

**PITTSTON TOWNSHIP
LUZERNE COUNTY, PENNSYLVANIA**

RESOLUTION NO. 2-02 of 2023

**A RESOLUTION OF THE TOWNSHIP OF PITTSTON, LUZERNE COUNTY, PENNSYLVANIA,
ACCEPTING DEDICATION OF 0.04 ACRES OF LAND TO BE USED AS AN ALLEY;
REPEALING ALL INCONSISTENT RESOLUTIONS OR PARTS THEREOF; PROVIDING A
SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, Anthony Bryk and Daria Bryk, husband and wife (Bryk's) are the owners in fee of 0.04 acres of real property (the "Property") located in Pittston Township, Luzerne County, Pennsylvania; and

WHEREAS, The Bryk's have agreed to dedicate the Property to Pittston Township for public use to be added to an existing alley partially located in Pittston Township and Partially located in Dupont Borough;

WHEREAS, the alley to which the Property is to be added is subject to a certain unrecorded Road Maintenance Cooperation Agreement by and between Dupont Borough and Pittston Township;

WHEREAS, The Board of Supervisors of Pittston Township desires to accept dedication of the property for public use, and is authorized to accept dedication of real property pursuant to Section 1502(a) of the Second Class Township Code, 53 P.S. §66502(a).

NOW THEREFORE, be it and it is hereby **RESOLVED** by the Board of Supervisors of Pittston Township, Luzerne County, Pennsylvania, and it is hereby **ADOPTED** and **RESOLVED** as follows:

THAT, Pittston Township accepts dedication of the Property. A Legal description of the Property is attached hereto as Exhibit "A" and incorporated herein by reference.

THAT, the Chairman of the Board of Supervisors, the Township Manager and the Township Solicitor are authorized to take any and all actions necessary to accept dedication of the Property.

THAT, the provisions of this Resolution are severable and if any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be unconstitutional or otherwise illegal or unenforceable, such decision shall not affect the validity of the remaining portions of this Resolution.

THAT, all resolutions, ordinances or parts thereof inconsistent with this Resolution are hereby repealed to the extent of the inconsistency.

THAT, this Resolution shall be effective immediately upon passage.


**BE IT RESOLVED AND IT IS HEREBY RESOLVED THIS 21st day of
FEBRUARY, 2023**, by the Board of SUPERVISORS of the Township of PITTSTON.

ATTEST:

TOWNSHIP OF PITTSTON:



John Bonita
Secretary



David A. Slezak
Chairman, Board of Supervisors



Joseph Hawk
Vice Chairman, Board of Supervisors

Steven Rinaldi
Member, Board of Supervisors

EXHIBIT "A"

All of that certain piece, parcel of land situated in Pittston Township, County of Luzerne, and Commonwealth of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at an existing mag nail in Curtain St. Said mag nail is the Northwesterly most corner of lot labeled "New Lot 4" as shown on the "Butler Heights" Subdivision plan recorded on 10/13/2020 in Luzerne County Recorder of Deeds in Instrument #202049022. Said lot now or formerly owned by Anthony and Daria Bryk as recorded in Deed Book 3021 on Page 38640 in Luzerne County Recorder of Deeds.

THENCE through said Lands of now or formerly Bryk the following 7 courses and distances:

1. S 58°44'25"E, a distance of 30.00' to a point.
2. S 68°20'04"E, a distance of 45.00' to a point.
3. S 67°04'33"E, a distance of 90.00' to a point.
4. S 52°34'49"E, a distance of 26.00' to a point.
5. S 68°20'04"E, a distance of 27.00' to a point.
6. S 73°29'15"E, a distance of 23.00' to a point.
7. N84°25'57"E, a distance of 26.16' to a point on the boundary line between Pittston Township and DuPont Borough.

THENCE along the said boundary line of Pittston Township and DuPont Borough, N 68°20'04"W, a distance of 262.75' to the point of beginning.

CONTAINING 1916.71 Square Feet or 0.04 acres more or less.

BEING a strip of land containing part of an existing roadway Curtain and Grant Streets.

ROAD MAINTENANCE CO-OPERATION AGREEMENT

This Agreement is entered into on 21st Feb, 2023, by and between the Township of Pittston, Luzerne County, PA ("the Township") and the Borough of Dupont, Luzerne County, PA ("the Borough").

WITNESSETH

WHEREAS, the Township and the Borough acknowledge that the public unimproved alley between Simpson Street and Butler Heights Development hereafter known as "**Alley**" travels through both communities and that each respective municipality owns that portion of "**Alley**" which is located within its borders.

WHEREAS, the Township and the Borough desire to ensure that the public roadway known as "**Alley**" remains accessible to and traversable by public motor vehicle traffic in both communities;

WHEREAS, the Township and the Borough desire to cooperate and work together to ensure that "**Alley**" is maintained in a condition which conforms to general standards applicable to public roadways in the Commonwealth of Pennsylvania;

WHEREAS, the Township and the Borough recognize that it may be more cost efficient and effective to have one municipality assume maintenance responsibility over the entire roadway know as "**Alley**";

WHEREAS, the Township and the Borough have agreed to enter into an Agreement whereby the Borough assumes responsibility for maintaining that portion of "**Alley**" located in and owned by the Township;

WHEREAS, in consideration of the Borough's agreement to assume all responsibility for maintaining the portion of "**Alley**" located in and owned by the Township, the Township has agreed to pay over to the Borough all liquid fuels monies it receives from the Commonwealth of Pennsylvania annually for "**Alley**".

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

1. The Township and the Borough desire to co-operate and work together to ensure that "**Alley**" is maintained in a condition which conforms to general standards applicable to public roadways in the Commonwealth of Pennsylvania.
2. The Township and the Borough have agreed to enter into an Agreement whereby the Borough assumes responsibility for maintaining that portion of "**Alley**" located in and owned by the Township. In consideration of the Borough's agreement to assume all responsibility for maintaining the portion of "**Alley**" located in and owned by the Township, the Township has agreed to pay over to the Borough all liquid fuels monies it receives from the Commonwealth of Pennsylvania annually for "**Alley**". The Township agrees to make the annual payment of the liquid fuels monies it receives relative to "**Alley**" to the Borough within 5 days of its receipt of such funds from the Commonwealth of Pennsylvania.
3. The parties expressly understand and agree that the Township shall have no further responsibility to pay for any maintenance costs associated with and/or incurred by the Borough (including, but not limited to, labor, materials and/or equipment in maintaining "**Alley**" other than the consideration set forth in paragraph 2 above.
4. The parties expressly understand and agree that the Borough's responsibility for maintaining "**Alley**" under this Agreement shall include, but is not limited to, snow plowing, general road repairs, pot hole filling/patching and street cleaning. The Borough agrees that it shall be responsible to maintain "**Alley**" in a condition which conforms to general standards applicable to public roadways in the Commonwealth of Pennsylvania.
5. The parties expressly understand and agree that the Borough shall have no responsibility to pave any portion of "**Alley**" as part of its obligations under this Agreement.
6. If either party fails to fulfill any of its obligations under this Agreement at any time, the non-offending party may provide written notice to the offending party that it is in breach of this Agreement. If notice of such breach is provided and the breach is not cured within fifteen (15) days, then the non-offending party shall have the right to terminate this Agreement immediately at the conclusion of such notice period. In the event of such termination, neither party shall be relieved of any obligations incurred prior to such termination and the non-breaching party shall have any and all rights and remedies available at law or in

equity against the breaching party. No single exercise of a remedy shall be deemed an election to forgo any other remedy and any failure to pursue a remedy shall not prevent, restrict or otherwise modify its exercise subsequently.

7. The Township shall have no responsibility to the Borough for any damages caused to any of the Borough's equipment while such equipment is being used by the Borough's employees, servants and/or agents to perform any work contemplated by this Agreement.

8. **INDEMNIFICATION.** The Borough hereby agrees to indemnify, defend and hold harmless the Township and the Township's Board of Supervisors, employees, successors and assigns from and against all losses, liabilities, claims, demands, causes of action, damages, costs, including attorneys fees, and expenses of every kind and nature, whether or not covered by insurance, arising out of, resulting from or caused by, in whole or in part, any act, omission, negligence or fault of the Borough, its agents or employees in connection with this Agreement, including, but not limited to, those in connection with the loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, any liability or fines, fees or penalties for violations of any statutes, ordinances, codes, rules, regulations or standards applicable to the services performed by the Borough, its agents and employees. This obligation to indemnify, defend and hold harmless shall survive termination and/or expiration of this Agreement.

9. **INSURANCE.** The Borough shall provide and maintain, at its sole cost and expense, during the entire performance of this Agreement, a Comprehensive General Liability Insurance policy, in a form and from an insurer satisfactory to the Township, covering all services to be performed and all obligations assumed under the terms of this Agreement. Coverage provided under this policy shall not be less than one million (\$1,000,000) dollars per occurrence, combined single limit for bodily injury (including disease or death) and property damage (including loss of use).

The Township shall be named as an additional insured on all insurance policies obtained by the Borough in compliance with this Agreement. A certificate of insurance evidencing the required coverage shall be delivered to the Township prior to the Borough's commencement of performance under this Agreement.

All insurance required to be provided by the Borough under this Agreement shall be endorsed to provide that the insurer will provide at least thirty (30) days prior written notice to the Township in the event the insurance required herein is materially altered, canceled or not renewed, and, if the Borough shall not have obtained replacement insurance as required by this paragraph, the Township shall have the right to treat such

failure as a material breach of this Agreement and to exercise all appropriate rights and remedies including, if it so elects, to secure necessary insurance protection at the Borough's expense.

10. The parties each represent and warrant that they have the power and authority to enter into this Agreement and to fully perform all obligations hereunder, that this Agreement has been executed by their duly authorized representative, and that they are under no contractual or other legal obligation which would interfere in any way with the full, prompt, and complete performance of their obligations under this Agreement.

11. Neither party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other party.

12. Any notice herein required or permitted to be given will be given in writing and may be delivered personally to the parties as follows: by express courier, or sent by registered or certified mail, postage and fees prepaid, with return receipt requested to the address specified herein or, if different, then to most current address of the other party known to the party giving such notice. Either party may from time to time specify or change the address for such notice by giving written notice thereof to the other party in the manner herein above provided. A notice will be deemed given and received on the date it was delivered to the other party.

If to: Township of Pittston
Municipal Building
421 Broad Street
Pittston Township, PA 18640
570-654-0161 (phone)
570-655-4488 (fax)

If to: Borough of Dupont
600 Chestnut Street
Dupont, PA 18641
570-655-6216 (phone)
570-655-6703 (fax)

13. **FORCE MAJEURE.** Neither party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of terrorism, strikes, riots, embargos, war, invasion, acts of civil or military authorities, fire, floods, explosion, earthquakes, accidents, delays in carriers, acts of God, and all other delays beyond the party's reasonable control, provided that such party gives prompt written notice of such Force Majeure event to the other party within ten (10) business days. The time for performance will be extended for a period equal to the duration of the Force Majeure event, but in no event longer than thirty (30) days absent a written agreement signed by both parties.

14. **SEVERABILITY.** In the event that any provision in this Agreement is subject to an interpretation under which it would be void or unenforceable, such provision will be construed so as to constitute it a valid and enforceable provision to the fullest extent possible, and in the event that it cannot be so construed, it will, to that extent, be deemed deleted and separable from the other provisions of this Agreement, which will remain in full force and effect and will be construed to effectuate the purposes of this Agreement to the maximum legal extent.

15. **GOVERNING LAW AND VENUE.** This Agreement will be construed in accordance with the substantive laws of the State of Pennsylvania, including its conflict of law rules. The venue for any judicial proceedings will be proper in the state and federal courts located in Pennsylvania and each of the parties hereby submits to the jurisdiction of such courts.

16. **HEADINGS AND PRESUMPTIONS.** The headings of the sections of this Agreement are provided for convenience only and will not be used to limit or construe the contents of this Agreement. As this Agreement is a negotiated agreement, there will be no presumption against any party on the ground that such party was responsible for preparing this Agreement or any part of it.

17. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which will be deemed an original for all purposes, and which together will constitute one and the same agreement.

18. **NUMBER AND GENDER.** Wherever used herein, the singular number shall include the plural, the plural number shall include the singular, and uses of any gender shall be applicable to all genders as is appropriate within the context hereof.

19. **REMEDIES.** Unless expressly set forth to the contrary, either party's election of any remedies provided for in this Agreement will not be

exclusive of any other remedies available hereunder or otherwise at law or in equity, and all such remedies will be deemed to be cumulative.

20. COMPLETE AGREEMENT, WAIVER AND MODIFICATION.

This Agreement constitutes the complete and exclusive understanding between the parties with respect to the subject matter hereof, superseding all prior negotiations, preliminary agreements, correspondence or understandings. No waiver or modification of any provision of this Agreement will be binding unless in writing and signed by each of the parties. No waiver of a breach here of will be deemed to constitute a waiver of a further breach, whether of a similar or dissimilar nature.

21. SIGNATURES. The signing of this Agreement below by an authorized representative of each party is an affirmation by each party of its intent and agreement to be bound by all the terms and conditions set forth above.

ACCEPTED AND AGREED:

TOWNSHIP OF PITTSTON

Date: _____

BY: David Lynch

TITLE: Supervisor

BOROUGH OF DUPONT

Date: 2/28/23

BY: Stanley Knudsen

TITLE: Council President