

## CITY TRANSIT DIVISION PROPERTIES LEASE AGREEMENT

THIS CITY TRANSIT DIVISION PROPERTIES LEASE AGREEMENT (“**Lease**”) is dated \_\_\_\_\_ and is effective as of \_\_\_\_\_, 2013 (the “**Effective Date**”) by and between **THE CITY OF PHILADELPHIA**, a body corporate and politic existing under the laws of the Commonwealth of Pennsylvania, acting through its Department of Public Property (the “**City**”), as lessor and **SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY**, a body corporate and politic which exercises the public powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof (the “**Authority**” or “**SEPTA**”), as lessee. The City and the Authority are sometimes referred to herein as a “**Party**” and collectively as the “**Parties**”.

### RECITALS

WHEREAS, the City is a municipal corporation of the Commonwealth, being a First Class City thereof; and

WHEREAS, the Authority is a body corporate and politic existing under the laws of the Commonwealth of Pennsylvania (the “**Commonwealth**”), organized pursuant to the Metropolitan Transportation Authorities Act of 1963, 74 Pa. Cons. Stat. Ann. §§1701 *et seq.* (as amended, and as may be amended, restated or supplemented from time to time, the “**SEPTA Enabling Act**”); and

WHEREAS, pursuant to the SEPTA Enabling Act, the Authority exists for the purpose of planning, acquiring, holding, constructing, improving, maintaining, operating, leasing (either as lessor or lessee) and otherwise functioning with respect to a transportation system within the metropolitan area consisting of Bucks, Chester, Delaware, Montgomery and Philadelphia counties in the Commonwealth (the “**SEPTA Metropolitan Area**”); and

WHEREAS, the Authority operates its integrated passenger transportation system (the “**SEPTA System**”) as three divisions generally described as follows: the City Transit Division, which is a network currently consisting of subway-elevated, light rail, trackless trolley and bus routes, as well as demand response services, serving the City, but for the purposes of this Lease, expressly excluding those properties described on Exhibit “B-1” (the “**City Transit Division**”), the Suburban Transit Division, which serves the suburban counties with a network currently existing of interurban trolley, light rail and bus routes, as well as demand response services (the “**Suburban Transit Division**”) and the Regional Rail Division, which serves all counties in the SEPTA Metropolitan Area with a network currently consisting of commuter rail lines (the “**Regional Rail Division**”); and

WHEREAS, on or about September 27, 1968, the Authority acquired the assets of the Philadelphia Transportation Company (“**PTC**”), which acquisition was financed through the issuance of certain revenue bonds, and in connection therewith, the City and the Authority entered into (i) a certain Agreement and Lease dated September 27, 1968 between the Authority as lessor and the City as lessee for the properties that the Authority had acquired from PTC (the “**1968 Lease**”) and (ii) a certain Lease dated September 27, 1968 between the City as lessor and the Authority as lessee pursuant to which the City leased back to the Authority the properties

that the City leased from the Authority pursuant to the 1968 Lease, and leased to the Authority certain other properties owned by the City, so that the Authority could operate an integrated passenger transportation system (the “**1968 Leaseback**” and collectively with the 1968 Lease, shall be referred to as the “**1968 Lease Agreements**”); and

WHEREAS, the properties leased by the Authority pursuant to the 1968 Leaseback constitute a portion of the City Transit Division and the SEPTA System; and

WHEREAS, the City owns certain properties which are part of the City Transit Division defined below as the “City Owned Transit Properties”; and

WHEREAS, in connection with the Authority’s operation of the City Transit Division, the Authority and the City entered into certain agreements, including without limitation, the agreements described in Exhibit “A” (collectively, the “**City Transit Division Agreements**”); and

WHEREAS, the City Transit Division Agreements identified on Exhibit “A-1” are to be terminated, and the City Transit Division Agreements identified on Exhibit “A-2” are intended to survive independently of this Lease, as described herein; and

WHEREAS, Suburban Station, also known as Penn Center Suburban Station (“**Suburban Station**”), is a two-level subterranean commuter rail passenger station which is located in an area bound generally by 15th Street, Cuthbert Street, 17th Street, Commerce Street, 16th Street and Market Street in the City of Philadelphia; and

WHEREAS, the two levels of Suburban Station consist of a lower level in which are located railroad tracks and passenger platforms and the upper level of which are located a pedestrian concourse, a ticket office, passenger waiting areas and retail spaces (the upper level is, collectively, “**Suburban Station Concourse**”); and

WHEREAS, the City is the owner of certain portions of the Suburban Station Concourse, including the 15th Street Courtyard and escalator headhouse (“**15th Street Courtyard**”), the 16th Street Corridor (“**16th Street Corridor**”) and the 17th Street Corridor (“**17th Street Corridor**”) (collectively, the “**City Owned Suburban Station Concourse Property**”), as each portion is further shown on Exhibit “C”; and

WHEREAS, the Authority desires to continue to improve and expand the facilities in the Suburban Station Concourse and the City desires that Authority continue such improvement and expansion, provided that the Suburban Station Concourse remains a publicly accessible concourse with amenities consistent with the operation of the Suburban Station Concourse as of the Effective Date, and for other transportation-related purposes, upon the terms and subject to the conditions and provisions set forth herein; and

WHEREAS, a dispute arose between the Parties as to the expiration date of the 1968 Lease Agreements and on July 29, 2005, the Authority filed an action in the Court of Common Pleas of Philadelphia County captioned SEPTA v. The City of Philadelphia, July Term, 2005, No. 003365 (the “**Declaratory Judgment Action**”), in which the Authority sought a declaratory



judgment that the 1968 Lease Agreements expire no sooner than the year 2029 and that they may be renewable by the Authority's unilateral actions; and

WHEREAS, the City and the Authority decided to work cooperatively toward the common goal of obtaining increased dedicated funding for mass transportation in Southeastern Pennsylvania, and of improving the operation of the mass transportation system in the SEPTA Metropolitan Area, and in furtherance thereof, entered into a certain Standstill Agreement dated October 7, 2005, which was amended by a certain First Amendment to Standstill Agreement dated on or about December 29, 2008, and which was further amended by a certain Second Amendment to Standstill Agreement dated as of December 24, 2009 (as so amended, and as it may be further amended by written agreement of the parties, the "**Standstill Agreement**"); and

WHEREAS, pursuant to the Standstill Agreement, SEPTA voluntarily discontinued the Declaratory Judgment Action without prejudice to SEPTA's ability to reinstate the Declaratory Judgment Action if the Standstill Agreement is terminated or if the extension of the 1968 Lease Agreements expired before any successor agreement is adopted; and

WHEREAS, the Standstill Agreement provided that it is the intent of the Authority and the City to enter into a "master agreement" which shall govern the relationship between them with respect to the operation by the Authority of the City Owned Transit Properties; and

WHEREAS, the Parties intend by this Lease for the City to lease to the Authority the City Owned Transit Properties (including without limitation the City Owned Suburban Station Concourse Property), upon the terms and subject to the conditions and provisions set forth herein, to enable the Authority to continue to operate the City Transit Division as part of the SEPTA System. In connection therewith, the Parties intend that this Lease shall govern as a master lease agreement for all of the City Owned Transit Properties, except as specifically excluded hereby.

WHEREAS, on \_\_\_\_\_, 2013, Philadelphia City Council approved Ordinance No. \_\_\_\_\_, which provides for execution and delivery of this Lease, which ordinance was signed by Mayor Michael A. Nutter on \_\_\_\_\_, 2013.

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **Recitals.** The Recitals of this Lease are incorporated herein as if set forth in full.
2. **Definitions.**
  - (a) "8 Penn Center Agreements" shall have the meaning as defined in Section 16.1 hereof.
  - (b) "8 Penn Center Agreement Amendments" shall have the meaning as defined in Section 16.3 hereof.

- Recitals.
- (c) “**15<sup>th</sup> Street Courtyard**” shall have the meaning as defined in the Recitals.
  - (d) “**16<sup>th</sup> Street Corridor**” shall have the meaning as defined in the Recitals.
  - (e) “**16<sup>th</sup> Street Loading Dock**” shall have the meaning as defined in Section 4.1(e) hereof.
  - (f) “**17<sup>th</sup> Street Corridor**” shall have the meaning as defined in the Recitals.
  - (g) “**1968 Lease**” shall have the meaning as defined in the Recitals.
  - (h) “**1968 Lease Agreements**” shall have the meaning as defined in the Recitals.
  - (i) “**1968 Leaseback**” shall have the meaning as defined in the Recitals.
  - (j) “**Additional Rent**” shall have the meaning as defined in Section 7.2 hereof.
  - (k) “**Alterations and Replacements**” shall have the meaning as defined in Section 13.1 hereof.
  - (l) “**Applicable Laws**” shall have the meaning as defined in Section 10.3 hereof.
  - (m) “**Authority**” shall have the meaning as defined in the introductory paragraph.
  - (n) “**Authority Entities**” shall have the meaning as defined in Section 3.3(a) hereof.
  - (o) “**Authority Utility Facilities**” shall mean Utility Facilities that are owned by the Authority or installed by third parties pursuant to agreements with the Authority.
  - (p) “**Base Index Number**” shall mean the CPI for the month and year in which the Effective Date occurs.
  - (q) “**Broad Street Subway Concourse**” means the concourse area of the Broad Street Subway, as shown on the plan attached hereto as Exhibit “C”.
  - (r) “**Capital Improvement Plan**” shall have the meaning as defined in Section 13.3 hereof.
  - (s) “**Casualty**” shall have the meaning as defined in Section 19 hereof.
  - (t) “**City**” shall have the meaning as defined in the introductory paragraph.



- Recitals.
- (u) “**City Authorizing Ordinance**” shall have the meaning as defined in the
- hereof.
- (v) “**City Entities**” shall have the meaning as defined in Section 3.3(a)
- hereof.
- (w) “**City Obligations**” shall have the meaning as defined in Section 10.5
- (x) “**City Owned Suburban Station Concourse Property**” shall have the meaning as defined in the Recitals.
- (y) “**City Owned Transit Properties**” shall have the meaning as defined in Section 4.1(a) hereof.
- (z) “**City Required Contributions**” shall have the meaning as defined in Section 15.1 hereof.
- (aa) “**City Transit Division**” shall have the meaning as defined in the Recitals.
- (bb) “**City Transit Division Agreements**” shall have the meaning as defined in the Recitals.
- (cc) “**City Transit Division Properties**” shall mean, collectively, the City Owned Transit Properties and the SEPTA Owned Transit Properties.
- (dd) “**Claims**” shall have the meaning as defined in Section 3.3(a) hereof.
- (ee) “**Commonwealth**” shall have the meaning as defined in the Recitals.
- (ff) “**Concourse Expenditures**” shall have the meaning as defined in Section 7.3(a)(i) hereof.
- (gg) “**Concourses**” shall mean, collectively, the Broad Street Subway Concourse, the Market East Station Concourse, the MSB Concourse, the Suburban Station Concourse, and other concourses or passageways that are part of the City Transit Division Properties.
- (hh) “**Constant Dollars**” shall mean the present value of the U.S. dollar to which such phrase refers. An adjustment shall occur on each CPI Adjustment Date. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number.
- (ii) “**Contamination**” shall have the meaning as defined in Section 17.2 hereof.

(jj) “**CPI**” shall mean the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers - Philadelphia - Wilmington - Atlantic City, PA, NJ, DE MD - All Items (November 1982-84=100) (Not Seasonally Adjusted). If the manner in which such Consumer Price Index is determined shall be changed, or if 1982-84 shall no longer be used as the base year, such adjustment shall be made in calculations using such successor or revised index as may be specified by the issuing agency for the purpose of compensating for the change, or if in the absence of such specification, there shall be made such adjustment, if any, as the Authority and the City reasonably determine to be appropriate. If such Consumer Price Index shall become unavailable to the public because publication is discontinued, or otherwise, the Authority and the City shall substitute therefor an index reasonably determined by them to be comparable.

(kk) “**CPI Adjustment Date**” means January 1 of the sixth (6th) calendar year following the Effective Date, and thereafter at five (5) year intervals.

(ll) “**Current Index Number**” shall mean the CPI for the same month as is used for the Base Index Number, but for the year prior to the CPI Adjustment Date; the “**Index**” shall be the CPI. For example, if the Base Index Number is November 2013, then the Current Index Number to be used as of the CPI Adjustment Date is November 2018 and the CPI Adjustment Date is January 1, 2019.

(mm) “**Declaratory Judgment Action**” shall have the meaning as defined in the Recitals.

(nn) “**Development Lease**” shall mean that certain Agreement of Sublease dated December 21, 1979 between PAID and Eight Penn Center Building Corporation, as subtenant, as amended by an Amendment to Agreement of Sublease dated January 7, 1980, as may be amended.

(oo) “**Dilworth Plaza Lease**” shall mean the Lease Agreement for Dilworth Plaza dated August 26, 2011 between the City, as landlord and the Center City District, as tenant, which was approved by City Council on December 16, 2010 pursuant to Ordinance No. 100842 and was signed by the Mayor of the City on December 21, 2010, as amended by First Amendment to Lease dated October 5, 2011, as the same may be amended.

(pp) “**Effective Date**” shall have the meaning as defined in the introductory paragraph.

(qq) “**Environmental Laws**” shall have the meaning as defined in Section 17.2 hereof.

(rr) “**Event of Default**” shall have the meaning as defined in Section 22.1 hereof.

(ss) “**Existing Advertising Revenue Sources**” shall have the meaning as defined in Section 7.3(b)(i) hereof.

(tt) “**Existing Advertising Revenues**” shall have the meaning as defined in Section 7.3(b)(i) hereof.

(uu) “**Existing Utility Facilities**” shall have the meaning as defined in Section 7.3(d)(i) hereof.

(vv) “**Extension Term**” and “**Extension Terms**” shall have the meanings as defined in Section 6.2 hereof.

(ww) “**Extensions**” shall have the meaning as defined in Section 13.2 hereof.

(xx) “**Fixed Rent**” shall have the meaning as defined in Section 7.1 hereof.

(yy) “**Hazardous Substance**” shall have the meaning as defined in Section 17.2 hereof.

(zz) “**Initial Term**” shall have the meaning as defined in Section 6.1 hereof.

(aaa) “**Lease**” shall have the meaning as defined in the introductory paragraph.

(bbb) “**Maintenance**” or “**Maintain**” shall have the meanings as defined in Section 10.1 hereof.

(ccc) “**Market East Station**” means the transit station located at 1170 Market Street and 12th Street which is served by the Regional Rail Division.

(ddd) “**Market East Station Concourse**” means the concourse area of Market East Station as shown on the plan attached hereto as Exhibit “C”.

(eee) “**Metromarket**” shall have the meaning as defined in Section 3.2 hereof.

(fff) “**Metromarket License Agreement**” shall have the meaning as defined in Section 3.2 hereof.

(ggg) “**MSB**” means the Municipal Services Building located at 1401 John F. Kennedy Boulevard.

(hhh) “**MSB Concourse**” means the concourse area of MSB, as shown on the plan attached hereto as Exhibit “C”, but excluding the areas of the concourse that are within the building footprint of MSB (and set behind glass doors).

(iii) “**New Access Areas**” shall have the meaning as defined in Section 4.3(b) hereof.

(jjj) “**New Advertising Revenues**” shall have the meaning as defined in Section 7.3(b)(ii) hereof.



(kkk) “**New Development Project**” shall have the meaning as defined in Section 7.3(c) hereof.

(lll) “**New Development Revenues**” shall have the meaning as defined in Section 7.3(c) hereof.

(mmm) “**New Project**” shall have the meaning as defined in Section 7.3(a)(ii) hereof.

(nnn) “**New Utility Facilities**” shall have the meaning as defined in Section 7.3(d)(ii) hereof.

(ooo) “**New Utility Revenues**” shall have the meaning as defined in Section 7.3(d)(ii) hereof.

(ppp) “**New Sources of Revenue Rent**” shall have the meaning as defined in Section 7.3 hereof.

(qqq) “**Other Properties**” shall have the meaning as defined in Section 8.2(a) hereof.

(rrr) “**PAID**” shall have the meaning as defined in Section 16.1 hereof.

(sss) “**PAID/City Agreement**” shall mean that certain Eight Penn Center Development Assistance Agreement dated December 21, 1979 between the City and PAID, as may be amended.

(ttt) “**Paid Areas**” shall have the meaning as defined in Section 7.3(a)(iii) hereof.

(uuu) “**Party**” or “**Parties**” shall have the meaning as defined in the introductory paragraph.

(vvv) “**Permitted Post-Term Agreements**” shall have the meaning as defined in Section 6.5 hereof.

(www) “**Policy**” shall have the meaning as defined in Section 18.2 hereof.

(xxx) “**Prime Lease**” shall mean that certain Agreement of Lease dated December 21, 1979 between SEPTA and PAID related to 8 Penn Center, as may be amended.

(yyy) “**Prime Lease Amendment**” shall have the meaning as defined in Section 16.3 hereof.

(zzz) “**Project Expenditures**” shall have the meaning as defined in Section 7.3(a)(iv) hereof.

(aaaa) “**Proposed Abandoned Facilities**” shall have the meaning as defined in Section 4.7(a) hereof.

(bbbb) “**PTC**” shall have the meaning as defined in the Recitals.

(cccc) “**Real Estate Tax Issue**” shall have the meaning as defined in Section 4.9 hereof.

(dddd) “**Regional Rail Division**” shall have the meaning as defined in the Recitals.

(eeee) “**Remediation Plan**” shall have the meaning as defined in Section 4.7(a)(ii) hereof.

(ffff) “**Rent**” shall have the meaning as defined in Section 7.4 hereof.

(gggg) “**ROW Ordinance**” means the Right-of-Way Management Ordinance (Bill No. 050065), passed by City Council on April 7, 2005, signed by the Mayor of the City on April 20, 2005, and codified chiefly as Chapter 11-700 of The Philadelphia Code.

(hhhh) “**ROW Ordinance Issue**” shall have the meaning as defined in Section 4.8 hereof.

(iiii) “**SEPTA**” shall have the meaning as defined in the introductory paragraph.

(jjjj) “**SEPTA Enabling Act**” shall have the meaning as defined in the Recitals.

(kkkk) “**SEPTA Metropolitan Area**” shall have the meaning as defined in the Recitals.

(llll) “**SEPTA Owned Transit Properties**” shall have the meaning as defined in Section 4.2 hereof.

(mmmm) “**SEPTA System**” shall have the meaning as defined in the Recitals.

(nnnn) “**Stairway Agreements**” have the meaning as defined in Section 4.3(c) hereof.

(oooo) “**Standstill Agreement**” shall have the meaning as defined in the Recitals.

(pppp) “**Suburban Station**” shall have the meaning as defined in the Recitals.

(qqqq) “**Suburban Station Concourse**” shall have the meaning as defined in the Recitals.

(rrrr) **“Suburban Station Concourse Survey”** means the survey of the Suburban Station Concourse commissioned by the City, a copy of which is attached hereto as **Exhibit “C”**.

(ssss) **“Suburban Transit Division”** shall have the meaning as defined in the Recitals.

(tttt) **“Term”** shall have the meaning as defined in Section 6.3 hereof.

(uuuu) **“Termination Notice”** shall have the meaning as defined in Section 6.2 hereof.

(vvvv) **“Transfer”** shall have the meaning as defined in Section 21 hereof.

(wwww) **“Transportation Funding Laws”** shall mean collectively, (1) Act 44 of 2007, as the same may be amended, and (2) any successor or additional law(s) which are enacted for the purpose of providing funding sources for mass transit in Pennsylvania.

(xxxx) **“Utility Facilities”** shall have the meaning as defined in Section 14.1(a) hereof.

(yyyy) **“Utility Revenues”** shall have the meaning as defined in Section 7.3(d)(ii) hereof.

### **LIST OF EXHIBITS**

|               |   |
|---------------|---|
| Exhibit “A”   | City Transit Division Agreements  |
| Exhibit “A-1” | Terminated City Transit Division Agreements   |
| Exhibit “A-2” | City Transit Division Agreements which Survive Independently of this Lease  |
| Exhibit “B”   | City Owned Transit Properties   |
| Exhibit “B-1” | Properties Excluded from City Owned Transit Properties – (Not Leased to SEPTA)                                      |
| Exhibit “B-2” | Ductbanks for which SEPTA is Responsible  |
| Exhibit “C”   | Plan of Broad Street Subway Concourse, Market East Station Concourse, MSB Concourse, and Suburban Station Concourse |
| Exhibit “C-1” | Plan showing Commerce Street  |
| Exhibit “C-2” | Plan of Dilworth Plaza Delineating Maintenance Responsibility   |
| Exhibit “C-3” | Plan showing City Transit Division as of the Effective Date   |
| Exhibit “D”   | Stairway Agreements   |
| Exhibit “E”   | ROW Ordinance Settlement Terms  |



### 3. Existing Agreements.

3.1 Termination of 1968 Lease Agreements. Effective as of the Effective Date, the City and the Authority agree that the 1968 Lease Agreements (including without limitation, the provisions of the Prior Agreements as defined in and incorporated into the 1968 Leaseback) are hereby terminated, null and void and of no further force or effect, and that the provisions of this Lease shall govern the relationship between the Parties as to the subject matter of the 1968 Leaseback; provided, however, that the termination of the 1968 Lease Agreements shall not relieve the Parties of obligations incurred thereunder, or deprive the Parties of rights accruing thereunder, prior to the Effective Date, except as provided in Section 3.3 below. The City Transit Division Agreements set forth on Exhibit "A-1" are hereby terminated by virtue of this Lease and are of no further force or effect. The City Transit Division Agreements set forth on Exhibit "A-2" involve projects that were financed with federal funds, so to the extent that this Lease can be construed to modify such agreements such that the consent of the Federal Transit Administration would be required, the Parties agree that the City Transit Division Agreements listed on Exhibit "A-2" shall control where inconsistent with the terms of this Lease. With respect to the City Transit Division Agreements identified on Exhibit "A" (other than those listed on Exhibit "A-1" or Exhibit "A-2"), to the extent that any such City Transit Division Agreements are inconsistent with the provisions of this Lease, the provisions of this Lease shall control. The Parties are not aware of any City Transit Division Agreements other than those listed on Exhibit "A," but if they discover any, they agree to consult with each other to update Exhibit "A" and to determine whether Exhibit "A-1" or Exhibit "A-2" should also be updated to list them, and this Lease shall be amended accordingly.

3.2 Metromarket License Agreement. The City shall terminate that certain License Agreement dated May 10, 1999, as amended (as so amended, the "**Metromarket License Agreement**"), between the City and Metromarket Business Trust ("**Metromarket**") pursuant to which the City granted to Metromarket a license to use portions of the 16<sup>th</sup> Street Corridor of the City Owned Suburban Station Concourse Property, such termination to be effective as of a date agreed upon by the City and the Authority. The Parties agree that, if necessary, the Authority shall amend its existing Master Lease and Management Agreement with Metromarket Management LLC to include the areas of the 16<sup>th</sup> Street Corridor which were the subject of the Metromarket License Agreement.

### 3.3 Waiver and Release.

(a) Except as otherwise provided herein, the City, for itself and its past and present agencies, boards, commissions, offices and departments, and each of their past and present officials, employees, agents, attorneys, accountants, successors and assigns (collectively, the "**City Entities**"), does hereby remise, release, settle and forever discharge the Authority and each of its past and present agencies, offices and departments, and each of their past and present officials, board members, officers, employees, agents, attorneys, accountants, successors and assigns (collectively, the "**Authority Entities**") from any and all actions, proceedings, causes of action, suits, debts, accounts, controversies, losses, judgments, damages, penalties, fines, claims, liabilities, expenses and demands of any nature whatsoever, and including, without limitation, reasonable attorneys', investigators' and experts' fees, expenses and costs (collectively, the



“**Claims**”) which the City, for itself and the other City Entities, ever had, now have or hereafter can, shall or may have against the Authority Entities with respect to, resulting from or in connection with any claims for payment, reimbursement, performance, obligations or liabilities of or by the Authority related to the City Transit Division Properties, including without limitation, the ROW Ordinance Issue and the Real Estate Tax Issue, and any actual or alleged breaches of or defaults by the Authority under any of the City Transit Division Agreements, whether or not now known, occurring prior to the Effective Date of this Lease, including without limitation, claims for payment of rent or other similar payments purported to be due under the City Transit Division Agreements; provided, however this release does not extend to (i) the obligations and liabilities (including, without limitation, the Authority’s obligation to pay the Past Due ROW Fees as described in **Exhibit “E”** attached hereto) created by this Lease or the enforcement of such obligations and liabilities; (ii) any Claims arising from an event occurring prior to the Effective Date that are brought by third parties against the City Entities related to the Authority’s rights or obligations under the City Transit Division Agreements to the extent that such Claims do not result from the negligence or willful misconduct of any of the City Entities; (iii) any rights accruing under any City Transit Division Agreements or any other agreements related to or necessary for the operation of the City Transit Division, such as easement agreements and trackage rights; and (iv) any Claims related to the City Transit Division Properties arising from a violation of Applicable Law by the Authority (other than the ROW Ordinance Issue, as further modified by clause (ii) above, and the Real Estate Tax Issue).

(b) Except as otherwise provided herein, the Authority, for itself and for the other Authority Entities, does hereby remise, release, settle and forever discharge the City and the City Entities from any and all Claims which the Authority, for itself and the other Authority Entities, ever had, now have or hereafter can, shall or may have against the City Entities with respect to, resulting from or in connection with any claims for payment, reimbursement, performance, obligations or liabilities of or by the City related to the City Transit Division Properties, including without limitation, the ROW Ordinance Issue and the Real Estate Tax Issue, and any actual or alleged breaches of or defaults by the City under any of the City Transit Division Agreements, whether or not now known, occurring prior to the Effective Date of this Lease, including without limitation, claims for payment of rent or other similar payments purported to be due under the City Transit Division Agreements; provided, however this release does not extend to (i) the obligations and liabilities (including, without limitation, the City’s obligation to make the City Required Contributions) created by this Lease or the enforcement of such obligations and liabilities; (ii) any Claims arising from an event occurring prior to the Effective Date that are brought by third parties against the Authority Entities related to the City’s rights or obligations under the City Transit Division Agreements to the extent that such Claims do not result from the negligence or willful misconduct of any of the Authority Entities; (iii) any rights accruing under any City Transit Division Agreements or any other agreements related to or necessary for the operation of the City Transit Division, such as easement agreements and trackage rights; and (iv) any Claims related to the City Transit Division Properties arising from a violation of Applicable Law by the City (other than the ROW Ordinance Issue and the Real Estate Tax Issue).

(c) The City, for itself and the other City Entities, jointly and severally, covenants and agrees not to commence or prosecute any civil action or proceeding, other than



for the enforcement of the obligations and liabilities arising hereunder, against the Authority Entities, or any of them, or to assert against the Authority Entities, or any of them, in any civil action or proceeding any matter whether or not now known, based upon any act, transaction, practice or conduct of the Authority Entities, or any of them, that is covered by (and not specifically excluded from) the release contained in Section 3.3(a) hereof.

(d) The Authority, for itself and the other Authority Entities, jointly and severally, covenants and agrees not to commence or prosecute any civil action or proceeding, other than for the enforcement of the obligations and liabilities arising hereunder, against the City Entities, or any of them, or to assert against the City Entities, or any of them, in any civil action or proceeding any matter whether or not now known, based upon any act, transaction, practice or conduct of the City Entities, or any of them, that is covered by (and not specifically excluded from) the release contained in Section 3.3(b) hereof.

(e) These releases and covenants not to sue shall inure to the benefit of the City Entities and to the Authority Entities and shall be binding upon the City Entities and the Authority Entities.

(f) Each Party represents and warrants to the other Party that it has not sold, assigned, transferred, conveyed or otherwise disposed of any Claims relating to any matter covered by the releases and covenants not to sue set forth in this Section 3.

3.4 Survival. The provisions of this Section 3 shall survive the expiration of this Lease.

#### 4. Ownership of City Transit Division Assets.

##### 4.1 City Owned Transit Properties.

(a) The Parties acknowledge and agree that the City has title to the properties and assets used in connection with the City Transit Division that are described in Exhibit "B", including any and all improvements, appurtenances, water rights, mineral rights, privileges, benefits and easements belonging or pertaining thereto; and subject to Section 4.5 and Section 4.6, any Alterations and Replacements and Extensions thereof; and the adjacent Concourses, stairways, stairwells, entryways, openings, escalators, elevators, headhouses, stations, and platforms owned by the City, which property and assets (but expressly excepting the properties and assets described on Exhibit "B-1") shall be referred to herein collectively as the "**City Owned Transit Properties**". The list of the City Owned Transit Properties included as Exhibit "B" is intended only for the convenience of the Parties to identify the major properties and assets comprising the City Owned Transit Properties to be leased by the Authority hereunder, and the omission of any property or asset from Exhibit "B" does not indicate in any way that such property or asset is not included as part of the City Owned Transit Properties unless it is listed on Exhibit "B-1." The Parties agree that any properties or assets which are (i) owned by the City; (ii) utilized as part of the City Transit Division; and (iii) not specifically excluded on Exhibit "B-1" shall be deemed part of the City Owned Transit Properties leased to the Authority for purposes of this Lease, even if such property or asset is not listed on Exhibit "B". The Authority shall make no charge or claim against the City that the Authority has any right or



title in or to the City Owned Transit Properties, except for the leasehold interest granted by this Lease.

(b) For the purposes of determining the boundaries of the envelope of the underground City Owned Transit Properties, the following rules shall apply:

(i) Upper boundaries: the exposed surface of the concrete slab and exposed metal beams that constitute the ceiling;

(ii) Lower boundaries: the exposed surface of the concrete slab that constitutes the floor;

(iii) Vertical boundaries: the exposed surface of the concrete that constitutes the walls, extended to the intersections with the interior surface of the upper and lower boundaries.

(c) Notwithstanding anything in Section 4.1(b) to the contrary, the Authority shall be responsible for (i) the ceilings, walls and floors, including without limitation, plaster, stucco, paint, tile, brick, flooring and concrete; (ii) all vents and shafts connecting the City Transit Division Properties to the sidewalks above to provide ventilation for the operation of the SEPTA System and for the Concourses which are part of the City Owned Transit Properties, including the vent well walls, grating at the surface and supportive concrete around the grating; and (iii) stairway landings (*i.e.*, the top step of a stairway) for the distance equal to the stair tread width of the run leading to street level.

(d) The City acknowledges and agrees that the Authority, in the course of inspecting or performing Maintenance on the City Transit Division Properties, may discover conditions or information regarding the condition of adjacent City property which reveals defects or potential defects in such adjacent City property that is outside the envelope of the City Owned Transit Properties established pursuant to Section 4.1(b) and which the Authority reasonably determines could impact or affect the safety or structural integrity of the City Transit Division Properties. In such event, the Authority may notify the City of such defects or potential defects and may request that the City undertake corrective measures. Upon request of either Party, the City and the Authority shall meet and exchange information with reasonable promptness and in good faith in order to discuss and evaluate the course of action to remediate such defects or potential defects. Notwithstanding anything in the foregoing to the contrary, the Authority may take any immediate action which may be necessitated in the case of an emergency posing immediate threat to life, human health or property, provided that the Authority provides the City with prompt notice of such emergency and its actions taken pursuant to this Section 4.1(d). If the City and the Authority cannot agree on the course of action to be taken, including without limitation, the Party who will undertake such action and the Party(ies) who will bear the cost of such action, then each Party shall be deemed to have reserved all rights and remedies with respect to such defects or potential defects. Notwithstanding the foregoing, the Parties expressly understand and agree that (i) the Authority has no duty or obligation to inspect or Maintain any adjacent City property which is outside the envelope of the City Owned Transit Properties established pursuant to Section 4.1(b) nor is the



Authority responsible for the condition thereof or any consequences thereof; and (ii) in the event that a Party undertakes any work to remedy such defects or potential defects, such undertaking is being performed without prejudice to any rights of such performing Party against the non-performing Party, and any rights of the non-performing Party against the performing Party, regarding the necessity of the performance of such work and the costs incurred with respect thereto.

(e) Notwithstanding the foregoing, Commerce Street and the access to the Suburban Station Concourse from Commerce Street, as shown on **Exhibit "C-1"**, including any loading docks within or adjoining Commerce Street, shall not be transferred or leased to the Authority and shall remain owned and controlled by the City, and the Authority shall have no obligation to Maintain the same, but the City agrees that the Authority shall have the right, in common with others, to (i) access the City Transit Division Properties through Commerce Street and (ii) use the loading dock located at 16<sup>th</sup> Street and Commerce Street (the "**16<sup>th</sup> Street Loading Dock**") to service the City Transit Division Properties. The Authority shall comply with the City's then-current standard rules and regulations regarding the use of the 16<sup>th</sup> Street Loading Dock, which rules and regulations currently include a prohibition on parking in Commerce Street or at the 16<sup>th</sup> Street Loading Dock, the scheduling of the use of the 16<sup>th</sup> Street Loading Dock, and a requirement that vendors provide insurance. The indemnification obligation set forth in Section 17 hereof shall apply to Claims arising from or alleged to arise from or relating to or alleged to relate to the Authority's use of the 16<sup>th</sup> Street Loading Dock pursuant to this paragraph.

(f) The Parties acknowledge that certain ductbank facilities were installed and/or operated by PTC or other previous operators of transit in the City of Philadelphia which were not acquired by the Authority from PTC or leased to the Authority pursuant to the 1968 Leaseback. The City and the Authority agree that the Authority is responsible for the operation and Maintenance of the ductbanks identified on **Exhibit "B-2"** attached hereto and any future ductbanks which the Authority may install pursuant to this Lease or Applicable Laws. The Parties are not aware of any ductbanks for which the Authority is responsible other than those listed on **Exhibit "B-2,"** but if they discover any new ductbanks the Authority might be responsible for, they agree to consult with each other to determine whether **Exhibit "B-2"** should be updated to list them, in which event this Lease shall be amended accordingly.

(g) The parcels located at the southeast corner of 8<sup>th</sup> and Market Streets known as 734 and 736 Market Street are owned by the City. The Authority hereby assumes the City's obligation with respect to snow removal from the adjacent sidewalks at this location.

4.2 SEPTA Owned Transit Properties. The Parties acknowledge and agree that the Authority has title to all assets and properties, including without limitation, all rolling stock, used in connection with the City Transit Division (and any Extensions and Alterations and Replacements thereto or thereof) other than the City Owned Transit Properties and those assets and properties described on **Exhibit "B-1"** (such assets and properties other than the City Owned Transit Properties and those assets and properties described on **Exhibit "B-1"** being referred to collectively as the "**SEPTA Owned Transit Properties**"), and any Extensions and Alterations and Replacements to or of the SEPTA Owned Transit Properties. The City shall



make no charge or claim against the Authority that the City has any right or title in or to the SEPTA Owned Transit Properties.

#### 4.3 Concourses and Stairways.

(a) The City hereby confirms that pursuant to the 1968 Lease Agreements, the City granted to the Authority the right to connect the Paid Areas of the platforms and concourse areas included in the premises leased to the Authority thereunder to the adjacent non-Paid Areas of the platforms and concourse areas owned by the City so as to permit access by the Authority and the riding public to the premises leased by the Authority thereunder. To the extent any such connections exist as of the Effective Date, and to the extent the City has any right, title or interest in those connections, they shall be part of the City Owned Transit Properties leased to the Authority hereunder.

(b) The Parties agree that any new Concourses, platforms, stairways, sidewalks, elevators, escalators and other connections or openings which are necessary or desired to be installed after the Effective Date to provide access (the “**New Access Areas**”) to and from the City Owned Transit Properties or the SEPTA Owned Transit Properties shall be governed by the provisions of Section 13.4 and Section 13.5 hereof, respectively.

(c) The City has entered into certain agreements with third parties regarding certain stairways which access the Concourses, which are identified on Exhibit “D” (collectively, the “**Stairway Agreements**”). Effective as of the Effective Date, the City hereby assigns to SEPTA, and SEPTA hereby assumes from the City, all of the City’s right, title and interest under the Stairway Agreements, including without limitation, the right to enforce the terms of such Stairway Agreements against the counterparties thereto (without any assumption of any acts, liabilities or obligations occurring prior to the Effective Date). Such assignment shall be in effect for the Term of this Lease and shall terminate automatically without the requirement of any notice or other action at the expiration of this Lease. The City shall defend, indemnify and hold harmless the Authority Entities against all Claims arising from or alleged to arise from or relating to or alleged to relate to, the City’s obligations, if any, under the Stairway Agreements prior to the Effective Date. The Authority shall defend, indemnify and hold harmless the City Entities against all Claims arising from or alleged to arise from or relating to or alleged to relate to, the Authority’s obligations, if any, under the Stairway Agreements from and after the Effective Date.

(d) The City acknowledges and agrees that the Authority shall have the right, subject to Section 13.4, to reduce the size of any Concourse and/or to close off access to a Concourse or stairway which is part of the City Owned Transit Properties if the Authority determines that such reduction or closure is necessary for the safe, economical or efficient operation of the City Transit Division; provided, however, that such reduction shall not unreasonably diminish the usefulness of or access to and from the City Owned Transit Properties to provide transportation service to the public, and in no event shall the Authority completely close a transit station that is part of the City Owned Transit Properties on the Effective Date without the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that notwithstanding the foregoing, upon



prior notice to the City, the Authority may completely close a transit station that is part of the City Owned Transit Properties on the Effective Date on a short-term, temporary basis, or during the Authority's active rehabilitation of any such transit station, or because of safety conditions posing threat to life, human health or property. Such right of closure shall include the right to discontinue the use of escalators, elevators or similar people-moving equipment if the Authority determines that they are in a unsafe or unsound condition and the Authority does not have adequate funding to remediate such conditions, it being understood that the Authority will use reasonable commercial efforts to obtain funding to remediate such conditions.

(e) Pursuant to the Dilworth Plaza Lease, the City leases to the Center City District the areas surrounding City Hall known as Dilworth Plaza, bounded generally by City Hall, JFK Boulevard to the curb line, 15th Street to the curb line, and South Penn Square to the curb line, which adjoin portions of the City Owned Transit Properties being leased to the Authority hereunder. The Parties agree that Exhibit "C-2" attached hereto delineates the areas that the Center City District is responsible to maintain and the areas that the Authority is responsible to maintain in and around Dilworth Plaza. The City shall reasonably cooperate with the Authority in the event that the Authority desires to modify or clarify such maintenance obligations with the Center City District, and to enforce any obligations of the Center City District under the Dilworth Plaza Lease which may impact the Authority's obligations hereunder. The City covenants and agrees not to modify or amend the Dilworth Plaza Lease in any manner which would impact the Authority's obligations with respect to the City Owned Transit Properties without the prior written consent of the Authority, which consent shall not be unreasonably withheld, conditioned or delayed.

4.4 Rolling Stock. The City hereby quitclaims, remises and releases to the Authority, in "as is" condition and without any representation or warranty of any kind or nature, all right, title and interest that the City may have in and to any rolling stock used in connection with the operation of the SEPTA System. Such rolling stock shall be deemed part of the SEPTA Owned Transit Properties.

4.5 Title to Alterations and Replacements of City Owned Transit Properties. Title to any Alterations and Replacements to the City Owned Transit Properties which are funded directly and solely by or through the City shall vest in the City. Title to any Alterations and Replacements to the City Owned Transit Properties made pursuant to Section 13.1 below which are funded by or through the Authority shall vest in the Authority. However, if any of the Alterations and Replacements are built upon or below land owned in fee by the City and the Authority has no right to occupy the same pursuant to a lease, easement or other right, then at the expiration of this Lease, title to such Alterations and Replacements will vest in the City and neither Party shall make any charge or claim against the other for such Party's use, removal or replacement thereof. Notwithstanding the prior sentence, neither Party shall be deemed to have waived any Claims for which a Party is indemnified pursuant to Section 17 hereof.

4.6 Title to Extensions. Title to any Extensions to the City Owned Transit Properties which are funded directly and solely by or through the City shall vest in the City. Title to any Extensions of the City Owned Transit Properties made pursuant to Section 13.2 below which are funded by or through the Authority shall vest in the Authority. However, if the Extension is built

upon or below land owned in fee by the City and the Authority has no right to occupy the same pursuant to a lease, easement or other right, then at the expiration of this Lease, title to such Extension will vest in the City and neither Party shall make any charge or claim against the other for such Party's use, replacement or removal thereof. Notwithstanding the prior sentence, neither Party shall be deemed to have waived any Claims for which a Party is indemnified pursuant to Section 17 hereof.

#### 4.7 Abandoned Facilities.

(a) The Authority may quitclaim to the City all of the Authority's right, title and interest in and to the rails, ties, poles, wires and other above-ground or underground facilities in the right-of-way formerly used for trolley service in the City of Philadelphia which the Authority intends to abandon (the "**Proposed Abandoned Facilities**"); provided that the Authority complies with the following requirements:

(i) The Authority shall prepare, at its sole cost and expense, a written report describing in reasonable detail the precise nature, location and infrastructure conditions of the Proposed Abandoned Facilities and any other information reasonably requested by the City and shall deliver such report to the Commissioner of Public Property and the Office of Transportation and Utilities (if such office then exists, and if not, the Managing Director's Office);

(ii) The Authority and the City, each acting reasonably, shall meet and exchange information with reasonable promptness and in good faith in order to discuss and evaluate a mutually acceptable remediation plan to be implemented by the Authority prior to the abandonment of the Proposed Abandoned Facilities, including, without limitation, the restoration obligations of the Authority with respect to the areas surrounding the Proposed Abandoned Facilities and whether the Proposed Abandoned Facilities will be removed (the "**Remediation Plan**"); and

(iii) The Authority, at its sole cost and expense, shall implement the Remediation Plan that was agreed upon by the Authority and the City. If the Authority and the City, despite such good faith efforts and acting reasonably, cannot agree upon a Remediation Plan, then the Authority shall not be entitled to abandon or quitclaim its interest in the Proposed Abandoned Facilities.

(b) Upon completion by the Authority of the Remediation Plan to the reasonable satisfaction of the City as confirmed in writing by the City, the City shall accept the Authority's quitclaim of the Proposed Abandoned Facilities and shall waive any claim against the Authority for the condition or removal of such Proposed Abandoned Facilities or payment in lieu thereof.

(c) The City and SEPTA acknowledge that the Authority has proposed to abandon certain facilities relating to Trolley Line Routes 6, 47, 50, 53 and 60, and the City and the Authority agree to discuss such proposed abandonment in accordance with this Section 4.7.



4.8 ROW Ordinance. The Parties acknowledge and agree that disputes had arisen regarding the applicability of the ROW Ordinance to the Authority (the “**ROW Ordinance Issue**”). The Parties have reached agreement regarding the ROW Ordinance Issue as set forth in Exhibit “E” attached hereto and shall comply with the settlement terms set forth in Exhibit “E” attached hereto.

4.9 Real Estate Taxes. The Parties acknowledge and agree that disputes had arisen regarding the obligation of the Authority to pay real estate taxes related to properties located in Suburban Station and other real property used in providing rail passenger transportation by the Authority which are leased or subleased by the Authority to commercial tenants (the “**Real Estate Tax Issue**”). The Parties have reached agreement regarding the Real Estate Tax Issue as follows: the City hereby agrees that (a) any real estate taxes that were assessed against property owned or leased by the Authority that are located in Suburban Station and other real property used in providing rail passenger transportation by the Authority which are leased or subleased by the Authority to commercial tenants prior to the Effective Date of this Lease shall not be obligations of the Authority or of its tenants or subtenants and the City shall not seek to collect or further assess any such real estate taxes for any such properties, and (b) the City, for the Term (as hereinafter defined) of this Lease, shall not seek to assess real estate taxes against property owned or leased by the Authority located in Suburban Station or other real property used in providing rail passenger transportation by the Authority which are leased or subleased by the Authority to commercial tenants, except as follows: if, during the Term, there is a final court decision from which no further appeal may be taken, or a change in statutory law, in either case providing that the Authority is subject to the payment of real estate taxes on any real property owned or leased by the Authority, then then the provisions of this Section 4.9 shall immediately be null and void and of no further force or effect with respect to such real property, but the Authority will not be required to pay, and the City and the School District shall not be entitled to collect, any real estate taxes for such property for periods prior to such date. Nothing in this Section 4.9 shall affect real estate taxes paid by the Authority with respect to space leased to third-party tenants in 1234 Market Street pursuant to the rulings in SEPTA v. Board Revision of Taxes, et al, 777 A.2d 1234 (Pa. Commw. 2001) and SEPTA v. Board of Revision of Taxes, 833 A.2d 710 (Pa. S. Ct. 2003).

4.10 Completion of Exhibits. The Parties acknowledge and agree that additional research, surveys and other work need to be performed in order to have accurate and complete Exhibits, particularly Exhibits “B”, “B-1”, “B-2”, “C”, “C-1”, “C-2” and “C-3”. To that end, Authority and the City shall each make their property and survey records available to the other Party without cost, shall meet and exchange information with reasonable promptness and in good faith, in order to finalize such Exhibits, in which event this Lease shall be amended accordingly.

## 5. Lease of City Owned Transit Properties.

5.1 Lease. The City hereby leases to the Authority, and the Authority hereby leases from the City, the City Owned Transit Properties, for the Term, upon the terms and subject to the conditions set forth herein.



5.2 Grant and Confirmation of Franchise. The City hereby grants and confirms to the Authority, so long as this Lease is in effect, the Authority's right and franchise to use, maintain and operate the underground, elevated and surface railways and trackless trolley facilities included in the SEPTA System and all Alterations and Replacements and Extensions thereof, and to operate motorbuses and other transit vehicles to serve the public as set forth in the SEPTA Enabling Act or other Applicable Laws, and for the uses permitted in this Lease. Such right and franchise shall be exercisable by the Authority subject only to the terms and conditions of this Lease, the City Transit Division Agreements (other than those listed on **Exhibit "A-1"**), and the police power of the City. Nothing herein shall constitute a waiver by the Authority of any operating rights conferred upon it by the SEPTA Enabling Act or other Applicable Laws. Nothing herein shall constitute a waiver by the City of any of its police powers.

5.3 As Is. The Authority acknowledges and agrees that the City Owned Transit Properties (and each part thereof) are being demised to the Authority hereunder in its and their current condition, "AS IS" and "WHERE IS," without any representation or warranty of any kind or nature whatsoever, express or implied, without any obligation of the City to make any Alterations and Replacements or Extensions thereto or to provide any Maintenance with respect thereto; except, however, with respect to any Claims brought by third parties against the Authority Entities related to the City's obligations with respect to such City Owned Transit Properties or under the Stairway Agreements, arising from an event or condition occurring prior to the Effective Date for which the City shall defend, indemnify and hold harmless the Authority Entities. **The City hereby disclaims any and all warranties of fitness, merchantability, suitability for intended purpose, and habitability.**

6. Term.

6.1 Initial Term. The term of this Lease shall be for a period of thirty (30) years, commencing on the Effective Date and expiring on [ ] (the "**Initial Term**").

6.2 Extension Terms. Following expiration of the Initial Term, the term of this Lease shall automatically extend for two (2) additional terms of fifteen (15) years each (each, an "**Extension Term**" and collectively, the "**Extension Terms**"), on all of the same terms and conditions contained in this Lease, unless the Authority provides written notice to the City that the Authority elects not to renew this Lease for the applicable Extension Term (a "**Termination Notice**"), not less than eighteen (18) months prior to the expiration date of the Initial Term, and, if the second Extension Term is to be exercised, not less than eighteen (18) months prior to the expiration date of the first Extension Term. If the Authority provides such Termination Notice, then this Lease shall terminate at the end of the then-current term. The Parties acknowledge that (a) the first Extension Term shall commence on [ ] and expire on [ ] unless the Authority provides the Termination Notice to the City on or before [ ] and (b) the second Extension Term shall commence on [ ] and expire on [ ] unless the Authority provides the Termination Notice to the City on or before [ ].

6.3 Term. The Initial Term and any Extension Term(s) are collectively referred to herein as the "**Term**".



6.4 No Assignment. In no event shall the Authority assign this Lease to a trustee, lender or payment agent in connection with any debt financing obtained by the Authority as security therefor.

6.5 Third Party Agreements Beyond Term. The Authority shall not enter into any agreements related to the operation of the City Transit Division Properties that extend beyond the Term of this Lease except with unrelated parties (the “**Permitted Post-Term Agreements**”). To the extent that any such Permitted Post-Term Agreements could be construed to include obligations on the City to expend funds, then the City’s obligations, if any, under such Permitted Post-Term Agreements shall be subject to appropriation of the necessary funds therefor by City Council. The Authority covenants and agrees that if the Authority enters into any Permitted Post-Term Agreements, the Authority shall not assert that the Term of this Lease continues beyond the stated Term due to the Authority’s entering into or performance of such Permitted Post-Term Agreements. In the event that any such Permitted Post-Term Agreement provides for “front-loaded” or “up-front” payments, such payments shall be deemed amortized ratably (unless otherwise expressly approved by the City) over the term of such agreement and the Authority shall pay to the City, at the expiration of the Term of this Lease, the City’s proportionate share of any such unamortized payments.

## 7. Rent; Cumulative Additional Rent.

7.1 Fixed Rent. The Authority shall pay as fixed rent for the Term the sum of One Hundred (\$100.00) Dollars (the “**Fixed Rent**”). The City hereby acknowledges receipt of the Fixed Rent.

7.2 Additional Rent/Net Lease. The Authority acknowledges and agrees that this Lease is intended to and shall be a net lease to the City, such that the Authority (and not the City) shall be responsible for and shall pay (without any contribution or reimbursement by or claim against the City other than as provided in Section 3.3, Section 4.1(d), Section 4.3(c), Section 5.3, Section 10.2, Section 10.5, Section 15 and Section 17 hereof), any and all costs, charges, amounts, fees, and expenses arising from or relating to the City Owned Transit Properties (or any part thereof) and the ownership, development, use, operation and occupancy thereof which are necessary to keep the City Owned Transit Properties in good order and condition, including without limitation, the obligation to make Alterations and Replacements, subject to Section 12 and Section 15 hereof. Such costs and all other sums, liabilities, obligations and other amounts which the Authority is required to pay or discharge pursuant this Lease in addition to Fixed Rent shall constitute additional rent hereunder (collectively, the “**Additional Rent**”).

7.3 New Sources of Revenue Rent. The Authority and the City agree that certain revenues generated by the City Owned Transit Properties as described below for New Projects shall be subject to a sharing arrangement. The City’s share of such revenues, as further defined in Section 7.3(e) below, shall be referred to as “**New Sources of Revenue Rent**”.

(a) Certain Definitions.



(i) **“Concourse Expenditures”** shall mean the expenditures incurred by the Authority in a fiscal year for the Maintenance of and improvements to the Concourses that are part of the City Owned Transit Properties.

(ii) **“New Project”** shall mean New Advertising Revenues, a New Development Project and/or New Utility Facilities, as applicable.

(iii) **“Paid Areas”** shall mean those areas where payment to the Authority is required for entrance.

