

## INSTRUCTIONS TO BIDDERS

### 1. **Read All Contract Documents!!!**

Bidders shall carefully examine the Contract Documents in their entirety as no extra payments or allowance will be made for ignorance of or failure to comprehend, any of the conditions set out anywhere in this entire package.

### 2. Firm Bids

Each bid submitted shall remain firm for at least ninety (90) days from the date of the Bid Opening and may not be withdrawn in whole or in part during that time. Bidder shall forfeit its bid security to the extent of the damage to SEPTA occasioned by such withdrawal.

### 3. Complete Price

The price quoted in any bid submitted shall include all items of labor, materials, tools, equipment, insurance and other costs necessary to fully complete the work pursuant to the Contract Documents. It is the intention of the Contract Documents to provide and require a completed work project ready for operation. Any work items omitted from such Contract Documents which are clearly necessary for the completion of such work and its appurtenances shall be considered a part of such work although not directly specified or called for in the Contract Documents. The total price quoted for any item(s) shall be deemed by SEPTA to include the costs and NO EXTRAS will be allowed on that account. Bids which purport to exclude these costs will be rejected as non-responsive.

### 4. Basis of Award

An award, if any will be to the lowest responsive, responsible bidder excluding any cash discount offered for all item(s) listed in the Schedule A per Specifications, if applicable, as deemed in the best interest of SEPTA. Any contract(s) to be awarded will be awarded to the RESPONSIBLE BIDDER(S) submitting the LOWEST RESPONSIVE BID or COMBINATION of BIDS. In considering alternates the following will prevail:

- a. Where alternates (additive or deductive) are not permitted or requested or where SEPTA elects to award a contract excluding alternates, the award, if one is made, shall be made to the responsible bidder submitting the lowest BASE BID.
- b. Where alternates (additive or deductive) are required to be bid and such alternates may be selected by SEPTA as part of the performance under the contract, the award(s), if one is made, shall be made to the responsible bidder submitting the lowest BASE BID (price without consideration of alternates). However, award of work for alternates may only be made to the bidder submitting the lowest BASE BID if the total of the BASE BID and the bid for such alternate or alternates, is the lowest bid submitted. If the bidder submitting the lowest BASE BID is not the lowest bidder for the total BASE BID plus alternate, or alternates, no alternates shall be awarded.
- c. Responsiveness. A responsive bid is one, both as to form and substance, which conforms to all the essential terms and conditions of the Invitation and in which the work/material offered meets the specifications in all essential respects. SEPTA

reserves the right to waive minor informalities or irregularities whenever it is to the advantage of SEPTA to do so.

d. Responsibility. SEPTA will only award a contract to a firm which it has determined to be responsible. The Bidder shall furnish adequate documentation, as determined by SEPTA, within five (5) days of receipt of SEPTA's written request to permit SEPTA to determine the responsibility of bidder. A responsible bidder is one which 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,” 2CFR Parts 180 and 1200, or under FAR at 48CFR Chapter 1 Part 9.4 or any Commonwealth of Pennsylvania funded programs;
- (3) Affirmative Action and DBE – Is in compliance with the Common Grant Rules’ affirmative action and DOTs’ 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, construction 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.

**SEPTA RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS OR ANY PART OF ANY OR ALL BIDS, WHENEVER IT IS IN THE BEST INTEREST OF SEPTA TO DO SO.**

5. Taxes

Bidder, as a result of any contract entered into pursuant to this Invitation, 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, bidder 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 Invitation.

Bidder acknowledges that nothing in this Invitation constitutes legal advice by SEPTA thereon. Bidder, to whatever extent that Bidder deems necessary, must obtain its own legal advice on any question concerning relevant taxes. Bidder is responsible for making its own investigation to determine whether or not it is subject to municipal, Commonwealth or Federal taxes and for paying for such tax if applicable. Bidders 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.

6. Time of Completion, Completion Date

The work must be completed within one thousand ninety-five (1,095) calendar days from the date of receipt by contractor of SEPTA's NOTICE TO PROCEED.

7. Bid Security

Each complete bid must be accompanied by: (1) BID BOND; (2) CASHIER'S CHECK; (3) CERTIFIED CHECK; (4) TREASURER'S CHECK; and/or (5) OFFICIAL BANK CHECK, in an amount of not less than FIVE PERCENT (5%) of the Amount Bid, including alternates, if any, and drawn in favor of the SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY (hereinafter called "Bid Security"). The Bid Security of the three lowest bidders shall be retained by SEPTA for a period of ninety (90) days, or until a contract is awarded and entered into or all bids are rejected, whichever comes first. SEPTA shall be entitled, but shall not have the obligation to cash bidder's Bid Security check and to invest the proceeds and to retain any income generated thereby and bidder, by submission of its bid, consents to SEPTA's retention of any income generated by such Bid Security. As used in this provision "Amount Bid" shall mean that amount which is the sum of the BASE BID plus all alternates which are bid unless such alternates are mutually exclusive or would result in deducts in which case "Amount Bid" as used herein shall be the highest possible contract price taking into consideration all possible combinations of alternates which might be included in an actual award.

The Bid Bond must be issued by a fully qualified surety company acceptable to SEPTA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder.

8. Discrepancies - Duty of Bidder to Clarify Ambiguities

Should a bidder find any discrepancy or ambiguity, or omission from the drawings and/or specifications, or should it be in doubt as to their meaning, the Bidder must at once notify SEPTA who will, if it determines it to be necessary, send a written addendum for clarification purposes to all bidders. Only written modifications issued as addenda will effect changes in the Bidding and/or Contract Documents. Failure of bidder to clarify ambiguities prior to bid opening constitutes a waiver of their right to raise any such ambiguity after bid opening.

9. Addenda

The contents of all addenda to bidders are to be incorporated in the bid and will become part of the Bidding and/or Contract Documents. Revisions to the Bid Opening date, if any, will be noted on said addenda.

10. Site Inspections

Bidder(s) shall visit the site(s) of the work to obtain first-hand knowledge of existing conditions. Visits to the work site(s) shall be made by pre-arranged appointments with SEPTA's Michael Piselli, telephone no. 215-580-8364.

Failure to inspect the work site(s) may be grounds for disqualification of a bidder at the discretion of SEPTA. In any event, no allowances or extra payments shall be made on account of site conditions which reasonable inspection would have disclosed.

11. Subcontractor's Listing

Bidders, as part of their bids, are to submit a subcontractors' list where indicated on the bid form. SEPTA reserves the right, prior to award, to approve or disapprove all subcontractors, who will be hired to perform portions of the work. Apparent low bidder must submit to SEPTA the list of their proposed subcontractors within five (5) days of the bid opening utilizing the Subcontractor/Supplier Participation Schedule. The awardee must also provide SEPTA with an updated subcontractors list if any changes are made during the course of the project within five (5) days of any respective changes.

12. Or Equals

Where items of equipment and/or material is defined by using a trade name or the name and catalog number of a particular manufacturer or vendor, or a limited description, the term "OR EQUAL" if not written thereafter shall be implied. Any reference to a particular manufacturer's product either by trade name or limited description is only for purposes of setting a standard of performance, quality, composition, construction or size.

The term "OR EQUAL" means any other manufactured product or article which is equivalent in material, workmanship and service and is as efficient and economical in operation in the opinion of SEPTA.

13. Bid Package

The Bid Package that will be submitted to SEPTA must include the following **to be considered responsive**:

- a. Signed Bid Acknowledgement Form.
- b. Bid Security (if applicable).
- c. Buy America Certificate, signed (If the highest possible Contract Sum, taking into consideration of all items bid and all possible combinations of alternates which might be included in the actual award is over \$100,000).

14. Contract

The bidders should execute and submit one (1) copy of the Agreement (pages 1 through 145) and all of its Exhibits and, if applicable, Special Conditions.

If bidder's Bid Form contains base bid and ALTERNATES (additive or deductive) bidder shall leave Paragraph II. (Contract Sum) of the Agreement blank. The final dollar amount shall be inserted by SEPTA in accordance with bidders' bid based on base bid plus or minus those alternates chosen by SEPTA.

The Agreements of all bidders will be retained by SEPTA until (a) a contract is awarded and entered into; (b) a period of ninety (90) days has passed or; (c) all bids are rejected, whichever comes first.

15. Non-Collusion Requirement

In the event bidder is deemed the lowest responsive bidder and as part of the bid signed herewith, bidder 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. A sample Affidavit of Non-Collusion is included in the Bid Forms..

16. Construction Subcontracting Requirements

Bidders are reminded that SEPTA's construction contract sets forth requirements which must be met by and included in any subcontract awarded by a construction contractor under contract to SEPTA. The general requirements which must be met by a subcontract are set forth in Paragraph IX. Subcontracts, of the contract. All Federal and State provisions and clauses (Exhibits I, II & IV) must be included in all subcontracts.

17. Certification Regarding Debarment, Suspension, and Other Responsibility Matters --

**Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor's principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid, the bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by SEPTA. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to SEPTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

18. Disadvantaged Business Enterprise (DBE) Goal

**Established Goal(s)** –Bidder is required to submit, a properly executed DBE Participation Schedule for each participating DBE subcontractor/subconsultant/supplier. Failure by the Bidder to submit the DBE Participation Schedule may result in the rejection of the bid. Within forty-eight (48) hours from notification by SEPTA, Bidder is required to submit a commitment confirmation document for each DBE firm scheduled to participate. SEPTA reserves the right to accept the bid in the event it has been determined that the DBE Participation Schedule submitted has clerical error/omissions and they have been corrected to SEPTA’s satisfaction. Firms must be certified prior to submission of the Participation Schedule. Please refer to the DBE section, Exhibit IV.

Failure to comply with the above requirements to SEPTA’s satisfaction will be considered a withdrawal of subject bid and Bidder’s security will be forfeited to the extent of the damage to SEPTA occasioned by such withdrawal.

At SEPTA’s sole discretion, Bidders failing to meet the above requirements may be suspended from future contracting opportunities.

19. SEPTA Solicitation Statistics Survey for DBE and Non-DBE Contractor/Subcontractor Form

All Bidders are required to complete a SEPTA Solicitation Statistics Survey for themselves and each of their DBE and non-DBE bidders in accordance with 49 CFR part 26.11. The form is to be signed by an officer legally authorized to bind the Bidder to a Contract and shall be submitted to SEPTA within five (5) days of the bid opening.

20. Steel Products Act

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.

The Commonwealth of Pennsylvania considers the requirements of the Steel Products Procurement Act to be met for federally funded projects with the federal Buy America Requirements.

21. Certification Regarding Lobbying. (If the highest possible Contract Sum, taking into consideration all items bid and all possible combinations of alternates which might be included in the actual award is over \$100,000)

By signing and submitting a bid, the bidder agrees to furnish the Certification Regarding Lobbying. The signed Certification may be submitted concurrent with the submission of the Bid Forms. If the Certification is not submitted along with the Bid Forms, it shall be submitted within five (5) days of bid opening, unless SEPTA grants, in writing, an extension.

22. Buy America Provision (If the highest possible Contract Sum, taking into consideration

all items bid and all possible combinations of alternates which might be included in the actual award is over \$100,000)

## **FORM 1**

This procurement is subject to the Federal Transit Administration Buy America Requirements in 49 CFR Part 661 and Federal Public Transportation Law 49 U.S.C. Chapter 53.

A Buy America Certificate, as per attached format, must be completed and submitted with the bid in accordance with the requirements of 49 CFR § 661.13. A bid which does not include the certificate will be considered non-responsive.

A waiver from the Buy America Provision may be sought by SEPTA if grounds for the waiver exist.

Federal Public Transportation Law 49 U.S.C. 5323(j) permits the FTA participation on this contract only if steel, iron and manufactured products used in the contract are produced in the United States. 49 CFR 661.5 requires that for steel, all manufacturing processes must take place in the United States, other than metallurgical processes involving refinement of steel additives. The steel requirements apply to all steel items including, but not limited to, structural steel, running rail, and contact rail. For manufactured products, 49 CFR 661.5 requires that for a "manufactured product" to comply with the Buy America requirements, all of the manufacturing processes for the product must take place in the United States; and all items or material used in the product must be of United States origin.

Bidder understands and agrees that, pursuant to 49 CFR 661.13, whether or not it certifies that it will comply with the applicable Buy America requirement, bidder is bound by its original certification and is not permitted to change its certification after bid opening. In addition, if bidder certifies that it will comply with the applicable Buy America requirements bidder understands and agrees that it is not eligible for a waiver of those requirements.

### 23. Certification Regarding Compliance with Immigration Reform and Control Act of 1986

By signing and submitting a bid, the bidder 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 may be submitted concurrent with the submission of the Bid Forms. If the Certification is not submitted along with the Bid Forms, it shall be submitted within five (5) days of bid opening, unless SEPTA grants, in writing, an extension.

### 24. Furnishing of Bonds:

If awarded this Contract, the Bidder must furnish within ten (10) days after receipt from SEPTA of a notice to award, a properly executed Performance Bond and Labor and Material Payment Bonds in the amount of one hundred percent (100%).

The Performance and Labor and Material Payment Bonds each must be issued by a fully qualified surety company acceptable to SEPTA and listed as a company currently authorized under 31 CFR part 223 as possessing a Certificate of Authority as described thereunder.

25. Rights Reserved

In submitting their bid the Contractor understands that the right is reserved by SEPTA to reject any and all bids, or part of any bid, and it is agreed that the bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the consent of SEPTA.

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

It is further understood and agreed, that to the extent the defaulting bidder's Bid Bond, Certified Check and/or Cashier's Check (excluding any income generated thereby which has been retained by SEPTA as provided in Item 7 "Bid Security" in these instructions) shall prove inadequate to fully recompense SEPTA for the damages occasioned by default, then the bidder agrees to indemnify SEPTA and pay over to SEPTA the difference between the bid security and SEPTA's total damage, so as to make SEPTA whole.

26. Single Bid Response

In submitting this bid, it is understood and agreed by the undersigned bidder that in the event that only one responsive bid is received by SEPTA, bidder, within ten (10) days of receipt of SEPTA's written request, will furnish a price analysis of the amount(s) bid in this bid.

In the event that the amount bid exceeds \$100,000 for an item for which only one responsive bid is received by SEPTA, bidder, within ten (10) days of receipt of SEPTA's written request, will also furnish a detail cost breakdown (including but not limited to such items as labor costs, overhead, material costs and profit) of the amount bid in this bid for such item. The costs included in the bid shall be calculated in accordance with Federal Acquisition Regulation Part 31, Contract Cost Principles and Procedures.

The purpose of the above information is to permit SEPTA to make a determination that the price is fair and reasonable in accordance with SEPTA's Procurement Manual. Bidder further agrees to cooperate with SEPTA in SEPTA's evaluation and to permit verification by SEPTA of data provided by bidder through audit or other means.

27. A Bid/Proposal Protest Procedure:

Bid/proposal protests relative to this procurement will be reviewed and adjudicated by SEPTA in accordance with the following Bid/Proposal Protest Procedure.

**SEPTA BID/PROPOSAL PROTEST PROCEDURE**

**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 Senior Director 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 Senior Director of Procurement or his/her designee (hereinafter Senior Director 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 Senior Director 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 Senior Director 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 Protestant.

When, on its face a protest does not state a valid basis for protest or is untimely, the Senior Director of Procurement may summarily dismiss the protest without requiring a detailed response.

### **5.4 Rebuttal to SEPTA Response**

The Protestant may submit a written rebuttal to SEPTA's response, addressed to the Senior Director 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 Protestant's rebuttal, the Senior Director of Procurement will review the protest and notify the Protestant of his/her final decision.

### **5.5 Request for Additional Information**

Failure of the Protestant to comply with a request for information as

specified by SEPTA's Senior Director 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 Senior Director 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 Senior Director of Procurement will again review the protest considering all currently available information. The Senior Director 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]**

**BID ACKNOWLEDGMENT FORM – FEDERAL CONSTRUCTION CONTRACT**

Bid No. 18-00197-AMJP

Date:

The bidder hereby acknowledges the DBE contract goal(s) established for this solicitation and will comply with the requirements of 49 CFR Part 26 found in Exhibit IV of the Contract. Having examined the Invitation to Bid, the Instructions to Bidders, this Bid Form, the Performance Bond, the Labor and Materials Payment Bond, the Contract, the Specifications, the Contract Drawings and all addenda entitled, Traction Power Substation Rehabilitation Program - Contract 2 (hereinafter referred to as the "Project"), and having inspected the site of, and the conditions affecting and governing the performance of said Project, the undersigned hereby bids to furnish all services, material and perform all labor specified and described in the said contract documents and as shown in the said Drawings for the said Project and meet all conditions of the contract, in consideration of the contract sum, which shall be a total price of the entire Project in accordance with the following schedule of items:

If Bidder is a CORPORATION execute here:

EXECUTED FOR \_\_\_\_\_

\*If signed by some other officer, a power of attorney or certified Board Resolution authorizing such signature must be attached

BY \_\_\_\_\_  
\*President or \*Vice President

ATTEST: \_\_\_\_\_  
\*(Asst.) Secretary or \*(Asst.) Treasurer

\*\*\*\*\*

If Bidder is PARTNERSHIP execute here:

\_\_\_\_\_  
Name of Partnership

WITNESS \_\_\_\_\_  
Signing Partner

Principal Partners (10% or more) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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If Bidder is an INDIVIDUAL execute here:

Trade or Business Name: \_\_\_\_\_,

and State of Registration: \_\_\_\_\_.

WITNESS \_\_\_\_\_  
Signature of Owner

**SCHEDULE A (EC)**

<b>Project Name:</b>	<b>Traction Power Substations Rehabilitation -Lansdale/Hatboro /12th/Portal</b>				
PART A: LUMP SUM PRICING: Contractor to provide all labor, materials, tools, equipment, permits, insurance, bonds, and services necessary to complete all work in accordance with Sealed Bid No. 18-00197-AMJP, Specifications, Plans, Contract Documents and all Addenda.					
ITEM NO.	DESCRIPTION	TOTAL PRICE			
		Lansdale	Hatboro	12th	Portal
1	Division 1 - General Requirements	\$	\$	\$	\$
2	Division 2 - Site Work	\$	\$	\$	\$
3	Division 3 - Concrete	\$	\$	\$	\$
4	Division 4 - Masonry	\$	\$	\$	\$
5	Division 5 - Metals	\$	\$	\$	\$
6	Division 6 - Wood & Plastic	\$	\$	\$	\$
7	Division 7 - Thermal & Moisture Protection	\$	\$	\$	\$
8	Division 8 - Doors & Windows	\$	\$	\$	\$
9	Division 9 - Finishes	\$	\$	\$	\$
10	Division 10 - Specialties	\$	\$	\$	\$
11	Division 11 - Equipment	\$	\$	\$	\$
12	Division 12 - Furnishings	\$	\$	\$	\$
13	Division 13 - Special Construction	\$	\$	\$	\$
14	Division 14 - Conveying System	\$	\$	\$	\$
15	Division 15 - Mechanical	\$	\$	\$	\$
16	Division 16 - Electrical	\$	\$	\$	\$
<b>SUBTOTAL PART A (SUM OF ALL ITEMS 1 THRU 16)</b>		\$	\$	\$	\$
<b>TOTAL PART A: (SUM OF Lansdale, Hatboro, 12th, Portal )</b>		\$			

**PART B: SPECIAL CONDITIONS - UNIT PRICES** - In accordance with paragraph XIV.D.1 of the Agreement, Changes In The Work, the unit prices below are established for determining the amount of increase or decrease of the Contract Sum resulting from adjustments for actual quantities of the following items of work or material. All items, Nos. 1, 2 and 3 inclusive, must be bid for award consideration. The unit prices below are to be fully burdened and include labor, material, equipment, overhead, profit, bonds and insurance. If the actual quantity of unit priced items varies more than fifteen percent (15%) above or below the estimated quantity, unit pricing for that item may be adjusted at SEPTA's option. All unused unit price quantities shall be credited back to SEPTA at the end of the project.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1	Removal, transportation and disposal (at an approved EPA regulated disposal site) of contaminated excess excavated soil.	1050	CY	\$	\$
2	Removal, transportation, and disposal at a non-EPA regulated disposal site, of uncontaminated excavated soil	1050	CY	\$	\$
3	Supply and install new fill dirt that is suitable for the installation and free of contaminates.	1050	CY	\$	\$
<b>SUBTOTAL PART B (SUM OF ALL ITEMS 1 THRU 3)</b>				\$	
<b>TOTAL CONTRACT SUM (SUM OF PARTS A &amp; B)</b>				\$	

SCHEDULE A (EC)

*CONTINUED FROM PAGE 1 OF 2*

<b>BASIS OF AWARD: REFER TO INSTRUCTOINS TO BIDDERS, PAGE 1, ITEM 4</b>
<b>FIRM:</b>
<b>ADDRESS:</b>
<b>CITY, STATE, ZIP</b>
<b>TELEPHONE NUMBER:</b>
<b>POINT OF CONTACT:</b>
<b>CELL PHONE - POINT OF CONTACT:</b>
<b>EMAIL ADDRESS -POINT OF CONTACT:</b>

ADDENDA:

All addenda, the receipt of which are hereby acknowledged by inserting the dates next to the appropriate numbers, have been included in this Bid and are listed below. Failure to properly acknowledge the addenda as set forth below may result in rejection of the bid. However, SEPTA reserves the right to accept the bid if SEPTA determines that the failure to properly acknowledge the addendum was due to a clerical mistake and if the bid intent can be determined from the bid submitted.

<b>ADDENDUM</b>	<b>DATE</b>	<b>ADDENDUM</b>	<b>DATE</b>
No. 1	_____	No. 4	_____
No. 2	_____	No. 5	_____
No. 3	_____	No. 6	_____

**PROPOSED CONSTRUCTION SUBCONTRACTORS' LISTING:**

(NAME)

(ADDRESS)

(TYPE AND % OF WORK WILL PERFORM)

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**BUY AMERICA CERTIFICATE**

*Certificate of Compliance With 49 U.S.C. 5323(j)*

**{NOTE: Only one of the certifications below may be executed by the bidder. Failure to execute one or execution of both could result in rejection of the bid}**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j) and the applicable regulations in 49 CFR part 661.

**Date:** \_\_\_\_\_  
**Signature:** \_\_\_\_\_  
**Company:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**or**

*Certificate for Non-Compliance With 49 U.S.C. 5323(j)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j) and the applicable regulations in 49 CFR 661.7.

**Date:** \_\_\_\_\_  
**Signature:** \_\_\_\_\_  
**Company:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

Form 1

## 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:** \_\_\_\_\_

**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. Consultant has and will continue to comply with, for the duration of this Agreement, 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. Consultant 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. Consultant 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 Agreement. 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: \_\_\_\_\_

CONTRACT

FOR

Traction Power Substation Rehabilitation Program - Contract 2

Project No.: 18-00197-AMJP

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**CONTRACT  
FOR**

Traction Power Substation Rehabilitation Program - Contract 2

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, between the SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ("SEPTA"), a body corporate and politic exercising the powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof, with offices located at 1234 Market Street, Philadelphia, Pennsylvania 19107-3780, AND \_\_\_\_\_, a \_\_\_\_\_, established under the laws of \_\_\_\_\_ (hereinafter called the "CONTRACTOR"), having a principal place of business at \_\_\_\_\_.

