

ORNAMENTAL LIGHTING MAINTENANCE AGREEMENT

This **AGREEMENT** is made this 30th day of September, 2021, by and between the **Borough of Pottstown** (the “Borough”), a Pennsylvania municipal corporation with offices at 100 E. High Street, Pottstown, PA 19464; **Hobart’s Run Neighborhood District**, a Pennsylvania non-profit corporation with a registered business address of 860 Beech Street, Pottstown, PA 19464 (“Hobart’s Run”); and **The Hill School**, a Pennsylvania non-profit corporation with a registered business address of 850 Beech Street, Pottstown, PA 19464 (the “Hill School”).

BACKGROUND

- A. Hobart’s Run is a 501(c)3 organization, primarily funded by the Hill School (collectively the “Installer”).
- B. The Installer approached the Borough about installing and maintaining, subject to certain terms and conditions, five ornamental streetlights along the north side of Beech Street within the geographic area of Hobart’s Run neighborhood district.
- C. On April 12, 2021, the Borough’s Council voted to grant the request to install light poles on Beech Street, within the Borough’s right-of-way, subject to approval of the Borough Manager and Public Works Director and the Borough and the Installer entering into a Maintenance Agreement satisfactory to the Borough’s Solicitor.
- D. The Installer installed the lights, as agreed, along the north side of Beech Street at locations approved by the Borough. The lights are a Washington X-Series LED style more clearly depicted and defined in the rendering attached hereto as Exhibit “A” and incorporated herein by reference (the “Design Specifications”).
- E. The parties hereby intend for this Agreement to memorialize the requirements and terms for operation, maintenance, and removal of the ornamental lighting.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the adequacy of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Background.** Paragraphs A through E contained in the Background are hereby incorporated into the content of this Agreement as if set forth herein at length.

2. **Electricity.** The Borough shall pay without reimbursement all reasonable electricity costs associated with the operation of the lights.

3. **Ornamental Lights.** The Installer shall own the lights.

4. **Maintenance Obligation.** The Installer shall be responsible for the maintenance of the lights and associated electrical system. All maintenance shall be performed in a timely and professional manner. Maintenance shall include but not be limited to lightbulb replacement, protecting against and the removal of rusting, and replacement due to destruction caused by pedestrian, vehicles, and acts of nature. Any replacement lights shall match the Design Specifications unless otherwise approved by the Borough.

5. **Financial Obligations.** From time to time the Borough may be required to incur costs and perform emergency repairs of the lights and associated electrical system. It may also be required to respond to Pennsylvania one-call requests related to the lights and associated electrical system. In addition, the Borough may incur costs if the installer fails, neglects or refuses to maintain the lights and associated electrical system to the reasonable satisfaction of the Borough. The parties agree that such costs as described above shall be the sole obligation of the installer. In lieu of requiring the installer to escrow funds with the Borough to cover these costs, the parties agree that in the event the Borough incurs any such costs, the Borough shall submit an invoice to installer and the installer shall pay said amount to the Borough in full within thirty (30) days. This amount shall reflect all reasonable costs incurred by the Borough as described in this paragraph.

6. **Removal.** The Installer must provide the Borough with at least ninety (90) days advance notice of any intent to remove the lights and associated electrical system. The Borough, however, may remove at the lights and associated electrical system without notice and then promptly return all equipment and materials to Installer.

7. **Insurance.** The Installer shall maintain at all times adequate liability insurance with respect to the lights and associated electrical system, and therein name the Borough as an additional insured. The Installer shall provide proof of insurance within five (5) days of any such request.

8. **Release.** The Installer hereby irrevocably and unconditionally releases, remises, and forever discharges the Borough, its officers, employees, agents, successors and assigns, of and from any and all actions, causes of action, suit, debts, charges, complaints, liabilities, claims, obligations, damages and expenses of any nature whatsoever, in law or equity, which the Installer may have against the Township related to the work performed pursuant to Paragraph Five (5).

9. **Indemnification.** The Installer shall indemnify and hold harmless the Borough, its officers, employees, agents, consultants, successors and assigns, and any other associated members, from any and all claims, actions, and judgments, including the cost of defense and any attorney's fees, brought by any third party, arising from the installation, maintenance, and removal of the lights and associated electrical system.

10. **Assignment.** This agreement is binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns, but will not be assignable, by operation of law or otherwise, by the Installer without prior written notice to the Borough.

11. **Choice of Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, intending to be legally bound by this Agreement, the parties caused this Agreement to be executed and do each hereby warrant and represent that their

respective signatory whose signature appears below is duly authorized by all necessary and appropriate action to execute this Agreement.

BOROUGH OF POTTSTOWN

By:

Justin Keller, Borough Manager

Dated: _____

HOBART'S RUN NEIGHBORHOOD DISTRICT

By:

DocuSigned by:
Michael Harris, Chairman
5861385638A4454...

Dated: 9/30/2021

THE HILL SCHOOL

By:

DocuSigned by:
Rick Wood, CEO
9FFFE54D5AD546E...

Dated: 9/30/2021