(iv) **“Project Expenditures”** shall mean the capital expenditures (from sources other than grants or other sources that the Authority is not required to repay, or for which the Authority is reimbursed) incurred by the Authority with respect to a New Project.

(b) Advertising and Naming Rights.

(i) With respect to advertising revenues and naming rights revenues arising from the use of the City Owned Transit Properties from Existing Advertising Revenue Sources that are in existence on the Effective Date of this Lease, including any renewals or replacements thereof (collectively, the **“Existing Advertising Revenues”**), the Authority shall retain 100% of any such Existing Advertising Revenues during the Term. **“Existing Advertising Revenue Sources”** include, but are not limited to, buses, trolleys, Market-Frankford Subway Elevated rail cars, Broad Street Subway rail cars, Regional Rail cars, bus and trolley loops, the Paid Areas of the Market-Frankford Subway Elevated and Broad Street Subway transit stations, Concourses that are part of the SEPTA Owned Transit Properties, the naming rights on the Pattison Avenue/Broad Street Subway transit station and similar type locations that have been under the control of the Authority and for which the Authority has been receiving advertising or naming rights revenues as of the Effective Date.

(ii) With respect to advertising revenues and naming rights revenues arising from the use of the City Owned Transit Properties during the Term that are not Existing Advertising Revenues (collectively, the **“New Advertising Revenues”**), subject to Sections 7.3(b)(iii) and 7.3(b)(iv) below, the Authority shall be entitled to retain all of such New Advertising Revenues until any Project Expenditures made by the Authority with respect to each of the New Advertising Revenues have been recovered in full. Thereafter, the New Advertising Revenues, on a fiscal year basis, shall be subject to Section 7.3(e) below.

(iii) If the contract generating such New Advertising Revenues applies to both City Owned Transit Properties and SEPTA Owned Transit Properties, then the New Advertising Revenues and any Project Expenditures associated therewith shall be allocated equitably between the City Owned Transit Properties and the SEPTA Owned Transit Properties, and the New Advertising Revenues shall only include such amount of revenues allocable to the City Owned Transit Properties on such basis. Thereafter, the New Advertising Revenues, on a fiscal year basis, shall be subject to Section 7.3(e) below.

(iv) If the contract generating such New Advertising Revenues applies to a new transit station which is part of the City Owned Transit Properties, then the New



Advertising Revenues shall be allocated proportionately based upon each Party's contribution to the total construction costs (hard costs and soft costs, but excluding any such costs paid for with grants or other sources that a Party is not required to repay, or for which a Party is reimbursed) of such new transit station, and the New Advertising Revenues shall only include such amount of revenues allocable to the City Owned Transit Properties on such basis. Thereafter, the New Advertising Revenues, on a fiscal year basis, shall be subject to Section 7.3(e) below.

(v) Notwithstanding anything in Section 7.3(b)(i) above to the contrary, if, under any renewal, replacement or modification of any arrangements described in the first sentence thereof, advertising is placed on or naming rights are granted for areas of the Concourses or stations that are part of the City Owned Transit Properties which are located in an area entirely separate and unrelated to the advertising or naming rights that are in place as of the Effective Date, then revenues from those new sources shall be "**New Advertising Revenues.**"

(c) Commercial Real Estate Developments. With respect to new transit stations or new commercial real estate developments that utilize and constitute any City Owned Transit Properties, which for the purposes hereof shall include a lease, license, concession or similar agreement in portions of any Concourse that is part of the City Owned Transit Properties (each, a "**New Development Project**"), the Authority shall be entitled to retain all of the revenues generated from such New Development Project (collectively, the "**New Development Revenues**") other than New Advertising Revenues which shall be governed under Section 7.3(b) above, until any Project Expenditures made by the Authority with respect to such New Development Project have been recovered in full; provided, however, that if any new commercial real estate development utilizes both SEPTA Owned Transit Properties and City Owned Transit Properties, the revenue shall be allocated between the two based upon the number of square feet of new commercial real estate development in the SEPTA Owned Transit Properties and in the City Owned Transit Properties. Thereafter, the New Development Revenues generated by such New Development Project, on a fiscal year basis, shall be subject to Section 7.3(e) below.

(d) Lease or License of Utility Facilities.

(i) With respect to revenues generated by the lease or license of any rights to Utility Facilities located in or on City Owned Transit Properties as of the Effective Date of this Lease, including any renewals or replacements thereof (collectively, the "**Existing Utility Facilities**" and such revenues, the "**Existing Utility Revenues**"), the Authority shall retain 100% of any such Existing Utility Revenues during the Term.

(ii) With respect to the revenues generated from any extension of any Existing Utility Facilities or any Utility Facilities located in or on City Owned Transit Properties that are installed after the Effective Date (including under any renewal, replacement or modification of any lease or license described in Section 7.3(d)(i) above) (collectively, the "**New Utility Facilities**"), the Authority shall be entitled to retain all revenues from such New Utility Facilities (the "**New Utility Revenues**") until any Project Expenditures made by the Authority with respect to such New Utility Facilities have been recovered in full. Thereafter, the New



Utility Revenues generated by such New Utility Facilities, on a fiscal year basis, shall be subject to Section 7.3(e) below.

(iii) If the contract generating such Utility Revenues applies to both City Owned Transit Properties and SEPTA Owned Transit Properties, then the Utility Revenues shall be allocated based upon the number of linear square feet of New Utility Facilities located in or on the City Owned Transit Properties and in or on the SEPTA Owned Transit Properties.

(e) Sharing of Net Revenues. On a fiscal year basis, the aggregate of the New Advertising Revenues, the New Development Revenues and the New Utility Revenues (after the applicable Project Expenditures with respect to New Projects have been recovered in full in accordance with Sections 7.3(b)(ii), 7.3(c), and 7.3(d)(ii) above), shall be first offset against the Concourse Expenditures, and the Authority shall pay the City forty percent (40%) of any such excess (the “**New Sources of Revenue Rent**”) within ninety (90) days following the date on which the Authority closes its books for a fiscal year, which obligation shall survive the expiration of the Term.

7.4 Rent. Collectively, Fixed Rent, Additional Rent, and New Sources of Revenue Rent shall be referred to herein as “**Rent**”.

## 8. Use of the City Owned Transit Properties.

8.1 Transit Purposes. The Authority shall use the City Owned Transit Properties for the purpose of operating the SEPTA System in accordance with the SEPTA Enabling Act and other Applicable Laws, and the tariffs approved by the Authority’s Board which relate to the operation of the SEPTA System, as such tariffs may be in effect from time to time, and for such other purposes related to the operation of a public transit system as are permitted in this Lease.

### 8.2 Acquisition and Operation of Other Properties or Transit Facilities.

(a) The Authority may own or acquire, by purchase, grant, lease or otherwise, transit and non-transit facilities not included in the City Owned Transit Properties (the “**Other Properties**”), and may operate the Other Properties and the City Transit Division Properties as part of the SEPTA System.

(b) The Authority may operate Other Properties on any basis as it deems desirable to provide improved transportation service for the public and the Authority may employ portions of the City Owned Transit Properties in such operations. The Authority may also operate the City Owned Transit Properties in coordination with other transit systems operated by itself or others and may enter into such joint fare, joint facility, joint operating and similar arrangements as it deems desirable to provide improved transportation service for the public. Any such cooperative agreements that extend beyond the Term of this Lease shall be subject to Section 6.5.

8.3 Non-Transit Purposes. The Authority may use or permit the use of the City Owned Transit Properties for purposes not strictly of a transportation nature (including, without limitation, concession stands, vending machines, advertising, naming rights, and licenses or



leases of Utility Facilities), provided that such use does not interfere with the use of the City Owned Transit Properties for transportation purposes. Without limiting the foregoing, the Authority may use the City Owned Transit Properties to do Maintenance work for other transit operators on a basis not involving any loss to the Authority. Any revenues received by the Authority from third parties for such rights shall be subject to Section 7.3, and any such agreements that extend beyond the Term of this Lease shall be subject to Section 6.5.

9. **Fares and Other Charges**. The Authority shall have the absolute right to fix its fares and other charges and services as provided in the SEPTA Enabling Act.

10. **Authority's Covenants**. Subject to the provisions hereof, the Authority covenants and agrees as follows:

10.1 **Cleaning and Maintenance of City Owned Transit Properties**. The Authority, at its sole cost and expense (except for and subject to the City Required Contributions), shall perform or cause to be performed all servicing, maintenance, cleaning, inspections, and repairs (collectively, "**Maintenance**" or to "**Maintain**") which are necessary or appropriate to keep the City Owned Transit Properties in good and safe operating condition, reasonable wear and tear excepted, subject to the provisions hereof. The Authority agrees that throughout the Term of this Lease, the City shall have no obligation for the Maintenance or operation of the City Owned Transit Properties. The City acknowledges and agrees that the Authority, in its sole discretion, shall have the right to contract with the Center City District or other third party to perform such Maintenance. The Parties acknowledge and agree that the City has entered into the Dilworth Plaza Lease which is not intended to include any of the property subject to the 1968 Leaseback. The Parties shall reasonably cooperate with each other and with the Center City District in the event that any issues arise as to the boundaries of the Maintenance obligations of the Authority under this Lease and the maintenance obligations of the Center City District under the Dilworth Plaza Lease.

10.2 **Utilities**.

(a) The Authority, at its sole cost and expense, shall take such action as may be necessary to procure the utility services required for the Authority's operation of the City Owned Transit Properties, which shall be subject to Section 14.1. The Authority shall pay, or cause to be paid, in a timely manner all charges for utility services used on the City Owned Transit Properties during the Term (including without limitation electric, gas, water, sewer and stormwater).

(b) The Parties agree that the Authority shall be responsible, at the Authority's cost, for the Maintenance of Utility Facilities to the following demarcation points:

(i) **Water: Installation and Maintenance of piping and fixtures from the public water main up to and including the water meters and isolation valves at the water meters consistent with Philadelphia Water Department regulations.**



(ii) Sewer: Installation and Maintenance of the ejectors, intake and discharge lines to the public sewer main. Replacement of valves (both check and isolation) in the sewer pump rooms.

(c) With respect to City Transit Division stations where public sewers are located under the platform structures (e.g., Logan, Fairmount, 11th and 5th), the City shall be responsible, at the City's cost, for the maintenance, servicing, repairs and replacement of such sewers, and the Authority shall provide the City with access to the affected station to assess the sewer facilities and perform such work, subject to Section 12.

(d) Without waiver of any rights that the Parties may have under this Lease or under Applicable Laws, with respect to removal of stormwater from the City Transit Division Properties and/or stormwater charges assessed by the City related to the City Transit Division Properties, if the Authority in good faith believes that the presence of such stormwater is the result of actions of the City or conditions for which the City is responsible and/or the fees charged by the City for stormwater discharge are excessive, the City and the Authority shall cooperate in good faith to achieve a mutually acceptable resolution of such issue(s). Any payment or performance by the Authority hereunder shall be without prejudice to the Authority's rights of recovery against any party who may be responsible for such condition (provided, however, that nothing herein shall be construed as a waiver of the defenses, immunities, and limitations on damages available to the City pursuant to 42 Pa. C.S.A. §§ 8541 et seq.).

10.3 Compliance with Applicable Laws. The Authority, at its sole cost and expense (except for and subject to the City Required Contributions) shall comply with all applicable laws, statutes, ordinances, rules and regulations and grant agreements of the Government of the United States, Commonwealth and the City now in force and/or which hereafter may be promulgated, including without limitation the Environmental Laws (defined below) and ordinances, rules and regulations regarding the issuance of permits, with respect to the operation, use and Maintenance of the City Owned Transit Properties (collectively, "**Applicable Laws**"), subject to Section 15 and Section 25.2 hereof. Notwithstanding the foregoing, nothing contained in this Lease shall be construed to as to require the Authority to perform any service or take any action which would violate any Applicable Law, and the Authority will not be deemed in default of this Lease nor any of its terms and conditions by reason of any such act or failure to act.

10.4 Delivery of Financial Reports. The Authority shall deliver to the City, within 120 days after the end of each fiscal year of the Authority, a financial report of operations of the City Transit Division Properties during such fiscal year, in a form reasonably satisfactory to the Finance Director of the City. This report shall be certified by an independent certified public accounting firm chosen by the Authority.

10.5 Authority in Possession, Care, Custody and Control. The Authority agrees that throughout the Term of this Lease, the Authority has possession, care, custody and control of the City Owned Transit Properties (and that the City does not have possession, care, custody or control of the City Owned Transit Properties). Except as resulting from the City Obligations (as

hereinafter defined), the City shall have no obligation whatsoever for the Maintenance or operation of the City Owned Transit Properties or any part thereof during the Term. “**City Obligations**” means any Claims resulting from the City’s exercise of its rights pursuant to Section 12, Section 14.2 or the first sentence of Section 25.1 of this Lease or from a violation of this Lease by the City. The City shall defend, indemnify and hold harmless the Authority Entities against all Claims, including for injury (including death) or damage to persons or property, arising from or alleged to arise from or relating to or alleged to relate to, the City’s performance of the City Obligations (provided, however, that nothing herein shall be construed as a waiver of the defenses, immunities, and limitations on damages available to the City pursuant to 42 Pa. C.S.A. §§ 8541 et seq. or rights of recovery from the responsible parties otherwise permitted by Applicable Law). The indemnity provided in this Section 10.5 is solely for the benefit of the Authority and shall not confer any rights on any other third party.

11. **City’s Covenants.**

11.1 Access. The City will, where necessary, and at no cost to the City, reasonably cooperate with the Authority to acquire access to the City Transit Division Properties across properties owned by the City (which are not part of the City Owned Transit Properties leased to the Authority hereunder) or by third parties for the purpose of construction, Maintenance, Alterations and Replacements and Extensions, to the extent that the City has such access or acquires it during the Term of this Lease; provided that this covenant shall not be construed to obligate the City to use its power of eminent domain. In the event that such access is required across property owned by the City, the Authority shall provide reasonable advance notice to the City, comply with reasonable regulations of the City (except in the event of an emergency), and perform such work without avoidable interference with the operations of the City, and if such access constitutes New Access Areas, the provisions of Section 13.4 shall apply.

11.2 Use of the Streets. The City hereby confirms that the Authority shall have the right to use and occupy the City streets, subject to Applicable Laws, to the extent necessary to perform Maintenance and to install and maintain facilities and equipment used in the public service and Alterations and Replacements thereof, but shall so schedule and conduct such operations as to minimize interference with traffic. The Authority shall repair or replace pavement or other property damaged by such operations.

11.3 Quiet Enjoyment. The City hereby confirms that it has leased the City Owned Transit Properties to the Authority in the operation of an integrated passenger transportation system by itself or by contract with others in accordance with and subject to the terms and conditions of this Lease. The City agrees that the Authority shall be entitled to quiet and peaceful possession of the City Owned Transit Properties with the right to use and operate the same for the purposes and the Term as set forth in this Lease, subject to the rights of the counterparty under any Stairway Agreement and the rights of any third party who is a party to any of the agreements listed on Exhibit “A”.

11.4 Issuance of Permits. The Authority shall obtain in accordance with Section 10.3, and the City shall, at the request of the Authority, cooperate in good faith with the Authority for the prompt issuance of, permits (including, without limitation, permits for the installation or



replacement of transit related public service, informational, and directional signs) from the City or any of its departments, boards or commissions (for example, but not by way of limitation, the Historical Commission), which are necessary for the Authority to operate, perform Maintenance and/or Alterations and Replacements to, or to construct Extensions of, the City Transit Division Properties, or to implement the Capital Improvement Plan, but nothing in this Section 11.4 shall require the City to waive (or to cause its departments, boards or commissions to waive) any applicable requirements for the issuance of such permits.

12. **City's Right of Access.** Subject to Section 10.5 hereof, the City and its contractors and authorized agents and employees shall have access to the City Owned Transit Properties and, if necessary, the SEPTA Owned Transit Properties, at reasonable times, subject to reasonable notice (except in the case of an emergency) and reasonable regulations of the Authority, and without avoidable interference with the operations of the Authority, for the purpose of inspecting the City Owned Transit Properties and to perform any necessary maintenance, repair or replacement of Utility Facilities owned by the City which are located within, above, adjacent, across or under the City Owned Transit Properties in accordance with Section 14.2 below.

13. **Alterations and Replacements, Extensions, Capital Improvement Plan.**

13.1 **Alterations and Replacements.** Subject to Section 13.4 and Section 15 below, the Authority may, at the Authority's sole cost and expense, make any alterations, additions, modifications, changes, betterments, improvements, renewals, replacements and capital improvements, including, without limitation, any reduction in the size of any Concourse or the closure of any Concourse or stairway pursuant to Section 4.3(d) (collectively, "**Alterations and Replacements**") to the City Owned Transit Properties which do not reduce the value thereof or unreasonably diminish the usefulness of or access to and from the City Owned Transit Properties to provide transportation service to the public. Any Alterations and Replacements made by the Authority to the City Owned Transit Properties shall be performed in compliance with all Applicable Laws and the Authority shall obtain all permits required pursuant to such Applicable Laws that are necessary to perform such Alterations and Replacements. The provisions of this Lease, including without limitation, Maintenance and insurance, shall apply with respect to any Alterations and Replacements to the City Owned Transit Properties.

