

AGREEMENT

MANAYUNK BRIDGE TRAIL MAINTENANCE

THIS AGREEMENT ("Agreement"), dated the _____ day of _____, 2013, by and between the CITY OF PHILADELPHIA ("City") and the TOWNSHIP OF LOWER MERION ("Township").

BACKGROUND

WHEREAS, Township and Southeastern Pennsylvania Transportation Authority ("SEPTA") entered into a lease agreement on December 22, 2007, as amended on March 28, 2008, October 13, 2010, and June 27, 2012 (the "Cynwyd Lease"), pursuant to which SEPTA leases to Township a certain portion of the surface of SEPTA's non-operating Cynwyd Line for use as a recreational trail known as the Cynwyd Heritage Trail (the "Cynwyd Trail"); and

WHEREAS, by the Third Amendment to the Cynwyd Lease dated June 27, 2012, SEPTA granted Township the right to extend the Cynwyd Trail across the Manayunk Bridge to that part of the SEPTA right-of-way at mile post 7.79 adjacent to the intersection of High Street and Dupont Street in the Manayunk, neighborhood in the City of Philadelphia; and

WHEREAS, City and SEPTA entered into a lease agreement on July 13, 2012 (the "Ivy Ridge Lease"), pursuant to which SEPTA leases to City a certain portion of the surface of SEPTA's non-operating Cynwyd-Ivy Ridge branch from mile post 7.79, the end of the aforesaid Cynwyd Trail, to mile post 8.36 for use as a recreational trail (the "Ivy Ridge Trail"); and

WHEREAS, SEPTA acquired the Manayunk Bridge in 1976 and used it to carry the SEPTA Cynwyd Line across the Schuylkill River until 1986 when SEPTA ceased operating the Cynwyd Line across the river; and

WHEREAS, the Manayunk Bridge is a historic concrete open spandrel arch bridge constructed by the Pennsylvania Railroad to cross the Schuylkill River and adjacent Schuylkill Canal between Bala Cynwyd, Lower Merion Township, Montgomery County and the Manayunk neighborhood of City of Philadelphia; and

WHEREAS, the Manayunk Bridge and its integral approach structures span numerous transportation facilities as follows: a deck girder structure on the south end of the Manayunk Bridge spans tracks of the Norfolk Southern Railroad on the south side of the Schuylkill River; the concrete arch portion of the Manayunk Bridge spans the Schuylkill Expressway (I-76), the Schuylkill River, tracks of the Norfolk Southern Railroad on the north side of the Schuylkill River, the Schuylkill Canal, and Main Street and Green Lane in Manayunk; and a through plate girder structure on the north end of the Manayunk Bridge spans tracks of SEPTA's Norristown Line; and

WHEREAS, in 1999, SEPTA stabilized and refurbished the concrete arch portion of the Manayunk Bridge to maintain its structural integrity by, among other activities, replacing parapets, repairing concrete surfaces, replacing railings, removing and replacing rail bed ballast, and making drainage improvements, but no substantive work was performed on the steel structures on either end of the main span of the Manayunk Bridge because they were determined to be structurally sound; and

WHEREAS, although SEPTA rehabilitated the Manayunk Bridge, it has not resumed railroad operations across the Manayunk Bridge; and

WHEREAS, City and Township, with the consent of SEPTA and the participation of other stakeholders, desire to convert the Manayunk Bridge from railroad to bicycle and pedestrian trail use as a

connector between the Cynwyd Trail and the street network in the City's Manayunk neighborhood (the "Project"), and

WHEREAS, the Project would enable the future connection of the Cynwyd Trail with the planned Ivy Ridge Trail; and

WHEREAS, a plan has been prepared for the Project by Whitman, Requardt and Associates, LLP, which said plan addresses both historic and safety requirements, and provides for the future addition to the Manayunk Bridge of such amenities as furniture, lighting, and public art; and

WHEREAS, the Project is a complex undertaking requiring safety, accessibility, site amenity, and structural considerations the implementation of which is estimated to cost \$3.5 million; and

WHEREAS, all protective fencing and new railings to be installed along the length of the Manayunk Bridge as part of the Project must remain distinct from but complement the existing post and rail fence system to maintain the historic nature of the Manayunk Bridge; and

WHEREAS, the Project will be funded through multiple sources to include as of November 21, 2012: Pennsylvania Community Transportation Initiative (PCTI) Grant - \$1,300,000; Pennsylvania Department of Transportation (PennDOT) Surface Transportation Program Urban ("ST-U") Grant - \$1,100,000; Pennsylvania Department of conservation and Natural Resources ("DCNR") Community Conservation Partnerships Program Grant - \$500,000; Lower Merion Township (allocated as a match for state grants) - \$250,000; Pennsylvania Congestion Management and Air Quality ("CMAQ") Grant - \$204,246; all totaling \$3,354,000, and as may be augmented from additional sources (collectively, the "Project Funds"); and