W I T N E S S E T H T H A T:

WHEREAS, SEPTA requires certain work, hereinafter more fully described to be performed in connection with an undertaking of SEPTA (hereinafter called "Project"); and

WHEREAS, the Contractor, pursuant to SEPTA's Invitation to Bid has submitted a bid to perform all the work required by this contract and such bid (base bid and indicated alternates as follows: Lansdale Traction Power Substation Rehabilitation Program - Contract 2) has been accepted by SEPTA.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, THE PARTIES hereto, intending to be legally bound, hereby AGREE as follows:

- I. The Contractor shall perform the Work required by the Contract Documents, more particularly set forth in the Specifications for this Contract including the Drawings.
- II. SEPTA shall pay the Contractor for the full and faithful performance of the Work for an amount not to exceed \_\_\_\_\_ (hereinafter called "Contract Sum") in accordance with Schedule A, subject to the UNIT PRICES.
- III. DEFINITIONS

Whenever they appear in the Contract Documents these words shall have the following meaning:

A. Contract

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and (except for substantial representations made by the Contractor upon which SEPTA was entitled to rely in making the decision to award the Contract to Contractor) supersedes prior negotiations, representations or agreements, either written or oral. Any change or amendment to the Contract shall not be binding unless set forth in writing, properly signed and subject to government concurrence where applicable, pursuant to Paragraph XIV. of this Agreement.

B. Contract Documents

which form the Contract consist of the following:

1. This Agreement, including any referenced documents or exhibits;
2. The following Special Condition(s): RAILROAD PROTECTIVE LIABILITY INSURANCE; RELEASE AND AGREEMENT TO CONFORM WITH ENVIRONMENTAL LAWS FOR ASBESTOS REMOVAL; RELEASE AND AGREEMENT TO CONFORM WITH ENVIRONMENTAL LAWS FOR REMOVAL OF MATERIAL DESIGNATED AS HAZARDOUS WASTE BY TITLE 40 CODE OF FEDERAL REGULATIONS PART 261 ET SEQ; SPECIAL PROVISISONS FOR CONTRACTS WHICH HAVE WASTE TRANSPORT OR DISPOSAL SERVICES; PHASED LIQUIDATED DAMAGES found in Exhibit VI.
3. Performance Bonds; Labor and Material Bonds;
4. Specifications and Drawings;
5. Addenda issued prior to execution of this Agreement; and
6. Any written change or amendment to any of the above documents as listed in "1." through "5."

C. Architect or Engineer

shall mean the organization designated below or its authorized on-site representative for this Project or Contract:

HDR Engineers

1515 Market Street #2020

Philadelphia, PA 19102

D. Government

shall include any political subdivision, agency or department, whether Federal, State or Local.

E. Project Manager

shall mean Project Manager of SEPTA, or his/her representative(s) designated in writing.

F. Contract Administrator

shall mean Contract Administrator of SEPTA, or his/her representative(s) designated in writing.

G. The Work

shall include all labor and services necessary to complete the construction required by



the Contract Documents, all material and equipment incorporated into such construction, and bonds, insurance, and any other performance required of the Contractor in order to complete the Project in accordance with all terms and conditions of the Contract, including all costs and expenses incidental thereto.

H. Changed Work

shall include those portions of the Work as modified by Change Orders as defined in Paragraph XIV.B.

IV. CONFLICTS - ALL DUTIES TO CONTRACTOR TO BE CUMULATIVE DUTIES

Except as provided in Paragraph XIII.D. in the event of any conflict among the terms, conditions or provisions of the Contract Documents, it shall be Contractor's obligation to promptly request a written clarification from SEPTA before proceeding with any portion of the Work affected by such clarification. SEPTA will review and respond to such requests within a reasonable time. Contractor shall not proceed prior to receipt of SEPTA's written response.

All terms, covenants and conditions of the Contract Documents shall be read together and shall be interpreted as a cumulative obligation to perform all the Work described herein completely and in the best and most workmanlike manner within the provisions of all of the Contract Documents.

With respect to technical matters, all questions pertaining to the quality or quantity of any item of the Work, or to the extent of the Drawings and Specifications, or to conflicts or inconsistencies between the Specifications and Drawings shall be promptly submitted by the Contractor to SEPTA, whose determination shall be final and binding upon the Contractor. SEPTA's interpretation shall be based on the following descending order of priority:

- A. Agreement, and Change Orders
- B. Special Conditions
- C. Specifications
- D. Drawings

If the Contractor adjusts such matters on its own initiative without a determination by SEPTA, it shall be at its sole risk and peril. With respect to any conflicts between requirements or standards of Federal and State or Local Law applicable to the Contract, the strictest standard shall govern.

V. EXECUTION, INTERPRETATION AND INTENT

- A. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance

with that meaning.

- B. The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- C. Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings, or otherwise will be issued with reasonable promptness by the Project Manager and in accordance with any schedule agreed upon in accordance with Paragraph VIII.M. Written requests for such interpretation may be submitted to the Project Manager. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents, and may be effected by Field Order as defined in Paragraph XIV.J.

VI. ARCHITECT AND ENGINEER

- A. The Architect, if applicable, is the person or organization licensed to practice Architecture who is performing architectural services for SEPTA. The term Architect means the Architect or its authorized representative.
- B. The Engineer, if applicable, is the person or organization licensed to practice Engineering who is performing Engineering services for SEPTA. The term Engineer means the Engineer or its authorized representative.
- C. Nothing contained in the Contract Documents shall create any contractual relationship between the Architect and the Contractor or the Engineer and the Contractor.

VII. CONTRACTOR TO COOPERATE WITH SEPTA'S DESIGNATED PROJECT REPRESENTATIVES

Contractor shall cooperate with SEPTA's Project Representatives, namely SEPTA's Project Manager, who shall be responsible for technical direction provided by SEPTA, and SEPTA's Contract Administrator, who shall be responsible for the administration of the Contract on SEPTA's behalf.

VIII. CONTRACTOR

- A. The Contractor is the person or organization identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and neutral in gender. The term "Contractor" means the Contractor or its authorized representative.
- B. The Contractor shall perform on the site with its own organization at least twenty percent 20% of the total amount of work to be performed under this Contract.
- C. Contractor Assumes Duty to Review Contract Documents

The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Project Manager any error, inconsistency or omission that it may discover. Contractor expressly agrees that failure to promptly and immediately notify SEPTA of any question or ambiguity shall be deemed by SEPTA to be a waiver by Contractor of its rights with respect to any such question or ambiguity.

D. Supervision and Construction Procedures

The Contractor accepts the relationship of trust and confidence established between it and SEPTA by the Contract. It covenants with SEPTA to furnish its best skill and judgement and to cooperate with SEPTA's Engineer or Architect, as applicable, in furthering SEPTA's interest. It agrees to furnish efficient business administration and superintendence and to use its best efforts to furnish at all times an adequate supply of workmen and materials, and to perform the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of SEPTA and in accordance with the Contract Documents.

The Contractor shall supervise and direct the Work, using its best skill and attention. It shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract.

E. Labor, Materials and Facilities

1. Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.
2. The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Project site any unfit person or anyone not fully skilled and capable of performing the task assigned to him/her. Any employee not conforming to these requirements shall be removed from SEPTA property.
3. The Work furnished must be of the first quality and the workmanship must be the best obtainable in the various trades. The Work must be safe, substantial and durable construction in all respects.
4. Contractor shall provide, maintain and pay all cost of temporary water lines from service location. All temporary water lines shall be kept free from all leaks and defects and shall be removed after completion of Work and the service location shall be restored to its original condition.
5. Sanitary toilet facilities shall be provided by the Contractor. Such facilities shall conform to all local and State regulations and are subject to the approval of SEPTA. Toilets shall be maintained at all times in sanitary condition and shall be removed at the completion of Work.

F. Contract Security

The Contractor shall furnish and maintain properly executed Performance Bonds and Labor and Material Payment Bonds, each written by good and sufficient sureties and in form acceptable to SEPTA, each in the amount of one hundred percent (100%) of the Contract Sum. If any of the sureties on these bonds should become insolvent or bankrupt in a technical or equitable sense, or otherwise become unqualified to underwrite these bonds for one hundred per cent (100%) of the Contract Sum, or the Contract Sum is

adjusted so as to exceed the penalties of such bonds, SEPTA may require, on ten (10) days written notice, the Contractor to furnish new or additional bonds from the same or different sureties so as to be fully secured at all times for one hundred percent (100%) of the Contract Sum. The required form of Labor and Material Payment Bond is AIA Document A311, while the Performance Bond must be in form acceptable to SEPTA (see sample of the desired Performance Bond attached to the Contract).

The Performance Bond and Labor and Material Payment Bond must be issued by a fully qualified surety company acceptable to SEPTA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder.

G. Indemnification

In addition to all other obligations of Indemnification specified herein, Contractor agrees to release and be liable for and to defend, indemnify and save harmless SEPTA, its Board Members, officers, agents, servants, workmen, employees, subsidizers and indemnities, the Pennsylvania Department of Transportation, the City of Philadelphia and any and all government funding agencies providing funds or services in connection with this Project (hereinafter collectively referred to as "SEPTA"), from and against any and all loss, cost, damage, liability and expense, including consequential damages, counsel fees, whether or not arising out of any claim, suit or action at law, in equity, or otherwise, of any kind or nature whatsoever, including negligence, arising out of the performance of the work by reason of any accident, loss or damage of property, including the work site, property of SEPTA and Contractor, or injury, including death, to any person or persons, including employees of SEPTA, Contractor, subcontractors at any tier or any person working on Contractor's behalf, caused by Contractor, which may be sustained either during the term of the Contract, or upon or after completion of the Project, whether brought directly by these persons or by anyone claiming under or through them including heirs, dependents and estates.

Contractor also agrees for itself and on behalf of its agents, servants, subcontractors, material men and employees to defend, indemnify and hold harmless SEPTA from and against any and all claims of any kind or nature whatsoever regarding subcontractors and material men and agrees to assume the defense of SEPTA to any such suit at its cost and expense. The Contractor further assumes the risk of loss and damage to materials, machinery and equipment to be incorporated in the Work at all times prior to delivery to the Project site or while in the possession or under the control of the Contractor.

Contractor, for itself and its employees, Board members, officers, agents, servants, workmen, contractors, subcontractors, licensees and invitees, or any other person working on Contractor's behalf, hereby releases and agrees to be liable for and to defend, indemnify and save harmless SEPTA, except to the extent that SEPTA is negligent in whole or in part, for any claims made by an employee, Board member, officer, agent, workman or servant of Contractor's or any other person working on Contractor's behalf, including claims for compensation or benefits payable to any extent by or for Contractor under any workers' or similar compensation acts or other employee benefit acts, and Contractor expressly waives its statutory protection under §303, as amended, of The Pennsylvania Workers' Compensation Act, 77 P.S. §481 (b).

In addition, Contractor shall indemnify SEPTA for any fines and legal fees incurred because employees, agents, or workers supplied by Contractor are not authorized to work

in the United States.

H. Taxes

The Contractor shall pay all sales, consumer, use and other taxes which it is by law required to pay.

I. Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to SEPTA and the Architect or Engineer that all materials and equipment furnished under the Contract will be of highest quality and new unless otherwise specified by SEPTA, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after final acceptance, as determined by SEPTA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to SEPTA. As additional security for these guarantees, the Contractor shall, prior to final acceptance by SEPTA, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to SEPTA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for the Contract, unless otherwise permitted by SEPTA in writing. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final acceptance, as determined by SEPTA, and shall be written in an amount equal to one hundred percent (100%) of the Contract Sum, as adjusted (if at all). Samples of the desired bond forms are attached to the Contract for informational purposes.

In the event that the Work is to be completed in phases, and such phases are completed to the full satisfaction of SEPTA, SEPTA shall issue a Certificate of Substantial Completion for the phase(s) or portion(s) of the work. The date of such Substantial Completion by SEPTA shall be the date upon which all warranty periods for the accepted phase or phases of the work will commence.

Neither completion of a phase nor portion of the Work nor final acceptance will be considered by SEPTA until all applicable elements of the work is completed. This includes, but is not limited to, training of SEPTA personnel, delivery of parts, delivery of maintenance and/or operations manuals, and the successful completion of any testing and/or "burn-in" periods. Furthermore, in the event that a latent defect is found in the work during the warranty period, the warranty shall be extended by the length of time that it took the Contractor to fully correct the latent defect.

In addition to the warranty requirements stated above, in the event that warranties extending beyond one (1) year are normally provided for any material, equipment, and/or labor provided for all or part of this Project, and the cost of these warranties are included in the bid price, then such warranties are to be extended to SEPTA at no additional cost. All documentation regarding extended warranties is to be

transferred to SEPTA upon the date of partial or final acceptance, whichever should occur first, as determined by SEPTA.

In the event that the warranty work is to be completed after the expiration of the Contract, the Contractor hereby agrees to maintain in force and/or extend all of the insurance as originally required by the Contract when it was in force, with SEPTA and any other entity required by SEPTA named as additional insured. The Contractor is to procure a Right of Entry Permit from Procurement and Contracts and may be required to submit proof of insurance before SEPTA will issue the permit.

J. Permits, Fees and Notices

1. The Contractor shall obtain and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the Work.
2. The Contractor shall give all notices and comply fully with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at a variance therewith in any respect, it shall promptly notify the Project Manager in writing, and any necessary modification shall be effected as determined by the Project Manager. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Project Manager, it shall assume full responsibility therefore and shall bear all costs, penalties, or fees attributable thereto.

K. Superintendent

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall be satisfactory to the Project Manager, and shall not be changed except with the consent or at the direction of the Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in its employ.

If the Project Manager orders that the superintendent be changed, then the Contractor shall promptly replace him or her with a new superintendent who is satisfactory to the Project Manager.

The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

L. Responsibility for Those Performing The Work

The Contractor shall be responsible to SEPTA for the acts and omissions of all its employees and all of its Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Contractor.

The Contractor agrees that all personnel used in performance of the Contract shall be considered employees of the Contractor or its Subcontractors and in no event shall any of

the personnel employed in the performance of the Contract be considered employees of SEPTA.

M. Construction Schedule

Contractor shall abide by all requirements attached hereto and made a part hereof in EXHIBIT III.

N. Drawings and Specifications at Site

1. The Contractor shall maintain at the site one (1) clean record copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders and Amendments, in good order, used to memorialize the As-Built condition of the work. These shall be available to the Project Manager, Architect or Engineer at all times. The Drawings and Specifications, marked to record all changes made during construction, shall be delivered to SEPTA upon completion of the Work.
2. The Contractor shall keep an accurate and current record of all deviations from the approved design drawings and Specifications that have occurred in the Work. The deviations are to be recorded on the As-Built Job Set documents.

The Contractor shall maintain this record of deviations on a continuous and regular basis. The As-Built Documents must be made available for the review of the Architect or Engineer and/or the Project Manager as required. The failure of the Contractor to maintain and record these deviations on a continuous basis may result in SEPTA withholding a portion or all of the progress payments impacted by the failure to maintain the As-Built Job Set in a timely manner.

Upon completion of the Work, the Contractor shall complete As-Built changes on the Final As-Built Drawings. The Contractor shall furnish additional reproducible drawings where the "As-Built" changes cannot be readily or completely shown on the Contract Drawings.

Final acceptance of the Work and full payment are contingent upon SEPTA's acceptance of the "As-Built" drawings. SEPTA reserves the right to reject unacceptable Drawings and Specifications. The Contractor shall remedy the same at no additional cost to SEPTA.

O. Shop Drawings and Samples

1. "Shop Drawings" mean any drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.

2. "Samples" mean physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.
3. The Contractor shall review, stamp with its approval and submit to the Project Manager, with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the Work of any other contractor, or Subcontractor, all Shop Drawings and Samples required by the Contract Documents. Shop Drawings and Samples shall be properly identified as specified, or as the Project Manager may require. Shop Drawings and Samples submitted to the Project Manager without evidence of the Contractor's review and approval may be returned for resubmission.

At the time of submission the Contractor shall inform the Project Manager in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents. Failure to inform the Project Manager shall result in an automatic rejection of such submittal.

4. By approving and submitting Shop Drawings and Samples, the Contractor shall represent that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents.
5. The Architect or Engineer will review Shop Drawings and Samples, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. Review of component or sub-assembly items shall not indicate review of an assembly in which the component or sub-assembly functions. Any work done by the Contractor prior to such review by the Architect or Engineer shall be at the Contractor's risk.
6. The Contractor shall make any corrections required by the Architect or Engineer and shall resubmit the required number of corrected copies of Shop Drawings or new Samples until accepted. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections requested by the Architect or Engineer on previous submissions.
7. The Architect's or Engineer's review of Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Architect or Engineer in writing of such deviation at the time of submission and the Architect or Engineer has given written acceptance to the specific deviation, nor shall the Architect's or Engineer's review relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.
8. The Architect or Engineer will review and return Shop Drawings received from the Contractor in a reasonable time after receipt thereof.

P. Use of Site

1. The Contractor shall confine operations at the site to areas permitted by law,



ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

2. SEPTA shall have the right to occupy the Project site and to continue its operations throughout the construction period without interference from Contractor's or any Subcontractor's activities, insofar as is practicable. Should any temporary disruption of SEPTA's operations and/or use of the electric, water or telephone utilities at such site be necessary, it will be undertaken only pursuant to reasonable notices (not less than 72 hours) given to SEPTA and shall not continue beyond the previously agreed-upon period, without further concurrence from SEPTA.
3. Contractor shall at all times allow access to the Project site by authorized representatives of SEPTA or the Government to inspect any of the materials and the Work furnished under the Contract.

Q. Cleaning Up

1. The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work it shall remove all its waste materials and rubbish from and about the Project as well as all its tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and leave the Work site broom clean or its equivalent, except as otherwise specified.

Any waste created by Contractor remains the property of the Contractor and shall be properly labeled and removed in accordance with Federal and State regulations promptly upon completion of task for which it is used.

2. If the Contractor fails to clean up within five (5) days after notification by SEPTA, then SEPTA may do so and the cost thereof shall be charged to the Contractor.

R. Communications

The Contractor shall forward all communications to SEPTA through the Project Manager. Important communications will be confirmed in writing. Other communications will be confirmed on written request in each case.

S. Federal, State and Local Contract Requirements

Contractor shall abide by all stipulations attached hereto and made a part hereof in Exhibits I and II for all the Work performed by the Contractor.

T. Contract Made Subject to Federal, State and Local Law

Contractor expressly agrees to comply with all applicable laws, ordinances, and regulations of the Federal, State and Local governments which are in effect or become effective during the term of the Contract.

U. Insurance

1. Contractor's Liability Insurance

The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations are by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable (Note: All insurance carriers providing this coverage shall have an A.M. Best Rating of "B+" or greater):

- a. claims under workmen's compensation, disability benefit and other similar employee benefit acts;
- b. claims for damages because of bodily injury, occupational sickness or disease, or death of its employees;
- c. claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;
- d. claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person; and
- e. claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.

2. Evidence of Compliance

a. Certificates of Insurance

Within ten (10) days after receipt from SEPTA of notice of award of the Contract, the Contractor shall furnish SEPTA with CERTIFICATES OF INSURANCE (**SEPTA's sealed bid number must be noted on certificates**) and any other documents which SEPTA may require, such as copies of policies or endorsements, as evidence of compliance with these Insurance Requirements.

b. Written Approval Required

Such Certificates or other documents must be approved in writing by SEPTA, before a Notice to Proceed will be given.

3. Policies to Remain in Force

a. Until Completion and Acceptance

All insurance coverage which the Contractor is required to provide for the Contract shall be maintained in full force and effect until the final

completion and acceptance by SEPTA of the Work.

b. All policies shall provide for ten (10) days written notice to SEPTA before cancellation by the company issuing the insurance. If such notice is not provided for within the basic terms of the policy, it shall be provided by endorsement or notation on the Certificate.

c. Replacement Coverage Required

In the event that any or all of the insurance coverages required by the Contract are cancelled, are reduced below the required minimum limits or lapse, then the Contractor will be suspended from further prosecution of the Work until such time as replacement coverage satisfactory to SEPTA has been obtained and is in force.

4. Additional Insureds Required

The Contractor shall have all policies designated "Additional Insureds Required" written or endorsed to include the following as Additional Insureds: SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY.

5. Waiver of Liability For Premiums

All policies wherein the parties designated in Paragraph VIII.U.4. are included as additional Insureds shall contain a Waiver of Liability for the payment of premiums covering those additional Insureds.

6. Limits of Liability

The insurance required by Paragraph VIII.U.1. shall be written for not less than any limits of liability specified below or required below, whichever is greater.

a. Workmen's Compensation Insurance

As required by the applicable laws of the Commonwealth of Pennsylvania

b. General Liability Insurance (excluding vehicles)

Comprehensive General Liability Insurance for Bodily Injury and Property Damage to others.

Minimum Limits of Liability

\$1 Million combined single limit (Bodily Injury and Property Damage) per occurrence.

General Aggregate

Not less than \$2 Million annual aggregate

Must have CG2417 endorsement or equivalent.

Products-Completed Operations

\$2 Million combined single limit (Bodily Injury and Property Damage) per occurrence.

Personal and Advertising Liability

\$1 Million combined single limit (Bodily Injury and Property Damage) per occurrence.

(2) Additional Insureds

Policy shall be written or endorsed to include as additional Insureds those parties or persons designated in Paragraph VIII.U.4.

(3) Contractual Liability (Hold Harmless) Coverage

Policy shall be written or endorsed to include coverage for the liability assumed by the terms of this contract and the Indemnification Agreement. Certificate or policy will state that the coverage applies to the Contract described as: Lansdale and Hatboro Substations and 12<sup>th</sup> and Portal Switching Stations.

c. Vehicle Liability

Liability Insurance (covering all autos, trucks, and other vehicles used in connection with this Project or Contract) for bodily injury and Property Damage to others.

(1) Minimum Limits of Liability

\$1 Million combined Single Limit (Bodily Injury and Property Damage) per occurrence.

(2) Additional Insureds

Policy shall be written or endorsed to include as additional Insureds those parties or persons designated in Paragraph VIII.U.4.

(3) Hired and Other Non-Owned Vehicles

Vehicle Liability Policy shall be written or endorsed to include coverage for Hired, Leased or other Non-Owned Vehicles.

d. Contractor's Pollution Liability Insurance

Covering the liability of Contractor arising out of any sudden and non-sudden pollution or impairment of the environment, including clean-up costs and defense, that arise from the Work of Contractor.

(1) Limits of Liability

Coverage under this policy shall have limits of liability of not less than \$ 2,000,000 per occurrence.

General Aggregate

Not less than \$2 Million annual aggregate

(2) Additional Insureds

Policy shall be written or endorsed to include as additional Insureds those parties or persons designated in Paragraph VIII.U.4.

(3) Other

This policy will have no sunset clause.

e. Professional Liability

(1) Minimum Limits of Liability

\$1 Million combined Single Limit (Bodily Injury and Property Damage) per occurrence.

(2) Additional Insureds

Policy shall be written or endorsed to include as additional Insureds those parties or persons designated in Paragraph VIII.U.4.

f. Umbrella/Excess Liability

(1) Minimum Limits of Liability

\$5 Million combined Single Limit (Bodily Injury and Property Damage) per occurrence.

Not less than \$5 Million annual aggregate.

7. Payment of SEPTA Claims

Contractor shall require its insurance carrier(s) to make checks in payment of SEPTA claims payable directly to SEPTA.

V. Books and Records

The Contractor shall prepare, maintain and make available for inspection and audit by SEPTA all Project Work and cost records relative to this Project at all times and for a period of five (5) years after Final Payment. Records shall be made available, upon request, at the Contractor's place of business during normal working hours. The Contractor's cost and financial records shall be maintained in accordance with generally

accepted accounting principles and reflect actual costs of all items of labor, material, supplies, services and all other expenditures for which compensation is payable. The Contractor shall include this requirement in all subcontracts awarded by it under the Contract.

