

line and to the underground concourse area which leads to the concourse shops area and the Penn Center train station. The City of Philadelphia has supported this project and has been in discussions with SEPTA for years to encourage this project (“the City Hall Station renovation”). SEPTA has not submitted a request to the City to begin construction of this project and the City has not denied permission to SEPTA nor has the City stopped this project.

This same suit also seeks to require SEPTA to construct an elevator in compliance with ADA and § 504 at the northwest corner of 15th and Market Streets in Philadelphia at the courtyard entrance to SEPTA’s facilities which SEPTA renovated in the year 2000 without constructing any elevator. The City has not received any request from SEPTA for the construction of such an elevator and the City has not denied permission to SEPTA for this elevator, nor has the City opposed the construction of such an elevator.

The Plaintiff initially sued only SEPTA in this case. SEPTA then filed a motion to dismiss on the ground that the City was an indispensable party because the City owned the ground. SEPTA contended that the City, as owner, would need to give permission for construction and should therefore be a party to this litigation. The Plaintiff then filed an amended complaint adding the City as a Defendant. This Settlement Agreement seeks to eliminate the underlying reason for SEPTA’s contention that the City is an indispensable party by making clear that the City does not object to the use of City land for these purposes.

SECTION 3. City Permission

The City of Philadelphia will give permission (conditioned as provided in this Section) for SEPTA to the construct the City Hall Station renovation project which has been discussed by SEPTA and the Plaintiffs in conceptual form for years. This project includes ADA compliant elevators which would provide access as discussed in Section 2, above. Similarly, the City of

Philadelphia will give permission (conditioned as provided in this Section) for the construction of an ADA compliant elevator at the Northwest corner of 15th and Market Street at the Courtyard which SEPTA renovated in the year 2000, which elevator would provide access to the underground concourse as described in Section 2, above. These permissions are conditioned upon SEPTA applying to the City for permits in the normal manner as provided by law. The City will review these permit applications, in the normal course, for compliance with the Philadelphia Code or other applicable law. In this review, the City will review the details of the particular location of these facilities and the details of the design of the facilities in order to ensure that they will be compliant with the ADA as well as other applicable law. For example, this review will entail review under the building code, fire code and electrical code, among other routine reviews.

As is routine when SEPTA requests the use of City property, SEPTA's permission is also conditioned on SEPTA agreeing to an entry agreement with the City and receiving approval from the City for the design of the facility. The City does not oppose the use of the property for these purposes. The entry agreement is needed to set forth the details and provisions by which SEPTA and the City agree to the use of the property.

These reviews, permits and agreement are important for the health, safety and welfare of all persons and are designed, not to slow or prevent the construction of these projects, but to ensure compliance with laws and to protect health, safety, welfare and operational needs for the facilities themselves and the surrounding land and structures. In the course of design review, or any entry agreement, the City of Philadelphia may require SEPTA to make modifications to the location, design as needed for the above purposes or deal with any other necessary factors to implement the project.

As to the payments for the costs of construction of these facilities, these issues are worked out in the normal course of operations between SEPTA, the Federal Government, The State Government and the City and need not be part of this agreement, nor part of any Court Order. In the unlikely event that financial disputes prevented the execution of any order to construct these facilities, Plaintiff may initiate an action in this Court to resolve such disputes.

The City hereby promises the Plaintiff, that it has no desire to frustrate or delay the construction of any of these facilities and, in fact, supports the construction of all of these facilities. While the final details of these projects have not been presented to the City by SEPTA at this time, the City is not aware at this time of any reason why ADA compliant plans will not be approved or could not be approved for all of the facilities sought by the Plaintiff. To the extent that the Plaintiff seeks to enforce this agreement against the City of Philadelphia, the City consents to the jurisdiction of this Court for that enforcement.

SECTION 4. Stipulation

(a). It is the City's legal opinion that SEPTA is legally obligated under the ADA and accompanying Regulations to construct an elevator at the 15th and Market Street Courtyard entrance, which SEPTA renovated. The City only granted permits for that renovation because the City believed SEPTA had agreed to construct elevators in the City Hall Courtyard in lieu of the required elevator at 15th and Market.

(b). The 15th and Market Street entrance to the underground Courtyard and concourse is on land owned by the City of Philadelphia which SEPTA uses by permission of the City.

(c). The 15th and Market Street entrance is used as ingress and egress to many forms of transportation services, including the Broad Street Subway, the Market-Frankford elevated line, the Suburban Station, the light rail, and the underground concourse.

(d). In the year 2000, SEPTA demolished the existing staircase and constructed a new staircase that provides access to the underground area. SEPTA also made other renovations at the site.

(e). These alterations affected the usability of the Courtyard entrance.

(f). The new staircase and the escalator are not readily usable by and accessible to individuals who use wheelchairs.

(g). The underground Courtyard provides access to stores, restaurants, the underground concourse, the Market-Frankford elevated line, and Suburban Station.

(h). This entrance is “a part of an existing facility used in providing designated public transportation” for the purposes of 49 C.F.R. § 37.43(a)(1).

(i). The City believes that the nature of the existing 15th and Market Courtyard entrance facility does not make it impossible to comply fully with the applicable accessibility standards. The City believes that an elevator could be constructed to gain access. The City has not received plans from SEPTA explaining such an elevator project, but the City knows of no reason why an ADA compliant elevator at that location could not be constructed.

(j). SEPTA is required under Title II of the ADA and 49 C.F.R. 37.43 to construct an elevator at the 15th and Market Street entrance to the underground Courtyard.

(k). Passenger boardings at the City Hall Station entrances to the Broad Street Subway and Market-Frankford elevated lines exceed average station passenger boardings on both lines by more than 15%.

(l). The City Hall Station is a transfer point between the Market-Frankford elevated line and the Broad Street Subway.

(m). The City Hall Station is a major interchange point between the Market-Frankford elevated line, the Broad Street Subway, the Subway Surface trolley lines, numerous SEPTA and New Jersey Transit bus routes, and all thirteen SEPTA regional rail lines

(n). The City Hall Station serves many major activity centers, including centers of employment and government, institutions of higher education, hospitals and other major health care facilities, and other facilities that are major trip generators for individuals with disabilities.

(o). City Hall Station meets all of the criteria for key station in the Philadelphia area as defined by Title II of the ADA and 49 C.F.R. §§ 37.47 and 37.51.

(p). SEPTA is required under Title II of the ADA and 49 C.F.R. § 37.51 to identify City Hall as a key station and make accessible entrances to the Market-Frankford elevated line and Broad Street Subway.

(q). It is the City's opinion that the list of identified stations in the Settlement Agreement, *EPVA v. Sykes*, Civ. No. 86-6797 (E.D. Pa.1989) was meant to be a floor for SEPTA. The list was not meant to be a maximum, and SEPTA is not limited to this list. The list does not minimize SEPTA's legal duty to identify City Hall as a key station.

SECTION 5. Withdrawal of Action Against City

In consideration of the promises of the City in this Settlement Agreement, the Plaintiff hereby settles, discontinues and ends this action against the City and removes the City as a Defendant for the claims in this suit against SEPTA: specifically, one, the claim relating to the construction of an elevator at the 15th and Market entrance to the Courtyard; and two, the claim relating to the requirement that SEPTA identify the City Hall Station as a "key station" for purposes of gaining access via elevators to the Broad Street Subway and Market-Frankford elevated lines. The Plaintiff will file this Settlement Agreement with the Court and will serve it

on all parties.

The Plaintiff will promptly file a motion, pursuant to Fed.R.Civ.P. 41(a)(2) to move that the City of Philadelphia be dismissed from this action by Order of Court. Plaintiff will also seek the agreement of SEPTA for a dismissal of this action against the City pursuant to Fed.R.Civ.P. 41(a)(1)(ii). The City agrees to dismissal by either method.

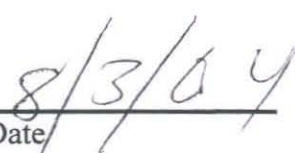
The duly authorized legal counsel on behalf of the Plaintiff and the City of Philadelphia have signed their names below, intending their clients to be legally bound thereby.

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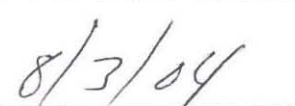


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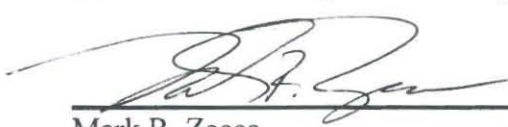
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Date