WHEREAS, provided adequate Project Funds are received for the total cost of the Project and said Project Funds are available to the City, the City is willing to implement the Project on behalf of the Township by coordinating and administrating the pre-award, award, and management of the necessary construction contracts for the Project; and

WHEREAS, upon completion of the Project, the City and Township desire to work cooperatively pursuant to the terms of this Agreement to maintain the bicycle and pedestrian trail and associated elements, facilities, and amenities installed on the Manayunk Bridge as part of the Project between a point situated approximately at mile post 7.45 on the south side of the Schuylkill River and mile post 7.79 on the north side of the Schuylkill River (the "Manayunk Bridge Trail"); and

WHEREAS, by the Third Amendment to the Cynwyd Lease dated June 27, 2012, the Township is responsible for installing the appropriate improvements as herein described to the surface of the Manayunk Bridge for the Manayunk Bridge Trail, and except for the maintenance of the improvements for which the Township is responsible, SEPTA is responsible for the maintenance of the Manayunk Bridge.

NOW, THEREFORE, for full and valuable consideration, the receipt of which is hereby acknowledged, City and Township, intending to be legally bound, agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated herein and made a part of this Agreement.

2. General Concept. As set forth in this Agreement, and subject to sufficient and available Project Funds, the City will construct the Manayunk Bridge Trail for the Township as the Manayunk Bridge Trail is contemplated by the Third Amendment to the Cynwyd Lease dated June 27, 2012 between the Township and SEPTA, including the Trail Improvements as defined in paragraph 5 herein, and the City and Township will jointly maintain the Manayunk Bridge Trail, including the Trail Improvements. The Township will develop and maintain the Cynwyd Trail and the City will develop and maintain the Ivy Ridge Trail in accordance with their respective lease agreements with SEPTA.

3. Manayunk Bridge Maintenance. City and Township acknowledge that with the exception of the Manayunk Bridge Trail, including the Trail Improvements, SEPTA is responsible under the Third Amendment to the Cynwyd Lease for the maintenance of the Manayunk Bridge and the Township shall promptly notify SEPTA if, in the Township's opinion, SEPTA is not performing its maintenance responsibility.

4. Term. The term of this Agreement shall commence on the date first written above and shall be co-terminous with the term of the Cynwyd Lease, as amended, or until City Council appropriations to the operating budgets of the City's Department of Streets and the City's Department of Parks & Recreation for the City's obligations under this Agreement cease. If City Council decides to stop appropriations for the City's obligations under this Agreement or if the City determines that it cannot otherwise fulfill its obligations under this Agreement, then the City will provide the Township with ninety (90) days written notice prior to the City's cessation of maintenance work on the Manayunk Bridge Trail. If the City and the Township cannot adequately and safely maintain the Manayunk Bridge Trail because of a lack of resources, or for any other reason, and if the Township cannot find any other partners willing to commit financial or other resources to maintain the Manayunk Bridge Trail, then the Township may unilaterally decide within its sole discretion to close the Manayunk Bridge Trail and keep it closed until such time as resources become available to properly maintain the Manayunk Bridge Trail. Any time after the expiration of the 4th year the City shall have the option to terminate this Agreement without liability to Township for damages or loss of profits which would have been realized had the Agreement not been terminated.

5. Trail Improvements. Under the Cynwyd Lease, as between the Township and SEPTA, the Township is responsible for installing the Manayunk Bridge Trail, including the Trail Improvements, on the Manayunk Bridge. Specific facilities, elements, and amenities of the Manayunk Bridge Trail to be installed on the Manayunk Bridge as the "Trail Improvements" are specified by plans prepared by Whitman, Requardt and Associates, LLP, and include, but are not limited to the following:

- a. Trail Elements – Six-inch thick reinforced concrete slab bicycle trail and exposed aggregate concrete pedestrian trail that together form the traveling portion of the Manayunk Bridge Trail.
- b. Safety Elements – Protective fencing extending an additional four feet in height to be added to the existing six foot high steel through plate girders on the span over the SEPTA Norristown Line; a ten foot high protective fence over the low use/low speed single Norfolk Southern track on the north side of the Schuylkill River; protective fence and railing at least four feet, eight inches in height to be attached to the existing post and rail barrier along the sides of the Bridge; a ten foot high protective fence along the entire length of the deck girder structure on the inside radius; metal fencing to be bonded and grounded to the Bridge structure; a ten foot high protective fence over I-76 for protection of the highway; a solid barrier along the sides of the Bridge span directly over the electrified SEPTA rails; anti-climb shields and access gates.
- c. Drainage Elements – Installation of a waterproofing membrane on the deck girder structure; scupper drainage improvements on the deck girder structure; linear trench drains for all bridge spans; drainage grates; and utilization of existing drainage facilities, including scuppers, underdrains, and downspouts.
- d. Site Amenity and Access Elements – Elements along the Manayunk Bridge Trail associated with ensuring the Manayunk Bridge Trail is accessible for users and provides a positive experience, including Manayunk Bridge Trail markings, bicycle racks, signage, bollards, and electric wire conduit and junction boxes for future light fixtures.

- e. Future Improvements – In addition to those Trail Improvements installed as part of the Project, the following amenities may be installed at a later date: light fixtures as recognized as an important amenity for the Manayunk Bridge Trail; benches; planters; and trash receptacles.

6. Joint Responsibilities and Coordination. Prior to completion of the Trail Improvements construction, City and Township will jointly develop rules for use of the Manayunk Bridge Trail and will create signs publicizing such rules. Daily and special use of the Manayunk Bridge Trail will be coordinated by appropriate representatives of the City and the Township on at least a monthly basis. City and Township will allow each other's employees and representatives the privilege to ingress, egress and use the land adjacent to the Manayunk Bridge as required for normal maintenance operations. City and Township will work together to develop and coordinate public safety strategies including emergency vehicle access. Each party will maintain appropriate records of their maintenance activities and related costs for at least five (5) years.

7. Daily Usage. Unless the City and Township otherwise agree in response to special events or otherwise, City will open and close the gates located at either end of Manayunk Bridge Trail on a daily basis, Sunday through Saturday.

8. Signage. Township will install, maintain and replace all signs along the Manayunk Bridge Trail. Signs will be of type and size agreeable to both the City and the Township. All costs associated with installing, maintaining and replacing the signs along the Manayunk Bridge Trail will be paid by the Township.

9. Routine Maintenance and Repairs. City will maintain and make necessary repairs to the Safety Elements described by paragraph 5 herein and the Manayunk Bridge Trail surface. With respect to the Manayunk Bridge Trail surface, routine maintenance and repairs consist of patching concrete surfaces. All costs associated with the services enumerated in this section will be paid by the City. Notwithstanding the above, Township will maintain and make necessary repairs to all other items comprising the Trail Improvements. Nothing herein obviates the Township's responsibility to perform Township's obligations under the Cynwyd Lease and as otherwise described herein.

10. Preventive Maintenance. Prior to completion of the Trail Improvements construction, the City and Township will jointly develop a plan of preventive maintenance for the Trail Improvements, which plan can be amended from time to time. In addition, City and Township will appoint a representative responsible for causing the Manayunk Bridge Trail to be inspected at least once a year and for preparing a summary report to be shared with the City and the Township within fifteen (15) days after completion of the report.

11. Drainage Elements. Township will maintain, repair, and replace the Drainage Elements as necessary to ensure the proper working condition of the Drainage Elements. All costs associated with the services enumerated in this section shall be paid by the Township.

12. Trash Removal. Township will remove all trash, as well as police all litter, on or about the Manayunk Bridge Trail. Township shall perform general cleaning of the Manayunk Bridge Trail to keep the same in good and safe condition and free of trash and debris. All costs associated with the services enumerated in this section shall be paid by the Township.

13. Graffiti Removal. Township will remove graffiti from those portions of the Trail Improvements readily accessible from the Manayunk Bridge Trail without the use of lifts, suspension, fall protection, and other high work equipment and precautions. Graffiti removal from surfaces that are difficult to access because of the need for lifts, suspension, fall protection and other high work equipment and precautions will be coordinated between the City, Township, and SEPTA.

14. Snow Removal. City and Township agree that they will not remove snow and ice from the Manayunk Bridge Trail. In the event of snow or ice accumulation on the Manayunk Bridge Trail, City and Township will consult with each other on whether to close the Manayunk Bridge Trail or open the Manayunk Bridge Trail for use.

15. Closure Notification. Except during the course of Daily Usage, whenever the City and the Township agree to close the Manayunk Bridge Trail, the Township shall notify SEPTA of such closure and the City will ensure the gates located at either end of Manayunk Bridge Trail are closed and locked for the duration of the closure.

16. Maintenance Changes. Except for those maintenance responsibilities specified in the Cynwyd Lease for which Township will have sole responsibility, City and Township will evenly share any unanticipated but required maintenance costs for the Manayunk Bridge Trail that may occur. The City and Township will review this Agreement annually and make appropriate amendments in the event that new maintenance requirements for the Manayunk Bridge Trail arise. In the event that replacement of any of the significant parts of the Trail Improvements becomes necessary, upon mutual consent of the parties and subject to the availability of budgeted funds, the costs thereof will be shared by the parties in an equitable manner.

17. Insurance.

- a. The parties are self-insureds against claims to persons or property, subject to the immunities, rights and defenses available to them in accordance with the provisions of the Political Subdivision Tort Claims Act.
- b. The parties agree to include in their contract provisions with construction contractor(s) for the development and maintenance of the Manayunk Bridge trail segment, such insurance and indemnification provisions as amenable to both parties, it being the intention of the parties hereto to have the contractor(s) fully insure and indemnify the City and Township.
- c. The parties acknowledge that upon selection of a contractor for the Project and upon the selection of a contractor for any future maintenance work, the contractor must apply to SEPTA for a Right-of-Entry Permit and enter into a Right-of-Entry Agreement prior to starting the contracted work, unless the contracted work involves only the use of hand held tools or equipment and the contracted work can be completed in less than one 24-hour day.

18. Indemnification.

- a. Nothing herein will waive or amend or be construed to waive or amend any defense or immunity that the City or the Township, or their officers, agents, employees or representatives may have under the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa.C.S.A. Section 8541, *et seq.* The City's obligations under the Agreement are limited to the recovery permitted against City under Political Subdivision Tort Claims Act, 42 Pa.C.S. § 8541 *et seq.*, including any defenses, limitations and waivers available to City under said Act.
- b. Township will fully defend, indemnify and hold harmless SEPTA from claims, losses, suits, demands, damages, liabilities, consequential damages, charges, fines, settlement payments, penalties or expenses (including, but not limited to, the fees and costs of attorneys and other professionals) with respect to the Project and the use of the Cynwyd Trail, and the Manayunk Bridge Trail, with the exception of claims arising out of SEPTA's negligence. The City will require its contractors to fully indemnify the City, Township and SEPTA during construction of the Project.

19. Further Assurances. The City and Township will take reasonable and appropriate steps to accomplish their responsibilities hereunder and cooperate with the other party in maintaining the Manayunk Trail Improvements. The City and Township agree they will testify in any proceeding before the Pennsylvania Public Utility Commission (P.U.C.) in accordance with the terms of this Agreement and may submit this agreement to the P.U.C. with a request that it be incorporated into any order issued by P.U.C. Should there be any conflict between this Agreement and any order of the P.U.C., the City and Township agree to be bound by the lawful orders of the P.U.C. on matters within its jurisdiction or the final determination by any proper Court on an appeal from said order or orders.

20. Beneficiaries. SEPTA is a third-party beneficiary to this Agreement, and other than SEPTA, there are no other third party beneficiaries of this Agreement and nothing in this Agreement confers any benefit or right upon any party other than the Township, City and SEPTA.

21. Notice. Any notice hereunder will be deemed to be duly given if sent by prepaid first class certified mail, or by a national over night courier to:

If to City:

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

with a copy to:

Philadelphia Parks & Recreation
One Parkway, 10th Floor
1515 Arch Street
Philadelphia, PA 19102
Attention: First Deputy Commissioner,
Parks and Facilities

with a copy to:

City of Philadelphia Law Department
1515 Arch Street, 16th Floor
Philadelphia, PA 19102
Attention: Divisional Deputy City Solicitor,
Transportation Division

If to Township:

Township Manager
Township of Lower Merion
75 East Lancaster Avenue
Ardmore, PA 19003-2376

with copy to:

Gilbert P. High, Jr., Esq.
High Swartz LLP
40 East Airy Street
Norristown, PA 19404

or to such place as any party wishing to change its address may from time to time designate in writing.

22. Authority. This Agreement is subject to councilmanic approval and will not be effective until approved or otherwise authorized by the City Council and the Township Board of Commissioners, and executed as provided by such approval or authorization.

23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of law principles.

24. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Except as specifically provided elsewhere herein, nothing herein shall entitle any person other than the parties hereto and their respective successors and assigns to any claim, cause of action, remedy or right of any kind.

25. Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter hereof. This Agreement can only be amended or modified by a writing signed by all parties hereto.

26. Counterparts. This Agreement may be executed in two or more counterparts, any or all of which shall constitute one and the same agreement.

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SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers or representatives, as of the date first above written.

Attest:

City of Philadelphia

By: _____

By: _____

Name: _____

Title: _____

Attest:

Township of Lower Merion

By: _____

By: _____

Douglas S. Cleland
Township Manager