13.2 **Extensions.** Subject to Section 13.4 and Section 15 below, the Authority may, at the Authority's sole cost and expense, make any extensions and/or expansions (collectively, "**Extensions**") to the City Owned Transit Properties, including, without limitation, extensions of the Broad Street Subway and the Market-Frankford Subway Elevated, which do not reduce the value thereof or unreasonably diminish the usefulness of or access to and from the City Owned Transit Properties to provide transportation service to the public. Any Extensions of the City Owned Transit Properties made by the Authority shall be performed in compliance with all Applicable Laws and the Authority shall obtain all permits required pursuant to such Applicable Laws that are necessary to perform such Extensions. The provisions of this Lease, including without limitation, Maintenance and insurance, shall apply with respect to the Extensions of the City Owned Transit Properties.



13.3 Capital Improvement Plan. The Parties acknowledge and agree that it is in the best interests of the SEPTA System that the City Owned Transit Properties are improved, subject to the availability of sufficient funding. To that end, the Authority covenants and agrees that it shall prepare, in consultation with the City, a written capital improvement plan detailing proposed capital improvements to be made to the Concourses and/or transit stations which are part of the City Owned Transit Properties (the “**Capital Improvement Plan**”). The Capital Improvement Plan shall be developed within two (2) years of the Effective Date. The Authority and the City shall meet and exchange information with reasonable promptness and in good faith in order to discuss and evaluate a mutually acceptable Capital Improvement Plan to be implemented by the Authority, it being understood that the Authority, in developing the Capital Improvement Plan, must also consider the capital needs of other assets within the SEPTA System. The City and the Authority shall in good faith cooperate to obtain the funding necessary to implement such Capital Improvement Plan; provided, however, that this provision shall not be construed in any way so as to limit the right of the Authority’s Board to approve its own budget or to make such adjustments as it determines are necessary, nor to limit City Council’s legislative or executive powers to adopt or administer City operating or capital budgets or make or expend appropriations. Provided that the necessary funding is secured in order to implement the Capital Improvement Plan, and subject to compliance with the requirements of the SEPTA Enabling Act (which the Authority shall endeavor in good faith to satisfy), the Authority shall with reasonable promptness after receipt of such funding, implement such Capital Improvement Plan.

13.4 City’s Rights of Consultation and Agreement to Cooperate.

(a) With respect to (i) any Alterations and Replacements and any Extensions of the City Owned Transit Properties which are reasonably anticipated to cost \$2,500,000 or more in Constant Dollars (except in the case of an emergency in which event no prior notice shall be required), or (ii) any New Access Areas, the Authority shall provide the City with written notice of such proposed Alterations and Replacements or Extensions, or the proposed New Access Areas, which notice shall identify the specific City Owned Transit Properties being affected and shall describe, in reasonable detail, the work to be performed. The City hereby designates the Commissioner of Public Property and the Office of Transportation and Utilities (if such office then exists, and if not, the Managing Director’s Office) to receive such notice on behalf of the City. The Authority shall provide additional information regarding the proposed Alterations and Replacements or Extensions or the New Access Areas as the City may reasonably request in writing.

(b) The City shall have a period of thirty (30) days after receipt of the Authority’s notice pursuant to Section 13.4(a) above to provide the Authority, in writing, with any comments regarding the proposed Alterations and Replacements or Extensions or the New Access Areas. The Authority shall, in good faith, consider any comments provided by the City and the Parties shall engage in good faith discussions regarding such comments; however, the final decision regarding the Alterations and Replacements or Extensions or New Access Areas shall be made by the Authority in its sole discretion. If the City fails to provide any written comments within such thirty (30) day period, then the Authority may proceed with the proposed Alterations and Replacements or Extensions or the proposed New Access Areas without any



requirement to consider any comments that the City may provide after such date, but the Authority shall be required to obtain any permits for such work as may be required by Applicable Laws. The City's right of consultation shall be in addition to, and not in lieu of, any rights that the City may have to approve permits or plans for such work as may be required by Applicable Laws.

(c) The City covenants and agrees to reasonably cooperate with the Authority with respect to the Authority's obligation to meet the requirements of any orders, directives or consent decrees issued or approved by applicable governmental authorities or courts, or other requirements of Applicable Laws, for the modification of the City Transit Division Properties in order to meet the requirements of the Americans with Disabilities Act or similar laws requiring accessibility for the disabled, the Authority's obligation being subject to Section 15 hereof. The Authority covenants and agrees that prior to applying for any permits related to such work, the Authority shall provide the City with notice and an opportunity to comment in accordance with this Section 13.4 (even if the work is not reasonably anticipated to cost \$2,500,000 or more), and the Authority and the City agree to engage in good faith discussions with respect to how the Authority can best meet such legal requirements; provided, however, that nothing in this sentence shall require the Authority to give the City additional notice or opportunity to comment if the Authority is already required to do so pursuant to Sections 13.4(a) and (b) above.

13.5 Alterations and Replacements and Extensions to SEPTA Owned Transit Properties. The Authority has the right, at the Authority's sole cost and expense, to make any Alterations and Replacements or any Extensions to the SEPTA Owned Transit Properties or any New Access Areas with respect to the SEPTA Owned Transit Properties which the Authority desires to make from time to time, in the Authority's sole and absolute discretion, provided the same do not reduce the value of the City Owned Transit Properties or unreasonably diminish the usefulness of or access to and from the City Owned Transit Properties to provide transportation service to the public. Any Alterations and Replacements or Extensions made by the Authority to the SEPTA Owned Transit Properties and any New Access Areas with respect to the SEPTA Owned Transit Properties shall be performed in compliance with all Applicable Laws and the Authority shall obtain all permits for such work required pursuant to such Applicable Laws that are necessary to perform such Alterations and Replacements or Extensions or for such New Access Areas with respect to the SEPTA Owned Transit Properties. The Alterations and Replacements or Extensions to the SEPTA Owned Transit Properties and any New Access Areas with respect to the SEPTA Owned Transit Properties shall not be subject to the requirements of Section 13.4 above except to the extent such Alteration and Replacement or Extension or New Access Area adversely affects City Owned Transit Property and is reasonably anticipated to cost \$2,500,000 or more in Constant Dollars (except in the case of an emergency in which event no prior notice shall be required). To the extent such Alteration and Replacement or Extension or New Access Area with respect to the SEPTA Owned Transit Properties affects property of the City other than the City Owned Transit Properties, including without limitation work that affects streets or sidewalks, the City retains all rights to approve the permits or plans for such work as may be required by Applicable Laws.

14. **Installation of Utility and Communication Facilities.**



14.1 By the Authority.

(a) It is agreed that the Authority shall have the right from time to time, at its sole cost and expense, to attach as fixtures to the City Owned Transit Properties such power, utility, telecommunication or transmission lines, cables, conduits, pipes, equipment or other similar or related facilities (collectively, the “**Utility Facilities**”) as may be required or useful in the Authority’s transportation operations or in connection with its powers and rights under the SEPTA Enabling Act and other Applicable Laws, but not in a manner which would interfere with the use of the City Owned Transit Properties for transportation purposes. Title to the Utility Facilities which are funded by or through the Authority and located within City Owned Transit Properties (including any Authority Utility Facilities existing within City Owned Transit Properties as of the Effective Date) shall vest in the Authority until the expiration of this Lease, at which time title thereto shall vest in the City, and neither Party shall make any charge or claim against the other for such other Party’s use, replacement or removal thereof. Notwithstanding the prior sentence, neither Party shall be deemed to have waived any Claims for which a Party is indemnified pursuant to Section 10.5 or Section 17 hereof.

(b) The Authority may permit third parties to install and maintain Utility Facilities within or upon the City Owned Transit Properties as may be required or useful in the Authority’s transportation operations or in connection with its powers and rights under the SEPTA Enabling Act and other Applicable Laws, but not in a manner which would interfere with the use of the City Owned Transit Properties for transportation purposes. In each instance in which the Authority permits third parties to install and maintain Utility Facilities within or upon the City Owned Transit Properties, such installation and maintenance shall be subject to the City’s receipt of appropriate written indemnification agreements in form and substance reasonably acceptable to the City and shall be subject to Applicable Laws, including, without limitation, the ROW Ordinance. Any third party’s installation and maintenance of Utility Facilities as aforesaid shall not have the benefit of the settlement terms referenced in Section 4.8 hereof and attached as **Exhibit “E”** hereto.

(c) Any installation of Utility Facilities pursuant to this Section 14.1 shall comply with the provisions of Section 13 hereof (including the consultation requirements contained in Section 13.4), and the provisions of this Lease, including, without limitation, Maintenance, insurance and compliance with Applicable Laws, shall apply with respect to all Authority Utility Facilities.

14.2 By the City. Subject to Section 10.5 hereof, the City at its sole expense may, or may permit third parties to, maintain, alter, repair or replace Utility Facilities owned by the City which are located within, above, across, adjacent or under the City Owned Transit Properties or the SEPTA Owned Transit Properties, and to install City-owned Utility Facilities in any City Owned Transit Properties, but not in a manner which would interfere with the use of the City Owned Transit Properties or the SEPTA Owned Transit Properties for transportation purposes or the rights of the Authority under this Lease. This privilege reserved to the City shall not extend to the installation of gas, steam, sewer or water pipes following the Effective Date which are installed by the City or any third party without the Authority’s express written consent in each case, which consent shall not be unreasonably withheld, conditioned or delayed, but no



such consent shall be required for the maintenance, alteration, repair or replacement of any such gas, steam or water pipes existing in the City Owned Transit Properties on the Effective Date or installed in the City Owned Transit Properties after the Effective Date with the Authority's consent. Except in the case of an emergency, any work undertaken pursuant to this Section shall not be undertaken without prior written notice to the Authority of the proposed time, date and scope of such work, all of which shall be coordinated with the Authority's operations. Such work also shall be subject to the Authority's safety and work rules and regulations, and the Authority's receipt of appropriate insurance from the City's contractors (the Authority hereby acknowledges that the City self-insures) and written indemnification agreements in form and substance reasonably acceptable to the Authority.

15. **Funding.**

15.1 **City's Obligation.** Nothing contained in this Lease shall be construed to modify, alter, or diminish any and all of the City's funding and subsidies which are required to be contributed by the City under the SEPTA Enabling Act, the Transportation Funding Laws or other Applicable Laws or agreements, including without limitation, any matching funds for operating and/or capital budgets (collectively, the "**City Required Contributions**").

15.2 **Insufficient Funding.** The Authority's obligations hereunder to operate and Maintain the City Owned Transit Properties and its right to perform Alterations and Replacements or Extensions as set forth herein shall be subject to the availability of sufficient operating revenues and capital funds from federal, state or other local sources to operate the City Transit Division Properties, to Maintain the City Owned Transit Properties and to perform Alterations and Replacements in accordance with the terms of this Lease, and to maintain adequately the entire SEPTA System. In the event that available funding is insufficient to operate and Maintain the City Owned Transit Properties and to perform Alterations and Replacements as set forth herein, the Authority shall consult with the City in good faith with respect to such obligations and adjustments as are required to bring costs into balance with available funding. This provision shall not be construed in any way so as to limit the right of the Authority's Board to approve its own budget or to make such adjustments as it determines are necessary, nor to limit City Council's legislative or executive powers to adopt or administer City operating or capital budgets or make or expend appropriations.

16. **8 Penn Center Agreements.**

16.1 Pursuant to the authority granted by an ordinance of the City Council of Philadelphia and approved by the Mayor on August 14, 1979 (Bill No. 2086), the City, the Authority and the Philadelphia Authority for Industrial Development ("**PAID**") entered into a series of agreements dated December 21, 1979 to facilitate the development of the 8 Penn Center Office Building, including the Prime Lease, the Development Lease and the PAID/City Agreement (collectively, the "**8 Penn Center Agreements**").

16.2 Pursuant to the 8 Penn Center Agreements, City is required to appropriate and pay annually to PAID a sum which represents the amount by which PAID's rent to the



Authority under the Prime Lease exceeds the rent received by PAID under the Development Lease.

16.3 The Parties agree to amend the 8 Penn Center Agreements as follows (collectively, the “**8 Penn Center Agreement Amendments**”):

(a) Authority shall execute and deliver an amendment to the Prime Lease in a form reasonably acceptable to the Authority, the City and PAID (“**Prime Lease Amendment**”). The Prime Lease Amendment shall include, *inter alia*, that: the Prime Lease shall be amended so that the adjusted Basic Rent (as such term is defined in the Prime Lease) paid by PAID to the Authority under the Prime Lease shall not exceed the rent paid by Eight Penn Center Building Corporation to PAID under the Development Lease. Accordingly, the Prime Lease Amendment shall eliminate the City’s obligation to appropriate and pay to PAID an amount in which the adjusted Basic Rent paid by PAID to the Authority under the Prime Lease exceeds the Project Revenues (as defined in the Development Lease) from the Eight Penn Center Building Corporation under the Prime Lease.

(b) The effective date of the Prime Lease Amendment shall be retroactive to November 1, 2009 and the City shall not have an obligation to make any additional payments to PAID nor shall PAID have an obligation to make such additional adjusted Basic Rent payments to the Authority after November 1, 2009 pursuant to the 8 Penn Center Agreement Amendments.

16.4 The Parties agree to undertake the preparation and the execution of the 8 Penn Center Agreement Amendments as soon as reasonably practicable concurrently with or after the execution of this Lease.

## 17. **Indemnification**

17.1 The Authority shall defend, indemnify and hold harmless the City Entities against all Claims, including for injury (including death) or damage to persons or property, arising from, or alleged to arise from, or relating to, or alleged to relate to, the condition, use, occupancy, operation, Maintenance or management of the City Transit Division Properties by the Authority Entities or their contractors, subcontractors, tenants, concessionaires, invitees or licensees, regardless of whether such Claims are caused in whole or in part by the negligent act or omission of the City Entities, or from a violation of this Lease by the Authority. However, the Authority shall not defend or indemnify or hold harmless the City Entities for Claims, including for injury (including death) or damage to persons or property, arising from, or alleged to arise from, or relating to, or alleged to relate to, the affirmative acts or omissions of the City Entities unrelated to the condition, use, occupancy, operation, Maintenance or management of the City Transit Division Properties by the Authority Entities or their contractors, subcontractors, tenants, concessionaires, invitees or licensees, or the City Obligations. Nothing in this Section 17.1 shall be construed as a waiver of the defenses, immunities and limitations on damages available to the Authority pursuant to 42 Pa. C.S.A. §§ 8521 *et seq.* or rights of recovery from the responsible parties otherwise permitted by Applicable Law. The indemnity



provided in this Section 17.1 is solely for the benefit of the City and shall not confer any rights on any other third party.

17.2 In the event of Contamination (defined hereafter), or of a condition that could give rise to Contamination, it is expressly understood and agreed that the City shall not assume or agree to be responsible for, and the Authority hereby agrees to indemnify, defend and hold harmless the City Entities from and against any and all Claims based upon or arising out of any obligation, liability, loss, damage or expense of whatever kind or nature, contingent or otherwise, known or unknown, incurred under or imposed by any provision of federal, state or local law or regulation, or common law, pertaining to health, safety or environmental protection, including without limitation such laws or regulations pertaining to the storage, transportation, handling, disposal, discharge, presence or use of Hazardous Substances (defined hereafter) (the “**Environmental Laws**”) resulting from, arising from or relating to the Authority’s use, operation or Maintenance of the City Owned Transit Properties, except to the extent that any such Claim results from, arises from or relates to a City Obligation. **Contamination**” means the uncontained presence of any “Hazardous Substances” at the City Owned Transit Properties, or arising from the City Owned Transit Properties, which may require “response,” “removal,” “remedial action” or “corrective action” (as those terms are defined under applicable Environmental Laws. “**Hazardous Substance**” means any substance which is or becomes regulated under any Environmental Law, including, without limitation, any substance which is (1) gasoline, petroleum products, explosives, radioactive materials, including by-product, source and/or special nuclear material and solid wastes, polychlorinated biphenyls or related or similar materials, asbestos or material containing asbestos; (2) defined, designated or listed as a “hazardous substance,” “regulated substance,” “hazardous material,” “solid waste,” “hazardous waste,” “residual waste,” “municipal waste” or “industrial waste” under any Environmental Law, including, without limitation, (A) CERCLA; (B) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; (C) the Resource Conservation Recovery Act of 1976, as amended, 42 U.S.C. §6901, et seq.; (D) the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq.; (E) the Clean Streams Law, Pa. Stat. Ann. tit. 35, §691.1, et seq.; (F) the Solid Waste Management Act, Pa. Stat. Ann. tit. 35, §6018.101, et seq.; (G) the Hazardous Sites Clean-Up Act, Pa. Stat. Ann. tit. 35, §6020.101, et seq.; (H) the Storage Tank and Spill Prevention Act (35 P.S. §6021.101, et seq.), and (I) in the regulations adopted and publications promulgated with respect thereto. The terms “**response**,” “**removal**” and “**remedial action**” shall be defined with reference to Sections 101(23) - 101(25) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§9601(23) - 9601(25), as amended from time to time, and to similar provisions in any applicable Environmental Law. The term “corrective action” shall be defined with reference to Section 103 of the Storage Tank and Spill Prevention Act, 35 P.S. §6021.103. The Parties acknowledge and agree that the Authority shall have no liability, responsibility or indemnification obligation with respect to any Claims related to Contamination or violation of Environmental Laws which results from conditions existing on or at the City Owned Transit Properties prior to the effective date of the 1968 Leaseback, except to the extent that the Authority has worsened such conditions due to its negligence or willful misconduct during the period that the Authority has occupied or operated such City Owned Transit Properties.

