

Southeastern Pennsylvania Transportation Authority (SEPTA)

**Request for Proposal
18-00185-AHAC**

for

**Development and Ground Lease of Property Located
at SEPTA's Powelton Yard**

August, 2018

Development and Ground Lease of Property Located at SEPTA's Powelton Yard

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Southeastern Pennsylvania Transportation Authority

Part I

Instructions and Information

**Request for Proposal
Development and Ground Lease of Property
Located at SEPTA’s Powelton Yard**

SECTION 1. – INSTRUCTIONS AND INFORMATION FOR PROPOSERS

I. INTRODUCTION.

A. Overview/Purpose.

You (hereinafter referred to as “**Proposer**” or “**Developer**”) are requested to submit a formal proposal (hereinafter referred to as “**Proposal**”) for the Development and Ground Lease of Property Located at SEPTA’s Powelton Yard (the “**Project**”), including the required services for the development of a Railroad Crew Quarters/Reporting Facility for SEPTA as detailed in Attachment 2 (hereinafter referred to as “**Scope of Services**”), in accordance with this Request for Proposal (“**RFP**”). Any information in addition to that required by this RFP which Proposer feels will help in the evaluation of its Proposal is to be submitted with its Proposal. Any Proposal submitted must comply with the requirements of this RFP as herein stated including all applicable Federal, State and Local laws, and is to be signed by an officer legally authorized to bind Proposer to a Contract and shall be submitted to SEPTA in writing, in the time and in the manner described herein.

II. FORM OF PROPOSAL.

The Proposal must address all items set forth in Attachment 2, “Scope of Services.”

A. Technical Proposal: The Technical Proposal shall include, but not be limited to the following information:

The services described by Proposer must be fully responsive to this RFP. Eliminations or qualifications by Proposer of performance of services required by this RFP may result in a Proposal being judged non-responsive. During the Question and Answer period, Proposers shall have an opportunity to propose concepts to be included in the Ground Lease and the Leaseback for SEPTA's consideration, in SEPTA's sole discretion. It is SEPTA's intent, after evaluation of the Proposals and the selection of a presumptive Developer, to negotiate the full terms and provisions of the Ground Lease and the Leaseback, based upon the form issued by SEPTA by Addendum, taking into consideration the specific issues related to the business transaction and the Project.

1. Firm Profile. Include a brief description of the experience, scale and history of the development entity seeking to obtain a lease interest in the Site. This profile must be in sufficient detail to provide SEPTA with an understanding of the Proposer's ability to successfully complete the Project proposed for

the Site. If the Proposer is a joint venture, then a copy of any written agreement that exists between the members of each party to the joint venture shall be included as part of the Technical Proposal. Such agreement shall fully discuss and identify the responsibility of the joint venture partners for performing the services.

2. Key Personnel and Team Members. Identify the names, titles and role of key personnel of the development entity that will enter into the Contract with SEPTA. Include an organizational chart. This section should also identify key team members, including an architect, planner and any other key professional support that will be integral to the Proposer's ability to execute the proposed Project. Resumes shall be provided identifying the qualifications and experience of the Project Manager and all key personnel. **SEPTA retains the right to reject or accept proposed Project personnel. Except set forth in the Contract, SEPTA will not permit a change in the Project Manager or key personnel after award, if any, to the selected Proposer.**
3. Development Schedule. Provide a schedule listing important tasks and dates, beginning with the execution of the Ground Lease with SEPTA and ending with full occupancy and operation of the proposed development. Identify critical milestones, any proposed temporary Railroad Crew Quarters/Reporting Facility, and any phasing of the development.
4. Project Financial Summary. Provide a detailed breakdown of the total estimated development costs for the Project, including a sources and uses of funds for the development by project element and phase.
5. Financial Resources. Include financial information that provides evidence of the Proposer's financial capacity to successfully undertake the Project proposed for the Site. Include the most recent copy of audited financial statements or the most recent annual report to shareholders for all equity participants in the development team.
6. Current and Future Commitments. Identify all current and planned development and financial commitments of the development entity, its key personnel or any of the equity participants that could have a material impact on the Proposer's ability to successfully complete the Project proposed for the Site.
7. Previous Similar Development Experience. The purpose of this section is to assess the capability, resources and relevant experience of the lead developer and supporting professional team of the Proposer. Principals of the lead developer and supporting professional team must demonstrate experience in the financing, leasing, planning, design, construction, and management of projects of significant size, cost and complexity to the Project being proposed. The submission must include illustrative materials, including a

description of the project and the developer's role in its execution. Provide specific information on the financing mechanisms used to develop previous projects, including sources and amounts of debt and equity for each. Provide names, telephone numbers, addresses, titles and responsibilities of references familiar with each project cited, as well as explicit written authorization to contact these references.

8. Conflicts. Identify any past, current or anticipated contractual or financial relationship the development entity, its key personnel, or any of the equity participants may have with SEPTA, its staff or board members, or any other contractual or financial relationship that may give the appearance of a conflict of interest.
9. Litigation. Include information regarding any litigation (pending or ongoing) in which any of the members of the development team of the Proposer are involved and any judgments that have been rendered against any members of the development team that may affect the Proposer's ability to successfully execute the proposed Project for the Site.

B. **Price Proposal**: The Price Proposal will be submitted to SEPTA as a **SEPARATE DOCUMENT IN A SEALED ENVELOPE**. The Price Proposal must include the cost for performing all of the SEPTA required Scope of Services. **Price Proposals which exclude or restrict cost items necessary for a Proposer to perform the SEPTA required Scope of Services are not acceptable and may be considered by SEPTA as non-responsive to the RFP**. The Price Proposal shall be submitted using the form included in Attachment 3 along with any other additional information required to make it complete. **The requirements of this RFP should be carefully reviewed by Proposer prior to preparation of its Price Proposal.**

III. RESPONSIBILITY OF PROPOSER.

SEPTA will only award a contract to a Proposer which it has determined to be responsible. The Proposer shall furnish adequate documentation to permit SEPTA to determine the responsibility of Proposer within five (5) calendar days of SEPTA's written request. A responsible Proposer is one that meets the following standards:

1. Integrity and Ethics - Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j) (2) (A);
2. Debarment and Suspension – Is neither debarred nor suspended from Federal programs under DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Parts 180 and 1200, or under FAR at 48CFR, Chapter 1 Part 9.4 or any Commonwealth of Pennsylvania funded programs. This contract will also be governed by the Contractor's responsibilities under 49 CFR, Part 29, regarding debarment, suspension, and other responsibility matters of any lower tier covered transactions, as applicable.

3. Affirmative Action and DBE – Is in compliance with the Common Grant Rules’ affirmative action and DOT’s Disadvantaged Business Enterprise requirements, 49 CFR, Part 26;
4. Public Policy – Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325 (j) (2) (B) and Commonwealth of Pennsylvania public policies;
5. Administrative and Technical Capacity – has the necessary organization, experience, accounting, and operational controls and technical skills, or the ability to obtain them in compliance with 79 U.S.C Section 5325 (j) (2) (D);
6. Licensing and Taxes – Is in compliance with applicable licensing and tax laws and regulations;
7. Financial Resources – has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325 (j) (2) (D);
8. Production Capability – Has, or can obtain, the necessary production, and technical equipment and facilities;
9. Timeliness – Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
10. Performance Record – Is able to provide a satisfactory current and past performance record.

IV. GENERAL REQUIREMENTS.

A. SUBMISSION OF PROPOSALS

One (1) original and 7 copies of the Technical Proposal, plus 1 CD/DVD in “PDF” format and One (1) original and 7 copies of the Price Proposal, in separate envelopes (**clearly marked**) shall be submitted to SEPTA’s Contract Administrator:

**Heather Casullo
Sr. Contract Administrator
Procurement, Supply Chain & DBE Division
Southeastern Pennsylvania Transportation Authority
1234 Market Street, 11th Floor
Philadelphia, PA 19107-3780**

B. DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL

Established Goal(s) – The DBE Goal for this procurement is 0%. The DBE goal will be factored against all operating/administrative expenses associated with the execution of an

agreement; excluding staff salaries and benefits, and transactional fees. Please refer to Attachment #6.

C. SEPTA SOLICITATION STATISTICS SURVEY FOR DBE and NON-DBE CONTRACTOR/CONSULTANT AND SUB-CONTRACTOR/SUBCONSULTANT FORM

All Proposers are required to complete a SEPTA Solicitation Statistics Survey (See Attachment 7) for themselves and each of their DBE and non-DBE subcontractors/subconsultants in accordance with 49 CFR part 26.11. The form is to be signed by an officer legally authorized to bind the Proposer to a Contract and shall be submitted to SEPTA as part of their Proposal.

D. RIGHTS RESERVED BY SEPTA

In submitting the Proposal, the Proposer understands that the right is reserved by SEPTA to reject any and all Proposals and/or to negotiate separately with any firm in any manner deemed appropriate to serve its best interest. If any award of Contract is made as a result of these Proposals, it will be made on the basis of the Proposal(s) which best satisfied the intent of the RFP and other factors considered in the best interest of SEPTA. SEPTA is not liable for any expenses incurred by Proposers in the development of its Proposal or any subsequent activity related to the Proposal.

It is also understood and agreed that if the Proposer should withdraw any part or all of its Proposal within ninety (90) calendar days after the Best and Final Offer (BAFO) without the consent of SEPTA, or shall refuse or be unable to enter into the Contract as provided with these documents, it shall be liable to SEPTA to the extent of SEPTA's damages occasioned by such withdrawal, or refusal, or inability to enter to a contract.

E. THE CONTRACT

The Contract will require that all tasks described in the RFP and/or Proposal shall be the Proposer's sole responsibility and shall be performed by the Proposer and its subcontractors/subconsultants. As a result of the negotiation process (see RFP Section 2, "Selection Process"), SEPTA may elect to revise the services described in the RFP and the Proposal. The single document as amended through Addenda and negotiations shall then become an Attachment to the Contract instead of the RFP and Proposal. SEPTA expressly reserves the right to approve and/or modify, at its sole discretion, both form and substance of any written Contract entered into pursuant to this RFP.

F. INSURANCE

Proposer and its subcontractor(s)/subconsultant(s) shall be required to provide, at their own cost and expense the insurance required in the Contract. SEPTA reserves the right to modify the required types and limits of insurance based upon the specific Project being developed and the negotiated terms of the Ground Lease.

G. PERFORMANCE EVALUATION

During the performance of the work, SEPTA will conduct at a minimum annually, a formal performance evaluation of the Contract (See Attachment 8).

H. TAXES

Proposer, as a result of any contract entered into pursuant to this RFP, may be subject to certain business taxes imposed by, but not limited to, municipal, school district, Commonwealth of Pennsylvania and/or the Federal government.

As to the sales tax imposed by the Commonwealth and some municipalities, Proposer is directed to the provisions in Pennsylvania law found at 72 P.S. 72 §7201 et seq. SEPTA makes no representation that these statutes are the only relevant statutes that apply to this Request for Proposal.

Proposer acknowledges that nothing in this RFP constitutes legal advice by SEPTA thereon. Proposer, to whatever extent that Proposer deems necessary, must obtain its own legal advice on any question concerning relevant taxes. Proposer is responsible for making its own investigation to determine whether or not it is subject to municipal, school district, Commonwealth of Pennsylvania or Federal taxes and for paying for such tax if applicable. Proposers are hereby informed that SEPTA is obligated by law to furnish to governmental entities, upon their request, the name and address of any person or firm with whom SEPTA has a contract for goods and/or services.

I. PROPOSAL SECURITY – NOT USED

J. DISCREPANCIES – DUTY OF PROPOSER TO CLARIFY AMBIGUITIES

Should a Proposer find any discrepancy or ambiguity, or omission from the Scope of Services, or should it be in doubt as to their meaning, the Proposer must at once notify SEPTA's Contract Administrator who will, if determined to be necessary, send a written addendum for clarification purposes to all Proposers. Only written modifications issued as addenda will effect changes in the RFP and/or Contract Documents. Failure of Proposer to clarify ambiguities prior to proposal submittal constitutes a waiver of their right to raise any such ambiguity.

