

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10152

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN ALL AGREEMENTS AND OTHER CLOSING DOCUMENTS TO PROVIDE LOAN SUBORDINATION AGREEMENT FOR HADIX GREENE PARTNERSHIP/HADREENE, INC.

WHEREAS, The Loan Committee of the City of Johnstown received a request for a loan subordination on an existing loan for the Hadix Greene Partnership and Hadreene, Inc.(d.b.a. Aces); and,

WHEREAS, The City of Johnstown Loan Committee met and approved the request for loan subordination during a public meeting held on December 20, 2018; and,

WHEREAS, the subordination is a required condition for the primary lender, Somerset Trust Company; and,

SO NOW, THEREFORE, BE IT RESOLVED that the City Manager is hereby authorized, and directed to execute all necessary agreements, subject to review by legal counsel, for closing documents for the Hadix Greene Partnership and Hadreene, Inc. (d.b.a. Aces).


ADOPTED: February 13, 2019

By the following vote:

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

Nays: None (0)


Absent: Mrs. Stanton, Mr. Williams, Mr. Britt. (3)



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. **10152** as the same adopted by the City Council of the City of Johnstown Pennsylvania.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10153

A RESOLUTION OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO EXECUTE AN AGREEMENT WITH STRAW CONSTRUCTION CO., INC. AWARDED CONTRACT 2018-08 FOR THE CONSTRUCTION OF THE ROXBURY PARK UPGRADES PROJECT.

WHEREAS, the EADS Group Inc. on behalf of the City of Johnstown advertised and opened bids for the construction of the Roxbury Park Upgrades Project, and

WHEREAS, bids were advertised in a paper of general circulation and the bids were opened at 11:00 am on July 31, 2018, and

WHEREAS, Straw Construction Co., Inc. is the apparent low bidder for Contract 2018-08, Roxbury Park Upgrades Project, with a Total Base Bid with Additive Alternate Bid #1, Alternate Bid #8, and Alternate Bid #12 for a total of \$244,492.00.

NOW THEREFORE BE IT RESOLVED, CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZES THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY TO AWARD CONTRACT NO. 2018-08 TO STRAW CONSTRUCTION CO., INC. TO CONSTRUCT THE ROXBURY PARK UPGRADES PROJECT.

ADOPTED:

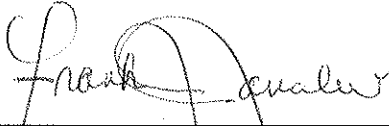
February 13, 2019

By the following vote:

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


Nays: None (0)

Absent: Mr. Williams, Mr. Britt, Mrs. Stanton (3)



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. **10153** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

Roxbury Park Upgrade / Project

Revenue Source/ Line Item:

22.360.36.081.00	Recreation Grant for Roxbury	225,000
22.392.04.024.00	Transfers General Fund	31,000

Expense Source/ Line Item:

22.450.48.010.00	Recreation Roxbury Grant Rehab Expenses	225,000
22.450.48.010.05	Recreation Roxbury City Match for Grant	31,000

**ROXBURY PARK UPGRADES PROJECT
 CONTRACT NO. 2018-08
 CONTRACT AWARD**

Item	Description	Contractor	Price
Base Bid	ADA Parking, Softball Field 1 Drainage Improvements, Field 4 Backstop	Straw Construction	\$ 148,613.00
Alternate #1	Field #2 Drainage Improvements	Straw Construction	\$ 48,047.00
Alternate #8	Field #2 Backstop and Fencing	Straw Construction	\$ 27,498.00
Alternate #12	Field #2 Infield	Straw Construction	\$ 20,334.00
Total Construction Cost			\$ 244,492.00
Engineering Cost			\$ 25,875.00
Total Project Cost			\$ 270,367.00
CFA Grant Amount			\$ 225,000.00
Roxbury Civic Group Donation			\$ 5,000.00
Required City of Johnstown Grant Match			\$ 40,367.00

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

THIS AGREEMENT is by and between The City of Johnstown (“Owner”) and
Straw Construction Co., Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

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

CONTRACT NO. 2018-08 - ROXBURY PARK UPGRADES PROJECT

ARTICLE 2 – THE PROJECT

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

Contract No. 2018-08 Base Bid with Alternate Bid #1, Alternate Bid #8, and Alternate Bid #12 for the construction of the Roxbury Park Upgrades consisting of ADA parking improvements, drainage improvements for Softball Field #1, new backstop and fencing for Field #4, drainage improvements for Field #2, new backstop and fencing for Field #2, and infield mix for Field #2.

ARTICLE 3 – ENGINEER

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

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

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Contract Times: Days*

A. The Work will be substantially completed within 80 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 90 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

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

4.04 *Special Damages*

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

ARTICLE 5 – CONTRACT PRICE

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

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

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

6.03 *Final Payment*

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

ARTICLE 7 – INTEREST

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

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

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

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 7, inclusive).
 - 2. Performance bond (pages 1 to 3, inclusive).
 - 3. Payment bond (pages 1 to 3, inclusive).
 - 4. General Conditions (pages 1 to 65, inclusive). Not attached but incorporated by reference.
 - 5. Supplementary Conditions (pages 1 to 19, inclusive). Not attached but incorporated by reference.
 - 6. Administration Documents and Specifications as listed in the table of contents of the Project Manual. Not attached but incorporated by reference.
 - 7. Contractor's Bid Package (pages 1 to 99, inclusive). Not attached but incorporated by reference.

8. Drawings (not attached but incorporated by reference) consisting of 13 sheets with each sheet bearing the following general title: [C-100]
 9. Addenda (numbers 1 to 1, inclusive). Not attached but incorporated by reference.
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid Form (pages 004143-3 to 004143-7, inclusive).
 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

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

10.02 Assignment of Contract

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

10.03 Successors and Assigns

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

10.04 Severability

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

10.05 *Contractor's Certifications*

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

10.06 *Other Provisions*

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

PERFORMANCE BOND

CONTRACTOR *(name and address)*:
Straw Construction Co., Inc.
P.O. Box 9
Boswell, PA 15531

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:
The City of Johnstown
401 Main Street, Johnstown, PA 15901

CONSTRUCTION CONTRACT

Effective Date of the Agreement: **September 13, 2018**

Amount: **\$244,492.00**

Description *(name and location)*: Roxbury Park Upgrades Project, Contract 2018-08. The project is located at Roxbury Park in the City of Johnstown.

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: None See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal *(seal)*

Surety's Name and Corporate Seal *(seal)*

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
- 7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Definitions
- 14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR (name and address):

Straw Construction Co., Inc.
P.O. Box 9
Boswell, PA 15581

SURETY (name and address of principal place of business):

OWNER (name and address):

The City of Johnstown
401 Main Street, Johnstown PA 15901

CONSTRUCTION CONTRACT

Effective Date of the Agreement: September 13, 2018

Amount: \$244,492.00

Description (name and location): Roxbury Park Upgrades Project, Contract 2018-08. The project is located at Roxbury Park in the City of Johnstown.

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)
Contractor's Name and Corporate Seal

(seal)
Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

- ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
 2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
 3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
 4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
 5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
 6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
 7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
 8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall

be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or

Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

**CITY OF JOHNSTOWN, PENNSYLVANIA
RESOLUTION NO. 10154**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA, AUTHORIZING THE AMENDMENT OF THE AGREEMENT BETWEEN THE CITY OF JOHNSTOWN AND HJA STRATEGIES, LLC FOR PURPOSES OF EXTENDING THE CONTRACT TERMINATION DATE FROM SEPTEMBER 30, 2018 TO JANUARY 31, 2020, WITH NO INCREASE IN THE AMOUNT OF SAID CONTRACT.

WHEREAS, the Department of Community and Economic Development (“DCED”) has provided funding for a valuation of assets study for the City of Johnstown; and

WHEREAS, the City entered into an agreement with HJA Strategies, LLC for a valuation of assets study in May of 2018 which continued through September 30, 2018; and

WHEREAS, the study requires additional assistance from HJA Strategies, LLC for purposes of the potential disposition strategy for the assets included within the study; and

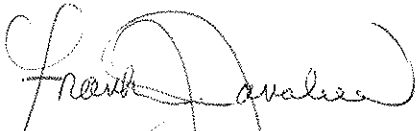
WHEREAS, HJA Strategies, LLC has proposed to extend the contract term without implementing any corresponding increase in the total contract cost of \$68,500; and

WHEREAS, the valuation of assets and potential disposition of assets is critical to the Exit Plan adopted by the City as recommended by the Act 47 Recovery Team;

NOW THEREFORE, BE IT RESOLVED that an amendment to the Agreement between the City of Johnstown and HJA Strategies, LLC extending the contract termination date from September 30, 2018 to January 31, 2020 is hereby authorized and the City Manager and City Solicitor are further authorized to take any/all actions necessary to effectuate same, provided that there shall at no time be any increase in the contract cost implemented as a result of said amendment.

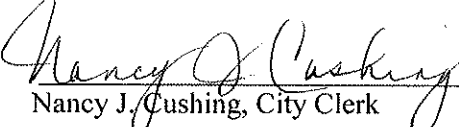
ADOPTED: February 13, 2019

By the following Vote:
Yeas: Mayor Janakovic, Rev. King, Mrs. Mock, Mr. Vitovich. (4)
Nays: None (0)
Absent: Mr. Britt, Mrs. Stanton, Mr. Williams. (3)



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. **10154** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA
RESOLUTION NO. 10155

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA, APPROVING THE DESIGNATION OF FINANCE DIRECTOR TO SERVE AS ACTING CITY MANAGER AS NEEDED AND IN ANY/ALL INSTANCES WHEN THE CURRENT CITY MANAGER IS ABSENT AND/OR UNABLE TO PERFORM HIS DUTIES, EFFECTIVE IMMEDIATELY.

WHEREAS, the City of Johnstown Home Rule Charter and Administrative Code provide that any time the City Manager is unable to perform the duties of that office, whether because of absence or disability, he or she may delegate such authority to another municipal employee, subject to prior approval by Council; and

WHEREAS, the City Manager wishes to retain the Council's prior approval in order to allow for the service of an Acting City Manager to occur at any such time when an anticipated or unanticipated absence or other inability of the City Manager to serve may arise; and

WHEREAS, Council wishes to approve the designation of an Acting City Manager in any such instances of absence or inability of the City Manager to perform the duties of his office, for the period designated herein and to provide for per diem pay based on the salary of the City Manager to be issued to the Acting City Manager for any/all days served as Acting City Manager;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Johnstown, that the City of Johnstown hereby approves the designation of Finance Director to serve as Acting City Manager in the current City Manager's absence, effective immediately, as needed, and continuing through January 1, 2020, and further providing for issuance of per diem pay for each day served as Acting City Manager, based on the salary of the current City Manager.

ADOPTED:

February 13, 2019

By the following Vote:

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

Nays: None: (0)


Absent: Mrs. Stanton, Mr. Williams, Mr. Britt. (3)


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. **10155** as the same by the City Council of the City of Johnstown, Pennsylvania.


Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10156

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE TRANSFER OF PROPERTY FROM THE CITY TO CONEMAUGH VALLEY CONSERVANCY FOR THE PURPOSE OF DEVELOPING AND MANAGING INCLINED PLANE HILLSIDE PARK.

WHEREAS, Conemaugh Valley Conservancy (CVC) is a 24-year-old, 501(c)(3) non-profit dedicated to conserving the Conemaugh River Watershed and promoting recreation within it;

WHEREAS CVC has an impressive history of owning and managing land for the purposes of conservation and recreation, including:

- The 17-mile-long West Penn Trail;
- A new Path of the Flood Trail in the City's Upper Woodvale neighborhood;
- Conemaugh Gap Gateway Park just outside the City;
- Stewardship of 17 properties, including 40 acres around Conemaugh River Lake, 203 acres that hold the West Penn Trail, the Conemaugh River boat launch below Seward, Conemaugh Gap Gateway Park, and a parcel on the Inclined Plane Hillside, as well as nine trail easements and two trail bridges;

WHEREAS CVC desires to assume the lead role in developing and managing Inclined Plane Hillside Park in cooperation with the Vision 2025 Friends of Inclined Plane Trails and the Cambria County Transit Authority using a plan revised from the City's 2009 Greenways and Open Space Plan;

WHEREAS CVC already owns a parcel of land on the Inclined Plane Hillside;

WHEREAS the City of Johnstown owns two large parcels on the Inclined Plane hillside, the northern parcel being 33.5 acres described as Surface Parcel 72-007.-101 on property maps of the County of Cambria, and the southern parcel being 51 acres described as Surface Parcel 75-006.-101 on property maps of the County of Cambria, as illustrated on Addendum A;

NOW THEREFORE BE IT RESOLVED that the City of Johnstown convey Parcels 72-007.-101 and 75-006.-001 to CVC for the price of \$1.00, with provisions that CVC keep the property open to public use and public access, and that the title reverts to the City if CVC is dissolved.

BE IT FURTHER RESOLVED THAT THE CITY Manager be authorized and directed to execute this conveyance, any and all administrative documents pertaining to this transaction, on behalf of the City of Johnstown.

ADOPTED:

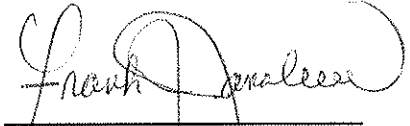
February 13, 2019

By the following vote:

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

Nays: None (0)

Absent: Mrs. Stanton, Mr. Williams, Mr. Britt. (3)



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. **10156** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

CITY OF JOHNSTOWN,
CAMBRIA COUNTY, PENNSYLVANIA
RESOLUTION NO. 10157

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS REQUIRED TO AUTHORIZE RIGHT-OF-WAY AGREEMENT AND EASEMENT BETWEEN THE CITY OF JOHNSTOWN AND THE GREATER JOHNSTOWN WATER AUTHORITY.

WHEREAS, the City recognizes the public need being served by continued improvement of the public water system and public water service by the Greater Johnstown Water Authority

WHEREAS, said Right of Way Agreement and Easement as attached herein is in consideration of One Dollar and other good and valuable consideration to the City of Johnstown.

WHEREAS, the City shall grant ten foot wide temporary construction easements and twenty foot permanent easements across City real property as shown on attached drawings.

WHEREAS, these easements shall run with the land and be binding upon the successors and assigns of the City of Johnstown

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Johnstown, hereby authorizes the City Manager to sign Right-Of-Way Agreement and Easement between the City of Johnstown and the Greater Johnstown Water Authority, as written and attached herein.

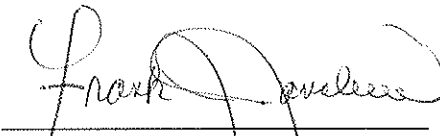
ADOPTED: February 13, 2019

By the following Vote:

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

Nays: None (0)

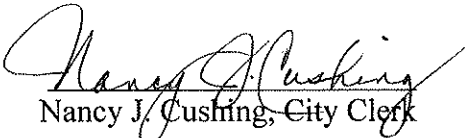
Absent: Mrs. Stanton, Mr. Williams, Mr. Britt. (3)



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. 10157 as the same by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk

RIGHT-OF-WAY AGREEMENT AND EASEMENT

This Agreement made this _____ day of _____, 2018, by and between **THE CITY OF JOHNSTOWN**, an organization of municipal government operating as a Third Class City under an optional charter utilizing the Council/Manager form of government, with an office at 401 Main Street, Johnstown, PA 15901, hereinafter called the "Grantor"

AND

THE GREATER JOHNSTOWN WATER AUTHORITY, a municipal authority, having offices at 640 Franklin Street, Johnstown, Pennsylvania 15901, hereinafter called the "Grantee".

WITNESSETH, that for and in the consideration of the sum of ONE AND 00/100 (\$1.00) DOLLAR to them in hand paid by the Grantee, and other good and valuable consideration, and also in consideration of the benefits which will inure to the Grantor, Greater Johnstown Water Authority and the general public through continuation and improvement of ability to provide public water service, said Grantor does hereby give, grant and convey unto the said Greater Johnstown Water Authority, its successors and assigns, a temporary and permanent easement to construct, install, operate and maintain potable water supply lines, for use by its present and future customers, with the right of ingress, egress and regress; in, through, under and across lands of the Grantor situated in the City of Johnstown, County of Cambria, and State of Pennsylvania, more particularly described and shown on the six drawings of Gibson-Thomas Engineering Company dated June 4, 2018, revised June 18, 2018, and attached hereto and labeled GT-14223.RW14.

Consisting in its entirety of a ten (10') foot wide temporary easement running parallel to and including a permanent twenty (20') foot wide permanent easement across Grantor's lands as shown on the attached drawing. The temporary easement to expire and be extinguished upon completion of the installation of the Grantee's new water supply main line and the restoration of the property.

Provided, however, that the Grantee, its successors and assigns, shall promptly restore and replace the grounds and property affected by the installation, maintenance and repair and replacement of said water line to the same condition as the grounds were immediately prior thereto.

This Easement will run with the land and will be binding upon the successors and assigns of the Grantor.

Grantor agrees that it shall not in the future substantially change the grade of the ground or the amount of fill over the line in a manner which makes Grantee's maintenance more difficult.

CITY OF JOHNSTOWN, PENNSYLVANIA
RESOLUTION NO. 10158

A RESOLUTION OF CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA AUTHORIZING THE CITY MANAGER TO SEEK REQUESTS FOR PROPOSALS FOR THE EXECUTION OF THE CITY OF JOHNSTOWN CURE VIOLENCE IMPLEMENTATION PROGRAM

WHEREAS, THE CITY OF JOHNSTOWN HAS SEEN AN INCREASE IN VIOLENT CRIME OVER THE PAST TEN YEARS, AN OPIOID CRISIS, AND AN INCREASE IN ALL TYPES OF CRIMINAL ACTIVITY INCLUDING GANG VIOLENCE, HOMICIDES, BURGLARIES, ASSAULTS, AND GUN VIOLENCE.

WHEREAS, IT HAS BEEN DETERMINED THAT THE EVIDENCE BASED CURE VIOLENCE PROGRAM WILL HELP REDUCE VIOLENT CRIME IN THE CITY

WHEREAS, GRANT FUNDING HAS BEEN RECEIVED IN THE AMOUNT OF \$150,000 WITH NO MATCH REQUIRED TO FUND THE PROPOSED CURE VIOLENCE PROGRAM

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, PENNSYLVANIA THAT AUTHORIZATION IS GIVEN TO THE CITY MANAGER TO SEEK REQUESTS FOR PROPOSALS (RFP) FOR THE EXECUTION OF THE CITY OF JOHNSTOWN CURE VIOLENCE IMPLEMENTATION PROGRAM

ADOPTED:

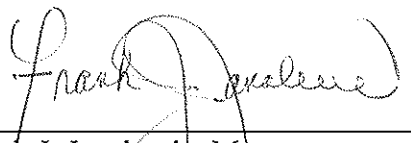
February 13, 2019

By the following vote:

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

Nays: None (0)

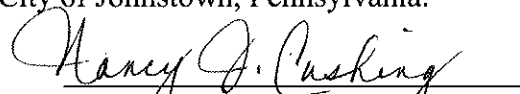
Absent: Mrs. Stanton, Mr. Williams, Mr. Britt. (3)



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. **10158** as the same adopted by the City Council of the City of Johnstown, Pennsylvania.



Nancy J. Cushing, City Clerk