

UNDERPASS LIGHTING & PAINTING AGREEMENT

THIS AGREEMENT, made and entered into by and between.

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, as lessee and operator of the allocated assets of Pennsylvania Lines LLC, hereinafter styled "Railway"; and

THE CITY OF PITTSBURGH, acting by and through the Urban Redevelopment Authority of Pittsburgh, hereinafter styled "City":

WITNESSETH:

WHEREAS, Railway owns an existing overhead bridge structure (hereinafter "Bridge") located between City-maintained public roads designated as Liberty Avenue and Penn Avenue at Railway Milepost PT -353.14, in PITTSBURGH, Allegheny County, Pennsylvania; and

WHEREAS, in connection with City's beautification plans, City requests permission to clean, paint and thereafter to maintain the painting on the underside of the Bridge; and

WHEREAS, City also requests permission to install and thereafter operate and maintain lighting to the underside of the Bridge;

NOW, THEREFORE, for and in consideration of the covenants hereinafter made, Railway does hereby grants permission to City to clean, paint, and install lighting (hereinafter "Facilities") to the underside of the Bridge, upon the following terms and conditions:

1. City will install and maintain the Facilities, at its expense, at the location shown on prints of Drawings, Pages 1 thru - of, dated " attached hereto as Exhibit A and made a part hereof, said Facilities to be installed in such manner as will not interfere with operations of Railway or endanger persons or property of Railway, and in accordance with (a) plans and specifications (if any) shown on said prints and any other specifications prescribed by Railway, (b) applicable regulations prescribed by statute or by governmental authority, and (c) applicable specifications of the National Electrical Safety Code when not in conflict with plans, specifications or regulations mentioned in (a) and (b) above.

2. To the extent permitted by the laws of Pennsylvania, City hereby agrees to indemnify and save harmless Railway, its officers, agents and employees, from and against any and all liability, claims, loss, damage, expense (including attorney's fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever, occurring or arising in any manner from the installation, maintenance, operation, presence or removal or failure to properly install, maintain, operate or remove the Facilities, unless such loss, damage or injury shall be caused solely by the negligence of Railway. However, City does not waive any immunities, rights, limitations of liability, exemptions or protections granted to it and its employees by federal law or the laws of the Commonwealth of Pennsylvania. City will require any contractors engaged to perform the lighting work under this agreement to agree to indemnify and save harmless Railway and City, their officers, agents and employees, from and against any and all liability, claims, loss, damage, expense (including attorney's fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever, occurring or arising in any manner from the installation, maintenance, operation, presence or removal or failure to properly install, maintain, operate or remove the Facilities, unless such loss, damage or injury shall be caused solely by the negligence of Railway.

3. The details of the Facilities, including any systems associated with the application or attachment of the Facilities, are to be at the option of City, subject to the approval of the chief engineering officer of Railway, and in case of failure of City to do the work as herein specified, Railway reserves the right to remove the Facilities from Railway's premises at the expense of City, and to terminate this Agreement upon thirty (30) days' written notice to City.

4. All work performed under this Agreement shall be in accordance with the: (a) "Special Provisions for Protection of Railway Interest" attached hereto as Exhibit B and made a part hereof, and (b) "Norfolk Southern Paint Specifications Worker Health and Safety Plan" attached hereto as Exhibit C and made a part hereof.

5. It is further agreed that, in connection with any future alterations in or additions to the line, grade, tracks or works of Railway, City will bear the entire expense of such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of Railway, shall be necessary or appropriate on account of said alterations or additions.

6. If the Facilities cause degradation of the signal, communications or other electronic facilities of Railway, or endanger the personnel of Railway or anyone else entitled to be on Railway's property, through inductive or electrostatic interference or otherwise, City, at the request of Railway, and at City's expense, will modify the Facilities to the satisfaction of Railway so as to eliminate such degradation or danger. Such modification may include, without limiting the generality of the foregoing, transposing circuits or providing additional shielding, filters, reactances or any other corrective measure deemed necessary.

7. If City fails to take any corrective measures requested by Railway in a timely manner or if an emergency situation is presented which in the Railway's judgment requires immediate repairs to the Facilities, Railway may undertake such corrective measures, as it deems necessary or desirable, at City's expense.

8. Notwithstanding any other provision of this Agreement, it is mutually understood, agreed and covenanted that City accepts this Agreement as a mere license and assumes all risk of damage to its property by reason of its occupation of the premises herein described, caused by any defects therein or business carried on therein, if such loss, damage or injury is caused by the negligence of City, its officers, agents or employees.

9. Railway shall furnish, at the cost of City, labor and materials to support its tracks and protect its traffic during the installation, maintenance, repair, renewal or removal of the Facilities.

10. It is further agreed between the parties hereto that City will use underside of the Bridge solely for the Facilities, and for no other purpose without the written permission of the chief engineering officer of Railway.

11. City shall give Railway seventy-two (72) hours' advance notice (or less in case of emergencies) of any work to be performed on the premises of Railway. City agrees to pay any costs incurred by Railway for the purpose of protection and inspection considered necessary by Railway during construction, maintenance, operation, modification, replacement and/or removal of the Facilities.

12. City shall not assign this Agreement without the written consent of Railway.

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13. The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's officers, agents and employees, and any parent company, subsidiary or affiliate of Railway and their officers, agents and employees.

14. This Agreement may be terminated by either party hereto upon sixty (60) days' written notice to the other party. During said sixty-day period, City shall remove the Facilities from Railway's premises and restore said premises to a condition satisfactory to Railway's chief engineering officer. If City fails to remove the Facilities within the aforesaid sixty day period, Railway shall elect: (a) to become the owner of the Facilities without any claim or consideration whatsoever therefor by or to City, its successors or assigns, or (b) to remove the Facilities and all property of City from the premises of Railway at the expense of City. City agrees to reimburse Railway for any and all costs of such removal. No termination of this Agreement shall affect any liability incurred by either party hereto prior to the effective date of such termination.

15. This Agreement shall take effect as of the - day of , 2003.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the - day of , 2003..

Witness: NORFOLK SOUTHERN RAILWAY COMPANY By

As to Railway Real Estate Manager

Witness: THE CITY OF PITTSBURGH, acting by and through the Urban Redevelopment Authority of Pittsburgh By

As to City Title: