

PROJECT AGREEMENT

This **PROJECT AGREEMENT** (this “Agreement”) is made as of the ___ day of _____, 2025 (the “Effective Date”), by and among (i) **THE CITY OF CHARLESTOWN REDEVELOPMENT COMMISSION**, a municipal body politic of the State of Indiana (the “Commission”), (ii) **THE CITY OF CHARLESTOWN BOARD OF PUBLIC WORKS**, a municipal body politic of the State of Indiana (the “BOW”), and (iii) **SHADOW LAKE OWNERS ASSOCIATION, INC.**, an Indiana nonprofit corporation (the “Association”).

RECITALS

A. The Commission desires to encourage investment and improve economic development in the City of Charlestown, Indiana (the “City”).

B. The Board of Works, among other things, oversees the use and operation of certain City property and improvements.

C. The Association is a nonprofit corporation formed to operate as the property owners’ association for the owners of real property located in the Shadow Lake Business Park, as described on that certain Final Plat of Shadow Lake Business Park recorded June 17, 2024 as Instrument No. 202411305 in the Office of the Recorder of Clark County, Indiana (the “Business Park”), and governed by that certain Declaration of Covenants, Conditions, and Restrictions for Shadow Lake Business Park, dated June 19, 2024, and recorded June 24, 2024 as Instrument No. 202412144 in the Office of the Recorder of Clark County, Indiana (the “Declaration”).

D. The Association desires for street lighting to be installed along certain of the public roadways located within the Business Parking (the “Shadow Lake Street Lighting”) as more particularly depicted on the proposed lighting plan attached hereto as **Exhibit A** (the “Proposed Lighting Plans”).

E. The Commission has determined that the proposed Shadow Lake Street Lighting will encourage, promote, and improve investment and economic development within the City and benefit certain economic development and redevelopment areas within the City.

F. The BOW has determined that the proposed Shadow Lake Street Lighting will increase public safety on and along certain public rights-of-way within the City, including Shadow Lake Drive and Cristiani Parkway.

G. Subject to the terms and conditions of this Agreement: (i) the Commission will agree to provide certain financial assistance for the installation of the Shadow Lake Street Lighting; (ii) the BOW will agree to install, or cause to be installed, the Shadow Lake Street Lighting; and (iii) the Association will accept responsibility for the operation and maintenance costs for the Shadow Lake Street Lighting following installation thereof.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the Commission, the BOW, and the Association, each intending to be legally bound, do hereby agree as follows:

1. **Incorporation of Recitals & Exhibits.** The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1. The exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.

2. **Installation of Street Lights.**

(a) **Costs.**

(i) The Commission will contribute to the BOW funds in the amount not to exceed, One Hundred Thirty-Three Thousand Eight Hundred Twenty-Seven Dollars (\$133,827.00) to be used by the BOW solely for the Installation (as such term is hereafter defined) (the "Commission Assistance"). The Commission will pay to the BOW, within sixty (60) days from the date on which the Final Lighting Plans are approved by both the BOW and the Commission, an amount equal to the lesser of (A) the Commission Assistance or (B) if contained in the Final Lighting Plans, the actual fixed fee quoted price for the Installation. Any Commission Assistance funds not actually applied to the cost and expense of the Installation incurred by the BOW shall be refunded by the BOW to the Commission within sixty (60) days following the completion of the Installation.

(ii) Subject to the "BOW Cap", the BOW shall be responsible for that portion of the cost of the Installation in excess of the amount of the Commission Assistance. As used herein, the term "BOW Cap" shall mean an amount equal to, and not to exceed, Zero Dollars (\$0.00).

(iii) In the event the sum of the Commission Assistance plus the BOW Cap is less than the total actual cost of the Installation (such difference being the "Cost Overage"), the Association shall be responsible for the payment of the Cost Overage, with such funds to be paid to the BOW within twenty (20) days of written demand therefor by the BOW.

