

WINTER ROAD MAINTENANCE AGREEMENT

This Winter Road Maintenance Agreement entered this _____ day of _____, 2020 by and between:

FRANKLIN BOROUGH, a Pennsylvania municipality with its principle offices located at 1125 Main Street, Franklin Borough, Johnstown, Cambria County, Pennsylvania 15902 (hereinafter referred to as "Franklin");

AND

EAST CONEMAUGH BOROUGH, a Pennsylvania municipality with its principle offices located at 355 1st Street, East Conemaugh, Johnstown, Cambria County, Pennsylvania 15909 (hereinafter referred to as "East Conemaugh")

WITNESSETH:

WHEREAS, Franklin does not have a municipal road crew; and

WHEREAS, East Conemaugh has a municipal road crew; and

WHEREAS, Franklin wishes to enter into a contract for winter road maintenance services with East Conemaugh; and

WHEREAS, East Conemaugh is willing to contract with Franklin to provide the same level of winter road maintenance services to Franklin as it provides in East Conemaugh; and

NOW THEREFORE, intending to be legally bound, East Conemaugh and Franklin hereby enter into the following agreement for winter road maintenance services on the terms and conditions hereinafter set forth:

I. Scope of Agreement

- A. East Conemaugh agrees provide winter road maintenance services to Franklin from November 1 until April 1 of the following year.
- B. East Conemaugh agrees to provide the same level of winter road maintenance services within the boundaries of Franklin as it provides within the boundaries of East Conemaugh.
- C. Such winter road maintenance services shall only encompass duties and functions of a type customarily rendered by East Conemaugh in East Conemaugh.
- D. On those days when East Conemaugh is not providing winter road maintenance services to East Conemaugh, then East Conemaugh shall not be obligated to provide winter road maintenance services to Franklin.

II. Definitions

- A. The phrase **same level of winter road maintenance services** shall mean the same winter road maintenance service, including, but not limited to, plowing, salting, and cindering of Franklin streets and alleys that is provided in East Conemaugh on any given day when East Conemaugh is or is not providing winter road maintenance services to East Conemaugh. On those days when East Conemaugh is not providing winter road maintenance services to East Conemaugh, then East Conemaugh shall not be obligated to provide winter road maintenance services to Franklin.

III. Consideration

- A. Compensation for winter road maintenance services rendered by East Conemaugh to Franklin shall

be as follows:

I. Franklin agrees to compensate East Conemaugh the following amounts:

- a. The hourly wage of any and all employees of East Conemaugh during the time that those employees are performing winter road maintenance services within the boundaries of Franklin.

(1) Hourly Wage shall include:

- (a) the employees regular hourly rate;
- (b) any overtime due and payable to the employee;
- (c) any benefits working;
- (d) any required employer contributions paid by East Conemaugh, including but not limited to:
 - i) the employer's share of social security contribution;
 - ii) the employer's share of any unemployment compensation tax;
 - iii) the employer's share of any pension contribution.

- b. The amount of any salt or cinders used to perform the winter maintenance services for Franklin;

- c. .54/mile for wear and tear on the East Conemaugh equipment; and

- d. \$_____ per mile of any road, street or alley plowed, salted, or cindered in Franklin by East Conemaugh.

B. Method of Payment

- 1. The amount due to East Conemaugh for winter road maintenance services shall be due and payable monthly by Franklin.

- 2. East Conemaugh shall invoice Franklin monthly for the any winter road maintenance services that it provides to Franklin from November 1 until March 31 of the following year.

- a. The invoice shall reference the month and day for which the winter road maintenance services were provided.

- b. The hours that the winter road maintenance services were provided.

- c. The amount of material used.

- d. The milage traveled.

- 3. The invoice shall be paid by Franklin to East Conemaugh by the 15th day of the month.

IV. Personnel

- A. The hiring of road crew personnel shall remain with East Conemaugh.

- B. The discipline of road crew personnel and the control of the personnel employed by the East Conemaugh shall remain within East Conemaugh.

