

MEMORANDUM OF UNDERSTANDING
concerning
CLEAN-UP OF RAIL PROPERTIES IN KENSINGTON

This Memorandum of Understanding (“MOU”) is made by and between **THE CITY OF PHILADELPHIA**, a corporation and body politic formed and existing under the laws of the Commonwealth of Pennsylvania (the “City”), by and through its Managing Director’s Office (“MDO”) and **CONSOLIDATED RAIL CORPORATION**, a corporation organized under the laws of the Commonwealth of Pennsylvania (“Conrail”) regarding the property owned by Conrail, and specifically the railroad right-of-way and adjacent land bordered by Gurney and East Tusculum Streets and the 2nd Street Bridge and the Kensington Avenue Bridge (“Gurney Street Property”), Philadelphia, Pennsylvania. Together, Conrail and the City are the “Parties.”

In consideration of the mutual promises set forth below, and intending to be legally bound, the City and Conrail covenant and agree as follows, effective on the date set forth in Section 2.a below.

1. **Background.** The Parties incorporate the following Background into the MOU in order to enhance the understanding of its purposes:

a. The City has invested significant public resources into restoring the City’s Fairhill and West Kensington neighborhoods surrounding Conrail’s Gurney Street Property. Specifically, the City has demolished structures, removed trash, cleaned and sealed vacant structures, installed new light fixtures, cleared vacant lots, removed overgrown vegetation and weeds, and otherwise engaged in efforts to eradicate blight and public health hazards in these neighborhoods. The City continues these abatement and maintenance actions to this day. The City has also maintained a significant police presence throughout these neighborhoods.

b. Conrail is invested in the City of Philadelphia and the City’s long-term success. Conrail is invested in the operation of a safe and efficient rail corridor in the City’s Fairhill and West Kensington neighborhoods.

c. One remaining impediment to the City’s revitalization efforts in these neighborhoods remains the condition of Conrail’s Gurney Street Property.

d. Conrail’s Gurney Street Property has become a safe harbor for drug use and other criminal activity, which poses a threat to the public health, safety, and welfare. Presently, there are countless used hypodermic needles strewn about the Gurney Street Property along with large piles of trash and debris throughout the rail corridor. Additionally, there are significant amounts of overgrown vegetation and weeds, which permits individuals to engage in criminal activity without fear of those activities being observed by the City’s police force. There are also individuals squatting in dilapidated structures on the property, possibly using those structures to engage in drug use and/or other illicit activity. The conditions of the Gurney Street Property endanger the health, safety, and welfare of the City’s citizens, the City’s first responders, and the surrounding community.

e. Both the City and Conrail are desirous of Conrail's restoring the Gurney Street Property to a safe condition so that the Gurney Street Property is no longer a threat to the public health, safety, and welfare.

f. Both the City and Conrail are desirous of restoring the City's Fairhill and West Kensington neighborhoods to the vibrant, thriving communities they once were by eradicating blighting conditions and eliminating threats to the public health, safety, and welfare.

2. Term.

a. Initial term. This MOU shall commence on _____, 201__ and shall terminate on _____, 201__ unless earlier terminated pursuant to its terms.

b. Additional terms. The Parties will amend the MOU, in the sole discretion of the City, to add any number of additional terms of no more than one (1) year each, upon notice by the City to Conrail. While the City intends to exercise its option to do so for as long as the MOU is beneficial, it cannot commit funds beyond one (1) year and will have no liability or penalty for its decision or nondecision. Each additional term shall be subject to appropriation of funds by City Council for the term, and shall be deemed to constitute a separate contract with a term not to exceed one (1) year. Unless otherwise agreed in writing, the terms and conditions applicable during the initial term shall be applicable during any additional term.

c. Termination for convenience. By notice to the other Party, either Party may terminate this MOU effective on a date stated in the notice that is no less than thirty (30) days later than the date the notice is given to the other Party. Such termination shall not relieve either Party of its obligations under this MOU accruing prior to the effective date of the termination.

3. **Project Area.** This MOU concerns the Parties' obligations within the Project Area, defined as follows:

This project concerns the City's West Kensington and Fairhill neighborhoods as identified in the map attached to this MOU as Exhibit A and roughly bordered by Kensington Avenue, 2nd Street, Lehigh Avenue, and Clearfield Street.

4. **The Parties' Commitments.** During the initial term and any and all additional terms, the Parties agree to do the following in and with respect to the Project Area:

a. The parties agree to cooperate with each other for the purposes stated in the Background.

b. Conrail agrees to clean-up and otherwise remove any and all hypodermic needles, trash, and other debris on the Gurney Street Property.

c. Conrail agrees to remove any and all overgrown vegetation and weeds. After the removal of the overgrown vegetation and weeds, Conrail agrees it will maintain a safe level of vegetation that permits the City's Police Department to maintain adequate sight lines of the Gurney Street Property at all times.

d. Conrail agrees to remove any and all temporary housing or similar structures on the Gurney Street Property.

e. Conrail agrees to install a fence along both sides of the Gurney Street Property that adequately secures the same from the 2nd street Bridge to the Kensington Avenue Bridge. Said

fence shall be at least eight (8) feet high, permit visibility from the street onto the rail tracks, be non-climbable, be impervious to dumping, be difficult to cut through, and should otherwise adequately secure the property from entry by trespassers or other individuals not authorized to enter the Gurney Street Property. Under no circumstances is said fence to have barbed wire.

f. Conrail agrees to install working security cameras throughout the corridor that feed, real-time, into the City's Police Department's crime center. Conrail shall post signs along the Gurney Street Property that shall notify the public that the area is under constant surveillance.

g. Conrail agrees to install adequate lighting along the entirety of the Gurney Street Property so that Conrail's Gurney Street Property is fully lit along the railroad embankment and railroad tracks.

h. Conrail agrees to begin the remediation work outlined in paragraphs 4b through 4g above within thirty (30) days of the commencement date of this MOU and complete the same within ninety (90) days of the commencement date of this MOU.

i. Conrail agrees to increase its patrols of the Gurney Street Property so that it is monitored twenty-four hours a day, seven days a week and so that the Gurney Street Property does not return to its present condition after the above-referenced remediation work is completed.

j. Conrail agrees to repair any damage to the fence, security cameras, or lighting on the Gurney Street Property within twenty-four hours of discovery of such damage and/or within twenty-four hours of notice from the City of such damage.

k. Conrail agrees to continually maintain the Gurney Street Property in a safe and clean manner in accordance with the terms expressed in this paragraph.

l. The City agrees to make all best efforts, through its Police Department, to coordinate a policing strategy with and provide support to Conrail as Conrail remediates the Gurney Street Property.

m. At the sole discretion of the City, the City will continue its blight removal efforts throughout the Project Area. Such tasks can include but are not limited to, demolition of imminently dangerous and unsafe structures, cleaning and sealing of vacant structures, graffiti removal, and removal of trash that has been short-dumped on the public right-of-way.

n. The City, by and through its Department of Behavioral Health and Intellectual Disabilities Services and Office of Homeless Services, will increase its outreach efforts in and around the Gurney Street Property before, during, and after Conrail's remediation efforts.

5. Expression of mutual intent.

a. Independent grounds for commitments; no financial assistance. The agreement or commitment of either Party to undertake any of the obligations set forth in this MOU shall not be construed to alter any existing authority or obligation of the other Party under applicable law to undertake the same or similar actions. Without agreeing on the exact contours of such authority and obligations, the Parties agree that they have sufficient and independent reasons for taking the agreed actions, and that no action taken by either Party under this MOU shall be construed as a gift or financial assistance to the other.

b. No intent to change underlying legal processes. The Parties agree to cooperate in coordinating their actions but do not intend to change underlying law. By way of example and not limitation, this MOU shall not be construed to limit the City's ability to issue violation notices to Conrail where applicable law so permits the City to enforce Conrail's legal obligations, or to limit Conrail's ability to contest such authority or appeal such notices.

6. **Notice.** All notices under this MOU shall be given to the persons listed below by one or more of the methods listed in this Section, and shall be deemed given at the times listed in this Section:

a. The Parties shall deem any notice addressed as provided in Section 7.b to be duly given (i) when received or refused if delivered by hand with receipt given or refused; (ii) on the next business day if delivered by a nationally recognized overnight courier service (e.g., Federal Express, United Parcel Service); (iii) on the date confirmed for receipt by facsimile if delivered by facsimile, provided that any notice by facsimile shall be promptly confirmed by one of the other methods set forth in this Section; and (iv) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested.

b. Notice to the Parties shall be sent as follows, or to such other address of which a Party shall have previously given the other Party:

To Conrail:

[Name, title]
[Street Address, City, and Zip] *[P.O. Box is insufficient for hand delivery]*
Fax: ***-***-**** *[OK to dispense with fax delivery; strike 7.a.iii too]*

with a copy to:

[Name, title]
[Street Address, City, and Zip]
Fax: ***-***-****

To the City:

Sozi Pedro Tulante, City Solicitor
City of Philadelphia, Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA, 19102

with a copy to:

Michael DiBerardinis, Managing Director
City of Philadelphia, Office of the Managing Director
1401 John F. Kennedy Boulevard
Philadelphia, PA 19102

7. **Applicable Law.**

a. Choice of law. The Parties, and any court or other tribunal, shall construe and enforce this MOU under the laws of the Commonwealth of Pennsylvania any applicable law of the United States of America and The City of Philadelphia, regardless of any conflict of laws

provisions, and without the aid of any canon, custom, or rule of law requiring construction against the drafter.

b. Compliance with law. The Parties will each comply with all law applicable to their respective actions in connection with this MOU, including federal, state, and local constitutions, statutes, regulations, and executive orders.

c. Nondiscrimination. This MOU is entered into under the terms of the Philadelphia Home Rule Charter. In performing this MOU, Conrail shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry, national origin, sex, gender identity, sexual orientation, age or disability.

8. Miscellaneous.

a. Dispute resolution; venue. The Parties will consult with each other concerning any disputes that may arise under this MOU, and will attempt to resolve such disputes amicably. In the event that the Parties cannot amicably resolve any dispute and a Party resorts to legal action, that Party shall file suit only in the state or federal courts sitting in Philadelphia.

b. Headings. Section headings in this MOU serve for reference only and shall not in any way affect the meaning or interpretation of this MOU.

c. Severability. If a court holds any term, covenant or condition of this MOU invalid, such holding shall not affect or impair the validity of any other terms, covenants or conditions of this MOU, which the Parties hereby deem severable and which shall remain in full force and effect.

d. Survival. Any and all provisions of this MOU which contemplate performance by a Party after the expiration or earlier termination of this MOU shall survive and be enforceable after such expiration or termination.

e. Waiver. No one shall find, hold or determine that a Party has waived any term, covenant or condition set forth in this MOU, or any event of default or remedy, unless that Party has set forth its waiver in a writing signed by that Party.

f. No partnership or agency. Anything in this MOU to the contrary notwithstanding, the Parties have not created, do not intend to create a joint venture or partnership between Conrail and the City, or any agency relationship between them. The MOU and actions taken thereunder shall not be construed so as to create any power in one Party to bind the other Party in any manner whatsoever to any third party.

g. No third-party beneficiaries. The Parties do not intend to create, and no Party, court, tribunal or Person shall construe anything set forth in this MOU to create, any contractual relationship with, or to give a claim, right, cause of action or remedy in favor of, any third party against either Conrail or the City. No third party is an intended beneficiary of this MOU.

h. Entire agreement; amendment. This MOU constitutes the entire agreement between the Parties and supersedes any and all prior and contemporaneous oral and written agreements and statements concerning its subject matter, as well as any prior or contemporaneous course of conduct, performance or dealing between the Parties. No amendment or modification changing this MOU's scope or terms shall have any force or effect unless executed and delivered in

writing, approved by the City's Law Department and signed by authorized representatives of both Parties.

i. Counterparts. The Parties may execute and deliver this MOU in any number of counterparts, each of which the Parties shall deem an original and all of which shall constitute, together, one and the same agreement.

IN WITNESS WHEREOF, the Parties through their duly authorized officials have caused the Contract to be executed by their respective duly authorized officers on the dates set forth below.

Approved as to form
Sozi Pedro Tulante, City Solicitor

Per _____
Daniel W. Cantú-Hertzler, Senior Attorney

THE CITY OF PHILADELPHIA
Through: Managing Director's Office

By: _____
Michael DiBerardinis

CONSOLIDATED RAIL CORPORATION

By: _____
[Print name, title] [prefer Pres or VP]

Attest: _____
[Print name, title] [prefer [asst] sec or treas]