

AGREEMENT NO. _____
FEDERAL ID NO. _____

EFFECTIVE DATE: _____
(PennDOT will insert)

INTELLECTUAL PROPERTY CROSS-LICENSE AGREEMENT

THIS INTELLECTUAL PROPERTY CROSS-LICENSE AGREEMENT ("Agreement") is made by and among the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT"),

and

the LOWER MERION TOWNSHIP, acting through its proper officials ("Lower Merion"),

and

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, a body corporate and politic ("SEPTA").

As used in this Agreement, PennDOT, Lower Merion and SEPTA are referred to as the "Parties."

BACKGROUND

Lower Merion entered into a Consulting Agreement for Architectural/Engineering Services with Urban Engineers, Inc., a Pennsylvania corporation ("Urban"), dated April 1, 2009, which was subsequently amended ("Urban Agreement"). The Urban Agreement provided for, among other things, the design of a transit center and parking garage in Ardmore, Lower Merion Township, Pennsylvania (the "ATC Project"). The ATC Project was comprised of two Phases: Phase I covers improvements to the Ardmore Transit Center and its components. Phase II covers the construction of a parking garage and related site improvements.

Phase I has been fully funded, but Phase II has not yet been fully funded. While under contract with Lower Merion, Urban prepared plans, specifications and other documentation for both Phase I and Phase II of the ATC Project. Urban's last formal submission to Lower Merion was the 60% submission. Urban's contract was placed on hold per written instructions from Lower Merion and SEPTA in December of 2013. At that juncture, the plans, specifications and other documentation for Phase I and Phase II

of the ATC Project were approximately 90% and 75% completed, (the "Works"), and thus did not constitute a final constructible work product.

PennDOT subsequently executed an Agreement with Parsons Brinckerhoff, Inc., a New York corporation ("P-B") dated December 20, 2011, for engineering and design services (as amended, the "P-B Agreement"). SEPTA serves as PennDOT's agent in managing the ATC Project. In December of 2013, P-B engaged Urban as its subcontractor to develop plans and specifications and other documentation for Phase I of the ATC Project that were 100% complete (the "Commonwealth Works").

PennDOT and SEPTA have requested that Lower Merion license to PennDOT and SEPTA the use of the Works.

In consideration for the license granted herein by Lower Merion to PennDOT and SEPTA for use of the Works, Lower Merion has asked PennDOT and SEPTA to license to Lower Merion the Commonwealth Works, including without limitation those associated with Phase II of the ATC Project, which has yet to be fully funded; provided, however, that Lower Merion elects to proceed with Phase II of the Project.

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

1. **Limited License.** Subject to the terms and conditions of this Agreement, Lower Merion grants to SEPTA and PennDOT a limited, non-exclusive, non-transferable, non-sublicensable (except as set forth herein), perpetual license to access and use the Works solely in connection with the design, construction, completion, maintenance, repair, replacement and restoration of the ATC Project. SEPTA and PennDOT will use the Urban Plans in accordance with all applicable laws, statutes, rules and regulations.

2. **Ownership and Changes.** Lower Merion represents that it owns the Works and has the right, power and authority to enter into this Agreement. The other Parties do not disagree with that assertion (although SEPTA funded a portion of the cost of that work) and have no knowledge to the contrary. Lower Merion shall retain all right, title and interest in and to the Works including all intellectual property rights and know-how associated with the Works. Neither PennDOT nor SEPTA shall obtain any ownership rights, express or implied, or any other rights, other than the license grant established in the Works under this Agreement.

3. **Disclaimers.** PENNDOT AND SEPTA ACKNOWLEDGETHAT (i) LOWER MERION DOES NOT WARRANT THAT THE WORKS ARE ERROR-FREE, and (ii) LOWER MERION MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY; AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, SATISFACTORY QUALITY OR NONINFRINGEMENT.

4. **Limited Conditional License.** Subject to the terms and conditions of this Agreement, PennDOT grants to Lower Merion a limited, non-exclusive, non-transferable, non-sublicensable (except as set forth herein), perpetual license, subject to the conditions precedent that (a) adequate funding becomes available for the future Phase II of the ATC Project and (b) Lower Merion elects to proceed with Phase II of the Project, to access and use the Commonwealth Works solely in connection with the design, construction, completion, maintenance, repair, replacement and restoration of Phase II of the ATC Project. If the conditions precedent for the exercise of such a license are satisfied, Lower Merion will use the Commonwealth Works in accordance with all applicable laws, statutes, rules and regulations. If adequate funding becomes available for Phase II of the ATC Project, but another entity ends up handling the construction and/or subsequent operation and maintenance of that future Phase II, PennDOT will grant a separate limited, non-exclusive, non-transferable, non-sublicensable, perpetual license to use the Commonwealth Works to that entity instead. In such event, the license granted to Lower Merion under this section shall be void.

5. **Ownership and Changes.** The parties acknowledge that PennDOT owns and retains all right, title and interest in and to the Commonwealth Works and any attendant intellectual property rights therein or arising therefrom except for the Works. Lower Merion shall not obtain any ownership rights, express or implied, or any other rights other than the non-exclusive license expressly set forth herein in the event Lower Merion elects to proceed with Phase II of the Project independent of SEPTA and PennDOT, in the Commonwealth Works.

6. **Disclaimers.** LOWER MERION ACKNOWLEDGES, EXPRESSES AND AGREES THAT (i) PENNDOT AND SEPTA DO NOT WARRANT THAT THE COMMONWEALTH WORKS SHALL BE ERROR FREE, AND (ii) PENNDOT AND SEPTA MAKE NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, SATISFACTORY QUALITY OR NONINFRINGEMENT.

7. Limitations of Liability.

NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOST REVENUES) WITH RESPECT TO THIS Agreement, WHETHER FORESEEABLE OR NOT AND REGARDLESS OF WHETHER CLAIMS UNDER THIS Agreement ARE

BROUGHT UNDER TORT, CONTRACT OR ANY OTHER LEGAL OR EQUITABLE THEORY.

8. **Acknowledgement.** The Parties acknowledge that the limitations and disclaimers set forth in the licenses granted herein represent an essential element in setting consideration under this Agreement.

9. **Easements.** SEPTA shall obtain, at no cost or expense to Lower Merion, all easements and other real property rights necessary or desirable to construct in part or whole the foundations for Phase II of the ATC Project. Nothing contained herein shall be deemed to be a promise by any party hereto to transfer real property.

10. **Governing Law.** This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania without regard to conflict of laws provisions.

11. **Assignment.** Neither this Agreement nor any rights, licenses or obligations hereunder, may be assigned by any party without the prior written consent of the non-assigning parties. Notwithstanding the foregoing grants of licenses set forth in Paragraphs 1 and 2 above, either party may sublicense the intellectual property referred to solely for the purpose of allowing contractors and subcontractors acting by, through or under one of the Parties hereto to design, construct, complete, maintain, repair, replace or restore the ATC Project or any portion thereof.

12. **No Waiver.** The failure of any party to enforce any rights granted hereunder or to take action against another party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

13. **Relationship of the Parties.** The relationship of the Parties established in this Agreement is that of independent contracting parties, and nothing contained in this Agreement shall be construed (i) to give either party the power to direct or control the day-to-day activities of the other, or (ii) to constitute the Parties as partners, franchisee-franchisor, joint venturers, co-owners or participants in a joint or common undertaking, or otherwise give rise to fiduciary obligations between the Parties.

14. **Required Commonwealth Provisions.** Lower Merion, only if it uses the Commonwealth Works, and SEPTA shall comply with the following required Commonwealth Provisions. As used in these provisions, "Contractor" refers to Lower Merion and SEPTA:

- (1) **Contractor Integrity Provisions.** The current version of the Contractor Integrity Provisions, attached and made part of this Agreement in Exhibit "A;"
- (2) **Americans with Disabilities Act.** The current version of the Commonwealth Provisions Concerning the Americans with Disabilities Act, attached and made part of this Agreement in Exhibit "B;" and,
- (3) **Nondiscrimination/Sexual Harassment Clause.** The current version of the Commonwealth Nondiscrimination/Sexual Harassment Clause, attached and made part of this Agreement in Exhibit "C."

15. **Right-to-Know Law.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Agreement. Therefore, this Agreement is subject to, and Lower Merion and SEPTA shall comply with the clause entitled Contract Provisions - Right to Know Law, attached and made part of this Agreement as Exhibit "D."

16 **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 shall be accomplished through a formal written document signed by the Parties with the same formality as this Agreement.

17. **Titles not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

18. **Severability.** The provisions of this Agreement shall be 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 the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

19. **Third Party Beneficiary Rights.** The Parties to this Agreement understand that this Agreement does not create or intend to confer any rights in or on persons or entities not a party to this Agreement.

20. **Notices.** All notices and reports arising out of, or from, the provisions of this Agreement shall be in writing and given to the Parties at the following addresses , either by regular mail or delivery in person:

If to PennDOT: 400 North Street, 8th Floor
Harrisburg, PA 17120

If to Lower Merion: 75 E. Lancaster Ave.
Ardmore, PA 19003

If to SEPTA: 1234 Market Street, 5th Floor
Philadelphia Pennsylvania 19107
Attention: Robin L. Lewis, Esquire

21. **Ambiguity.** This Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one party.

22. **Entire Agreement.** This Agreement constitutes the entire, final, complete and exclusive understanding and legal arrangement between the Parties and supersedes all previous agreements or representations, oral or written, relating to the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. The Parties acknowledge having read the terms and conditions set forth in this Agreement and all attachments hereto, understand all terms and conditions, and agree to be bound thereby.

23 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties intending to be legally bound hereby have duly executed the Agreement as of the date first above written.

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

TOWNSHIP OF LOWER MERION

By: _____
Jeffrey D. Knueppel, P.E., Date
General Manager

By: _____
Name: _____ Date
Title: _____

Attest: _____ (Seal)
Title: _____ Date

Attest: _____
Title: _____ Date

Approved as to form

By: _____
Office of the General Counsel of SEPTA

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY: _____
Deputy Secretary Date
of Multimodal Transportation

APPROVED AS TO LEGALITY
AND FORM

PRELIMINARY APPROVAL

BY: _____
For Chief Counsel Date

BY: _____
Assistant Counsel Date

BY: _____
Deputy General Counsel Date

BY: _____
Deputy Attorney General Date

JOINDER AND CONSENT - URBAN ENGINEERS

Urban Engineers, Inc., hereby joins in this Agreement for the purposes of acknowledging that it is bound by the terms hereof to the extent applicable to it.

URBAN ENGINEERS, INC.

By:_____

JOINDER AND CONSENT - WSP USA, INC.
(formerly known as PARSONS BRINCKERHOFF, INC.)

WSP USA, Inc. (formerly known as Parsons Brinckerhoff, Inc.) hereby joins in this Agreement for the purposes of acknowledging that it is bound by the terms hereof to the extent applicable to it.

WSP USA, INC. (formerly known as
Parsons Brinckerhoff, Inc.)

By:_____