(b) **Installation.** Subject only to a Force Majeure Event, on or before that date which is _____ (__) months following the date on which the Final Lighting Plans are

approved by both the BOW and the Commission, the BOW shall install, or cause to be installed, within the bounds of the dedicated rights-of-way for Shadow Lake Drive and Cristiani Parkway, the Shadow Lake Street Lighting in accordance with the Final Lighting Plans (as hereafter defined) (the “Installation”).

(c) Final Lighting Plans. The Association, at its sole cost and expense, shall coordinate with the BOW and Clark County Rural Electric Membership Corporation (“Clark County REMC”) to prepare, or cause to be prepared, detailed plans and specifications for the installation of the Shadow Lake Street Lighting in substantial conformance with the Proposed Lighting Plans and in compliance with applicable law and the rules, regulations, and standards of the BOW and Clark County REMC (the “Draft Plans and Specifications”). For avoidance of doubt, the Draft Plans and Specifications shall provide for, among other lighting system components, a separate electric meter for only the Shadow Lake Street Lighting so that the electric usage and the cost thereof may be determined. The Association shall deliver to the BOW and the Commission, respectively, the Draft Plans and Specifications, together with documentary evidence acceptable to each of the BOW and the Commission evidencing the approval of Clark County REMC and all applicable governmental and regulatory agencies, on or before _____, 2025 (the “Plan Submission Date”). Following the submission of the Draft Plans and Specifications, the Commission and the BOW shall each consider approval or rejection of the Draft Plans and Specifications at each body’s next regular meeting (or at a special meeting), with the BOW and the Commission each exercising sole discretion at such public bodies’ respective meetings. If either or both the BOW and/or the Commission reject the Draft Plans and Specifications, such rejecting body shall provide to the Association a reasonably detailed summary of its basis for rejection and the Association shall have a period not to exceed thirty (30) days from the date of such rejection to revise and resubmit the Draft Plans and Specifications. Notwithstanding anything to the contrary herein, if the Draft Plans and Specifications are not approved within ninety (90) days from the Plan Submission Date, then such Draft Plans and Specifications shall be deemed fully and finally rejected and this Agreement shall terminate except for such obligations which expressly survive the termination hereof. Upon approval by both the BOW and the Commission, the Draft Plans and Specifications shall be deemed the “Final Lighting Plans”.

3. **Operation and Maintenance of Street Lights**.

(a) Costs; Invoicing.

(i) The Association shall be solely responsible for the costs and expenses arising from, and relating to, the operation and maintenance of the Shadow Lake Street Lighting following the Installation, including, without limitation, the utility costs to power the Shadow Lake Street Lighting (collectively, the “Operation and Maintenance Costs”).

(ii) The BOW will, within ninety (90) days following the beginning of each calendar year, deliver to the Association an invoice for the estimated Operation and Maintenance Costs for such calendar year based on the actual Operation and Maintenance Costs for the immediately preceding calendar year (the “Annual Invoice”). Additionally, within ninety (90) days following the beginning of each calendar year, the BOW will deliver to the Association a statement of the actual Operation and Maintenance Costs for the preceding calendar year and any differential between such amount and the estimated amount set forth on the Annual Invoice for such calendar year (the “Annual Reconciliation Statement”). If the Annual Reconciliation Statement reveals an underpayment of the Operation and Maintenance Costs by the Association for such calendar year, then the Association shall pay to the BOW the amount of such underpayment within thirty (30) days of receipt of the Annual Reconciliation Statement. If the Annual Reconciliation Statement reveals an overpayment of the Operation and Maintenance Costs by the Association for such calendar year, then the BOW shall credit such overpayment against the next Annual Invoice.

(iii) Notwithstanding Section 3(a)(ii), for the remaining partial calendar year following the completion of the Installation, the BOW will deliver to the Association an Annual Invoice for such period as soon as reasonably practicable following the completion of the Installation, with the amount thereof to be the BOW’s estimate for the Operation and Maintenance Costs for such period based upon the BOW’s experience with the operation and maintenance of other street lighting systems in the City. The Operation and Maintenance Costs for such partial calendar year shall be reconciled in the same matter as set forth in Section 3(a)(ii) above.

(iv) The Association shall pay to the BOW the amount of each Annual Invoice within thirty (30) days following the Association’s receipt thereof. Any Annual Invoice not paid in full within such time period shall be deemed delinquent and shall bear interest from the date of such delinquency at a rate equal to the lesser of (A) the maximum rate of interest legally permissible or (B) three (3) percentage points in excess of the then prevailing “prime rate” of interest as announced from time to time in The Wall Street Journal in the section titled “Money Rates” or, if such rate is discontinued, some other responsible periodical of recognized authority as determined by the BOW. If any Annual Invoice or other amount owed by the Association to the BOW hereunder remains delinquent for a period of thirty (30) days or more, the BOW may instruct Clark County REMC to discontinue electrical power to the Shadow Lake Street Lighting until such time as all such payments, including accrued interest, are paid in full and current.

(b) Operation and Maintenance.

(i) The BOW shall coordinate with Clark County REMC, or any successor thereof as the electric utility provider for the Shadow Lake Street Lighting, to provide electrical power for the Shadow Lake Street Lighting upon the completion of the Installation (the “Electric Cost”). The BOW, at its sole option, may elect to (x) instruct Clark County REMC to invoice the Association directly for the Electric Cost or (y) pay the Electric Cost and invoice the Association therefor as an Operation and Maintenance Cost in accordance with the procedure set forth in Section 3(a).

(ii) Subject to Section 3(a), the BOW shall maintain and repair, or cause to be maintained and repaired, the Shadow Lake Street Lighting in a manner materially consistent with other public street lighting systems in the City.

(iii) The Association, for itself and its Members (as defined in the Declaration), hereby grants to the BOW and the City, and their respective agents, employees, and contractors, a temporary license during times of maintenance and repair of the Shadow Lake Street Lighting on, over, and across such portion of the property lying within the Business Park being twenty feet (20’) in width along the public rights of way known as Shadow Lake Drive and Cristiani Parkway in order to allow such maintenance and repair activities; provided, however, such right of temporary access shall be exercised in such a manner as to mitigate unreasonable interference with the rights of the Association and its Members.

(iv) For avoidance of doubt, the Association shall have no right of self-help to repair or maintain the Shadow Lake Street Lighting.

4. **Representations and Warranties.** Unless attributed below to a specified party, each party to this Agreement represents and warrants to each of the other parties the following:

(a) **Organization and Qualification.** The Association is a non-profit corporation duly formed, in good standing, and authorized to conduct business under the laws of the State of Indiana. The Declarations, and the Bylaws attached thereto, are in full force and effect and have not been amended or modified.

(b) **Right and Power.** Each party has the full right, power and authority to execute and deliver this Agreement and the other deliverables provided for herein and is not in violation of any laws in any manner material to its ability to perform its obligations under this Agreement.

(c) **Conflict with Other Instruments.** Neither the execution and delivery of this Agreement, nor consummation of the transactions contemplated hereby, nor compliance with the terms, conditions and provisions hereof, will conflict with or result in a breach of

any of the terms, conditions or provisions of any other agreements of the Association, or any regulation, order, writ, injunction or decree of any court or governmental instrumentality or agency or any agreement or instrument to which the Association is a party or by which it or any of its respective properties is subject to or bound, or constitute a default thereunder or result in the creation or imposition of any lien, charge, security interest or encumbrance of any nature whatsoever upon any of the property of the Association pursuant to the terms of any such agreement or instrument.

(d) Authority, Validity and Binding Effect. The execution and delivery of this Agreement and the execution and delivery of the other documents provided for herein have been duly authorized by all necessary action on the part of the Commission, the BOW, and the Association, and no additional authorization, approval or consent by, or filing with, any governmental or public regulatory authority is necessary therefor except as specifically provided herein. Specifically, the Association has been duly authorized by its Members to enter into this Agreement in accordance with the Declaration and its Bylaws (as defined in the Declaration). The individuals executing this Agreement are authorized to act on behalf of the applicable party hereto and have the power to bind such party to the terms hereof. When executed by each party, this Agreement shall be deemed duly and validly executed and delivered by the party and shall constitute a legal, valid and binding obligation of the Commission, the BOW, and the Association, enforceable in accordance with its terms, except as the enforceability thereof may be limited by applicable law, bankruptcy, insolvency or other laws of general application affecting the enforcement of creditors' rights and by principles of equity.

(e) Litigation. There are no actions, suits or proceedings pending, or to the actual knowledge of the Association, threatened against or affecting the Association or its Members before any court or governmental instrumentality or agency, the result of which might have a material adverse effect on the Association or its operations or financial condition, or on the future development of the Business Park.

(f) Other Approvals. The Association acknowledges that future development in the Business Park may be subject to certain approvals and permitting by certain other City agencies, bodies, and boards under applicable law and ordinance, including, without limitation, zoning and developmental requirements, subdivision regulations, and building standards.

(g) Other Documents. Each document furnished pursuant to this Agreement is a true and correct copy thereof, has not been modified or amended and is in full force and effect on the date hereof.

None of representations or warranties set forth in this Agreement by either party or in any document or certificate furnished pursuant to this Agreement or in connection with any transactions contemplated hereby, contains or will contain any untrue statement of material fact or

omits or will omit to state a material fact necessary to make any statement of fact contained herein or therein, in light of circumstances under which it was made, not misleading.

5. **Additional Association Covenants.** In addition to its other obligations set forth in this Agreement, the Association covenants to the Commission as follows:

(a) **Existence; Good Standing.** The Association shall, at all times, remain duly organized and in good standing under the laws of the State of Indiana.

(b) **Declarations; Bylaws.** The Association shall provide to the Commission and the BOW prior written notice of any proposed amendment(s) to the Declaration or the Association's Bylaws before approval or enactment thereof.

(c) **Insurance.** The Association shall require its Members to maintain insurance in accordance with the terms and conditions of the Declaration.

(d) **Taxes.** The Association and its Members shall timely pay all taxes on real and personal property owned by the Association in accordance with Indiana law.

(e) **Legal Compliance.** In the use, operation, and development of the Business Park, the Association and its Members shall comply, at all times, with applicable law, ordinance, and regulation, including, without limitation, the City's zoning ordinance and developmental standards.

(f) **Cooperation; No Interference.** The Association and its Members shall cooperate reasonably and in good faith with the BOW and the City in connection with the Installation and shall not materially or unreasonably interfere, nor permit agents, contractors or invitees accessing the Business Park with the permission of the Association or its Members to materially or unreasonably interfere with such activities undertaken by the BOW and/or the City.

6. **Default and Remedies.**

(a) **Commission's Default.** Subject to Section 6(d), in the event that the Commission fails to perform any of its obligations under this Agreement for any reason other than the default of the BOW or the Association or the permitted termination of this Agreement as expressly provided in this Agreement:

(i) the BOW shall be entitled, as its exclusive remedies, to either (A) terminate this Agreement by written notice to the Commission and the Association, or (B) only if the Association does not elect to terminate this Agreement in accordance with Section 6(a)(ii), recover payment from the Commission, as liquidated damages, an amount equal to the lesser of (x) the Commission Assistance

less any portion thereof previously delivered to the BOW and (y) the actual cost of the Installation; and

(ii) the Association shall be entitled as its sole and exclusive remedy to terminate this Agreement by written notice to the Commission and the BOW.

(b) BOW's Default. Subject to Section 6(d), in the event that the BOW fails to perform any of its obligations under this Agreement for any reason other than the default of the Commission or the Association or the permitted termination of this Agreement as expressly provided in this Agreement:

(i) the Commission shall be entitled, as its exclusive remedies, to (A) terminate this Agreement by written notice to the Association and the BOW, and/or (B) recover from the BOW all Commission Assistance distributed by the Commission to the BOW; and

(ii) the Association shall be entitled as its sole and exclusive remedy to terminate this Agreement by written notice to the Commission and the BOW.

(c) Association's Default. Subject to Section 6(d), in the event that the Association fails to perform any of its obligations under this Agreement for any reason other than the default of the Commission or the BOW or the permitted termination of this Agreement as expressly provided in this Agreement:

(i) the Commission shall be entitled, as its exclusive remedy, to recover from the Association an amount equal to the Commission Assistance distributed by the Commission to the BOW, plus the costs and expenses incurred by the Commission in connection with the preparation and negotiation of this Agreement, including, without limitation, reasonable attorneys' fees and costs; and

(ii) the BOW shall be entitled to (A) terminate this Agreement by written notice to the Association and the Commission and/or (B) pursue all remedies available at law and in equity, including, without limitation, the recovery from the Association of the costs and expenses incurred by the BOW in connection with the Installation, the recovery from the Association of Operation and Maintenance Costs incurred by the BOW, and to seek specific performance of the Associations obligations under this Agreement.

(d) Notice of Breach; Cure Period. Before any failure of any party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach or event of default under this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform and shall demand performance. No breach or event of default under this Agreement shall be deemed to have occurred if the

party receiving notice of such a failure hereunder cures such failure within thirty (30) days of receipt of such notice, or, in the event of a non-monetary default, such longer period as is reasonably necessary to complete such a cure so long as the party commences the curative efforts within such thirty (30) day period and diligently pursues completion of the same. The parties' respective remedies set forth in Sections 6(a), (b), and (c) are subject to the notice requirement and cure period set forth in this Section 6(d). As used herein, the term "non-monetary default" refers to a breach or default which cannot be cured by the payment of a liquidated sum of money.

(e) Attorneys' Fees. In the event legal action is instituted by any party to enforce the terms of this Agreement or which arises out of the execution of this Agreement, the prevailing party in such legal action will be entitled to receive from the other party the prevailing party's reasonable attorneys' fees and court costs, including the costs of appeal, as may be determined and awarded by the court in which the action is brought. The term "prevailing party" shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement, or judgment. The right to attorneys' fees shall survive the termination of this Agreement.

7. Indemnification.

(a) Indemnification by the Association. Except as caused or occasioned by the negligence or willful misconduct of the BOW, the Commission, the City and any City agency, body, and board, and their respective officers, employees, attorneys and agents (each a "City Indemnitee" and, together, "City Indemnitees"), the Association covenants and agrees at its expense to pay and to indemnify and save the City Indemnitees harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury, property damage, or any other claim or loss resulting directly from the Association's (and/or any of the Association's Members, directors, officers, employees, agents, contractors, or attorneys) negligence or willful misconduct with respect to the Business Park, the Shadow Lake Street Lighting, and the activities contemplated by this Agreement, or due to any representation or warranty of the Association herein being false or materially misleading. If any action or proceeding is brought against one or more City Indemnitees, (i) each City Indemnitee may, in its sole discretion, select its own counsel, (ii) the City Indemnitee(s) seeking indemnification shall give notice of such action or proceeding to the Association in writing, and (iii) the Association shall reimburse such City Indemnitee(s) for all reasonable costs and expenses, including reasonable attorneys' fees, incurred by such City Indemnitee(s) in connection with the defense of such action or proceeding. This Section 7(a) shall survive the termination or expiration of this Agreement.

(b) Indemnification by the BOW. Except as caused or occasioned by the negligence or willful misconduct of the Association, and/or the Association's Members,

directors, officers, employees, agents, contractors, or attorneys (each an “Association Indemnitee” and, together, “Association Indemnitees”), or by the gross negligence or willful misconduct of the Commission, its officers, attorneys and agents (each a “Commission Indemnitee” and, together, “Commission Indemnitees”), the BOW covenants and agrees at its expense to pay and to indemnify and save the Association Indemnitees and the Commission Indemnitees harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury, property damage, or any other claim or loss resulting directly from the BOW’s (and/or the City and any City agency, body, and board other than the Commission, and the City’s and the BOW’s respective officers, employees, attorneys and agents) negligence or willful misconduct with respect to the Business Park and the Shadow Lake Street Lighting, and the activities contemplated by this Agreement. If any action or proceeding is brought against one or more Association Indemnitees or Commission Indemnitees, (i) each such Association Indemnitee or Commission Indemnitee, as applicable, may, in its sole discretion, select its own counsel, (ii) the Association Indemnitee(s) or Commission Indemnitee(s) seeking indemnification shall give notice of such action or proceeding to the BOW in writing, and (iii) the BOW shall reimburse such Association Indemnitee(s) or Commission Indemnitees for all reasonable costs and expenses, including reasonable attorneys’ fees, incurred by such Association Indemnitee(s) or Commission Indemnitees in connection with the defense of such action or proceeding. Notwithstanding the foregoing, nothing in this Section 7(b) shall be deemed a waiver of the doctrine of qualified immunity.

(c) Indemnification by the Commission. The BOW and the Association acknowledge and agree that the Commission’s only obligation hereunder is the provision of the Commission Assistance in accordance with Section 2 hereof. Except as caused or occasioned by the negligence or willful misconduct of one or more of the Association Indemnitees, or by the negligence or willful misconduct of the BOW, its officers, attorneys and agents (each a “BOW Indemnitee” and, together, “BOW Indemnitees”), the Commission covenants and agrees at its expense to pay and to indemnify and save the Association Indemnitees and the BOW Indemnitees harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury, property damage, or any other claim or loss resulting directly from the Commission’s (and/or Commission’s respective officers, employees, attorneys and agents) gross negligence or willful misconduct with respect to the Business Park and the Shadow Lake Street Lighting, and the activities contemplated by this Agreement. If any action or proceeding is brought against one or more Association Indemnitees or BOW Indemnitees, (i) each Association Indemnitee or BOW Indemnitee, as applicable, may, in its sole discretion, select its own counsel, (ii) the Association Indemnitee(s) or BOW Indemnitee(s) seeking indemnification shall give notice of such action or proceeding to the BOW in writing, and (iii) the Commission shall reimburse such Association Indemnitee(s) or BOW Indemnitee(s) for all reasonable costs and expenses, including reasonable attorneys’ fees, incurred by such Association Indemnitee(s) or BOW Indemnitee(s) in connection with the

defense of such action or proceeding. Notwithstanding the foregoing, nothing in this Section 7(c) shall be deemed a waiver of the doctrine of qualified immunity.

8. **Notices.** All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the Commission: City of Charlestown Redevelopment Commission
304 Main Cross Street
Charlestown, Indiana 47111
Attn: President

With a copy to: Frost Brown Todd LLP
400 West Market Street, Suite 3200
Louisville, Kentucky 40202-3363
Attn: Amy J. Burnette & Jacob B. Vissing

The Wheatley Group
5150 Charlestown Road, Suite 1A
New Albany, Indiana 47150
Attn: Jill Saegesser

To the BOW: City of Charlestown Board of Public Works
304 Main Cross Street
Charlestown, Indiana 47111
Attn: Chair

With a copy to: Mosley, Bertrand & McCall
332 Spring Street
Jeffersonville, Indiana 47130
Attn: William P. McCall, III

To the Association: Shadow Lake Owners Association, Inc.
3000 Shadow Lake Drive
Charlestown, Indiana 47111
Attn: Chris Jackson

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by overnight or certified mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

9. **Miscellaneous Provisions.**

(a) Time of Essence. Time is of the essence in the performance of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein).

(b) Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an amendment approved in the same manner as this Agreement, and by the execution of said amendment by the parties or their successors in interest.

(c) Merger. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

(d) Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

(e) Assignment. Except as expressly permitted herein, the Property and Project (or any part thereof) and the rights and obligations contained in this Agreement may not be assigned or transferred by the Association without the express prior written consent of Commission and any such assignee or transferee entity shall assume in writing all of the obligations of the Association herein.

(f) No Third-Party Beneficiaries. Except as provided in Section 9(e) above, this Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party. For avoidance of doubt, except for the express indemnification provisions set forth in Section 7 hereof, no Member of the Association may individually enforce the provisions of this Agreement against the BOW or the Commission.

(g) Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until the each of the Commission and the BOW have approved or ratified the execution of this Agreement at public meetings held and conducted in accordance with Indiana law.

(h) Approvals. Notwithstanding anything contained herein, the parties acknowledge and recognize that the obligations of governmental parties hereunder, including those of the Commission and the BOW, are or may be subject to and conditioned upon certain legal approval requirements, including, without limitation, public meetings, public hearings, public bidding, and formal approvals of the Commission, the BOW, and other governmental bodies.

(i) Non-Discrimination. As required by I.C. 22-9-1-10, the Association shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion color, sex, disability, national origin, ancestry or veteran status. Breach of this covenant may be considered a material breach of this Agreement.

(j) Termination. In addition to the other provisions of this Agreement allowing the termination of this Agreement for any reason, this Agreement shall automatically terminate and be of no further force or effect on the date that is ten (10) years after the date of this Agreement. The BOW may, in its sole discretion, continue to operate and maintain the Shadow Lake Street Lighting following such termination in its ordinary course of operating and maintaining public improvements and street lighting systems in the City. Notwithstanding anything to the contrary herein, if any monetary obligations of the Association hereunder which are not paid in full as of such termination date shall remain due and payable and recoverable by the BOW together with any applicable interest, penalties, and/or attorneys' fees.

(k) No Waiver. No delay or failure by the Association, the Commission, the BOW, or any City agency, body, or board to enforce any of the covenants, conditions, reservations and rights contained in this Agreement or to invoke any available remedy with respect to an event of default by either party, shall under any circumstances be deemed or held to be a waiver or an estoppel to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

(l) Force Majeure. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform the same; provided, however, that if completion of performance shall be delayed at any time by reason of pandemic, acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar causes beyond the reasonable control of a party (other than financial reasons) (each a "Force Majeure Event"), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such Force Majeure Event. If there should arise a Force Majeure Event and the Association, the BOW, or the Commission anticipates that such Force Majeure Event will cause a delay in its performance under this Agreement, then such Party shall provide written notice to the other Party(ies) to this Agreement with the nature of and the anticipated length of such delay. For avoidance of doubt, payment of a monetary obligation may not be delayed due to a Force Majeure Event.

(m) No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the Commission, the BOW, and/or the City and the Association or any Member thereof.

(n) Governing Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

(o) Jurisdiction and Venue. The Association agrees, and hereby submits, to jurisdiction before any state or federal court with jurisdiction in Clark County, Indiana, and the Association hereby specifically waives any right to raise questions of personal jurisdiction or venue. Further, the Association waives, to the extent permitted under applicable law, any right the Association may have to: (i) assert the doctrine of “forum non conveniens”; or (ii) object to venue.

(p) Counterparts. This Agreement may be executed in several counterparts, by separate signature pages, and/or by facsimile signatures, each of which may be deemed an original, and all such counterparts, separate signature pages, and facsimile signatures together shall constitute one and the same Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Commission, the BOW, and the Association have executed this Agreement as of the Effective Date.

COMMISSION:

**THE CITY OF CHARLESTOWN
REDEVELOPMENT COMMISSION,**
a municipal body politic of the State of Indiana

By: _____

Name: Derek Coombs

Title: President

BOW:

**THE CITY OF CHARLESTOWN BOARD OF
PUBLIC WORKS,** a municipal body politic of the
State of Indiana

By: _____

Name: Mayor Treva Hodges

Title: Chair

ASSOCIATION:

**SHADOW LAKE OWNERS ASSOCIATION,
INC.,** an Indiana nonprofit corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

Proposed Lighting Plans

[Attached]