File #: 250068, **Version:** 0

Authorizing the Commissioner of Public Property and the Streets Commissioner, on behalf of the City, to own and maintain a bridge to be constructed by the Pennsylvania Department of Transportation ("PennDOT") to carry Byberry Road over certain railroad tracks between Evans Street and Worthington Road, and placing said bridge carrying Byberry Road on the City Plan pursuant to the terms of an agreement between the City and PennDOT, all under certain terms and conditions.

WHEREAS, The existing bridge presently carrying Byberry Road over CSX railroad tracks is a temporary structure nearing the end of its useful life; and

WHEREAS, The existing bridge was constructed by PennDOT and maintained by PennDOT since being built in 1995 by order of the Pennsylvania Public Utility Commission; and

WHEREAS, The City and Pennsylvania Department of Transportation ("PennDOT") have negotiated an agreement pursuant to which PennDOT will construct a permanent replacement bridge and dismantle and remove the existing temporary bridge at no cost to the City, provided that the City will agree to assume ownership and maintenance responsibility of that new bridge upon its completion: and

WHEREAS, The negotiated agreement provides that PennDOT will use its best efforts to maintain traffic on Byberry Road during construction of the replacement bridge while it constructs the replacement bridge next to the existing bridge; and

WHEREAS, Pennsylvania law requires PennDOT to obtain City approval by ordinance prior to abandoning ownership and control of the newly built replacement Byberry Road Bridge; and

WHEREAS, Section 5-900 of the Home Rule Charter requires Council approval by ordinance before the Department of Public Property can acquire ownership and control of the new Byberry Road Bridge on behalf of the City;

WHEREAS, Section 5-500 of the Home Rule Charter requires the Department of Streets to maintain the new Byberry Road Bridge after the City assumes ownership of that bridge; now, therefore, be it

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Public Property, on behalf of the City of Philadelphia, is hereby authorized to enter into an agreement with the Pennsylvania Department of Transportation ("PennDOT") to own and maintain a bridge constructed by PennDOT to carry Byberry Road over certain railroad tracks between Evans Street and Worthington Road, pursuant to the terms of a Bridge Replacement and Transfer Agreement substantially in the form attached hereto as Exhibit "A.

SECTION 2. The Board of Surveyors of the Department of Streets is hereby authorized to revise the lines and grades on the City Plan as necessary in order to place on the City Plan the replacement bridge, its approaches,

and its right-of-way.

SECTION 3. The City Solicitor is hereby authorized to review and to approve the agreements and documents necessary to effectuate the transaction authorized by this Ordinance, and to impose such terms and conditions on them as the City Solicitor may deem necessary and proper to protect the interests of the City of Philadelphia and to carry out the purpose of this Ordinance.

Exhibit A

AGREEMENT NO. FEDERAL
ID NO.

BRIDGE REPLACEMENT AND TRANSFER AGREEMENT

This Bridge Replacement and Transfer agreement is between the Commonwealth of Pennsylvania ("Commonwealth"), acting through the Department of Transportation ("Department"), and the City of Philadelphia, a municipal corporation and body politic, duly and properly formed under the laws of the Commonwealth, acting through its proper officials ("City").

The Department has jurisdiction and control of a certain bridge within the City, known as the Byberry Road Bridge over the tracks of the CSX Railroad (formerly Consolidated Rail Corporation), designated as State Route 7301 and BMS No. 67-7301-0200-0000. The Byberry Road Bridge is a temporary Bailey-type structure, installed and maintained by the Department pursuant to order of the Pennsylvania Public Utility Commission entered September 30, 1994, at Docket No. I- 78020294. The Byberry Road Bridge is a temporary structure because the Department's planned Woodhaven Road extension project would have made a permanent bridge on Byberry Road unnecessary; however, the Department has decided not to proceed with the Woodhaven Road extension project.

The parties desire to proceed with the Department's replacement of Byberry Road Bridge with a permanent structure and, upon completion, transfer jurisdiction over the permanent structure to the City. Transfer of

jurisdiction over the permanent structure is permissible in accordance with Section 222 of the State Highway Law, as amended, 36 P.S. § 670-222, relating to abandonment of routes on the State highway system.

The parties, intending to be legally bound, agree as follows:

1. Department Work. The Department, by contract or with its own forces, using federal funds, state funds or a combination of both, shall undertake the replacement of the existing Byberry Road Bridge, designated as State Route 7301 and BMS No. 67-7301-0200-0000, ("Bridge") with a permanent structure (the

2. Department Supervision. The Department shall, with its own forces or by contract with an outside consultant, provide personnel for the adequate inspection and supervision of all construction work on the Project in accordance with the approved plans and specifications; other applicable Department publications, policies, procedures and criteria; and, if applicable, relevant federal requirements. All work performed on the Project shall be subject to the approval of the Department.

3. Traffic Maintenance. The Department will make efforts to maintain traffic on Byberry Road during construction of the Project, provided that short, temporary closures and detours (at night if feasible) may occur. The Department will provide a Maintenance and Protection of Traffic Plan for discussion with and approval by the City prior to the start of construction. City approval shall be in writing, signed by the Streets Commissioner, or his/her designee. The Department will remove unnecessary structures upon completion of the Project and opening to traffic of the Replacement Structure.

4. Plan of Abandonment. After completion of the Project, the Department shall perform a post-construction safety inspection and provide a report to the City prior to abandonment. Prior to the Bridge's final acceptance by the Department, the Department shall prepare a plan of abandonment for the Replacement Structure and record a copy of the plan in the Office of the Recorder of Deeds for Philadelphia county. The area to be abandoned shall consist of the Replacement Structure itself, its appurtenances and associated right-of-way areas, all as shown on the plan attached hereto as Exhibit A. The Department shall provide written notice to the

5. Transfer of Jurisdiction. Transfer of jurisdiction of the Replacement Structure shall be in accordance with Section 222 of the State Highway Law, as amended, 36 P.S. § 670-222, relating to abandonment of routes on State highway system. Full execution and approval of this agreement by bothparties shall be deemed to satisfactorily demonstrate the City approval and agreement requirement of Section 670-222. Transfer of jurisdiction over the Replacement Structure from the Department to the City shall be effective upon the filing of the plan of abandonment by the Department in the Office of the Recorder of Deeds. It is understood that the City will not be eligible for its first annual maintenance payment for the Replacement Structure at the rate of $4,000 per mile until after the year following the transfer, as provided in Section 9511(g)(2) of the Vehicle Code, 75 Pa. C.S. § 9511(g)(2).

6. Responsibility Upon Transfer. Upon transfer of jurisdiction, the City shall have jurisdiction, ownership, and control, in perpetuity, of the Replacement Structure, its appurtenances, and associated right-of-way areas and shall assume, at no cost to the Department, the responsibility and expense of maintenance, improvement, repair, and reconstruction of the Replacement Structure, its appurtenances, and associated right -of-way areas.

The City's exercise of its police powers as regards regulation of traffic on the Replacement Structure

shall be in strict accordance with applicable statutes and regulations, including, but not limited to, those relating to the performance of traffic and engineering studies.

Upon transfer of jurisdiction over the Replacement Structure, its appurtenances and associated right-of-way, the City shall assume the same public liability for the Replacement Structure as it assumes for other highways and bridges under its jurisdiction.

7. Public Utility Commission Proceedings. Because the construction of the Replacement Structure in place of the Bridge represents the alteration of a grade crossing over which Pennsylvania Public Utility Commission ("PUC") has assumed jurisdiction, the Department, after consultation with the City, will file the appropriate application with the PUC for an order authorizing alteration of the grade crossing by construction and completion of the Project and shall present this agreement into evidence before the PUC in support of the application. Upon completion of the Project and transfer of jurisdiction, the City shall petition the PUC to modify its order by placing responsibility for operation and maintenance of the grade crossing upon the City. The Department and the City shall cooperate with each other in the PUC proceedings.

8. Evidence of Transfer. The City shall furnish documentary evidence of the transfer of jurisdiction to the office in the Philadelphia County Courthouse that is responsible for municipal road dockets and shall furnish the Department with proof that the transfer has been duly recorded there, in order to begin receiving the annual payments described in Paragraph 5.

9. Information Provided by Department. The Department shall provide the City with available straight-line diagrams, right-of-way information, traffic engineering documentation, bridge reconstruction plans (including, but not limited to, design calculations, Project specifications, and as-built construction contract drawings (in such electronic and/or paper form as the Department and the City shall agree upon)), and utility and railroad crossing information.

10. RESERVED

11. Entry by Department. The City grants to the Department, its employees, agents and contractors the authority to enter upon and utilize the Replacement Structure, its appurtenances and associated right-of-way areas being transferred to the City and Byberry Road as necessary for purposes of accessing, maintaining, repairing, constructing or reconstructing nearby areas of the State highway system.

13. City Ordinance. As evidence of its intention to accept the transfer of the Bridge, the City has enacted an ordinance or passed a resolution approving the abandonment and accepting the transfer of jurisdiction. A copy of this ordinance or resolution is attached hereto as Exhibit B.

14. Standard Terms and Conditions. The City agrees to comply with the Commonwealth Standard Terms and Conditions attached to this agreement as Exhibit C. As used in Exhibit C, the term "Contractor" refers to the City.

15. Nondiscrimination / Sexual Harassment. If **no** federal funds are used, the Commonwealth Nondiscrimination/Sexual Harassment Clause, which is attached as Exhibit D-1, is made a part of this agreement. If federal funds **are** used, the Federal Nondiscrimination and Equal Employment Opportunity Clauses, which are attached as Exhibit D-2, are made a part of this agreement. As used in Exhibits D-1 and D-2, the terms "Contractor" or "contractor" refer to the City.

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16. Federal Provisions. If federal funds are used for this Project, the City shall comply, and shall cause its consultant(s) and contractor(s) to comply, with the provisions referenced in this section. As used in these provisions, the term "Contractor" or "Grantee" or "Subrecipient" means the City.

a. Lobbying Certification: Public Law 101-121, § 319, 31 U.S.C. § 1352, prohibits the recipient or any lower tier subrecipients of a federal contract, grant, loan or cooperative agreement from expending federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal contract, the making of any federal grant or loan or the entering into of any cooperative agreement. The City shall comply with the Lobbying Certification Form attached to this Agreement as Exhibit E, which an authorized official of the City has executed and, if applicable, shall complete and submit the Disclosure of Lobbying Activities form included in this exhibit in accordance with its instructions.

b. Federal Funding Accountability and Transparency Act: The City shall comply with the Federal Funding Accountability and Transparency Act provisions, attached as Exhibit F.

17. Effective Date. This agreement shall be effective only after full execution and approval by all necessary Commonwealth officials as required by law.

18. Amendments and Modifications. No alterations or variations to this agreement shall be valid unless made in writing and signed by the parties. Amendments to this agreement, with the exception of Section 24, must be accomplished through a formal written document signed by the parties with the same formality as the original agreement.

19. Severability. The provisions of this agreement are severable. If any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth and its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and its applicability to any government, agency, person, or circumstance will not be affected.

20. No Waiver. Either party may elect not to enforce its rights and remedies under this agreement in the event of a breach by other parties of any term or condition of this agreement. In any event, the failure by either party to enforce its rights and remedies under this agreement may not be construed as a waiver of any subsequent breach of the same or any other term or condition of this agreement.

21. Independence of the Parties. Nothing contained in this agreement is intended or may be construed to, in any respect, create or establish the relationship of partners between the City and the Department, or as constituting the Department as the representative or general agent of the City.

22. Assignment. This agreement may not be assigned, either in whole or in part, without the Department's written consent.

23. No Third Party Beneficiary Rights. This agreement does not create or confer any rights in or on persons or entities not a party to this agreement.

24. Notices. All notices and reports arising out of, or from, the provisions of this agreement must be in writing and given to the parties at the address provided under this agreement, either by regular mail, email, or delivery in person:

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If to the Department:

Din Abazi
District Executive, Engineering District 6-0 7000
Geerdes Blvd
King of Prussia, PA 19406
dabazi@pa.gov
<mailto:dabazi@pa.gov>

If to the City:

Vadim Fleysh, Chief Engineer
City of Philadelphia Streets Department 1401 John
F. Kennedy Blvd., St 830 Philadelphia, PA 19102
Vadim.Fleysh@phila.gov
<mailto:Vadim.Fleysh@phila.gov>

or to such other person or address as the parties may provide to each other in writing.

25. Force Majeure. Neither party will be liable for failure to perform under this agreement if a failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Causes include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargos, and unusually severe weather. This provision will become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision will not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

26. Integration and Merger. The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing. In entering this
agreement, the parties did not rely upon oral or written statements or representations not contained within the document itself.

27. Counterparts. This agreement may be executed in counterparts, each of which is deemed an original and has the full force and effect as an original, but all of which constitute one and the same instrument.

The parties have executed this agreement to be effective the date of the last signature affixed below.

ATTEST: CITY OF PHILADELPHIA

BY BY
Name DATE Name DATE Title:

Title: Streets Commissioner

APPROVED AS TO FORM

Renee Garcia, City Solicitor

BY Senior
Attorney DATE

DO NOT WRITE BELOW THIS LINE-FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO LEGALITY AND FORM
BY Deputy Secretary of
DATE Transportation

BY
for Chief Counsel DATE Encumbrance No.

BY
APPROVED
BY:
Office of General Counsel DATE for Comptroller Operations DATE

BY Office *of*
Attorney General DATE

18-AT-103-21

Exhibit A Plan
Exhibit B
City Ordinance or Resolution

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