17.3 In the event any Claim is brought against a City Entity for which the Authority has indemnified the City Entity, the Authority shall, upon written notice from the City Entity, resist or defend such Claim at the Authority's sole cost and expense (including without limitation, legal and experts' fees, and litigation costs), using counsel selected by the Authority, provided that each City Entity may, if it so desires, engage at its sole expense its own counsel to participate in the defense of any such Claim.

17.4 The provisions of this Section 17 shall survive the expiration of this Lease.

## 18. Insurance.

18.1 The Authority shall at its option, either insure with a responsible insurance company(ies) authorized to do business in the Commonwealth or enter into a program of self-insurance, with respect to the City Owned Transit Properties to provide coverage for risk or damage by fire or other casualty, for liability claims, and for worker's compensation claims related to the Authority's employees. If the Authority elects to self-insure, the Authority shall submit to the City to the City's Risk Management Division a certified copy of the Authority's most recent audited financial statement, and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be reasonably requested by the City's Risk Manager. If at the time of commencement of the Term, the Authority self-insures its workers' compensation and employers' liability and automobile liability coverage, the Authority may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate.

18.2 Any insurance policy obtained by the Authority from an insurance company shall be referred to herein as a "**Policy.**" All Policies, except for workers' compensation, employers' liability and professional liability, shall be written on an "occurrence" basis and not a "claims made" basis. The City Entities shall be named as additional insureds on all Policies except workers compensation and employers' liability, and all such Policies shall include an endorsement stating that the coverage afforded the City Entities as additional insureds are primary to any other coverage available to them. The Authority shall submit certificates of insurance evidencing the Policies to the City and to the City's Risk Manager, in each case at the addresses provided for in Section 28. All Policies shall provide for at least thirty (30) days' prior written notice to be given to the City and the City's Risk Manager in the event the coverage is materially changed, canceled or not renewed. At least ten (10) business days prior to the expiration of each Policy, the Authority shall deliver to the City a certificate of insurance evidencing the replacement Policy(ies) to become effective immediately upon the termination of the previous Policy(ies). Any Policies the Authority maintains with respect to the City Owned Transit Properties is not intended and shall not be construed to modify, limit or reduce the indemnification made in this Lease by the Authority to the City or to limit the Authority's liability under this Lease to the limits of the Policies or programs of self-insurance that the Authority may maintain hereunder.

18.3 If the Authority has any work performed in the City Owned Transit Properties and is named as an additional insured on any contractor's or subcontractor's insurance policy,



the Authority shall also cause the contractor or subcontractor to name the City Entities as additional insureds.

18.4 The provisions of this Section 18 shall survive the expiration of this Lease.

19. **Casualty.**

19.1 Except as provided in Section 19.2 or resulting from a City Obligation, if any of the City Owned Transit Properties is damaged or destroyed by a Casualty and the Authority believes that repair and restoration of such damage is in the best interests of the operation of the SEPTA System, then the Authority shall promptly commence and proceed with due diligence to repair, restore or replace such damage to the extent that the Authority has sufficient funds, either through insurance from a third party carrier, grants or other available funding sources within its capital budget, to complete such repair, restoration or replacement. Such repair, restoration or replacement by the Authority shall be without prejudice to the Authority's rights of recovery against any party who may be responsible for such Casualty (provided, however, that nothing herein shall be construed as a waiver of the defenses, immunities, and limitations on damages available to the City pursuant to 42 Pa. C.S.A. §§ 8541 et seq.). If such Casualty results from a City Obligation, then the Authority has the right, but not the obligation, to repair, restore or replace such damage without prejudice to the Authority's rights of recovery against the City. "Casualty" shall mean war, riot, civil disorder, fire, flood, earthquake, the bursting or leaking of water, gas mains or sewers, and any other event comprehended under the term "force majeure" as described in Section 29.12.

19.2 If a Casualty is such that, in the Authority's reasonable judgment, the City Owned Transit Property(ies) shall be unsuitable for repair, restoration or replacement, then the Authority may request the City to permit it to (a) demolish any improvements and restore the damaged City Owned Transit Property(ies) to a clear, graded condition, at the Authority's sole cost and expense, and thereafter terminate the Lease as it applies to such damaged City Owned Transit Property(ies) or (b) utilize the City Owned Transit Property(ies) for another use related to the operation of the City Transit Division, such as creating a parking lot where a building used to be located. The City agrees not to unreasonably withhold, condition or delay its approval of any such request pursuant to clause (a) or clause (b) above. Notwithstanding the foregoing, the Authority shall not be required to obtain the City's permission to take the actions described in clause (a) above with respect to Casualty affecting any Alteration and Replacement to any City Owned Transit Property(ies) or Extension thereof; provided, however, the Authority shall give the City advance notice that it is taking such action within ninety (90) days following the occurrence of the Casualty.

19.3 The provisions of this Section 19 shall survive the expiration of this Lease.

20. **Review by City.** Review, approval and/or inspection by the City of any plans, designs, specifications, drawings, work or other materials submitted or performed by the Authority in connection with this Lease shall not constitute any representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed or approved. No person or party shall rely in any way on such review or approval, and at all times the Authority shall use its own



independent judgment as to the accuracy and quality of all such matters. The City's review or approval of any work performed under this Lease shall not constitute or be construed to constitute approval otherwise required by any and all City departments, boards and commissions in connection with any and all aspects of the work.

21. **Assignment and Sublease.** Neither this Lease nor any right granted or demised to the Authority hereunder shall be transferred, assigned, sublet, mortgaged or encumbered (collectively, a "**Transfer**") by the Authority without the consent of the City granted by Ordinance of City Council. Notwithstanding the foregoing, the following shall not be considered a Transfer within the meaning of this Section: the entering into any agreement by the Authority with a third party to perform transportation services related to the City Transit Division which may necessitate the utilization of any part of the City Owned Transit Properties, such as para-transit services, provided that any such agreements that extend beyond the Term of this Lease shall be subject to Section 6.5.

22. **Default and Remedies.**

22.1 In the event that the Authority has defaulted in its obligations under this Lease, and such default is not cured within sixty (60) days after written notice from the City (or if the nature of such default is such that it cannot reasonably be cured within sixty (60) days, then the City shall grant the Authority an additional period of time as is reasonably necessary to complete such cure), then such a default shall constitute an "**Event of Default**" hereunder. Upon the occurrence of an Event of Default or an alleged Event of Default, the General Manager of the Authority and the City's Commissioner of the Department of Public Property, or the Commissioner's designee, shall meet in an effort to reach agreement concerning the default and remedial action to be taken. If a resolution is not reached within ten (10) days after such meeting, then the City's exclusive remedies shall be to bring an action for damages or an action for equitable relief (e.g., injunctive relief or specific performance) against the Authority. In no event shall the City have a right to terminate this Lease.

22.2 The City's remedies under this Lease are not exclusive of each other or exclusive of other remedies City may have at law and in equity now or in the future, and the City may, at its election, exercise its remedies under this Lease, at law and in equity, individually, cumulatively, or in any combination; provided, however, that in no event shall the City have a right to terminate this Lease.

22.3 The City shall not be deemed to have waived any Event of Default unless the City explicitly waives the Event of Default in writing. Without limiting the preceding sentence, the City shall not be deemed to have waived any Event of Default regardless of whether the City (a) fails to insist upon the Authority's strict performance of any provision of this Lease, (b) fails to provide written notice to the Authority of the Event of Default, or (c) fails to exercise any right or remedy after providing written notice to the Authority of the Event of Default and the Authority fails to cure such Event of Default within any applicable cure period.

23. **Surrender.** Upon the expiration of this Lease, the Authority shall surrender to the City possession of the City Owned Transit Properties, subject to Section 4.5 and Section 4.6 hereof,



all Alterations and Replacements thereto and Extensions thereto, respectively, and all Authority Utility Facilities therein, in the condition required by the terms of this Lease, without any further notice or demand now or hereafter required by Pennsylvania law.

24. **Representations and Warranties.**

24.1 By the City.

(a) This Lease has been duly authorized, executed and delivered by the City.

(b) The execution, delivery, and performance by the City of this Lease will not result in a breach or violation of, or constitute a default under, any agreement, instrument, indenture, law, regulation, ordinance, order or decree to which the City is a party or by which the City is bound.

24.2 By the Authority.

(a) This Lease has been duly authorized, executed and delivered by the Authority.

(b) The execution, delivery, and performance by the Authority of this Lease will not result in a breach or violation of, or constitute a default under, any agreement, instrument, indenture, law, regulation, ordinance, order or decree to which the Authority is a party or by which the Authority is bound.

25. **No Waiver.**

25.1 By the City. Nothing contained in this Lease shall prevent the City from exercising its police power to maintain the peace or to prevent or suppress crime, riot or disorder, to enact, implement or enforce its regulatory powers, or from extinguishing fires anywhere in the City Transit Division. Nothing contained in this Lease shall be construed as a waiver by the City of those rights, defenses, immunities, and limitations on damages available to the City under the Political Subdivision Tort Claims Act, Act of October 5, 1980, P.L. 693, No. 142 (42 Pa. Cons. Stat. Ann. § 8541 *et seq.*), as may be amended from time to time, nor as a limitation on the rights or defenses available to the City under law, except with respect to the remedies available to the City pursuant to Section 22 above.

25.2 By the Authority. Nothing contained in this Lease shall constitute a waiver by the Authority of any rights conferred upon the Authority by the SEPTA Enabling Act, the Transportation Funding Acts or other Applicable Laws, nor a waiver by the Authority of any of its rights with respect to the subject matter hereof. Nothing contained in this Lease shall be construed as a waiver by the Authority of those rights, defenses, immunities and limitations on damages available to the Authority under 42 Pa. Cons. Stat. Ann. § 8521 *et seq.*, as may be amended from time to time, nor as a limitation on the rights or defenses available to the Authority under law.

26. **Books and Records.** The City Controller, the City Director of Finance, the Deputy Mayor for Transportation and Utilities (if such position then exists, and if not, the Managing Director), the Commissioner of Public Property and their respective employees and agents, shall have access at reasonable times upon reasonable advance notice to the books and records of the Authority relating to the City Owned Transit Properties, which shall include, without limitation, records of the Maintenance, Alterations and Replacements and Extensions of the City Owned Transit Properties and any Authority Utility Facilities located therein, and the New Sources of Revenue Rent. The Authority shall keep its accounts in such a way that New Sources of Revenue Rent, Concourse Expenditures and Project Expenditures for each fiscal year may be reasonably calculated.

27. **Non-Discrimination.** During the Term of this Lease, the Authority covenants and agrees that it shall at all times comply with the non-discrimination provisions and covenants set forth in the Grant Agreements between the Authority and the United States Federal Transit Administration, or any successor agency, with respect to any projects undertaken by the Authority in connection with the City Owned Transit Properties and other applicable federal laws.

28. **Notices.** All notices, requests, demands and other communications required or permitted under this Lease shall be in writing and shall be deemed to have been duly given, made and received only (i) when personally delivered or (ii) on the day specified for delivery when deposited with a courier service guarantying next business day delivery such as FedEx or UPS for delivery to the intended addressee, addressed as set forth below:

If to the Authority: Southeastern Pennsylvania Transportation Authority  
1234 Market Street, 10th Floor  
Philadelphia, PA 19107  
Attention: General Manager

With a copy to: Southeastern Pennsylvania Transportation Authority  
1234 Market Street, 5th Floor  
Philadelphia, PA 19107  
Attention: General Counsel

If to the City: City of Philadelphia Managing Director's Office  
Municipal Services Building, 14th Floor  
Philadelphia, PA 19102  
Attention: Deputy Mayor of Transportation and Utilities (if such position then exists, and if not, the Managing Director)

With a copy to: The City of Philadelphia Law Department  
1515 Arch Street, 17th Floor  
Philadelphia, PA 19102  
Attention: Divisional Deputy of Economic Development and Real Estate



And to: Department of Public Property  
City Hall, Room 790  
Philadelphia, PA 19102  
Attention: Commissioner of Public Property

And evidence of qualifications The City of Philadelphia Law Department  
to act as a self-insurer required 1515 Arch Street  
to be sent to the City's Risk Philadelphia, PA 19102  
Manager pursuant to Section Attention: Risk Manager  
18 shall be sent to:

Any Party may alter the address to which communications or copies are to be sent by giving notice of such change of address to the other Party in conformity with the provisions of this Section for the giving of notice.

29. Miscellaneous.

29.1 Certain Interpretational Rules. For purposes of this Lease, whenever the words "include", "includes", or "including" are used, they shall be deemed to be followed by the words "without limitation" and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Lease as a whole and not to any particular provision of this Lease, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Lease unless otherwise specified. The captions in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof

29.2 Governing Law. This Lease shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to conflicts of laws principles. Any action brought to enforce or interpret this Lease shall be brought in the court of appropriate jurisdiction in Philadelphia County.

29.3 Amendments. This Lease may not be amended or modified other than by an agreement in writing signed by the Parties.

29.4 Entire Agreement. This Lease (including any schedules and exhibits referred to herein and all supplementary agreements provided for herein) contain the entire agreement between the parties regarding the City Owned Transit Properties and all prior negotiations and agreements (other than those listed in Exhibit "A-1" and Exhibit "A-2") are merged into this Lease. All of the schedules and exhibits attached hereto are incorporated in and made a part of this Lease, provided that in the event of any inconsistency between the terms and provisions of this Lease and the terms and provisions of the schedules and exhibits hereto, the terms and provisions of this Lease shall control.



29.5 Severability. If any of the provisions of this Lease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

29.6 Counterparts. This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together constitutes one and the same instrument.

29.7 Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

29.8 No Third Party Beneficiaries. Anything in this Lease to the contrary notwithstanding, the City and the Authority agree that the agreements and provisions herein shall benefit only the City and the Authority, and their respective successors and permitted assigns, and under no circumstances shall benefit any third parties. Neither party shall have the right to bind the other party in dealings with third parties with respect to the subject matter of this Agreement.

29.9 No Joint Venture. This Lease shall create only the relationship of landlord and tenant between the City and the Authority. Nothing herein is intended to be construed as creating a joint venture or partnership relationship between the parties hereto.

29.10 Time. Time is of the essence of this Lease with respect to the performance by the City and the Authority of all of their respective obligations hereunder.

29.11 Waiver of Jury Trial. IT IS MUTUALLY AGREED BY AND BETWEEN THE CITY AND THE AUTHORITY THAT THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION PROCEEDING OR COUNTER-CLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE AUTHORITY'S USE OR OCCUPANCY OF THE CITY OWNED TRANSIT PROPERTIES OR CLAIM OF INJURY OR DAMAGE IN OR TO THE CITY OWNED TRANSIT PROPERTIES.

29.12 Force Majeure. Neither Party shall be responsible for failure or delay in performance hereunder by reason of fire, flood, riot, strikes, bomb or other threat, acts of terrorism, labor disputes, freight embargoes or transportation delays, acts of God or of the public enemy, war or civil disturbances, national disaster or similar unforeseen factors outside such party's reasonable control, or any existing or future Applicable Laws or acts of any government (including any orders, rules or regulations issued by any official or agency or such government) affecting such Party or failure of any supplier of a Party to provide the raw materials to such Party that would delay or prohibit performance hereunder.

29.13 Further Assurances. Each Party agrees (a) to furnish upon request to each other Party such further information, (b) to execute and deliver to each other party such other



documents, and (c) to do such other acts and things, all as another party may reasonably request for the purpose of carrying out the intent of this Lease.

29.14 Consents. Except as otherwise specifically provided for herein, any consent, approval, direction or similar action by the City under this Lease shall be given on its behalf by the City's Commissioner of Public Property. Any consent, approval, direction or similar action by the Authority under this Lease shall be given on its behalf by the Authority's General Manager. All consents, approvals, directions or similar actions required hereunder shall be in writing.

29.15 Authorization. This Lease is made under and subject to the Philadelphia Home Rule Charter and the SEPTA Enabling Act, as each may be amended. It has been duly authorized by the City Authorizing Ordinance and by the Board of the Authority and is executed and delivered by proper officials of the Parties.

29.16 No Negative Inference Against Preparer. The Parties have participated jointly in the negotiation and drafting of this Lease. In the event an ambiguity or question of intent or interpretation arises, this Lease shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Lease.

29.17 Survival. All of the Authority's and the City's covenants and obligations contained in this Lease which by their nature might not be fully performed or capable of performance before the expiration of this Lease shall survive such expiration.

**SIGNATURES BEGIN ON NEXT PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year first above written.

SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_

Name: Joseph M. Casey

Title: General Manager

THE CITY OF PHILADELPHIA, by and through its  
Department of Public Property

By: \_\_\_\_\_

Name: Bridget Greenwald

Title: Commissioner

APPROVED AS TO FORM:  
Shelley R. Smith, City Solicitor

Name: \_\_\_\_\_  
Title: Deputy City Solicitor

Approved as to Form:

By: \_\_\_\_\_

James B. Jordan, Esq.  
Office of General Counsel  
Southeastern Pennsylvania  
Transportation Authority



## EXHIBIT "A"

### CITY TRANSIT DIVISION AGREEMENTS

Capitalized terms used without definition in this Exhibit "A" shall have the meanings ascribed to them in the Lease

1. The 1968 Lease
2. The 1968 Leaseback
3. Prior Agreements
4. Metromarket License Agreement
5. The 8 Penn Center Agreements
6. Management Contract for the Operation of the Center City Commuter Connection dated June 29, 1984 and effective July 2, 1984
7. Consent Agreement dated June 9, 2000 regarding advertising at Market Street
8. Management Contract for the Operation of the Airport High Speed Line dated February 8, 1988 and effective April 28, 1985
9. 1984 Safe Harbor Agreement concerning Broad Street Subway Cars
10. City/SEPTA General Agreement on Operating Subsidies dated March 28, 1991
11. Letter of Understanding dated December 8, 1998 re: use of SEPTA Buses for City-Sponsored Events
12. Concourse Electric Service Agreement dated April 10, 1991
13. Agreement dated August 14, 2000 regarding conveyance of 7 East Market Street Headhouses by SEPTA to the City
14. ComPass Agreement dated June 6, 2001
15. Agreement dated May 24, 2002 regarding the Market Street Ductbank
16. Agreement between City and SEPTA regarding the Phlash Transportation Service effective as of July 1, 2002
17. Agreement dated September 20, 2002 regarding construction by Pavilion East Associates, L.P. of retaining wall at 8th and Market Streets

18. Agreement dated August 24, 2004 regarding Frankford Transportation Center Pedestrian Bridge
19. First Amended and Restated Memorandum of Understanding effective May 21, 2009 regarding City Hall Station Renovations Project
20. Agreement dated May 14, 1997 between the City and the Delaware River Port Authority regarding installation of elevators at 8<sup>th</sup> and Market Streets and 15<sup>th</sup> and Locust Streets



**EXHIBIT "A-1"**

**TERMINATED CITY TRANSIT DIVISION AGREEMENTS**

Capitalized terms used without definition in this **Exhibit "A-1"** shall have the meanings ascribed to them in the Lease

1. The 1968 Lease – terminated pursuant to **Section 3.1**
2. The 1968 Leaseback – terminated pursuant to **Section 3.1**
3. Prior Agreements – terminated pursuant to **Section 3.1**
4. Metromarket License Agreement - terminated pursuant to **Section 3.2**
5. Agreement between City and SEPTA regarding the Phlash Transportation Service effective as of July 1, 2002 – **expired**

**EXHIBIT "A-2"**

**CITY TRANSIT DIVISION AGREEMENTS  
WHICH SURVIVE INDEPENDENTLY OF THIS LEASE**

1. Management Contract for the Operation of the Center City Commuter Connection dated June 29, 1984 and effective July 2, 1984
2. Consent Agreement dated June 9, 2000 regarding advertising at Market Street
3. Management Contract for the Operation of the Airport High Speed Line dated February 8, 1988 and effective April 28, 1985



**EXHIBIT "B"**

**CITY OWNED TRANSIT PROPERTIES**

|  | <b>Brief Description</b>  |
|--|---|
| Broad Street Subway System               | The entire Broad Street Subway System extending, as of the Effective Date, from Fern Rock Transportation Center to the AT&T Station (Sports and Entertainment Center Complex), including all passenger stations, concourses as shown on <b><u>Exhibit "C-3,"</u></b> access stairways, entrances, power substations, and the Fern Rock Yard with shops and parking lot.   |
| Center City Commuter Concourse           | The Center City Commuter Concourse extending, as of the Effective Date, from Suburban Station to Market East Station as shown on as shown on <b><u>Exhibit "C-3"</u></b>  |
| Elevators                                | 1 passenger elevator located at 8 <sup>th</sup> and Market<br><br>1 passenger elevator located at 15 <sup>th</sup> and Locust   |
| Entrances and Stairways                  | All entrances and stairways to underground concourse areas in City Transit System other than those contained within the property line of any building owned by someone other than the City, as shown on <b><u>Exhibit "C."</u></b>  |
| Escalators                               | 2 located at 15 <sup>th</sup> and Market<br><br>1 located at 8 <sup>th</sup> and Market   |
| Market-Frankford Subway Elevated Railway | Two-track elevated structure, with appurtenances, as of the Effective Date running north from Front and Arch Streets to the end of the line at the Frankford Transportation Center (Bridge Street), as shown on <b><u>Exhibit "C-3,"</u></b> including all passenger stations, concourses and access stairways, car inspection shops, car cleaning, outdoor storage and automobile parking facilities at Bridge Street, and power |

|   |   |
|---|---|
|   | substations.  |
| Market East Station Concourse   | As shown on <b>Exhibit "C"</b>  |
| MSB Concourse except the portion of the MSB Concourse described on <b>Exhibit "B"</b> | As shown on <b>Exhibit "C"</b>  |
| Route 59 Oxford-Castor Trackless Trolley Line   | Arrot Street Station and Bell's Corner Loop, including overhead power distribution system with substations.   |
| Route 66 Trackless Trolley Line   | Electrification system, substation and loop   |
| Suburban Station Concourse  | As shown on <b>Exhibit "C"</b>  |
| West Philadelphia Subway  | Land at 36 <sup>th</sup> and Ludlow for Route 10 (subway surface)<br><br>Land at 44 <sup>th</sup> and Market for Market-Frankford Subway Elevated<br><br>Land at 33 <sup>rd</sup> and Market for station (subway surface) |
| Woodland Avenue Subway  | Junction near 36 <sup>th</sup> and Ludlow to 40 <sup>th</sup> and Baltimore and Woodland 100 feet beyond 40 <sup>th</sup> Street (subway surface), including stations, signals, power distribution system and tracks.     |



**EXHIBIT “B-1”**

**PROPERTIES EXCLUDED FROM CITY OWNED TRANSIT PROPERTIES (NOT  
LEASED TO SEPTA)**

- That portion of the MSB Concourse located within the footprint of the Municipal Services Building (and set behind glass doors)
- Commerce Street and any loading areas and loading docks therein, as shown on **Exhibit “C-2”**
- Airport High Speed Line -- to be managed by SEPTA pursuant to the Management Contract for the Operation of the Airport High Speed Line dated February 8, 1988 and effective April 28, 1985
- Center City Commuter Concourse currently extending from Suburban Station to Market East Station – to be managed by SEPTA pursuant to the Management Contract for the Operation of the Center City Commuter Connection dated June 29, 1984 and effective July 2, 1984, as amended
- Enclosures at street level of the headhouses on Market East
- Utility Facilities (excepting Authority Utility Facilities)
- PATCO High-Speed Line connecting Philadelphia, Pennsylvania and Camden, New Jersey which currently is operated by the Delaware River Port Authority (also known as the Locust Street Subway) and the related concourses
- Ductbanks other than those identified on **Exhibit “B-2”** attached hereto or described in **Section 4.3(d)**.

**EXHIBIT "B-2"**

**DUCTBANKS FOR WHICH SEPTA IS RESPONSIBLE**

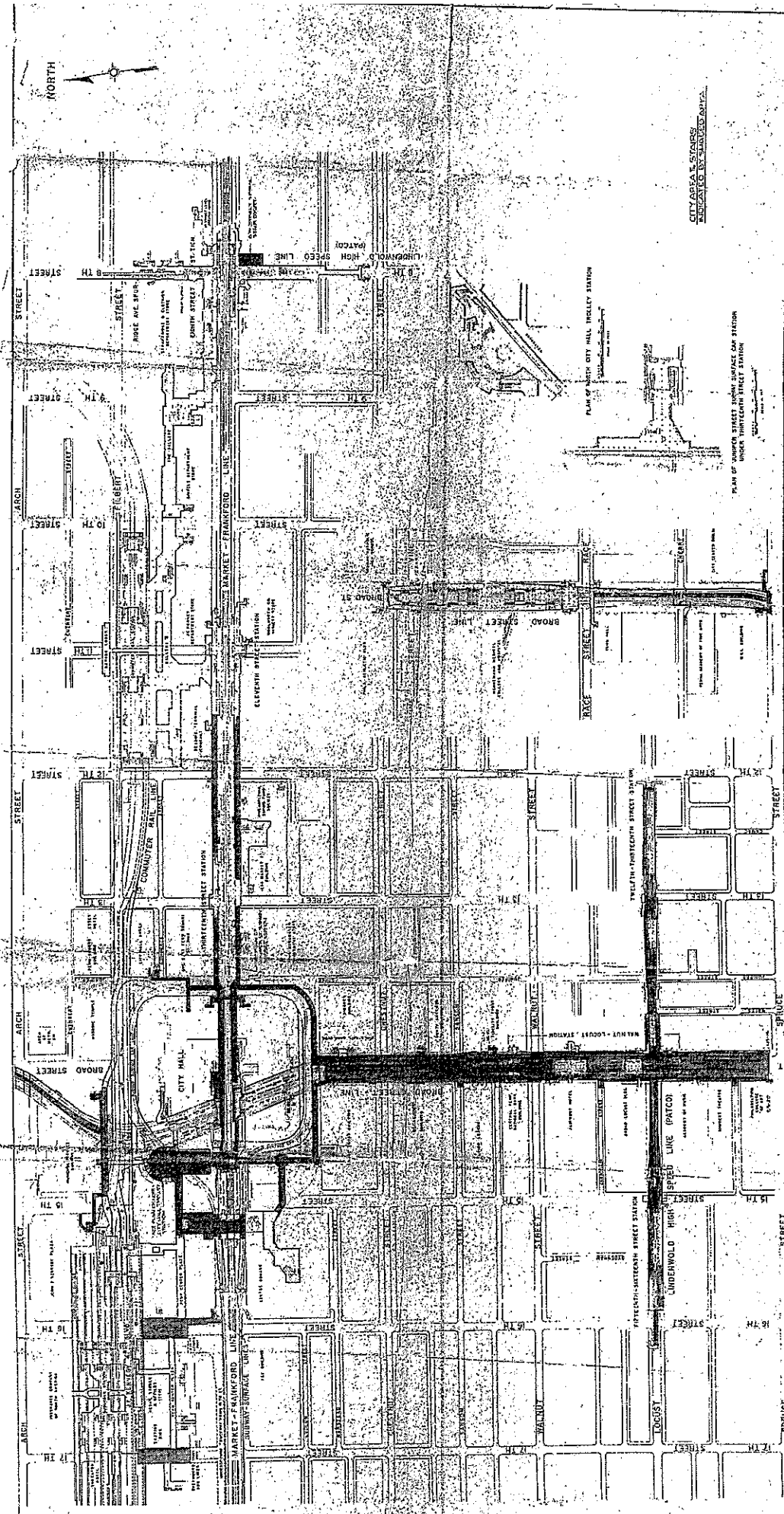
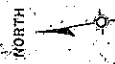




**EXHIBIT "C"**

**PLAN OF BROAD STREET SUBWAY CONCOURSE, MARKET EAST STATION  
CONCOURSE, MSB CONCOURSE, AND SUBURBAN STATION CONCOURSE**



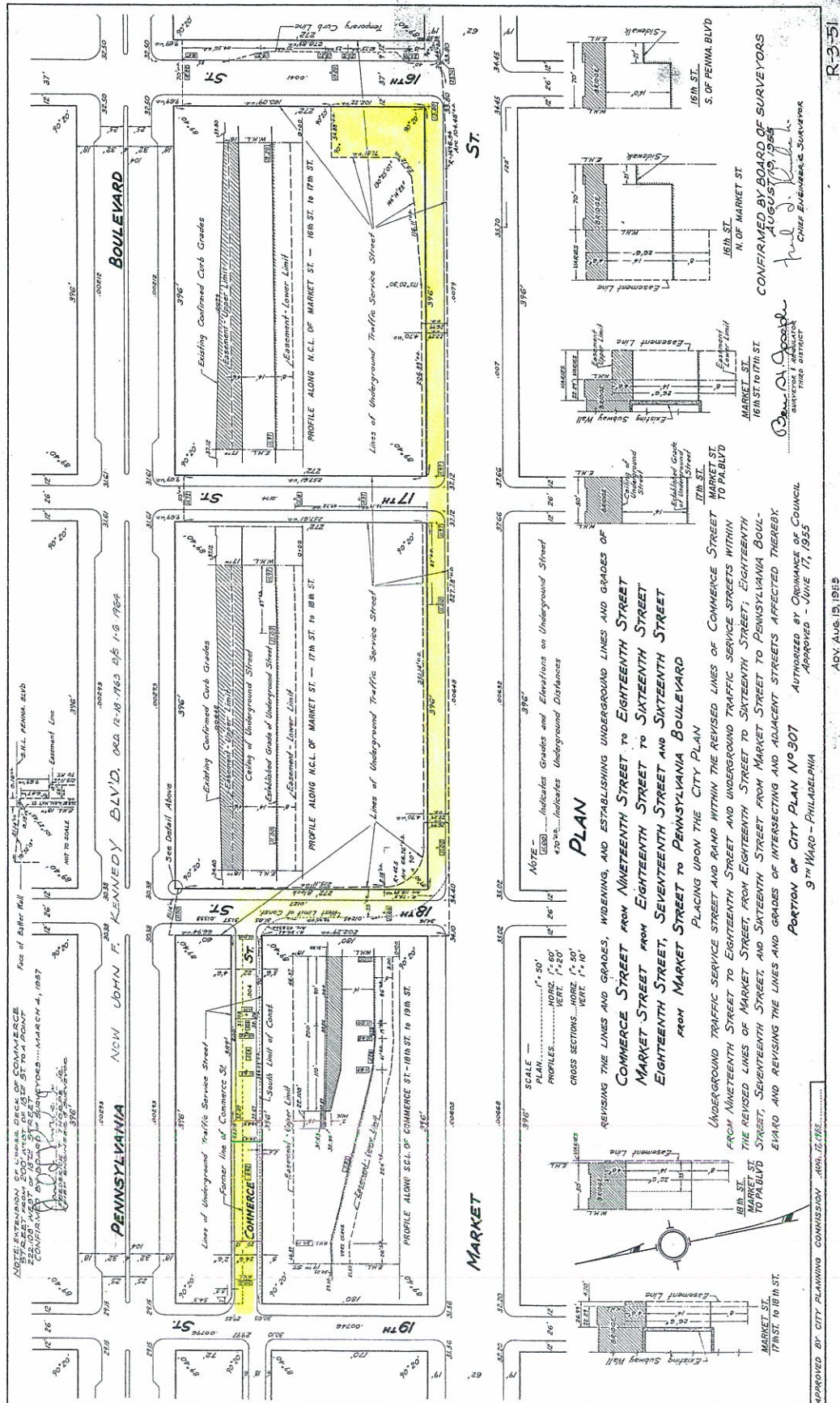


CITY AREA STAIRS  
ASSOCIATED WITH CHICAGO

PLAN OF SOUTH CITY HALL TRANSIT STATION  
UNDER THIRTEENTH STREET STATION

PLAN OF MADISON STREET SURFACE CAR STATION  
UNDER THIRTEENTH STREET STATION

|  |  |  |  |
|--|--|--|--|
| <p>THE<br/>CITY OF CHICAGO<br/>COMMISSIONER OF PUBLIC WORKS<br/>FOR LIABILITIES MAINTENANCE<br/>&amp; RESPONSIBILITY</p> | <p>DATE: 1/1/00<br/>DRAWN BY: [Name]<br/>CHECKED BY: [Name]<br/>SCALE: AS SHOWN<br/>PROJECT NO. [Number]</p> | <p>APPROVED FOR THE CITY OF CHICAGO<br/>COMMISSIONER OF PUBLIC WORKS<br/>[Signature]</p> | <p>APPROVED FOR THE CITY OF CHICAGO<br/>COMMISSIONER OF PUBLIC WORKS<br/>[Signature]</p> |
|--|--|--|--|



NOTE: EXTENSION OF CONVERSE STREET FROM COMMERCIAL STREET TO MARKET STREET WAS APPROVED BY THE BOARD OF SURVEYORS ON MARCH 4, 1947. CONFIRMATION BY THE BOARD OF SURVEYORS ON MARCH 4, 1947. THE EXTENSION OF CONVERSE STREET FROM MARKET STREET TO COMMERCIAL STREET WAS APPROVED BY THE BOARD OF SURVEYORS ON MARCH 4, 1947. CONFIRMATION BY THE BOARD OF SURVEYORS ON MARCH 4, 1947.

