

PART C - VEHICLE LEASE AGREEMENT

THIS AGREEMENT made as of the 1st day of July, 2020 by and between the Borough of Pottstown, with its principal office at 100 East High Street, Pottstown, PA 19464, hereinafter referred to as "**Lessor**";

AND

_____ a corporation, partnership, sole proprietor, or other form of business entity organized and existing under the laws of the State of _____, hereinafter referred to as the "**Lessee**," with its principal office at _____, _____, _____.

IN CONSIDERATION of the mutual promises herein contained, the parties hereto agree as follows:

ARTICLE 1 - LEASE

Equipment Leased

1.0 The above Lessor obtained the Leased Equipment (as defined below) through grants from the Pennsylvania Department of Transportation (PENNDOT) and the Federal Transit Administration (FTA). The purpose of this Lease is to make the Leased Equipment available to the Lessee for the sole purpose of providing transit services to the residents of Montgomery County and Chester County pursuant to the terms of the Purchase of Fixed Route and ADA Para-Transit Service Agreement signed by the parties as of the same date as this Lease (referred to hereinafter as the "Service Agreement"). In furtherance of this goal, the Lessor hereby leases to Lessee and Lessee hereby leases and hires from the Lessor, all vehicles, equipment, and other property described in:

- a.) The schedule executed by the parties concurrently herewith and made a part hereof as the schedule may be amended by the parties from time to time (**EXHIBIT A**); and
- b.) Any schedule or schedules hereafter executed by the parties hereto and made a part hereof.

All said vehicles, equipment, and other property described in all said schedules are hereinafter called " Leased Equipment" and all said schedules are hereinafter collectively called the "Schedule".

ARTICLE 2 – TERM

Duration

2.0 The term of this Lease with respect to each item of Leased Equipment commences on the date the item is delivered to the Lessee. The term of this Lease with respect to each item of Leased Equipment ends on the date that the Service Agreement terminates or on an earlier termination date as specified in this Agreement

ARTICLE 3 – RENT

Amount

3.0 The rent for any and every item of Leased Equipment described in this schedule shall be in the amount of One Dollar (\$1.00) per year, the payment of which is waived by the Lessor.

Security Deposit

3.1 There will be no security deposit required under this agreement.

Default

3.2 In regard to the Lessee, if any execution or any other writ of process shall be issued in any action or proceeding against the Lessee whereby said Leased Equipment may be seized, taken, or detained, or if a proceeding in bankruptcy, receivership, or insolvency shall be instituted by or against the Lessee or its property, or if the Lessee shall enter into any agreement or composition with its creditors, or if Lessee, with regard to any item or items of Leased Equipment, fails to observe, keep or perform any other provision required to be observed, kept, or performed by it, the Lessor shall, if such default shall continue for ten (10) days after written notice thereof, have the right to exercise any one or more of the following remedies:

- a.) To take possession of any or all items of Leased Equipment, without demand or notice, wherever the same may be located, without any court order or other process of law. The Lessee hereby waives any and all damages occasioned by such taking of possession, unless said damages arise from the negligence, willful or reckless conduct of Lessor or any or its representative, agents, employees or invitees. Any said taking of possession shall not constitute a termination of this Lease as to any or all items of Leased Equipment unless the Lessor expressly so notifies the Lessee in writing.
- b.) To terminate this Lease as to any or all items of Leased Equipment.
- c.) To pursue any other remedy at law or in equity.

Notwithstanding, any said repossession or other action which Lessor may take, the Lessee shall be and remain liable for the full performance of all obligations to be performed by the Lessee under this Lease. Any waiver on one occasion of a right of Lessor hereunder shall not be deemed a waiver of that right in the future.

ARTICLE 4 - USE

Manner of Use

4.0 The Leased Equipment which is the subject matter of this agreement shall only be used in the manner prescribed by the Lessor and according to the dates, times, places and schedules as established in this Lease Agreement and in the Service Agreement and as such the Service Agreement may, from time to time, be extended, altered or supplemented. The Lessee, its agents or employees shall not operate said Leased Equipment in a manner inconsistent with, or in addition to the schedules as established by these Agreements. The Lessee shall use the Leased Equipment in a careful and proper manner and shall comply with all laws, ordinances, and regulations relating to the possession, use, or maintenance of the Leased Equipment. In addition to the requirements of the Service Agreement and this Lease, the Lessee will operate said Leased Equipment pursuant to any other directives

which are not contained herein, but which may be established by the Lessor, from time to time. It is also expressly agreed that only drivers from a list of approved drivers on file with the Lessee's insurance carrier and with the Lessor will be authorized to operate the Leased Equipment at times and under conditions which are mutually agreeable to the parties.

Markings

4.1 If at any time during the term of this Lease, Lessor supplies Lessee with labels, plates, or other markings, stating that the Leased Equipment is owned by the Lessor; the Lessee shall affix and keep the same in a prominent place on the Leased Equipment.

Lessor's Right to Use

4.2 Lessee agrees to make all buses covered by this agreement available for Lessor's dedication ceremonies. Additionally, Lessor may request Lessee to make buses available for demonstrations to community groups; Lessor related activities and special events--as long as this does not interfere with the provision of service.

ARTICLE 5 – INSPECTION

Lessee's Inspection

5.0 The Lessee shall inspect the Leased Equipment within forty-eight (48) hours after receipt thereof. Unless the Lessee within said period of time gives written notice to Lessor, specifying any defect in or other proper objection to the Leased Equipment, the Lessee agrees that it shall be conclusively presumed, as between the Lessor and Lessee, that the Lessee has fully inspected and acknowledged that the Leased Equipment is in good and proper working condition, reasonable wear and tear excepted and that the Lessee is satisfied with and has accepted the Leased Equipment in such good condition and proper working condition.

Lessor's Inspection

5.1 The Lessor shall, at any time and all times during business hours, have the right to enter into and on the premises where the Leased Equipment may be located for the purpose of inspecting the same or observing its use. The Lessee shall give the Lessor immediate notice of any attachment or other judicial process affecting any item of Leased Equipment and shall, whenever requested by the Lessor, advise the Lessor of the exact location of the Leased Equipment. It is further understood and agreed that the Lessor and or its agents has a right at any time to board the vehicle to observe the operation and the condition of the vehicles or to conduct operational surveys involving service, fare collection procedures, and senior citizen ridership verification.

ARTICLE 6 - ALTERATIONS AND REPAIRS

Alterations

6.0 Without the prior written consent of the Lessor, the Lessee shall not make any alterations, additions, or improvements to the Leased Equipment. All additions and improvements of whatsoever kind or nature made to the Leased Equipment shall belong to and become the property of the Lessor on termination of this Lease.

Repairs

6.1 The Lessee, at its own cost and expense, shall keep the Leased Equipment in good and proper working condition, reasonable wear and tear accepted and shall furnish any and all parts, mechanisms, devices and labor required to keep the Leased Equipment in good mechanical and working order. This includes the Leased Equipment manufacturer's preventive vehicle maintenance and all other repairs necessary to keep the vehicles in safe operating condition in accordance with recognized principles of sound and prudent operation in the mass transit industry. All said repairs will be in accord with Leased Equipment service manuals. The Leased Equipment part, mechanisms, lubricants and devices includes but are not limited to grease, oil, antifreeze, brake fluid, fasteners, filters, gaskets, hoses, belts, light bulbs and wiper blades.

Maintenance

6.2 General Vehicle Cleaning Requirements

The Lessee shall maintain Lessor's vehicles in a clean and neat condition at all times including, at a minimum, complying with the Bus Cleaning Schedule set forth in the Service Agreement. Buses shall be kept free of vermin and insects at all times. The Lessee shall exterminate all vermin and insects from all vehicles immediately upon their discovery, utilizing safe, non-hazardous and EPA approved insecticides/materials. Buses must be washed and cleaned every day that they are used in service.

6.3 Wheelchair Lift

The Wheelchair lift must be cycled on a per trip basis. The lift must be clean and free of debris daily.

6.4 Purchased Transportation Agreement

The Service Agreement between the Lessor and Lessee shall govern all other maintenance related activities.

ARTICLE 7 - LOSS AND DAMAGE

Risk of Loss and Damage

7.0 The Lessee hereby assumes and shall bear the entire risk of loss and damage to the Leased Equipment from any and every cause. No loss or damage to the Leased Equipment or any part hereof shall impair any obligation of the Lessee under this Lease or the Service Agreement, which shall continue in full force and effect.

Options of Lessee

7.1 In the event of loss or damage of any kind to any item of Leased Equipment, the Lessee, at the option of the Lessor, shall:

- a.) Place the same in good repair, condition and working order; or
- b.) Replace the same with like equipment in good repair, condition and working order, through proper procurement procedures, including competitive bidding if required.

ARTICLE 8 – SURRENDER

8.0 On the expiration or earlier termination of this Lease, with respect to any item of Leased Equipment, the Lessee shall return the same to the Lessor in good repair, and proper working order (ordinary wear and tear resulting from proper use thereof alone excepted) in the following manner as may be specified by the Lessor:

a.) By delivering such item of Leased Equipment at Lessee's cost and expense to such place as the Lessor shall specify within any municipality of the county in which it was delivered to the Lessee.

ARTICLE 9 - INSURANCE AND TAXES

Insurance

9.0 The Lessee shall keep the Leased Equipment insured against all risks of loss or damage from every cause whatsoever for not less than the current book value thereof as determined by the Lessor. All said insurance shall be in the form and amount and with companies approved by the Lessor, and shall be in the joint names of the Lessor and Lessee. The Lessee shall pay the premiums therefore and shall deliver said policies, or duplicates thereof, to the Lessor. Each insurer shall agree, by endorsement on the policy issued by it or by independent instrument furnished to the Lessor, that it will give the Lessor thirty (30) days written notice before the policy in question shall be altered or canceled. The proceeds of such insurance shall be applied toward the replacement, restoration, or repair of the Leased Equipment. The Lessee hereby appoints the Lessor as the Lessee's attorney in fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts for loss or damage under any said insurance policy.

