

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY
AND
THE BOROUGH OF CONSHOHOCKEN**

This Memorandum of Understanding ("MOU"), is made and entered into on this ___ day of _____, 2023 between Southeastern Pennsylvania Transportation Authority, a body corporate and politic which exercises the public powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof with its principal office located at 1234 Market Street, 10th Floor, Philadelphia, Pennsylvania 19107-3780 ("SEPTA"), and the Borough of Conshohocken, a municipality organized and existing under the Borough Code, 8 Pa.C.S. § 101, *et seq.*, with its principal office located at 400 Fayette Street, Suite 200, Conshohocken, PA 19428 ("Borough"), collectively, the "Parties."

RECITALS

WHEREAS, SEPTA occupies or operates the passenger station located at Mile Post 13.50 on the Norristown Regional Rail Line (LC 0329) in the Borough of Conshohocken (the "Former Conshohocken Regional Rail Station"); and

WHEREAS, SEPTA constructed a new Regional Rail Station in the Borough of Conshohocken at the intersection of Oak and Washington Streets, Parcel No. 05-00-00032-01-7 (to be colloquially known as 2 Oak Street)("the New Conshohocken Station Project"); and

WHEREAS, as part of the New Conshohocken Station Project, SEPTA acquired Parcel No. 05-00-00040-00-9 (colloquially known as 101 Washington Street) adjacent to the location of the New Conshohocken Station for the construction of a proposed parking garage that will accommodate approximately 500 motor vehicles; and

WHEREAS, SEPTA is considering, for transit improvement purposes, opportunities for Transit Oriented Development ("TOD Project") in addition to the existing plans for the New Conshohocken Station Project; and

WHEREAS, the Borough wishes to cooperate with SEPTA while SEPTA explores interest and feasibility of the TOD Project;

NOW THEREFORE, the Parties have agreed to enter into this MOU setting forth the Parties' understanding and expectations relating to the TOD Project as follows:

MEMORANDUM OF UNDERSTANDING

Section 1. Recitals.

The above Recitals are incorporated into and made a part of the terms of this MOU.

Section 2. Responsibilities.

- a. SEPTA, at its sole cost and expense, will:
 1. Construct interim surface parking at the Station with approximately 125 spaces for automobiles (“Interim Lot”). To be completed within two hundred sixty (260) working days after SEPTA provides NTP to the contractor.
 2. Prepare the elements of Request for Proposals (“RFP”) and publish any necessary solicitations for the TOD Project.
 3. Apply for any and all TOD permits, variances, amendments or overlays required by the Borough of Conshohocken Code of Ordinances, including specifically the Borough of Conshohocken Zoning Ordinance and Subdivision and Land Development Ordinance, subject to the provisions of Section 2.b.2. herein.

- b. The Borough, at its sole cost and expense, will:
 1. Use reasonable efforts to coordinate, with SEPTA, the elements of the RFP.
 2. Use reasonable efforts to review any and all TOD permits, variances, amendments or overlays required for the TOD Project and Interim Lot and hereby waives any entitlement to any published fees for such applications in exchange for SEPTA’s payment of the actual costs of the review of these applications and related plans by the Borough’s engineers, solicitors, and other professionals at the same rate paid for such reviews by the Borough. The Parties shall execute a professional services agreement acceptable to both parties addressing SEPTA’s payments of such actual costs.

- c. SEPTA shall use reasonable efforts to coordinate, with the Borough, the design of the TOD Project and Interim Lot. Such efforts shall include, but not be limited to participation in one or more meetings with SEPTA Planning and Engineering teams.
 - a. In the event the TOD Project is not approved by the appropriate body or bodies, and contingent upon all current funding sources remaining available, SEPTA will move forward with the existing Station Upgrade Project. In the event that a TOD Project is approved by the appropriate body or bodies before Construction NTP (see, Section 3 Project Schedule, below), SEPTA will not move forward with Construction NTP or completion of the Interim Lot.

Section 3. Project Schedule

[To be discussed.]	Design Complete	8/28/2024
	Construction NTP	6/01/2025
	Substantial Completion	6/16/2026

Section 4. Notices.

All notices, demands, or requests permitted under this MOU shall be in writing and shall be personally delivered or sent by certified United States mail (postage prepaid, return receipt requested), overnight express mail, or courier service providing for receipted delivery addressed as follows:

If to SEPTA: Jody Holton, Chief Planning Officer
1234 Market Street, 9th Floor
Philadelphia, PA 19107

With a copy to: Gretchen S. Wisheart, Deputy General Counsel
Office of General Counsel
1234 Market Street, 5th Floor
Philadelphia, PA 19102

If to Borough: Stephanie Cecco, Borough Manager
Borough of Conshohocken
400 Fayette Street, Suite 200
Conshohocken, PA 19428

With a copy to: Michael E. Peters, Esquire
Eastburn and Gray, PC
60 East Court Street, PO Box 1389
Doylestown, PA 18901

Either Party may change its address by written notice given to the other.

Section 5. Confidentiality.

a. As used in this Agreement, “Confidential Information” is defined as information, including but not limited to a formula, drawing, pattern, compilation including a customer list, program, device, method, technique, or process that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain value from its disclosure or use, (ii) the disclosure of which would cause substantial harm to the business or public transportation operations of either Party, and (iii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

b. A Party (“Recipient”) shall treat as confidential and protect from disclosure using the same degree of care it uses for its own Confidential Information (but no less than a reasonable degree of care) and shall not disclose to any third party except as provided

herein, any Confidential Information received from the other Party (“Disclosing Party”) or otherwise discovered by the Recipient while this Agreement is in effect.

c. The Recipient shall use the Disclosing Party’s Confidential Information only for the purpose of this Agreement (the “Permitted Use”). The Recipient may disclose the Disclosing Party’s Confidential Information to its employees, contractors, and agents (collectively, the “Personnel”) who (i) have a need to know in connection with the Permitted Use, and (ii) are informed of the confidential nature of the Confidential Information. Without limiting the foregoing, the Recipient will be liable for any breach of this Agreement by its Personnel, and will, at its own expense, take all actions necessary to restrain its Personnel from making any unauthorized use or disclosure of Confidential Information.

d. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that the Recipient can demonstrate by competent evidence: (i) is in the possession of the Recipient at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (ii) is or becomes publicly known through no wrongful act or omission of the Recipient; (iii) is received without restriction from a third-party free to disclose it without obligation to the Disclosing Party; (iv) is developed independently by the Recipient without reference to or use of the Confidential Information; or (v) is required to be disclosed by the Recipient in order to comply with applicable law, governmental regulation, or court order, provided that the Recipient promptly informs the Disclosing Party prior to disclosing any Confidential Information and allows the Disclosing Party reasonable time to seek a protective order or any other action necessary to avoid or limit the disclosure of Confidential Information.

e. The Recipient will immediately notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Confidential Information or any other breach of this Agreement by the Recipient. The Recipient will cooperate with the Disclosing Party to help the Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use and disclosure.

f. All Confidential Information (including any reproduction thereof) will remain the exclusive property of the Disclosing Party. Except for the right of the Recipient to use Confidential Information for the Permitted Use, nothing contained in this Agreement will be construed as granting any rights to any Confidential Information, or to any intellectual property right based on such Confidential Information.

g. The Parties acknowledge and agree that each has a responsibility and, in many cases, legal obligation to conduct its business in a manner open and available to the public, including being subject to the Pennsylvania Right-to-Know Law (“RTKL”) and other federal, state, and local public records laws. Accordingly, any information provided by the individual Parties to the other may be disclosed to the public as a result of a public request or court order. Notwithstanding the foregoing, in the event that any third-party requests to disclose the contents of Confidential Information pursuant to a

public records request or otherwise, the Parties each agrees to (i) notify the other Party in writing within a reasonable time period after it receives such request and (ii) not to disclose Confidential Information that qualifies for an applicable exemption under public disclosure laws, unless ordered to do so by a reviewing court of competent jurisdiction. The Parties acknowledge that Confidential Information may include trade secrets that are exempt from disclosure under the RTKL and other federal, state, and local public records laws.

h. In the event of actual or threatened breach or violation of this Section, the Disclosing Party shall have the right to seek injunctive relief in any court of competent jurisdiction.

i. The confidentiality obligations under this Section will remain in full force and effect for so long as such trade secrets remain protected as such under applicable laws.

Section 6. No Waiver; Governing Law.

a. Nothing contained in this MOU shall limit or waive any of the rights, defenses, and/or immunities available to SEPTA or the Borough.

b. The waiver by either Party of any breach of any covenant, obligation, or condition of this MOU shall not be deemed to be a waiver of any subsequent breach of any covenant, obligation, or condition.

c. All matters or claims arising out of, related to, or in connection with the MOU or the relationship between the Parties shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to the principles of conflicts of laws of said state, and enforced only in the state and federal courts in located in Montgomery County, Pennsylvania.

Section 7. Termination.

In the event that either Party is not satisfied with the other's efforts on the items described in this MOU, the Parties may, jointly or independently, elect to terminate this MOU. Were either Party to elect to terminate, the terminating Party will notify the other's primary contact in writing and provide a reasonable opportunity, within thirty (30) days, to cure the defect in performance before final termination.

Section 8. Miscellaneous.

a. This MOU shall apply to and inure to the benefit of the Parties hereto and their permitted heirs, successors, and assigns.

b. Neither Party may assign this MOU without the prior written consent of the other Party via the Notice provisions in Section 4 herein.

c. The Parties expressly disclaim any intention to create a joint venture or partnership by this MOU.

d. There are no third-party beneficiaries to this MOU.

e. This MOU shall be the final expression of the understanding between the Parties concerning the TOD Project. The Parties shall amend this MOU only by a writing signed by the Parties. If any portion of this MOU is deemed invalid, the remainder of this MOU shall remain valid and enforceable as permitted by law.

f. This MOU may be signed, and delivered, in multiple parts by the Parties (including by facsimile and electronic transmission). When the individually signed copies of this MOU are combined it will be deemed executed.

[The remainder of the page, except for the page number, is intentionally blank.]

IN WITNESS WHEREOF, the Parties indicate their agreement by signing and dating below:

**SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY**

By: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to Form:

By: _____
SEPTA Office of General Counsel

BOROUGH OF CONSHOHOCKEN

By: *Tina M Sokolowski*

Printed Name: Tina Sokolowski

Title: President

Date: 2/21/24