## IX. SUBCONTRACTS

### A. Definition

1. A "Subcontractor" is an individual or organization who enters into a Contract to furnish labor or materials or apparatus in connection with the Work directly or indirectly for or on behalf of the Contractor and whether or not in privity of Contract with the Contractor.

The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neutral in gender and means a Subcontractor or its authorized representative.

2. Nothing contained in the Contract Documents shall create any contractual relationship between SEPTA, the Architect, or the Engineer and any Subcontractor.

### B. Award of Subcontracts and Other Contracts for Portion of the Work

1. If, after the award, SEPTA refuses to accept any Subcontractor approved by it prior to award, the Contractor shall promptly submit an acceptable substitute and the Contract Sum shall be increased or decreased by the difference in cost occasioned solely by such substitution, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted in good faith promptly and responsively in submitting a name with respect thereto after notice is given that a proposed Subcontractor is unacceptable.
2. Any new or additional or substituted Subcontractor proposed to be used by Contractor after the award shall be subject to SEPTA's prior written approval.
3. The Contractor shall not make any substitution for any Subcontractor or for any person or for any organization which has been previously accepted by SEPTA as part of subject Contract unless and until requested to do so by SEPTA and/or unless such substitution is expressly approved by SEPTA in writing.
4. Within ten (10) days of receipt of NTP, Contractor must ensure that SEPTA is in possession of an updated Subcontractor/Supplier Participation Schedule (if different than the one provided with the bid) and must ensure that subsequent updated lists are provided to SEPTA with five (5) days of any event where a new subcontractor is added or deleted/replaced. Within ten (10) days of receipt of written request from SEPTA's Project Manager or Contract Administrator, the Contractor shall furnish to SEPTA copies of all contracts, bonds, insurance certificates and other similar documents between Contractor and any Subcontractor for the Work.

### C. Subcontractor Relations

The Contractor shall deal with each Subcontractor according to the terms and conditions of a written agreement between the Contractor and such Subcontractor. Said written agreement shall not be inconsistent with any term or condition of the Contract, shall include all terms and conditions required by the Contract and shall in every respect protect SEPTA's interests in the Work and the conduct thereof.

In the absence of good and sufficient reasons, within twenty (20) days of the receipt of payment from SEPTA by the Contractor, the Contractor shall pay each Subcontractor with whom it has contracted their earned share of the payment the Contractor received.

In addition, Contractor shall pay its Subcontractor(s) any retainage Contractor has withheld from its Subcontractor(s) within twenty (20) days after a Subcontractor's work is satisfactory completed.

With regard to any claim or dispute with respect to payment of a Subcontractor or supplier 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 subcontractors, suppliers and materialmen and, in particular, Contractor shall assume the defense affirmatively at its sole cost whenever such suit is brought in any jurisdiction.

## X. SEPARATE CONTRACTS

### A. General

1. SEPTA reserves the right to award other contracts in connection with other portions of the Project under these or any other conditions of the Contract.
2. When separate contracts are awarded for different portions of the Project, "the Separate Contractor" in the Contract Documents in each case shall be the Contractor who signs each separate contract.
3. The Contractors shall be knowledgeable and familiar with the complete work of the Project, including the responsibilities of the Separate Contractors for their portion of the project. The organization of the Specifications in Divisions, Sections and Articles and Drawing arrangement does not in itself define all of the work of the Separate Contracts.

### B. Mutual Responsibility Between Contractors

1. The Contractor shall permit other contractors reasonable opportunity for the introduction and storage of their materials and equipment at this site and facilitate the execution of their Work by properly coordinating its Work with theirs.
2. If any part of the Contractor's Work depends on the proper execution, progress or completion of the Work or assistance of any other contractor, utility, person, or municipal or governmental agency, the Contractor agrees to examine and promptly report to the Project Manager any discrepancies or defects in such Work or assistance that render it unsuitable for proper and timely execution of the Contractor's Work. Failure of the Contractor to so examine and report to SEPTA constitutes an acceptance by the Contractor of the other contractor's work or

assistance as fit and proper to receive Contractor's Work except for deficiencies discovered after the initiation of the Contractor's Work which could not have been discovered by Contractor prior thereto.

3. Should the Contractor cause damage to the Work or property of any separate contractor on the Project, the Contractor shall at its own expense, upon due notice, diligently attempt to settle with such other contractor by agreement or arbitration.

If such separate contractor sues SEPTA or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, SEPTA shall notify the Contractor who shall defend such proceedings at its own expense, and, if any judgment or award against SEPTA arises therefrom, the Contractor shall pay or satisfy it and shall reimburse SEPTA for any costs which SEPTA has incurred.

C. Cutting and Patching Under Separate Contracts

1. The Contractor shall be responsible for any cutting, fitting, and patching that may be required to complete its Work except as otherwise specifically provided in the Contract Documents. The Contractor shall not cut or alter the work of any other contractor except with the written consent of the Project Manager.
2. Any costs caused by defective, untimely or improperly scheduled work by the Contractor shall be borne by the party responsible therefor.

D. SEPTA's Right to Clean Up

If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph VIII.Q. SEPTA may clean up and charge the cost thereof to the several contractors as determined by the Contract Administrator.

XI. TIME

A. Definitions

1. "Contract Time" means the period of time allotted in the Contract Documents for completion of the Work.
2. The date of commencement of the Work is the date established in a Notice to Proceed.
3. The date of completion of the Work or any designated portion thereof is the date certified by the Project Manager when the Work delivered by the Contractor is complete and has been accepted by SEPTA. The Work will not be considered complete under the Contract until it has been accepted by SEPTA.
4. The term "day" as used in the Contract Documents shall mean calendar day.

B. Progress and Completion

1. All time limits stated in the Contract Documents are of the essence of the Contract.



2. The Work to be performed under the Contract shall be commenced immediately upon receipt of SEPTA's Notice to Proceed. Contractor shall execute the Work continuously and shall complete the Work within one thousand ninety five (1,095) calendar days after the date of receipt of SEPTA's Notice to Proceed. The date of the one thousand ninety-fifth (1,095<sup>th</sup>) day after the date of receipt of SEPTA's Notice to Proceed is designated as the "Completion Date" wherever referred to in the Contract Documents. "Completion" as used herein shall mean Final Completion as defined by SEPTA's Project Manager.

C. Delays and Extensions of Time

1. The Contractor hereby expressly warrants and represents that it shall make no claim for increased costs, charges, expenses or damages against SEPTA for any delays or hindrances experienced in the performance of the Work, whether caused by any act or omission of SEPTA or from any cause whatsoever. In the event completion of any portion of the Work is delayed through no fault or neglect of the Contractor the Completion Date may be extended at no additional cost to SEPTA, in SEPTA's sole discretion, as further provided herein.
2. The Contractor shall promptly report to the Project Manager and Contract Administrator any delays or anticipated delays as soon as it, or any of its supervisory employees, become aware of the same.
3. The Contractor may request a no cost time extension for unusually severe weather. In order for SEPTA to consider such a no cost time extension, the following conditions must be met:
  - a. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather that could reasonably been anticipated for the project location during same period in preceding years.
  - b. The unusually severe weather must actually cause a delay to the completion of the project, and not have been either concurrent with delays caused by the fault or negligence of the Contractor, or have absorbed any or all of the available positive critical path float, as defined in Exhibit III.

The Contractor, in his request for a weather-related time extension, must provide a schedule of anticipated monthly adverse weather days based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location. This schedule will constitute the baseline for monthly weather time evaluations. The Contractor's progress schedule must reflect the adverse weather delays in all weather dependent activities. For the purpose of this Contract, unusually severe weather is defined as daily precipitation equal to or exceeding 0.5 inches the average (or mean) precipitation for the month and/or maximum daily temperature not exceeding 32 degrees F. The Contractor shall also meet the provisions of paragraph XI.C.4. below to demonstrate that the severe weather actually delayed the Contractors Work. Actual adverse weather days must prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday. If the number of actual adverse weather delay days exceeds the number of days anticipated in the

NOAA schedule, SEPTA will consider extending the time of completion by the difference between the schedule and actual adverse weather days for the period requested. A no-cost time extension will be issued by SEPTA if the Contractor's Time Impact Analysis, as described below, supports the Contractor's delay claim.

4. In the event that the Contractor decides to claim any extension of time as a result of proposed change orders, or delays, the Contractor shall submit to the Project Manager or the Project Manager's representative, a written Time Impact Analysis illustrating the influence of each proposed change order or delay on the current contract schedule completion date. Each Time Impact Analysis shall include a network analysis demonstrating how the Contractor proposes to incorporate the change order or delay into the detailed progress schedule. Additionally, the analysis shall demonstrate the time impact based on the date the proposed change order is given to the contractor or the date the delay occurs, the status of construction at that point in time, and the event time computation of all affected activities. The event times used in the analysis shall be those included in the latest update copy of the detailed progress schedule or as adjusted by mutual agreement. The Time Impact Analysis shall also include a concise narrative stating the cause(s) of the delay and action taken or proposed to minimize or eliminate the delay. Each Time Impact Analysis shall be submitted by Contractor within fifteen (15) calendar days after notice of a delay is given by the Contractor or a proposed change order is given to the Contractor unless a longer period is requested, with sufficient justification, by the Contractor and approved, in writing, by SEPTA. In cases where the Contractor does not submit a Time Impact Analysis for a specific proposed change order within the specified period of time, then it is mutually agreed that the particular change has no time impact on the contract completion date and no time extension is required.
5. SEPTA shall be the sole judge of whether any such extension shall be granted. In the event that an extension of the Completion Date is granted, SEPTA's right to liquidated damages, as determined in Paragraph XI.E. (if used), shall be accrued as of the extended Completion Date.

In no event shall Contractor be entitled to extra payment on account of any delay in the Work, regardless of whether SEPTA elects to grant an extension of time to the Contractor.

D. Suspensions of Work

The Contractor shall suspend the progress of the Work, or any part thereof, for the operational necessity or convenience of SEPTA whenever it shall be required by written order of the Project Manager. Such suspensions shall be for such reasonable periods of time as the Contract Administrator may order; provided that, in the event of such Suspension(s) of the progress of Work or any part thereof, the Completion Date of the Work so suspended or delayed by such Suspension(s) shall be extended by SEPTA for a period equivalent to the time lost by reason of such Suspension(s). Such order of the Contract Administrator shall not otherwise modify, or invalidate in any way, any of the other provisions of the Contract, and the Contractor shall not be entitled to any damages or compensation from SEPTA, except as otherwise provided in the Contract Documents, on account of such delay(s) or Suspension(s).

E. Liquidated Damages for Delays in Completion

Time is of the essence in the completion of the Work of the Contract. Unless the Completion Date is extended as otherwise provided for in the Contract Documents, liquidated damages in the amount of \$2,400 dollars per day (hereinafter called "Liquidated Damages") shall be assessed for each and every Calendar Day, or portion thereof, beyond the Completion Date that the Work is not completed to SEPTA's satisfaction.

Such Liquidated Damages may, at SEPTA's election be retained by SEPTA from monies to become due to the Contractor and, if none, Contractor agrees to pay to SEPTA such sums as have been determined not as penalty, but as a bona fide attempt to establish an agreed measure of damages which SEPTA will suffer as a result of delays in the completion of the Work beyond the Completion Date. This provision shall be in addition to any other rights or remedies SEPTA may have in law or equity.

## XII. PAYMENT AND COMPLETION

### A. Contract Sum

The total Contract Sum is stated in this agreement and is, unless otherwise amended in properly executed writing, the total amount payable by SEPTA to the Contractor for the performance of the Work under the Contract Documents.

### B. Schedule of Payments

Immediately after award of the Contract and before the first application for payment, the Contractor shall submit to the Project Manager a schedule of values of the various portions of the Work, including quantities, cash flow estimates and other information required by the Project Manager, aggregating the total Contract Sum, divided so as to facilitate payments to Subcontractors in accordance with Paragraph IX., and supported by such data to substantiate its correctness as the Project Manager may require. Each item in the schedule of values shall include its proper share of overhead and profit. The schedule and cash flow projections, when approved by the Project Manager, shall be used as a basis for the Contractor's application for payment.

### C. Interim Progress Payments

Until fifty percent (50%) of the Work is completed (as determined exclusively by SEPTA), progress payments will be made monthly on the basis of ninety percent (90%) of the value of labor, overhead, equipment, materials and other direct costs incorporated into the Work in that calendar month, as verified by SEPTA's Project Manager. Upon completion of fifty percent (50%) of the Work, one-half of the amount retained by SEPTA shall be returned to the Contractor, provided, however, that the Project Manager approves the application for payment and that the Contractor is making satisfactory progress and there is no specific cause for greater withholding. Upon completion of fifty percent (50%) of the Work, progress payments will be made monthly on the basis of ninety-five percent (95%) of the value of labor, overhead, equipment, materials, and other costs incorporated into the Work in that calendar month, as verified by SEPTA's Project Manager. All such monies retained by SEPTA may be withheld from the Contractor until substantial completion of the Work. Such payments shall be made within thirty (30) days after approval of a request for a progress payment ("Invoice") by the Project Manager. Such Invoice shall be submitted in such

form and detail as required by the Project Manager, within ten (10) days after the end of each calendar month. Such invoice shall include a DBE Invoice Payment Report (a sample copy of the DBE Invoice Payment Report that is to be utilized by the Contractor is attached to the Contract).

Payments will be made for materials or equipment which are not incorporated in the Work but delivered and suitably stored at the site and for materials or equipment properly stored off the site and all of which can be determined by the Project Manager to be specifically for the Work; such payments shall be conditioned upon submission by the Contractor of bills of sale or such other procedures and documents are satisfactory to the Project Manager to establish SEPTA's title to such materials or equipment or otherwise protect SEPTA's interest.

The Contractor warrants and guarantees that title to all Work, materials, and equipment covered by an Invoice and incorporated in the Project, will pass to SEPTA upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Paragraph as "liens"; and that no Work, materials, or equipment covered by an Invoice will have been acquired by the Contractor, or by any other person performing the Work at the site or furnishing materials and equipment for the project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. If payment is to be made for materials or equipment delivered to the Work site but not incorporated into the Work, the Contractor shall not be paid until satisfactory evidence of title to the equipment or materials, free and clear of any liens or encumbrances, shall be delivered to SEPTA. Further, the Contractor shall provide adequate safeguard of the materials or equipment against loss or destruction and shall be financially responsible to SEPTA for any failure to do so which results in such loss or destruction.

The parties expressly agree that any provision hereof to the contrary notwithstanding SEPTA shall not be obligated to make payment to the Contractor hereunder if any one or more of the following conditions exists and the parties expressly agree that the aforesaid and below-stated provisions are express conditions subsequent to the payment obligation and that payments under Paragraph XII.C. of the Contract are made expressly subject to the following limitations:

1. Contractor is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents;
2. Any part of such payment is attributable to Work which is defective or not performed in accordance with the Plans and Specifications; provided, however, such payment shall be made as to the part hereof attributable to Work which is performed in accordance with the Plans and Specifications and is not defective;
3. Contractor has failed to make payments promptly to Contractor's Subcontractors or for material or labor used in the Work for which SEPTA has made payment to Contractor or Contractor has failed to promptly pay Contractor's Subcontractor(s) retainage after satisfactory completion of work by Subcontractor(s);
4. If SEPTA, in its good faith judgement, determines that the portion of the Contract Sum then remaining unpaid will not be sufficient to complete the

Work in accordance with the Plans and Specifications, whereupon no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Sum then remaining unpaid is determined by SEPTA to be sufficient to so complete the Work; and/or

5. SEPTA assesses Liquidated Damages pursuant to Paragraph XI.E. (if used) and/or SPECIAL CONDITION - PHASED LIQUIDATED DAMAGES (if used) as otherwise described herein.

The parties expressly agree that SEPTA, in its sole reasonable discretion may withhold payments on account of any of the above conditions, and that this withholding is in the contemplation of both parties in their understanding of all the other terms and covenants and conditions of the subject Contract.

D. Certificates for Payment

1. The Project Manager shall be the individual responsible for the approval or disapproval of payments. If the Project Manager approves, SEPTA shall make payment in the manner provided in the Agreement.
2. No Certificate for a Payment, nor any payment, nor any partial or entire use or occupancy of the Project by SEPTA, shall constitute an acceptance of any Work not in accordance with the Contract Documents and/or including the contract schedule.
3. The Contractor recognizes that SEPTA receives a large quantity of funds from Local, State and Federal Governments and that the time required for payment of invoices may, on rare occasions, be affected thereby.

E. Payment Withheld

1. The Contractor expressly agrees that the Project Manager may, from time to time or whenever the Project Manager deems it necessary in the Project Manager's reasonable discretion, decline to approve an application for payment and may withhold a certificate in whole or in part, to the extent reasonably necessary to protect SEPTA.

F. Substantial Completion and Final Payment

1. When the Contractor considers that the entire project work is both substantially complete and acceptable to SEPTA, the Contractor shall submit a Request for Substantial Completion to the Project Manager. The Contractor shall also prepare a list of still incomplete items that remain to be completed or corrected prior to final acceptance. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Within a reasonable time after receipt of the Contractor's request, SEPTA, the Contractor and Architect or Engineer shall make an inspection of the Work to determine the status of completion. If SEPTA, the Architect or Engineer do not consider the Work substantially complete, SEPTA will notify the Contractor in

writing giving the reasons for the rejection. If SEPTA, and the Architect or Engineer consider the Work substantially complete, the Architect or Engineer will prepare and deliver to SEPTA a Certificate of Substantial Completion, which shall fix the date of Substantial Completion.

The Certificate of Substantial Completion shall list in detail each and every uncompleted item and a reasonable estimate of the cost of completion. The Certificate of Substantial Completion shall also state the responsibilities of SEPTA and the Contractor regarding maintenance, heat, utilities, and insurance and shall fix the time within which the Contractor shall complete the uncompleted items listed. SEPTA will transmit the Certificate of Substantial Completion to the Contractor for the Contractor's signature and return to SEPTA. SEPTA, upon receipt of the executed certificate will release the remaining retained funds, less one and one half the amount of the uncompleted Work, in accordance with paragraph XII.C. above.

2. Use by SEPTA of any portion/phase of the Work, which has specifically been identified in the Contract Documents, or which SEPTA, the Architect or Engineer and the Contractor agree constitutes a separately functioning and useable part of the Work that can be occupied by SEPTA without significant interference with the Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

SEPTA may, at any time, request (in writing) that the Contractor permit SEPTA to use any portion/phase of the Work for its beneficial use that SEPTA believes to be ready for its intended use and considers substantially complete. If the Contractor agrees, the Contractor will certify to SEPTA that said portion of the Work is substantially complete and request SEPTA to issue a Certificate of Substantial Completion for that portion of the Work. If SEPTA and the Architect or Engineer considers that portion of the Work to be substantially complete, the provisions of paragraphs XII.F.1. will apply with respect to Certification of Substantial Completion for that portion of the Work.

3. Within thirty (30) days of receipt of written notice that the Work is ready for final inspection and acceptance the Project Manager shall have the Architect or Engineer make such inspection and, when the Work is found acceptable in full accordance with the Contract Documents, issue a Certificate of Final Acceptance.

The final payment shall not become due until the Contractor submits to the Project Manager (1) Affidavits that all payrolls, bills for material and equipment, and other indebtedness connected with the Work for which SEPTA or its property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, (3) SEPTA's General Release form, (4) all closeout documentation and materials, and, if required by SEPTA, (5) other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by SEPTA. SEPTA will make final payment in full within forty-five (45) days of issuance of the Certificate of Final Acceptance

If any Subcontractor at any tier, refuses to furnish a release or waiver required by SEPTA, the Contractor shall, if SEPTA requires, furnish a bond in addition to those bonds required in Paragraph VIII.F. satisfactory to SEPTA to indemnify SEPTA against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to SEPTA all monies that the latter may be compelled to pay in discharging such lien, including all costs and attorney's fees.

G. Failure to Complete the Work

In the event the Work delivered by the Contractor does not fulfill the requirements or intention of the Specifications and Drawings, or otherwise comply with the requirements of the Contract Documents, said Work shall not be considered as being completed and accepted, and the assessment of Liquidated Damages set forth in Paragraph XI.E. (if used) shall apply and be enforced. Furthermore, if any portion or phase of the Work is incomplete, or contains any defective or damaged materials, said materials shall be removed and new materials shall be furnished promptly by the Contractor, who shall also pay for freight or transportation charges for same, plus the cost of labor for the removal and installation of said materials, all of which shall be furnished at no cost to SEPTA. In such an event, SEPTA will withhold one and one half times the value of the uncompleted Work, in accordance with Paragraph XII.C. above.

H. No Release Upon Acceptance

Acceptance of any portion of the Work shall not release the Contractor from liability for faulty workmanship or materials appearing even after Final Payment has been made.

I. Final Payment

Final payment of the Contract Sum, as adjusted in accordance with the other terms of the Contract LESS the aggregate of all prior interim payments, shall be made, subject to the provision of Paragraph XI.E. (if used) and/or the SPECIAL CONDITION - PHASED LIQUIDATED DAMAGES (if used) upon Completion and Acceptance of the Work and the Contractor's furnishing the required Maintenance Bonds as provided in Paragraph VIII.I. above. Final payment shall be expressly conditioned upon Contractor's successfully performing all terms, covenants and conditions of the Contract.

XIII. PROTECTION OF PERSONS AND PROPERTY

A. Safety Precautions and Programs

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

B. Safety of Persons and Property

1. The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction over the safety of persons or property for their protection from

damage, injury or loss which are in effect or become effective during the term of the Contract. The Contractor shall be solely responsible for the cost of all changes in such regulations during the term of the Contract whether anticipated or not, regardless of the amount of such costs and these costs shall not be passed on or through SEPTA under any circumstances.

2. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damages, injury or loss to:
  - a. employees on the Work and all other persons who may be affected thereby;
  - b. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of its Subcontractors; and
  - c. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
3. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safe guards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.
4. When the use or storage of hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. The use of explosives on SEPTA property is strictly prohibited, unless expressly permitted by the specifications. In no event shall any explosives be stored on SEPTA property.
5. All damage or loss to any property referred to in Paragraphs XIII.B.2.b. and XIII.B.2.c. caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly employed or controlled by any of them, shall be remedied by the Contractor.
6. The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent (see Paragraph VIII.K.) unless otherwise specified by SEPTA, designated in writing by the Contractor and approved by the Project Manager.
7. The Contractor shall neither load nor permit any part of the Work to be loaded so as to endanger its safety.
8. Contractors shall maintain an alcohol and drug free environment and shall not permit any person under its control or the control of any of its Subcontractors at any tier, who exhibits unsafe behavior or behavior which involves a reasonable suspicion of being impaired from alcohol or drugs to remain on or about the



jobsite. This provision shall be strictly and promptly enforced by the Contractor.

9. The Contractor shall comply with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and the U.S. Department of Labor regulations set forth in 29 CFR Parts 1910 and 1926 which are in effect or become effective during the term of the Contract. The Contractor shall be solely responsible for the cost of all changes in such regulations during the term of the Contract whether anticipated or not, regardless of the amount of such costs and these costs shall not be passed on or through SEPTA under any circumstances.
10. Contractors must comply with 49 CFR § 219 - Control of Alcohol and Drug Use as outlined for all Roadway Workers and Maintenance of Way employees.

49 CFR § 214.7 “Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of a railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near the track or with the potential to foul a track, and flagmen and watchmen/lookouts as defined in this section.”

49 CFR § 219.5 “Employee means any individual (including a volunteer or a Probationary employee) performing activities for a railroad or a contractor to a railroad.”

Contractors must submit their FRA Drug and Alcohol testing plans to the SEPTA Contract Administrator within ten (10) days of notification of a successful bid.

Any updates and/or changes to the plan after award must be submitted to SEPTA throughout the life of the contract.

Any delay in submitting the required plan or updates to SEPTA may delay the contract award or the work.

#### C. Personnel Security Measures

SEPTA reserves the right to impose personnel security measures upon the Contractor and its employees as SEPTA deems necessary and appropriate to ensure the safety of its patrons, employees and property. These measures may include, but are not limited to, registration of all employees of the Contractor and its subcontractors who shall be working on SEPTA property, photo identification of all registered employees, and background investigations of all registered employees. In addition, SEPTA reserves the right to institute personnel security measures, which may be imposed at anytime during the course of the Work. SEPTA shall assume the costs of such security measures. The

Contractor and its employees shall cooperate fully with SEPTA in implementing and enforcing security measures on SEPTA property. The Contractor shall be notified by SEPTA, in writing, regarding what is required by SEPTA to carry out any personnel security measures that are being imposed on the Contractor.

D. Emergencies

In any emergency affecting the safety of persons or property, the Contractor shall act at its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Paragraph XIV. Changes in the Work.

XIV. CHANGES IN THE WORK

A. Change Orders

1. SEPTA, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be executed under the applicable conditions of the Contract Documents.
2. It is understood and agreed that refinement or detailing will be accomplished from time to time with respect to the Plans and Specifications. No adjustments in the Contract Sum or the Completion Date shall be made unless such refinement or detailing results in changes in the scope, quality, function and/or intent of the Plans and Specifications not reasonably inferable or foreseeable by a Contractor of Contractor's experience and expertise.

B. Definitions

1. A "Change Order" means a written order to the Contractor, signed by the Contract Administrator, issued in accordance with SEPTA's standard procedures and, authorized either by its General Manager or by its Board, as appropriate, after the execution of the Contract, which makes a Change in the Work or an adjustment in the Contract Sum or the Contract Time. A Change Order shall also be signed by the Contractor if it agrees to the adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A sample copy of the Change Order form that will be utilized by SEPTA is attached to the Contract.
2. "Material", as used in this Paragraph XIV., means an item or items that is provided by:
  - a. a factory or established facility that produces on its premises the item(s) obtained by the Contractor; or

- b. a firm that owns, operates, or maintains a store, warehouse, or other established facility in which the item(s) required for the performance of the Contract are brought, kept in stock, and regularly sold to the public in the usual course of business.
- 3. "Subcontractor", as used in this Paragraph XIV., means a firm providing labor or services necessary to complete a distinct element of the Work. The labor or services provided must be provided on the basis of direct labor hours at specified fixed hourly rates.
- 4. "Equipment", as used in this Paragraph XIV., means apparatus used by the Contractor or a Subcontractor to complete a distinct element of the Work.

C. Changes and Amendments to the Contract

No Change Order or amendment to the Contract shall be binding unless executed in writing by SEPTA, in a form approved by SEPTA and concurred in by the appropriate governmental funding agencies, if required. SEPTA will obtain all required concurrences from governmental funding agencies.

All Change Orders or amendments to the Contract by SEPTA shall be transmitted to the Contractor through the Contract Administrator.

The provisions of the Contract relating generally to the Work and its performance shall apply without exception to any Work, authorized by Change Order and to the performance thereof, except as may be otherwise provided by written agreement between the Contractor and SEPTA.

D. Determination of Cost/Credit

The cost or credit to SEPTA resulting from a Change in the Work shall be subject to funding agency concurrence, if required, and determined in one or more of the following ways:

1. Unit Prices

- a. If changes in the Work are ordered by SEPTA and such change order calls for the deletion or addition of items of Work or material of the same type as those for which unit prices have been stated in the Contract Documents or subsequently agreed upon, the compensation to be paid therefore shall be computed on the basis of such unit prices.
- b. If unit prices are stated in the Contract Documents or are subsequently agreed upon, and if the quantities of changed Work proposed will create a hardship on SEPTA or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.
- c. Where in the sole opinion of SEPTA the application of unit prices would not be appropriate, the cost or credit to SEPTA shall be determined under the terms and conditions set forth in either Paragraph XIV.D.2. or XIV.D.3. as determined appropriate by SEPTA.

2. Fixed Price Lump Sum Amount

Where SEPTA determines that the scope and extent of the change can be defined before the changed Work is performed, and compensation is not computed on the basis of unit prices as set forth in Paragraph XIV.D.1. above, SEPTA will negotiate a fixed price lump sum amount with the Contractor as compensation for such work. For each change, the Contractor shall furnish a detailed, written proposal itemized according to these guidelines. In order to expedite the review and approval process, all proposals shall be prepared in the categories and in the order listed below:

a. Labor

- (1) Actual Wages - base hourly rate by craft for all levels below the General Foreman but excluding premium pay paid to all employees directly engaged in the Work.
- (2) Labor Burden - to be established as a percent of actual wages paid pursuant to contractual obligation and paid for each craft and shall include: Vacation Allowance, Health and Welfare, Pension, Apprenticeship Programs and other programs as required for each craft, Social Security, Unemployment Insurance and Workers' Compensation Insurance.

Burden must not include Employee Profit Sharing Plans regardless of how defined or described. The Contractor will pay these charges from the profit and will not be reimbursed. Additionally, voluntary employee contributions to charities, savings plans, etc. will not be reimbursed as burden.

- (3) Subsistence and/or Mileage - if required in union agreements or by written corporate policy.
- (4) Premium Time - Actual premium costs paid, plus paid social security taxes, unemployment insurance, workers' compensation insurance, and union fringe benefits if required by union agreements and/or by written corporate policy.
- (5) Overhead – Includes: all supervision and administration above and including the General Foreman Level, such as Superintendents, Assistant Superintendents, Engineers\*, Purchasing Agents, Accountants, Clerks, Timekeepers, Office Managers, and all others on staff; office supplies; drinking water; temporary heat, light and power; field toilets; costs of services; small tools and/or equipment not incorporated in the Work or directly associated with the Work; telephone system and charges; facsimile machines and charges; telegrams; photographs; photocopying; postage; tool breakage, repairs, replacement, blades, bits and parts; bonds; and all home office costs to include home office estimating and expediting, legal services, parking expenses, etc. Maximum allowable per net amount of labor change is ten (10) percent.

\* An exception is allowed for shop drawing or engineering labor, which is not subject to the prevailing wage rates, for steel fabricators, sheet metal fabricators, curtain wall fabricators, communications and signal designer/fabricators, and sprinkler system fabricators. Recovery will be allowed under Items 2.a. (1) and (2) of these pricing guidelines.

- (6) Profit - Maximum ten (10%) percent of the sum of subparagraphs (1), (2), (4) and (5) above.

b. Material

- (1) All materials incorporated into the final product of the Work at the Contractor's net cost. Expendable materials, e.g., small tools and welding supplies, and reusable materials previously purchased for the Work are not eligible for direct reimbursement, but are included in 2.a. (5) above.
- (2) one third (thirty-three percent) of the cost of reusable materials such as concrete formwork lumber, shoring or temporary enclosures is allowed for each change.
- (3) Actual freight and transportation costs of materials used.
- (4) Overhead and Profit: A maximum of fifteen (15%) percent overhead and profit on subparagraphs (1) and (2) above.

c. Equipment Rental

- (1) Total compensation for equipment leased specifically for the additional work at the contractor's net invoiced cost. Contractor's Overhead and Profit on leased equipment shall be a maximum of five (5%) percent of the net invoiced cost.
- (2) Contractor owned equipment shall be reimbursed on an hourly basis. Hourly rates shall be based upon the hourly rental rates as defined in the latest edition of Construction Equipment and Operating Expense Schedule - Region I, U. S. Army Corps of Engineers.
- (3) Transportation costs for equipment utilized to accomplish the additional work shall be reimbursed as defined in subparagraph (1) or (2) above if it is allocable solely to a specific change.
- (4) Small Tools: Non-power operated and/or hand held tools weighing less than 40 lbs. shall be defined as small tools and are therefore included in subparagraph 2.a.(5) of this paragraph.
- (5) Overhead and Profit: A maximum of five (5%) percent overhead and profit is permitted on company owned equipment.

d. Subcontractor Cost

- (1) Subcontractor Cost - Shall be quoted in the manner prescribed above for the Contractor.
- (2) Contractor's Overhead and Profit on Subcontractor Work - maximum five (5%) percent of the net amount of Subcontractor's cost of change.

e. Miscellaneous

- (1) The net increase in premiums for public liability and property damage insurance charged by insurance company(ies) which net increase is occasioned solely by authorized change order work.
- (2) Fees for permits, licenses, tests, state and local inspections, etc.
- (3) No additional overhead or profit will be authorized, permitted or paid on additional insurance costs allowed under paragraph 2.e.(1).

3. Time and Material

Compensation for Changed Work on a Time and Material basis will be used only where SEPTA in its sole judgement determines that the scope and extent including cost of the work required cannot be readily determined or negotiated before the Changed Work is performed. Compensation due the Contractor for such Changed Work shall be determined by post audit of the Contractor's claim, priced in accordance with Paragraph XIV.D.2., above.

In the event SEPTA determines to compensate the Contractor for an item of Changed Work on a Time and Materials basis, the Contractor shall, at the end of each day or at such other intervals as SEPTA shall direct in writing, furnish to SEPTA for such work, (a) daily time slips showing the name of each employee on such Work, the number of hours which he or she was employed thereon, the character of his or her duties, and the wages paid to the employee, (b) a memorandum showing the rates and amounts of Workers' Compensation Insurance premiums and state and federal taxes based on such wages, (c) a memorandum showing vacation allowances, union dues and assessments and health, welfare, employment and retirement benefits which the employer actually pays pursuant to contractual obligation upon the basis of such wages, (d) a memorandum showing the amount and character of the materials furnished in the performance of Changed Work, apparatus rented in connection therewith, from whom they were purchased or rented, and the amount paid therefore, and (e) a memorandum detailing payments made to approved Subcontractors (with copies of Subcontractor invoices attached supported by backup detailed in items (a) through (d) of this paragraph). The failure of the Contractor to furnish time slips and memoranda with respect to any particular labor, equipment, materials, apparatus or subcontract in the timely manner as specified shall constitute a conclusive and binding determination of its part that such labor, equipment, materials, apparatus or subcontract work is not Changed Work, and shall constitute a waiver by the Contractor of its claim for

payment based thereon.

E. Access

Representatives of SEPTA shall have access during normal business hours to all records and documents of the Contractor relating to any labor, materials, apparatus, plant and equipment used in the performance of Changed Work, and the Contractor shall obtain for them similar access to the records and documents of its suppliers and Subcontractors. Such access shall be given or obtained both before and after completion of the Changed Work.

F. Allowability and Allocability of Costs

Wherever a determination of cost is to be made, and such determination is not otherwise limited by the foregoing guidelines, the provisions of 48 CFR Subpart 31.2 shall be used to determine the allowability and allocability of such costs, except that (those regulations notwithstanding) state and local taxes on net income shall not be allowed.

G. Other Requirements

In all cases, the costs and percentages detailed in this Paragraph XIV. will cover any and all costs and profit not specifically mentioned therein. The sum of these costs with the applicable percentages will be the only costs used to determine the Contract price increase or decrease.

H. Prior Notice Required as Express Condition for any Claims for Additional Cost

If the Contractor wishes to make any claim for any increase in the Contract Sum, it must give the Project Manager written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim or it shall not be entitled to any compensation therefor. This notice must be given by the Contractor before proceeding to execute any of the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph XIII.D. No claim for any increase in the Contract Sum shall be valid unless so made. To be considered for any additional money such claim must set forth the factual basis of the claim in sufficient detail for the party receiving it to know and understand, the nature, amount and extent of the claim and the event or events and fact or facts upon which the claim is based. The parties hereto agree that in the event of such claim or claims that they shall not proceed to litigation without first giving such notice and making reasonable efforts thereafter to resolve the claim or claims without the necessity of seeking recourse in the courts. The Contractor expressly agrees that it shall not make any claim, nor be entitled to any additional cost, against SEPTA resulting from the actions of any Subcontractor or other and separate contractors on the Project it being clearly understood that the Contractor's sole avenue of recovery is against such Subcontractor or other and separate contractors on the Project.

Contractor agrees that failure to comply with the above, may result in waiver of its right, if any, to additional compensation.

I. Minor Changes in the Work

The Project Manager shall have the authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be binding on SEPTA and the Contractor.

J. Field Orders

The Project Manager may issue written field orders which interpret the Contract Documents or which order minor changes, as defined in Paragraph XIV.I. in the Work without change in Contract Sum or Contract Time. The Contractor shall carry out such field orders promptly.

XV. UNCOVERING AND CORRECTION OF WORK

A. Uncovering of Work

1. If any Work should be covered contrary to the request of the Project Manager, it must, if required by the Project Manager, be uncovered for the Project Manager's observation and replaced at the Contractor's expense.
2. If any other Work has been covered which the Project Manager has not specifically requested to observe prior to being covered, the Project Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work is not defective, Contractor shall be compensated for the cost of uncovering and recovering; however, if such Work is defective, then Contractor shall promptly correct such Work and compensate SEPTA for all costs of additional project management incurred in such uncovering, correction of Work and recovering. Any adjustment in the Contract Sum shall be made in accordance with the provisions of Paragraph XIV.

B. Correction of Work

1. The Contractor shall promptly correct all Work rejected by SEPTA as defective or as failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting such rejected Work, including the cost of the Architect's or Engineer's additional services thereby made necessary.
2. If, within one year after Final Payment or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from SEPTA to do so unless SEPTA has previously given the Contractor a written acceptance of such specific conditions.
3. All such defective or non-conforming Work under Paragraphs XV.B.1. and 2. shall be removed from the site if necessary and the Work shall be corrected by Contractor to comply with the Contract Documents without cost to SEPTA.
4. The Contractor shall bear the cost of making good all Work performed by separate contractors which has been destroyed or damaged by such removal or



correction of defective Work performed by Contractor.

5. If the Contractor does not remove such defective or non-conforming Work within a reasonable time fixed by written notice from the Project Manager, SEPTA may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, SEPTA may, upon ten (10) additional days written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for additional architectural and/or engineering services and handling fees, as well as any costs associated with making good Work performed by SEPTA as set forth in Paragraph B.4. above. If such proceeds of sale do not cover all costs which the Contractor should have borne and handling fees, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to SEPTA. Any adjustment in the Contract Sum shall be made in accordance with the provisions of Paragraph XIV.
6. If the Contractor fails to correct such defective or non-conforming Work, SEPTA may correct it in accordance with Paragraph XVIII.G.

C. Acceptance of Defective or Non-Conforming Work

If SEPTA prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction. In such case, a Change Order will be issued to reflect an appropriate reduction in the Contract Sum, or, if the amount is determined after Final Payment, it shall be paid by the Contractor.

XVI. TERMINATION FOR CONVENIENCE

SEPTA shall have the right to terminate the Contract, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid all reasonable costs as determined by SEPTA in accordance with 48 CFR Subpart 31.2, that specifies the special treatment of certain costs under Subpart 31.2, Section 31.205-42, "Termination Costs."

Such costs will include contract work performed up to the date of termination; any actual costs associated with termination for convenience, as agreed to by SEPTA; and profit on Work performed up to the time of termination. However, the agreed amount may not exceed the Contract Sum as reduced by (1) the amount of payments previously made and (2) the Contract price of Work not terminated. Furthermore, SEPTA will not pay any anticipatory profits and/or consequential damages claimed by the Contractor as a result of termination of the Contract. The amount of profit paid shall be determined by the parties based on the amount of actual work completed. The Contractor shall submit promptly its termination claim to SEPTA and SEPTA shall determine the settlement amount to be paid the Contractor. If the Contractor has any property in its possession belonging to SEPTA, the Contractor shall account for same and dispose of it in the manner SEPTA directs.

XVII. TERMINATION FOR CAUSE

- A. If Contractor 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) days after receipt by Contractor of written notice from SEPTA setting forth the nature of said breach or default and/or if the Contractor 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. Any such termination for cause shall not in any way operate to preclude SEPTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- B. In the event that SEPTA elects to waive its remedies for any breach by Contractor 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.
- C. In the event that it is ultimately determined by SEPTA that the Contractor was not in default or that the failure to perform arose out of causes beyond the control and without fault of the Contractor, the termination shall be treated as one of convenience and the Contractor's sole rights and exclusive remedies shall be those set forth in Section XVI. above.

## XVIII. MISCELLANEOUS PROVISIONS

### A. 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, work 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, work 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 may have under any such rules or law. Contractor 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 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. Contractor represents and acknowledges that the choice of jurisdiction and venue described above is reasonable and has been freely and voluntarily made by Contractor. Further, the choice of jurisdiction and venue described above shall be mandatory and not permissive in nature, thereby precluding the possibility by Contractor 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.

### B. Contract to Bind SEPTA and Contractor

The Contract shall be binding upon the parties and their respective successors and assigns.

C. Assignment Prohibited

Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the Contract or any right, title or interest in or to the same, or any part thereof, without the prior written consent of SEPTA. Contractor shall not assign, by power of attorney or otherwise any of the monies due or to become due and payable under the Contract unless by and with the like consent. If Contractor shall, without such previous written consent, assign, transfer, convey, sublet or otherwise dispose of the Contract or of any right title or interest therein or any of the monies due or to become due, the Contract, or any portion of it, may at the option of SEPTA be terminated and cancelled and SEPTA shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to Contractor and to its assignee or transferee. No right under the Contract or to any money due or to become due hereunder shall be asserted against SEPTA in law or in equity by reason of any so called assignment of the Contract or of any part thereof or of any monies due or becoming due hereunder unless authorized as aforesaid by the prior written consent of SEPTA; provided, that the termination of the Contract shall not release Contractor or its sureties from any liability for any damages sustained by SEPTA by reason of such termination.

D. Government Financial Assistance

Payment and Performance of the Work is subject to all applicable rules, regulations and requirements governing construction involving federal, state or local governmental financial assistance.

E. Reimbursable Work and Expenses

Contractor shall submit to SEPTA a purchase order requesting SEPTA to provide in kind, materials, labor or additional facilities, in each instance where Contractor's performance or that of any Subcontractor has caused or will cause SEPTA to perform necessary emergency or other Work or to vary in any way its schedule of transportation service unless such performance is in accordance with the Contract Documents. Such purchase order may at SEPTA's option be offset against any sum due from SEPTA to Contractor or, be invoiced to Contractor by SEPTA for Payment by Contractor to SEPTA in U. S. currency in an amount determined by SEPTA using its regular cost structure included in the specifications hereto and accounting practices in effect at the time of actual performance by SEPTA.

F. SEPTA's Right To Stop the Work

If the Contractor fails to correct defective Work or persistently fails to supply materials or equipment in accordance with the Contract Documents, SEPTA may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

G. SEPTA's Right to Carry out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, SEPTA may, after seven (7) days written notice to the Contractor and without prejudice to any other

remedy, make good such deficiencies. In such case, an appropriate Change Order shall be issued, deducting from the payments then or thereafter due to the Contractor the cost of correcting such deficiencies, including the cost of the Architect's or Engineer's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to SEPTA.

H. Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

I. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save SEPTA harmless from loss on account thereof, except that SEPTA shall be responsible for all such loss when a particular manufacturer or manufacturers is specified by SEPTA, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, it shall be responsible for such loss unless it promptly gives such information to SEPTA.

J. Tests and Inspections:

1. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to SEPTA and shall bear all related costs of tests, inspections and approvals. The Contractor shall give SEPTA and the Architect or Engineer timely notice of when and where tests and inspections are to be made so SEPTA and/or the Architect or Engineer may observe such procedures.
2. If after the commencement of the Work SEPTA determines that any Work requires special inspection, testing, or approval which Paragraph XVIII.J.1. does not include, SEPTA will instruct the Contractor to order such special inspection, testing or approval and the Contractor shall give notice as in a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the work with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including the Architect's or Engineer's additional services made necessary by such failure; otherwise SEPTA shall bear such costs, and an appropriate Change Order shall be issued.
3. During the performance of the Work SEPTA reserves the right and shall be at liberty to inspect all materials and workmanship at any time and shall have the right to reject all material and workmanship which does not conform with the Specifications.

Required certificates of inspection, testing or approval shall be secured by the

Contractor and promptly delivered by it to the Project Manager.

4. If the Project Manager wishes to observe the inspections, tests, or approvals required by this Paragraph XVIII.J. the Project Manager will do so promptly and, where practicable, at the source of supply.
5. Neither the observations of the Project Manager or any representative of SEPTA in the administration of the Construction Contract, nor inspection tests or approvals by persons other than the Contractor shall relieve the Contractor from its obligations to perform the Work in accordance with the Contract Documents.

K. Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

L. Written Notice

Written notice shall be deemed to have been duly served if delivered to or sent by mail to:

FOR SEPTA:

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

or such other address as SEPTA may from time to time designate.

FOR CONTRACTOR:

M. Unforeseen Underground Conditions

Should concealed conditions encountered in the performance of the Contract below the surface of the ground be at variance with the conditions indicated in the Contract Documents or should unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract, be encountered, the Contract Sum and/or the Completion Date shall be equitably adjusted by Change Order in accordance with Paragraph XIV. as deemed and judged by SEPTA after due deliberation of all the facts in its reasonable discretion.

N. Overhead Obstacles

It shall be the responsibility of the Contractor to become familiar with and to make appropriate provisions for any and all overhead obstacles, regardless whether noted in the Contract Documents, that may prevent or inhibit the performance of the Work in accordance with the Contract Documents, Contractor's chosen means and methods, or access to the work site. No adjustments to the Contract price or completion date will be granted based on the Contractor's failure to provide for any overhead obstacle in the prosecution of the Work. Providing for an overhead obstacle could include the removal and reinstallation or the temporary relocation of the obstacle by the Contractor, its Subcontractor or a third party.

O. Third Party Contract Rights

It is agreed that SEPTA, neither by this clause nor by any other provisions in this Agreement or other statements prior to or contemporaneous with this Agreement creates any right or expectation in any third party or third parties (including, without limitation, subcontractors) enforceable at law or in equity or any other proceeding against SEPTA, its officers, board, subsidizers, employees, agents or assigns.

P. Use of Financial Institutions Owned and Controlled by Socially and Economically Disadvantaged Individuals

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 §26.5.

Q. Disadvantaged Business Enterprise (DBE) Requirements

The Contractor shall fully comply with the DBE requirements as found in Exhibit IV which is attached hereto and made a part hereof.

R. SEPTA's Equal Employment Opportunity/Affirmative Action Contract Requirements

The Contractor shall fully comply with the EEO/AA requirements as found in Exhibit V which is attached hereto and made a part hereof.

S. Samples

Sample documents are found in Exhibit VII.

T. Drawings & Specifications

The Contractor shall fully comply with the drawings and specifications as found in Exhibit VIII which is attached hereto and made a part hereof.

XIX. DISPUTES

A. Disputes arising in the performance of the Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of

SEPTA's Senior Director of Procurement and Supply Chain Management. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor or SEPTA Project Manager mails or otherwise furnishes a written appeal to the Senior Director of Procurement and Supply Chain Management. In connection with any such appeal, the Contractor or the SEPTA Project Manager shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Senior Director of Procurement and Supply Chain Management shall be binding upon the Contractor and SEPTA.

- B. Performance During Disputes. Unless otherwise directed by SEPTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.

XX. PROHIBITED INTEREST.

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

XXI. SEVERABILITY.

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

XXII. INTEGRATION.

Subject to SEPTA's right to rely upon substantial representations made by the Contractor in making the decision to award the Contract to Contractor, this represents the entire and integrated agreement between SEPTA and Contractor and supersedes all prior or contemporaneous negotiation, representation, or agreement, either written or oral.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement 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:

CONTRACTOR:

\_\_\_\_\_

(Secretary or Treasurer)

\_\_\_\_\_

President or Vice-President

\_\_\_\_\_

(Please type name)

\_\_\_\_\_

(Please type name)

APPROVED AS TO FORM:

By: \_\_\_\_\_, Esq.  
Office of General Counsel  
Southeastern Pennsylvania  
Transportation Authority



**SCHEDULE A**

**INSERT PDF COPY OF COMPLETED SCHEDULE A HERE**

**EXHIBIT 1  
FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED PROVISIONS FOR  
CONTRACTS**

# FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED PROVISIONS FOR CONTRACTS

## 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 – 633.17)**

**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. 633.17 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 in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(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. DOJ 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 PAGE]**

**U.S. DEPARTMENT OF TRANSPORTATION NONDISCRIMINATION REQUIREMENTS  
(49 CFR Part 21)**

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.
6. **Incorporation of Provisions.** The Contractor shall include the provisions of paragraphs 1. through 6. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as SEPTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request SEPTA to enter into such litigation to protect the interests of SEPTA and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## RESTRICTIONS ON LOBBYING SECTION

(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 EI-20 through EI-22 of this Exhibit, 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 costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs 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.

**[END OF PAGE]**





## 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 agreement to 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 followup 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 subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards 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 agreements, 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 Project (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

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

Section B Affirmative Action Program

(For All Construction Contracts and Subcontracts Over \$10,000)

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT (EXECUTIVE ORDER 11246):**

- 1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
- 2. (a) The goals and the timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade  (all trades)	Goals for female participation for each trade  (all trades)
17.3%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

- (b) The Contractor's compliance with the Executive Order and the regulations at 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth at 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations at 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
- 3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is the Philadelphia Five-County area (Bucks, Chester, Delaware, Montgomery, and Philadelphia counties).

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION  
CONTRACT SPECIFICATION:**

1. As used in these specifications
- a. **"Covered area"** means the geographical area described in the solicitation from which the Contract resulted;
  - b. **"Director"** means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. **"Employer identification number"** means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
  - d. **"Minority"** includes:
    - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
    - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the Contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a hometown plan approved by the U. S. Department of Labor, in the covered area either individually or through an association, its affirmative action obligation on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan.

Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The over all good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.a. through p. of these specifications. The goals set forth in the solicitation from which the Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract

shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Program Office or from Federal Procurement Contracting Officers. The Contractor is expected to make substantially uniform progress toward its goal in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notice to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7.b. above.
  - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its

EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notice to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both on the site and in other areas of Contractor's workforce.
- k. Validate all tests and other selection requirements where there is obligation to do so under 41 CFR 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their affirmative action obligations set forth in paragraphs 7.a. through p. The efforts of a contractor

association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7.a. through p. of these specifications, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Officer of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7. of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, Social Security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the extent that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).



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

### 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.
6. **Incorporation of Provisions.** The Contractor shall include the provisions of paragraphs 1. through 6. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as SEPTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request SEPTA to enter into such litigation to protect the interests of SEPTA and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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**EXHIBIT II**  
**STATE AND LOCAL CONTRACT REQUIREMENTS**

## **STATE AND LOCAL 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-lit 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 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-5 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 -6 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 – 7 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 PAGE]**

**EXHIBIT III**  
**PLANNING, SCHEDULING AND PROGRESS MONITORING SPECIFICATIONS**

**EXHIBIT III**  
**PLANNING, SCHEDULING AND PROGRESS MONITORING SPECIFICATIONS**  
**FORMAT A – CPM SCHEDULE**

**1. DEFINITION OF TERMS**

- a. Contract Skeleton Form: A form generated from SEPTA's Capital Program Management System used to record progress and initiate the payment process for each Prime Contractor.
- b. CPM Schedule (Critical Path Method Schedule): The project management tool used for planning, scheduling and monitoring project progress herein known as the "Schedule."
- c. Value Line Breakdown: A list of cost items (value lines) and associated CPM Schedule activities. Each value line will represent the Prime Contractor's estimate of the value of the Work described by its associated CPM Schedule activity and will include direct costs, overhead and profit. The Value Line Breakdown must total each Prime Contractor's contract price.

**2. COORDINATING CONTRACTOR**

The Electrical contractor is designated the Coordinating Contractor for this project. The other Prime Contractors will furnish to the Coordinating Contractor the required data necessary for the Coordinating Contractor to prepare the Schedule.

If this project interfaces with one or more other SEPTA projects, and, in the event that two or more designated Coordinating Contractors interface on specific project tasks, the Project Manager shall have the authority to direct that these Contractors conform to a schedule approved by the Project Manager for the interfacing items. The Project Manager can direct one of the involved designated Coordinating Contractors to develop the Coordinated Schedule for these interface items for the Project Manager's review and approval.

**3. BASELINE SCHEDULE SUBMISSION REQUIREMENTS**

The Baseline Schedule shall be a CPM schedule showing the Work of all Prime Contractors for the entire contract period. It is a detailed schedule and shall be delivered to SEPTA no later than twenty-one (21) calendar days after receipt by the Coordinating Contractor of its Notice-To-Proceed. The other Prime Contractors shall supply information to the Coordinating Contractor for preparation of this schedule within seven (7) calendar days after receipt of Notice-to-Proceed.

The Baseline Schedule shall include all of the Work, as specified in the Contract Documents. Failure to include any element of Work required for the performance of the Contract shall not excuse any Prime Contractor from completing all of the Work required within the Contract Time. The Coordinating Contractor shall submit to SEPTA for its review and approval the Baseline Schedule using Oracle's Primavera P6 Professional Project Management software (P6) version 8.4 or higher using the following criteria:

- a. Activity numbers shall not exceed twenty (20) alphanumeric characters.
- b. Activity durations shall be each Prime Contractor's estimate, in days, of the time required to perform each activity.
- c. Activity descriptions shall not exceed sixty (60) characters and shall indicate definable items of work. The use of the words "start," "continue," "complete," "general conditions," "maintain" and similar are not acceptable. The description will include one action for each activity, e.g., "furnish," "install," etc.

- d. The Schedule shall include all major design, engineering, mobilization, procurement and construction activities for the entire Contract period. Procurement activities shall include shop drawing submittal and SEPTA approval durations in accordance with the technical specifications, lead times for the fabrication and delivery of materials and equipment, and installation of materials and equipment.
- e. Each activity in the Schedule shall be assigned a responsibility code as follows: “GC” for General Contractor, “MC” for Mechanical Contractor “EC” for Electrical Contractor and “SE” for SEPTA.
- f. Each activity in the Schedule shall be assigned an area code identifying the location of the Work being performed, where applicable.
- g. Each activity in the Schedule shall be assigned a phase code identifying the phase, as described in the Contract Documents, of the Work being performed, if applicable.
- h. Each activity in the Schedule shall be assigned a subcontractor code identifying each Prime Contractor’s subcontractor performing the Work described by that activity, if applicable.
- i. Contract interim milestone dates and the Contract Completion Date shall be input as finish constraint dates and shall agree with such dates specified in the Contract. Other constraint dates are unacceptable unless approved by SEPTA.
- j. The use of lag time in activity relationships should be kept to a minimum and must be approved by SEPTA. The use of negative lag time in activity relationships is forbidden.

The Baseline Schedule submission will consist of the following:

- a. A P6 time-scaled diagram showing all activities in the Schedule and a longest path diagram.
- b. A written narrative explaining the Schedule and the Prime Contractors’ general approach for meeting interim milestone dates and the Contract Completion Date. The narrative shall discuss the following:
  - The critical path
  - Construction phasing
  - Major procurement items
  - Calendars used in the Schedule, e.g., seven day, five day with holidays, weekend, etc.
  - Activity codes, constraint dates and lags. Non-contract constraint dates and lags must be discussed in the narrative and are subject to SEPTA approval.
- c. A compact disk (CD) in P6 .XER format. Electronic media other than CD shall require SEPTA approval.

#### **4. REVIEW AND ACCEPTANCE OF THE BASELINE SCHEDULE**

SEPTA shall complete its review of the Baseline Schedule within seven (7) calendar days. After review by SEPTA, the Baseline Schedule shall be revised and resubmitted if necessary within seven (7) calendar days. SEPTA will direct all changes and the Coordinating Contractor shall comply accordingly. Revision and re-submittal will continue until SEPTA acceptance is achieved.

If the Coordinating Contractor submits a Baseline Schedule whose Projected Completion Date is earlier than the Contract Completion Date, SEPTA may require, at its sole discretion, that the Contract Completion Date be adjusted, by means of a Change Order to reflect the Prime Contractor’s proposed Projected Completion Date.

## 5. VALUE LINE BREAKDOWN SUBMISSION REQUIREMENTS

After approval of the Baseline Schedule, each Prime Contractor shall submit its Value Line Breakdown, as defined in Section 1 of these Specifications, to the Coordinating Contractor who will incorporate this Value Line data into the approved Baseline Schedule in its P6 .XER file.. The Coordinating Contractor will then submit the CD or other SEPTA-approved electronic media for SEPTA's review and approval within seven (7) calendar days. SEPTA shall complete its review of the Value Line Breakdown within three (3) calendar days. If necessary, the Coordinating Contractor will re-submit the Value Line Breakdown for SEPTA approval within three (3) calendar days. Upon SEPTA's approval, the Coordinating Contractor shall submit the approved Baseline Schedule data and approved value line data on a CD or other SEPTA-approved electronic media. The approved data will be used as the basis for input to SEPTA's Capital Program Management System and progress payments. If the Coordinating Contractor has all Prime Contractors' Baseline Schedule and Value Line data before the Baseline Schedule is approved, the Coordinating Contractor may submit the Baseline Schedule with value lines for SEPTA's review and approval.

As defined in Article XII.B, Schedule of Payments, each Value Line shall include its proper share of overhead and profit. Therefore, Value Lines for general conditions and other overhead costs are not acceptable. Value Lines for shop drawing submissions and approval are not acceptable.

The Coordinating Contractor's failure to submit the Baseline Schedule, Value Line Breakdown and CD as required shall result in the withholding of progress payments to the extent permitted by Section XII.C of the Agreement until such submission requirements are met. No payment will be made until the Baseline Schedule and Value Line Breakdown have been approved by SEPTA.

## 6. SCHEDULE UPDATING AND PAYMENT REQUISITION

### 6.1. Schedule Updating

A schedule review and update meeting shall be held each month on a day designated by the Project Manager. At this meeting, all progress during the reporting period shall be addressed and reviewed. The updated Schedule shall reflect actual start and actual finish dates for all completed activities and actual start and projected completion dates or remaining durations for all in-progress activities. Each Prime Contractor shall be represented at each monthly progress meeting by its project manager and/or superintendent who shall be prepared to provide progress information.

The Coordinating Contractor shall submit the Schedule update to SEPTA within five (5) calendar days of the Schedule Update Meeting and not later than five (5) calendar days after receipt of the invoice request. The data date for the Schedule update must match the period ending date for the corresponding invoice. The Schedule update shall include the following:

- a. The P6 time-scaled diagram showing all activities except completed activities.
- b. The written narrative report which addresses, as a minimum:
  - Description of project status
  - Current status compared to the status of the previous Schedule update
  - The critical path
  - The projected completion date
  - The number of calendar days that the project is ahead or behind schedule
  - Activities that may become critical within the next 30 day period
  - Schedule slippages, if any, including a comparison to the previous Schedule update's status, the reason(s) for the schedule slippages and the measures required to get the project back on schedule
  - Schedule revisions as approved by SEPTA at the progress meeting or by other means.

- c. CD of the updated Schedule in P6 .XER format. The CD shall be identified by project name, update number and data date.

Failure of any Prime Contractor to provide the required information on time and failure by the Coordinating Contractor to furnish an acceptable P6 time-scaled diagram, written narrative report and CD on time may result in the progress payment of the Prime Contractor responsible being delayed until the required action is taken to the extent permitted by Section XII.C of the Agreement.

The Schedule shall be updated monthly and will continue to be updated every month until Substantial Completion.

## 6.2 Schedule Revisions

Any revision to the approved Schedule must be approved by SEPTA. After approval, Schedule revisions shall be addressed in the written narrative report by means of both a description of the revisions and a listing of those activities affected by such change. This listing will include the following, when applicable:

- a. Addition and deletion of activities
- b. Addition and deletion of relationships including relationship types and lags
- c. Changes to activity descriptions
- d. Changes to activity original durations
- e. Changes to relationship types and lag codes
- f. Changes to contract milestone dates and approved constraint dates
- g. All other revisions

The Coordinating Contractor shall maintain the Schedule's CPM logic such that it reflects the planned work sequence of all Prime Contractors as of the date of the update. Out of sequence logic shall be revised, and is subject to SEPTA's approval.

Failure to comply with the Schedule revision approval provisions described herein may result in the rejection of the Schedule submission and subsequent delay to the related progress payment until compliance is achieved.

## 6.3. Payment Requisition

Prior to updating the Schedule, each Prime Contractor shall update the SEPTA-supplied Contract Skeleton Form. The Contract Skeleton Form shall be available to each Prime Contractor on, or before, the monthly progress meeting during which the Schedule will be updated and progress payments, as agreed upon prior to the meeting, will be discussed. The Contract Skeleton Form period ending date and Schedule data date will be the same.

After SEPTA approves the completed Contract Skeleton Form, SEPTA will generate the Contract Payment Request. Once the necessary signatures have been secured and the "Release of Liens and Affidavit for Partial Payment" form has been submitted, and after SEPTA receives an acceptable updated Schedule, each Prime Contractor's payment for the requisition period can be processed subject to the Prime Contractor's meeting the conditions set forth in Section XII.C of the Agreement.

## 7. **CHANGE ORDERS**

When a change order is proposed by SEPTA or one of the Prime Contractors, the appropriate Prime Contractor must identify all CPM logic changes and additions required as a result of said proposed change order. Upon acceptance of the revision(s), the appropriate Prime Contractor shall provide the



Coordinating Contractor with the pertinent information so that the Schedule can be modified to reflect the change order work. The cost of all CPM logic changes required to reflect change order work shall be borne by the Coordinating Contractor.

## **8. RESPONSIBILITY FOR COMPLETION**

When, in SEPTA's sole opinion, an interim milestone date or the Contract Completion Date will not be met, the Prime Contractor, if any, determined by SEPTA to be the cause of the delay to these dates, shall take some or all of the following actions, as directed by SEPTA:

- a. Increase manpower in such quantities and crafts to eliminate the backlog of work.
- b. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment, or any combination of the foregoing to eliminate the backlog of work.
- c. Propose a Recovery Schedule or Delay Mitigation Plan for the Work under its Contract within 14 calendar days of SEPTA's request.

Prior to proceeding with any of the above actions, such Prime Contractor shall notify and obtain acceptance from SEPTA for the proposed Schedule changes. If actions are approved, the revisions shall be incorporated by the Coordinating Contractor into the Schedule during the next update period. Any additional costs incurred by any Prime Contractor as a result of it's or another Prime Contractor's failure to meet the latest approved Schedule shall be borne by the appropriate Prime Contractor(s).

## **9. ADJUSTMENT OF CONTRACT COMPLETION**

If a Prime Contractor requests an extension of time for the completion of an interim milestone date or Contract Completion Date, this Prime Contractor shall, in addition to the time impact analysis submission requirements specified in the Contract, furnish such justification, CPM data and supporting evidence as SEPTA may deem necessary for the determination as to whether or not said Prime Contractor is entitled to an extension of time under the provisions of the Contract. The time impact analysis shall include a narrative describing the delays and time impacts to the current Contract Completion Date. The cost of all time extension requests, including time impact analyses, shall be borne solely by the Prime Contractor requesting the time extension.

The Schedule must clearly display that the requesting Prime Contractor has used, in full, all the float time available for the work involved in its request. Float time in the Schedule is not for the exclusive use or benefit of either SEPTA or Prime Contractor but is a jointly owned expiring resource available to both parties as needed to meet interim milestones or the Contract Completion Date. Delays to activities which, according to the most current updated Schedule, do not affect the current Contract Completion Date as shown by the Schedule's critical path will not be the basis for a change to the Contract Completion Date.

After receipt of such justification and supporting evidence, SEPTA will review the facts and advise the Prime Contractor in writing of SEPTA's decision. If SEPTA determines that the requesting Prime Contractor is entitled to an extension of time to an interim milestone date, the Contract Completion Date shall remain the same, unless SEPTA states otherwise.

If SEPTA has not yet made a final determination as to the amount of time extension to be granted and SEPTA and the Prime Contractor requesting an extension of time are unable to agree on the amount of the extension to be reflected in the Schedule, the Coordinating Contractor shall reflect that amount of time extension in the Schedule as SEPTA may determine to be appropriate for such interim purpose. It is understood and agreed that such interim determination by SEPTA for the purposes of this paragraph will not be binding upon SEPTA or the Prime Contractor requesting the extension of time for any other purpose and that, after SEPTA has made a final determination as to any time extension, the Coordinating Contractor shall revise the Schedule in accordance with the final decision.

## SUMMARY OF SUBMISSION REQUIREMENTS

Following is a summary of the CPM Schedule and Value Line Breakdown and computer disk submission requirements:

### Baseline CPM Schedule

Prime Contractor's Receipt of Notice-To-Proceed (NTP)	Day 1
Baseline CPM Schedule Due to SEPTA	21 calendar days after receipt of NTP
SEPTA Review of Baseline CPM Schedule	7 calendar days after receipt
Re-submission(s) of Baseline CPM Schedule, if necessary	7 calendar days after review by SEPTA
SEPTA Approval of Baseline CPM Schedule	7 calendar days after receipt

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### Value Line Breakdown

Value Line Breakdown on Computer Disk Due to SEPTA	7 calendar days after approval of the Baseline CPM Schedule
SEPTA Review of Value Line Breakdown	3 calendar days after receipt
Re-submission(s) of Value Line Breakdown, if necessary	3 calendar days after review by SEPTA
SEPTA Approval of Value Line Breakdown	3 calendar days after receipt

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### Monthly CPM Schedule Updates

Coordinating Contractor's Monthly CPM Schedule Update Due to SEPTA	Within 5 calendar days of the monthly progress meeting
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[END OF PAGE]

**AFFIDAVIT FOR PARTIAL PAYMENT-SCHEDULE A  
Request for Payment**

No. \_\_\_\_\_

Contractor: \_\_\_\_\_

Date: \_\_\_\_\_

Project: \_\_\_\_\_

Period Ending: \_\_\_\_\_

Name and Address of Supplier, Subcontractor or Materialman	Total Value of Material and/or Work Performed as of the end of period given in this Affidavit	Net Payments by Affiant as of date of this Affidavit	Balance Due from Affiant as of date of this Affidavit

SEPTA Form 7/00 Schedule A Affidavit

**EXHIBIT IV**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**COMPETITIVELY BID  
CONTRACT WITH 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 established the following goal for Disadvantaged Business Enterprise (DBE) participation. The DBE goal shall apply to all change orders and amendments.

**DBE Goal: 11% of the total dollar value of the Contract Sum.**

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, Tuvalu, 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. The vendor must fill out, sign and submit the Bid Acknowledgement Form at the time of its bid.
2. The Bidder, using the attached DBE Participation Schedule, is required to submit the requisite information on a properly executed Participation Schedule for each proposed DBE subcontractor/supplier:
  - (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 dollar amount of participation for the DBE firm participating.

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

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

- (a) **The Bidder's commitment** to use a DBE subcontractor/supplier whose participation it submitted to meet a contract goal; **and**
- (b) **The DBE subcontractor/supplier's confirmation** that it is participating in the Contract as provided in the Bidder's commitment.
- (c) If the contract goal is not met, Bidder 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 Bidder is also required to identify all other subcontractors/suppliers scheduled to participate in the Contract by submitting the attached Subcontractor/Supplier Participation Schedule.**

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

- 3. The requirements of this section also apply to DBE Bidders for prime contracts. In determining whether a DBE Bidder 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 subcontractors and DBE suppliers will be counted.
- 4. 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 subcontractor 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 subcontractor 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 subcontractor toward the prime contractor's DBE achievements until the amount being counted toward the goal has been paid to the DBE.

E. **DETERMINATION OF DBE RESPONSIBILITY**

1. SEPTA will only award a contract with a DBE goal to a Bidder who meets the participation goal or makes good faith efforts to meet it. A Bidder must do either of the following things:

(a) Documents that it has obtained sufficient DBE participation to meet the goal; or

- (b) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining sufficient DBE participation to do so.
2. In determining whether a Bidder has made good faith efforts to meet the DBE Goal, SEPTA will look at the documentation supporting the different kinds of efforts that the Bidder has made, as well as the quantity and intensity of those efforts. As requested by SEPTA's DBE Program Office, a Bidder shall be required to submit in writing the efforts undertaken to demonstrate the Bidder's good faith efforts to obtain DBE participation for this Contract. At a minimum, the Bidder's written statement shall include the following information, as well as address the steps specified in 49 CFR, part 26, Appendix A, IV - Guidance Concerning Good Faith Efforts:
- (a) Whether the Bidder attended any pre-bid meetings that were scheduled by SEPTA to inform DBEs of contracting and subcontracting opportunities;
  - (b) Whether the Bidder advertised in general circulation, trade association, and minority focus-media concerning the subcontracting opportunities;
  - (c) Whether the Bidder provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
  - (d) Whether the Bidder followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
  - (e) Whether the Bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE Goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
  - (f) Whether the Bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
  - (g) Whether the Bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
  - (h) Whether the Bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by SEPTA or the bidder; and
  - (i) Whether the Bidder effectively used the services of available DBE community organizations, DBE contractors' groups, local, State and Federal DBE business assistance offices, and other organizations that provide assistance in recruitment and placement of DBEs.
3. If SEPTA determines that the apparent successful Bidder has failed to meet the requirements specified in paragraph E.1.above, SEPTA will provide upon receipt of written request from the Bidder an opportunity for administrative reconsideration:
- (a) As part of this reconsideration, the Bidder will have the opportunity to provide additional written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
  - (b) SEPTA's decision on reconsideration will be made by an official who did not take part in the original determination that the Bidder failed to meet the goal or make adequate good faith efforts

to do so.

- (c) The Bidder will have the opportunity to meet in person with SEPTA's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (d) SEPTA will send the Bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
- (e) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

1. In the event that a Bidder requires a modification to its DBE Participation Schedule after contract award, the Bidder must notify SEPTA's DBE Program Office, in writing, and request approval for the modification. This will include any modifications or substitutions to items or work, material, services and/or DBE firms identified on the initial DBE Participation Schedule. The Bidder must provide SEPTA with any and all documents and information as may be requested with respect to the requested modification. If the modification involves a substitution and if SEPTA agrees that a substitution may be made, then the Bidder shall make good faith efforts as set forth in paragraph E.2. above to substitute that DBE firm with another DBE firm. Such efforts must be documented to the satisfaction of SEPTA's DBE Program Office in the event that the Bidder is unable to contract with another DBE firm. The level of DBE Participation achieved will be reviewed in accordance with the requirements of paragraph E.2. above. The substitute DBE firm must be certified in the Pennsylvania Unified Certification Program (PA UCP) in order for the Bidder to receive credit towards achieving the DBE Goal for this SEPTA contract.
2. If after award of the Contract, a DBE subcontractor 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 subcontractor 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.

