

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CSX TRANSPORTATION, INC.,	:	
Plaintiff	:	No. 04-CV-5023
	:	
v.	:	
	:	
CITY OF PHILADELPHIA,	:	
Defendant	:	

SETTLEMENT TERM SHEET

This Term Sheet summarizes the agreement in principle between CSX Transportation, Inc. (“CSXT”) and the City of Philadelphia (“City”) as of April 24, 2007.

Definitions.

1. **Race Location.** The location in the City of Philadelphia at the intersection of
 - (a) CSXT’s Philadelphia Subdivision right-of-way and
 - (b) a straight line aligned with Race Street

2. **Locust Location.** The location in the City of Philadelphia at the intersection of
 - (a) CSXT’s Philadelphia Subdivision right-of-way and
 - (b) a straight line aligned with Locust Street.

3. **Schuylkill River Park Vicinity.** The area of CSXT’s Philadelphia Subdivision right-of-way in the City of Philadelphia between the intersection of 34th Street and Grays Ferry Avenue in the south and the tunnel portal taking the railroad beneath the Benjamin Franklin Parkway in the north, the approximate location of which is shown in Exhibit 1.



Exhibit 1

4. At-Grade Access Point. A location, without significant elevation or depression, suitably improved with At-Grade Barrier Technology to

(a) permit movement of pedestrians, bicycles, strollers, wheelchairs, and like devices across railroad right-of-way (only and solely for the purpose of crossing the tracks) at any time when a train is not present on any track within the location, or when a train is not in motion, even though it is in proximity to the location, and

(b) prohibit any movement across railroad right-of-way when a train is present on any track within the location, or when a train is in motion and approaching the location so that the At-Grade Barrier Technology is activated 20-30 seconds prior to the train reaching the improved crossing surface area of the At-Grade Access Point, or as otherwise required by federal or other applicable law. The location shall also be designed and equipped to accommodate the occasional, non-routine movement of City-authorized Motor Vehicles across railroad right-of-

way, but shall be equipped with durable devices, capable of being secured with locks, which physically prevent the regular movement of unauthorized Motor Vehicles across the railroad right-of-way.

5. Motor Vehicle. A vehicle that can be operated on a public street in the Commonwealth of Pennsylvania only by an operator possessing a valid motor vehicle operator's license.

6. Pedestrian Overpass. A location suitably improved to permit pedestrian movement across railroad right-of-way by means of passage over a structure elevated above all railroad tracks within that right-of-way. The overpass structure shall:

(a) be designed and constructed to protect railroad property from objects thrown or dropped from it and prevent trespassing at all points,

(b) be designed and constructed to prevent public use by Motor Vehicles, and

(c) shall not carry utilities other than those specifically required to illuminate and service the overpass itself.

7. At-Grade Barrier Technology. A configuration of equipment and devices installed at an At-Grade Access Point to

(a) warn pedestrians, bicyclists, wheelchair users, and authorized motor vehicle operators of an oncoming railroad train or equipment from either direction and

(b) prevent entry upon railroad tracks from either side by pedestrians, bicyclists, wheelchair users or Motor Vehicles from the time that a train is approaching the At-Grade Access Point until the full length of the train has cleared. The configuration must be designed and constructed so that equipment failure prohibits access. The Train Detection Technology at the location shall be designed and constructed so that if an approaching train stops prior to

reaching the improved crossing surface area of the At-Grade Access Point after the At-Grade Barrier Technology has activated, such barriers shall reopen shortly after the train comes to a complete stop and shall remain open as long as no part of the train is on the improved crossing surface area of the location. The equipment must operate reliably in all exterior environments reasonably anticipated in the Philadelphia area.

8. Train Detection Technology. That portion of At-Grade Barrier Technology that determines the presence of a moving or stationary train in proximity to an At-Grade Access Point.

9. Equipment Operation Assurance Indicator. Equipment that is activated by a signal from the At-Grade Barrier Technology, and provides an indication, visible to a locomotive engineer moving in either direction, confirming that the At-Grade Barrier Technology is operating as designed.

10. Park Junction Connection. A segment of railroad track proposed to be constructed in the vicinity of North 32nd Street and Thompson Street in the City of Philadelphia, as delineated in Exhibit 2.

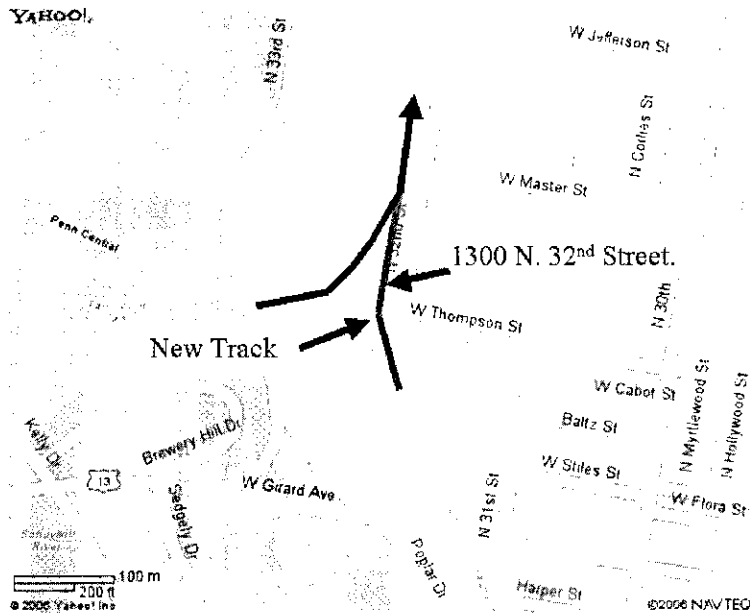


Exhibit 2

Agreement.

11. Scope and Limitations of this Agreement. This Agreement shall not be construed as altering, amending or affecting either party's ownership interest in any real property.
12. Establishment of Two At-Grade Access Points. The City and CSXT will cooperate with each other to create At-Grade Access Points at the Locust Location and the Race Location. CSXT shall design, install, and maintain the Train Detection Technology and the Equipment Operation Assurance Indicator at CSXT's expense. The City shall design, install, and maintain all other components of the At-Grade Barrier Technology at the City's expense. The City's design of each At-Grade Access Point shall be subject to CSXT's engineering review and approval, which shall be based upon general industry standards and not unreasonably withheld. All this CSXT engineering review shall be performed by CSXT without cost to the City. All equipment other than the Train Detection Technology and the Equipment Operation Assurance

Indicator shall be located on City property. CSXT shall install and maintain the crossing surface and any paving thereon within its right-of-way at its expense. Each party shall discharge all of its repair and maintenance responsibilities in a timely manner.

13. Establishment of a Continuous Barrier. The City shall design, install, and maintain a continuous barrier, extending for 300 feet on City property on each side of the At-Grade Access Points adjacent to the eastern side of CSXT's right-of-way. Such fencing shall be consistent with existing continuous barrier fencing located along the eastern side of the Schuylkill River Park, and shall be integrated with the components of the At-Grade Barrier Technology. Such fencing shall be reasonably designed and constructed to prevent, when a train is approaching or present, entry upon railroad tracks through or around an At-Grade Access Point from either the east or west side of the At-Grade Access Point. The City shall also close all openings in the fencing other than the At-Grade Access Points described in this Agreement along the eastern side of the Schuylkill River Park.

14. Time is of the Essence. The City and CSXT acknowledge that the installation of At-Grade Barrier Technology is a vital public safety initiative which must be completed as soon as possible. CSXT shall complete the installation of Train Detection Technology and the Equipment Operation Assurance Indicator no later than two (2) years from the date of execution of this Agreement. The City shall complete its installation of all other components of the At-Grade Barrier Technology no later than two (2) years from the date of execution of this Agreement.

15. Motor Vehicle Access at At-Grade Access Points. Devices preventing the passage of Motor Vehicles at At-Grade Access Points shall be maintained in the locked position preventing

passage at all times. The City and CSXT acknowledge that Motor Vehicle passage at either At-Grade Access Point is intended to be infrequent, and without exception is limited to City-authorized vehicles. Keys or access cards shall be distributed only to CSXT officials, qualified emergency responders, such as the Philadelphia Fire Department and the Philadelphia Police Department, and the City of Philadelphia or a governmental agency thereof, which may include the Fairmount Park Commission or the Schuylkill River Development Corporation. The City and CSXT agree that passage of Motor Vehicles across an At-Grade Access Point shall be limited to emergency response vehicles responding to a bona-fide emergency, and to City-authorized vehicles needed to provide service to the Park or Park activities. Such access will be available with the condition that an employee of the City of Philadelphia, or its authorized governmental agent, as described above, shall be present to open, and to immediately resecure, the At-Grade Barrier. Notwithstanding any other language in this Agreement, it is understood and agreed that the contractor hired by the City to maintain the At-Grade Barriers shall also be provided with keys or access cards to the At-Grade Barriers.

16. Construction of Pedestrian Overpass. The City shall design, construct, own and maintain a Pedestrian Overpass in close proximity to the Locust Location At-Grade Access Point, at the approximate location shown in Exhibit 3 hereto. The Pedestrian Overpass and its approaches shall be designed in such a way that the Pedestrian Overpass is a viable and convenient alternative to the Locust Location At-Grade Access Point. The Pedestrian Overpass shall be open for pedestrian use at all times and on all days. The City shall be responsible for all ongoing costs of maintaining (including illumination, snow removal, graffiti removal and sanitation) a Pedestrian Overpass at the Locust Location as well as for any initial design and construction

costs that collectively exceed \$1 million. Up to \$1 million of initial design and construction costs will be the responsibility of the Commonwealth of Pennsylvania Department of Transportation. The City's Pedestrian Overpass design shall be subject to CSXT's review and approval, which shall be based upon general industry standards and not unreasonably withheld. This CSXT engineering review shall be performed by CSXT without any cost to the City.

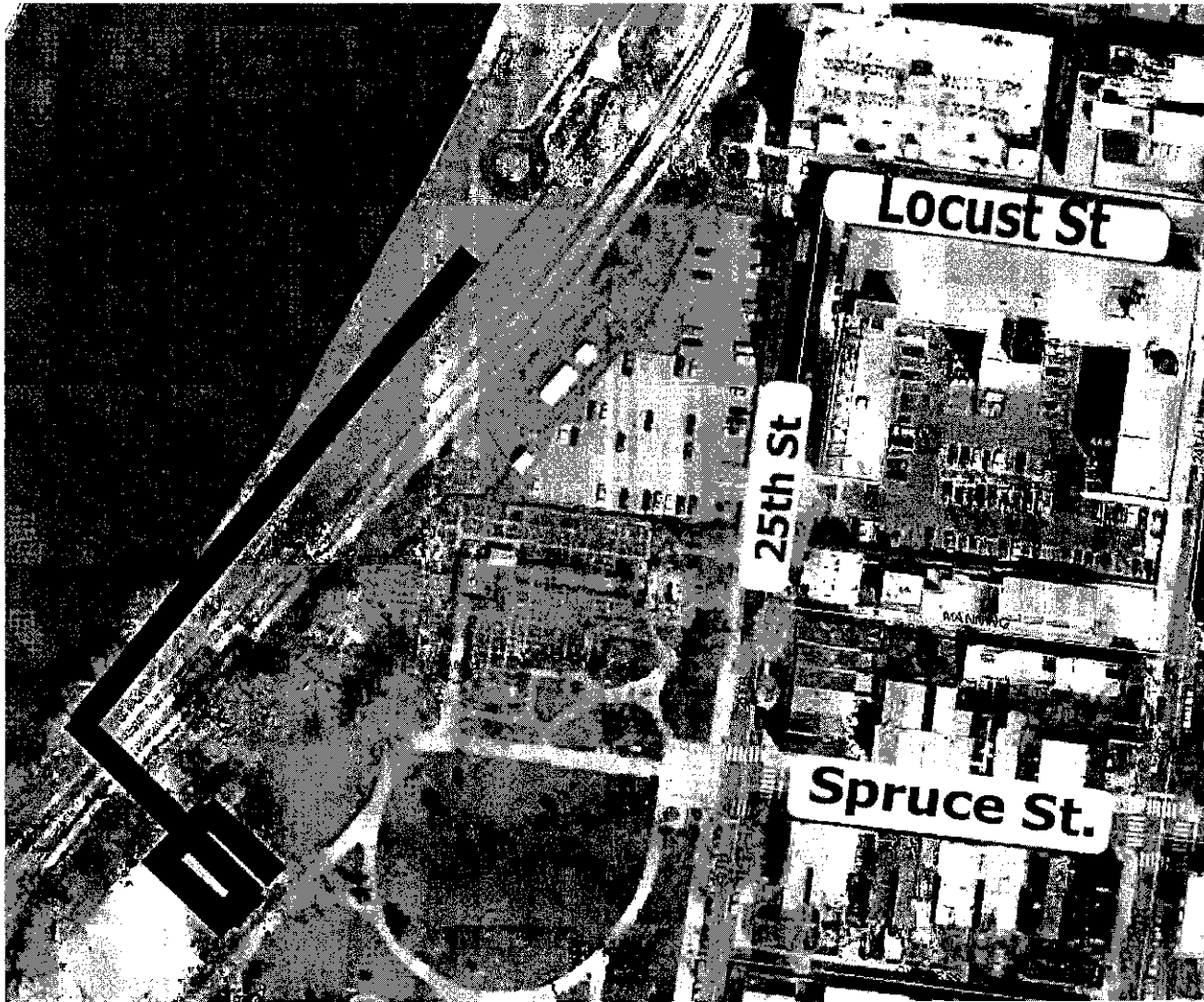


Exhibit 3

17. Pedestrian Overpass Scheduling. The City shall complete construction of the Pedestrian Overpass such that it is available for public use no later than thirty (30) months after the execution of this Agreement.

18. Interim Arrangements. During the period prior to completion of the At-Grade Barrier Technology at the Locust Location and the Race Location, the current crossings at Race Street and Locust Street shall remain open with appropriate warning signs.

19. Other Payments by the City to CSXT. The City agrees to pay CSXT \$134,218.99 within ninety (90) days after the execution of this Agreement for past due invoices for flagging and engineering review in connection with the construction of the Schuylkill River Park.

20. Indemnification. The City shall indemnify and hold harmless CSXT up to the fullest extent allowed by law for any damages or liabilities CSXT may sustain due to the City's failure to maintain the Pedestrian Overpass and the At-Grade Barrier Technology, other than the Train Detection and Equipment Operation Assurance Indicator components. In addition, the City agrees to require any third party with whom it contracts to install or maintain the At-Grade Barrier Technology to obtain commercial general liability insurance in a minimum amount of \$5 million combined single limit per occurrence, with \$10 million in the aggregate per policy term, and to list CSXT as an additional named insured for any damages or liabilities CSXT may sustain due to any negligence of the third party contractor in regard to its installation or maintenance responsibilities. Such policy shall contain a severability of interests provision and shall be endorsed to provide for thirty (30) days' notice in writing to CSXT prior to termination of or change in the coverage provided. A certificate of insurance shall be provided to CSXT at the beginning of each renewal period, and CSXT shall have the right to review the insurance

policy upon request. Consistent with the City's governmental immunity under Pennsylvania law, CSXT shall indemnify and hold harmless the City for any damages or liabilities that the City may sustain due to CSXT's negligence in its operations, up to the limits of the City's liability under state law.

22. Train Horns. Except as may be subsequently required by applicable federal or other law or regulation, train horns will not be routinely sounded when trains are approaching the two At-Grade Access Points specified in this Agreement. CSXT will continue to use train horns when needed to clear trespassers or animals from the path of an oncoming train, and to comply with existing train movement operating rules. CSXT will use train horns in the event that an engineer cannot verify that the At-Grade Barrier Technology is operating correctly.

23. Scheduling of Municipal Solid Waste Trains. On or before the time of completion of the At-Grade Access Points, CSXT agrees to reconfigure the operation of all trains that exclusively carry loaded and empty containers of municipal solid waste, eliminating their need for routine, programmed stops on tracks located within the Schuylkill River Park Vicinity. Thereafter, no road freight train of which more than fifty percent (50%) of its cars are carrying loaded or empty containers of municipal solid waste shall be programmed to regularly stop on tracks located within the municipal boundaries of the City.

24. Belmont Siding. The City and CSXT agree to negotiate in good faith regarding terms for the potential construction of a siding between Control Point "Park" and Control Point "River", in order to reconfigure CSXT crew change practices for trains that stop in Philadelphia, which should eliminate the need for programmed crew change stops for such trains within the Schuylkill River Park Vicinity.

24. Construction of Park Junction Connection. Construction of the Park Junction Connection shall be the responsibility of CSXT. The City agrees to not oppose or delay the construction of the Park Junction Connection, except that routine licensing and permitting requirements under the Philadelphia Code shall be enforceable by the City to the extent such requirements are not preempted by federal law. The City specifically agrees that it will not interpose any zoning objection to the construction of the Park Junction Connection. The City and CSXT acknowledge that construction of the Park Junction Connection requires establishing a railroad right-of-way through the parcel of land at 1300 North 32nd Street. Acquisition of any real property rights needed for construction of the Park Junction Connection shall be the responsibility of CSXT.

25. Vine Street Signal Bungalow. The signal bungalow in the area of the Vine Street bridge shall remain as is at its present location at no cost to CSXT. CSXT agrees that it will not enlarge the area occupied by the present signal bungalow, or increase its height or exterior dimensions, and that if CSXT ever elects to move the bungalow it will relocate it outside the boundaries of City property, which is commonly known as Schuylkill River Park.

26. Future Crossings. The City agrees that for a period of seventy-five (75) years after the execution of this Agreement it shall not seek, encourage, approve, or fund any additional public or private pedestrian or vehicular grade-level crossings of CSXT's tracks within the Schuylkill River Park Vicinity.

27. Resolution of Litigation. The parties agree to submit a Settlement Agreement and Release and a Stipulated Order to the United States District Court for the Eastern District of Pennsylvania, which incorporates the terms of this Settlement Term Sheet, and further agree to

jointly file an Application with the Pennsylvania Public Utility Commission for approval of the At-Grade Access Points and Pedestrian Overpass.

28. Continuing Oversight. CSXT and the City agree to jointly request that the U.S. District Court for the Eastern District of Pennsylvania retain jurisdiction to enforce the parties' agreement herein, and each party hereby consents to the jurisdiction of the Court for such enforcement proceedings. Refusal by the District Court to retain jurisdiction, however, shall not invalidate this Agreement.

29. Successors and Assigns. It is understood and agreed that all of the terms of this Agreement shall be binding on the parties hereto, and on their successors and assigns.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have caused this Agreement to be executed by their respective duly authorized officers as of the date in the heading hereof.

THE CITY OF PHILADELPHIA

By: _____

John F. Street, Mayor

CSX TRANSPORTATION, INC.

By: _____

**William G. M. Goetz
Resident Vice President**

Approved as to Form:
Romulo L. Diaz, Jr.
City Solicitor

Per: _____