PENNSYLVANIA NOW JOHN F. KENNEDY BLVD. OLD 18-16-163 D/S 1-5 1964

SCALE -  
PROFILES..... 1" = 50'  
HORIZ. 1" = 60'  
VERT. 1" = 20'  
CROSS SECTIONS..... HORIZ. 1" = 50'  
VERT. 1" = 10'

NOTE -  
..... Indicates Grades and Elevations on Underground Street  
..... Indicates Underground Distances

**PLAN**

REVISING THE LINES AND GRADES, WIDENING, AND ESTABLISHING UNDERGROUND LINES AND GRADES OF  
**COMMERCE STREET FROM NINETEENTH STREET TO EIGHTEENTH STREET**  
**MARKET STREET FROM EIGHTEENTH STREET TO SIXTEENTH STREET**  
**EIGHTEENTH STREET, SEVENTEENTH STREET AND SIXTEENTH STREET**  
**FROM MARKET STREET TO PENNSYLVANIA BOULEVARD**

PLACING UPON THE CITY PLAN  
 UNDERGROUND TRAFFIC SERVICE STREET AND RAMP WITHIN THE REVISED LINES OF COMMERCE STREET  
 FROM NINETEENTH STREET TO EIGHTEENTH STREET AND UNDERGROUND TRAFFIC SERVICE STREETS WITHIN  
 THE REVISED LINES OF MARKET STREET FROM EIGHTEENTH STREET TO SIXTEENTH STREET; EIGHTEENTH  
 STREET, SEVENTEENTH STREET, AND SIXTEENTH STREET FROM MARKET STREET TO PENNSYLVANIA BOUL-  
 EVARD AND REVISING THE LINES AND GRADES OF INTERSECTING AND ADJACENT STREETS AFFECTED THEREBY

APPROVED BY CITY PLANNING COMMISSION, APR. 22, 1955

9<sup>TH</sup> WARD - PHILADELPHIA

APPROVED BY COUNCIL

AUGUST 19, 1955

CONFIRMED BY BOARD OF SURVEYORS

Chief Engineer & Surveyor

R-3-51



EXHIBIT  
C-2

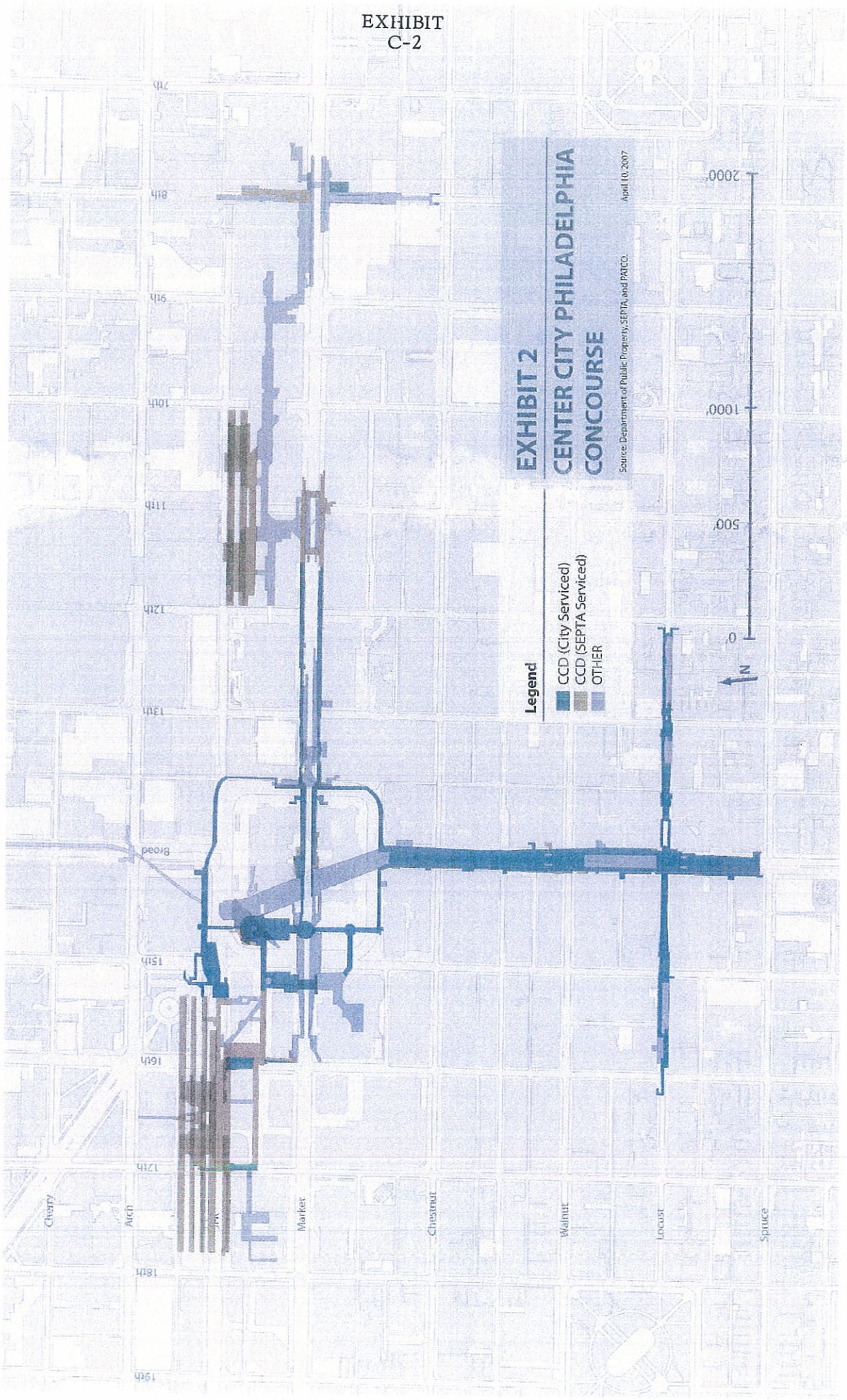


EXHIBIT 2

CENTER CITY PHILADELPHIA  
CONCOURSE

Source: Department of Public Property, SEPTA, and PATCO.  
April 10, 2007

Legend

- CCD (City Serviced)
- CCD (SEPTA Serviced)
- OTHER









**EXHIBIT "D"**

**STAIRWAY AGREEMENTS**

1. Unsigned and undated Agreement between the City and Broad and Walnut Corporation (on or about 1929 and marked as "Ritz Carlton Hotel"), to the extent such agreement is still in effect
2. Ordinance approved October 30, 1934 authorizing an Agreement between the City and Strawbridge & Clothier (8th and Market Streets), to the extent any such agreement is still in effect
3. Agreement dated October 26, 1971 among the City, Centre Square, Inc. and Tishman Construction Co. of Pennsylvania, Inc. (1500 Market Street)
4. Agreement dated September 24, 1982 between the City and Lobro Associates (Broad and Locust Streets)
5. Agreement dated June 1, 1988 among the City, the Delaware River Port Authority and 1525-29 Locust Street Associates (1525-29 Locust Street)
6. Lease Agreement dated May 29, 2012 between Independence Center Realty, L.P. and SEPTA (8th and Filbert Streets)

## EXHIBIT "E"

### **ROW Ordinance Settlement of Claims between City and SEPTA 5/29/2013**

1. **Settlement of Claims:** This is a settlement of claims (the "**Settlement of Claims**") relating to a dispute that arose between the City and SEPTA as to the applicability to SEPTA of the City's 2005 Right-of-Way Management Ordinance (Bill No. 050065 passed by City Council 4-7-05 and signed into law 4-20-05, the "**ROW Ordinance**"), codified chiefly as Chapter 11-700 of The Philadelphia Code, and the Regulations of the Department of Streets for Right of Way Management (the "**ROW Regulations**"). SEPTA has taken the position that the ROW Ordinance cannot be applicable to SEPTA as a matter of law, and the City has taken the position that the ROW Ordinance is applicable to SEPTA by virtue of the City's police powers. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the ROW Ordinance or ROW Regulations, as the case may be. The City and SEPTA acknowledge that the ROW Ordinance shall be applicable to SEPTA except as expressly set forth below:
  
2. **Acknowledgement of SEPTA's Right to Occupy ROW:** City acknowledges that SEPTA, pursuant to SEPTA's enabling legislation, the Metropolitan Transportation Authorities Act, 74 Pa. C.S.A. §§1701, et seq. (the "**SEPTA Enabling Act**"), is a body corporate and politic exercising the public powers of the Commonwealth as an agency and instrumentality thereof, and as such has the right to occupy the public right-of-way ("**ROW**") in its designated "metropolitan area" as defined in the SEPTA Enabling Act. Accordingly, the City shall not require SEPTA to obtain a ROW Use Authorization under Section 11-701(2)(a), to enter into a ROW Use Agreement under Section 11-701(2)(c) or to obtain a Right-of-Way Use License under Section 11-702 of the ROW Ordinance or under Section 3 of the ROW Regulations.
  
3. **SEPTA's Obligation to Maintain Area Within Track Plus 18 Inches:** SEPTA shall, at its sole cost and expense, maintain, repair, replace and restore those portions of the SEPTA ROW Area (as hereinafter defined) in a safe and passable condition and state of repair as a duty and obligation incident to its operations of its railway lines. "**SEPTA ROW Area**" shall mean the portion of the ROW in which the railway tracks owned and operated by SEPTA are located, including the rails and ties and the space between the rails and for eighteen inches on each side of the rails. "**SEPTA ROW Area**" shall also include areas of the ROW in which railway tracks are located that SEPTA formerly owned or operated, but have not been formally abandoned by SEPTA in accordance with Section 4.7 of the City Transit Division Properties Lease Agreement dated \_\_\_\_\_, 2013 between the City and SEPTA to which this Settlement of Terms is attached (the "**Lease Agreement**"), even if such rails have been paved over, but shall not include any railway tracks or ductbanks that were owned or operated by any



previous operators of transit in the City of Philadelphia which were not acquired by SEPTA from Philadelphia Transit Company or used by SEPTA or leased to SEPTA by the City pursuant to the Lease between the City and SEPTA dated September 27, 1968. In the event that the City or a third party causes material damage to the SEPTA ROW Area such that the SEPTA ROW Area or the rails and ties within the SEPTA ROW Area require restoration or repair, then SEPTA's restoration or repair of such damage shall be without prejudice to any rights of recovery SEPTA may have against the party who caused such damage (provided, however, that nothing herein shall be construed as a waiver of the defenses, immunities, and limitations on damages available to the City pursuant to 42 Pa. C.S.A. §§ 8541 et seq.); except to the extent that SEPTA is held by a court of competent jurisdiction to have a right of recovery against the City for such material damage, the City shall have no obligation whatsoever to maintain, repair, renew, replace, restore or improve the SEPTA ROW Area, including the rails and ties located therein, whether the rails have been paved over or not.

**4. Permits:**

(a) SEPTA shall be required to obtain Construction Permits under Section 11-705 of the ROW Ordinance and Section 5 of the ROW Regulations, and Street Opening Permits, as applicable, for the following types of work (except that in the event of an Emergency Condition, SEPTA shall follow the requirements of Section 5 of the ROW Regulations including, without limitation, notification of the City Municipal Radio by telephone upon arrival of the work crew at the site of the Emergency Condition and application for a Construction Permit within seven (7) days following the day on which the work to correct the Emergency Condition commenced):

(i) Work within the public ROW outside of the SEPTA ROW Area

(ii) Major Projects within the SEPTA ROW Area. "**Major Projects**" shall mean installation, repairs, maintenance, replacements, improvements or restoration involving any excavation the full width of the area occupied by one or more tracks ("one track" being understood to comprise two parallel rails) within the SEPTA ROW Area.

(iii) Work in the following categories (the "**Additional SEPTA Work**"), whether or not such work takes place in the SEPTA ROW Area or other portions of the ROW:

- (a) Trolley pole installation and/or removal
- (b) Duct bank repair
- (c) Manhole repair, manhole casting repair/replacements
- (d) Vent well repairs
- (e) Sidewalk repairs

(b) The City and SEPTA acknowledge that SEPTA has a common law obligation to maintain the SEPTA ROW Area (see, e.g., Yackobovitz v. SEPTA, 590 A.2d 40 (Commw. Ct., 1991) (setting forth common law obligation) and has certain rights and obligations under the Lease Agreement regarding the use of the ROW. Therefore, the City shall not require SEPTA to obtain Construction Permits or Street Opening Permits, as applicable, for Routine Maintenance Work (as hereinafter defined). “**Routine Maintenance Work**” shall mean any and all other work by SEPTA within the SEPTA ROW Area other than Major Projects and Additional SEPTA Work.

(c) Notwithstanding the foregoing, before performing work in the ROW (including within or outside of the SEPTA ROW Area), SEPTA shall obtain a permit authorizing the temporary closure of a roadway lane(s) under Section 11-612 of The Philadelphia Code and applicable regulations, as required by the Streets Commissioner, except that in the event of an Emergency Condition, SEPTA shall notify City Municipal Radio.

5. **Fees:**

(a) In light of SEPTA’s common law and contractual obligation to maintain the SEPTA ROW Area as described above, the City shall not require SEPTA to pay the following fees pursuant to the ROW Ordinance or the ROW Regulations:

(i) With respect to Street Degradation Fees under Section 11-706 of the Row Ordinance and Section 2.2 of the ROW Regulations, SEPTA shall not be required to pay Street Degradation Fees for its work within the SEPTA ROW Area, but SEPTA shall pay Street Degradation Fees for all work in the ROW outside of the SEPTA ROW Area.

(ii) For the purpose of calculating the portion of the aggregate ROW User Annual Fee to be allocated to SEPTA under Section 11-706(1) of the ROW Ordinance and Section 2.1 of the ROW Ordinance:

(a) The Permitting Costs component shall be calculated using the total of the linear feet of construction authorized under all permits obtained by SEPTA pursuant to the procedures stated in Section 4, but shall not include Routine Maintenance Work.

(b) The Ongoing Management Costs component shall be calculated by excluding the linear feet of track and any equipment or infrastructure (other than ductbanks) owned or used by SEPTA within the SEPTA ROW Area, regardless of whether SEPTA was required to obtain a Construction Permit or Street Opening Permit for any such work within the SEPTA ROW Area, but shall include the total number of linear feet of any equipment or infrastructure owned or used by SEPTA in the public ROW outside of the SEPTA ROW Area and all ductbanks owned or used by SEPTA that are located in the public ROW; and

(c) The Street Degradation Allocation component shall be calculated using only the linear feet of construction by SEPTA outside the SEPTA ROW Area.



6. **SEPTA's Combined Underground Facilities:** In light of SEPTA's common law and contractual obligation to maintain the SEPTA ROW Area as described in Section 4.b above, when calculating SEPTA's Combined Underground Facilities for the purposes provided in the ROW Ordinance or ROW Regulations, the number of linear feet of all SEPTA underground facilities outside of the SEPTA ROW Area and of all ductbanks shall be included; however, the number of linear feet of track and any equipment or infrastructure (other than ductbanks) within the SEPTA ROW Area shall be excluded.

7. **Insurance**

(a) The City shall accept SEPTA's program of self-insurance with respect to Section 11-701(d)(1) of the ROW Ordinance and Section 4 of the ROW Regulations, provided that such program complies with all self-insurance requirements set forth in the Lease Agreement.

8. **Indemnification**

(a) The indemnification requirement of Section 11-701(d)(2) of the ROW Ordinance shall be subject to rights, defenses, immunities and limitations on damages available to SEPTA under 42 Pa. Cons. Stat. Ann. § 8521 et seq., as may be amended from time to time, and shall not be construed as a limitation on the rights or defenses available to SEPTA under law.

9. **Past Due ROW Fees:**

(a) With respect to calculating the number of linear feet of Combined Underground Facilities that SEPTA owns in the ROW, SEPTA has provided for City review SEPTA's proposal and supporting documentation for reducing the City's current record for SEPTA Combined Underground Facilities of 928,608 linear feet. The Streets Department has reviewed its record and the City agrees to revise its record for SEPTA Combined Underground Facilities to be 611,550 linear feet as of July 1, 2012.

(b) Based upon the revised linear feet of SEPTA Combined Underground Facilities, the City has recalculated the ROW fees previously billed to SEPTA for FY2006-FY2012 based upon the principles set forth above regarding the exclusions from the calculations for such fees to be \$365,526.76, consisting of two components: (i) Annual Fees equal to \$365,283.37 and (ii) a Street Degradation Fee of \$243.39, and shall rebill SEPTA accordingly. SEPTA shall pay the revised bill in two (2) equal installments, the first due within twelve (12) months after, and the second due within twenty-four (24) months after the Effective Date of the Lease Agreement.

10. **No Waiver.**

(a) Nothing in this settlement is intended as a waiver or release by the City of any rights, power or authority conferred upon the City under its police power or any applicable laws, including without limitation, the City's authority under its police power to require sufficient and adequate maintenance and repair by SEPTA of the SEPTA ROW Area, and to

impose on or collect fees from SEPTA now or in the future, whether pursuant to Section 9-302 (Overhead Wires) of the City Code, amendments thereto, or any other law, authorizing fees relating to overhead wires in the ROW.

(b) Nothing contained in this settlement is intended as a waiver or release by SEPTA of any rights, power or authority conferred upon SEPTA by the SEPTA Enabling Act or other applicable laws, nor a waiver by SEPTA of any of its rights to challenge any such fees sought to be charged by the City with respect to overhead wires or the sufficiency and adequacy of SEPTA's maintenance and repair of the SEPTA ROW Area as set forth in the paragraph above.

11. **Inconsistent Provisions:**

(a) To the extent that the ROW Ordinance or the ROW Regulations are inconsistent with the provisions of this Settlement of Claims, the provisions of this Settlement of Claims shall control.