9.1 During the period of this Lease, the Leased Equipment encompassed by the Lease shall be covered by the insurance provisions and coverage set out in the Service Agreement between the Lessor and Lessee as it is amended or extended.

Taxes

9.2 The Lessee shall keep the Leased Equipment free and clear of all levies, and liens and encumbrances other than levies, liens and encumbrances created by the act or omission of the Lessor. Lessor shall pay all license fees, registration fees, assessments, charges and taxes which may now or hereafter be imposed on the ownership, or use of the Leased Equipment.

ARTICLE 10- WARRANTIES

THE LESSOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE LEASED EQUIPMENT, IT'S **MERCHANTABILITY**, OR IT'S FITNESS FOR ANY PARTICULAR PURPOSE AND LESSEE ACCEPTS THE LEASED EQUIPMENT "AS IS."

ARTICLE 11 - OWNERSHIP AND ASSIGNMENT

11.0 The Leased Equipment is, and shall at all times be and remain, the sole and exclusive property of the Lessor. The Lessee shall have no right, title, or interest therein, except as expressly set forth in this Lease.

Assignment

11.1 The parties to this Lease shall not:

- a.) Assign, transfer, pledge, or hypothecate this Lease, the Leased Equipment or any part of it, or any interest in it; or b.) Sublet or lend the Leased Equipment or any part of it, or permit the Leased Equipment or any of it to be used by any other than the Lessee or the Lessee's employees. Consent by either party to any of these prohibited acts applies only in the given instance, and is not consent to any subsequent like act by the parties or person.

ARTICLE 12 –INDEMNITY

Indemnity

12.0 With respect to any operation by Lessee of the Leased Equipment, the Lessee shall indemnify the Lessor against, and shall hold from, any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including court costs and attorney's fees, arising out of, in connection with, or resulting from the use of the Leased Equipment. In accordance with Section 4.2 above, with respect to any operation by Lessor of this Leased Equipment pursuant to the terms of this Lease, the Lessor shall indemnify the Lessee against, and shall hold from any and all claims, actions, suites, proceedings, costs, expenses, damages, and liabilities, including attorney's fees, arising out of, in connection with, or resulting from the Lessor's use of the Leased Equipment.

ARTICLE 13- GENERAL PROVISIONS

Lessor's Expense

13.0 The Lessee shall pay the Lessor for all costs and expenses, including attorney's fees, incurred by the Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions, or provisions hereof.

Concurrent Remedies

13.1 No right or remedy herein conferred on or reserved to the Lessor is exclusive of any other right or remedy herein or by law or by equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder, now or hereafter existing at law, in equity, by statute or otherwise, and may be enforced concurrently therewith or from time to time.

Nonwaiver

13.2 No covenant or condition of this Lease may be waived except by the written consent of the Lessor. Forbearance or indulgence by the Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the Lessee to which the same may apply, and, until complete performance by the Lessee of any covenant or condition, the Lessor shall be entitled to invoke any remedy available to the Lessor under this Lease or by law or

in equity despite said forbearance of indulgence.

Entire Agreement

13.3 This Lease, the Purchase of Fixed Route Service Agreement, the Request For Proposal, all addendums to the Request For Proposal and all Federal, State and local clauses and certifications constitutes the entire agreement between the Lessor and the Lessee and supersedes any prior understandings written or oral agreements between the parties respecting the within subject matter. It shall not be amended, altered, or changed except by a written agreement dated and signed by the parties hereto.

Notices

13.4 Service of all notices under this Lease shall be sufficient if given personally or mailed to the party involved at its respective address hereinabove set forth, or at such address as such party may provide in writing from time to time. Any such notice mailed to such address shall be effective when deposited in the United States mail, duly addressed and with postage prepaid.

Pennsylvania Law to Apply

13.5 This Lease shall be constructed under and in accordance with the laws of the Commonwealth of Pennsylvania, and all obligations of the parties created hereunder are performable in Montgomery County and Chester County, Pennsylvania.

Parties Bound

13.8 This Lease shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Lease.

Legal Construction

13.9 If anyone or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, or unenforceability shall not affect any other provision thereof and this Lease shall be construed as if such invalid, illegal, or unenforceable provision has never been contained herein.

WHEREFORE, as of the day and year first above written, whether or not actually executed on that day, the parties do hereby execute this Agreement intending to be legally bound thereby.

[SIGNATURE LINES TO BE ADDED]

EXHIBIT A

LEASED EQUIPMENT

[Refer to Attachment A to the RFP]