

City of Philadelphia



(Bill No. 070931)

AN ORDINANCE

Authorizing the Commissioner of Public Property, on behalf of the City of Philadelphia, to enter into an agreement with the United States of America for the grant of a right-of-way for railroad purposes by the City through property, located on the north side of the Army Corps of Engineers Fort Mifflin Center from Fort Mifflin Road to the 60th Street Branch of the former Philadelphia, Baltimore and Washington Railroad (CSX Transportation, Inc.), under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

Section 1. The Commissioner of Public Property, on behalf of the City, is hereby authorized to enter into an agreement, substantially in the form set forth in Exhibit A, with the United States of America and its assigns, for the grant of a right-of-way for railroad purposes through City property located on the north side of the Army Corps of Engineers Fort Mifflin Center from Fort Mifflin Road to the 60th Street Branch of the former Philadelphia, Baltimore and Washington Railroad (CSX Transportation, Inc.), under certain terms and conditions.

Section 2. The City Solicitor shall include in said agreement such terms and conditions as he may deem necessary to protect the interest of the City.

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Exhibit A

“RIGHT OF WAY AND EASEMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 200____, by and between, THE CITY OF PHILADELPHIA, hereinafter called “Grantor”, the record owner of a certain Property, identified as Registry Plan 47 S 7, Lot No. 28, located in Philadelphia, Philadelphia County, Pennsylvania, hereinafter “Property”; Said property being adjacent to the north side of the Fort Mifflin Army Corps of Engineers Center from Fort Mifflin Road to the 60th Street Branch of the former Philadelphia, Baltimore and Washington Railroad (CSX Transportation, Inc.), in the 40th Ward, Philadelphia, Pennsylvania, and THE UNITED STATES OF AMERICA, hereinafter called “Grantee”;

WITNESSETH:

WHEREAS, in order to conduct the Bark Camp Run Environmental Protection and Restoration Project and other projects in the future, Grantee requires a Perpetual Railroad Easement for the transportation of materials across the herein described portion of Grantor’s said Property; and

WHEREAS, City desires to support the successful implementation of such Environmental Protection and Restoration projects and to cooperate with the Grantee in allowing the perpetual use of said railroad right-of-way;

NOW, THEREFORE, FOR AND IN CONSIDERATION of reasonable, periodic use by the Grantor of the railroad and its appurtenances as developed by the Grantee under this Agreement and for benefits received by the Grantor from successful project implementation, the receipt and sufficiency of which is acknowledged, the parties hereby agree to as follows:

1. For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby gives, grants, and conveys unto the Grantee its successors and assigns, all the rights, title and interest which it presently has or will acquire in the full, free and uninterrupted use, liberty and privilege of a railroad right-of-way and easement over, under, along and in the Easement described in Section 2 of this Agreement and shown on the Plan of Right-of-Way, attached hereto and marked “Exhibit A”.

2. Grantor has granted unto the Grantee, its successors and assigns, the full, free and uninterrupted use, liberty and privilege of a right-of-way and easement for railroad purposes (hereinafter referred to as the “Easement”) over, under, along and in the following premises as lies within the land owned by the Grantor, such portion of the following described, to wit :

ALL THAT CERTAIN LOT OR PIECE OF GROUND SITUATED IN THE 40th WARD OF THE CITY OF PHILADELPHIA, DESCRIBED AS FOLLOWS:

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BEGINNING at a point in the centerline of an intersection formed by Fort Mifflin Road (also known as Fort Road, 20 feet wide, not on City Plan and no record of legal opening), and Hog Island Road (20 feet wide, not on City Plan and no record of legal opening) by the following two courses and distances : 1) South 29°17'41" East, the distance of 1,145.719 feet to a point; Thence 2) South 29°17'41" East, a distance of 58.911 feet to a point. Said point being the True Point and Place of Beginning; Thence, from the Point of Beginning, 1) South 29°17'41" East, a distance of 269.473 feet to a point; Thence 2) South 46°39'19" West, a distance of 1,660.943 feet to a point; Thence 3) North 06°07'52" East, a distance of 115.428 feet to a point; Thence 4) North 46°39'19" East, a distance of 1,565.142 feet to a point; Thence 5) North 29°17'41" West, a distance of 188.491 feet to a point; Thence 6) North 39°20'19" East, a distance of 27.975 feet to the True Point and Place of Beginning. Containing 126,938 Square Feet or 2.19 Acres, more or less.

The Right-of-way for Railway Purposes, described herein, is according to a plan entitled "RIGHT-OF-WAY DISCRIPTION FOR RAILROAD SIDING", dated October 19, 2005, (Reference Drawing Y543), prepared by Philadelphia Water Department Survey Unit, 3585 Fox Street, Philadelphia, PA, 19129.

3. Grantor hereby grants the Grantee, its officers, agents, employees and contractors the right of access, ingress, egress to and from the Easement along with the necessary equipment and materials, for the construction, reconstruction, maintenance, alteration, repair and inspection of any and all present and future railroad structures and appurtenances now situated in the said Easement or which the Grantee may hereafter at any time desire to locate therein.

4. In consideration of this grant of right-of-way by the Grantor, the Grantee shall grant reasonable, periodic use by the Grantor of the railroad and its appurtenances as developed by the Grantee, including the right to construct, maintain and reconstruct a railroad siding to subject railroad.

5. Grantee covenants and agrees that no change in grades or other alterations within the lines of the Easement shall be made and that no buildings and/or other structures either overhead, underground or upon the surface, shall be constructed within the lines of the Easement or abutting thereon unless the plans for such changes of grade, alterations or structures shall be first be submitted to and approved by the Water Department.

6. In the event that the Grantor shall require the right-of-way herein granted for railroad purposes, or any part thereof, Grantor shall provide a substitute right-of-way. The Grantee shall bear the cost of the restoration and relocation costs if such substitute right-of-way is necessary.

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7. Grantor warrants that Grantor is the owner in fee of the Easement free and clear of liens, encumbrances, restrictions and other matters of record, has the power and is duly authorized to execute this Right of Way and Easement Agreement, and the Grantee may peacefully and quietly exercise the rights granted hereunder free and clear of rights or consent of third parties.

8. Grantee agrees that this Agreement may be filed of record in the office of the Department of Records of the City of Philadelphia, the same to be public notice of waiver and release of any and all damages which may be sustained by reason of future City Plan changes and the grant of the right-of-way and easement described herein.

9. All notices given under this Easement shall be in writing and shall be deemed to have been duly given if sent by United States certified registered mail, postage prepaid, enclosed in an envelope addressed to the party to be notified, at the following addresses:

If to Grantor at: City of Philadelphia
Water Department
Projects Control Unit
ARA Tower, Second Floor
1101 Market Street
Philadelphia, PA 19107

If to Grantee at: United States of America
Army Corps of Engineers
Baltimore District
ATTN : CENAB-RE-C
P.O. Box 1715
Baltimore, MD 21203-1715

or to such other address as either party may give by notice to the other party.

10. The terms and conditions hereof shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns and be covenants running with the land affected by the Easement.

11. This is not a conveyance of the real estate included within the Easement nor of any interest in the oil, gas and other minerals in, on or under the real estate covered hereby, but is a grant solely of rights-of-way and easement as described above.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused these presents to be duly executed the day and year first above written.

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APPROVED AS TO FORM

**CITY OF PHILADELPHIA
DEPARTMENT OF PUBLIC
PROPERTY**

By: _____

JOAN SCHLOTTERBECK
Commissioner, Department of
Public Property

UNITED STATES OF AMERICA

By: _____

WITNESS

By: _____”

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 6, 2007. The Bill was Signed by the Mayor on December 18, 2007.



Patricia Rafferty
Chief Clerk of the City Council