORE**, the undersigned Parties hereby agree to the following binding terms:

1. **Stadium Term.** NSS shall have the right to use the Stadium including all areas within the fenced in area commonly known as Point Stadium during the entirety of the following periods (the “Initial Term”):
  - a. May 1, 2021 to August 15, 2021
  - b. May 1, 2022 to August 15, 2022
  - c. May 1, 2023 to August 15, 2023
  - d. May 1, 2024 to August 15, 2024
  - e. May 1, 2025 to August 15, 2025

Should NSS not be in default of the Use Agreement as of August 15, 2025, NSS and the City hereby agree that NSS may extend this Use Agreement for an additional 5 (five) year period (“the First Additional Term”) beginning May 1, 2026 and concluding August 15, 2030.

During all terms of this agreement, the NSS agrees to accommodate the annual AAABA Tournament that occurs within Sargent’s Stadium in early August.

2. **Priority.** NSS shall have priority over all events on the Premises during the Term then in effect. NSS shall provide the City with a schedule of home games and potential playoff games a minimum of five (5) months prior to the first scheduled home game of the upcoming season.
3. **Team.** NSS agrees to provide a Team in good standing as a member of the League during the Initial Term of this Agreement and any Additional Terms. With approval of the City, NSS may provide a Team in another League ("New Team"). It is expressly understood that a New Team must be of an equivalent League or higher League of play for the approval of the City to be granted. Should the League cease to exist due to merger with another entity, or the League reorganizes to the benefit of League members, this action by the League will not require approval of the City for this Agreement to continue in effect.
4. **Stadium Use Fee.** During the Initial Term and First Additional Term, the NSS shall pay the City a use fee of Fifteen Thousand Dollars (\$15,000.00) annually on or before the dates as listed herein:

June 15 – \$5,000

July 15 – \$5,000

August 15 – \$5,000

Stadium Rent shall include the cost of utilities (electricity, water, sewer, disposal service).

5. **Field Equipment & Maintenance.** The City shall supply the Field Equipment for the Stadium identified as Exhibit A. If any of the Field Equipment listed in Exhibit A, requires maintenance or replacement, the City shall provide appropriate maintenance or the City shall supply suitable replacement Field Equipment for the Stadium.

The City shall be solely responsible for maintenance and upkeep of the Stadium playing surface and grounds including but not limited to turf maintenance and care and preparation of the field for games. All costs including materials and labor to upkeep and maintain the Stadium playing surface in proper playing condition shall be the responsibility of the City.

Absent negligence by NSS, the City shall be responsible for major repairs to the turf during the Term.

6. **Stadium Cleaning.** The City shall provide cleaning and janitorial services for the Stadium including the seating areas, concourse, rest rooms and clubhouses. Cleaning shall include items such as garbage removal, sweeping of concourse and patrons walkways and pressure washing as needed.
7. **Field Access.** For each scheduled home game, NSS shall have exclusive use of the Stadium playing field beginning at 8:00 am on game day.

8. **Office Space.** City to provide NSS with suitable office space – approximately 800 sf – at the Stadium prior to the 2022 baseball season. The City is responsible for providing telephone and internet service to the office location. The monthly cost for telephone and internet service is the responsibility of NSS. The City is responsible for the monthly cost of office utilities (electricity, water). Any furniture, fixture and equipment necessary for team office operations are the responsibility of NSS. Cleaning and janitorial services for the office space are the responsibility of NSS.
9. **Stadium Internet.** City to provide sufficient wireless bandwidth to the Stadium for the establishment of a private network for the operation of Team’s credit card terminals and point of sale system. City to provide a minimum of four wired Ethernet drops, one each to the following locations – third base concession stand, first base concession stand, ticket office and home plate press box.
10. **Ticketing.** City to provide an enclosed structure at the main Stadium entrance with four (4) ticket windows from which NSS can sell tickets to Team events. NSS shall be responsible for all costs of the ticketing system including licensing fees, per ticket printing fees, sales taxes, payroll and payroll taxes for events in which NSS operates the Stadium box office.
11. **Concessions.** NSS shall have the exclusive right to use and occupy the concession areas at the Stadium during the Term for storage, preparation and sale of food, beverages, souvenirs, and other concessions (“Concessions”); and no other tenant, sub-tenant, licensees of the City or other person shall have the right to use the Concession area or to sell food or beverages at the Stadium, without the express written consent of NSS. The City agrees that no food products and beverages may be brought into the Stadium during any Term of this Agreement then in effect.

During its operation of Stadium Concessions, NSS shall be responsible for all costs of the concession operations to include but not limited to costs of goods sold, sales taxes, payroll, payroll taxes and insurance. All permitting and insurance required (including liquor liability) for the Stadium food and beverage operation will be the responsibility of NSS. NSS may utilize third parties to provide concession services as is appropriate for the conduct of NSS’s business at the Stadium.

NSS agrees with the City that all concessions and concession services shall be of high quality commensurate with industry standards prevailing in facilities similar to the Stadium. All items offered for sale by NSS, or any third party at the Stadium, shall be sold at reasonable prices established by NSS which are plainly displayed.

The City shall supply equipment for the Stadium concession operation identified as Exhibit B. It shall be the responsibility of NSS to purchase all additional equipment that NSS deems necessary for the operation and sale of concessions at the Stadium which is not listed in Exhibit B. Any

equipment listed in Exhibit B, shall be the responsibility of the City to maintain. If any of the equipment listed in Exhibit B requires replacement, the City shall supply suitable replacement concession equipment for the Stadium. Any concession equipment provided by NSS, shall be maintained by NSS at its sole expense including the replacement thereof if necessary.

NSS agrees that throughout the Term and any extension thereof, it shall possess and maintain in good standing a license to sell alcoholic beverages from the Pennsylvania Liquor Control Board.

12. **Sponsorship.** With the exception of Stadium Naming Rights, NSS receives exclusive rights to all Stadium sponsorship and advertising (“the Sponsorship Elements”) to include but not limited to outfield wall signs, banners, ticket booths, stadium entrances, parking areas, field level signs, dugout tops, interior dugout walls, fixed scoreboard panels, concession menu boards, concession stands, program stands, retail store, concourse wall signs and displays, table tops, beer garden, picnic areas and group areas. The exclusive right NSS holds to the Sponsorship Elements as listed herein shall be in effect for the period of January 1, 2021 through December 31, 2025. If an Additional Term is enacted, NSS will hold exclusive right to the Sponsorship Elements as listed herein for the period of January 1, 2026 through December 31, 2030.

All costs to produce, install and remove the Sponsorship Elements shall be the sole responsibility of NSS.

NSS agrees that the kind, type, size and location of all Sponsorship Elements shall be in keeping with the character of the Stadium and shall not be offensive to the City which shall have the authority to prohibit advertising which it deems offensive, which right will not be unreasonably implemented.

13. **Videoboard.** The City shall supply a videoboard, operating system and videoboard cameras for the Stadium. The video board shall be at a minimum 12 feet high and 24 feet wide. The operating system for the videoboard shall be a sports video control. At a minimum, the City shall provide two wireless cameras and two fixed cameras.

It shall be the responsibility of NSS to purchase any additional equipment for the operation of the videoboard which NSS deems necessary for the Team’s operation of the videoboard.

Maintenance of the videoboard and videoboard operating system and cameras shall be the sole responsibility of the City. Maintenance of any videoboard software or equipment provided by NSS shall be the sole responsibility of NSS.

During League games, NSS shall have the exclusive right to use of the Stadium videoboard to display advertising, sponsor logos, commercials and entertainment. NSS agrees to allow up to four 30-second static or video advertisements provided by Bishop McCourt Catholic School, Inc. to run on the videoboard prior to each League game at times chosen by the NSS. The Team and

the City agree that the Team will not be required to display on the videoboard the advertisements of any sponsors provided by Bishop McCort Catholic School, Inc. which conflict with exclusive sponsorship agreements of the Team. During events other than League games, the City shall have exclusive rights with respect to the display of images on the videoboard.

For all Stadium events during the Term then in effect, NSS shall be responsible for the operation of the videoboard and press box. If NSS operates the Stadium videoboard for a non-Team event, NSS is to be reimbursed by the City – or the contracted Stadium user – for all labor related costs associated with the operation of the Stadium videoboard.

14. **Broadcasting.** NSS shall retain all revenue or benefits from Team's broadcasting, cable casting, internet transmission or telecasting for any Team's games played at the Stadium. Any production expenses associated with the broadcasting, cable casting, internet transmission or telecasting of Team's games shall be the sole responsibility of NSS. However, it is expressly understood that the City shall charge no special fees, permits or hook-up expenses to NSS or its broadcasters, cablecasters or telecasters.
15. **Pouring Rights.** NSS shall be responsible for negotiating pouring rights agreements for alcoholic and non-alcoholic beverages at the Stadium and retain all fees generated, if any, during the Stadium Terms outlined in this agreement.
16. **Public Address & Sound System.** The City shall supply a sufficient public address and sound system for the Stadium that allows the Team to readily communicate with patrons throughout the Stadium. Maintenance of the public address and sound system shall be the sole responsibility of the City.
17. **Parking.** The City shall provide free of charge handicap parking around the Stadium complying with applicable Federal, State and local code for all events during the Term.
18. **Traffic Control.** The City shall be responsible for establishing appropriate levels of service for traffic control on public streets and shall be responsible for any and all costs for the providing this service for Team's games.
19. **Security.** NSS shall be responsible for all safety and security, including, but not limited to providing at least one security police officer during all home games. Compensation for officers will be the responsibility of NSS and processed through the Team's payroll service provider.
20. **Stadium Operations.** For all Team games, NSS to be responsible for the scheduling and training of personnel ("Stadium Employees") necessary to effectively and safely operate the Stadium including but not limited to ticket sellers, ticket takers and ushers. All wages, payroll taxes and worker's compensation insurance for Stadium Employees are the sole responsibility of NSS.

21. **Field Tarps.** On game days (Monday through Friday) the City will be responsible for the placement and removal of field tarps prior to 4:00 pm. On game days (Monday through Friday) NSS will be responsible for the placement and removal of field tarps after 4:00 pm. NSS will be responsible for the placement of field tarps following the conclusion of each game. On weekend game days, NSS is solely responsible for the placement and removal of field tarps.

22. **Capital Repairs, Maintenance & Replacement.** The City shall be responsible for all capital repairs, maintenance or replacements of permanent Stadium fixtures including but not limited to scoreboard, videoboard, plumbing, electrical, HVAC, painting, mechanical, stadium lighting, audio system, buildings and structures, pedestrian traffic surfaces, seating, playing field and back stop netting. It shall also be the City's responsibility to make any required alterations and improvements to the Premises which are necessary to comply with applicable statutes, ordinances, governmental rules, regulations and codes and to protect the safety of NSS's employees and guests. NSS shall be responsible for any maintenance, repairs or replacement caused by the willful misconduct or negligence of NSS including but not limited to its players and employees.

NSS and the City will mutually determine the schedule for capital repairs, maintenance or replacement.

NSS and the City shall jointly inspect the Stadium by May 1<sup>st</sup> of each use period and once again prior to the end of each use period to determine repair responsibilities in accordance with the terms above.

23. **Capital Improvements.** NSS shall provide the City with written proposals and recommendations for Stadium improvements and modifications with appropriate advance time to allow for proper review and preparation of necessary plans and cost estimates. All Capital Improvement projects which request City funding must be agreed upon by the Parties by July 1 of the year prior to the year in which the project is proposed to occur. This paragraph does not obligate the City to fund Stadium improvements in whole or in part with the exception of Office Space as identified in Section 8.

24. **Alterations and Improvements.** With approval by the City, NSS may make alterations, additions, and improvements to the Stadium. Any alterations and improvement provided by NSS that do not become fixtures of the stadium shall remain the property of NSS. Alterations, additions and improvements by either party becoming fixtures shall become property of the City unless otherwise noted herein.

25. **Warranties of Possession.** The City warrants and covenants that it has the full right to make and enter into this Agreement. NSS warrants and covenants that it has the full right to make and enter into this Agreement.

26. **Delivery of Premises.** The City agrees to deliver the Stadium in clean and operable condition at the beginning to the Term as listed in Section 1.
27. **Codes.** The City will provide a Stadium which meets all applicable electrical, fire, safety and health codes to support the programmatic needs of NSS.
28. **Taxes.** Other than sales tax, NSS shall not be responsible for the payment of use taxes, property taxes, property assessments or levies of any kind assessed against the Premises. Should any such amount be assessed by any governmental agency, the City will credit such payments against the rent and/or reimburse NSS in full, as necessary. The City shall reimburse any new local taxes assessed against NSS during the Term, such as an Amusement Tax.
29. **Surrender of Property.** Annually, on the ending time and date under Section 1, NSS shall peaceably surrender the Stadium in as good condition as the Stadium was at the time of delivery of the Stadium, with the exception of normal wear and tear.
30. **Naming Rights.** NSS and the City agree that the parties will work together to extend or rename the Stadium upon the conclusion of the current Stadium Naming Rights Agreement and jointly share in any proceeds generated.
31. **Other Events.** NSS retains the right to schedule Non-League events at the Stadium on a year round basis which do not conflict with previously schedule events at the Stadium. The City retains the right to approve all such events, but such right will not be unreasonably withheld.
32. **Insurance.** NSS shall at its own expense maintain in effect during the term of this contract the following insurance with limits as shown or greater:

General Liability (including automobile) and Liquor Liability in minimum limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate, combined single limit of \$1,000,000 bodily injury and \$1,000,000 property damage and \$2,000,000 general aggregate. The City shall be named as an Additional Insured and be given a 30 day notice of cancellations, non-renewal or significant change of coverage. NSS's insurance shall be written on a "primary" basis and the City's insurance program shall be in excess of all of NSS's available coverage.

Worker's Compensation at the statutory limit. Workers Compensation shall include a Waiver of Subrogation endorsement in favor of the City.

33. **Status of Parties.** By executing this Agreement, the parties agree that each is acting as an independent contractor and not as the agent or employee of the other. Each party agrees to pay, as they become due, all federal and state withholding and income taxes, as well as other payroll taxes, including Social Security taxes due and payable on the compensation earned by



their respective employees and to hold each other harmless from any and all taxes, penalties or interest which might arise by the failure to do so.

34. **Indemnification.** NSS agrees that it will indemnify and hold harmless the City of Johnstown their officer's, agents and employees, including staff, from any loss, cost, damage, expense, attorney's fees, and liability by reason of bodily injury, property damage, or both of whatsoever nature or kind, arising out of or as a result of the negligent act or negligent failure to act of NSS or any of its agents for employees. The City agrees that it will indemnify and hold harmless NSS, its officers, agents, and employees from any loss, cost, damage, expense, attorney's fees, and liability by reason of the negligent act or failure to act by the City or any of its agents for employees, including staff. In the event of loss, cost, damage or expense caused by the joint or concurrent negligence of NSS and the City, they shall be borne by each party in proportion to its negligence.

35. **Default.** If either party shall default in the performance of any obligations of said party to be performed under this Agreement and such a default shall continue for a period of thirty (30) days after written notice of such default shall be given to the defaulting party by the non-defaulting party, the non-defaulting party shall be entitled to terminate this Agreement and all other remedies at equity and law.

In addition to the remedies set forth above, in the event of default by NSS and after the expiration of the period to cure, in addition to any other remedies at equity and law that the City may have, the City shall have the immediate right of re-entry and to removal all persons and property from the Premises.

36. **Force Majeure.** The parties shall not be liable for failure of performance under this Use Agreement if occasioned by declared or undeclared war, flood, fire, embargo, governmental orders, regulations, governmental expropriation, interruptions of transportation facilities, labor strikes, public health emergency, terrorist event and disputes, or any other causes beyond the control of the parties.

37. **Entire Agreement.** This Agreement supersedes all previous contracts or agreements between the parties with respect to the same subject matter and does constitute the entire Agreement between the parties hereto. NSS and the City shall neither be entitled to other benefits than those herein specifically enumerated.

38. **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as nor be construed to be, a waiver of any subsequent breach hereof.

39. **Governing Law.** This Agreement shall be construed and governed by the laws of the State of Pennsylvania.

40. **Severability.** In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.
41. **Interpretation.** The parties hereto acknowledge and agree that (i) each party has reviewed the terms and provision of the Agreement; (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement; and (iii) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favor or against any party, regardless of which party was generally responsible for the preparation of this Agreement.
42. **Amendments.** This Agreement may be amended only by an instrument in writing signed by the parties hereto.
43. **Execution.** This Agreement and any amendments thereto shall be executed in duplicate copies on behalf of NSS and the City. Each duplicate copy shall be deemed an original, but both duplicate originals together constitutes one and the same instrument.
44. **Notices.** Notices or communications herein required or permitted shall be given the respective parties by registered or certified mail (said notices being deemed given as of the date of mailing) or by hand delivery at the following addresses unless either party shall otherwise designate its new address by written notice:

**NSS**

William R. Davidson  
National Sports Services  
3946 SW Canterbury Town Road  
Topeka, KS 66610

**CITY**

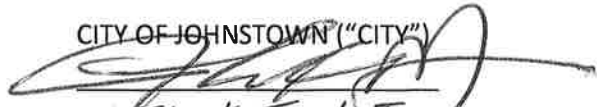
/////  
City of Johnstown  
401 Main Street  
Johnstown, PA 15901

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

NATIONAL SPORTS SERVICES ("NSS")

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

CITY OF JOHNSTOWN ("CITY")

  
By: John K. Trant, Jr.  
Its: Interim City Manager

**EXHIBIT A**

Field Equipment

**EXHIBIT B**

Concession Equipment