



# CITY OF BETHLEHEM

## OFFICE OF THE CITY SOLICITOR

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### INTEROFFICE MEMORANDUM

To: Tad J. Miller, City Clerk

From: John F. Spirk, Jr., Esq., City Solicitor

Re: Contract for Purchase and Sale – Greenway

Date: October 9, 2024

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Attached is a proposed Resolution and associated Contract for Purchase and Sale with Norfolk Southern Railway Company for the purchase of approximately 11.8 acres of land along 0.9 miles of abandoned rail line in South Bethlehem for Council's consideration.

Please place this matter on City Council's agenda for review and appropriate action.

*John F. Spirk, Jr.*

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John F. Spirk, Jr., Esq., Solicitor

Cc: J. William Reynolds, Mayor  
Laura Collins, DCED Director

RESOLUTION NO. 2024-\_\_\_\_

Authorization for Contract of Purchase and Sale

BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute the Contract of Purchase and Sale and such other agreements, instruments, and documents as are deemed by the City Solicitor to be necessary and/or related to the transaction described therein, with Norfolk Southern Railway Company, according to the terms and conditions indicated therein which are made a part hereof, subject to any revisions deemed appropriate by the City Solicitor including, but not limited to, any revisions as may be required by the City's federal funding sources, so long as such revisions do not increase the Purchase Price, for the purpose of acquiring approximately 11.8 acres, more or less, to develop same with a public recreational trail connecting to existing public recreational trails in the vicinity known as the Bethlehem Greenway and the Saucon Rail Trail.

Sponsored by \_\_\_\_\_  
\_\_\_\_\_

ADOPTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
President of Council

ATTEST:

\_\_\_\_\_  
City Clerk

## CONTRACT OF PURCHASE AND SALE

This Contract of Purchase and Sale (this "**Agreement**"), the effective date of which shall be the date last executed, below, by the Parties hereto (the "**Effective Date**"), is made by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation with a principal place of business located at 650 West Peachtree Street, NW 11<sup>th</sup> Floor, Atlanta, Georgia 30308 ("**Seller**"); and CITY OF BETHLEHEM, a PENNSYLVANIA municipal corporation and city of the third class duly organized and existing pursuant to the laws of the Commonwealth of Pennsylvania with a principal place for doing business located at 10 E. Church Street, Bethlehem, Pennsylvania 18018 ("**Purchaser**").

**1. Premises.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, the land and improvements of Seller located in BETHLEHEM, NORTHAMPTON County, PENNSYLVANIA, more specifically being: (a) certain parcels bearing Parcel Identification Numbers of Q7NW3A 1 1, Q7NW2D 1 1, and Q7NW2A 3 1—legal descriptions for which the parties: (i) acknowledge may not be finally completed at the time of the Effective Date; and (ii) agree that, if not already attached to this Agreement on the Effective Date, shall be attached to this Agreement upon receipt of same by Purchaser but, in any event, no later than fourteen (14) days after the Effective Date, and the same shall constitute **Exhibit "A"** to this Agreement and form a material part hereof; and (b) a certain parcel to be created by a subdivision, as described in Paragraph 10, below, and more particularly identified as "Proposed Lot 1" or "Trail Lot 1," consisting of approximately 146,196 sq. ft., as depicted on that certain subdivision plan titled, "Greenway Trail Minor Subdivision," attached hereto as **Exhibit "B"** and made a material part hereof, all of which collectively consist of approximately 11.88 acres, more or less (final acreage to be determined and confirmed by survey obtained in accordance with Paragraph 3, below), together with (i) all servitudes, easements, appurtenances and hereditaments appertaining thereto, and (ii) all improvements, structures, landscaping, and appurtenances situated thereon (collectively, referred to as "**Premises**").

**2. Purchase Price.** The purchase price for the Premises (the "**Purchase Price**") is **FOUR MILLION THREE HUNDRED THOUSAND and 00/100 DOLLARS** (\$4,300,000.00).

**3. Survey.** The exact area of land to be purchased is to be determined by a survey made by a registered land surveyor licensed in the State of Pennsylvania (the "**Survey**"). The Survey, which is subject to approval of Seller, shall be obtained by and at the sole cost of Purchaser. Purchaser shall arrange for the Survey of the Premises and, within not more than fourteen (14) days from the Effective Date (or as otherwise mutually agreed to by Purchaser and Seller in writing) shall furnish to Seller three (3) copies of the metes and bounds description describing the exact area to be conveyed, and three (3) prints of a survey plat, acceptable to Seller and to the officials responsible for recordation of deeds in the County or City in which the Premises lie, for use by Seller in preparation of the deed, as set forth in Paragraph 5, and other papers associated with the transaction contemplated by this Agreement. The Survey shall show the location of all improvements, buildings, highways, streets, roads, railroads, rivers, lakes, creeks or other water courses, fences, encroachments, easements and rights of way on or adjacent to the land to be purchased and shall set forth the total number of square feet or acres contained within the Premises, together with a metes and bounds description of the Premises.

**4. Earnest Money.** The earnest money to bind this Agreement, receipt of which is hereby acknowledged by Seller, is **TEN THOUSAND and 00/100 DOLLARS** (\$10,000.00) (the "**Earnest Money**"), which amount shall be credited toward the total price at closing. If Purchaser shall

terminate this Agreement in accordance with the paragraph entitled "Due Diligence Contingency," then Seller may retain the Earnest Money. Except as otherwise provided in this Agreement, the Earnest Money may be retained by Seller if Purchaser, through no fault of Seller, shall fail to close in accordance with the terms of this Agreement. The parties acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Purchaser's default. Seller's retention of the Earnest Money, together with all interest thereon, is not intended as a penalty, but as full liquidated damages.

**5. Type of Conveyance.** At closing, Seller shall convey all of its right, title and interest to the Premises to Purchaser by Quitclaim Deed (the "**Deed**") subject to the following:

(a) General real estate taxes for the year of closing and subsequent years not yet due and payable; General real estate taxes

(b) Applicable zoning laws and regulations; and

(c) All easements, conditions, reservations, leases, licenses and restrictions whether or not of record.

(d) If there are existing signboards or existing fiber optic lines, poles, pipes, wires, communications and signal facilities and facilities of like character used in the operation of a railroad located on the Premises, the Deed shall include an exclusive reservation of easement by the Seller (which for purposes of this paragraph, includes the Seller's successors, assigns, licensees, and lessees) for the existing signboards and the existing fiber optic lines, poles, pipes, wires, communications and signal facilities and facilities of like character used in the operation of a railroad.

(e) The Deed shall include the following language:

The above-described property is acquired in part with funding received by the Pennsylvania Department of Conservation and Natural Resources (the grant recipient) and the City of Bethlehem (the grant subrecipient) from Grant Agreement Number F18AP00580 dated November 7, 2018 between the U.S. Fish and Wildlife Service ("Service") and the Pennsylvania Department of Conservation and Natural Resources. All present and future use of this property is and shall remain subject to the terms and conditions described in the Notice of Federal Participation, and to the other administrative requirements of the applicable grant funding program of the Service.

Additionally, the parties acknowledge that Purchaser will be funding the Purchase Price through federal funding sources including, but not limited to, federal funds awarded by the U.S. Department of Housing and Urban Development. The parties acknowledge that there may be additional language that must be included in the Deed delivered by Seller to Purchaser at closing which is not identified in this Agreement, and the parties agree that any additional language required by Purchaser's federal funding sources to be included in the Deed shall be provided to Seller prior to the Closing Date, and Seller shall include such required language in the Deed.

**6. Title.** Purchaser shall have fourteen (14) days after the Effective Date to examine title to the Premises and to furnish Seller with a written statement of objections affecting the marketability of said title. Seller shall have until the earlier of thirty (30) days after receipt of such objections or the Closing Date (as the same may be extended by the parties) to satisfy them. If Seller does not satisfy such objections within the prescribed time, then, at Purchaser's option evidenced by written notice to Seller, Purchaser may either (i) terminate this Agreement or (ii) waive any or all objections not cured by Seller and proceed to close hereunder without diminution in price. In the event this Agreement is terminated pursuant to this paragraph, Purchaser shall be entitled to a full refund of the Earnest Money, without interest, and neither party shall be liable to the other for damages on account of the termination. Marketable title as used herein shall mean title that a title insurance company licensed to do business in the State of PENNSYLVANIA will insure at its regular rates subject only to standard exceptions and those stated in the paragraph entitled, "Type of Conveyance" ("**Marketable Title**").

**7. Closing.**

(a) The Closing shall be held at a mutually agreed upon date and time on or before November 15, 2024, or such other date as may be mutually agreed to by Purchaser and Seller (the "**Closing Date**"). At closing:

(i) Seller shall deliver to Purchaser the duly executed and acknowledged Deed conveying the Premises to Purchaser as provided in as provided in the paragraph entitled, "Type of Conveyance" and one or more deeds of release to release the lien of any mortgage or trust that may apply to the Premises.

(ii) Purchaser shall pay to Seller the Purchase Price for the purchase of the Premises such payment to be made by wire transfer or, with Seller's authorization, by certified or cashier's check.

(iii) General real estate taxes for the then-current year relating to the Premises and rents for applicable leases or other third party agreements that may be assigned, if any, shall be prorated as of the closing date and shall be so adjusted at closing. If the closing shall occur before the tax rate is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuations. All special taxes or assessments due subsequent to the Closing Date shall be paid by Purchaser.

(iv) Possession of the Premises shall be delivered to Purchaser.

(v) Seller shall pay for the Deed preparation, Commonwealth and local realty transfer taxes, and Seller's attorney's fees. Purchaser shall pay for all other closing costs, taxes, filing fees, recording fees and Purchaser's attorney's fees.

**8. Due Diligence Inspections.**

(a) Commencing on the Effective Date and continuing until fourteen (14) days prior to the Closing Date, Purchaser and its employees, agents and consultants shall have the right and permission to enter upon the Premises or on any part thereof at all reasonable times for the purpose of inspecting, examining, surveying, making soil tests, borings, percolation tests and

other necessary tests for engineering and planning for development and determination of surface, sub-surface, environmental, and topographic conditions ("**Geotechnical Conditions**"). Purchaser shall not have the right to perform any invasive environmental testing unless Seller shall have first consented in writing to any such testing proposed in writing by Purchaser, which consent Seller may withhold in its sole discretion. Purchaser shall undertake all entry onto the Premises under this paragraph entitled, "Due Diligence Inspections" in accordance with all applicable safety and insurance requirements of Seller and shall perform all activities with such care, diligence and cooperation with Seller as will avoid accident, damage or harm to persons or property and delays to or interference with operations of Seller. Purchaser will remove from the Premises all soil, fill, debris or other materials (whether solid or liquid) it displaces during Purchaser's investigation activities covered by this paragraph entitled, "Due Diligence Inspections", including any such material that is contaminated and/or potentially contaminated. Seller assumes no responsibility for any such material and shall not be a signatory on any waste manifests, bills of lading or other documentation concerning this material. Notwithstanding any other provision of this Agreement, Purchaser agrees to indemnify and hold Seller (which word, for the purposes of this paragraph entitled, "Due Diligence Inspections", shall be deemed to include any corporation controlling, controlled by or under common control with Seller, together with the officers, employees, agents and servants of any of them) harmless from and against any claims or liability for injuries to (including death of) persons or damage to or loss of property, real or personal, or expense in any manner connected with the undertakings under this paragraph entitled, "Due Diligence Inspections", and at Seller's option to defend any lawsuit brought against Seller on account of any such claims and to pay any judgment against Seller resulting from any suit, whether or not any such claim, demand or suit purports to arise from the negligence of Seller or otherwise, including without limitation any mechanic's liens or claims that may be filed or asserted against the Premises by contractors, sub-contractors or materialmen performing such work for the Purchaser, provided, however, that if, under the law applicable to enforcement of this Agreement, an agreement to indemnify against the indemnified party's own negligence is invalid, then in that event Purchaser's obligation to indemnify Seller under this paragraph shall be reduced in proportion to the negligence of Seller, if any, that proximately contributed to such claim, demand or suit. Purchaser agrees to provide Seller with complete copies of the results of the analyses of any samples taken from the Premises, along with maps depicting locations of such samples, and any reports generated using such data, at no cost to Seller. The foregoing sentence includes copies of any waste manifests, profiles, or characterization, as applicable, of impacted soil and/or groundwater removed from the Premises during the due diligence activities under this paragraph entitled, "Due Diligence Inspections."

**(b)** If Purchaser's inspection as provided above reveals either any Geotechnical Conditions concerning the Premises that render it unsuitable for Purchaser's use of the Premises or the existence of toxic/hazardous substances or wastes in such quantities that render it unsuitable for Purchaser's use of the Premises or give rise to possible liability under applicable federal, state or local environmental laws and regulations, Purchaser shall have fourteen (14) days after the Effective Date to furnish Seller with a written statement of such Geotechnical Conditions. Seller shall have until the earlier of thirty (30) days after receipt of such notice or the Closing Date (as the same may be extended by the parties) to remedy such conditions, but shall be under no obligation so to do, and if Seller declines to or fails to remedy such conditions within the prescribed time, or if Seller declines to give Purchaser permission to perform any environmental testing as provided in paragraph entitled, "Due Diligence Inspections", then, at Purchaser's option evidenced by written notice to Seller, Purchaser may either (i) terminate this Agreement or (ii) waive any or all objections not cured by Seller and proceed to close hereunder without diminution in price. In the event this Agreement is

terminated pursuant to this paragraph entitled, "Due Diligence Inspections," Purchaser shall be entitled to a full refund of the Earnest Money, without interest, and neither party shall be liable to the other for damages on account of the termination.

**9. Real Estate Commissions.** Purchaser and Seller each represent that no real estate commissions are due and owing to any party with respect to the transaction contemplated by this Agreement. Both parties hereby agree to indemnify and save harmless the other from and against any and all claims or liability for real estate commissions arising out of this transaction attributable to the indemnifying party.

**10. Subdivision.** The parties acknowledge and agree that, prior to the Closing Date, Purchaser shall cause that certain subdivision plan titled, "Greenway Trail Minor Subdivision," attached hereto in draft form as **Exhibit "B"** and made a material part hereof (the "**Subdivision Plan**"), to be recorded in the Office of the Recorder of Deeds in and for Northampton County, subject to approval and signature of the Subdivision Plan by Seller, and as the same may be revised upon mutual agreement by the parties. The Parties acknowledge and agree that the Subdivision Plan provides for the subdivision of certain of Seller's land presently bearing Parcel Identification Numbers of Q7 4 1, P7 19 2, and P7 19 2B-1, for the purpose of creating three (3) new parcels, one (1) of which being that certain parcel identified as "Proposed Lot 1" or "Trail Lot 1," as depicted on the Subdivision Plan, to be conveyed to Purchaser by Seller. Purchaser will assume the entire cost of whatever streets, sewers, and utilities are required in connection with such subdivision, and will do all other acts and file such other papers as may be necessary to obtain any and all required approvals thereof. Seller agrees to execute such documents and plats as are reasonably necessary to accomplish such subdivision. All costs, expenses and attorney's fees incurred in complying with any such subdivision ordinances and regulations, including, without limitation, dedication and installation of streets, sewers, and utilities, shall be borne solely by Purchaser, and Purchaser agrees that Purchaser will indemnify and save Seller harmless from any and all claims, demands, suits, costs or expenses arising or in any way growing out of any failure by Purchaser to fully comply with such subdivision ordinances and regulations.

**11. Assignment.** This Agreement may not be assigned by Purchaser to any other party without the written consent of Seller, which consent may be withheld for any reason, except that, in the case of an assignment to an entity of which Purchaser has a controlling interest or is the general partner, such consent shall not be unreasonably withheld. Seller expressly reserves the right to assign or delegate all or any part of Seller's rights and duties hereunder with respect to all or any portion of the Premises to one or more third parties, including a qualified intermediary as defined by Treasury Regulation Section 1.1031 (K)-1(g) (4).

**12. Disclaimer/Environmental Considerations.**

**(a)** Purchaser agrees to purchase the Premises "as is, where is" and acknowledges that Seller has not made any express or implied representation or warranty with respect to the condition or suitability of the Premises, including, but not limited to, the condition of the soil, the presence of hazardous materials, substances, wastes or other environmentally regulated substances, or other contaminants in the soil, groundwater, or improvements, whether known or unknown, (referred to herein as "**contamination of the Premises**") and other physical characteristics. Purchaser shall perform at its own expense and rely solely upon its own independent investigation concerning the physical condition of the Premises (including, but not limited to, an environmental assessment) and compliance of the Premises with any applicable law and regulations.

**(b)** Seller has not and does not hereby make any express or implied representation or warranty or give any indemnification of any kind to Purchaser concerning the Premises, its condition or suitability or its compliance with any statute, ordinance or regulation, including, but not limited to, those relating to the environment. Purchaser acknowledges that neither Seller nor any of its agents or representatives have made, and Seller is not liable for, or bound in any manner by, any express or implied warranties, guarantees, promises, statements, inducements, representations or information pertaining to the Premises or any part thereof, the physical condition, size, zoning, income potential, expenses or operation thereof, the uses that can be made of the same or in any manner or thing with respect thereof, including, without limitation, any existing or prospective leasing or occupancy of all or any part thereof.

**(c)** Purchaser hereby agrees that, following its purchase of the Premises, Purchaser will protect, indemnify, defend, and hold harmless Seller (which word, for the purposes of this paragraph entitled, "Disclaimer/Environmental Considerations", shall be deemed to include any corporation controlling, controlled by or under common control with Seller, together with the officers, employees, agents and servants of any of them) from and against any and all damages, penalties, fines, claims, demands, causes of action, liens, suits, liabilities, costs (including, without limitation, consultant's fees, experts' fees, attorney's fees, investigation and cleanup costs, and court costs), judgments, and expenses (including, without limitation, attorney's and experts' fees and expenses) of every kind and nature suffered by, incurred by (whether voluntarily or by court or administrative order or direction) or asserted against Seller or Purchaser as a direct or indirect result of any condition of the Premises, including without limitation any hazardous materials, substances, or wastes, or other environmentally regulated substances located on, in or under the Premises, whether occurring or existing before or after the Effective Date.

**(d)** Following Purchaser's purchase of the Premises, Purchaser hereby expressly agrees to assume any and all responsibility and liability for all environmental obligations imposed under applicable environmental laws, regulations, or other requirements relating to or arising from any contamination of the Premises, whether occurring or existing before or after the Effective Date, and expressly releases Seller from such liability. Purchaser further expressly renounces and waives any claim or cause of action it may have against Seller under any existing or future theory of law (federal, state or local, or by common law) for any cleanup, response or remedial action costs incurred (whether voluntarily or otherwise) by Purchaser that arises directly or indirectly out of any contamination of the Premises, whether occurring or existing before or after the Effective Date, including, but not limited to, costs incurred under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act. Purchaser agrees to waive any and all statutes of limitations applicable to any controversy or dispute arising out of the preceding obligation, and Purchaser further agrees that it will not raise or plead a statute of limitations defense against Seller in any action arising out of Purchaser's failure to comply with the preceding obligation.

**13. Eminent Domain.** If, at any time prior to the closing hereunder, any action or proceeding is filed under which the Premises, or a substantial portion thereof, may be taken pursuant to any law, ordinance or regulation or by condemnation or the right of eminent domain, then either Seller or Purchaser may terminate this Agreement by delivering to the other party written notice of termination on or before the earlier of the thirtieth (30<sup>th</sup>) day following the day on which the terminating party receives notice that such suit has been filed or one (1) day prior to the Closing Date, in which case the Earnest Money, without interest, shall be returned to Purchaser. If neither party elects to terminate this Agreement pursuant to the preceding sentence, then Seller, at the



time of closing hereunder, shall transfer and assign to Purchaser all of Seller's right, title and interest in any proceeds received or which may be received by the taking, or a sale in lieu thereof.

**14. Signs and Advertising.** Before closing, Purchaser will not place any advertising or promotional signs on the Premises or on any of Seller's other property without the written consent of Seller.

**15. Notice.** Any notice required or permitted to be delivered under this Agreement shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address set forth below.

Seller:

Solomon Jackson  
Director-Real Estate  
Norfolk Southern Corporation  
650 W. Peachtree Street NW - 11<sup>th</sup> Floor  
Atlanta, Georgia 30309

Purchaser:

Mayor J. William Reynolds  
City of Bethlehem  
10 E. Church Street  
Bethlehem, PA 18018

With copy to:

Joseph Collins, Esq.  
General Attorney - Real Estate  
Norfolk Southern Corporation  
650 W. Peachtree Street NW- 11th Floor  
Atlanta, GA 30309-3579

Laura Collins, Esq.  
City of Bethlehem  
10 E. Church Street  
Bethlehem, PA 18018

**16. Miscellaneous Provisions.**

**(a)** This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and cannot be varied except by the written agreement of the parties. No representation, promise, or inducement not included in this Agreement shall be binding upon the parties hereto.

**(b)** Time is of the essence of this Agreement.

**(c)** All the terms and conditions of this Agreement are hereby made binding on the successors and permitted assigns of both parties hereto.

**(d)** This Agreement shall be governed by and construed in accordance with the laws of the State of PENNSYLVANIA without regard to principles of conflict of laws.

**(e)** This Agreement shall not be effective or binding until fully executed by the parties hereto. This Agreement may be executed in any number of counterparts, each of which when executed and delivered, shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument binding upon all of the parties notwithstanding the fact that all parties are not signatory to the original or the same counterpart. For purposes of this Agreement, facsimile signatures shall be deemed originals, and the parties agree to exchange original signatures as promptly as possible.

**(f)** Any provision of this Agreement that imposes an obligation after termination or expiration of the Agreement, including without limitation all indemnifications and releases, will survive closing.

**(g)** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**(h)** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

**(i)** Seller shall retain all mineral rights pertaining to the Premises.

**(j)** Sale is subject to Norfolk Southern Senior Management approval.

**(k)** Sale is subject to PA Title 66, Chapter 27 (Railroads) Section 2709: Disposition of real property by public utility engaged in railroad business.

**(l)** This Agreement was validly approved by the City Council of Bethlehem in a duly-assembled public meeting on October 15, 2024.

**(m)** The parties acknowledge and agree that the Purchase Price represents a fair approximation of the Premises' fair market value as of the Effective Date, and that the Purchase Price has been agreed upon by the parties following good faith, arms-length negotiation.

**(n)** The Parties acknowledge and agree that prior to the Closing Date, Purchaser will obtain an appraisal(s) for the Premises in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) containing an appraised value of the Premises. Immediately upon receipt of said appraisal(s) but, in any event, no later than five (5) days prior to the Closing Date, Purchaser shall provide Seller with a copy of said appraisal(s) or otherwise disclose to Seller the appraised value of the Premises contained therein. Seller shall provide Purchaser with written confirmation of its receipt of said appraisal(s) or the disclosure of the appraised value of the Premises contained therein. Following receipt of said appraisal(s) or the appraised value of the Premises contained therein, Seller shall have the ability, up until the time of closing, to terminate this Agreement and the sale transaction contemplated herein upon written notice to Purchaser, in which event Purchaser shall be entitled to a full refund of the Earnest Money, without interest, and neither party shall be liable to the other for damages on account of the termination.

**(o)** Seller acknowledges that Purchaser is a governmental authority possessing the power of eminent domain and that at no point prior to the execution of this Agreement in connection with the transaction described herein did Purchaser or any of its authorized representatives threaten, or otherwise express an intent on the part of Purchaser, to acquire the Premises through the exercise of eminent domain if negotiations between Purchaser and Seller for this transaction were unsuccessful. Seller acknowledges that it has participated in negotiations for the transaction described herein freely, knowingly, and voluntarily and has, at all times, including up to the time of execution of this Agreement, had the ability to end such negotiations without the express or implied threat of eminent domain as a consequence in response thereto. Seller acknowledges receiving prior written notice from Purchaser that Purchaser

would not exercise its power of eminent domain to acquire the Premises if negotiations between Seller and Purchaser for the transaction described herein were unsuccessful.

(p) Seller acknowledges that it has been represented and advised by legal counsel in connection with the negotiation and execution of this Agreement. Seller acknowledges that it has had the opportunity to review, and has actively participated in, the negotiation and drafting of this Agreement.

(q) Seller does remise, release, quitclaim, and forever discharge the Purchaser and any agencies thereof, and with respect to all, their elected and appointed officials, employees, agents, and representatives, of and from any and all suits, damages, claims, and demands which the Seller might otherwise been entitled to assert under the provisions of the Eminent Domain Code, Act of May 4, 2006, P.L. 112, *as amended*, (26 Pa.C.S. § 101 *et seq.*) and which arise out of or relate to the transaction hereunder.

**17. Financing Contingency.** Purchaser and Seller acknowledge and agree that the sale transaction contemplated by this Agreement is expressly contingent upon Purchaser acquiring financing (primarily through State and Federal grants) to fund the payment of the Purchase Price prior to the Closing Date. Purchaser agrees that it shall make a good faith effort to acquire all necessary financing to fund the payment of the Purchase Price. Commencing on the Effective Date and continuing until the Closing Date (as applicable), Purchaser shall provide Seller with weekly updates regarding the status of securement of all necessary financing to fund the payment of the Purchase Price. If Purchaser shall fail, through no fault of its own, to acquire all necessary financing to fund payment of the Purchase Price prior to the Closing Date, then Purchaser may terminate this Agreement at any time prior to the Closing Date upon written notice to Seller. In the event of a termination of this Agreement pursuant to this paragraph entitled "Financing Contingency," Seller shall be entitled to retain the Earnest Money, and neither party shall be liable to the other for damages on account of the termination.

**18. Due Diligence Contingency.** Purchaser and Seller acknowledge and agree that the sale transaction contemplated by this Agreement is expressly contingent upon Purchaser conducting a due diligence inspection with respect to the Premises, laws affecting the Premises, the state of Seller's title to the Premises, and all other matters which Purchaser deems material to its decision to purchase the Premises, and Purchaser, in its sole discretion, being satisfied with the results of Purchaser's due diligence inspection. If Purchaser, in its sole discretion, is not satisfied with the results of its due diligence inspection, Purchaser shall have the right to terminate this Agreement, which right shall be exercised by written notice to Seller given at least fourteen (14) days prior to the Closing Date. If Purchaser shall fail to exercise this right of termination, the contingency set forth in this paragraph entitled "Due Diligence Contingency," shall be deemed to be waived by Purchaser. In the event that Purchaser terminates this Agreement pursuant to this paragraph entitled "Due Diligence Contingency," then Seller shall be entitled to retain the Earnest Money, and neither party shall be liable to the other for damages on account of the termination.

**[SIGNATURE PAGE FOLLOWS]**

EXECUTED in duplicate, each part being an original, as of the day and year set forth below.

**SELLER:**  
**NORFOLK SOUTHERN RAILWAY**  
**COMPANY**

**PURCHASER:**  
**CITY OF BETHLEHEM**

Signature:

Signature:

Name: Solomon Jackson  
Title: Real Estate Manager  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## Exhibit A

## Exhibit B