

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10447

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA AUTHORIZING AND APPROVING A SECOND AMENDMENT TO THE CONSENT ORDER AND AGREEMENT DATED JULY 14, 2010 AND FIRST AMENDED ON JULY 23, 2014 AND FURTHER AUTHORIZING THE INTERIM CITY MANAGER AND ANY OF HIS DESIGNEES TO TAKE ANY AND ALL ACTIONS NECESSARY TO EFFECTUATE SAME.

WHEREAS, on July 14, 2010 the Pennsylvania Department of Environmental Protection and the City of Johnstown entered into a Consent Order and Agreement requiring the City of Johnstown to undertake certain remedial repairs of the city-owned sanitary sewage collection system; and

WHEREAS, said Consent Order was amended by mutual agreement of the parties on July 23, 2014; and

WHEREAS, on or about July 8, 2020 the City of Johnstown and Greater Johnstown Water Authority entered into an Asset Purchase Agreement whereby the Authority agreed to purchase and then operate and maintain the city sewer system and to become a party to abide by the terms of the Consent Order and Agreement, as amended; and

WHEREAS, it is appropriate that the Consent Order and Agreement be further amended to add the Greater Johnstown Water Authority as an additional obligor to each of the obligations contained within the Consent Order and Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Interim City Manager and/or his designee is hereby authorized and directed to execute, on behalf of the City of Johnstown, the attached Second Amendment to the Consent Order and Agreement.

ADOPTED:

September 8, 2021

By the following Vote:

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

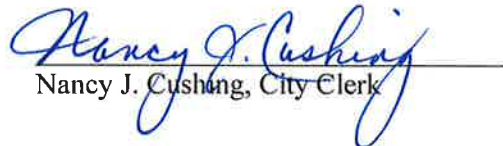
Nays: None (0)



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. 10447 as the same by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

City of Johnstown	:	
401 Main Street	:	Violations of the Clean Streams Law
Johnstown, PA 15901	:	
	:	
Greater Johnstown Water Authority	:	
640 Franklin Street	:	
Johnstown, PA 15907	:	

**SECOND AMENDMENT TO THE
CONSENT ORDER AND AGREEMENT**

This Second Amendment to the Consent Order and Agreement (“Second Amendment”) is entered into this day ____ of _____, 2021, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and the City of Johnstown (“Johnstown”) and Greater Johnstown Water Authority (“GJWA”).

The Department has found and determined the following:

- A. On July 14, 2010, the Department and Johnstown entered into a Consent Order and Agreement (“July 14, 2010 Consent Order and Agreement”).
- B. On July 23, 2014, the Department and Johnstown entered into a First Amendment to the July 14, 2010 Consent Order and Agreement. (“First Amendment”).
- C. The July 14, 2010 Consent Order and Agreement, *as amended*, required, *inter alia*, Johnstown to assess and repair its sewer system and identify and eliminate Sanitary Sewer Overflows (“SSOs”). Pursuant to Paragraph 7.a. of the July 14, 2010 Consent Order and Agreement, *as amended*, Johnstown submitted to the Department an SSO Abatement Plan proposing to relieve the hydraulic overload conditions and eliminate SSOs from the City Sewer System by replacing its sanitary sewer system, including all private sewer laterals that fail

televising or pressure testing. The replacement of private sewer laterals included those laterals that extended underneath the foundation of the structure served by the private sewer lateral.

D. On August 13, 2015, the Department approved the Johnstown SSO Abatement Plan. This plan included (i) an initial City SSO Abatement Plan submitted to the Department on August 5, 2013, (ii) Progress Reports Numbers 8 and 10, which progress reports were submitted to the Department under the requirements of the July 14, 2010 Consent Order and Agreement, *as amended*, and (iii) Johnstown Regulations for Lateral Televising Testing, which were submitted to the Department on August 11, 2015.

E. On or about July 8, 2020, Johnstown and GJWA entered into an Asset Purchase Agreement whereby GJWA agreed to purchase and then operate and maintain the City Sewer System and to become a party to and abide by the terms of the July 14, 2010 Consent Order and Agreement, *as amended*.

F. GJWA is a municipal authority operating pursuant to the Municipal Authorities Act, Act of June 19, 2001, P.L. 287, No. 22, *as amended*, 53 Pa.C.S.A. §§ 5601 *et seq.*, and is a municipality as defined by Section 1 of the Clean Streams Law, 35 P.S. § 691.1. GJWA's mailing address is 640 Franklin Street, Johnstown, PA 15907.

G. On March 10, 2021 the Department approved a Special Study of the City of Johnstown ("Special Study") submitted to the Department under the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535 (1965), No. 537, *as amended*, 35 P.S. §§ 750.1-750.20a ("Sewage Facilities Act"). The Plan provides the framework for addressing the purchase of the City Sewer System by GJWA.

H. The City is responsible for the implementation of Special Study. Section V of the Special Study requires Johnstown to cooperate with GJWA to implement Appendix E of the

Special Study, which calls for completing the replacement of the public sewer system, and to implement this Consent Order and Agreement, *as amended*.

I. Due to unforeseen circumstances associated with the Covid-19 Pandemic, amongst other causes, Johnstown and GJWA have requested extensions of certain deadlines in the July 14, 2010 Consent Order and Agreement, *as amended*.

After full and complete negotiation of all matters set forth in this Second Amendment and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Johnstown and GJWA as follows:

1. **Authority**. This Second Amendment is an Order of the Department authorized and issued pursuant Sections 5, 316, 402, and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402, and 691.610; Section 10 of the Sewage Facilities Act, 35 P.S. § 750.10, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings**.

a. Johnstown and GJWA agree that the findings in Paragraphs A through I are true and correct and, in any matter or proceeding involving Johnstown, GJWA and the Department, Johnstown and GJWA shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. In Paragraphs 3, 4, 5, 6, 7, 9, 11, 17, and 20 of the July 14, 2010 Consent Order and Agreement and First Amendment, “GJWA” shall replace “Johnstown” as the obligor for each obligation and requirement in each of those paragraphs.

4. Paragraph 5.m. of the July 14, 2010 Consent Order and Agreement and First Amendment is hereby replaced with the amended text as follows: *GJWA will reduce its flows to the JRA sanitary sewer system to a level of 625 Gallons per Day/Equivalent Dwelling Unit (“GPD/EDU”) on a peak hourly basis. If on or before December 31, 2022, GJWA fails to meet the 625 GPD/EDU benchmark, on or before March 1, 2023, GJWA shall submit to the Department for review and approval a plan to achieve compliance with the 625 GPD/EDU benchmark. (“Flow Reduction Plan”). Within thirty (30) days of receipt of comments from the Department, GJWA shall revise the Flow Reduction Plan to address completely and include all written comments provided by the Department. Upon approval of the Flow Reduction Plan, it shall be incorporated into this Consent Order and Agreement as an obligation of this Consent Order and Agreement for all purposes.*

5. Paragraph 8 of the July 14, 2010 Consent Order and Agreement, *as amended*, is hereby replaced with text as follows:

Cooperation.

a. Johnstown shall cooperate with GJWA to implement the requirements of this July 14, 2010, Consent Order and Agreement, as amended.

b. Johnstown and GJWA shall cooperate with each other and JRA and the Communities regarding flow monitoring and all other activities to eliminate SSOs and to bring the Dornick Point Sewage Treatment Plant into compliance with the Clean Streams Law.

6. In Paragraphs 2, 10, 14, and 15 of the July 14, 2010 Consent Order and Agreement and First Amendment, GJWA shall be an additional obligor of each of the obligations and requirements of those paragraphs.

7. Paragraph 13 of the July 14, 2010 Consent Order and Agreement, *as amended*, is hereby replaced with text as follows:

Stipulated Civil Penalties.

a. *In the event GJWA or Johnstown fail to comply in a timely manner with any term or provision of their respective obligations under this Consent Order and Agreement, the applicable party shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty of \$500 per day, per violation.*

b. *From the date of execution of the Second Amendment to the Order and Agreement until December 31, 2023, GJWA shall pay a stipulated penalty of \$1,000 for each month in which one or more SSOs occur on the City Sewer System.*

c. *From January 1, 2024, through the termination of this Consent Order and Agreement, GJWA shall pay \$10,000 per month for each month in which an SSO occurs on the City Sewer System.*

d. *Stipulated civil penalties shall be payable monthly on or before the 30th day of each succeeding month. The payment shall be made by corporate check or the like, made payable to the "Commonwealth of Pennsylvania Clean Water Fund," and sent to the individual at the address set forth in Paragraph 18 (Correspondence with the Department), below.*

e. *Any payment under this Paragraph shall neither waive GJWA's or Johnstown's respective duties to meet their respective obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel GJWA or Johnstown to comply with the terms and conditions of this Consent Order and Agreement. The payment only resolves GJWA's or Johnstown's liability for civil penalties arising from the violation of this Consent Order and Agreement for which payment is made.*

f. *Stipulated civil penalties shall be due automatically and without notice.*

g. *All payments shall be due by the 30th day of each succeeding month in which a violation or violations of this Consent Order and Agreement or an SSO occur.*

8. Paragraph 16 of the July 14, 2010 Consent Order and Agreement, *as amended*, is hereby replaced with text as follows:

Liability of Operator. *Johnstown and GJWA shall be liable for any of their respective violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. GJWA shall also be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns*

9. Paragraph 19 of the July 14, 2010 Consent Order and Agreement, *as amended*, is hereby replaced with text as follows:

Correspondence with the GJWA and Johnstown.

a. All correspondence with GJWA concerning this Consent Order and Agreement shall be addressed to:

*Greater Johnstown Water Authority
Michael Kerr, General Manager
640 Franklin Street
Johnstown, PA 15907
Phone: 814-533-4300
Email: mkerr@rdm-gjwa.com*

b. All correspondence with Johnstown concerning this Consent Order and Agreement shall be addressed to:

*City of Johnstown
Daniel Penatzer, City Manager
401 Main Street
Johnstown, PA 15901
Phone: 814-533-2001
Email: dpenatzer@cojtwm.com*

c. GJWA and Johnstown shall notify the Department whenever there is a change in the contact person or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the respective addresses, above.

10. Paragraph 27 of the July 14, 2010 Consent Order and Agreement, *as amended*, is hereby replaced with the amended text as follows:

Termination of Obligations. Except for GJWA's and Johnstown's respective continuing obligations to pay all fees and penalties which have accrued under this Consent Order and Agreement prior to December 31, 2028, this Consent Order and Agreement shall terminate on December 31, 2028.

11. All other provisions of the Consent Order and Agreement not explicitly revised herein remain unchanged and specifically agreed to by Johnstown and GJWA as constituting an Order from the Department. GJWA agrees to comply with all the provisions in the July 14, 2010 Consent Order and Agreement as amended by the First Amendment and Second Amendment.

12. **Resolution.** Attached as Exhibit D is a resolution of Johnstown authorizing its signatories below to enter into this Second Amendment.

13. **Resolution.** Attached as Exhibit E is a resolution of GJWA authorizing its signatories below to enter into this Second Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to the Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Johnstown and GJWA certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Second Amendment to the Consent Order and Agreement on behalf of Johnstown and GJWA, respectively; that Johnstown and GJWA consent to the entry of this Second Amendment to the Consent Order and Agreement as a final ORDER of the Department; and that Johnstown and GJWA hereby knowingly waive their respective rights to appeal this Second Amendment to the Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any

other provision of law. Signature by Johnstown's attorney and GJWA's attorney certify only that the agreement has been signed after each respective party consulted with counsel.

FOR THE CITY OF JOHNSTOWN

FOR THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Name:
Title: *Interim City Manager*

Christopher J. Kriley, P.E.
Regional Manager
Clean Water Program
Southwest Region



Name:
Title: *City Clerk*

Attorney for Johnstown

Bruce M. Herschlag
Assistant Regional Counsel

FOR THE GREATER JOHNSTOWN WATER AUTHORITY



Name:
Title:



Name:
Title:



Attorney for Greater Johnstown Water Authority

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10448

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN,
PENNSYLVANIA, ADOPTING A CITY OF JOHNSTOWN
SOCIAL MEDIA NETWORKING POLICY.**

WHEREAS, the City Council of the City of Johnstown wishes to utilize various forms of social media in order to disseminate information to the residents of the City of Johnstown; and

WHEREAS, City Council desires to put in place certain policies to govern the use of said social media.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Johnstown hereby adopts the Social Media Networking Policy attached hereto.

ADOPTED:

September 8, 2021

By the following Vote:

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

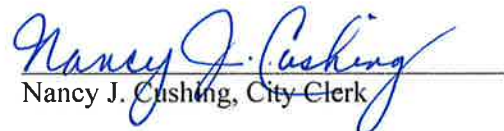
Nays: None (0)



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. 10448 as the same by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

Purpose

Social media networking pages administered by the City of Johnstown are for the purpose of information dissemination only. Social Media pages are not intended to be used as channels to air grievances or serve as a public forum, but rather as a medium to keep the public updated on important public safety information and City-related events, programs and materials. The City reserves the right to delete submissions that violate the City Social Media Policy. The City of Johnstown will utilize social media to further the goals of the city and to disseminate and clarify relevant information regarding its services, events, programs and projects. Management of the social media platform will be administered by the City Manager or his/her designee.

Social media networking pages administered by the City of Johnstown do not serve as the City's primary online presence nor the primary point of electronic contact. The City website (cityofjohnstownpa.net) will remain as such.

Social Media posts do not serve as formal requests for service or information from the City. Social media requests are not a substitute for formal requests for information under the Right-to-Know law. A Right-to-Know request may be submitted in writing to the City Right-to-Know Officer. Grievances discussed on social media platforms are not official requests for action. Requests for action may be delivered in person, via writing, or via telephone to City Hall, 401 Main Street, Johnstown, PA, 15901.

Comments by the public on social media pages created by the City of Johnstown do not reflect in any way the opinions and positions of the City of Johnstown, nor does it reflect the views of staff and officials.

City social media networking sites are not monitored at all times, and therefore, should not be used to report emergencies or submit time-sensitive materials. All emergencies should be reported to emergency services by dialing 9-1-1.

Interactions containing any of the following improper content will not be permitted on the City's social media pages and are therefore subject to removal or regulation by the Social Media Administrator or designee(s):

1. Content containing profane language
2. Content that promotes, fosters, or perpetuates discrimination including, but not limited to, race, creed, ethnicity, national origin, gender and gender identity, age, sexual orientation, religion, marital status, financial status, and physical or mental abilities
3. Sexual Content
4. Content that defames any person or organization
5. Content that is hateful, incites violence or contains harassing behavior
6. Private/confidential information, and/or information that may compromise the safety or security of the public and individuals (Doxing). Confidential municipal information is not to be released.
7. Encouragement and/or incitement of illegal activity
8. Solicitation of commerce or personal financial gain, including advertising non-government related business or products
9. Materials violating intellectual property rights or violates a legal ownership of another party.
10. Content that violates Federal, State, County, or local law.
11. Content that violates the Terms of Service of the social media platform utilized.

All comments and materials posted to the City page are subject to the City's social media policy as well as the policy of each social media platform.

The City reserves the right to remove content, including comments, that violate the guidelines listed above. Removed comments will be documented as per requirements established by the Commonwealth of Pennsylvania.

This policy is subject to change and may be amended as needed.

City of Johnstown Social Media Networking Policy

Definitions (relating to Social Media Networking)

Algorithm- The sorting of posts according to relevance rather than publish time. Algorithms use the social media habits of a user to prioritize and tailor content viewed by the user to increase the likelihood interaction with content.

Comment - A response to a post on a social network site.

Content- Refers to media posted or interacted with on a social networking site by a user. Content can be in the form of text, links, videos, blogs, images, etc.

Feed - Place where posts from a user's following are displayed.

Follower - Someone who chooses to receive updates and see posts from a user, business or brand on a social media platform. Users automatically "follow" those they are friends with on social media, making posts by friends visible on their dashboard.

Following - Refers to the collection of users/ "followers" that are subscribed to a particular user.

Hashtag - A searchable word or phrase attached to a hashtag symbol (#) relating to the content of a post that is typed within the caption to identify content on that topic.

Notification – An alert indicating new activity on social media, such as a "like" or "tag" on a post.

Platform - A web and/or mobile based internet application that allows for the exchange of content created by users. (i.e.: Facebook, Twitter, Instagram, Pinterest, Tumblr, Snapchat, YouTube, LinkedIn etc.)

Post- Content created or shared to a user profile on all socials. (Twitter refers to posts as "tweets.")

Profile - The page associated with a user's account. Profiles show posts created and shared by the user as well as images and other information they choose to display, such as a user bio.

Reaction - A quick response to a post or comment that may be chosen from a list of programmed reactions. A "like" is an example of a reaction. The other five reaction options include: "love," "haha," "wow," "sad" and "angry." A "reaction" is exclusive to Facebook.

Replies - A response to a comment on a social media post. (Twitter refers to all comments *and* replies as "replies")

Share - To re-post an existing post to share it with one's network of followers.

Social Media: Referring collectively to the websites and applications that allow users to connect electronically with each other and publish and share content through various platforms.

Tag – To mention another user in a post or comment. Those "tagged" in a post will be directly notified of the tag.

Thread - A series of comments and replies to a particular post on a social media platform.

Timeline (Facebook) - A place on a user's profile where the collection of posts created, published or shared by that user are visible.

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10449

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN,
PENNSYLVANIA ENTERING AN AGREEMENT WITH THE EADS GROUP, INC.
FOR DESIGN AND CONTRACT ADMINISTRATION FOR REPAIRS TO CHENEY
RUN AND AUTHORIZING THE INTERIM CITY MANAGER TO TAKE ALL
ACTIONS NECESSARY TO EFFECTUATE SAME.**

WHEREAS, the City Council of the City of Johnstown, Pennsylvania finds it to be in the City's best interest to retain The EADS Group, Inc. to provide design services and contract administration with respect to necessary repairs to the Cheney Run flood wall; and

WHEREAS, the City desires to enter into an Agreement specifically delineating the role of The EADS Group, Inc. relative to the design and contract administration of said project.

NOW, THEREFORE, BE IT RESOLVED, that the Interim City Manager and/or his designee is hereby authorized and directed to execute, on behalf of the City of Johnstown, the attached agreement with The EADS Group, Inc. for design services and contract administration for repairs to Cheney Run.

ADOPTED:

September 8, 2021

By the following Vote:

Yeas: Mr. Britt, Mr. Capriotti, Mayor Janakovic, Rev. King, Mrs. Mock, Mr. Vitovich, Mr. Arnone. (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. **10449** as the same by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

Appendix 3

August 31, 2021

City of Johnstown
401 Main St.
Johnstown, PA 15901

**PROFESSIONAL SERVICES FEE PROPOSAL
CHENEY RUN CHANNEL WALL REPAIR - BISHOP MCCORT**

Dear Mr. Ritter:

The EADS Group, Inc. (EADS) is pleased to provide this Professional Services Fee Proposal to rehabilitate a portion of the Cheney Run Channel Wall Repair adjacent to Bishop McCort High School. We understand our Scope of Work for this project will consist of the following:

Detail Summary of Scope of Work:

1. Provide engineering services to design, bid and periodically inspect the rehabilitation of approximately 65 feet of concrete and stone channel wall utilizing the data to be obtained from field surveys included in this proposal. This project will be incorporated into and bid with the Sam's Run Flood Wall project that is currently under design.
2. EADS will prepare drawings, specifications and other contract documents for the channel wall rehabilitation, at the discretion of the engineer.
3. EADS will prepare and submit an Erosion & Sedimentation Control Plan on behalf of the Owner for regulatory agency approval.
4. EADS will prepare and submit a General Permit 11 (GP-11) application on behalf of the Owner for regulatory agency approval and it is assumed that no hydrologic & hydraulic analysis will be necessary.
5. EADS will prepare one property plat associated with the acquisition of any temporary or permanent right-of-way necessary to complete the project.
6. EADS will prepare an opinion of the probable construction costs of the project.
7. EADS will provide construction phase services including attendance at the pre-bid meeting, attendance at bid opening, attendance at pre-construction conference, construction administration, RFI review/response, periodic construction observation, shop drawing and submittal review and construction consultation.



8. EADS will provide Bidding & Award Services (including the preparation of Upfront Specifications).
9. All Authorities Having Jurisdiction (AHJ) vary in their code review process and requirements. The fee provided herein is based on typical submission items generally acceptable to most AHJ's for Permit Review & Approval. If special information is requested by the AHJ, additional Professional Service Fees may be requested prior to preparing any additional items.
10. EADS will provide Project Management Services administering contractor payment applications, change orders, etc.

Our proposal is based on the following assumptions and stipulations:

1. This proposal does not include any services beyond those as outlined within the 'Detail Summary of Scope of Work' (Items 1 thru 10).
2. This proposal does not include any site design.
3. This proposal does not include any negotiations with property owners associated with acquiring temporary or permanent right-of-way.
4. This proposal does not include fire protection, mechanical, plumbing, or electrical engineering services.
5. Structural Analyses will not be performed under this proposal.
6. Remediation design of any hazardous material that may be encountered is not included in this scope-of-work.
7. This proposal does not include wetlands delineation or any other environmental investigations.
8. All applicable Permit Application, Review and Inspection Fees required by the Code Authorities having jurisdiction will be paid directly by the Owner and are not included in the fees mentioned.

The City of Johnstown shall pay the engineer as follows:

Basic Services (Surveys, Design, Bidding and Construction Admin.): \$61,000 (Lump Sum)

Additional Services (Estimated Hourly):

*Periodic Construction Observation \$5,000

Total Estimated Additional Services: \$5,000

TOTAL ESTIMATED COMPENSATION: \$66,000

**Periodic Construction Observation by the Engineer will be provided on the basis of the Engineer's Direct Labor Cost times a factor of 3.0 in order to observe and document the Contractor's general conformance with the plans and specifications during construction. The estimated fee of \$5,000 is based upon part-time services, approximately 10 hours per*

City of Johnstown
Cheney Run Channel Wall Repair – Bishop McCort
August 31, 2021

week for 5 weeks of construction. If additional effort is necessary to observe and document proper construction, at the discretion of the Engineer, adjustments in the fee will be made.

It is anticipated that a biddable set of plans and specifications will be provided for the City's review within 180 days of the acceptance of this proposal.

If you are satisfied with our proposal to provide Engineering Services to the City, we have enclosed our Form of Agreement between Owner and Engineer for Professional Services along with our billing rates and our Standard Terms and Conditions for your review and approval. If acceptable, please sign both copies of the Agreement in the space provided and return one (1) executed copy of the Agreement to my attention at The EADS Group, Inc. This will constitute an agreement between the City of Johnstown and The EADS Group, Inc. to begin work on the project.

Thank you for the opportunity to submit this proposal for this exciting project. We are prepared to begin work immediately upon receipt of a signed agreement. Please do not hesitate to contact Todd Brewer, P.E. at (814) 445-6551 if you should have any questions.

Respectfully submitted,
The EADS Group, Inc.



By: David M. Yahner, P.E.
Vice- President

cc: File
Todd R. Brewer, PE, CBSI (EADS)



**THE
EADS
GROUP**

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ ("Effective Date") between the City of Johnstown ("Owner") and The EADS Group, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Cheney Run Channel Wall Repair -- Bishop McCort ("Project").

Engineer's services under this Agreement are generally identified as follows: Engineering services for this project will include survey, design, bidding, periodic construction observation, and construction administration for the rehabilitation of approximately 65 feet of the Cheney Run Channel wall adjacent to Bishop McCort, City of Johnstown, Cambria County, Pennsylvania as outlined in the attached proposal in the "Detail Summary of Scope of Work". ("Services").

Owner and Engineer further agree as follows:

1.01 Basic Agreement and Period of Service

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above ("Additional Services").
- B. Engineer shall complete its Services within the following specific time period: Engineer shall complete its Services within a reasonable period of time.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

2.01 Payment Procedures

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in

b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I.

c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.

d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
 - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole

risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;

3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
 - H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.
 - I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
 - J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
 - K. This Agreement is to be governed by the law of the state in which the Project is located.
 - L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 Definitions

- A. **Constructor**—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner’s work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. **Constituent of Concern**—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

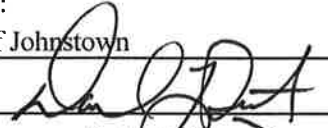
8.01 Attachments:


Appendix 1, Engineer's Standard Hourly Rates

Appendix 2, EADS Standard Contract Terms and Conditions – Should any provisions of this Appendix conflict with the terms and conditions of the above Agreement, the Agreement terms and conditions dictate over those of the Appendix.

Appendix 3, Professional Services Fee Proposal, Cheney Run Channel Wall Repair – Bishop McCort, dated August 31, 2021.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:
 City of Johnstown
 By: 
 Print name: Robert Ritter Daniel Penatier
 Title: Finance Director City manager
 Date Signed: 9/15/21

Engineer:
 The EADS Group, Inc.
 By: 
 Print name: David M. Yahner, P.E.
 Title: Vice-President/Somerset Office Manager
 Date Signed: 08/31/2021

Engineer License or Firm's Certificate No. (if required):
Not required.
 State of: Pennsylvania

Address for Owner’s receipt of notices:
401 Main St.
Johnstown PA 15901

Address for Engineer’s receipt of notices:
450 Aberdeen Drive
Somerset, PA 15501

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated _____.

Engineer's Standard Hourly Rates

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 2.01, 2.02, and 2.03, and are subject to annual review and adjustment.

B. Schedule of Hourly Rates:

Refer to attached "The EADS Group, Inc., 2021 Billing Range of Rates"

Appendix 1, Standard Hourly Rates Schedule.

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The EADS Group, Inc.
2021 BILLING RANGE OF RATES

CLASSIFICATION	RATE
CLERICAL	
Clerical	\$44 - \$56
Administrative Assistant	\$54 - \$66
DRAFTING	
CADD Operator/Draftsman	\$56 - \$84
GIS Technician	\$59 - \$84
ENVIRONMENTAL	
Environmental Specialist	\$58 - \$74
Senior Environmental Specialist	\$104 - \$118
Sewage Enforcement Officer (SEO)	\$90 - \$104
Geologist	\$94 - \$107
INSPECTION	
Resident Inspector	\$58 - \$74
Senior Resident Inspector	\$73 - \$87
OPERATOR	
Water/Wastewater Operator	\$83
PLANNING	
Jr. Planner	\$69 - \$72
Planner	\$98 - \$105
LEAK DETECTION	
• One-Man Crew	**
• Two-Man Crew	**
SURVEYING	
UAV Crew (Drones)	***
Photogrammetrist	\$109
Survey Crew:	
• Two-Man Crew	\$97 - \$134
• Three-Man Crew	\$130 - \$167
Chief of Surveys	\$104 - \$137
ENGINEERING	
Engineering Intern/E. I.T.	\$83 - \$93
Engineering Technician	\$83 - \$93
Senior Engineering Technician	\$101 - \$117
Engineer	\$108 - \$137
Senior Engineer	\$142 - \$167
ARCHITECTURE	
Architectural Designer	\$83 - \$99
Landscape Architect	\$80 - \$90
Senior Landscape Architect	\$142 - \$160
Architect	\$126 - \$144
Senior Architect	\$150 - \$167
MANAGEMENT	
Project Manager	\$131 - \$151
Department Manager	\$151 - \$173
Principal	\$180
REIMBURSABLE EXPENSES	
Mileage	\$575****
Out-of-Pocket Expenses - Project expenses such as telephone, printing, posting, advertisements, legal notices, fees, permits, travel, business-related meals, lodging, etc. at cost.	

* Billing rates will be based upon the actual individual being utilized on the contract.

** Different rates may apply for emergency callouts.

*** Price proposal will be provided per project.

**** Or current PennDOT approved mileage rate.

Appendix 1, Standard Hourly Rates Schedule.

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 and American Society of Civil Engineers. All rights reserved.

This is **Appendix 2, Standard Contract Terms and Conditions**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated _____.

STANDARD CONTRACT TERMS AND CONDITIONS

Where used, the term "Client" shall mean City of Johnstown, Cambria County, Pennsylvania. The term "Engineer" shall mean The EADS Group, Inc.. The term "Project" shall mean both the services rendered or to be rendered by the Engineer and the undertaking to be performed as a result of the Engineer's services.

1. Client agrees to assist the Engineer by placing at the Engineer's disposal, all available pertinent information including previous reports, surveys and all other data relative to rendering design services. Engineer is entitled to rely on the accuracy of information provided by the Client.
2. Client will arrange for access to and make all provisions for Engineer to enter upon public and private property, as required for Engineer to perform design services.
3. Client shall be responsible for such legal services as Client may require or Engineer may reasonably request with regard to legal issues pertaining to the Project.
4. All documents of any kind prepared by Engineer and the Engineer's consultants in performing services on this Project are instruments of service and therefore remain the property of Engineer and may not be used by Client or anyone else, except on this project, without the prior written consent of Engineer. Any use other than that specifically called for in their preparation shall be without liability on the part of the Engineer.
5. In any dispute involving the accuracy of surveying services, Engineer will have no liability to anyone if reference points set by Engineer have not been preserved. Engineer's field notes shall govern in the resolution of any dispute regarding surveying services.
6. Engineer and the Engineer's consultants will strive to perform services under this Agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.
7. Client understands that Engineer cannot, and does not, assure favorable or timely action by any governmental entity.
8. Engineer will not furnish copies of the Engineer's design including project reports, specifications or drawings to third parties without permission of the Client, unless ordered to do so by a Court of competent jurisdiction.
9. Client agrees that if additional services are requested from Engineer by Client, fees for such services will be incurred on the basis of time and material unless the parties mutually agree upon other terms.
10. Invoices will be rendered monthly and are due and payable in full upon receipt. If Client fails to make any payment due Engineer for services, expenses and charges within thirty (30) days after receipt of Engineer's invoice, the amounts due will be increased at the rate of 1% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, after giving seven (7) days' written notice to Client, Engineer may suspend services under this Contract without obligation or liability to the Client until Engineer has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. The Client shall have twenty (20) days from the date of the invoice to advise the Engineer of any portions of the invoice disputed by the Client. After twenty days, the invoice will be deemed acceptable by the Client. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment and the undisputed portion shall be paid in accordance with the terms of this paragraph.

24. To the maximum extent permitted by law, the Client agrees to limit the Engineer's, its officers', employees', consultants', agents and insurance policies' liability for the Client's damages to the sum of \$25,000.00 or the Engineer's fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pleaded or asserted, including claims of breach of contract, breach of warranty, negligence or other tort, or otherwise.
25. Notwithstanding any other provision of this Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the Client or the Engineer, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.
26. The services of outside consultants, specialists or testing agencies shall be invoiced at cost to Engineer plus ten (10) percent.
27. This contract is governed by the laws of the Commonwealth of Pennsylvania.
28. The individual(s) executing this contract, if acting on behalf of a sole proprietorship, partnership, municipality, municipal authority, corporation, or funding agency, represent that they have the authority to do so.
29. Evaluation of the Client's budget for the Project, the preliminary estimate of the Cost of Work and the updated estimates of the Cost of the Work prepared by the Engineer represent the Engineer's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Engineer nor the Client has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Client's budget for the Project, or from any estimate of the Cost of the Work evaluation prepared or agreed to by the Engineer.
30. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Engineer's services are substantially completed.
31. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
32. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Client, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

License Agreement [Standard Documents version]

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3. Copy the attached EJCDC document into any machine-readable or printed form for backup or modification purposes in support of your use of the document.

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1. To comply with all terms, conditions, and instructions in this License Agreement.
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Alexandria, VA 22314
Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

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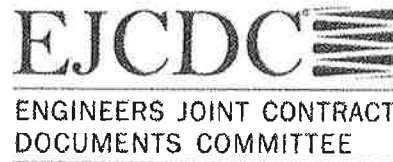
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(202) 347-7474
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(800) 548-2723
www.asce.org

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**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



SPECIAL NOTE ON USE OF THIS FORM

This abbreviated Agreement form ("Short Form") is intended for use only for professional services of limited scope and complexity. It does not address the full range of issues of potential importance to the parties. Depending on the scope and complexity of the services and the project, the Owner and Engineer may be better served by using the Agreement Between Owner and Engineer for Professional Services (EJCDC® E-500, 2014 Edition), or one of the several special-purpose EJCDC professional services agreement forms.

If the Owner intends to enter into a construction contract for implementation of a design prepared under the Short Form, or otherwise associated with professional services provided under the Short Form, Owner may wish to consider using EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition, and other 2013 EJCDC Construction Series documents. The terms and provisions used in EJCDC® C-700 and the other EJCDC Construction Series documents are consistent with those used in the Short Form.

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CITY OF JOHNSTOWN,
CAMBRIA COUNTY, PENNSYLVANIA
RESOLUTION NO. 10450

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:

September 8, 2021

By the following Vote:

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

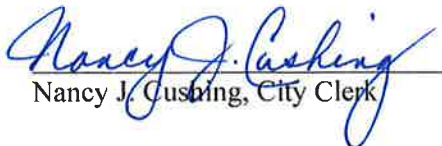
Nays: None (0)



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. **10450** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



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, 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 September 9, 2021, and expiring on July 31, 2022.
- B. **Rental/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 overtime incurred by City employees for purposes of opening and maintaining the facility 1) after 3:00 p.m. on any Monday through Friday and/or 2) all day on any Saturday and Sunday. The User will consult and work with the City of Johnstown Public Works Department regarding confirmation of the incurrence of overtime, the amount of compensation owed, the number of employees involved, and the hours of duty. Any/all such overtime costs shall be paid by the User to the City.
 - 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
- **FRESHMAN FOOTBALL** – Afternoon Games
- **SOCCER** - Afternoon games
- **PAROCHIAL LEAGUE FOOTBALL AND SOCCER LEAGUES** – 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:**

- **NON-VARSITY FOOTBALL NIGHT EVENT** – Soccer, Junior Varsity, Freshmen
- **ADDITIONAL PRE-SEASON CONDITIONING EVENTS:** Any pre-season conditioning program event not occurring on a Tuesday or Thursday

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.

d. **The following activities shall subject to a Rental/Usage Fee of \$650 per program**

PRE-SEASON CONDITIONING PROGRAM – June, July, and August, subject to pre-approved schedule on Tuesdays and Thursdays.

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, including the locker room 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
SOCCER 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.
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.

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 amounts of \$500,000 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 upon receipt of notice from the City of Johnstown 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. A judgment obtained in any such action or proceeding shall be conclusive, in any action by the City against the undersigned when so notified as to the existence of a defect or other cause of the injury or damage, as to the liability of the City to the plaintiff in the first named action, and as to the amount of the damage or injury. The City of Johnstown reserves all available rights to maintain an action against the undersigned to recover the amount of the judgment together owed by the User under this Agreement, together with all expenses incurred by the City in the suit.

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:


CITY MANAGER

BISHOP MCCORT


WITNESS

PRINTED NAME OF ABOVE

Address of User: