

**CITY OF JOHNSTOWN, PENNSYLVANIA**  
**ORDINANCE NO. 5324**

Bill No. 17 of 2021

Introduced in Council

November 22, 2021

**AN ORDINANCE OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA AUTHORIZING AND APPROVING THE SALE OF THE CITY'S CLEAN FILL DISPOSAL SITE LOCATED IN THE 20TH WARD OF THE CITY OF JOHNSTOWN TO THE GREATER JOHNSTOWN WATER AUTHORITY (THE "AUTHORITY") AND FURTHER AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE CITY TO DO ALL THINGS NECESSARY TO CARRY OUT THE ORDINANCE, AND ANY/ALL ACTIONS INCIDENTAL TO SAID SALE AS REFERENCED IN THE AGREEMENT ENTERED BETWEEN THE PARTIES.**

**WHEREAS**, the City of Johnstown, Cambria County, Pennsylvania (the "City") is a third class city and home rule municipality governed by the Home Rule Charter of the City of Johnstown, as adopted on May 18, 1993 and effective on January 1, 1994, as amended (the "Charter"); and

**WHEREAS**, the City owns a certain Clean Fill Disposal Site in the 20th Ward of the City of Johnstown, identified as Tax Map No 90-038. -400.000, hereinafter referred to as the "Clean Fill Site, and;

**WHEREAS**, the City, in accordance with its Charter and Ordinance No. 5287 adopted finally on April 15, 2020 and later codified at Section 236.21 of the Codified Ordinances of the City, desires to convey the Clean Fill Site to the Greater Johnstown Water Authority (the "Authority"), a body corporate and politic organized under the Pennsylvania Municipality Authorities Act; and

**WHEREAS**, the City and the Authority have executed an Agreement for the Transfer of the Clean Fill Site (hereinafter "Agreement") which is attached hereto as Exhibit A and which was duly authorized by each party via the adoption of a municipal Resolution in November 2021; and

**WHEREAS**, the Agreement addresses terms and conditions applicable to the sale and transfer of the Clean Fill Site via Special Warranty Deed to the Authority for consideration in the amount of \$125,000 dollars and the covenant of the Authority to reduce the monthly sanitary sewer collection bill to City of Johnstown residents and property owners from \$55.00 per EDU to \$53.00 per EDU for a period of four (4) years, subject to certain limitations that may arise under the GJWA Trust Indenture's Rate Covenant for the applicable period; and

**WHEREAS**, the Agreement likewise includes a covenant by the City of Johnstown to waive a certain Annual Installment Payment otherwise due under an Asset Purchase Agreement addressing the sale of the City's sewer collection system to the Parties, and to further formally effectuate the actual conveyance of the Clean Fill Site to the Authority, via Ordinance; and

WHEREAS, the City desires to enact this Ordinance to authorize and approve the Sale and Conveyance of the Clean Fill Site and the undertaking of all incidental action in connection therewith.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the City Council of the City of Johnstown, Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

SECTION 1. The sale, transfer, and conveyance of the property identified as the Clean Fill Disposal Site in the 20th Ward of the City of Johnstown, identified as Tax Map No 90-038, 400.000, via Special Warranty Deed to the Greater Johnstown Water Authority, and all related transactions, transfers and assignments pertinent to same as referenced in the Agreement between the parties attached hereto as Exhibit A, are hereby approved.

SECTION 2. Any of the Mayor, the City Manager and the Finance Director, and such other authorized officers of the City (each, a "Proper Officer") is hereby authorized, directed and empowered to execute and deliver any/all documents necessary to effectuate the sale and transfer of the Clean Fill Site to the GJWA on behalf of the City Council of the City of Johnstown.

SECTION 3. Any of the Proper Officers of the City is hereby authorized, directed and empowered to execute any and all agreements, consents, assignments, certificates, instruments, permits, licenses and other documents determined to be necessary or proper by such Proper Officer to effectuate the Sale and Conveyance of the Clean Fill Site and any/all transactions contemplated by the Agreement between the Parties.

SECTION 4. Any of the Proper Officers of the City is hereby authorized, directed and empowered on behalf of the City to execute any and all papers and documents and to do or cause to be done any and all acts and things necessary or proper for the carrying out of the provisions of this Ordinance.

SECTION 5. All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith be and the same hereby are repealed, rescinded, cancelled and annulled.

SECTION 6. In the case any one or more of the provisions of this Ordinance shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Ordinance and this Ordinance shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

SECTION 7. This Ordinance shall become effective immediately, or otherwise on the earliest date permitted by law,

PASSED FINALLY IN COUNCIL: December 8, 2021

By the following vote:

Yeas: Mayor Janakovic, Ms. Mock, Mr. Vitovich, Mr. Capriotti, Mr. Britt, Rev. King, Mr. Arnone

Nays:

Absent:



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Frank J. Janakovic, Mayor  
Marie Mock, Deputy Mayor

ATTEST: I do hereby certify that the following is a true and correct copy of Ordinance No. 5324 as the same was enacted by the City Council of the City of Johnstown, Cambria County, Pennsylvania.



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Dan Penatzer, Interim City Manager

**AGREEMENT FOR SALE OF CITY CLEAN FILL SITE**

THIS AGREEMENT (this "Agreement"), dated the 11<sup>th</sup> day of November, 2021 by and between:

**THE CITY OF JOHNSTOWN**, a political subdivision of the Commonwealth of Pennsylvania operating as a Third Class City under a Home Rule Charter (the "Seller"), and **THE GREATER JOHNSTOWN WATER AUTHORITY**, a body corporate and politic organized under the Pennsylvania Municipality Authorities Act (the "Buyer") and Buyer together with Seller, the "Parties".

**WHEREAS**, the City of Johnstown, hereinafter referred to as "City", owns and operates a clean fill disposal site in the Twentieth Ward of the City of Johnstown, identified as Cambria County Tax Map Number 90-038. -400.000, hereinafter referred to as the "Clean Fill Site; and

**WHEREAS**, the Greater Johnstown Water Authority, hereinafter "GJWA", has, on September 9, 2020 purchased the Sanitary Sewer Collection System from the City pursuant to an Asset Purchase Agreement, hereinafter the "APA"; and

**WHEREAS**, the APA contains several ongoing obligations and covenants from the GJWA to the City of Johnstown; and


**WHEREAS**, the Clean Fill Site is permitted by the Cambria County Conservation District, which permit carries with it numerous obligations for maintenance during use and during the eventual closure of the site; and


**WHEREAS**, the City of Johnstown is willing to transfer and the Greater Johnstown Water Authority is willing to accept the Clean Fill Site under the following terms and conditions:

- 1) The City will convey the Clean Fill Site, Cambria County Tax Map No. 90-038. -400.000, by Special Warranty Deed to the GJWA on or prior to December 30, 2021.
- 2) The GJWA will cause the City permit for operation of the Clean Fill Site to be transferred into the name of the GJWA on or prior to December 30, 2021. In the event of delay in effecting the transfer of the permit, GJWA shall act as City's agent after December 31, 2021 and shall indemnify, defend and hold harmless the City from any liability of any sort related to such agency.
- 3) The GJWA agrees to indemnify, defend and hold harmless the City from any future liability with respect to the Clean Fill Site.
- 4) The GJWA agrees to operate the Clean Fill Site within the requirements of its permit and to assume all costs and expenses of operation and eventual closure.
- 5) The GJWA agrees that during the useful life of the Clean Fill Site, which useful life shall be determined within the sole discretion of the GJWA, it shall permit the City to dispose of clean fill at the site.
  - a. Clean Fill is meant as a defined term meaning only such materials as are permitted under the current permit for the Clean Fill Site or as may be further restricted or expanded in the future by any modifications to the permit for the Clean Fill Site or changes in applicable regulations.
  - b. The City agrees that with respect to materials placed at the Clean Fill Site after transfer to GJWA, it will indemnify, defend and hold harmless the GJWA from any costs or liabilities connected in any way with material dumped by the City which does not meet the current standards for clean fill under the permit or regulations.

- 6) The City shall cancel all contracts applicable to maintenance or operation of the Clean Fill Site as of December 31, 2021.
- 7) The GJWA shall pay the City the sum of \$125,000.00 as a flat sum, not subject to change, but intended to cover all costs of the City in connection with the Clean Fill Site through December 31, 2021. No other cash payment to the City will be made in connection with this Agreement or the transfer of the Clean Fill Site.
- 8) The GJWA covenants that as of December 31, 2021, it will reduce the monthly sanitary sewer collection bill to City of Johnstown residents and property owners from \$55.00 per EDU to \$53.00 per EDU. The GJWA covenants to hold that reduced price for a period of four (4) years, provided that Buyer may increase the Monthly Rental and may impose multiple minimum Monthly Rental Charges in such four-year period if and only to the extent required to achieve the minimum required amount under the GJWA Trust Indenture's Rate Covenant for the applicable period.
- 9) As partial consideration for this Agreement, the City hereby waives the provisions of the APA requiring the GJWA to pay the City an Annual Installment Payment as such term is described in the APA. The provisions of the APA relating to the Annual Installment Payment, specifically, but not limited to paragraphs 1.4 d), 5.8, 5.14, 8.18, 8.19 and Exhibit F of the APA shall be removed from the APA and of no further effect. The GJWA shall hereinafter have no obligation to pay over to the City any portion or part of its revenues
- 10) The Parties hereto agree to provide any assistance of further assurance to each other as may be necessary to carry out the purposes of this Agreement, as set forth above.
- 11) This is an entire Agreement and there are no other agreements, verbal or by implication, other than as set forth herein. This Agreement may not be modified except in writing and as approved at a public meeting held by the governing bodies of the Parties hereto.

THE CITY OF JOHNSTOWN, approved at a meeting held on Nov. 10, 2021

By:   
Daniel Penatzer, Manager


ATTEST:  (Seal)  
Nancy Cushing, Chief City Clerk

Approved as to legal form:   
Elizabeth Benjamin, Solicitor, City of Johnstown

GREATER JOHNSTOWN WATER AUTHORITY, approved at a meeting held on November 11, 2021

By:   
Don C. Hall, II, Chairman

ATTEST:  (Seal)  
Anthony Caputo, Secretary

Approved as to legal form:   
William Gleason Barbin, Solicitor  
Greater Johnstown Water Authority