K. ADDENDA

The contents of all addenda to Proposers are to be incorporated in the Proposal and will become part of the RFP and/or Contract Documents.

L. CERTIFICATION REGARDING LOBBYING

By signing and submitting a Proposal, the Proposer agrees to furnish the Certification Regarding Lobbying. The signed Certification may be submitted concurrent with the submission of the Technical Proposal. If the Certification is not submitted along with the Technical Proposal, it shall be submitted within five (5) calendar days of proposal

submittal, unless SEPTA grants, in writing, an extension (See Attachment 5).

M. CERTIFICATION REGARDING COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT OF 1986

By signing and submitting a Proposal, the Proposer agrees to furnish the Certification Regarding Compliance with Immigration Reform and Control Act of 1986 in compliance with the requirements stated in 8 U.S.C. §1324 (a). The signed Certification must be submitted with the submission of the Technical Proposal (See Attachment 9).

N. NON-COLLUSION REQUIREMENT

In the event Proposer is recommended to the SEPTA Board for award, the Proposer hereby agrees to sign an Affidavit of Non-Collusion, if requested by SEPTA, in form acceptable to SEPTA prior to the award, if any, of the Contract.

O. SEPTA's RFP PROTEST PROCEDURE

The definitions, policies and procedures cited below are applicable to this section only.

1.0 PURPOSE

1.1 This section describes the policies and procedures governing the receipt and resolution of protests in connection with an Invitation for Bid (IFB) or Request for Proposal (RFP). This procedure is applicable to all procurements in excess of \$100,000. Bid/proposal protests for procurements of less than \$100,000 shall be informally handled by the Assistant General Manager of Procurement, Supply Chain & DBE of Procurement or his/her designee.

2.0 DEFINITIONS

2.1 "Interested Party" means any bidders/proposers.

2.2 "days" means business days.

2.3 "Filed" means the date of receipt by The Office of SEPTA's Assistant General Manager of Procurement, Supply Chain & DBE of Procurement or his/her designee (hereinafter Assistant General Manager of Procurement, Supply Chain & DBE of Procurement).

2.4 "Federal/State Law or Regulation" means any valid requirement imposed by Federal, State, or other Statute or regulation.

2.5 "Presumptive Contractor" means the bidder/proposer that is in line for award of the contract in the event that the protest is denied.

2.6 "Protestant" is an Interested Party who is aggrieved in connection with the solicitation or award of a contract and who files a protest.

3.0 TYPES OF PROTESTS/ TIME LIMITS

- 3.1 Pre-Bid/Proposal Protest is based upon alleged restrictive specifications or alleged improprieties in SEPTA's procurement process. A Protestant must file a pre-bid/proposal protest no later than five (5) days prior to bid opening date by 4:30 p.m. Philadelphia prevailing time.
- 3.2 Pre-Award Protest is based upon alleged improprieties of a Bid/Proposal. A Protestant must file a pre-award protest no later than five (5) days after the Protestant knows or should have known of the facts giving rise thereto by 4:30 p.m. Philadelphia prevailing time.
- 3.3 Post-Award Protest is based upon the award of a contract. A Protestant must file a post-award protest no later than five (5) days after the notification to the unsuccessful firms of SEPTA's intent to award, or no later than five (5) days after an unsuccessful firm becomes aware of SEPTA's intent to award a contract, whichever comes first, by 4:30 p.m. Philadelphia prevailing time.

4.0 CONTENTS OF PROTEST

- 4.1 Protests must be in writing, and filed directly with the Office of SEPTA's Assistant General Manager of Procurement, Supply Chain & DBE of Procurement, at the address indicated in the solicitation, and must contain the following information:
 - a. The name, address and telephone number of the Protestant; and
 - b. Identity of the IFB or RFP (by number and description); and
 - c. A detailed factual statement of the grounds for protest; and
 - d. The desired relief, action or ruling.

5.0 ACTION BY SEPTA

5.1 Procurement Process Status

Upon timely receipt of a protest, SEPTA will delay the opening of bids until after resolution of the protest for protests filed prior to the bid opening, or withhold award until after resolution of the protest for protests filed after bid opening. However, SEPTA may open bids or award a contract whenever SEPTA, at its sole discretion, determines that:

- a. The items or work to be procured are urgently required; or
- b. Delivery or performance will be unduly delayed by failure to make the

award promptly; or

- c. Failure to make prompt award will otherwise cause undue harm to SEPTA or a funding source.

If the protest is filed before the award of the contract, SEPTA will advise the Presumptive Contractor of the pending protest.

- 5.2 If deemed appropriate, SEPTA may conduct an informal conference on the merits of the protest with all Interested Parties invited to attend.

5.3 Response to the Protest

SEPTA's Assistant General Manager of Procurement, Supply Chain & DBE of Procurement will respond in detail to each substantive issue raised in the protest within a reasonable time after the protest is filed. SEPTA's response shall address only the issues raised originally by the Protester.

When, on its face a protest does not state a valid basis for protest or is untimely, the Assistant General Manager of Procurement, Supply Chain & DBE of Procurement may summarily dismiss the protest without requiring a detailed response.

5.4 Rebuttal to SEPTA Response

The Protester may submit a written rebuttal to SEPTA's response, addressed to the Assistant General Manager of Procurement, Supply Chain & DBE of Procurement, but must do so within five (5) days after receipt of the original SEPTA response. SEPTA will not address new issues raised in the rebuttal. After receipt of the Protester's rebuttal, the Assistant General Manager of Procurement, Supply Chain & DBE of Procurement will review the protest and notify the Protester of his/her final decision.

5.5 Request for Additional Information

Failure of the Protester to comply with a request for information as specified by SEPTA's Assistant General Manager of Procurement, Supply Chain & DBE of Procurement, may result in determination of the protest without consideration of the additional information if subsequently produced. If any Interested Party requests information from another Interested Party, the request shall be made to SEPTA's Assistant General Manager of Procurement, Supply Chain & DBE of Procurement, and, if SEPTA so directs, shall be complied with by the other party within five (5) days.

5.6 Request for Reconsideration

If data becomes available that was not previously known, or there has been an error

of law, a Protestant may submit a request for reconsideration of the protest. SEPTA's Assistant General Manager of Procurement, Supply Chain & DBE of Procurement will again review the protest considering all currently available information. The Assistant General Manager of Procurement, Supply Chain & DBE of Procurement's determination will be made within a reasonable period of time, and his/her decision will be considered final.

5.7 Decision

Upon review and consideration of all relevant information the determination as issued by SEPTA will be final.

6.0 CONFIDENTIALITY OF PROTEST

Material submitted by a Protestant will not be withheld from any Interested Party, except to the extent that the withholding of information is permitted or required by law or regulation. If the Protestant considers that the protest contains proprietary material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest submission and the allegedly protected information must be so identified whenever it appears.

7.0 FEDERAL TRANSIT ADMINISTRATION (FTA) INVOLVEMENT

Where procurements are funded by the FTA, within five (5) business days from receipt of SEPTA's final decision, the Protestant may file a protest with the FTA only where the protest alleges that SEPTA failed to have or failed to adhere to its protest procedures or there was a violation of Federal Law or Regulation. Any protest to the FTA must be filed in accordance with FTA Circular 4220.1F.

[END OF SECTION]

SECTION 2. – SELECTION PROCESS

I. EVALUATION CRITERIA

The following criteria in descending order of importance will be used for the evaluation of the Proposals according to SEPTA Procedures:

- A. **Project Approach** - The innovation and creativity of the proposed Project and the degree to which the proposed Project reflects compatibility with the local community and can serve as a catalyst for other development, including the type of business, benefits to the community, disadvantaged entity participation (such as providing opportunities for minority businesses and/or creating permanent (non-construction) jobs for local, diverse, lower-income individuals), and provision of products and/or services not currently in the area. Detail the effects on SEPTA's transit facilities and the market/financial viability of the Project. Provide an interpretation of the Project objectives and description of the work by demonstrating a clear understanding of the RFP and by providing explicit interpretation of the Project's goals and requirements. Detail enhancements to SEPTA's rail and bus ridership as well the surrounding community. Satisfactorily describe the method of Project control including design, schedule, and method of reporting and progress meetings.
- B. **Experience & Project Team Organization** - Developer's overall capacity to accomplish goals and under sensitive, complex conditions considering the Project team and its organization. The development team's proven experience, prior performance and successful completion of similar projects including examples of work that demonstrate this type of experience. Staffing the project in a manner as required insuring efficiency and control of the work. Appointed a Project Manager (PM), design team, and other key personnel inclusive of subcontractors/subconsultants who possess the appropriate education, professional qualifications, significant technical and administrative experience necessary and have managed similar work. Clearly outline and define the division of work tasks between the Developer and the named subcontractors/subconsultants and also, if applicable, their joint venture partners.
- C. **Pricing Offer To SEPTA, Financial Capacity & Qualifications** –The pricing offer to SEPTA as provided on “Attachment 3”, the financial position and credit quality of the Developer including the Developer's ability to obtain financing for the construction of the Project and the Developer's comprehensive plan to finance the Project and the payment to SEPTA of the required ground rent, including any third-party financing structure.
- D. **Location** - Regarding the general geographic location of the Project, the Developer's and subconsultants/subcontractors general knowledge of the Philadelphia Metropolitan area and SEPTA. The Developer's ability to react quickly to SEPTA's needs regarding the Project.

II. SELECTION

- A. SEPTA shall create a Selection Committee, composed of several SEPTA staff members which shall independently evaluate each Proposal on the evaluation criteria based upon the application of adjectival ratings. The standards and qualifications that follow have been developed to serve as indicators of expected performance or compliance with the requirements of the RFP. SEPTA may seek the assistance of external experts and/or consultants during the evaluation process. The adjectival ratings are as follows:

Superior: Exceeds in all or most aspects the minimum requirements of the RFP. Offers a development Project and responses to the Scope of Services that have a high probability of success. Provides cost effective advantages for the program and SEPTA. Response requires no modifications to conform and comply with the critical elements of the RFP.

Very Good: Meets in all aspects and in some cases exceeds the minimum requirements of the RFP. Offers a development Project responses to the Scope of Services that have a high probability of success. Provides cost effective advantages for the program and SEPTA. No significant weaknesses or deficiencies. Response requires little or no modifications to conform and comply with the critical elements of the RFP.

Acceptable: Meets the minimum requirements of the RFP; Proposed development Project and responses to the Scope of Services offer no significant advantages; reasonable probability of success; Weakness and/or deficiencies require some modifications to conform and comply with the critical elements of the RFP.

Marginal: Proposed development Project and responses to the Scope of Services provide minimum probability of success. Significant weaknesses and deficiencies in the responses and solutions offered. Responses require significant modifications to conform and comply with the requirements of the RFP.

Unacceptable: Proposed development Project and responses to the Scope of Services fail to meet the minimum requirements of the RFP. Information provided is insufficient to evaluate the response. Major revisions required to cure deficiencies.

These adjectival ratings are only guides to assist SEPTA in evaluating Proposals, and they do not mandate the automatic selection of a particular Proposal.

- B. After making an evaluation of the Proposals on the basis of the criteria set forth above, SEPTA may conduct interviews and request and receive additional

information as it deems necessary from any Proposer deemed to be responsive to the RFP. If interviews are conducted, Proposers who are deemed to be non-responsive and/or have no reasonable chance of being selected will not be interviewed.

- C. After all Proposals have been evaluated in accordance with the criteria set forth above, SEPTA may, without discussion or negotiation, select any Proposal determined to be acceptable and enter into negotiations of the contractual terms.
- D. However, if no Proposal is acceptable without negotiation, those Proposers whose Proposals are determined by SEPTA to be within the competitive range may be contacted by letter from SEPTA to formally schedule negotiations. Competitive range will be determined by SEPTA and will consist of those firms whose Proposals are determined to have a reasonable chance of being selected for award based on the technical evaluations and price.
- E. No information, financial or otherwise, will be provided to any Proposer about any Proposals from other Proposers.
- F. After all negotiations and discussions have been completed, each of the Proposers within the competitive range with whom negotiations have been conducted shall be afforded the opportunity to submit a BEST AND FINAL OFFER (BAFO). The BAFO shall be each Proposer's most favorable Price Proposal for the Technical Proposal and business/contractual terms which have been clarified and agreed upon during discussions and negotiations. The request for BAFOs will set forth the specific time and date for the submission of the BAFO. The BAFO will be evaluated by SEPTA.

III. AWARD

- A. SEPTA will make an award, if any, only to a Proposer that has been determined by SEPTA to be fully responsive and responsible to the RFP requirements, while taking into consideration the staff's evaluation of the Proposals, interviews (if conducted), and the BAFO. A recommendation to the SEPTA Board will be made of the Proposal that is the most advantageous to SEPTA.

[END OF SECTION]

Southeastern Pennsylvania Transportation Authority

Part II

**Ground Lease and Development Agreement of
Property Located at SEPTA's Powelton Yard**

Required provisions of the Ground Lease will include, without limitation, the following:

Contract Documents

Attachments 1 through 11, inclusive, are hereby incorporated into this document and the Attachments are deemed to be a part thereof.

Attachments 4 and 10 are a notice and a summary of notices by SEPTA of the requirements that the Federal Government and Commonwealth of Pennsylvania impose on contracts which they fund in whole or in part. Contractor/Consultant acknowledges that Attachments 4 and 10 do not constitute legal advice by SEPTA thereon. Hence, Contractor/Consultant, to whatever extent Contractor/Consultant deems necessary, must obtain its own legal advice on these requirements.

Right of Recapture.

SEPTA reserves the right to recapture all or any portion of the Premises or Improvements from Tenant at any time under the Term of this Lease, if the Premises are required by SEPTA in connection with or for any transportation-related or operations purposes, by giving notice to Tenant not less than on hundred twenty (120) days prior to the date SEPTA desires to retake possession of all or any portion of the Premises or Improvements. Any subleases, licenses, or assignments shall provide for recapture of all or any part of the Improvements or Premises for any transportation related or operations purposes. The Lease hereby provides and any Subleases shall provide for repayment to Tenant or Subtenant of its unamortized cost of any initial improvement through the date of _____ [termination of the applicable lease, sublease, or license], which amounts will be paid by SEPTA. To the extent available such amounts will be paid from amounts otherwise payable to SEPTA under this Lease.

Assignment of Rights, Delegation of Duties Restricted

Contractor/Consultant shall not assign any rights arising under the Contract without the prior written consent of SEPTA. Contractor/Consultant shall not delegate, without the prior written consent of SEPTA, any duties in performance of services under the Contract.

Changes

- a. The services set forth in Attachments 1 through 11 of the Contract may be reduced, modified or expanded within or beyond the scope of the Contract by written modifications executed by SEPTA and Contractor/Consultant.

Except as provided in paragraph "b" below, in the event that SEPTA requires a reduction, expansion, or modification of the services, SEPTA shall issue to Contractor/Consultant a written notification which specifies such reduction, expansion, or modification. Within fifteen (15) calendar days after receipt of the written notification, Contractor/Consultant shall provide SEPTA's Contract Administrator with a detailed price and schedule proposal for the services to be performed or to be reduced. This proposal may be accepted or rejected by SEPTA or modified by negotiations between Contractor/Consultant and SEPTA. A written Amendment to the Contract shall be executed by both parties.

- b. Notwithstanding paragraph "a" above, SEPTA may at any time, by written order, make changes within the general scope of the Contract to the services to be performed by Contractor/Consultant. If any such change causes an increase or decrease in the price of, or the time required for, the performance of any portion of the services under the Contract, SEPTA's Contract Administrator shall make equitable adjustment in any one or more of the following: price; completion schedule; or other affected terms; and shall modify the Contract in writing accordingly. Any claim by Contractor/Consultant for adjustment under this paragraph must be asserted within thirty (30) calendar days from the date of receipt by Contractor/Consultant of the notification of change; provided however that SEPTA's Contract Administrator, if the Contract Administrator decides that the facts justify such actions, may receive and act upon such claim at any time prior to final payment under the Contract. Failure to agree to any adjustment shall be a dispute within the meaning of Paragraph 31 Disputes. However, nothing in this paragraph shall excuse Contractor/Consultant from proceeding with the Contract as changed.
- c. No services for which an additional amount will be charged by Contractor/Consultant shall be furnished without the prior express written authorization of SEPTA's Contract Administrator.

Termination of Contract for Cause

If Contractor/Consultant fails to remedy to SEPTA's satisfaction the breach or default of any of the terms, covenants, or conditions of the Contract within ten (10) calendar days after receipt by Contractor/Consultant of written notice from SEPTA setting forth the nature of said breach or default and/or if the Contractor/Consultant is suspended or debarred by any federal agency or by the Commonwealth of Pennsylvania, SEPTA shall have the right to terminate the Contract without any further obligation to Contractor/Consultant. Any such termination for cause shall not in any way operate to preclude SEPTA from also pursuing all available remedies against Contractor/Consultant.

In the event that SEPTA elects to waive its remedies for any breach by Contractor/Consultant of any covenant, term or condition of the Contract, such waiver by SEPTA shall not limit SEPTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of the Contract.

In the event that it is ultimately determined by SEPTA that the Contractor/Consultant was not in default or that the failure to perform arose out of causes beyond the control and without fault of the Contractor/Consultant, the termination shall be treated as one of convenience and the Contractor/Consultant's sole rights and exclusive remedies shall be those set forth.

The Contractor/Consultant will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract

Indemnification

Tenant (for itself and the Tenant Representatives) hereby agrees to and shall indemnify, defend, protect and hold harmless SEPTA (and its officials, officers, shareholders, trustees, directors, boards, commissions, agents, employees, representatives, successors and assigns) of, from and against any and all claims (including, but not limited to, any claims by members of the public as well as by invitees, employees, contractors and agents of Tenant), any right or claim of contribution), actions, causes of action, suits, legal and administrative proceedings, rights and remedies, liens, encumbrances, demands and duties (collectively, the “Claims”), and any and all responsibility, obligation, damages, liability, costs fees, losses, and expenses (including, but not limited to, attorney’s fees and disbursements and expert and consultant fees) (collectively, the “Costs”) in connection with, resulting from or attributable to loss of life, personal injury, damage to property, any loss or damage resulting from the use, occupancy or operation by Tenant pursuant to this Lease, any occurrence in, upon or at the Leased Premises, any work or act or omission, done in, on, or about the Leased Premises, or any portion thereof, by or at the direction of Tenant (or any Tenant Representative) or in connection with the construction, development, occupancy, use, non-use, possession, condition, operation, maintenance or management by Tenant (or any Tenant Representative) of the Leased Premises or any part thereof. The indemnification, rights and other protections of this Section shall apply to any Claims or Costs that would have been covered by the insurance that SEPTA requires in this Lease and shall survive the expiration or earlier termination or cancellation of this Lease.

Insurance

A. Tenant shall procure and maintain, at its sole cost and expense, insurance for or with respect to the Premises of the types and minimum limits of coverage specified below. All insurance shall be procured from reputable insurers who are acceptable to SEPTA and authorized to do business in the Commonwealth of Pennsylvania. All insurance required herein, except for Professional Liability Insurance, shall be written on an “occurrence” basis and not a “claims-made” basis.

(i) Workers Compensation & Employers’ Liability

(A) Workers’ Compensation - Statutory limit;

(B) Employers’ Liability:

\$500,000.00 Each Accident-Bodily
Injury by Accident \$500,000.00
Each Employee-Bodily Injury by Disease.
\$500,000.00 Policy Limit-Bodily Injury by Disease,

(ii) General Liability Insurance

(A) Limit of Liability:

\$2,000,000 per occurrence combined single limit for bodily
injury (including death) and property damage liability.
\$2,000,000 personal and advertising injury;
\$2,000,000 general aggregate and \$2,000,000 aggregate for

products and completed operations.

- (B) Coverage:
 - Premises operations;
 - Blanket contractual liability;
 - Personal injury liability (employee exclusion deleted);
 - Products and completed operations; Independent contractors;
 - Employees as additional insureds;
 - Cross liability;
- (C) Broad form property damage liability (including completed operations and loss of use) liability and explosion, collapse, and underground hazards, care, custody and control exemption excluded,

(iii) **Automobile Liability**

- (A) Limit of Liability:
 - \$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (B) Coverage:
 - Owned, non-owned and hired vehicles.

B. Tenant shall require that each of Tenant's Representatives entering upon or performing or conducting any work or other activity on the Premises procure and maintain, at their respective cost and expense, insurance for or with respect to the Premises of the types and minimum limits of coverage specified below. All insurance shall be procured from reputable insurers who are acceptable to SEPTA and authorized to do business in the Commonwealth of Pennsylvania. All insurance required herein, except for Professional Liability Insurance, shall be written on an "occurrence" basis and not a "claims-made" basis.

(i) **Workers' Compensation & Employers' Liability**

- (A) Workers' Compensation - Statutory limit;
- (B) Employers' Liability:
 - \$500,000.00 Each Accident-Bodily Injury by Accident.
 - \$500,000.00 Each Employee-Bodily Injury by Disease.
 - \$500,000.00 Policy Limit-Bodily Injury by Disease.

(ii) **General Liability Insurance**

- (A) Limit of Liability:
 - \$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
 - \$2,000,000 personal injury;
 - \$2,000,000 general aggregate and \$2,000,000 aggregate for

products and completed operations.

- (B) Coverage:
Premises operations;
Blanket contractual liability;
Personal injury liability (employee exclusion deleted);
Products and completed operations; Independent contractors;
Employees as additional insureds;
Cross liability;
Broad form property damage liability (including completed operations and loss of use) liability and explosion, collapse and underground hazards, care, custody and control exemption excluded,

(iii) **Environmental/Contractors Pollution Liability Insurance**

By separate policy or endorsement to the General Liability Insurance, contractor shall maintain Environmental/Contractors Pollution Liability Insurance in an amount not less than \$2,000,000 in limits,

(iv) **Automobile Liability**

- (A) Limit of Liability:
\$2,000,000 per occurrence combined
single limit for bodily injury
(including death) and property damage liability.
- (B) Coverage:
Owned, non-owned and hired vehicles.

(v) **Professional Liability Insurance**

- (A) Limit of liability; \$ 1,000,000 per occurrence, \$2,000,000 aggregate with a deductible not to exceed \$10,000.
- (B) Coverage:
Environmental investigation, testing, consulting, architectural, engineering, remediation or professional services errors and omissions project specific professional liability insurance including liability assumed under contract.

C. SEPTA shall be named as additional insureds on all policies required hereunder except the Workers Compensation and Employers' Liability, All such policies shall include an endorsement stating that the coverage afforded these parties as additional insureds will be primary to any other coverage available to them.

D. Certificates of insurance evidencing the required coverage shall be submitted to SEPTA, at 1234 Market Street, Philadelphia, PA 19107, by Tenant on the Effective Date of this Agreement and by Tenant's Representatives at least five (5) Business Days prior to the

first entry by each Tenant's Representative upon the Premises. Tenant and the Tenant Representatives shall furnish certified copies of the original policies of all insurance required under this Agreement at any time within ten (10) days after written request by SEPTA.

- E. All insurance policies shall provide for at least thirty (30) days prior written notice to be given to SEPTA in the event coverage is materially changed, canceled or not renewed. At least ten (10) days prior to the expiration of each policy, Tenant or Tenant's Representatives shall deliver to SEPTA a certificate or certificates evidencing a replacement policy to become effective immediately upon the termination of the previous policy.
- F. Tenant or Tenant's Representatives, as the case may be, shall furnish SEPTA with proof that the premiums for all insurance required hereunder have been SEPTA in full. Such proof shall be provided in writing at the time of the delivery of the certificates of insurance.
- G. In the event Tenant or Tenant's Representatives fails to cause such insurance to be maintained, SEPTA shall not be limited in the proof of any damages which SEPTA may claim against Tenant, Tenant's Representatives or any other Person to the amount of the insurance premium or premiums not SEPTA or incurred and which would have been payable upon such insurance, but SEPTA shall also be entitled to recover as damages for such breach the uninsured amount of any loss, damages and expenses of suit and costs, including without limitation reasonable cancellation fees, suffered or incurred during any period when Tenant or Tenant's Representatives shall have failed or neglected to provide insurance as required herein.
- H. Tenant shall maintain, keep in full force and effect during the Term, a Property Insurance policy of "all risk" fire and extended coverage, insuring any Improvements and Alterations in an amount not less than one hundred (100%) percent of the full insurable value of the Improvements and Alterations or, at Tenant's option, as set forth in an agreed value endorsement which shall be not less than the amount of the estimated cost to demolish and remove such Improvements and Alterations. Notwithstanding the foregoing to the contrary, such property insurance policy (i) shall not be required to include insurance coverage for acts of terrorism, earthquakes, windstorm and/or flood and (ii) shall contain a "loss payable" clause which provides for payment of all proceeds under such property insurance policy to Tenant subject to the terms of this Lease. Landlord shall have no right to participate in the adjustment of any loss under the property insurance policy or to receive any of the proceeds of such insurance. The term "full insurable value", as used herein, shall mean actual cost of replacement of like kind and quality without deduction for depreciation.

SEPTA reserves the right to modify the required types and limits of insurance based upon the specific Project being developed and the negotiated terms of the Ground Lease.

Notices

All Notices given by either party to the other shall be effective only if given in writing and sent to the following addresses of the parties, or to such other address as may be designated in writing by the parties:

TO SEPTA: Assistant General Manager of Procurement, Supply Chain & DBE
Procurement, Supply Chain & DBE Division
Southeastern Pennsylvania Transportation Authority
1234 Market Street, 11th Floor
Philadelphia, PA 19107-3780

TO CONTRACTOR/CONSULTANT:

Compliance with Federal, State and Local Laws and Contract Requirements

Contractor/Consultant shall comply in performance of services hereunder with all applicable laws, ordinances and regulations, judicial decrees or administrative orders, ordinances and codes of federal, state and local governments. See Attachments 4 and 10.

Governing Law, Forum Selection, and Consent to Jurisdiction

All matters or claims arising out of, related to, or in connection with the Contract, the Project 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 such state. All matters, disputes, claims, litigation, or proceedings of any nature whatsoever based upon, arising out of, under or in connection with the Contract, the Project or relationship between the parties shall be solely and exclusively brought, maintained, resolved, and enforced in the state or federal courts located in the City of Philadelphia, Pennsylvania, irrespective of any procedural rules or laws related to venue and forum non conveniens, including but not limited to any choices Contractor/Consultant may have under any such rules or law. Contractor/Consultant hereby expressly consents to the jurisdiction of the state and federal courts located in the City of Philadelphia and hereby expressly and irrevocably waives any objection which Contractor/Consultant may have or hereafter may have to jurisdiction or venue in the state and federal courts located in the City of Philadelphia and any claim that such court is inconvenient or lacks personal jurisdiction over Contractor/Consultant. Contractor/Consultant represents and acknowledges that the choice of jurisdiction and venue described above is reasonable and has been freely and voluntarily made by Contractor/Consultant. Further, the choice of jurisdiction and venue described above shall be mandatory and not permissive in nature, thereby precluding the possibility by Contractor/Consultant of litigation or trial in any other jurisdiction, court or venue other than specified above, except that any final judgment may be enforced in other jurisdictions in any manner provided by law.

Waiver of Breach of Contract

No waiver of any breach of any covenant, term, or condition of the Contract shall constitute a waiver of such covenant, term, or condition, or of any subsequent breach thereof.

SEPTA Equal Employment Opportunity/Affirmative Action Contractual Requirements

Contractor/Consultant covenants and agrees to abide by all stipulations attached hereto and made a part hereof as Attachment 11 for all services to be performed in connection with the Contract.

Third Party Contract Rights

It is agreed that SEPTA, neither by this paragraph nor by any other provisions in the Contract or other statements prior to or contemporaneous with the Contract creates any right or expectation in any third party or third parties (including, without limitation, subcontractors/subconsultants) enforceable at law or in equity or any other proceeding against SEPTA, its Board Members, officers, agents, servants, workers, employees, subsidizers, indemnities or assigns.

Prohibited Interest

No member, officer, or employee of SEPTA or of a local public body during his tenure or one year thereafter shall have any financial interest, direct or indirect, in the Contract or the proceeds thereof.

Integration

Subject to SEPTA's right to rely upon substantial representations made by Contractor/Consultant in making the decision to award the Contract to Contractor/Consultant, the Contract represents the entire and integrated contract between SEPTA and Contractor/Consultant and supersedes all prior or contemporaneous negotiation, representation, or contract, either written or oral. The Contract may not be amended, modified, or changed except as provided in the Paragraph "Changes."

Severability

If any paragraph, clause, section or part of the Contract is held or declared to be void or non-enforceable for any reason, all other paragraphs, clauses, sections or parts shall nevertheless continue in full force and effect.

Disadvantaged Business Enterprise (DBE) Requirements

The Contractor/Consultant shall fully comply with the DBE requirements as found in Attachment 6 which is attached hereto and made a part hereof.

Joint and Several Liability

If two or more individuals, corporations, partnerships, or other business associations (or any combination of two or more thereof) shall sign the Contract as Contractor/Consultant, the liability of each such individual, corporation, partner or other business association to perform the obligations hereunder shall be deemed to be joint and several and all notices, payments and agreements given or made by, with or to any such individual, corporation, partner or other business association shall be deemed to have been given or made by, with or to all of them. In like manner, if Contractor/Consultant shall be a partnership or other business association, the members of which are by virtue of state or federal law are subject to personal liability, the liability of each member shall be joint and several.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by the undersigned duly authorized officers, as of the day and the year first above written.

ATTEST:

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

CAROL R. LOOBY
SECRETARY TO THE BOARD

JEFFREY D. KNUEPPEL
GENERAL MANAGER

ATTEST:

(SECRETARY)

BY: _____
PRESIDENT OR VICE PRESIDENT

(Please type name)

(Please type name)

APPROVED AS TO FORM:

BY: _____, Esquire
Office of General Counsel
Southeastern Pennsylvania
Transportation Authority

Attachment 1

Technical Proposal

for

Development and Lease of Property Located at SEPTA's Powelton Yard

Insert

(Technical Proposal)

Attachment 2

Scope of Services

for

Development and Lease of Property Located at SEPTA's Powelton Yard

SCOPE OF SERVICES

The goal of this Request for Proposal is solicit development proposals from qualified developers or development teams for the development of a dynamic, state-of-the-art medical research, manufacturing, production or office building on a portion of SEPTA's Powelton Railroad Yard land. The Project must incorporate the design and construction of a 6,000 square foot ground floor 'Turnkey' SEPTA Railroad Crew Quarters/Reporting facility with parking for 90 SEPTA vehicles; which may be part of a larger building proposed by the Developer, or a separate structure.

The development site is bounded by North 32nd Street and the Amtrak right-of-way directly north of the 3100 block of West Market Street (the "**Site**"). The Site must be developed in accordance with the limitations presented due to its proximity to the Amtrak right-of-way.

The scale, design, land use and tenant mix of the proposed development should create an attractive, well-designed development that will complement the surrounding community, be consistent with SEPTA's requirement for a Railroad Crew Quarters/Reporting Facility, and encourages investment in the surrounding area by providing opportunities for local and diverse businesses and residents (such as providing opportunities for minority businesses and/or creating permanent (non-construction) jobs for local, diverse, lower-income individuals).

Developers are encouraged to incorporate sustainable, "green" design features and materials, and to consider green building certifications, performance objectives and Energy Star's design guidelines that integrate energy efficiency.

The Developer is solely responsible for all aspects of zoning, permitting, design, construction and maintenance of the Project, and all due diligence associated with the Site, including all costs of engineering, structural, geo-technical planning and environmental studies required for construction on the Site. SEPTA makes no warranty or representation concerning the existence of any structural deficiencies, geo-technical deficiencies and/or environmental contamination on the Site, or upon any adjoining land or improvements, and SEPTA is not now or at any time hereafter under any circumstance responsible for any of such conditions or for the analysis, care or remedy thereof. The Site will be transferred in its "as-is" condition and the Developer is solely responsible for all structural, geo-technical and environmental repairs, stabilization and/or remediation required for construction on the Site. Any Proposal submitted pursuant to this Request for Proposals should consider and address the foregoing obligations and requirements.

The selected Developer will gain exclusive rights from SEPTA to allow for the planning and financing of the proposed Project on the Site within a negotiated time schedule and based upon negotiated performance criteria. Ultimately, the selected Developer will enter into a Ground Lease and Development Agreement (the "**Contract**" or "**Ground Lease**") with SEPTA for a long-term ground lease for the development and operation of the Site, including a leaseback to SEPTA for the Railroad Crew Quarters/Reporting Facility and related parking (the "**Leaseback**"). The ground rent paid to SEPTA under the Ground Lease must be based on a fair market valuation.

The selected Developer will be given the opportunity to investigate existing site conditions under the terms and conditions of a Right of Entry to be entered into between SEPTA and the Developer as a condition precedent to the commencement of the Ground Lease. Based on such investigation, if the selected Developer determines that the Site is not suitable for the proposed Project, the Developer will have a right to not sign the Ground Lease.

1. Ownership of the Site. SEPTA makes no representations or warranties regarding title to the Site. The Proposer must undertake its own due diligence to determine whether the status of the title to the Site is acceptable to the Proposer.
2. Zoning. It is the Proposer's responsibility to determine if the Proposer's Project complies with zoning requirements and/or to obtain such approvals. Any zoning approvals must include the use of the Site for SEPTA's Railroad Crew Quarters/Reporting facility as a permitted use.
3. Utilities; On-Site and Off-Site Infrastructure. Public utilities are located within the public streets adjacent to the Site. The selected Proposer will be required to investigate both on-site and off-site utility conditions and infrastructure as it relates to that Proposer's development program and be committed to cooperate with SEPTA to achieve a development that integrates with the surrounding community.
4. Development Incentives. It is the Proposer's responsibility to determine if the Project may qualify for any Commonwealth of Pennsylvania or City of Philadelphia development incentives. SEPTA makes no representations regarding the availability of any such incentives and no commitment to assist the selected Proposer in pursuing any such development incentives.

B. Site Inspection.

Site inspections will be held. Details confirming these site inspections will be distributed to all registered Proposers prior to the meeting date.

C. The Ground Lease and Leaseback.

The form of Ground Lease will be provided by an Addendum to this RFP. The Leaseback between the selected Proposer and SEPTA for the SEPTA Railroad Crew Quarters/Reporting facility will either be part of the Ground Lease or a separate lease agreement provided by an Addendum to this RFP. Proposers are advised that the Ground Lease will be a triple net ground lease with the Developer/tenant bearing all operating costs associated with the Site. Proposers are advised that the Ground Lease will contain the required contract provisions set forth as Attachments 2 through 11 of this RFP as the same may be modified at SEPTA's sole discretion.

SEPTA reserves the right to require that the selected Developer's obligations under the Ground Lease, including without limitation, the obligation to commence and complete construction, are guaranteed by one or more guarantors acceptable to SEPTA in its sole discretion.

Crew Quarters

As part of its overall development goals for the designated leased premises at SEPTA's Powelton Railroad Yard, the successful Developer shall incorporate a dedicated SEPTA Railroad Crew Quarters/Reporting facility into its improvements and provide this facility as a lease back to SEPTA for its sole use.

SEPTA's Railroad Crew Quarters/Reporting facility at Powelton Yard is a 24-hour facility that is essential to the regional rail system. It houses offices, lounges, restrooms, locker rooms and bunk rooms that are federally mandated to be provided to employees on the railroad. All areas of this Railroad Crew Quarters/Reporting facility, as incorporated into the overall Developer improvements, shall be adjacent to each other and operationally separate from the general building.

Developer shall provide SEPTA with 24-hour, secure access to the facility, ideally through a private SEPTA entrance. Pedestrian pathways shall be provided from the facility to the adjacent 32nd Street and to SEPTA's pedestrian tunnel to Powelton Railroad Yard.

Septa's Role In The Realization Of Developer's Improvements.

SEPTA shall have no pecuniary interest or participation in the Developer's improvements, but reserves the right to review and approve the Developer's intended improvements upon the leased premises as more particularly described in the Contract. It is understood that the leased premises is to be let 'As-Is'. As such, SEPTA is under no obligation to make improvements or alterations of any kind to the leased premises. All expenses in connection with the development shall be borne by the Developer.

As part of its Technical Proposal, Developer shall submit a profile of its design team, including the name and resume of all consultant firms. The Developer shall identify one person of that team to be the Project Manager and the main source of communication to SEPTA. This person shall be responsible for overseeing the design team efforts, and for coordinating the work with SEPTA.

As will be more detailed in the Contract, the Developer shall submit to SEPTA for review and approval all design drawings, specifications, construction procedures, access plans, phasing (including temporary work), elevations, cross-sections, details and calculations, in sufficient detail as required of the permitting process, sealed as required by a Professional Engineer licensed in Pennsylvania.

The Developer shall also provide to SEPTA detailed plans for incorporating the Railroad Crew Quarters/Reporting facility and SEPTA's designated parking area in the larger development as well as the route of pedestrian and vehicle access into its intended improvements. SEPTA reserves the right to make QA/QC assessments concerning its Railroad Crew Quarters/Reporting facility as stated below and appendix A of this Scope of Services.

The Developer shall provide to SEPTA for its review and approval, all intermediary design changes before and during the design and construction process. SEPTA reserves the right at all times to stop any phase of the improvement work, without consequence, should SEPTA determine that proceeding are in violation of the safety of the adjacent railroad, its passengers or adversely impacts the leased premises in any way.

SEPTA reserves the right to have representation at any and all meetings being held during the design and construction process and the Developer shall be responsible for the recording, preparation, and distribution of written minutes of all meetings, conferences, etc. to SEPTA, within five business days after the meeting date.

The Developer shall notify SEPTA when its Railroad Crew Quarters/Reporting facility is ready for a punch-list walk-through. SEPTA and the Developer shall do the walk-through and Developer shall address all issues and redo the punch-list walk-through as required until all issues are resolved.

Temporary Railroad Operations Facility

During construction, the Developer shall either maintain SEPTA's access to its current Railroad Crew Quarters/Reporting facility and parking or provide 4,500 square feet of temporary indoor facilities and 75 parking spaces to ensure SEPTA's continuous operation at the location. This area should ideally be within 500 feet of SEPTA's pedestrian tunnel to Powelton Yard, unless approved otherwise by SEPTA. All facilities shall be in accordance with all applicable Federal, State and Local regulations having jurisdiction. SEPTA's Railroad Operations Facility shall be ADA compliant.

If the Developer proposes to demolish or otherwise make inaccessible SEPTA's current facility before the new one is available for occupancy, the Developer shall provide a facility, satisfactory to SEPTA, during construction for SEPTA's use. SEPTA will review the Developer's design for the intended temporary facility, and provide design review and approval at the various stated submission stages.

Subject to SEPTA's approval, Developer shall move SEPTA's furnishings into the temporary facility and SEPTA shall do a punch-list walk-through with the Developer prior to accepting the temporary facilities. The Developer shall address any items as required in the punch list, and obtain SEPTA's approval prior to doing any demolition on the existing facilities.

The Developer shall not remove the temporary facilities until SEPTA has moved into the permanent facility and has given its approval to do so.

Developer's Responsibility

The Developer shall coordinate and be fully responsible for the code compliance of all elements of its improvement work, including federal, state, ADA, Philadelphia city/county, utility, historical and other agencies' requirements and regulations which govern or are relevant to the project design. All permit applications and inspections are the responsibility of the Developer.

The Developer shall provide project administrative services as required to plan, schedule, organize and coordinate the flow of work around SEPTA's normal use of the intended leased space.

The Developer shall conduct all research and perform all investigations necessary to develop the design documents for construction of the Project. This shall include but not be limited to surveys, geo-technical research, drainage investigations, hazardous materials research and assessments of existing conditions.

Testing for any environmental hazards that may be present throughout the leased premises shall be the responsibility of the Developer. If necessary and as required, the Developer shall coordinate with SEPTA in detailing its remediation plan of any contaminated material in compliance with National Environmental Policy Act (NEPA).

SEPTA, shall provide at Developer's reimbursable expense, protection services as required to maintain a safe distance from the railroad track, and the Developer shall work cooperatively with SEPTA to minimize the operational impact of any required track out-of-service events caused by the Developer's activities. The Developer will abide by all requirements as put forth by SEPTA System Safety and Engineering, Maintenance and Construction forces. The Developer and its workforce may, as part of its coordination with railroad operations, be required to obtain Railroad Worker Safety training as applicable.

Proof of Worker's Compensation insurance shall be provided by the Developer for itself, its employees, contractors and their subcontractors. SEPTA shall be a named insured and indemnified in all matters and claims that may arise as a result of the Developer's activities.

The Developer shall permit no mechanic's or other lien against SEPTA property or by reason of any consent given by SEPTA to improve the leased premises. The Developer shall require its contractors to post bonds that guarantee payment for all labor and material provided by subcontractors.

SEPTA Its Railroad Crew Quarters/Reporting Facility Specifications Material Specifications

Division 6 Wood, Plastics and Composites

Cabinets and Counters - High Pressure Laminate Cabinets with High Pressure Laminate or Corian Counters,
Heavy Duty Commercial Hardware

Division 8 Openings

Interior Doors – 18 gauge hollow metal doors

Division 9 Finishes

Paint – Sherwin Williams

FRP – Crane Composites Glasbord FRP Ceramic Tile

Floor Tile – Daltile Color Body 12"x12" Nero Macchiato CD37

Wall Tile – Daltile Wall Tile, 4 1/4" x 12 3/4", Urban Putty, 0161, horizontal running bond pattern

VCT – Armstrong Excelon Commercial VCT
ACT – USG Radar ClimaPlus and Coordinating Grid System

Division 10 Specialties

Signage – All rooms to have identification signs with braille and tactile letters
Lockers and Benches – Lockers to be PENCO 18”w x18”d x72”h with sloped hoods, base fillers and protruding handles for padlocks.
Restroom Accessories – Stainless steel Bobrick accessories
Restroom Partitions – Hiny Hiders Composite Plastic with Stainless Steel Hardware

Division 11 Equipment

Refrigerator – 18 cu. ft., Energy Star, ADA compliant, Top Freezer Refrigerator with Adjustable Shelves,
Stainless Steel finish and Metallic or Stainless Steel Handles.
Microwave – 1.6 Cu Ft Microwave, Stainless Steel finish, 1150-1200 Watts with rotating plate.

Division 12 Furnishings

Desks – Haworth X-Series with metal pedestals and full height bases, grommets, laminate tops, and ³/₄ height panels. Desks shall be minimum 72”x30” with two full-height pedestals and center drawers
File cabinets and bookshelves to be Haworth X-Series. File cabinets to be lateral filing cabinets, 36” wide, 5-drawers in height.
Task Chairs – Haworth Improv Task Chairs, Product M231-1W42
Guest Chairs – Haworth Improv Chairs, Product M600-2112
Lounge Chairs – Lazy Box Odeon Series, Product L40P15AC with Grade 5 Vinyl, with Momentum Icon Upholstery
Recliner Chairs - Lazy Box Odeon Series, Product OD1304U with Grade 5 Vinyl, with Momentum Icon Upholstery
Sofas – Lazy Box Odeon Series, Product L40P35AC with Grade 5 Vinyl, with Momentum Icon Upholstery
Ottomans – Lazy Box Dialogue Series, Product D100 with Momentum Icon Upholstery

Division 23

SEPTA requires HVAC systems that are independent of the rest of the development. Developer shall provide 24- hour, permanent access to SEPTA to all equipment.

Division 26

All rooms to have Philips DualLED 2x4 recessed Light Fixtures with Occupancy Sensors

Division 27

Each office and lounge shall have a minimum of four data and phone jacks for connection of computers and equipment.

Attachment 3

Price Proposal for Development and Lease of Property Located at SEPTA's Powelton Yard

PRICE PROPOSAL FORM

The Price Proposal shall include the following:

1. Ground Lease Terms. SEPTA is required to obtain a “fair market value rent” for the Site. The Price Proposal must describe in detail the business terms of the Ground Lease, including, but not limited to:
 - (a) Term for the Ground Lease, including any extension rights.
 - (b) Base Rent for the Ground Lease expressed in dollars per year and including annual escalation.
 - (c) Any participation by SEPTA in the revenues generated by the Project.
 - (d) The identity and financial capacity of the proposed guarantor(s) of the Lease and of the construction of the improvements, and such guarantor(s)' relationship to the Proposer.
 - (e) Contingencies. Identify any conditions that must be satisfied prior to entering into the Ground Lease for the Site. Include milestones for completing all due diligence activity, securing any government approvals required, and securing financing commitments

2. Leaseback Terms. Describe in detail the proposed economic terms of the leaseback to SEPTA of the new Railroad Crew Quarters/Reporting Facility meeting the required Scope of Services, including the proposed leaseback commencement date and annual rent payments to be paid by SEPTA. The term of the leaseback must not expire prior to the date of expiration of the term of the Ground Lease.

Attachment 4

Federal Transit Administration (FTA) Provisions for Contracts

Federal Transit Administration (FTA) Contract Provisions

Section A

Section A - Federal Contract Requirements

FR-01 Fly America Act (49 U.S.C. § 40118, 41 CFR Part 301-10)

A. APPLICABILITY

This article applies to all federally funded if the purchase order is over \$3,000; contracts; or subcontracts may involve the international transportation of goods, equipment or personnel by air.

- B.** The Contractor agrees to comply with the Fly America Act and its regulations. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation

FR-02 Buy America Act (49 U.S.C. §5323(j) and 49 CFR Part 661 et seq.)

A. APPLICABILITY

This article applies to all federally funded rolling stock purchases, construction contracts; and contracts for material and supplies for steel, iron or manufactured products over \$100,000.

- B.** The Contractor agrees to comply with the Buy America Act and its regulations

FR-03 Cargo Preference Act of 1954 (46 U.S.C. §55302, 46 CFR Part 381)

A. APPLICABILITY

This article applies to all federally funded rolling stock purchases, construction contracts; and contracts for material and supplies which may be transported by ocean vessels.

- B.** The Contractor agrees: a. to comply with the Cargo Preference Act of 1954 and its regulations. The Contractor agrees to include the requirements of this section in all subcontracts that involve the transport of equipment, material or commodities by ocean vessel.

FR-04 National Earthquake Hazards Reduction Program Reauthorization Act of 2004 (42 U.S.C. 7701 et seq., 49 CFR Part 41)

A. APPLICABILITY

This article applies to all federally funded architectural & engineering and constructions contracts for the design or construction of new buildings or additions to existing buildings.

- B.** The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the National Earthquake Hazards Reduction Program Reauthorization Action of 2004 and its regulations. The Contractor will certify to compliance to the extent required by the regulations. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the Act and its regulations and the certification of compliance issued on the Project.

FR-05 Energy Policy and Conservation Act (42 U.S.C. §6321 et seq., 10 CFR Part 431)

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts.

- B.** The Contractor or agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act and its regulations.

FR-06 Clean Water Act (33 U.S.C. §1251 et seq.)

A. APPLICABILITY

This article applies to all federally funded contracts over \$100,000.

- B.** (1). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act. The Contractor agrees to report each violation to SEPTA and understands and agrees that SEPTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2). The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FR-07 Access to Records (49 U.S.C. §5325 et seq., 49 CFR 633.15 – 633)

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts.

B. (1) Contractor agrees to provide SEPTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2).The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3).The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until SEPTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

(4).FTA does not require the inclusion of these requirements in subcontracts.

FR-08 Byrd Anti-Lobbying Amendment as amended by the Lobbying Disclosure Act of 1995 (31 U.S.C. §1352, 2 U.S.C. §1601, 49 CFR Part 20)

A. APPLICABILITY

This article applies to all federally funded contracts over \$100,000.

B. Contractor, if this Contract is for \$100,000 or more, shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying," and shall include this clause in each subcontract for \$100,000 or more and shall require its inclusion in all lower tier transactions for \$100,000 or more. Each contractor tier shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. §1352. Each contractor tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. §1352. Such disclosures are forwarded from contractor tier to tier up to SEPTA.

FR-09 Compliance with FTA Regulations, Policies, Procedures and Directives

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts.

- B.** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between SEPTA and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

FR-10 Clean Air Act (42 U.S.C. §7401 et seq)

A. APPLICABILITY

This article applies to all federally funded contracts over \$100,000.

- B.** (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, and its regulations. The Contractor agrees to report each violation to SEPTA and understands and agrees that SEPTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed under this Contract

FR-11 Davis-Bacon and Copeland Anti-Kickback Acts (40 U.S.C. §3141-3146, 29 CFR §5.1-5.33, 18 U.S.C. §874, 29 CFR Part 3)

A. APPLICABILITY

This article applies to all federally funded construction contracts over \$2,000 (including ferry vessels).

- B.** (1) The Contractor agrees to comply with the Davis-Bacon and Copeland Anti-Kickback Acts.

(2) **Withholding** - SEPTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper,

employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, SEPTA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(4) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(5) **Certification of eligibility** - (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

FR-12 Fair Labor Standards Act (29 U.S.C. 201, 29 CFR Part V)

A. APPLICABILITY

This article applies to all federally funded construction contracts (including ferry vessels), rolling stock purchases and operations/management contracts (except transportation services) over \$100,000.

B. (1). Overtime requirements - No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours unless they are compensated in accordance with Federal Labor Standards Act (FLSA) regulations.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause

set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – SEPTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(5) **Disputes** - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and SEPTA, the U.S. Department of Labor, or the employees or their representatives.

FR-13 Veterans Employment

A. APPLICABILITY

This article applies to all federally funded construction purchase orders and contracts.

B. Contractors working on a federally funded project give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC §2108) who have the requisite skills and abilities to perform the construction work required under the contract. This provision shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member any racial or ethnic minority, female, an individual with a disability, or former employee.

FR-14 No Obligation by the Federal Government

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts.

B. (1) SEPTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to SEPTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

FR-15 Program Fraud Civil Remedies Act (31 U.S.C. §3801 et seq., 49 CFR Part 31 18 U.S.C. §1001)

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts.

B. (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. Department Of Transportation regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FR-16 Government Wide Suspension and Debarment (13 CFR §500.109, 31 U.S.C. 6101 et

seq., 48 CFR §404).

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$25,000 and contracts.

- B.** The Contractor is required to comply with Government Wide Suspension and Debarment and must include the requirement in all its lower tier covered transactions.

FR-17 Use of Seat Belts (23 U.S.C. §402, Executive Order 13043)

A. APPLICABILITY

This article applies to all federally funded purchase orders and contracts.

- B.** Pursuant to Executive order No. 13043 and in accordance with 23 U.S.C. §402, the Contractor is encouraged to adopt and promote on-the-job seat belt use policy and program for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in all subcontracts entered into under this Contract.

FR-18 Recycled Products (42 U.S.C. §6962, 40 CFR Part 247, Executive Order 12873)

A. APPLICABILITY

This article applies to federally funded operations/management, construction, or materials and supplies purchase orders or contracts for items designated by the Environmental Protection Agency, when procuring \$10,000 or more per year.

- B. Recovered Materials** - The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247

FR-19 Contracts Involving Federal Privacy Act Requirements (5 U.S.C. §552)

A. APPLICABILITY

This article applies to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- B.** (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express

consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

FR-20 Civil Rights – (29 U.S.C. § 623, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.)

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$10,000 and contracts.

B. The above statutes apply to the underlying Contract

FR-21 Disadvantaged Business Enterprise – (49 CFR Part 26)

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts.

B. (1) Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises, as defined in 49 CFR Part 26, shall have the equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

(2) **DBE Obligation.** SEPTA and its contractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, SEPTA and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have maximum opportunity to compete for and perform contracts. SEPTA and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts assisted by the Department of Transportation.

FR-22 Incorporation of Federal Transit Administration (FTA) Terms – (FTA Circular 4220.1F)

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts.

- B.** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SEPTA requests which would cause SEPTA to be in violation of the FTA terms and conditions.

FR-23 National Intelligent Transportation System Architecture and Standards (ITS)

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts involving ITS projects.

- B.** The Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

FR-24 Contracts Involving Experimental, Developmental, or Research Work, Rights in Data

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts for professional and architectural and engineering services.

- B.** The Contractor agrees to follow the requirements as set forth in 37 U.S.C. 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements), 49 CFR part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and 49 CFR part 19 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations with regard to experimental, developmental or research work; rights in data; copyrights; and intangible property).

FR-25 Transit Employee Protective Agreements

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts

for transit operations.

- B.** The Contractor agrees to comply with the requirements as set forth in 49 U.S.C. 5310 (Formula Grants For Special Needs of Elderly Individuals and Individuals with Disabilities), 49 U.S. 5311 (Formula Grants for Other than Urbanized Areas), 49 U.S.C. 5333 (Labor Standards), and 29 CFR part 215 (Guidelines, Section 5333(b), Federal Transit Law).

FR-26 Texting While Driving and Distracted Driving

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts for transit operations.

- B.** Consistent with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10 “Text Messaging While Driving,” December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

FR-27 ADA Access

A. APPLICABILITY

This article applies to all federally funded purchase orders over \$3,000 and contracts for architectural & engineering, operations/management, rolling stock purchases and construction contracts.

- B.** Contractor shall comply with 49 U.S.C. §5301(d); all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; The American Disabilities Action of 1990 (ADA), as amended, 42 U.S.C. §12101 *et seq.*; The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et seq.*; and all applicable requirements of the following regulations and any subsequent amendments thereto:

- (1) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
- (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;

- (3) Join U.S. Architectural and Transportation Barriers Compliance Board (U.S. TBCB)/U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38;
- (4) U.S.DOT regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
- (5) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 CFR Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
- (8) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 CFR Part 64, Subpart F and
- (9) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194; and
- (10) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
- (11) Any implementing requirements FTA may issue

END OF SECTION

**FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED
PROVISIONS FOR CONTRACTS**

EEO/AA Contractual Requirements

In connection with the performance of the Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

Section C - U.S. Department Of Transportation Nondiscrimination Requirements

During the performance of the Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the Contract.
2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under the Contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.
4. **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SEPTA or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to SEPTA, or the FTA, as appropriate, and shall set forth what

efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of the Contract, SEPTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
 - b. Cancellation, termination or suspension of the Contract, in whole or in part.

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Restrictions on Lobbying
(If Contract Sum exceeds \$100,000)

1. Certification Requirements

Contractors, at any tier, who apply or bid for a contract of \$100,000 or more, shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to SEPTA.

2. Disclosure Requirements

- a. Each contractor who requests and receives from SEPTA a Federal contract shall file with SEPTA a disclosure form, Standard Form - LLL, "Disclosure of Lobbying Activities," as set forth on pages 41 through 43 of this Contract, if such contractor has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered federal action), which would be prohibited under 49 CFR part 20 if paid for with appropriated funds.
- b. Each contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such contractor under paragraph 2.a. of this section. An event that materially affects the accuracy of the information reported includes:
 - (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- c. Any person who requests or receives from a contractor referred to in paragraph 2.a. of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.

- d. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Contractor referred to in paragraph 2.a. of this section. That contractor shall forward all disclosure forms to SEPTA.

3. Penalties

- a. Any person who makes an expenditure prohibited under 49 CFR part 20 shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- b. Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- c. Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

4. Cost allowability

Nothing in this clause is to be interpreted to make allowable or reasonable any revenues which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, revenues made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or Contractor make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional district, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub award recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Sub awards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative Contracts, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/ proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contract with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form; print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Service (0348-0046), Washington, D.C.20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0348-0046

Reporting Entity:

Page of

Authorized for Local Reproduction
Standard Form - LLL-A

Attachment 5

Certification Regarding Lobbying

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an Officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____

Company Name: _____

Title: _____

Date: _____

[END OF SECTION]

Attachment 6

Disadvantaged Business Enterprise (DBE) Requirements

REQUEST FOR PROPOSAL WITHOUT DBE GOALS

Disadvantaged Business Enterprise (DBE) Participation solicitation and contract provisions pursuant to U. S. Department of Transportation regulations (Title 49 CFR part 26), FTA Circular 4716.1A, and SEPTA Policy are provided in this Section.

A. DBE CONTRACT GOALS

In connection with this solicitation and any resulting contract, SEPTA has not established a goal for Disadvantaged Business Enterprise (DBE) participation. This is in accordance with the DBE Regulations at 49 CFR part 26, which require SEPTA to attempt to use race-neutral means of obtaining DBE participation whenever possible.

B. DEFINITIONS

1. **"Affiliation"** has the same meaning the term has in the Small Business Administration regulations, 13 CFR part 121:
 - (a) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (1) one concern controls or has the power to control the other; or
 - (2) a third party or parties controls or has the power to control both; or
 - (3) an identity of interest between or among parties exists such that affiliation may be found.
 - (b) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.
2. **"Contract Sum"** means total contract price, including any change orders and amendments.
3. **"Disadvantaged Business Enterprise"** or **"DBE"** means a for-profit small business concern (a) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individual(s); and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it and is certified as such by SEPTA's DBE Program Office or by Pennsylvania's Unified Certification Program (PAUCP).
4. **"Joint Venture"** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct clearly defined portion of the work to be performed by the joint venture and whose share in

the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest (see paragraph D.5. below).

5. **"Small Business Concern"** means a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121), that also does not exceed the following size determinations:
 - (a) to be an eligible DBE, a firm (including its affiliates) must be an existing for-profit small business, as defined by Small Business Administration (SBA) standards found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.
 - (b) In addition to the requirements of (a) above, a firm must also meet the annual gross receipts requirements defined in SBA regulations 13 CFR §121.402

6. **"Socially and Economically Disadvantaged Individuals"** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - (a) Any individual which SEPTA finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - (b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) "Asian-Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U. S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans" which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

C. **SUBMISSION REQUIREMENTS**

1. In connection with this solicitation and any resulting contract, SEPTA has not established goals for Disadvantaged Business Enterprise (DBE) participation. This is in accordance with

the DBE Regulations at 49 CFR §26.39, §26.51, which require SEPTA to attempt to use race-neutral means of obtaining DBE participation whenever possible. If your firm utilizes a certified DBE subconsultant/supplier, a dually executed DBE Participation Schedule which is attached must be submitted for each DBE subconsultant/supplier, with the Technical Proposal and include the following:

- (a) The name and address of the DBE firm that will participate in the Contract.
- (b) A description of the work that the DBE will perform
- (c) The percent of the participation of the DBE firm participating

The Proposer is required to submit a properly executed DBE Participation Schedule for each DBE subconsultant/supplier identified to participate in the Contract.

Within forty-eight (48) hours from notification by SEPTA, Proposer is required to submit a Commitment/Confirmation document for each DBE firm scheduled to participate. The Commitment/Confirmation document represents:

- (a) The proposer's commitment to use a DBE subconsultant/supplier whose participation it submitted to meet a contract goal; and
- (b) The DBE subconsultant/supplier's confirmation that it is participating in the Contract as provided in the Proposer's commitment.
- (c) If the contract goal is not met, Proposer must provide evidence of its Good Faith Efforts in accordance with Paragraph E. Determination of DBE Responsibility.

In accordance with 49 CFR §26.39 (Fostering Small Business Participation), the Proposer is also required to identify all other subconsultants/suppliers scheduled to participate in the Contract by submitting the attached Non-DBE Participation Schedule with their Technical Proposal.

Any questions regarding DBE and or SBE Participation should be directed to SEPTA's DBE Program Office at (215) 580-7278.

- 2. The requirements of this section also apply to DBE Proposers for prime contracts. In determining whether a DBE Proposer for a prime contract has met a Contract goal, the work the DBE has committed to perform with its own forces as well as the work it has committed to be performed by DBE subconsultants and DBE suppliers will be counted.
- 3. SEPTA's DBE Program Office will provide upon request SEPTA's DBE Directory. The DBE Directory is revised on a continual basis; i.e., at least weekly, and identifies all firms eligible to participate as DBEs in SEPTA's program. Additionally, interested persons can obtain access to a state-wide combined directory through SEPTA's membership in the Pennsylvania Unified Certification Program (PAUCP) at <http://www.paucp.com>. These DBE directories list the firm's name, address, phone number, fax number, email address and the types of work the firm has been certified to perform as a DBE.

D. DETERMINATION OF PERCENTAGE OF DBE PARTICIPATION

DBE participation shall be credited toward achieving the DBE Goal as follows:

1. When a DBE participates in a contract, only the value of the work actually performed by the DBE will be counted toward DBE goals.
2. SEPTA will count the entire amount of that portion of a construction contract (or other contract covered by paragraph D.3. below) that is performed by the DBE's own forces, including the cost of supplies and materials obtained by the DBE for the work of the contract, and supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subconsultant purchases or leases from the prime contractor or its affiliates).
3. SEPTA will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, toward DBE goals, provided SEPTA determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
5. When a DBE performs as a participant in a joint venture, SEPTA will count a portion of the total value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
6. SEPTA will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract, as determined by SEPTA's DBE Program Office.
 - (a) A DBE is considered to perform a commercially useful function when it is responsible for execution of a specific scope of work in a contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity when ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, SEPTA will evaluate the amount of work subcontracted; industry practices; whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing; and the DBE credit claimed for its performance of the work and other relevant factors.
 - (b) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, SEPTA will examine similar transactions, particularly those in which DBEs do not participate.

- (c) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, SEPTA will presume that the DBE is not performing a commercially useful function.
 - (d) When a DBE is presumed not to be performing a commercially useful function, SEPTA will accept evidence from the DBE or prime contractor to rebut this presumption. Evidence from independent sources, such as trade journals or independent studies by consultants, is particularly desirable in such circumstances.
7. SEPTA will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- (a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - (b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
 - (c) The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
 - (d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
 - (e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - (f) For purposes of this paragraph D.7., a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
8. SEPTA will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- (a) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials and supplies toward DBE goals. For purposes of this section, a "manufacturer" is a firm that operates or maintains a factory or

establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the Specifications.

(b) If the materials or supplies are purchased from a DBE Regular Dealer count 60% of the cost of the materials and supplies toward DBE goals. For purposes of this section, a "regular dealer" is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the Specifications and required under the Contract are brought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as previously provided if the person both owns and operates distribution equipment. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

(c) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, SEPTA will only count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided SEPTA determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves will be counted towards DBE goals.

9. SEPTA will not count the participation of a DBE subconsultant toward the prime contractor's DBE achievements until the amount being counted toward the goal has been paid to the DBE.

E. **DBE MODIFICATION(S) OR SUBSTITUTION(S)**

1. If after award a DBE subconsultant included on the DBE Participation Schedule submitted to SEPTA, is terminated, or fails to complete its work on the Contract for any reason, SEPTA must be notified within 48 hours.

2. If after award of the Contract, a DBE subconsultant is terminated, or fails to complete its work on the Contract for any reason, SEPTA will require the prime contractor to make good faith efforts to find another DBE subconsultant to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same dollar value of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established by SEPTA.

F. **REPORTING AND RECORDKEEPING REQUIREMENTS**

To ensure that all obligations under the contracts awarded to DBEs are met, SEPTA's DBE Program Office shall monitor the Contractor's performance during the life of the Contract.

1. Upon execution of its SEPTA contract, the Contractor shall enter into written subcontract agreement(s) with the DBE(s) listed in its DBE Participation Schedule. Copies of the Contractor's executed subcontract agreement(s) with DBEs shall be provided to SEPTA's DBE Program Office by the Contractor immediately upon execution.
2. The Contractor shall submit a work schedule outlining when the DBE subconsultant(s) will commence and complete work on the project, at such times as prescribed by SEPTA's DBE Program Office
3. The Contractor shall keep a regular accounting of actual expenditures of funds made under all contract and subcontract agreements with DBEs; specifically, an accounting of the actual amount of DBE expenditures for each contract. **The Contractor shall submit a DBE Invoice Payment Report to SEPTA with each invoice or request for payment from SEPTA.**
4. The Contractor shall submit monthly reports of actual contract expenditures to DBE's by the Contractor. This information must be submitted electronically via SEPTA's website (<http://bizweb.septa.org/bizwebsepta>).
5. The Contractor and subconsultant(s) shall permit access to their books, records and accounts by SEPTA (or its designated representative) or the Federal Transit Administration (FTA) for the purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Contractor in a fashion which is readily assessable to SEPTA and/or the FTA for a minimum of five (5) years following completion of this Contract.
6. With regard to any claim or dispute with respect to payment of a subconsultant at any tier, Contractor expressly agrees to defend, indemnify and hold SEPTA harmless in the event any suit is brought on account of a dispute between any of the parties including but not limited to subconsultant(s), supplier(s) and material men and in particular, Contractor shall assume the defense affirmatively at its sole cost whenever such suit is brought in any jurisdiction.

G. **FTA DBE AUDIT REQUIREMENT – DBE INVOICE PAYMENT REPORT**

The Contractor shall keep a regular accounting of actual expenditures of funds made under all contract and subcontract agreements with DBEs, specifically, an accounting of the actual amount of DBE expenditures for each contract.

H. **MISCELLANEOUS**

The Contractor is encouraged to utilize the services of financial institutions owned and controlled by socially and economically disadvantaged individuals as defined at 49 CFR part 26.5.



Disadvantaged Business Enterprise (DBE) INVOICE PAYMENT REPORT (IPR)

APPLICATION DATE: _____ PERIOD FROM: _____ TO: _____ CONTRACTOR NAME AND ADDRESS: _____ _____ PROJECT NAME: _____ _____ CONTRACT NUMBER: _____ PURCHASE ORDER NUMBER: _____	FOR SEPTA'S USE ONLY Contractor's Application for Payment <input type="checkbox"/> APPROVED <input type="checkbox"/> REJECTED <input type="checkbox"/> ITEM(S) DISALLOWED (specify): _____
SEPTA Project Manager	

PART I: CONTRACT INFORMATION	PART II: DBE INFORMATION
Original Contract Sum: _____	Original DBE Subcontractor(s) Sum: _____
Net Change by Change Order: _____	Net Change by Change Order: _____
Contract Sum to Date: _____ \$0.00	DBE Subcontractor(s) Sum to Date: _____ \$0.00
Total Billed to Date: _____	Total Invoices Submitted for DBE Payment to Date: _____
Retainage: 0.00% _____ \$0.00	Retainage: 0.00% _____ \$0.00
Total Billed to Date Less Retainage: _____ \$0.00	Total Invoices Submitted for DBE Payment to Date Less Retainage: _____ \$0.00
Total Previous Invoices Submitted Less Retainage: _____	Total Previous Invoices Submitted Less Retainage: _____
Current Amount Due: _____ \$0.00	Current DBE Payment Due: _____ \$0.00

List DBE Subcontractor(s), DBE Invoice Number(s) and the current DBE Payment Due:		
DBE Subcontractor Name	DBE Invoice Number	DBE Amount Due

The undersigned Contractor certifies that the above listed DBE charges have been incurred by the respective DBE subcontractor(s) and that the DBE firm(s) has(ve) been paid or will be paid this amount from the proceeds of the attached invoice. The Contractor further certifies that records supporting these DBE expenditures, including retainage, shall be maintained and made available to SEPTA or its designee upon request.

Company Official: _____ Title: _____
(type or print) (type or print)

_____ Date: _____
(signature)



SEPTA

NON-DBE PARTICIPATION SCHEDULE
(Request for Proposals)

As specified in the DBE Participation Section included in the Solicitation Documents, the Proposer must furnish to SEPTA the details of non-DBE subconsultant participation.

PROJECT NAME: _____

RFP NO.: _____

- 1. WORK/SERVICES TO BE PERFORMED BY SUBCONSULTANTS
- 2. MATERIAL/SUPPLIES TO BE PURCHASED FROM SUPPLIERS

NAME OF FIRM CONTACT PERSON, BUSINESS ADDRESS, TELEPHONE NUMBER		DESCRIPTION OF WORK/SERVICES TO BE PERFORMED / MATERIAL TO BE SUPPLIED	TOTAL PARTICIPATION
Firm Name:			%
Contact:			
Address:			
Tele. No.:			
Firm Name:			%
Contact:			
Address:			
Tele. No.:			
Firm Name:			%
Contact:			
Address:			
Tele. No.:			
Firm Name:			%
Contact:			
Address:			
Tele. No.:			
Firm Name:			%
Contact:			
Address:			
Tele. No.:			

(Type or Print all information)

Name of Proposer: _____
(type or print)

Tele. No.: () _____

Email: _____

Contact: _____
(type or print)

Title: _____

Signature: _____

Date: _____

MUST BE PROVIDED ON BIDDER'S OFFICIAL LETTERHEAD

RE: DBE PARTICIPATION - COMMITMENT/CONFIRMATION
SEPTA Sealed Bid
No. _____

Project Name: _____

<Bidder> is committed to contracting with <DBE Firm> for participation on the SEPTA solicitation referenced above. <DBE Firm> is scheduled to provide the following services and/or materials/supplies:

<Provide a Detailed Description of the Services and/or Materials/Supplies* to be furnished by the named DBE Firm>.
For approximately \$<\$\$,\$\$\$>, or xx% of the total contract.

(*60% of the total agreed price for DBE suppliers will be credited towards the DBE goal)

_____ Bidder's Representative Name/Title (<i>please type or print</i>)	_____ Signature	_____ Date
---	--------------------	---------------

_____ DBE Firm's Representative Name/Title (<i>please type or print</i>)	_____ Signature	_____ Date
---	--------------------	---------------

Attachment 7

SEPTA Solicitation Statistics



SEPTA SOLICITATION STATISTICS

Dear Contractor/Consultant/Subcontractor/Subconsultant:

In accordance with Federal Regulation 49 CFR part 26.11, SEPTA must maintain bidding statistics on **all** contractors/consultants and subcontractors/subconsultants bidding on contracts. Please include copies of this form with your bid/proposal package to any subcontractors/subconsultants. You are required to return the form for each bidder/proposer with your bid/proposal package. This applies to both disadvantaged business enterprises (DBEs) and non-DBEs (a DBE is a firm which meets the criteria set forth in 49 CFR part 26).

Thank you for your assistance with this request. If you should have any questions, comments or suggestions, please contact the Director of SEPTA's DBE Program Office at 215-580-3710.

The information gathered on this form will be used for statistical purposes only and is set forth under 49 CFR part 26.

Firm Name:	_____
Firm Address:	_____
Description of Services:	
NAICS Code: _____ (www.census.gov/epcd/www/naics.html)	
Status: DBE _____ Non-DBE _____	
Month/Year firm established: _____	

Company Owner(s) Ethnic Group Membership: *(optional)*

- Black

 Hispanic

 Native American
 Asian Pacific

 Subcontinent Asian
 Other *(specify)* _____

Annual Gross Receipts of the Firm: (check one)

- | | |
|-----------------------------------|----------------------------------|
| Less than \$500,000 _____ | \$500,000 - \$1 Million _____ |
| \$1 Million - \$5 Million _____ | \$5 Million - \$10 Million _____ |
| \$10 Million - \$20 Million _____ | Above \$20 Million _____ |

Project Name: _____	Bid Number: _____
Name (Type or Print): _____	Date: _____
Title: _____	
Signature: _____	Telephone No.: () _____
Email Address: _____	Facsimile No.: () _____

Rev 092410

Attachment 8

Project Progress And Performance Evaluation Form

PERFORMANCE EVALUATION (OTHER THAN ARCHITECT-ENGINEER)		1. FUND NUMBER 1.		
		2. PURCHASE ORDER		
		3. CPMS NUMBER		
IMPORTANT: Be sure to complete both pages of this Performance Evaluation. If additional space is necessary for any item, use Remarks Section on next page.				
4. TYPE OF REPORT <i>(Check one)</i> <input type="checkbox"/> INTERIM <input type="checkbox"/> COMPLETION OF SERVICE OR STUDY <input type="checkbox"/> TERMINATION		5. REPORT NUMBER	6. DATE OF REPORT	
7. NAME AND ADDRESS OF CONSULTANT		8. PROJECT DESCRIPTION AND LOCATION		
9. OFFICE RESPONSIBLE FOR				
A. SELECTION OF CONSULTANT		B. NEGOTIATION/AWARD OF CONTRACT	C. ADMINISTRATION OF CONTRACT	
10. CONTRACT DATA				
A. TYPE OF WORK		B. TYPE OF CONTRACT <input type="checkbox"/> FIXED PRICE <input type="checkbox"/> COST PLUS FIXED FEE <input type="checkbox"/> OTHER <i>(Specify)</i>		
C. PROJECT COMPLEXITY <input type="checkbox"/> DIFFICULT <input type="checkbox"/> SIMPLE <input type="checkbox"/> ROUTINE	D. PROFESSIONAL SERVICES CONTRACT			
	INITIAL CONTRACT SUM	AMENDMENTS	CLAIMS BY CONSULTANT	(a) FINAL CONTRACT SUM
	NO.	AMOUNT	NO	AMOUNT
E. DATE OF NOTICE TO PROCEED	F. CONTRACT COMPLETION DATE <i>(Including extensions)</i>		G. ACTUAL COMPLETION DATE	
11. KEY CONSULTANT DATA				
A. NAMES		B. ADDRESS	C. SPECIALTY	
12. OVERALL RATING <input type="checkbox"/> EXCELLENT <input type="checkbox"/> AVERAGE <input type="checkbox"/> POOR		13. RECOMMENDED FOR FUTURE CONTRACTS? <input type="checkbox"/> YES <input type="checkbox"/> NO <i>(If "NO", explain in REMARKS on reverse)</i>		
14A. NAME AND TITLE OF RATING OFFICIAL		15A. NAME AND TITLE OF REVIEWING OFFICIAL		
14B. SIGNATURE	14C. DATE	15B. SIGNATURE	15C. DATE	

PERFORMANCE EVALUATION (Other than Architect/Engineer)
(Continuation from previous page)

Consultant:

Performance Elements	N/A	Excellent	Average	Poor	No Information	Signature & Date
Professionalism						
Accuracy of Work						
Cooperation						
Completeness						
Coordination						
Effectiveness of Management						
Timely Performance						
Personnel Qualifications						
Quality of Presentation						
Quality of Work						

REMARKS *(Explain all Excellent and Poor ratings.)*

Attachment 9

Certification Regarding Compliance With Immigration Reform and Control Act of 1986

**Certification Regarding Compliance with
Immigration Reform and Control Act of 1986**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. Contractor has and will continue to comply with, for the duration of this Contract, the requirements of 8 U.S.C. § 1324a with respect to the hiring, recruiting or referral for employment of an alien in the United States of America.
2. Contractor will:
 - 1) Complete the Employee Eligibility Form (I-9) for each person that it hires
 - 2) Utilize the electronic employment verification system (“E-Verify”) designated in Executive Order 12989, and shall keep each I-9 Form on file for at least three (3) years, or one (1) year after employment ends, whichever is longer.
3. Contractor shall require that the provisions of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the parties entered into this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Act 43 of 2006, the Illegal Alien Labor on Assisted Act also known and cited as the Prohibition of Illegal Alien Labor on Assisted Projects Act.

Signature: _____

Company Name: _____

Title: _____

Date: _____

[END OF SECTION]

Attachment 10

Commonwealth of Pennsylvania Contract Requirements

Commonwealth of Pennsylvania Contract Requirements

DEFINITIONS:

- A. For the purpose of these provisions, the term **Contractor** is defined as any person, including, but not limited to, a bidder, offeror, supplier, or subgrantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or subgrant with SEPTA.

SR-1 Nondiscrimination/Sexual Harassment Clause.

A. APPLICABILITY

This article applies to all purchase orders and contracts.

B. The contractor agrees:

In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under any subgrant agreement, contract, or subcontract, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of SEPTA shall not discriminate in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

Any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any of its employees.

Any subgrantee, contractor or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the grant services are performed shall satisfy this requirement.

Any subgrantee, contractor or any subcontractor shall not discriminate in violation of the PHRA and applicable federal laws against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.

Each subgrantee, contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. Each

subgrantee, contractor and subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. Any subgrantee, any contractor or any subcontractor shall, upon request and within the time periods requested by SEPTA, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the granting agency and the Bureau of Small Business Opportunities (BSBO), for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.

Any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.

Each subgrantee’s, contractor’s and subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the agreement through the termination date thereof. Each subgrantee, contractor and subcontractor shall have an obligation to inform the SEPTA if, at any time during the term of the agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.

SEPTA may cancel or terminate the agreement and all money due or to become due under the agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the SEPTA may proceed with debarment or suspension and may place the subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

SR-2 ADA Provision

A. APPLICABILITY

This article applies to all purchase orders and contracts.

B. During the term of this agreement, the contractor agrees as follows:

Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the

Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by SEPTA through contracts with contractors.

The contractor shall be responsible for and agrees to indemnify and hold harmless SEPTA from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of the above paragraph.

SR-3 Contractor Integrity Provisions.

A. APPLICABILITY

It is essential that those who seek to contract with SEPTA observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of SEPTA's contracting and procurement process.

DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

"Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

"Consent" means written permission signed by a duly authorized officer or employee of SEPTA, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, SEPTA shall be deemed to have consented by virtue of the execution of this contract.

"Contractor" means the individual or entity, that has entered into this contract with SEPTA.

"Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, SEPTA's Board members or owners of 5 percent or more interest in the Contractor.

"Financial Interest" means either:

- (1) Ownership of more than a five percent interest in any business; or
- (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

"Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct,

Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

“**Non-bid Basis**” means a contract awarded or executed by SEPTA with Contractor without seeking bids or proposals from any other potential bidder or offeror.

B. In furtherance of this policy, Contractor agrees to the following:

Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with SEPTA.

Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the SEPTA and SEPTA employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well- lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to SEPTA in writing and SEPTA consents to Contractor’s financial interest prior to SEPTA’s execution of the contract. Contractor shall disclose the financial interest to SEPTA at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor’s submission of the contract signed by Contractor.

Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

- (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3) had any business license or professional license suspended or revoked;

- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and SEPTA will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify SEPTA in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that SEPTA may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a SEPTA officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the SEPTA contracting officer or SEPTA's Office of the Inspector General in writing.

Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify SEPTA in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse SEPTA for the reasonable costs of investigation incurred by SEPTA's Office of the Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the

Contractor and SEPTA that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

Contractor shall cooperate with the Commonwealth's Office of the Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between SEPTA and any such subcontractor, and no third party beneficiaries shall be created thereby.

For violation of any of these Contractor Integrity Provisions SEPTA may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with SEPTA and the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

SR-4 Contractor Responsibility.

A. APPLICABILITY

This article applies to all purchase orders and contracts.

- B.** For the purpose of these provisions, the term "Contractor" is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under institutions. The term "Contractor" may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The Contractor must certify, in writing, for itself and all its subcontractors, that as

of the date of its execution of any Commonwealth contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.

2. The Contractor must also certify, in writing, that as of the date of its execution of any Commonwealth contract, it has no tax liabilities or other Commonwealth obligations.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state governmental entity. Such notification shall be made within 15 days of suspension or debarment.
4. The failure of the Contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for reasonable costs of investigation incurred by the Office of the Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain the current list of suspended and debarred Commonwealth Contractors by either searching the Internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125

SR-5 Retainage

A. APPLICABILITY

This article applies to all construction purchase orders and contracts.

- B.** SEPTA may withhold an amount not to exceed ten (10%) percent of SEPTA’s portion of net Project cost of this Agreement to ensure substantial completion by the contractor of the Project. SEPTA may at any time release any portion of any such retainage if, in the opinion of SEPTA , the contractor has substantially completed sufficient portions of the Project to justify such payments.

SR-6 Steel Products

A. APPLICABILITY

This article applies to all purchase orders and contracts.

- B.** All steel products used or supplied in the performance of the Contract shall be products produced from steel made in the United States in conformity with the Steel Products Procurement Act of 1978 (Act No. 3 of 1978, march 3, P.L. 6 (73 P.S. §1881 et seq.)), as amended and, if the federal Buy America requirements are applicable to the Contract, in full conformity with the Buy America provisions of 49 U.S.C. §5323 (j) [formerly the Federal Surface Transportation Assistance Act of 1982, as amended] and the applicable regulations in 49 CFR part 661.

Contractor shall insert this requirement as a special condition for any subcontract awarded in the performance of the Project.

SR-7 Diverse Business Participation for Non-Federally-Funded Projects

A. APPLICABILITY

This article applies to all purchase orders and contracts.

- B.** For non-federally funded projects, the Contractor shall comply with provisions of Section 303 of Title 74 of Purdon's Statutes. 74 Pa.C.S. §303 (Diverse business participation)."

SR-8 Right To Know

A. APPLICABILITY

This article applies to all purchase orders and contracts.

- B.** Subgrantee or Contractor understands that this Agreement and records related to or arising out of the Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”).

If SEPTA needs the Subgrantee’s or Contractor’s assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the Subgrantee or Contractor using the legal contact information provided in the Agreement. The Subgrantee or Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to SEPTA.

Upon written notification from SEPTA that it requires Subgrantee's or Contractor's assistance in responding to a request under the RTKL for information related to this Agreement that may be in Subgrantee's or Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), Subgrantee or Contractor shall:

- (1) Provide SEPTA, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in Subgrantee's or Contractor's possession arising out of this Agreement that SEPTA reasonably believes is Requested Information and may be a public record under the RTKL; and
- (2) Provide such other assistance as SEPTA may reasonably request, in order to comply with the RTKL with respect to this Agreement.

If Subgrantee or Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that Subgrantee or Contractor considers exempt from production under the RTKL, Subgrantee or Contractor must notify SEPTA and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of Subgrantee or Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

SEPTA will rely upon the written statement from Subgrantee or Contractor in denying a RTKL request for the Requested Information unless SEPTA determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should SEPTA determine that the Requested Information is clearly not exempt from disclosure, Subgrantee or Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of SEPTA's determination.

If Subgrantee or Contractor fails to provide the Requested Information within the time period required by these provisions, Subgrantee or Contractor shall indemnify and hold SEPTA harmless for any damages, penalties, costs, detriment or harm that SEPTA may incur as a result of Subgrantee's or Contractor's failure, including any statutory damages assessed against SEPTA.

SEPTA will reimburse Subgrantee or Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

Subgrantee or Contractor may file a legal challenge to any SEPTA decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Subgrantee or Contractor shall indemnify SEPTA for any legal expenses incurred by SEPTA as a result of such a challenge and shall hold SEPTA harmless for any damages, penalties, costs, detriment or harm that SEPTA may incur as a result of Subgrantee's or Contractor's failure, including any statutory damages assessed against SEPTA, regardless of the outcome of such legal challenge. As between the parties, Subgrantee or Contractor agrees to waive all rights or remedies that may be available to it as a result of SEPTA's disclosure of Requested Information pursuant to the RTKL.

The Subgrantee's or Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the Subgrantee or Contractor has Requested Information in its possession.

[END OF SECTION]

Attachment 11

SEPTA EEO/AA Contractual Requirements

SEPTA EEO/AA Contractual Requirements

Nondiscrimination:

During the performance of the Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, religion, sex, age, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
3. The Contractor will send to each Labor Union or Representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said Labor Union or Worker's Representative of the Contractor's commitments under this Attachment, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all Affirmative Action provisions of the Contract.
5. The Contractor will furnish all information and reports required by SEPTA and will permit access to its books, records, and accounts by the EEO Compliance Officer for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clause of the Contract, the Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further SEPTA contracts.
7. The Contractor will include the portion of the sentence immediately preceding Paragraph 1 and the provisions of paragraph 1 through 8 in every subcontract or purchase order so that such provisions shall be binding upon each subconsultant or vendor. The Contractor will take such action with respect to any subcontract or purchase order as SEPTA may direct as a means of enforcing such provisions, including sanctions for noncompliance.

8. The Contractor shall have an Affirmative Action Plan declaring that it does not discriminate on the basis of race, color, religion, creed, national origin or sex and specifying minority and female goals to assure implementation of the Plan.

[END OF SECTION]