

ELECTRIC POWER LINE EXTENSION AGREEMENT

THIS AGREEMENT, made this day of , 2018, by and between:

KIEWIT CONTRACTING, (a _____ with a principal address of _____
(hereinafter referred to as "Kiewit")

AND

EAST CONEMAUGH BOROUGH, a municipality, with its principal offices located at 355 First Street, East Conemaugh, Pennsylvania 15909 (hereinafter referred to as the "Borough");

WHEREAS, the Borough is not only organized and existing pursuant to, but also regulated and governed by 8 Pa. C.S.A. §101 et seq (hereinafter referred to as the "Borough Code"); and

WHEREAS, §1202 of the Borough Code is titled "Specific powers" and provides that "...The specific powers of the borough shall include the following:": and

WHEREAS, §1202(62) of the Borough Code grants the Borough the specific power "To manufacture, purchase or otherwise supply electricity pursuant to Chapter 24A (relating to manufacture and supply of electricity)"; and

WHEREAS, §24AO2(d) of the Borough Code, in essence grants the Borough the exclusive right to provide electric power within its boundaries; and

WHEREAS, §24A03(a)(1) of the Borough Code reiterates the specific power for the Borough to “to contract for the purchase, sale, ... or transmission of electric power” and

WHEREAS, §24A03(a)(2) of the Borough Code specifically allows the Borough "to regulate the use of and the charge for electricity furnished by the borough for use throughout the borough;" thus confirming its exclusive right to provide power to those users located within the boundaries of the Borough; and

WHEREAS, Norfolk Southern Railroad (hereinafter referred to as "N/S RR"), has facilities located within the boundaries of the Borough; and

WHEREAS, the NYS RR facilities that are within the boundaries of the Borough is located between the Conemaugh River and Railroad Street; and

WHEREAS, N/S RR owns an electric compressor (hereinafter referred to as "Compressor") that is located along the Conemaugh River portion of its facilities; and

WHEREAS, the electric power for the Compressor is provided by the Borough; and

WHEREAS, in order to provide electric power for the Compressor, the Borough had to extend its electric supply lines from Railroad Street overhead of the rail lines of the N/S RR to the Compressor; and

WHEREAS, CPV Ventures is proposing to construct an electric generating power plant (hereinafter referred to as "Power Plant") along Pennsylvania State Route 271 in Jackson Township, Cambria County, Pennsylvania; and

WHEREAS, CPV Ventures has contracted with Kiewit Corporation (hereinafter referred to as "Kiewit"), to construct the Power Plant; and

WHEREAS, some of the parts, components, and other materials (hereinafter referred to as "Loads"), that Kiewit needs to construct the Power Plant will be arriving by "rail" at the N/S RR Yard located in the Borough; and

WHEREAS, in order for Kiewit to unload its Loads in an area that was away from and not near N/S RR main rail lines, Kiewit had to design and construct a "siding/unloading" area that was subject to the approval of N/S RR; and

WHEREAS, Kiewit submitted the "siding/unloading" area that it designed to N/S RR for review; and

WHEREAS, the design indicated that a "spur line" would have to be constructed by N/S RR from its main rail lines to Kiewit's "siding/unloading" area; and

WHEREAS, N/S RR questioned the height of the Borough's electric supply line that provides power to the Compressor while it was constructing the "spur line" for Kiewit; and

WHEREAS, the height of the Borough's overhead electric supply lines that provide power to the Compressor is approximately 24 feet above the N/S RR rail lines; and

WHEREAS, none of the Loads that Kiewit would be receiving at the N/S RR "siding/unloading" area would be 24 feet in height, N/S RR insisted that the Borough's existing overhead electric supply line that provides electric to the Compressor had to be raised to comply with the height requirements established by the N/S RR rules and regulations for overhead crossings of its rail lines; and

WHEREAS, the overhead height requirement established by the rules and regulations of the N/S RR for an overhead crossing is at least 31 feet above the rail lines; and

WHEREAS, in order for Kiewit to receive approval to use its "siding/unloading" area from N/S RR, the Borough's overhead electric supply lines that extend from Railroad Street to the Compressor needed to be raised from 24 feet to a height greater than 31 feet across the rail lines of the N/S RR; and

WHEREAS, to facilitate the use of its "siding/unloading" area, Kiewit is willing to design, construct, and install, at no cost to the Borough, on separate distribution poles new overhead electric supply lines that extend from Railroad Street to the Compressor at an overhead height of at least 31 feet which is acceptable to and complies with the rules and regulations of the N/S RR for an overhead crossing; and

WHEREAS, Kiewit agrees to remove the overhead electric supply lines that provide power to the Compressor that are approximately 24 feet above the N/S RR rail lines which are not in accord with the rules and regulations of N/S RR for an overhead crossing; and

WHEREAS, Kiewit agrees to "turn over" - at no charge to the Borough - the new overhead electric supply lines that extend from Railroad Street to the Compressor at an overhead height of at least 31 feet which is acceptable to and complies with the rules and regulations of the N/S RR for an overhead crossing; and

WHEREAS, §24AO3(a)(4) of the Borough Code enables the Borough "to contract for and to accept any gifts, grants or loans of funds, property or financial or other aid in any form, from the United States or any agency or instrumentality of the United States or from any other source.; and

WHEREAS, the Borough agrees to sponsor the project in the application of the N/S RR