V. Disputes

- A. In the event of a dispute between the parties as to the extent of the duties and functions to be rendered hereunder, or the level and manner of performance of such service, the determination thereof made by East Conemaugh shall be final and conclusive.

VI. Term of Agreement, Termination and Renewal

A. Term.

1. This agreement shall be effective February ____, 2020, and shall be continuous for the following three (3) years and shall terminate on March 31, 2023, unless

B. Termination Prior to Expiration of Agreement

1. By East Conemaugh

- a. If at any time prior to the expiration of this Agreement East Conemaugh determines that the cost of providing winter road maintenance services exceeds the consideration mentioned herein, then East Conemaugh shall have either the:

(1) option to negotiate with Franklin for an increase in said compensation
OR

(2) right to terminate said Agreement with one-hundred twenty (120) days written notice to Franklin.

(a) Negotiations for an increase in said compensation may take place and continue during the one-hundred twenty (120) days written notice period.

(b) Said one-hundred twenty (120) day written notice period shall be for the purpose of Franklin securing other winter road maintenance services and shall cease once said services are secured by Franklin.

2. By Franklin

- a. If at any time prior to the expiration of this Agreement Franklin determines that it is not satisfied with the quality and level of services being provided by East Conemaugh, then Franklin shall have either the

(1) option to negotiate with East Conemaugh for a higher level of services
OR

(2) right terminate this Agreement with one-hundred twenty (120) days written notice to East Conemaugh.

(a) Negotiations relating to the level of services may take place and continue during the one-hundred twenty (120) days written notice period.

(b) Said one-hundred twenty (120) day written notice period shall be for the purpose of Franklin securing winter road maintenance services and shall cease once said services are secured by Franklin.

C. Renewal.

1. This Agreement shall renew automatically for a one (1) year period at the same consideration as set forth herein unless either party to this Agreement, that is, East Conemaugh or Franklin provides ninety (90) day written notice to the other party with documentation that supports its intent to terminate this Agreement.
2. During the ninety (90) day period, East Conemaugh and Franklin may negotiate a continuation of the contract.

VII. Authorization to Enter Agreement

- A. East Conemaugh shall adopt an resolution authorizing it to provide winter road maintenance services to Franklin.
 1. The resolution adopted by East Conemaugh shall be attached hereto and labeled as Exhibit "A" and incorporated herein.
- B. Franklin shall adopt an resolution authorizing it to enter into a contract with and receive from East Conemaugh winter road maintenance services.
 1. The resolution adopted by Franklin shall be attached hereto and labeled as Exhibit "B" and incorporated herein.
- C. The President of Council for the parties to this Agreement are hereby authorized to enter in this Agreement on behalf their party.
 1. A copy of the minutes of the meeting authorizing the President of Council for East Conemaugh to execute this Agreement on behalf of East Conemaugh is attached hereto and labeled as Exhibit "C."
 2. A copy of the minutes of the meeting authorizing the President of Council for Franklin to execute this Agreement on behalf of Franklin is attached hereto and labeled as Exhibit "D"

VIII. Miscellaneous

- A. The headings of this Agreement are for the purpose of reference only and shall not limit or define the meaning thereof.
- B. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Pennsylvania.
- C. This Agreement supersedes all prior agreements and understanding between the parties.
- D. This agreement or any term hereof may not be changed, waived, modified, or terminated orally, but only by an instrument in writing signed by the party against whom the enforcement of the change, waiver modification, or termination is sought.
- E. All notices, requests, demands and other communications hereunder shall be in writing, shall be given simultaneously to all parties hereunder and shall be deemed to have been duly given if delivered or mailed (certified mail, postage pre-paid, return receipt requested) or sent by nationally recognized overnight courier service to the addresses first above written.
 1. Any party may change its address at any time and from time to time, by notifying the

other parties of such changed address.

- F. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which taken together shall constitute a fully execute instrument.

ATTEST:

EAST CONEMAUGH BOROUGH

Nancy Geyer, Secretary

by: _____ (SEAL)
John Andrews, President

ATTEST:

FRANKLIN BOROUGH

Nancy Geyer, Secretary

by: _____ (SEAL)
_____, President