**G. 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(s). 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 subcontractor(s) will commence and complete work on the project, at such times as prescribed by SEPTA's DBE Program Office
3. The Contractor shall submit monthly reports of actual contract expenditures to DBEs by the Contractor. This information must be submitted electronically via SEPTA's electronic reporting system (<http://bizweb.septa.org/bizwebsepta>).
4. The Contractor and subcontractor(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.

5. With regard to any claim or dispute with respect to payment of a subcontractor 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 subcontractor(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.

#### H. **SANCTIONS FOR VIOLATIONS**

If at anytime SEPTA has reason to believe that the Contractor is in violation of its obligations under this section, SEPTA may, in addition to pursuing any other available legal remedy, commence proceedings to impose sanctions on the Contractor. Such sanctions may include, but are not limited to, one (1) or more of the following:

1. The suspension of any payment, or part thereof, due to the Contractor until such time as the issues concerning the Contractor's compliance are resolved;
2. The termination or cancellation of the Contract, in whole or in part, unless the Contractor is able to demonstrate to SEPTA's satisfaction, within a reasonable time period as designated by SEPTA, its compliance with the terms of this Section; and
3. The denial of the Contractor of the right to participate in any further contracts awarded by SEPTA for a period not longer than three (3) years.

No such sanctions shall be imposed by SEPTA upon Contractor except in accordance with SEPTA's Procurement Manual and the terms of the Contract.

#### I. **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. The Contractor shall complete and submit to SEPTA's Project Manager with each of its invoices or any request for payment from SEPTA a DBE Invoice Payment Report. A copy of the reporting form is attached.

#### J. **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.

**[END OF PAGE]**



## Disadvantaged Business Enterprise (DBE) Policy Statement

The Southeastern Pennsylvania Transportation Authority (SEPTA) opposes unlawful discrimination of any kind. SEPTA is an Equal Employment Opportunity Employer/Contractor, and is firmly committed to providing equal employment and business opportunities for all persons.

SEPTA receives Federal financial assistance from the U.S. Department of Transportation (DOT) and, as a condition of receiving this assistance, SEPTA has signed an assurance that it will comply with the regulations of the DOT, 49 Code of Federal Regulations (CFR) Part 26 (Part 26). Accordingly, SEPTA has established a Disadvantaged Business Enterprise (DBE) Program in accordance with Part 26.

It is the policy of SEPTA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy to:

- Ensure non-discrimination in the award and administration of DOT-assisted contracts;
- Create a level-playing field on which DBEs can compete fairly for DOT-assisted contracts;
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- Help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- Assist the development of firms that can compete successfully in the marketplace outside of the DBE Program.

SEPTA's Director, DBE Program Office (Director) has been designated to serve as the Disadvantaged Business Enterprise Liaison Officer (DBELO) for SEPTA. In this capacity, the Director is responsible for implementing all aspects of SEPTA's DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by SEPTA in its financial assistance agreements with the DOT.

SEPTA has disseminated this policy statement to its Board of Directors and all appropriate departments throughout our organization. We distribute our policy statement, via inclusion in certification approval letters and contract documents, to the DBE and non-DBE business communities that perform work for SEPTA on DOT-assisted contracts. Our policy statement can also be accessed via SEPTA's website at [www.septa.org](http://www.septa.org). Information about our DBE Program can be obtained by contacting SEPTA's DBE Program Office via phone (215-580-7278) or email (DBEProgram@septa.org).

  
Jeffrey D. Knuettel  
General Manager

  
8/28/17

Date Approved



SEALD BID

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION SCHEDULE

As specified in the DBE Participation Section included in the Bidding Documents, the Bidder shall furnish to SEPTA's satisfaction the details of disadvantaged business enterprise participation.

NOTE: Firms must be Pennsylvania Unified Certification Program (PA UCP)-certified prior to being listed on a DBE Participation Schedule.

PROJECT NAME: \_\_\_\_\_

SEALD BID NO.: \_\_\_\_\_

TABLE I. ALL WORK/SERVICES TO BE PERFORMED BY THE DBE FIRM

Table with 3 columns: 1. NAME OF DBE FIRM (CONTACT PERSON, BUSINESS ADDRESS, TELEPHONE NUMBER), 2. DESCRIPTION OF WORK TO BE PERFORMED, 3. TOTAL DBE AGREED PRICE TO BE CREDITED TO DBE GOAL. Includes sub-rows for Firm Name, Contact, Address, and Tele. No.

(Type or Print all information)

TABLE II. MATERIAL/SUPPLIES TO BE PURCHASED FROM "REGULAR DEALERS"

Table with 3 columns: 1. NAME OF DBE FIRM (CONTACT PERSON, BUSINESS ADDRESS, TELEPHONE NUMBER), 2. DESCRIPTION OF MATERIAL TO BE SUPPLIED, 3. TOTAL DBE AGREED PRICE TO BE CREDITED TO DBE GOAL (Total Price x .6). Includes sub-rows for Firm Name, Contact, Address, and Tele. No.

(Type or Print all information)

Name of Bidder: \_\_\_\_\_ (type or print) Tele. No.: ( ) \_\_\_\_\_
Contact: \_\_\_\_\_ (type or print) Email: \_\_\_\_\_
Signature: \_\_\_\_\_ Title: \_\_\_\_\_
Date: \_\_\_\_\_

- ❖ A FULLY COMPLETED DBE PARTICIPATION SCHEDULE, FOR EACH DBE FIRM DESIGNATED TO PARTICIPATE, IS REQUIRED TO BE SUBMITTED.
❖ FAILURE OF THE BIDDER TO SUBMIT FULLY COMPLETED DBE PARTICIPATION SCHEDULE(S) TO SEPTA'S SATISFACTION MAY RESULT IN THE REJECTION OF THE BID.
❖ BIDDER MUST SIGN AND DATE ABOVE.
❖ BIDDER WILL BE REQUIRED TO PROVIDE A COMMITMENT/CONFIRMATION DOCUMENT FOR EACH DESIGNATED DBE FIRM UPON REQUEST FROM SEPTA.

Bidders are hereby notified that the information contained herein will be verified with the designated DBE firm. Additionally, if and when the award of a contract is made, the DBE firm listed herein will be simultaneously notified of the award.

SEPTA reserves the right to waive informalities herein in its sole reasonable discretion.

1 See Section D. "Determination of Percentage of DBE Participation" for discussion of types of participation and credit given toward achieving the DBE Goal.

2 This may be expressed in dollars or as a percentage of the Bidder's total maximum price to SEPTA.



## DBE INVOICE PAYMENT REPORT

(To Be Submitted For Federally Funded Contracts Only)

APPLICATION DATE: _____ PERIOD FROM: _____ TO: _____  CONTRACTOR NAME AND ADDRESS: _____ _____ PROJECT NAME: _____ _____ CONTRACT NUMBER: _____ PURCHASE ORDER NUMBER: _____	<p style="text-align: center;"><b>FOR SEPTA'S USE ONLY</b></p> <p style="text-align: center;">Contractor's Application for Payment</p> <p> <input type="checkbox"/> APPROVED      <input type="checkbox"/> REJECTED  <input type="checkbox"/> ITEM(S) DISALLOWED (specify): _____         </p> <p style="text-align: right; font-weight: bold;">SEPTA Project Manager</p>	
<b>PART I: CONTRACT INFORMATION</b>	<b>PART II: DBE INFORMATION</b>	
Original Contract Sum: _____ Net Change by Change Order: _____ Contract Sum to Date: _____  Total Billed to Date: _____ Retainage:   % _____ Total Billed to Date Less Retainage: _____  Total Previous Invoices Submitted Less Retainage: _____ Current Amount Due: _____	Original DBE Subcontractor(s) Sum: _____ Net Change by Change Order: _____ DBE Subcontractor(s) Sum to Date: _____ Total Invoices Submitted for DBE Payment to Date: _____ Retainage:   % _____ Total Invoices Submitted for DBE Payment to Date Less Retainage: _____ Total Previous Invoices Submitted Less Retainage: _____ Current DBE Payment Due: _____	
<b>List DBE Subcontractor(s), DBE Invoice Number(s) and the current DBE Payment Due:</b>		
<b>DBE Subcontractor Name</b>	<b>DBE Invoice Number</b>	<b>DBE Amount Due</b>
<p>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.</p>		
<b>COMPANY OFFICIAL'S SIGNATURE</b>	<b>TITLE</b>	<b>DATE</b>

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**SEPTA SOLICITATION STATISTICS**

In accordance with Federal Regulation 49 CFR part 26.11, SEPTA must maintain statistics on **all** contractors and subcontractors bidding/proposing on SEPTA projects. Please include copies of this form with your bid/proposal package to any potential subcontractors/subconsultants. All Bidders/Proposers are required to submit a completed survey for themselves and all potential subcontractors/subconsultants.

Thank you for your assistance with this request. If you should have any questions, comments or suggestions, please contact SEPTA's DBE Program Office at 215-580-7278, or via email at [DBEProgram@septa.org](mailto:DBEProgram@septa.org).

***The information gathered on this form will be used for statistical purposes only.***

**Firm Name:** \_\_\_\_\_

**Firm Address:** \_\_\_\_\_

**Description of Services:** \_\_\_\_\_

**NAICS\* Codes:** \_\_\_\_\_

\* North American Industry Classification System ([www.census.gov/epcd/www/naics.html](http://www.census.gov/epcd/www/naics.html))

**Status:** DBE \_\_\_\_\_ SBE \_\_\_\_\_ OBE \_\_\_\_\_  
(Disadvantaged Business Enterprise) (Small Business Enterprise) (Other Business Enterprise)

**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:** \_\_\_\_\_  
*(Please Type or Print)*

**Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Telephone No.:** ( ) \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Facsimile No.:** ( ) \_\_\_\_\_





SEPTA

**NON-DBE PARTICIPATION SCHEDULE  
(Sealed Bid)**

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

PROJECT NAME: \_\_\_\_\_

SEALED BID NO.: \_\_\_\_\_

**1. WORK/SERVICES TO BE PERFORMED BY SUBCONTRACTORS**

**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 SUBCONTRACT/PURCHASE ORDER AMOUNT
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 Bidder: \_\_\_\_\_  
(type or print)

Tele. No.: (    ) \_\_\_\_\_

Email: \_\_\_\_\_

Contact: \_\_\_\_\_  
(type or print)

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## SAMPLE DOCUMENT

***Bidder is required to submit a Commitment/Confirmation document, on Bidder's official letterhead, for each DBE firm scheduled to participate, within forty-eight (48) hours from notification by SEPTA.***

DBE PARTICIPATION - COMMITMENT/CONFIRMATION

SEPTA Sealed B

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 (please type or print)	Signature	Date
--	-----------	------

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

**EXHIBIT V**  
**SEPTA'S EEO/AA CONTRACTUAL REQUIREMENTS**

## **SEPTA'S 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.

(See Exhibit I Section B)

**EXHIBIT VI  
SPECIAL CONDITIONS**

## **SPECIAL CONDITION**

### **RAILROAD PROTECTIVE LIABILITY INSURANCE**

#### **A. Coverage and Limits Required**

In addition to insurance coverage required and minimum limits stated elsewhere in the Contract, Railroad Protective Liability Insurance with a \$5 Million Combined Single Limit (Bodily Injury and Property Damage) per occurrence and a \$10 Million aggregate per policy period shall be required for the Contract. This coverage shall be provided by SEPTA, at no cost to the Contractor for the duration of the Contract.

It is understood and agreed that this coverage only protects SEPTA and any other railroad named as an insured under SEPTA's Blanket policy. Under no circumstances will the Contractor and/or any of its subcontractors, at any tier, enjoy any coverage under this insurance.

## SPECIAL CONDITION

### RELEASE AND AGREEMENT TO CONFORM WITH ENVIRONMENTAL LAWS FOR ASBESTOS REMOVAL

KNOW ALL MEN BY THESE PRESENTS THAT: For and in consideration of an award of contract and payment of Contract Sum under a contract with the Southeastern Pennsylvania Transportation Authority ("SEPTA") dated \_\_\_\_, 20\_\_, hereinafter known as the "*Contract*" which is incorporated by reference herein and other good and lawful consideration \_\_\_\_\_, including its successors in interest or assigns, who shall be held as and hereinafter known as "Releasor" for all purposes of this Release and Agreement to Conform with Environmental Laws for Asbestos Removal, does hereby remise, release, and forever discharge SEPTA and its members, officers, employees, successors and subsidizers, subject to and conditioned upon SEPTA's full performance of its obligations under the Agreement, of and from all manner of actions and causes of action, suits, debts, covenants, contracts, judgments, penalties, claims, and demands whatsoever in law or in equity whether judicial or administrative in nature, and, without limiting the above, of and from any actions or causes of action, suits, debts, covenants, contracts, judgments, penalties, claims, and demands of any sort based upon any and all environmental laws of any jurisdictions including those which regulate hazardous wastes and hazardous substances including Asbestos or materials that by operation of the Specifications in this Agreement are defined to be Asbestos.

Moreover, it is also agreed, without limiting the above general release:

- A. The Agreement for the disposal of certain materials that will be generated by the activities to be performed and that are defined to be Asbestos, is expressly incorporated by reference herein as though set forth fully herein. Releasor acknowledges that the subject matter of the Agreement, including the handling, storage, packaging, transportation and disposal of the aforesaid Asbestos by Releasors, is strictly regulated in the currently applicable federal regulations, found in Title 40 of the Code of Federal Regulations, Part 61, Subpart M (and as they may be amended) ("EPA Regulations") and the City of Philadelphia Asbestos Control Regulations, when applicable.
- B. Releasor expressly covenants that it is familiar with and agrees that it will comply with these Regulations. The Releasor further covenants and agrees to comply with all other federal, state, and local laws, ordinances, regulations and decrees, whether administrative or judicial, which are presently applicable or which may become applicable to the subject matter of the Agreement.
- C. Releasor covenants and agrees that it will not use, presently, or at any future time, any of the above-referenced Asbestos to be removed pursuant to this contract, and that it will only handle said materials according to all applicable laws and regulations, and handle, store, package, transport and eventually dispose of the Asbestos according to all applicable laws. Releasor further covenants and agrees that, in the event it contracts with any other party or parties for the handling, storage, packaging, transportation and/or disposal of Asbestos, which is the subject of the present Agreement, that Releasor is obligated to ascertain that such other party or parties will comply as fully with the law as Releasor is obligated to do hereunder and as SEPTA is obligated to do, and that Releasor will obtain a written certification accompanied by an affidavit of an officer of each such third party stating that the third party or parties will fully comply with the EPA Regulations and all other applicable laws with respect to the Asbestos. The failure of Releasor to obtain such certification from any third party or parties shall not be deemed to be a breach of this Release or the Agreement as long as Releasor has used its best efforts to obtain the same. A copy of such certification must be sent by Releasor to SEPTA within thirty (30) days of the

making of any such contract with any such third party or parties. Releasor agrees to obtain the prior written approval of SEPTA before Releasor engages any third party or parties to perform any services under this paragraph; provided, however, that no such prior approval shall be required of SEPTA in conjunction with the contracting by Releasor for the ultimate disposal of the Asbestos, on the condition that Releasor obtain a written certification and affidavit prior to or at the time when the third party takes possession of such Asbestos and shall state that the third party will fully comply with the EPA Regulations and all other applicable laws. Releasor covenants and agrees to transmit to SEPTA such certification and affidavit within ten (10) days of the date such certification and affidavit are executed by the third party and officer thereof.

- D. Releasor avers that it has been engaged in the business of handling, processing and storing Asbestos for the past three years and to the extent required by law, has arranged for lawful disposal of Asbestos for the past three years.
- E. It is understood by the parties to the Agreement that the Asbestos which is the subject of the Agreement pass to Releasor at the time said Asbestos is generated by Releasor's activities, unless barred by the operation of law.
- F. Any act or omission on the part of Releasor which involves or includes a violation of the EPA Regulations or of any federal or state environmental statute or regulation, or local ordinance dealing with the environment, and which involves the handling, disposal, storage, packaging, transportation and/or disposal of the Asbestos which is the subject of the Agreement will be regarded by SEPTA as a substantial breach of the Agreement. Such act(s) or omission(s) will be regarded as a breach or breaches of the Agreement by Releasor whether resulting from the inadvertence, negligence or gross negligence of Releasor.
- G.
  - (1) Releasor covenants and agrees to send to SEPTA one copy of every record which Releasor is obligated by the EPA Regulations to maintain and one copy of every communication between Releasor and every federal, state and local governmental body, including also the Environmental Protection Agency, which deals with the Asbestos which is the subject of the Agreement, and to send such copies to SEPTA within thirty (30) days of the making of such records and the sending or receiving of such communication.
  - (2) In the event that Asbestos is stored by Releasor prior to ultimate disposal, Releasor covenants and agrees to send to SEPTA the certification that such disposal was carried out properly under the EPA Regulations and all other applicable laws, and such certification shall be sent within thirty (30) days of each such disposal.
  - (3) On the occasion or occasions of the ultimate disposal of any or all of the Asbestos, Releasor covenants and agrees to send to SEPTA its certification that such disposal was carried out properly under the EPA Regulations and all other applicable laws, and such certification shall be sent within thirty (30) days of each disposal.
  - (4) The certifications concerning proper storage and disposal, which are the subjects of the two immediately preceding subparagraphs (2 and 3), are to be sent by Releasor to SEPTA even if Releasor, pursuant to paragraph C above, has engaged a third party or parties to perform such storage and/or disposal, and regardless of whether Releasor passes Asbestos to any other party or parties. This requirement concerning the sending of certifications described in this paragraph is the continuing responsibility of Releasor, and may not be assigned to any agent or independent contractor of Releasor, without the prior written consent of SEPTA.



- (5) The transmission by Releasor of all records, documents, and certifications mentioned in this paragraph G or elsewhere in this Release within the prescribed periods and at the prescribed intervals is regarded by both parties to be of the essence of this Release and the incorporated Agreement.
- H. Releasor hereby promises and agrees that in the event that SEPTA is named as a defendant in any action at law or equity or in any criminal or civil action or any administrative proceeding before any court or administrative agency in any jurisdiction, for any act or omission for which Releasor is responsible pursuant to the Agreement or this Release, Releasor hereby covenants and agrees to defend, indemnify, and hold harmless SEPTA, its agents, employees and officers, successors and subsidizers, from and against any civil or criminal judgment, penalty, cost, claim, suit or action at law or in equity or any administrative proceeding which may be brought against SEPTA on account of any violation or damage of any kind whatsoever including property loss or personal injury of any kind or nature whatsoever (including deaths) arising out of or in any way connected with Releasor's performance of the Agreement incorporated by reference herein.
- I. This Release and Agreement to conform with Environmental Laws shall be interpreted according to the laws of the Commonwealth of Pennsylvania.

For and in consideration of the Agreement incorporated herein by reference as though set forth fully herein, and for other good and lawful consideration, this Release and Agreement to Conform with Environmental Laws for Asbestos Removal is executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the hereunder signed parties and/or authorized representatives thereof.

Attest: \_\_\_\_\_ By: \_\_\_\_\_

SEAL

By: \_\_\_\_\_  
President or Vice President

\_\_\_\_\_  
Secretary

## SPECIAL CONDITION

### RELEASE AND AGREEMENT TO CONFORM WITH ENVIRONMENTAL LAWS FOR REMOVAL OF MATERIAL DESIGNATED AS HAZARDOUS WASTE BY TITLE 40 CODE OF FEDERAL REGULATIONS PART 261 ET SEQ

KNOW ALL MEN BY THESE PRESENTS THAT: For and in consideration of an award of contract and payment of Contract Sum under a contract with the Southeastern Pennsylvania Transportation Authority ("SEPTA") dated \_\_\_\_\_, 20\_\_, hereinafter known as the "*Contract*," which is incorporated by reference herein and other good and lawful consideration \_\_\_\_\_, including its successors in interest or assigns, who shall be held as and hereinafter known as "Releasor" for all purposes of this Release and Agreement to Conform with Environmental Laws for Hazardous Waste Removal, does hereby remise, release, and forever discharge SEPTA and its members, officers, employees, successors and subsidizers, subject to and conditioned upon SEPTA's full performance of its obligations under the Agreement, of and from all manner of actions and causes of action, suits, debts, covenants, contracts, judgments, penalties, claims, and demands whatsoever in law or in equity whether judicial or administrative in nature, and, without limiting the above, of and from any actions or causes of action, suits, debts, covenants, contracts, judgments, penalties, claims, and demands of any sort based upon any and all environmental laws of any jurisdictions including those which regulate hazardous wastes and hazardous substances including material designated as hazardous waste by Title 40 Code of Federal Regulations Part 261 *et seq* ("Hazardous Waste") or materials that by operation of the Specifications in this Agreement is defined to be Hazardous Waste.

Moreover, it is also agreed, without limiting the above general release:

- A. The Agreement for the disposal of certain materials that will be generated by the activities to be performed and that are defined to be Hazardous Waste, is expressly incorporated by reference herein as though set forth fully herein. Releasor acknowledges that the subject matter of the Agreement, including the handling, storage, packaging, transportation and disposal of the aforesaid Hazardous Waste by Releasors, is strictly regulated in the currently applicable federal regulations, found in Title 40 of the Code of Federal Regulations, Part 261 *et seq* (and as they may be amended) ("EPA Regulations").
- B. Releasor expressly covenants that it is familiar with and agrees that it will comply with these Regulations. The Releasor further covenants and agrees to comply with all other federal, state, and local laws, ordinances, regulations and decrees, whether administrative or judicial, which are presently applicable or which may become applicable to the subject matter of the Agreement.
- C. Releasor covenants and agrees that it will not use, presently, or at any future time, any of the above-referenced Hazardous Waste to be removed pursuant to this contract, and that it will only handle said materials according to all applicable laws and regulations, and handle, store, package, transport and eventually dispose of the Hazardous Waste according to all applicable laws. Releasor further covenants and agrees that, in the event it contracts with any other party or parties for the handling, storage, packaging, transportation and/or disposal of Hazardous Waste, which is the subject of the present Agreement, that Releasor is obligated to ascertain that such other party or parties will comply as fully with the law as Releasor is obligated to do hereunder and as SEPTA is obligated to do, and that Releasor will obtain a written certification accompanied by an affidavit of an officer of each such third party stating that the third party or parties will fully comply with the EPA Regulations and all other applicable laws with respect to the Hazardous Waste. The failure of Releasor to obtain such certification from any third party or parties shall not be deemed to be a breach of this Release or the

Agreement as long as Releasor has used its best efforts to obtain the same. A copy of such certification

must be sent by Releasor to SEPTA within thirty (30) days of the making of any such contract with any such third party or parties. Releasor agrees to obtain the prior written approval of SEPTA before Releasor engages any third party or parties to perform any services under this paragraph; provided, however, that no such prior approval shall be required of SEPTA in conjunction with the contracting by Releasor for the ultimate disposal of the Hazardous Waste, on the condition that Releasor obtain a written certification and affidavit prior to or at the time when the third party takes possession of such Hazardous Waste and shall state that the third party will fully comply with the EPA Regulations and all other applicable laws. Releasor covenants and agrees to transmit to SEPTA such certification and affidavit within ten (10) days of the date such certification and affidavit are executed by the third party and officer thereof.

- D. Releasor avers that it has been engaged in the business of handling, processing and storing Hazardous Waste for the past three years and to the extent required by law, has arranged for lawful disposal of Hazardous Waste for the past three years.
- E. It is understood by the parties to the Agreement that the Hazardous Waste which is the subject of the Agreement pass to Releasor at the time said Hazardous Waste is generated by Releasor's activities, unless barred by the operation of law.
- F. Any act or omission on the part of Releasor which involves or includes a violation of the EPA Regulations or of any federal or state environmental statute or regulation, or local ordinance dealing with the environment, and which involves the handling, disposal, storage, packaging, transportation and/or disposal of the Hazardous Waste which is the subject of the Agreement will be regarded by SEPTA as a substantial breach of the Agreement. Such act(s) or omission(s) will be regarded as a breach or breaches of the Agreement by Releasor whether resulting from the inadvertence, negligence or gross negligence of Releasor.
- G.
  - (1) Releasor covenants and agrees to send to SEPTA one copy of every record which Releasor is obligated by the EPA Regulations to maintain and one copy of every communication between Releasor and every federal, state and local governmental body, including also the Environmental Protection Agency, which deals with the Hazardous Waste which is the subject of the Agreement, and to send such copies to SEPTA within thirty (30) days of the making of such records and the sending or receiving of such communication.
  - (2) In the event that Hazardous Waste is stored by Releasor prior to ultimate disposal, Releasor covenants and agrees to send to SEPTA the certification that such disposal was carried out properly under the EPA Regulations and all other applicable laws, and such certification shall be sent within thirty (30) days of each such disposal.
  - (3) On the occasion or occasions of the ultimate disposal of any or all of the Hazardous Waste, Releasor covenants and agrees to send to SEPTA its certification that such disposal was carried out properly under the EPA Regulations and all other applicable laws, and such certification shall be sent within thirty (30) days of each disposal.
  - (4) The certifications concerning proper storage and disposal, which are the subjects of the two immediately preceding subparagraphs (2 and 3), are to be sent by Releasor to SEPTA even if Releasor, pursuant to paragraph C above, has engaged a third party or parties to perform such storage and/or disposal, and regardless of whether Releasor passes Hazardous Waste to any other party or parties. This requirement concerning the sending of certifications described in this paragraph is the continuing responsibility of Releasor, and may not be assigned to any agent or independent contractor of Releasor, without the prior written consent of SEPTA.
  - (5) The transmission by Releasor of all records, documents, and certifications mentioned in this

paragraph G or elsewhere in this Release within the prescribed periods and at the prescribed intervals is regarded by both parties to be of the essence of this Release and the incorporated Agreement.

- H. Releasor hereby promises and agrees that in the event that SEPTA is named as a defendant in any action at law or equity or in any criminal or civil action or any administrative proceeding before any court or administrative agency in any jurisdiction, for any act or omission for which Releasor is responsible pursuant to the Agreement or this Release, Releasor hereby covenants and agrees to defend, indemnify, and hold harmless SEPTA, its agents, employees and officers, successors and subsidizers, from and against any civil or criminal judgment, penalty, cost, claim, suit or action at law or in equity or any administrative proceeding which may be brought against SEPTA on account of any violation or damage of any kind whatsoever including property loss or personal injury of any kind or nature whatsoever (including deaths) arising out of or in any way connected with Releasor's performance of the Agreement incorporated by reference herein.
  
- I. This Release and Agreement to conform with Environmental Laws shall be interpreted according to the laws of the Commonwealth of Pennsylvania.

For and in consideration of the Agreement incorporated herein by reference as though set forth fully herein, and for other good and lawful consideration, this Release and Agreement to Conform with Environmental Laws for Hazardous Waste Removal is executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the hereunder signed parties and/or authorized representatives thereof.

Attest: \_\_\_\_\_ By: \_\_\_\_\_

SEAL

By: \_\_\_\_\_  
President or Vice President

\_\_\_\_\_  
Secretary

## **SPECIAL PROVISIONS FOR CONTRACTS WHICH HAVE WASTE TRANSPORT OR DISPOSAL SERVICES**

The Contractor must have and maintain for the duration of the contract period or until the task is completed all applicable State and Federal licenses that are required for Hazardous or Residual Waste transporting, or disposing, as applicable.

The Contractor must provide for the safe and proper collection, transport, treatment and disposal of SEPTA's Hazardous and/or Residual Waste, in full compliance with all applicable local, State, and Federal laws, statutes, regulations, ordinances, and requirement, including Department of Transportation requirements.

The Contractor must own or lease the vehicles that are appropriate for and will be used for loading and transporting SEPTA's Hazardous and/or Residual Waste.

The Contractor must own, lease or have licensed use of a properly licensed storage facility if that storage facility is to be used to store SEPTA's Hazardous and/or Residual Waste prior to shipment to a disposal facility.

The Contractor can use only properly trained and qualified personnel, and proper equipment, vehicles, supplies and packing materials for the collection, packing, transport and disposal of SEPTA's Hazardous and/or Residual Waste.

The Contractor is prohibited from subcontracting the transporting, or storing of SEPTA's Hazardous or Residual Waste unless explicit approval by SEPTA's System Safety Department is requested and granted for that, and only that, specific instance of transport, or storage. Additionally, the Contractor shall provide, for SEPTA's review, the name of the Disposal Facility scheduled to receive and process the transported waste. This information must be submitted to System Safety for review and approval.

The Contractor must provide, within applicable regulator timeframes, all manifests, bills of lading, certificates of recycling, or other appropriate documentation for each shipment and disposal of Hazardous and/or Residual Waste from SEPTA. Such document **must always** be forwarded to the Location Environmental Officer. While the Contractor is permitted, to send a copy of the documentation to SEPTA's Purchase & Supply Chain Management Department or the Accounting Department (such as attached to an invoice), if he chooses to do so, he always **must also** send the documentation to the SEPTA location that generated the waste.

Contractor's must have the ability to retain and track all manifests, bills of lading, certificates of recycling or other appropriate documentation electronically. The Contractor must also appropriately retain in Contractor's possession, and make available upon request, additional copies (both paper and electronic copies when applicable) of such documentation, for at least three (3) years from the date of service.

The Contractor must maintain, for a period of three (3) years, both paper and electronic copies of all documentation (including manifests, bills of lading, etc.) pertaining to the transport or disposal of SEPTA's Hazardous and/or Residual Waste. All such documentation must be made available to SEPTA upon request.

Violation of any requirement specified herein or of any applicable law, statute, ordinance, regulation or other requirement, shall constitute grounds for immediate termination for cause or recession, at SEPTA's sole discretion, of this contract, and may subject Contractor to legal and civil action.

**SPECIAL CONDITION**

**PHASED LIQUIDATED DAMAGES**

In performing the rehabilitation work at any of these substations, the Contractor shall be required to clear any tracks that they are occupying or have a power outage on by the time designated by SEPTA to allow for the restoration of normal passenger revenue service on the line. This includes clearing all personnel, equipment, debris, and construction materials and power fully restored that may inhibit the safe operation of trains. Failure to properly clear these tracks will result in delays to trains, or potential safety hazards to both trains and passengers and the following minimum values for liquidated damages will be assessed:

1st hour:	\$800
2nd hour:	\$4,000
3rd hour:	\$4,000
4th + subsequent hrs:	\$800

Total LDs shall not exceed \$14,000 per event.

**EXHIBIT VII  
SAMPLES**



State of \_\_\_\_\_)

County of \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn,

deposes and says that he/she is \_\_\_\_\_

(insert "sole owner", "a partner", or other proper title)

of \_\_\_\_\_ the offeror submitting this bid; that such offer was not made in the interest of or on behalf of any undisclosed person, partnership, company organization or corporation that such offer is genuine and not collusive or a sham; and that said offeror has not been a party to any agreement to bid a fixed amount or to refrain from offering and has not, directly or indirectly, by agreement, communication or conference with anyone attempted to induce action prejudicial to the interests of the Southeastern Pennsylvania Transportation Authority, of any offeror or anyone else interested in the proposed contract;

Signed: \_\_\_\_\_

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

(Seal of Notary)

**PERFORMANCE BOND**

Know all men and women (or persons) by these presents, that \_\_\_\_\_ as principal (hereinafter called the Contractor) and \_\_\_\_\_ as Surety (hereinafter called the Surety) are held and firmly bound unto SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, 1234 MARKET STREET, PHILADELPHIA, PA 19107-3780, as Obligee (hereinafter called SEPTA) in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), for the payment whereof the said Contractor and Surety bind themselves, and their respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has by written agreement dated \_\_\_\_\_ entered into a contract with SEPTA for \_\_\_\_\_ which contract is hereby referred to and made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such, that if the Contractor shall fully indemnify SEPTA against any loss or damage directly suffered through the failure of the Contractor to faithfully perform said contract, at the time(s), and in the manner therein specified, then this obligation shall be void; otherwise it shall remain in full force and effect.

Provided however, whenever Contractor shall be, and declared by SEPTA to be in default under the Contract, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if SEPTA elects, upon determination by SEPTA and/or the Surety of the lowest responsible bidder, arrange for a contract between such bidder and SEPTA, and make available as work progresses and continue to make available (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by SEPTA to Contractor under the Contract and any amendments or other entitlements thereto, less the amount properly paid by SEPTA to Contractor.

[END OF PAGE]

AND PROVIDED FURTHER, that no action, suit or proceeding be instituted on this bond after the expiration of two (2) years from the date on which final payment under the Contract falls due.

Signed, Sealed and Dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Contractor)

BY: \_\_\_\_\_(SEAL)

\_\_\_\_\_  
(Surety)

BY: \_\_\_\_\_(SEAL)

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY  
1234 Market Street  
Philadelphia, Pennsylvania 19107-3780

CONTRACT CHANGE ORDER

Page \_\_ of \_\_  
Date \_\_\_\_\_

Change Order No.: \_\_\_\_\_

SEPTA Fund No. \_\_\_\_\_

CPMS No. \_\_\_\_\_

Federal Grant No. \_\_\_\_\_

Requested by: \_\_\_\_\_

Contractor: \_\_\_\_\_

SEPTA Commitment No: \_\_\_\_\_

Contract Title: \_\_\_\_\_

THIS ORDER, WHEN PROPERLY EXECUTED, CONSTITUTES AUTHORIZATION TO PROCEED WITH THE CHANGES DESCRIBED BELOW, AND TO CHANGE THE AMOUNT OF THE CONTRACT AS NOTED.

DESCRIPTION OF CHANGE	AMOUNT	
	ADD	DEDUCT

All terms, covenants and conditions of the original Agreement dated \_\_\_\_\_ with amendments to date, if any, remain in full force and effect except as herein stated.

Contractor does hereby acknowledge that the increase in the Contract Sum, as set forth in this Change Order, shall be in full and complete satisfaction of all indebtedness and obligation of any nature whatsoever for the additional services performed or to be performed under this Change Order, and that such increase includes any and all costs for inefficiency, disruption or delay associated with such additional services. Contractor, for itself, its successors and assigns hereby remises, releases and forever discharges SEPTA of and from all manner of debts, demands, claims, actions, causes of action, suits, accounts, covenants, contracts, agreements and any and all claims and liabilities whatsoever, in law and in equity, arising under or by virtue of this and any other Change Orders.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY  
1234 Market Street  
Philadelphia, Pennsylvania 19107-3780

CONTRACT CHANGE ORDER

Page \_\_ of \_\_  
Date \_\_\_\_\_

Change Order No.: \_\_\_\_\_

SEPTA Fund No. \_\_\_\_\_

Contractor: \_\_\_\_\_

CPMS No. \_\_\_\_\_

SEPTA Commitment No: \_\_\_\_\_

Federal Grant No. \_\_\_\_\_

Contract Title: \_\_\_\_\_

Requested by: \_\_\_\_\_

- A. Original Value of Contract \$ \_\_\_\_\_
- B. Previous Change Orders \$ \_\_\_\_\_
- C. This Change \$ \_\_\_\_\_
- D. New Contract Sum (A+B+C) \$ \_\_\_\_\_ (Not to exceed)
- E. % Change - This Change (C) A) \_\_\_\_\_%
- F. Cumulative % Change ([B+C] A) \_\_\_\_\_%
- G. Cumulative \$ Change (B+C) \$ \_\_\_\_\_

APPROVALS: This change order made subject to Resolution adopted by the SEPTA Board on \_\_\_\_\_ (date to be inserted is that of adoption of original authorizing resolution for contract), incorporated by reference herein.

\* If cumulative change order amount is in excess of 20% or \$100,000, whichever is less, has Board approval been obtained to reset change order delegation to zero dollars? Yes\_\_ No\_\_. If yes, provide date of approval\_\_\_\_\_.

\* If delegation to reset to zero dollars has been authorized more than once, please provide the date(s) of Board approval below.  
\_\_\_\_\_

\* Is Funding Agency Approval Required YES\_\_ NO\_\_, if YES Date of Approval\_\_\_\_\_.APPROVED AS TO FORM:

SEPTA

VENDOR/CONTRACTOR

\_\_\_\_\_  
CONTRACT ADMINISTRATOR

\_\_\_\_\_  
PROJECT MANAGER

\_\_\_\_\_  
PROJECT MANAGER

SEAL:

\_\_\_\_\_  
JEFFREY D. KNUEPPEL, GENERAL MANAGER

\_\_\_\_\_  
PRESIDENT, VICE PRESIDENT

ATTEST:

\_\_\_\_\_  
CAROL R. LOOBY, SECRETARY TO THE BOARD

\_\_\_\_\_  
SECRETARY, ASST. SECRETARY  
TREASURER, ASST. TREASURER

APPROVED AS TO FORM:

BY: \_\_\_\_\_ .Esq.  
GENERAL COUNSEL'S OFFICE

**STORED MATERIAL PAYMENT/AFFIDAVIT OF RELEASE OF ALL LIENS**

**NAME OF PROJECT:** \_\_\_\_\_

**PURCHASE ORDER NUMBER:** \_\_\_\_\_

**INVOICE NUMBER:** \_\_\_\_\_

Upon receipt from the Southeastern Pennsylvania Transportation Authority ("SEPTA") of \$\_\_\_\_\_ as payment in full satisfaction, excluding the retainage to be paid per the Contract, for the materials described in the attached application for payment which have been:

1. Determined by SEPTA to its satisfaction to have been delivered and suitable stored at the project site; and/or
2. Have been properly stored off the site and determined by SEPTA to its satisfaction to be specifically for the project at an approved site located at \_\_\_\_\_, \_\_\_\_\_ hereby expressly warrants and guarantees as a condition of receiving such payment that:
  - A. Good and proper title to all material and equipment set forth in said application for payment, whether or not incorporated in the project, shall pass to SEPTA free and clear of all liens, claims, security interests, or encumbrances at or prior to the time of payment therefore by SEPTA; and
  - B. No materials or equipment delivered by the aforementioned application for payment have been acquired by **any third party** in any manner under which any interest therein or encumbrance thereon is retained by the seller or supplier of the material or equipment or otherwise imposed by \_\_\_\_\_, its agents or employees.

A list of descriptions of material tagged, stored and requisitioned to this payment is attached and is made part of this affidavit of release of liens.

(SEAL)

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
President/Corporate Officer

\_\_\_\_\_  
Attest: Secretary/Treasurer

\_\_\_\_\_  
Date

General Release by Contractor

by Agreement, dated \_\_\_\_\_,

as amended ("Contract") on for \_\_\_\_\_.

\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars to be paid by the Southeastern Pennsylvania Transportation Authority ("SEPTA") to \_\_\_\_\_ (hereinafter called "Contractor"), the Contractor hereby accepts said sum as full compensation to be paid for the work performed under or by virtue of the Contract, including any costs associated with delay, disruption or inefficiencies, and said Contractor warrants and represents that all bills, claims and obligations for material used, rentals of equipment, labor performed and any other items furnished under or in connection with said Contract have been or shall be paid and satisfied, with the exception of the following matters still in dispute:

The Contractor for itself, its successors and assigns hereby remises, releases and forever discharges SEPTA of and from all manner of debts, demands, claims, actions, causes of action, suits, accounts, covenants, contracts, agreements and any and all claims by virtue of the Contract, dated \_\_\_\_\_, as amended for SEPTA, with the exception of those matters specially set forth above as still in dispute.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_

\_\_\_\_\_  
BY

KNOW ALL PERSONS BY THESE PRESENTS, that we, \_\_\_\_\_,  
(Contractor)

(hereinafter called "Principal"), and \_\_\_\_\_  
(Surety Company)

authorized to transact business in the Commonwealth of Pennsylvania, (hereinafter called "Surety"), are held and firmly bound unto the Southeastern Pennsylvania Transportation Authority ("SEPTA") as Obligee, in the penal sum of \_\_\_\_\_ good and lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has, by written Agreement, dated \_\_\_\_\_, entered into a contract with SEPTA for the \_\_\_\_\_; and

WHEREAS, the contract requires that the Principal shall furnish a bond in the penalty of 100 percent of the contract price which shall remain in force for a period of \_\_\_\_\_ year(s) after the date of Final Payment by SEPTA and which shall be conditioned to guarantee against all defects in workmanship and materials which shall become apparent during said period.

NOW, Therefore, The Condition of This Obligation Is Such, that if the Principal shall well and truly repair and replace any defects or deficiency in materials or workmanship which may develop in connection with said work during the period of \_\_\_\_\_ year(s) from Final Payment and which have been occasioned by faulty workmanship or defects in materials, then this obligation shall be null and void, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, said Principal and Surety have caused these presents to be signed and their seals to be affixed the day and year first written below.

Signed, Sealed and Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Contractor:**

\_\_\_\_\_  
(Authorized Signature)                      \_\_\_\_\_ (Authorized Signature)                      (SEAL)

**Surety Company:**

\_\_\_\_\_  
(Authorized Signature)                      \_\_\_\_\_ (Authorized Signature)                      (SEAL)





Southeastern Pennsylvania Transportation Authority  
**PROCUREMENT & SUPPLY CHAIN MANAGEMENT**

1234 Market Street, 11th Floor, Philadelphia, PA 19107-3780

**"SAMPLE"**

**AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS**

SEPTA Purchase Order # \_\_\_\_\_

**Project** \_\_\_\_\_

**Contractor** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Contract for** \_\_\_\_\_

**Contract NTP Date** \_\_\_\_\_

**STATE OF:**

**COUNTY OF:**

*The undersigned, pursuant to Paragraph XII.F.3. of this Contract for Construction, hereby certifies that except as listed below he has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, ad services performed, and for all known indebtedness and claims against the CONTRACTOR for damages arising in any manner in connection with the performance of the Contract referenced above for which Southeastern Pennsylvania Transportation Authority or its property might in any way be held responsible.*

**EXCEPTIONS:** (If none, write "NONE". The CONTRACTOR shall furnish bond satisfactory to the Southeastern Pennsylvania Transportation Authority for each exception.)

**SIGNED,**

*Subscribed and sworn to before me this*

**CONTRACTOR**

\_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

*Notary Public of*

*My Commission expires \_\_\_\_\_, 20 \_\_\_\_\_*

**(SEAL)**

By: \_\_\_\_\_

Title: \_\_\_\_\_



Southeastern Pennsylvania Transportation Authority  
**PROCUREMENT & SUPPLY CHAIN MANAGEMENT**

1234 Market Street, 11th Floor, Philadelphia, PA 19107-3780

**"SAMPLE"**

**AFFIDAVIT OF RELEASE OF LIENS**

SEPTA Purchase Order # \_\_\_\_\_

**Project** \_\_\_\_\_

**Contractor** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Contract for** \_\_\_\_\_

**Contract NTP Date** \_\_\_\_\_

**STATE OF:**

**COUNTY OF:**

*The undersigned, pursuant to Paragraph XII.F.3. of this Contract for Construction, hereby certifies that to the best of his knowledge, information and belief, except as listed below, there are no liens filed against any property of Southeastern Pennsylvania Transportation Authority by the CONTRACTOR, or any subcontractor suppliers of materials and equipment, or performers of work, labor or services arising from the performance of the Contract referenced above.*

**EXCEPTIONS:** (If none, write "NONE". The CONTRACTOR shall furnish bond satisfactory to the Southeastern Pennsylvania Transportation Authority for each exception.)

**SIGNED,**

*Subscribed and sworn to before me this*

**CONTRACTOR**

\_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

*Notary Public of*

*My Commission expires \_\_\_\_\_, 20 \_\_\_\_\_*

**(SEAL)**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_



**“SAMPLE”**

***CERTIFICATE OF FINAL ACCEPTANCE***

SEPTA Purchase Order # \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Project** \_\_\_\_\_

**Contractor** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Contract for** \_\_\_\_\_

**Contract NTP Date** \_\_\_\_\_

This Certificate of Final Acceptance applies to all Work under the Contract Documents or to the following specified parts thereof:

**To** \_\_\_\_\_  
**Architect/Engineer**

**And To** \_\_\_\_\_  
**Contractor**

The Work to which this Certificate applies has been inspected by authorized representatives of SEPTA, CONTRACTOR and ARCHITECT/ENGINEER, and that Work is hereby declared to be complete in all respects and accordance with the Contract Documents on

\_\_\_\_\_  
**Date of Final Acceptance**

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The following documents are attached to and made a part of this Certificate:

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Reviewed by ARCHITECT/ENGINEER on \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
**Engineer**

**By** \_\_\_\_\_

CONTRACTOR accepts this Certificate of Final Acceptance on \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
**Contractor**

**By** \_\_\_\_\_

SEPTA executes and certifies Final Acceptance on \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
**Project Manager**

\_\_\_\_\_  
**Contract Administration**



**“SAMPLE”**

***CERTIFICATE OF SUBSTANTIAL COMPLETION***

SEPTA Purchase Order # \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Project** \_\_\_\_\_

**Contractor** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Contract for** \_\_\_\_\_

**Contract NTP Date** \_\_\_\_\_

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

**To** \_\_\_\_\_  
**Architect/Engineer**

**And To** \_\_\_\_\_  
**Contractor**

The Work to which this Certificate applies has been inspected by authorized representatives of SEPTA, CONTRACTOR and ARCHITECT/ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

\_\_\_\_\_  
**Date of Substantial Completion**

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within \_\_\_\_\_ days of the above date of Substantial Completion.

The responsibilities between SEPTA and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as follows:

**RESPONSIBILITIES:**

SEPTA:

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CONTRACTOR:

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A tentative list of items remaining to be completed for this Phase is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents.

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The following documents are attached to and made a part of this Certificate:

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This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

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Recommended by ARCHITECT/ENGINEER on \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
**Engineer**

**By** \_\_\_\_\_

CONTRACTOR accepts this Certificate of Substantial Completion on \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
**Contractor**

**By** \_\_\_\_\_

SEPTA executes and certifies this Certificate of Substantial Completion on \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
**Project Manager**

\_\_\_\_\_  
**Contract Administration**



**“SAMPLE”**

**CONSENT OF SURETY TO FINAL PAYMENT**

SEPTA Purchase Order # \_\_\_\_\_

**Project** \_\_\_\_\_

**Contractor** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Contract for** \_\_\_\_\_ **Contract NTP Date** \_\_\_\_\_

*In accordance with the Agreement for Construction, Paragraph XII.F.3. of the Contract between Southeastern Pennsylvania Transportation Authority and the contractor as indicated above the*

**,SURETY COMPANY**

*on bond of*

**,CONTRACTOR**

*hereby approves to the final payment to the CONTRACTOR, and agrees that final payment to the CONTRACTOR shall not relieve the SURETY COMPANY of any of its obligations to*

*Southeastern Pennsylvania Transportation Authority  
 1234 Market Street  
 Philadelphia, Pennsylvania 19107*

**,OWNER**

*as set forth in said Surety Company's bond.*

*IN WITNESS WHEREOF, THE SURETY COMPANY has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_*

\_\_\_\_\_  
*Surety Company*

\_\_\_\_\_  
*Signature of Authorized Representative*

*Attest:* \_\_\_\_\_

\_\_\_\_\_  
*Title*

*(Seal):*

**EXHIBIT VIII  
DRAWINGS & SPECIFICATIONS**





**EXHIBIT IX  
FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED PROVISIONS FOR  
CONTRACTS WAGE RATES**

## Wage Rates

General Decision Number: PA180006 07/06/2018 PA6

Superseded General Decision Number: PA20170006

State: Pennsylvania

Construction Types: Heavy and Highway

Counties: Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania.

### HEAVY AND HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/05/2018
1	02/09/2018
2	02/16/2018
3	04/13/2018
4	04/20/2018
5	05/04/2018
6	05/11/2018
7	05/18/2018
8	06/08/2018
9	06/15/2018
10	06/22/2018
11	06/29/2018
12	07/06/2018

BOIL0013-003 03/01/2018

	Rates	Fringes
BOILERMAKER.....	\$ 45.89	33.39
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CARP0179-003 05/01/2018

	Rates	Fringes
Federal Construction Contract	133	0418

PILED RIVERMAN.....\$ 43.45 34.47  
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CARP0219-005 05/01/2018

	Rates	Fringes
MILLWRIGHT.....	\$ 43.93	31.79

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CARP0255-006 05/01/2018

	Rates	Fringes
CARPENTER.....	\$ 46.26	27.69

FOOTNOTE:

A. PAID HOLIDAY: LABOR DAY

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 ELEC0098-001 04/29/2018

BUCKS COUNTY: Starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north 09113 to Route 152, north along Route 152 to the Humeville Road, east on Humeville Road to Route 333, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 to Route 09028, west on 09028 to Route 152, north on 152 to TR 232, north on TR 532 to Tr 113, north on TR 113 to TR 232 at Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope. The Borough of New Hope is excluded. Starting at the Delaware at the Delaware River and proceeding southwest along the Plumstead-Solebury and the Plumstead-Buckingham Township lines to Route 09064, northwest on 09064 to U.S. Highway 611 south on 611 to the spur of Route 270, northwest along the spur to Route 397, Southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09060, southeast on 09069 to Route 09041 southwest on 09041 to the Montgomery County line.

DELAWARE COUNTY: That portion east of a line following State Highway 320 from Montgomery County to Maple, then along the Springfield Road to Saxer Ave, along Saxer Avenue to Powell Road, along Powell Road to State Highway 420 and continuing in a straight line to the Delaware River. MONTGOMERY COUNTY:

That portion southeast of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S Highway 309), south on the Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and Blue Bell Pikes to the Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike to North Lane near Conshohocken Borough, southwest on North Lane to Schuylkill River and continuing southeast in a line to the Spring Mill Road and southwest on the Spring Mill Road to Delaware County. PHILADELPHIA COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 58.33	59%+1.75

-----

ELEC0102-003 05/29/2017

BUCKS COUNTY (Plumstead, Bedminister, Tinicum, Nockamixon, Bridgeton and Durham Townships in their entirety, and that portion of Haycock and Springfield Townships east of a line following State Highway 412, from Northampton County south to Route 09071 to State Highway 212, along Highway 212 to Route 09068, and along 09068 to State Highway 313. Also included is that portion of Dublin Borough east of State Highway 313

	Rates	Fringes
ELECTRICIAN.....	\$ 55.93	56.50%

ELEC0126-002 05/28/2018

CHESTER, DELAWARE, MONTGOMERY, PHILADELPHIA, AND REMAINDER OF BUCKS COUNTY

	Rates	Fringes
Line Construction:		
Cable Splicer.....	\$ 53.64	29.25%+11.25
Groundman.....	\$ 32.18	29.25%+11.25
Lineman.....	\$ 53.64	29.25%+11.25
Truck Driver.....	\$ 34.87	29.25%+11.25
Winch Truck Operator.....	\$ 37.55	29.25%+11.25

ELEC0269-001 10/01/2017

BUCKS COUNTY (Area East of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to route 152, north along route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on route 344 to the junction of Spurs 281 and 252 continue north on spur 252 and route 09028, west on 09028 to Route 152, north on 152 to TR 532, north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn, northeast on TR 232 and continue northeast along 659 to Route 09060, West on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope; including the Boroughs of New Hope and Bristol)

	Rates	Fringes
ELECTRICIAN.....	\$ 49.79	61.48%

ELEC0269-002 10/01/2017

BUCKS COUNTY - That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to route 152, north along route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on route 344 to the junction of Spurs 281 and 252 continue north on spur 252 and route 09028, west on 09028 to Route 152, north on 152 to TR

532, north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn, northeast on TR 232 and continue northeast along 659 to Route 09060, West on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristol are included.

	Rates	Fringes
Line Construction:		
Groundman, Truck Driver.....	\$ 39.83	60.93%
Linemen, Cable Splicer,		
Heavy Equipment Operator....	\$ 49.79	60.93%

-----  
 ELEC0313-003 06/01/2011

DELAWARE COUNTY :(That portion south of U.S. Highway No. 1 and west of U.S. Highway No. 202) Chester County (That portion South and east of U. S. Highway 1)

	Rates	Fringes
ELECTRICIAN.....	\$ 35.00	23.70

-----  
 ELEC0375-001 06/01/2018

BUCKS COUNTY (East Rock Hill, West Rock Hill, Milford and Richland Townships in their entirety and that portion of Haycock and Springfield Townships west of a line following State Highway 212 from Northampton County South to Route 09071 along 09071 to state Highway 212, along Highway 212 to Route 09068 and along 09068 to State Highway 313) MONTGOMERY COUNTY(Upper Hanover Twp.in its entirety)

	Rates	Fringes
ELECTRICIAN.....	\$ 40.78	18.56

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 ELEC0380-001 09/29/2014

BUCKS COUNTY (Hilltown and New Britain Townships in their entirety; that portion of Telford Borough Northeast of County Line Road (Main Street) and bounded by West Rock Hill and Hilltown Township that portion of Dublin Borough West of State Highway 313, and that portion of Doylestown and Warrington Townships and Doylestown Borough Northwest of a line following U.S. Highway 611 South from Route 09064 to the spur of Route 270, and proceeding Northwest along the spur to Route 397, Southwest on 397 to Route 350, Southeast on 350 to Route 395, Southwest on 395 to Route 09069, Southeast on 09069 to Route 09041, Southwest on 09041 to the Montgomery County Line) DELAWARE COUNTY (The portion of Radnor Township North of U.S Highway 30 and West of State Highway 320) MONTGOMERY COUNTY (The portion Northwest of a line following Lower State Road from Bucks County Southwest to Bethlehem Pike (U.S. Highway 309), South on Bethlehem Pike to Penllyn Pike, Southwest on the Penllyn and Blue Bell Pikes to Wissahickon Creek to the Butler Pike, Southwest Wissahickon Creek to Butler Pike, Southwest on Butler Pike, to North Lane near Conshohocken

Borough, Southeast on North Lane to the Schuylkill River and continuing Southeast in a line to Spring Mill Road, Southwest on Spring Mill Road to Delaware County; but excluding Upper Hanover, Douglas, Upper Pottsgrove, West Pottsgrove Townships and also excluding that portion of the Borough of Pottstown North and West of a line drawn Northeast on Kein Street from the Schuylkill River to Reading Railroad Northwest on the railroad to Madison Street, to High Street, East on High Street to Green Street, North on Green Street and Northeast on Mintzer Street to Lower Pottsgrove Township Line, along this township line and the borough line Northwest to Adams Street and Beehive Road, Northeast on Beehive Road to the Township Line at Mervine Street)

CHESTER COUNTY (East Coventry, East Vincent, West Vincent, East Pikeland, West Pikeland, Uwchlan, Upper Uwchlan, East Brandywine, Schuylkill and Charleston Townships in their entirety, and that portion of Clan, East Clan, East Whiteland & West Whiteland, Tredyffrin, Willistown, Easttown Townships and Borough of Downingtown north of U. S. Highway 30 )

	Rates	Fringes
ELECTRICIAN.....	\$ 41.05	29.99
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ELEC0654-001 06/04/2018		

DELAWARE COUNTY (The portion south of U.S. Highway 30 and north of that part U.S. Highway 1 between U.S. Highway 202 and the Chester County Line, and east of that part of U.S. Highway 202 between U.S. Highway 1 and the Delaware Line, and west of a line extending from Montgomery County along State Route 320 to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road; along Powell Road to State Highway 420; along 420 and continuing in a straight line to the Delaware River in the State of Pennsylvania) CHESTER COUNTY (That portion south of U. S. Highway 30 and north of that part of U.S. Highway 1)

	Rates	Fringes
ELECTRICIAN.....	\$ 44.07	19%+20.74
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ELEC0743-001 09/01/2017		

CHESTER (Coatesville, Honey Brook, South Coventy, Valley, Wallace, Warwick, West Brandywine, West Clan, and West Nantmeal Twps); AND MONTGOMERY (Douglas, Pottstown, Upper Pottsgrove, and West Pottsgrove, Twps) COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 34.77	21.39

New Year's Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

CHESTER COUNTY (The portion of Sadsbury and West Sadsbury  
Township north of U.S. Highway 30)

	Rates	Fringes
ELECTRICIAN.....	\$ 34.77	21.39

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\* ENGI0542-005 05/01/2018

	Rates	Fringes
Power equipment operators: (HEAVY, HIGHWAY, AND WATER LINE CONSTRUCTION (Off Plant Site))		
GROUP 1.....	\$ 46.41	27.60
GROUP 1a.....	\$ 49.41	28.49
GROUP 2.....	\$ 46.16	27.53
GROUP 2a.....	\$ 49.16	28.42
GROUP 3.....	\$ 42.07	26.33
GROUP 4.....	\$ 41.78	26.23
GROUP 5.....	\$ 40.05	25.73
GROUP 6.....	\$ 39.07	25.43

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Handling steel and stone in connection with erection, cranes doing hook work, any machine handling machinery, helicopters, concrete pumps building machines similar to the above, including remote control equipment.

GROUP 1a: Machines handling steel, or the functional equivalent, and stone in connection with erection 15 ton and over factory rating; Cranes doing hook work 15 ton and over factory rating; Any machines handling machinery; High Rail/Burro Crane 15 ton and over factory rating; Rail Loader (Winch Boom Type) 15 ton and over factory rating; Concrete Pumps (Building) 120 feet of Boom length or less (200 yard pour or less); Machines similar to above, including remote control equipment; Equipment in this Wage Group that does not require an oiler.

GROUP 2: All types of cranes, All types of backhoes, Cableways, Draglines, Keystones, all types of shovels, Derricks, Pavers 21E and over, Trenching machines, Trench shovel, Graddalls, Front-End loaders, Boat Captain, Pippin type backhoes, Tandems scrapers, Towers type crane operation erecting, Dismantling, Jumping or Jacking, Drills (self-contained), (drillmaster type) forklift (20 ft. and over), Moter patrols (fine grade), Batch plant with mixer, Carryalls, Scraper, Trownapulls, Roller (Hith Grade Finishing), Spreaders (asphalt), Bulldozers and Tractors, Mechanic welder, Conveyor loaders (euclid-type wheel), Concrete pump, Milling Machines, Hoist with two towers, Building hoist double drum (unless used as a single drum), Mucking machines in tunnel, All auto grade and concrete finishing machines, Bundle pullers/extractors (tublar),



toxic/hazardous waste removal rate 20 per cent added to all classification, bobcat, side broom, directional boring machines, vermeet saw type machines ( other than hand held) tractor mounted hydro axe, chipper with boom, all machine similar to the above including remote control equipment.  
 3: Asphalt plant engineers, Well drillers, Ditch witch (small trencher), Motor patrols, Fine grade machines, Ten-ton roller (grade fill stone base), Concrete breaking machines, Guilloline only, Stump grinder, Conveyors (except building conveyors), Fork lift trucks of all types, High pressure boilers, Machine similar to the above, including remote control equipment.

GROUP 2a: Crawler backhoes and Crawler gradalls over one cubic yard factory rating; Hydraulic backhoes over one cubic yard factory rating; All types of cranes 15 ton and over factory rating; Single person operation truck cranes 15 ton and over factory rating; Cherry picker type machinery and equipment 15 ton and over factory rating; Concrete Pumps (Heavy/Highway); Machines similar to above, including remote control equipment; Equipment in this Wage Group that does not require an oiler.

GROUP 3: Asphalt plant engineers, Well drillers, Ditch witch (small trencher), Motor patrols, Fine grade machines, Ten-ton roller (grade fill stone base), Concrete breaking machines, Guilloline only, Stump grinder, Conveyors (except building conveyors), Fork lift trucks of all types, High pressure boilers, Machine similar to the above, including remote control equipment.

GROUP 4: Seaman, Pulverzer form line grader, Farm tractors, road finishing, Concrete spreader, Power broom (self-contained), Seed spreader, Grease truck.

GROUP 5: Compressors pumps, Well point pumps, Welding machines Tireman, Power equipment, Maintenance engineer (power boats), and machines similar to the above.

GROUP 6: Fireman, Oilers and deck hands (personnel Boats), grease truck.

FOOTNOTE: A. PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day

**\*\*TOXIC/HAZARDOUS WASTE REMOVAL\*\***

Add 20 per cent to basic hourly rate for all classifications

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IRON0068-003 07/01/2014		
BUCKS COUNTY (Remainder)		
	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 42.65	30.28

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IRON0068-005 07/01/2014

BUCKS COUNTY (Remainder)

	Rates	Fringes
IRONWORKER (STRUCTURAL & ORNAMENTAL).....	\$ 44.64	30.28
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IRON0401-001 07/01/2017		

BUCKS (Includes the towns of Bensalem, Breadysville, Bristol Churchville, Cornwells Heights, Davisville, Eddington, Feasterville, Hartsville, Johnsville, Line Lexington, Neshaminy, Southampton, Tradesville, Trevose, Unionville, Warminster, and Warrington); DELAWARE (North of a line running along State Rt 352 to right on State Rt 291 to State Line); CHESTER (Includes the towns of Aldham, Anselma, Bacton, Berwyn, Cedar Hollow, Charlestown, Chester Springs, Cromby, Devon, Devault, Daylesford, Diamond Rock, Dutton Mill, Frazer, Goshenville, Howellville, Kimberton, Ludwigs Corner, Paoli, Matthews, Perkiomen Junction, Phoenixville, Rapps Corner, Rocky Hill, Stratford, Sugartown, Tanguy, Valley Forge, Valley Store, White Horse, Williams Corner, and Wilsons Corner); MONTGOMERY (Remainder); and PHILADELPHIA COUNTIES

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 47.30	32.50
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* IRON0405-001 07/01/2018		

BUCKS (Includes the towns of Bensalem, Breadysville, Bristol, Churchville, Cornwell Heights, Davisville, Eddington, Festerville, Hartsville, Johnsville, Line Lexington, Neshaminy, Southampton, Transville, Trevose, Unionville, Warminster, and Warrington), DELAWARE (North of a line running along State Route 352 to right on State Route 291 to State Line); CHESTER (Includes the towns of Aldham, Anselma, Bacton, Berwyn, Cedar Hollow, Charlestown Chester Springs, Cromby, Devon, Devault, Daylesford, Diamoand Rock, Dutton Mill, Frazer, Goshenville, Howellville, Kimberton, Ludwigs Corner, Paoli, Mathews, Perkiomen Junction, Phoenixville, Rapps Corner, Rocky Hill, Strafford, Sugartown, Tanguy, Valley Forge, Valley Store, White Horse, Williams Corner, and Wilsons Corner); MONTGOMERY (Remainder); AND PHILDELPHIA COUNTIES

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 42.88	30.00
Reinforcing Steel Mesh, Rebar Work		

The following holidays shall be observed and when work is performed thereon it shall be paid for at twice the base rate: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Employees shall be off Christmas Eve Day and receive four hours pay. Employees who have to work on Christmas Eve Day shall work four hours and be paid for eight hours pay for the holiday. Any time worked beyond fours hours shall be paid at the

double time rate plus the four hours holiday pay. To receive holiday pay, the employee must work the day before Christmas Eve and the first working day after Christmas Day.

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 \* IRON0405-003 07/01/2018

BUCKS COUNTY (Includes the towns of Bensalem, Breadysville, Bristol, Churchville, Cornwells Heights, Davisville, Eddington, Feasterville, Hartsville, Johnsville, Line Lexington, Neshaminy, Southhampton, Tradesville, Trevose, Unionville, Warminster, and Warrington), DELAWARE (North of a line running along State Route 352 to right on Stae Route 291 to State Line); CHESTER (Includes the towns of Alsham, Anselma, Bacton, Berwyn, Cedar Hollow, Charlestown, Chester Springs, Cromby, Devon, Devault, Daylesford, Diamond Rock, Dutton Mill, Frazer, Goshenville, Howellville, Kimberton, Ludwig Corner, Paoli, Mattews, Perkiomen Junction, Phoenixville, Rapps Corner, Rocky Hill, Strafford, Sugartown, Tanguy, Valley Forge, Valley Store, White Horse, Williams Corner); MONTGOMERY (Remainder); and PHILADELPHIA COUNTIES

	Rates	Fringes
IRONWORKER (Rigger and Machinery Mover).....	\$ 41.05	28.00

The following holidays shall be observed and when work is performed thereon it shall be paid for at twice the base rate: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Employees shall be off Christmas Eve Day and receive four hours pay. Employees who have to work on Christmas Eve Day shall work four hours and be paid for eight hours pay for the holiday. Any time worked beyond fours hours shall be paid at the double time rate plus the four hours holiday pay. To receive holiday pay, the employee must work the day before Christmas Eve and the first working day after Christmas Day.

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 IRON0420-007 07/01/2014

MONTGOMERY COUNTY (Anise, Berguy, Congo, Douglas, East Greenfield, East Limerick, East Slaford, East Zieglerville, Engleville, Fagleysville, Ford, Gilbertsville, Green Lane, Hanover, New Perksionenville, Niato, Palm, Obelish, Pennsburg, Perkiomen, Pottstown, Royerford, Roytown, Sammamansville, Tylerport, Upper Hanover, Upper Pottsgrove, Upper Wodall, West Limerick, West Salford, and West Zieglerville Townships)

	Rates	Fringes
Ironworkers:		
Projects \$200,000,000 and greater, all work.....	\$ 31.70	25.00
Projects less than \$200,000,000.....	\$ 30.70	25.00

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 IRON0451-004 07/01/2016

CHESTER (Remainder of County), AND DELAWARE (Remainder of County) COUNTIES

	Rates	Fringes
Ironworkers: (Structural, Ornamental, and Reinforcing).....	\$ 33.60	28.75

The following holidays shall be observed, and when work is performed thereon it shall be paid for at twice the base wage rate: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

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LABO0057-001 05/01/2017

	Rates	Fringes
LABORER		
GROUP 1.....	\$ 29.75	25.12
GROUP 2.....	\$ 29.95	25.12
GROUP 3.....	\$ 29.95	25.12
GROUP 4.....	\$ 24.55	25.12
GROUP 5.....	\$ 30.60	25.12
GROUP 6.....	\$ 30.65	25.12
GROUP 7.....	\$ 30.50	25.12
GROUP 8.....	\$ 30.25	25.12
GROUP 9.....	\$ 30.10	25.12
GROUP 10.....	\$ 30.25	25.12
GROUP 11.....	\$ 30.15	25.12
GROUP 12.....	\$ 33.88	25.12
GROUP 13.....	\$ 30.00	25.12

LABORERS CLASSIFICATIONS

GROUP 1: Yardwork Laborers; Scale Mixermen; Burnermen, Feeders; Dustmen

GROUP 2: General Laborer; Asphalt Shovelers; Sheeting, Shoring & Lagging Laborers; Stone, Granite & Artificial Stone Setting Laborer; Hod Carriers; Scaffold Builders; Relief Joints & Approach Slabs; Assembling & Placing Gabions; Pneumatic Tool Laborers; Concrete Forms & Stripping Laborers; Concrete & Lumber Material Laborers; Steel & Steel Mesh (Carrying & Handling); Form Pinner; Mortar Mixers; Pouring & Placing Concrete; Grade Men

GROUP 3: Vibrator Laborer; Finish Surface Asphalt Rakers; Jackhammer Operators; Paving Breaker Operator; Pipelayer & Caulker (all joints up to within 5 feet of the Building Foundation Line); Conduit & Duct Layers

GROUP 4: Flagperson

GROUP 5: Miners

GROUP 6: Burners

GROUP 7: Miner Bore Driver; Blasters; Drillers; Pneumatic  
Federal Construction Contract

Shield Operator

GROUP 8: Form Setters

GROUP 9: Trackmen; Brackmen; Groutmen; Bottom Shaft Men; All Other Laborers in Free Air Tunnels; Underpinning (When an underpinning excavation is dug eight feet or more below the natural grade or where an excavation for a pier hole of five feet square or less and eight feet or more deep is dug, the rate shall apply only after a depth of eight feet is reached, to the men working in the bottom)

GROUP 10: Circular Caissons (Where an excavation for circular caissons are dug eight feet or more below the natural grade level adjacent to the starting point of the caisson hole, at ground level, for the men working in the bottom); Welders, Burners & Air Tuggers

GROUP 11: Powderman; Multiple Wagon Drill Operator

GROUP 12: Toxic/Hazardous Waste Handler

GROUP 13: Wagon Drill/Hydraulic Track Drill Operator

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LABO0413-005 04/01/2016

	Rates	Fringes
Landscaping		
Farm Tractor Driver,		
Hydroseeder Nozzleman,		
Mulcher Nozzleman.....	\$ 21.19	22.37+A

FOOTNOTE:

A. PAID HOLIDAYS: Independence Day, Labor Day, and Thanksgiving Day

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PAIN0021-003 02/01/2018

	Rates	Fringes
Painters:		
Bridge.....	\$ 54.14	26.78
All Other Work.....	\$ 43.18	26.64

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PLAS0592-008 05/01/2018

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 35.65	32.01

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PLUM0420-001 05/01/2018

	Rates	Fringes
Steamfitter		
Bucks, Chester, Delaware,		
Montgomery and		

Philadelphia Counties.....\$ 56.37 34.09

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PLUM0690-008 05/01/2018

	Rates	Fringes
PLUMBER.....	\$ 53.45	33.24

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TEAM0107-002 05/01/2017

	Rates	Fringes
Truck drivers:		
GROUP 1.....	\$ 30.315	17.96+a+b
GROUP 2.....	\$ 30.415	17.96+a+b
GROUP 3.....	\$ 30.665	17.96+a+b

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1 - Stake body truck (single axle, dumpster)

GROUP 2 - Dump trucks, tandem and batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

GROUP 3 - Euclid type, off-highway equipment or belly dump trucks and double hitched equipment, staddle (ross) carrier, low-bed trailers

FOOTNOTE:

A. PAID HOLIDAYS: Memorial Day, Independence Day, Labor Day, Thanksgiving Day and five personal holidays provided employee works at least one day in the three work days before and at least one day in the three work days after the said holiday. Employee earns a personal holiday every two months, provided employee has worked twenty-six day in each consecutive two month period, up to a maximum of five per calendar year. After 130 work days the employee is entitled to all five personal holidays.

B. PAID VACATION: Employee will earn one vacation day for every two months, provided employee has worked twenty-six day in each consecutive two month period, up to a maximum of five vacation days per calendar year. After 130 workdays the employee is entitled to all five days of vacation. Employees with 5 years of seniority, earn an additional week of vacation, accrued in the same way.

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.  
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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this

contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates

the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210



2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION