May 18, 2015

To Whom It May Concern:

This letter constitutes **Addendum No. 4 to SEPTA RFF No. 14-297-JFK for SEPTA’s Combined Heating & Power Plant at Midvale Facility.**

Addendum No. 4 consists of the changes and modification to the Cover Letter and Part 1 – Instructions to Proposers of the RFP, and following are the changes and modifications which have been included in the attached red-line, track-changes version of the Cover Letter and Part 1 – Instructions to Proposers:

1. Questions for this RFP will be taken until Friday, May 22, 2015, close of business – 4:30 PM.
2. The Proposal Due Date has been postponed until June 19, 2015, close of business – 4:30 PM.
3. Cover Letter – Modifications to third & sixth paragraph, plus addition of seventh paragraph.
4. Section 1.1 – Introduction – Modification to fifth paragraph.
5. Section 1.2.1 – Summary of the Proposal and Potential Award Process – Modifications to ninth, fourteenth, and eighteenth (final) paragraph.
6. Section 1.2.2 – Additional Information Related to the CHP Plant Project – Modification to the second and third paragraph.
7. Section 6.1.4 – Pricing – Modification to only paragraph.
8. Section 6.4 – Execution of the GESA and Award of Phase II Work on the CHP Plant Project – Modification to only paragraph.

**Notice:** A site visit will be arranged shortly. Additionally, previous addendums and previously released documentation is also available.

Addendum No. 4 must be acknowledged by updating and signing the Acknowledgement of Addenda Form and including with your RFQ Proposal.

Any inquiries regarding this Addendum must be directed to John Kerrigan of the Procurement and SCM Department at jkerrigan@septa.org or 215.580.8360.

Sincerely

John Kerrigan
Contract Administration
Procurement and SCM Department
December 30, 2014

Subject: Request for Proposal (RFP) to Finance, Design, Build, Own, Operate and Maintain a Guaranteed Energy Conservation Measure Consisting of a Combined Heating and Power Plant at SEPTA’s Midvale Facility.

RFP NO.: 14-297-JFK

Dear Sir/Madam:

SEPTA is soliciting Proposals from qualified providers to potentially serve as an Energy Services Company (“ESCO”) to Finance, Design, Build, Own, Operate, and Maintain (“FDBOOM”) an energy conservation measure consisting of a Combined Heating & Power (“CHP”) Plant at SEPTA’s Midvale Facility located in Philadelphia, PA. The CHP Plant project will be a guaranteed energy savings contract in accordance with the provisions set forth in the Pennsylvania Guaranteed Energy Savings Act, Pennsylvania Act 57 of 1998, 62 Pa.C.S.A. §3751 et seq.

SEPTA requests that Proposers carefully review this RFP to ensure that the Proposer is responsible and capable of evaluating, recommending, designing, implementing, installing, owning and operating the energy conservation measures of the CHP Plant as required by the RFP. Each Proposer shall also ensure that its proposal to FDBOOM the CHP Plant is a program/project that is designed, constructed, operated and maintained throughout the Project life span to reduce energy or other consumption or operating costs to SEPTA as set forth in the RFP.

All proposals for the CHP Plant shall comply fully with the requirements of the RFP and be based upon the Proposer performing all services required to FDBOOM the CHP Plant through the life of the Project. **Proposer may include in its proposal additional energy conservation measures (ECMs) at the Midvale Facility. The proposed ECMS such as lighting and/or HVAC and/or other harnessing of exhaust heat recovery must be coordinated with the Septa Fit program at Midvale.**
In summary, any award of an agreement for the FDBOOM of the CHP Plant project will be based upon a phased approach. First, based upon the Proposers’ Technical and Cost Proposal(s), which shall include an estimated price of the cost of electricity and optional hot water heating for twenty years, if exercised, inclusive of all assumptions and escalation to perform the Pre-Development Services, and based upon the other selection processes and Evaluation Criteria set forth in the RFP, SEPTA may select one or more Proposers/ESCOs to perform the professional services defined as Pre-Development Services in accordance with Part II of the RFP – the “Pre-Development Agreement (“PDA”).”

Only those ESCO(s) selected and under agreement with SEPTA to perform the Phase I PDA services will perform the Phase I PDA services. These services shall be Phase I of the proposed CHP Plant project and shall not be construed to be an award of any contract to perform any services other than those set forth in the PDA.

During Phase I, each ESCO will be eligible to update and amend its Technical and Cost Proposal(s) and prepare a Best and Final Offer (“BAFO”) containing the ESCO’s Technical and Cost Proposal with a price of the cost of electricity and hot water heating for twenty years, inclusive of all assumptions and escalation, and based upon executing a Guaranteed Energy Services Agreement (“GES”) and ground lease not to exceed twenty years with SEPTA, consistent with the Guaranteed Energy Savings Act, 62 Pa C.S. §3751 et seq. and the terms of the RFP (See Part III of the RFP - the GESA, Lease Terms and Attachments). The GESA will be finalized as part of the BAFO process.

The price of the cost of electricity and hot water shall be fixed for the first five years, then based on fixed electrical and thermal heat rates for the following fifteen years. The electrical and thermal heat rates shall be a stipulated fixed formula for the duration of the Contract.

At the conclusion of the evaluation process related to the BAFOs during Phase I, it is SEPTA’s goal to possibly award a GESA to a single ESCO to:

   i) Lease land on SEPTA’s Midvale Site;
   ii) Undertake and fully bear the costs of the FDBOOM Project (Phase II of the CHP Plant project based upon the evaluation criteria and process as set forth in the RFP); and,
   iii) transfer ownership of the CHP Plant to SEPTA at the successful conclusion of the Project consistent with the terms of the GESA.

There is no guarantee that any Phase I PDA or GESA will be awarded to any ESCO. If an ESCO is awarded a GESA for Phase II of the CHP Project, the ESCO will incorporate its Phase I PDA costs into its GESA for payment over the term of the GESA. If SEPTA does not award a GESA for Phase II of the CHP Project, then any selected ESCO(s) that perform the Phase I PDA services will be reimbursed for their services in accordance with the PDA.

A Pre-Proposal Meeting has been scheduled for Friday, January 16, 2015 at 9:00 AM prevailing Eastern time on the 11th Floor of 1234 Market Street, Philadelphia, Pennsylvania, for
the purpose of discussing the project and providing clarifications. A representative of your company is encouraged to be present at this meeting. A tour of SEPTA’s Midvale facility will immediately follow the Pre-Proposal Meeting.

All questions regarding the RFP must be submitted in writing to:

John Kerrigan  
Manager  
Contract Administration  
Procurement & Supply Chain Management  
Southeastern Pennsylvania Transportation Authority  
1234 Market Street, 11th Floor  
Philadelphia, PA 19107-3780  

Phone: (215) 580- 8360  
Email address: JKerrigan@septa.org

All questions must be received no later than the close of business (4:00 PM prevailing Eastern time) on Thursday, January 29, 2015. SEPTA’s responses to these questions will be provided to all proposer(s) (“Proposer” or “Proposers”) who have completed the registration process. Proposers are responsible for ensuring that their questions or other communication permitted under this RFP have been received by SEPTA.

Each Proposal must be submitted to SEPTA as described in the RFP by 4:30 PM on Thursday, March 5, 2015. Please direct the Proposals to John Kerrigan at the above address.

SEPTA, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4, and Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all Proposers that it will affirmatively ensure that, in regard to any contract entered into pursuant to this RFP, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this RFP, and will not be discriminated against on the grounds of race, sex, color, or national origin in consideration for an award.

All Proposers will be required to comply with all applicable Equal Employment Opportunity laws and regulations, and will be required to certify compliance with Executive Order 12549 (Ineligible Contractors).

Oral, facsimile, electronic mail, telegraphic or telephonic Proposals or modifications will not be considered.

This letter must not be interpreted as an award of a contract or as a commitment to reimburse Proposers for any costs incurred in the preparation of Proposals.

Sincerely;
John Kerrigan
Manager
Contract Administration
Procurement & Supply Chain Management

Enclosures
Southeastern Pennsylvania Transportation Authority

REQUEST FOR PROPOSAL


Part I

INSTRUCTIONS TO PROPOSERS

SEPTA RFP No.: 14-297-JFK
REQUEST FOR PROPOSAL

Finance, Design, Build, Own, Operate and Maintain a Guaranteed Energy Savings Measure Consisting of a
Combined Heating and Power (CHP) Plant
at SEPTA’s Midvale, Philadelphia, Pennsylvania, facility.

SECTION 1 GENERAL INFORMATION FOR PROPOSERS

1.1 Introduction

SEPTA is seeking Proposals from a qualified provider to act as an Energy Savings Company (“ESCO”) to potentially finance, design, construct, own, operate and maintain a Combined Heating and Power Plant at SEPTA’s Midvale Facility, Philadelphia, Pennsylvania under a Guaranteed Energy Service Agreement (“GESA”) in accordance with the Pennsylvania Guaranteed Energy Savings Act 57 of 1998, Act 77 of 2004 and Act 39 of 2010, 62 Pa.C.S.A. §3751 et seq. Each ESCO (herein referred to as the “Proposer” or “ESCO”) is requested to submit a formal, detailed and written proposal (herein referred to as the “Proposal”) for a guaranteed energy savings measure consisting of the Combined Heating and Power Plant at SEPTA’s Midvale facility (herein referred to as the “Project” or the “CHP Plant”).

The Project is to be a guaranteed energy savings contract in accordance with the Guaranteed Energy Savings Act, Pennsylvania Act 57 of 1998, 62 Pa.C.S.A. §3751 et seq., and this Request for Proposal (hereinafter referred to as the “RFP” or the “Request for Proposal”). Any Proposal submitted must comply with the requirements of this RFP as herein stated, all applicable federal, state and local laws, must be signed by an officer or representative legally authorized to bind the Proposer, and must be submitted to SEPTA in writing, at the time and manner described herein.

It is the Proposer’s responsibility to carefully review the attached documents to ensure that its Proposal addresses all items requested in sufficient detail to enable full evaluation by SEPTA of the proposed CHP Plant as well as any options described herein. SEPTA is not liable for any expenses incurred by any Proposer(s) in the development of its Proposal or any subsequent activity related to the Proposal.

It is envisioned that the CHP Plant will consist of two nominal 4.3 MW each gas reciprocating engine generators and auxiliary systems within a new enclosure on the Midvale property that will provide electricity to the Wayne Junction substation and Midvale site. Additionally it will provide hot water heating to the Midvale and Roberts Yard sites.

The RFP requires Proposers to respond directly to published conceptual design and performance specifications as well as offer approaches that may include one or more elements that achieve or surpass the published financing requirements and conceptual
design and performance specifications. Proposer may include in its proposal additional energy conservation measures (ECMs) at the Midvale Facilities. These proposed ECMS must be coordinated with the FIT program at Midvale.

Regardless of any information, concepts or data that may be provided or communicated prior to or as part of this RFP, Proposers are hereby advised that this RFP and the documents included issued by SEPTA in connection with this RFP (and any questions and answers and addenda issued in connection with this RFP) are the only documents and information that Proposers should rely upon in preparing and submitting Proposals in response to this RFP.

1.2 Midvale CHP Plant Overview

1.2.1 Summary of the Proposal and Potential Award Process

SEPTA is seeking qualified full service ESCOs that, if selected as set forth herein, will enter into a Pre-Development Agreement with SEPTA, and then at the conclusion of the Pre-Development work, SEPTA may elect to enter into a Guaranteed Energy Savings Agreement (“GESA”) with a single ESCO to finance, design, build, own, operate and maintain a state-of-the-art Combined Heating and Power plant for up to 20 years to be located on SEPTA’s Midvale Facility, Philadelphia, Pennsylvania, pursuant to this RFP and in accordance with the current requirements of the Pennsylvania Guaranteed Energy Savings Act.

While SEPTA’s goal is to have the CHP Plant completed and available for operations as soon as possible, such work must be completed by no later than June 5, 2017. SEPTA is open to Innovative Alternative Concepts to the financial requirements contained within this RFP, so long as they (i) are an economic improvement for SEPTA, (ii) comply fully with Pennsylvania Guaranteed Energy Savings Act, Pennsylvania Act 57 of 1998, 62 Pa.C.S.A. §3751 et seq., and (iii) permit for future operation in a manner that provides a sound economic basis throughout the duration of a contemplated ESA within the programmatic and financial requirements of SEPTA.

SEPTA is soliciting proposals based on the requirements and criteria set forth in this RFP document. Careful review of the RFP is highly recommended to ensure a responsive submittal. Although the objective is for SEPTA to possibly enter into a Guaranteed Energy Savings Agreement (“GESA”) for energy conservation measures consisting of the CHP Plant with a single ESCO, there is no assurance that any GESA will be awarded, or that any agreement for any services outlined in this RFP will be awarded. SEPTA reserves the right, at its sole discretion, to withdraw this RFP at any time, for any reason, or to reject all or any Proposal for any reason.

The Proposer need not be a single entity, but may be a joint venture to provide all of the requested services. If a joint venture, the Proposer must submit a Joint Venture
Agreement. In sum, SEPTA will entertain Proposals from ESCOs who are experienced
CHP energy companies having team project experience of a similar size and magnitude.

Each Proposer must be a qualified provider, such that it is a business entity that is
responsible and capable of evaluating, recommending, designing, implementing,
installing and operating the energy conservation measures as set forth in this RFP, and as
determined by SEPTA.

All proposals for the CHP Plant shall comply fully with the requirements of the RFP and
be based upon the Proposer performing all services required to FDBOOM the CHP Plant
through the life of the Project. Each Proposer shall also ensure that its proposal to
FDBOOM the CHP Plant is a program/project that is designed, constructed, operated and
maintained throughout the Project life span to reduce energy or other consumption or
operating costs to SEPTA as set forth in the RFP.

SEPTA will utilize the competitive sealed proposal method of procurement for the
Project pursuant to Section 513 of the Pennsylvania Procurement Code, 62 Pa.C.S.A. §
513(b), (g). SEPTA may therefore select for contract negotiation the Proposer(s) who
submits the most responsive and best proposal(s) that is determined by SEPTA to be most
advantageous to SEPTA, taking into account price, technical and cost factors, and all
other factors as set forth in the RFP.

Any award of an agreement for the FDBOOM of the CHP Plant will be based upon a
phased approach. The selection process will consist of two (2) rounds or Phases. In any
event, the initial Proposal response to the RFP by all Proposers must address and include
all of the qualification items, work scopes and criteria to fully perform the FDBOOM the
Project as set forth in this RFP. The Proposers’ submissions in response to this RFP are
designed to facilitate the selection by SEPTA of one or a limited number of finalists who
will be selected as “qualified providers” to proceed to enter into preliminary professional
services as outlined in Part II of the RFP – the Pre-Development Agreement.

As such, the Proposers’ initial Technical and Cost Proposal(s) shall include an estimated
price of the cost of electricity and optional hot water heating for twenty years, if
exercised, inclusive of all assumptions and escalation to FDBOOM the Project, including
a cost budget to perform the Pre-Development Services. SEPTA may select one or more
Proposers to perform the professional services defined as Pre-Development Services in
accordance with Part II of this RFP and enter into “Pre-Development Agreement”
(“PDA”).” The selection process and Evaluation Criteria are as set forth in the RFP.
These PDA services shall be Phase I of the proposed CHP Plant project and shall not be
construed to be an award of any contract to perform any services other that those set forth
in the PDA.

During Phase I, each selected ESCO under a PDA will be eligible to update and amend
its Technical and Cost Proposal(s) and prepare a Best and Final Offer (“BAFO”)
containing the ESCO’s best Technical and Cost Proposal with a fixed price of the cost of
electricity and hot water heating for the first five years (year 1 to 5 of GESATerm), fixed
electrical and thermal heat rates for the following fifteen years (year 6 to 20 of GESA

Deleted: twenty years
Term), both inclusive of all assumptions and escalation. The BAFO shall also be based upon the ESCO executing a Guaranteed Energy Services Agreement (“GESA”) consistent with the Guaranteed Energy Savings Act, 62 Pa C.S. §3751 et seq. and the terms of the RFP and a ground lease not to exceed twenty years with SEPTA (See Part III of the RFP – the proposed GESA).

Discussions and negotiations may be conducted with responsible Proposer(s)/ESCO(s) for the purpose of clarification of initial Proposals, and of obtaining Best and Final Offers (“BAFOs”) for the selected ESCOs that perform under the PDA. The responsible Proposer(s) whose proposal(s) is(are) determined to be the most advantageous to SEPTA, taking into consideration the technical issues, price and all evaluation factors, shall be selected for contract negotiation, including for a potential GESA.

At the conclusion of the evaluation process related to the BAFOs during Phase I, it is SEPTA’s goal to possibly award a GESA to a single ESCO to perform Phase II of the Project (the “Phase II Work”), which shall include:

i) Leasing land on SEPTA’s Midvale Site in order to build and operate the CHP Plant;
ii) Undertaking and fully bearing all of the costs to FDBOOM the Project (which shall be based upon the BAFO and the evaluation criteria and process as set forth in this RFP); and,
iii) transfer ownership of the CHP Plant to SEPTA at the successful conclusion of the Project consistent with the terms of the GESA (combined, the “Phase II Work”).

In addition to the services to be provided under the GESA, the Proposer will be required to perform start-up and commissioning tasks, and post-commissioning tasks including troubleshooting will be as needed by the ESCO to ensure that the energy is provided to SEPTA in accordance with the GESA.

There is no guarantee that any Phase I PDA or GESA will be awarded to any ESCO. If an ESCO is awarded a GESA for Phase II of the Project, the ESCO will incorporate its Phase I PDA costs into its GESA for payment over the term of the GESA. If SEPTA does not award a GESA for Phase II of the Project, the selected ESCO(s) that perform the Phase I services will be reimbursed for their services in accordance with the PDA.

If SEPTA elects to a GESA with a qualified provider ESCO for the Phase II Work, such an award shall only be made upon certain preconditions having occurred. First, SEPTA must find that the amount it would spend on the energy conservation measures recommended in the Proposal would not exceed the amount of energy, water or wastewater cost savings, operational cost savings or revenue increases resulting from the energy conservation measures within a period not to exceed 20 years from the date of final installation if the recommendations in the Proposal were followed and the qualified provider ESCO provides a written guarantee that the energy, water or wastewater cost savings, or operational cost savings or revenue increases will meet or exceed the cost of the GESA to SEPTA.
Therefore, the GESA shall be inclusive of all required costs, services and work required for the Phase II Work, shall be consistent with the requirements of the Guaranteed Energy Savings Act, 62 Pa C.S. §3751 et seq., and shall be under SEPTA’s required terms and conditions as set forth herein and to be finally negotiated with the ESCO. The GESA shall be over a period not to exceed twenty years, pursuant to which the ESCO will assume all of the risk, cost and expense associated with obtaining all approvals for the CHP Plant project and for financing, designing, building, operating and maintaining the CHP Plant.

Next, before the award of a GESA, the qualified provider ESCO shall provide a report as part of its initial proposal and its BAFO proposal (which shall be available for public inspection) summarizing estimates of all costs of installation, maintenance, ownership, repairs, debt service and estimates of the amounts by which SEPTA’s energy or operating costs will be reduced. The report shall contain a listing of contractors and subcontractors to be used by the qualified provider ESCO with respect to the energy conservation measures of the CHP Plant project. See 62 Pa.C.S.A §3753(d), see also SEPTA Procurement Manual Ch. XIII-2 (4.1). The award of the GESA must be done at a public meeting of SEPTA’s Board following notice (made at least 10 days in advance) which includes the names of the parties to the GESA, the purpose of the GESA and a listing of contractors and subcontractors to be used by the qualified provider with respect to the energy conservation measures. See 62 Pa.C.S.A §3753(e), see also SEPTA Procurement Manual Ch. XIII-2 (5.2).

Finally, the qualified provider ESCO to whom a GESA is awarded shall also give a sufficient bond to SEPTA for its faithful performance to FDBOOM the Project, including a Guarantee Bond, in accordance with the provisions of section 533 of the Pennsylvania Procurement Code (relating to security and performance bonds), and known as the Public Works Contractors’ Bond Law of 1967.

SEPTA will meet regularly with the ESCO regarding the operation and maintenance of the CHP Plant. However, besides the PDA services in Phase I, all efforts by the ESCO to FDBOOM the CHP Plant and any other capital improvements provided by the ESCO will be strictly at the ESCO’s sole risk and expense, with the sole exceptions being that (i) SEPTA guaranteeing to the ESCO the minimum base thermal and electric loads, as described herein; and (ii) SEPTA paying the ESCO, pursuant to a negotiated GESA, for the provision of thermal and electrical energy, and (iii) SEPTA accepting energy market risk to the cost of electricity and hot water heating during year 6 to 20 of the GESA, and (iv) SEPTA indemnifying ESCO for hazardous subsurface conditions which reasonably impact the installation and/or operating cost of the CHP Plant.

1.2.2 Additional Information Related to the CHP Plant Project
SEPTA’s goals and objectives for the CHP Plant arrangement are set forth in the attached Design Criteria Document, Reciprocating Engine Generator Specifications and Drawings (herein referred to as the “Specifications”).

The energy rates to be charged by the ESCO may be adjusted by certain escalation factors to be determined and agreed upon by the ESCO and SEPTA. Any such factors shall be memorialized in the Proposal and any eventual GESA between the parties. SEPTA prefers to have rates for natural gas fixed for as long a period as possible, and for a period of not less than five years (year 1 to 5 of GESA). Rates and any escalation factors shall be negotiated and memorialized by SEPTA and the ESCO. Regardless of the natural gas purchase agreement between the ESCO and the natural gas utility, the ESCO shall be responsible for installation of the required natural gas pipeline to feed the CHP Plant.

The cost of the natural gas supply is solely the responsibility of the ESCO for a period of not less than five years (year 1 to 5 of GESA). Thereafter the cost of electricity and hot water heating (year 6 to 20 of the GESA) shall be borne by SEPTA as a function of SEPTA’s energy procurement based on fixed electrical and thermal heat rates. The ESCO can coordinate with SEPTA for water supply and sanitary sewer. The cost of designing, acquiring of permits and installation for water supply and sanitary sewer will be borne by the ESCO at no direct cost to SEPTA.

The ESCO will be required to obtain the necessary Air Permit for the CHP Plant issued by the Pennsylvania Department of Environmental Protection to include the operation of the CHP Plant, and SEPTA will assist the ESCO in providing any required SEPTA emissions data.

1.3 Addenda and Clarification

In the event SEPTA finds it necessary to supplement or modify any portion of the RFP during the Proposal preparation period, after the initial proposal period, and/or the Best and Final Offer (“BAFO”) preparation period, if any, SEPTA shall issue written addenda only by written addenda. Proposers may have the opportunity to supplement or amend their Proposals based upon such data or information, at the sole discretion of SEPTA. SEPTA’s interpretation regarding disputed terms regarding the Pre-Development Services, Project, the Phase II work, the GESA, or other Project documents and correction of any apparent ambiguity, inconsistency or error shall be made in writing.

All addenda will be issued in writing from SEPTA with content and number of pages described to all registered Proposers. “Registered Proposers” are those who have previously provided the Proposer’s contact information (name, address, telephone number, email address) to SEPTA. SEPTA will not consider any questions from a Proposer and/or provide any addenda to a Proposer unless and until the Proposer has completed the registration process.
Each Proposer submitting a Proposal shall acknowledge receipt of all addenda by signing the acknowledgment included with each addendum. In the event of conflicts in the addenda, the most recent addendum will govern.

1.4 Responsibility and Qualified Provider Determination

SEPTA, if it elects to award a PDA and GESA, will only award a PDA and GESA to an ESCO that SEPTA has determined to be a responsible qualified provider. The Proposer shall furnish adequate documentation to permit SEPTA to determine the responsibility of Proposer within five (5) days of SEPTA’s written request. A responsible Proposer does not necessarily indicate that the Proposer is a qualified provider for the Phase II Work on the CHP Plant project. A responsible Proposer who may be a qualified provider sufficient to perform the PDA and GESA, is one that, at a minimum, 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. This contract will also be governed by the Consultant’s responsibilities under 49 CFR, Part 29, regarding debarment, suspension, and other responsibility matters of any lower tier covered transactions, as applicable.

3 Affirmative Action and DBE – Is in compliance with the Common Grant Rules’ affirmative action and DOT’s Disadvantaged Business Enterprise requirements, 49 CFR, Part 26;

4 Public Policy – Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325 (j) (2) (B) and Commonwealth of Pennsylvania public policies;

5 Administrative and Technical Capacity – Has the necessary organization, experience, accounting, and operational controls and technical skills, or the ability to obtain them to fully perform the Project, and in compliance with 79 U.S.C Section 5325 (j) (2) (D);

6 Licensing and Taxes – Is in compliance with applicable licensing and tax laws and regulations;

7 Financial Resources – Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325 (j) (2) (D);
8 **Production Capability** – Has, or can obtain, the necessary production, and technical equipment and facilities;

9 **Timeliness** – Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

10 **Performance Record** – Is able to provide a satisfactory current and past performance record.

1.5 **Disadvantaged Business Enterprise (DBE) Participation Requirement**

Disadvantaged Business Enterprise (DBE) Participation - SEPTA has not established a goal for Disadvantaged Enterprise (DBE) participation. See Attachment 2.

1.6 **Other Requirements**

1.6.1 **Insurance**

Proposer shall be required to provide, at its own cost and expense, the insurance types and limits set forth in PDA and the GESA. All insurance shall be provided by insurance carriers acceptable to SEPTA in accordance with this document. Within ten (10) days after SEPTA’s request, Proposer shall submit to SEPTA a certified insurance policy complying with the insurance requirements of this document and any PDA or GESA for SEPTA’s review.
1.6.2 **Performance Bond or Irrevocable Letter of Credit**

The successful Proposer shall be required to furnish a Performance Bond or Irrevocable Letter of Credit from issuers acceptable to SEPTA for its faithful performance of all GESA responsibilities, including the savings guarantee. This bond must have corporate surety, and the sufficiency of the bond and surety shall be determined at the discretion of SEPTA. The bond(s) will be in effect from the initial operation of the CHP Base Plant until the end date of the GESA, in the amount of the yearly savings times the term (twenty years). The written savings guarantee shall also be in accordance with the Guaranteed Energy Savings Act. The total program costs, including financed equipment costs, long term maintenance costs, and other costs, shall be one hundred percent (100%) covered by program operational and energy savings. A performance bond must comply with the requirements of the Act of June 10, 1947, P.L. 493 and the requirements of Pennsylvania law. The guarantee shall be monitored at agreed upon intervals and reconciled on an annual basis, commencing one year from the date of completion of installation. In the event that the Guaranteed Energy Savings actual savings are less than the guaranteed savings, the successful ESCO shall annually provide cash reconciliation of the difference.

The bond shall be provided not later than at the time of the Notice of Award for the GESA.

1.6.3 **Additional Guarantee**

SEPTA reserves the right, at its sole discretion, to require a Proposer to provide a guaranty and suretyship agreement in form and substance as required by SEPTA from a parent, subsidiary, affiliated and/or related entity. If the Proposer is Joint Venture, a guaranty and suretyship agreement will be required.

1.6.4 **Proposal Acceptance Period**

The Proposal shall be binding upon the Proposer for ninety (90) calendar days following submission of the Proposal, and ninety (90) days following submission of the BAFO for the Project for those ESCOs performing PDA Phase I Work. Any Proposal in which the Proposer shortens the acceptance period may be rejected, although the acceptance period may be extended by mutual agreement between SEPTA and the Proposer.

1.6.5 **Rights Reserved**

In submitting their Proposal the ESCO understands that the right is reserved by SEPTA to reject any and all Proposals or any BAFO, or part of any Proposal or BAFO, and it is agreed that the Proposal for the Pre-Development Services and the BAFO for the GESA may not be withdrawn for a period of ninety (90) days subsequent to the due date, without the consent of SEPTA.
It is also understood and agreed that if the Proposer should withdraw any part or all of its Proposal or its BAFO for the GESA within ninety (90) days after the due date without the consent of SEPTA, or shall refuse or be unable to enter into the Pre-Development Services and GESA as provided with these documents, it shall indemnify SEPTA to the extent of SEPTA’s damages occasioned by such withdrawal, or refusal, or inability to enter into an Agreement.

### 1.6.6 Financial Assistance Grants

Financial Assistance Grants may become available for this Project from the Commonwealth or federal government. Whether or not the grant is obtained by the ESCO or SEPTA, SEPTA will receive the 100% of the financial benefit of any such grant, regardless of when the grant is obtained.

### 1.6.7 Taxes

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

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

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

### 1.7 Protests

RFP protests relative to this procurement will be reviewed and adjudicated by SEPTA in accordance with the Protest Procedure described below.

#### 1.7.1 Definitions

1. "Interested Party" means any bidders/proposers.

2. "Days" means business days.
“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).

“Federal/State Law or Regulation” means any valid requirement imposed by Federal, state, or other Statute or regulation.

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

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

1.7.2 Types Of Protests/ Time Limits

(1) Pre-Proposal Protest is based upon alleged restrictive specifications or alleged improprieties in SEPTA’s procurement process. A Protestant must file a pre-proposal protest no later than five (5) days prior to Proposal due date by 4:30 PM prevailing Eastern time.

(2) Pre-Award Protest is based upon alleged improprieties of a 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 PM prevailing Eastern Time.

(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 ESCO(s) 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 PM prevailing Eastern time.

1.7.3 Contents of Protest

(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 RFP (by number and description); and
(c) A detailed factual statement of the grounds for protest; and
(d) The desired relief, action or ruling.

1.7.4 Action By SEPTA

(1) Procurement Process Status
Upon timely receipt of a protest, SEPTA will delay the opening of proposals until after resolution of the protest for protests filed prior to the proposal due date, 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.

(2) Conference
If deemed appropriate, SEPTA may conduct an informal conference on the merits of the protest with all Interested Parties invited to attend.

(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.

(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) 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.

(6) **Request for Reconsideration**
If data become available that were 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.

(7) **Decision**
Upon review and consideration of all relevant information the determination as issued by SEPTA will be final.

1.7.5 **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.

**SECTION 2 CHP PLANT TECHNICAL OVERVIEW**

2.1 **Introduction and Disclaimers**

Proposers shall provide a written description of its complete scope to FDBOOM the CHP Plant project, including its Pre-Development Services, Phase II Work, and its proposed technical solution that identifies the major subcontractors and other major equipment, approaches to system function and other services to demonstrate to SEPTA’s satisfaction, full compliance with SEPTA’s stated goals of this RFP. Only those Proposals that present a complete system will be considered by SEPTA.

The Design Criteria, Technical Specifications, Plans and Drawings attached as part of this RFP (collectively, the “Specifications”) contain a description of the CHP Plant components ascertained that potentially best meet SEPTA’s goals. In certain instances, the Specifications contain certain equipment and software that may be utilized in the CHP Plant. See also Section 4 below.

The RFP, including the Specifications, have been provided to identify the desired CHP Plant arrangement as determined by SEPTA. SEPTA makes no representation or warranty regarding, and affirmatively disclaims any representation or warranty with respect to, the viability, operability or functionality of the CHP Plant set forth in the RFP.
It is the obligation of the Proposer to finance, design, build, own, operate and maintain the CHP Plant to enable the CHP Plant to provide the functionality and performance as needed to meet the requirements of the RFP.

The use or adoption of any of the data, information or Specifications by the Proposer in the development of design and construction drawings and specifications for the CHP Plant project is conditioned and premised upon certain assumptions, criteria, reservations, limitations and disclaimers, all of which must be carefully reviewed and analyzed. It is important, therefore, that all Proposers read the following statements and disclaimers and accept their terms as a prerequisite to the use of any portion of the Specifications and its submittal of any Proposal or BAFO:

1. All design and construction drawings, specifications, sketches and other records by the Proposer related to its design, construction, ownership, maintenance or remodeling of the CHP Plant project (“Design Documents”) are required to be prepared and issued by licensed architects, engineers or design professionals engaged by the Proposer and licensed and insured to practice such professional services in the jurisdiction of the location of the CHP Plant project (the “Design Professionals”). All Design Documents shall comply with all applicable laws, building codes, ordinances, and other criteria mandated by the jurisdiction in which the CHP Plant project is located (“Applicable Laws”). To the extent that there is any irreconcilable conflict between any Applicable Laws and use of the Specifications, the Applicable Laws shall govern.

2. The Specifications are confidential, and are owned by SEPTA and may not be reused or sold by the Proposer related to its design, construction, ownership, maintenance or remodeling of the CHP Plant project (“Design Professionals”) are required to be prepared and issued by licensed architects, engineers or design professionals engaged by the Proposer and licensed and insured to practice such professional services in the jurisdiction of the location of the CHP Plant project (the “Design Professionals”). All Design Documents shall comply with all applicable laws, building codes, ordinances, and other criteria mandated by the jurisdiction in which the CHP Plant project is located (“Applicable Laws”). To the extent that there is any irreconcilable conflict between any Applicable Laws and use of the Specifications, the Applicable Laws shall govern.

3. Under no circumstances does SEPTA warrant or certify that the information or data in the Specifications are free of errors, omissions or deficiencies of any kind. SEPTA specifically disclaims all warranties, express or implied, associated with the Specifications, including but not limited to the warranties of merchantability and fitness for a particular purpose.
4. The information in the Specifications is subject to change by SEPTA or by Applicable Laws. Anyone using or relying upon the Specification should satisfy himself/herself as to the most current version of the Specifications and Applicable Laws. Proposers, Design Professionals and other users of the Specifications agree to assume and accept all risks and consequences flowing from or related to the use, retention, distribution, alteration, or deletion of the information in the Specifications. Use or adoption of the Specifications does not entitle Proposers or Design Professionals or other users to compensation for damages of any kind that could be attributed to such use, and Proposers, the Design Professionals or other users waive and release SEPTA, its agents, employees, officers and directors from any such damages or claims related to the Specifications. SEPTA will in no instance be liable for any loss of profit or other damage of any kind related to the use or adoption of the Specifications, including but not limited to special, incidental, consequential, or other damages, even if apprised of the likelihood of such damages.

5. These terms and conditions constitute the complete and final agreement of the parties hereto with respect to the use or adoption of the Specifications in any Design Documents, and hereby are deemed to be incorporated in the PDA and any GESA.

**SEPTA’s current power consumption for the Rail Road is as Follows:**

- SEPTA’s current quantity of Kilowatt Hour (KWH) is 103,697,861 KWH/yr. LEVEL LOAD INCLUSIVE OF SPIKES
- SEPTA’s current cost per KWH is $.0809/kwh

**SEPTA’s current heating demand for the Optional Facilities**

- SEPTA’s currently uses approximately 235,000 CCF of natural gas annually at the Midvale site based on fiscal year 2011.
- SEPTA’s uses approximately 96,000 gallons of fuel oil annually at the Roberts Yard facilities based on fiscal year 2011.
- SEPTA’s current cost per MMBTU is $21.1866

2.2 **Certain Requirements Regarding the Proposals**

The Proposer's technical information submittal must include a clear description of how the design, functional and performance requirements contained in the RFP and Specifications will be met or exceeded, as well as providing a clear description of the proposed CHP Plant as a whole, and its component systems. The selected Proposer will be required to work with SEPTA so that the CHP Plant as designed and implemented meets SEPTA’s requirements as well as seamlessly integrates with SEPTA’s existing Midvale and Wayne Junction facilities.
By submission of a Proposal in response to this RFP, any Proposer consents and grants permission to SEPTA to make inquiries concerning the Proposer, its officers, agents, subcontractors, and vendors, to any persons or firm concerning the Proposal, as well as for obtaining information relevant to possible contract negotiations. Any information that the Proposer believes to be proprietary and does not want disclosed to the public shall be so identified on each page in which it is found. To the extent allowed by applicable law, proprietary information provided by an ESCO in response to this RFP and identified as such will be held in confidence and SEPTA will use reasonable commercial efforts not to reveal or discuss such designated proprietary information with competitors.

SEPTA shall not be responsible for any cost incurred by the ESCO in the preparation of its Proposal. It must be specifically understood that this RFP does not create any obligation on the part of SEPTA to enter into any contract or undertake any financial obligation with respect to the program referred to herein. SEPTA reserves the right to reject any or all Proposals. The Proposer/ESCO understands that, if selected, SEPTA reserves the right to provide its opinion publicly and privately regarding the ESCO’s performance.

All material submitted becomes the property of SEPTA and may be returned only at SEPTA’s option. Proposals submitted become the property of SEPTA and may be reviewed and evaluated by any person except the Proposer’s competitors at the discretion of SEPTA, regardless of statements to the contrary contained within the Proposer's response. Notwithstanding the foregoing, SEPTA shall have the right to use any or all concepts, ideas and work presented in any response to the RFP and to make the information from other proposals available to the party making the successful proposal for possible incorporation into the GESA. Selection or rejection of the proposal shall not affect this right of SEPTA.

Information provided by SEPTA to the requesting Proposer for the purpose of providing a response to the RFP is the property of SEPTA. As such, said information is to be kept in confidence and used only for the intended use of this RFP. No further use or dissemination of SEPTA-supplied information may be made by any ESCO without SEPTA’s express written consent.

SECTION 3   MODIFICATIONS TO SEPTA’S TERMS & CONDITIONS

3.1 Modifications to PDA, SEPTA Required Terms & Conditions and ESA:

The proposed form of the PDA is in Part II of this RFP, and the proposed terms and conditions of the GESA are in Part III of this RFP. By its nature and the phasing of the Project, the terms and conditions of the GESA are preliminary and incomplete. It is anticipated that the technical and commercial terms of the BAFO, if accepted, will be incorporated into the GESA. Proposers may propose modifications to the PDA or the GESA with its Proposal, its BAFO (if applicable), or prior to the date identified as the due date for questions and approval of alternative concepts. SEPTA may, at its sole discretion, consider such modifications to the terms and conditions, provided the
Proposer has complied with the requirements stated herein and the GESA fully complies with the Guaranteed Energy Savings Act.

All modifications must be specific, and the Proposer must indicate clearly what alternative is being offered to allow SEPTA a meaningful opportunity to evaluate the modifications and the cost implications of the modifications, if any. If the Proposer believes that any modification will affect the cost of the Project, the Proposer must indicate a reasonable estimate of the cost impact, including a description of the direct and indirect cost advantages to SEPTA.

SEPTA shall determine the acceptability of all proposed modifications. SEPTA may accept or reject the proposed modifications. If SEPTA elects to accept a proposed modification, it shall do so by issuing an Addendum prior to the submission of Proposals and/or BAFO, if any. No modifications to the terms and conditions shall be made except through an Addendum published by SEPTA.

All proposed modifications shall be referenced by utilizing the corresponding section, paragraph and page number, SEPTA is under no obligation to accept any modifications.

The GESA shall provided that all tasks described in the RFP and/or Proposal shall be the Proposer’s sole responsibility and shall be performed by the Proposer and its subcontractors.

SEPTA will not accept any further exceptions at the time of BAFO submission. Any subsequent request for modifications to the terms and conditions may be grounds for canceling any recommendation to award the Pre-Development Services and/or the GESA.

SECTION 4 ADDITIONAL SERVICES AND EQUIPMENT

4.1 CHP Plant – Base System

The CHP Plant requirements with regard to equipment are as documented in the Specification. Proposers are required to submit a Technical Proposal and a Price Proposal for the Base System as described in the Proposal Submittal Requirements (Section 5 of this RFP). To be responsive, Proposers must submit a Proposal for the entire Base System. Additionally, to be responsive, Proposers must submit a Proposal for all mandatory options.

4.2 CHP PLANT OPTIONS - Hot Water Heating (Mandatory Option)

As part of the CHP Plant project, SEPTA may elect to purchase hot water heating at the Midvale or Roberts sites. As such, SEPTA requires that the Proposers provide a mandatory optional price for providing hot water heating to Midvale, Roberts Yard, or both. A separate price shall be provided for each service.
SECTION 5 PROPOSAL SUBMITTAL REQUIREMENTS

5.1 General Requirements

Proposals shall be prepared as simply but as completely as possible and provide a straightforward, concise description of the Proposer's capabilities to satisfy the requirements of the RFP. Proposers are reminded that their offer or submission should be the best and most advantageous proposal to be presented by their ESCO. Emphasis should be concentrated on accuracy, completeness, and clarity of content. SEPTA assumes no responsibility for any costs incurred by Proposers in preparing their Proposals.

The Proposers shall provide information that demonstrates how they will meet the requirements of this RFP, successfully develop and implement the FDBOOM of the CHP Plant, and manage the GESA during the entire term of the GESA. Statements merely indicating that the Proposer will meet specific requirements are insufficient. Large and complex packages with extraneous brochures, etc. are not desired.

The Proposal must also contain a budget for performance of the Pre-Development Expenses as set forth in the PDA at Part II of this RFP, showing each category of Pre-Development Expenses. The Pre-Development Expenses will be a negotiated to a not-to-exceed amount prior to the award, if any, of the PDA for the Phase I Work, and will be incorporated therein.

For the purposes of this RFP, the terms “comply” and “compliant” mean that the Proposal conforms to the requirements of the RFP without material deviation or reservation. It is the sole determination of SEPTA, that a “material deviation” or “reservation,” defined as one or more of the following, has occurred:

- That which adversely affects in any substantial way the scope, quality and performance of the proposed deliverable; and/or
- That which results in a material nonconformance with a legal or financial requirement.

SEPTA hereby clarifies that with respect to a Proposal being “compliant” with respect to the Technical Proposal, the intent is that the Proposal substantially meets (i.e., without material deviation) the design, functional and performance requirements of the RFP specifications to achieve SEPTA’s goals stated in the RFP.

5.2 Form of Proposal

Each Proposal shall include a single-sided Cover Letter that includes the name and address of the ESCO submitting the Proposal and whether the organization is an individual, partnership, corporation, limited liability company or joint venture, including the jurisdiction of organization. The cover letter shall include the name, address, telephone number and e-mail address of the contact person who will be authorized to
represent and legally bind the Proposer. Also contained in the cover letter shall be a statement that the Proposer acknowledges that its Proposal shall be valid for ninety (90) calendar days following submission and throughout the PDA period.

The ESCO Combined Heating and Power FDBOM proposal must be organized, and labeled in the manner, format and quantities set forth below. The Proposal must be submitted in a sealed container that is identified on the face with the name of the Proposer, the Project name and the contents of the container.

The Proposal shall be submitted on 8.5 by 11-inch paper in no less than 11 point font size. 11 by 17-inch fold-out drawings are permitted, but should be limited, with the exception of any drawings that are specifically requested in the Specifications. All parts, pages, figures and tables shall be numbered and clearly labeled. One original hard copy, five copies and one electronic copy on a CD of the Proposal are required.

Each Proposal shall include a table of contents corresponding to the Sections below. The response to each Section should be contained within its respective tab and each tab shall include all information requested in its entirety.

5.2.1 Introduction and Executive Summary
A concise summary of your Proposal highlighting the key points that meet SEPTA’s objectives. The Executive Summary provides the opportunity for the Proposer to present the most important aspects of the firm’s experience and history. It should summarize the firm’s qualifications, the engineering approach, financial approach, and provide an overview of the implementation plan envisioned for the CHP Plant project. It should answer the question “Why should SEPTA select your firm to provide the Guaranteed Energy Measures discussed in this RFP?” Limit this section to four (4) pages.

5.2.2 Summary of ESCO qualifications and experience and references
Discuss in detail your company’s history and experience in providing a Savings Guarantee to customers in performance contracts similar to those as described in this RFP. The history and experience discussed in this section should be from the prime company that would execute the GESA with SEPTA.

This is an opportunity for the Proposer to demonstrate knowledge and experience with performance guarantees. At a minimum, provide background information on your company, describing its primary business activities and financial backing. Include your company’s most recent annual report, if available, or most recent audited financial statements, and any additional documents that indicate current financial status. Provide detailed information describing your company’s qualifications to perform the proposed project utilizing a comprehensive energy services approach. Discuss your firm’s manufacturing and/or service capabilities (if any), bonding capacity, and sources of financing.
Include a description of any Pennsylvania Act 29, Act 57, or Act 77 projects that your firm has completed that are similar to the proposed Project. As much information as possible concerning these references should be included. At a minimum, the customer’s name (including a contact name and telephone number), location, contract type, scope of work, and savings should be supplied. Any difficulties meeting savings guarantees or project deadlines and the eventual resolution should be outlined in this section. Specific examples of situations where a customer has challenged performance may be used to demonstrate experience.

5.2.3 List of any suspensions, debarments, delays and/or litigation

In this section, respondent must disclose any and all litigation, arbitration or other disputes involving performance contracts within the last three years. SEPTA reserves the right to require contractor and all sub-contractors to provide criminal background check certification for employees working in on any SEPTA property. All SEPTA property is a drug free environment.

5.2.4 Engineering and Construction Phase Details

- Describe the design philosophy of your ESCO to ensure that the CHP Plant is built to achieve the highest degree of reliability for both thermal and electric energy and to meet SEPTA’s Specifications of this document.
- Describe how you intend to manage the design and construction of these systems in order to achieve the required results and performance within the time period and dates as specified.
- Provide a description, as well as the economic justification, of any design enhancements that you would incorporate into the system design.

5.2.5 Operations Phase Details

- Explain how you would staff the CHP Plant for continuous operation as well as provide operational monitoring, surveillance and oversight of the CHP Plant. Provide an organization chart that identifies typical members of the Proposer’s staff that will participate in the project. Any affiliate companies or subcontractors should be identified and similar organization charts provided.
- Describe typical energy services to be provided by your local branch offices, project partner companies, and all subcontractors. Include each organization’s name, address, telephone number, and key contact. Indicate the history and experience that each organization has in providing these energy services. Include a brief description of all projects completed as a collective team. Describe any contractual arrangements between organizations. Describe your company’s organizational structure, the management approach for this project, and how the project’s success will be assured.
For each individual that will be working on the project provide a resume that provides at a minimum: job title and function, tenure with the company, experience in performance contracting, recent projects, academic degrees, professional registration, proximity of residence to SEPTA facilities. Indicate who will have primary responsibility for technical analysis, design work, and construction management.

Indicate the key individuals that will have primary project development point-of-contact responsibility, and the company officer with authority and responsibility to negotiate and execute the GESA with SEPTA.

Discuss the mechanism to promote use of local support services. Discuss your ability to coordinate project construction with local utilities, subcontractors, local equipment suppliers, and customer facility personnel. Also, provide examples of such successes in other performance contracts, including company names, contacts, and telephone numbers.

Identify potential subcontractors with demonstrated proof of the financial and technical capabilities necessary to perform their proposed scope of work and or services.

- Describe your preventive and predictive maintenance systems with examples.
- Describe your procurement program for the purchase and delivery of natural gas.
- Describe your training program for the CHP Plant staff.
- Explain your operational quality control program.
- Describe home office operational support for resolving plant problems, capital modifications and major maintenance.
- Describe your safety and environmental programs.
- Proposers must summarize a Measure and Verification Plan for the CHP Plant project (the “M&V Plan”) in this section. The evaluator team should gain a basic conceptual understanding of the M&V approach that will be used for the CHP Plant project. SEPTA must understand that the Proposer has a clear and defensible plan to verify the savings. The Proposer needs to demonstrate the ability to develop and manage a M&V Plan that will withstand the rigors of Act 57, yet not unnecessarily burden the project with either hard costs (for M&V equipment and service) or soft costs (for professional time to manage the verification process). The cost to provide measurement and verification services for the project must be included.

- Describe how you will provide cost effective maintenance and maintain warranties on the installed CHP Plant on the existing facility equipment/structure. Identify and describe the roles and requirements of SEPTA maintenance personnel and your maintenance services. Describe your capabilities and experience in providing maintenance service on such project. Identify specific projects, references, and contacts. Describe the extent to which equipment maintenance is a profit center for your company.
The Proposer should use this section to describe the program that is proposed to manage O&M requirements of the installed system(s) for the full term of the agreement. SEPTA has a basic view that the maintenance of equipment installed under this program should not increase the burden on existing SEPTA staff. SEPTA recognizes that in order to achieve energy savings performance, the equipment installed under the program and existing building systems must be properly maintained. This section provides the respondent the opportunity to propose a plan to manage the O&M of the equipment and other buildings in light of the above considerations. The response in this section should include a plan, with clearly defined responsibilities, and the cost to the project to have the Proposer provide the recommended level of service. Note that any incremental costs to SEPTA must fully comply with the requirements of Act 57.

- O&M Impact of the CHP Plant project. Proposers should describe the effect that the CHP Plant project will have on Operations and Maintenance of the facility. This section provides an opportunity to demonstrate its knowledge and experience with the O&M impact of energy efficiency projects. Any incremental O&M costs or savings should be described in this section. O&M savings and/or costs MUST BE WELL FOUNDED. SEPTA will only consider O&M savings that are clearly and directly demonstrated as a budget line item reduction. SEPTA reserves the right, at its sole discretion, to remove the dollar value of O&M savings from the project entirely during the evaluation process.

- Project Financing - Describe the approach that Proposer proposes to employ to finance the proposed program. Discuss your firm's past ability to finance and implement projects of this size quickly and efficiently. Describe your relationship with funding sources and whether funding these projects is a profit center for you. The proposal must include a financial plan to obtain financing for implementation of the CHP Plant project. This plan shall include, but not be limited to, discussion of: types of financing, sources of financing, use of investment banking services, intent to transfer contract to successor in interest after award.

5.2.6 GESA Form and Guarantee

- Submit the proposed GESA and confirmation that the SEPTA required terms and conditions are included and/or acceptable to incorporate into said GESA. List any revisions to SEPTA required terms and conditions and indicate if any of terms and conditions are unacceptable.

- The GESA submittal will be used as the basis for negotiations with SEPTA. Any GESA form should reflect a likely scope of work similar to that intended to be included in the proposal, and should be fully developed, including the performance guarantee and the Measurement and Verification (M&V) Plan. References involving similar projects utilizing a similar agreement will be viewed favorably. Discuss the status of equipment ownership at contract
expiration.

- **Performance Guarantee** – provide a layman’s description of the performance and guarantee bonds to be provided in the GESA. Describe the important business points, including strong points and limitations. Discuss the process that is used to establish and manage the performance guarantee for the full term of the agreement. Explain how accounts will be adjusted for shortfalls or windfalls in project cash flow.

- Provide any other information you believe appropriate and necessary for consideration of your ESCO to be selected.

5.2.7. **Identification of Risks**

The ESCO should include in the proposal a brief description of its proposed method to investigate the various risks involving the property and the CHP Plant. Proposed remedies to limit such risks will assist in SEPTA’s evaluation of the ESCO’s response to the RFP and to the extent available, the ESCO should meet or discuss with all governing regulatory agencies to ascertain the feasibility of obtaining all approvals for the CHP Plant, and provide to SEPTA in writing a list of all approvals which must be obtained to construct the CHP Plant, the likelihood of obtaining all approvals and a timeframe for obtaining all approvals and completing construction on time and within budget.

5.2.8 **Compliance with Performance Schedule**

Submit evidence of the Proposer’s ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments. Include a list of existing business commitments/contracts.

5.2.9 **ESCO, Technical Experience and Capability - Commercial**

(a) If the Proposer will be a joint venture, limited liability company, partnership, newly formed entity or holding company (a “**Proposer Entity**”), provide copies of joint venture, limited liability company, partnership or other organizational (business entity) and/or relationships agreements. If no written contract or understanding exists, then the Proposer Entity shall include a written statement explaining how the Proposer Entity will fulfill the requirements of the Agreement. Such explanation shall fully discuss and identify the responsibility of the members or partners of the Proposer Entity for performing the services, providing the required insurance and bonding, and providing coverage for the indemnification of SEPTA required by the Agreement. In the event that the Proposer is a Proposer Entity and the Proposer Entity is selected as the Contractor under the Agreement, it is required that all corporations, partnerships, limited liability companies, sole proprietorships, members or partners that hold interests in the Proposer Entity shall be jointly and severally responsible under the Agreement and shall execute a separate
guaranty and suretyship agreement in form and substance as required by SEPTA.

(b) Submit evidence that the Proposer is duly and properly organized and is qualified to conduct business in the state of Pennsylvania or will be prior to Agreement award. If applicable, confirm or provide evidence that the Proposer’s and all team members’ work on the Project will be in compliance with all U.S. federal restrictions (including treaties) on doing business with non-U.S. entities.

5.2.10 Capacity to Perform

(a) Provide evidence of the Proposer’s financial ability and resources to adequately perform and manage the Agreement, manage risk or ability to obtain such resources as are required during the performance of the Project. If Proposer is a joint venture or a newly-formed entity, identify appropriate guarantor(s) and provide evidence of the financial resources of such guarantor(s).

(b) List every ESCO or CHP Plant Agreement, in the last five (5) years, either completed or open for which liquidated damages or other contractually stipulated sums or damages were assessed against the Proposer or a team member for failure to complete the work on time or damages that were paid for any other breach of Agreement. For each such Agreement, provide a brief description of the work performed, the initial Agreement amount, the dollar amount at completion, date completed, and the name and telephone number of the owner’s representative.

5.2.11 Bonding/Insurance

(a) Provide a letter from a bonding company satisfactory to SEPTA that commits the bonding company to provide the bonding required in the GESA on behalf of the Proposer if the Proposer is selected to provide the CHP Plant in accordance with this RFP.

(b) Provide a letter from an insurance company satisfactory to SEPTA that commits the insurance company to provide the insurance required in the GESA on behalf of the Proposer if the Proposer is selected to provide the CHP Plant in accordance with this RFP.

5.2.12 Price Proposal

(a) The budget for Pre-Development Expenses showing each category of Pre-Development Expenses shall be provided. The Pre-Development Expenses will be a negotiated to a not-to-exceed amount prior to the award, if any,
of the PDA for the Phase I work. The Pre-Development Services shall be as outlined in the Pre-Development Agreement Part II.

(b) The fixed price, at the conclusion of Predevelopment Services, inclusive of all assumptions and escalation for electricity and hot water heating, should be submitted per KWH for electricity and MMBTU for hot water heating.

(c) Price Proposals which exclude or restrict cost items necessary for a Proposer to perform the SEPTA required scope of services may be considered by SEPTA as non-responsive to the RFP. This pricing cannot exceed plus or minus ten percent of the estimated pricing. The successful Proposer must abide by GESA, including, but not limited to, the requirement (62 P.S. 3753(d)) regarding the guarantee that the ESCO is required to provide energy savings to SEPTA.

(d) Financing: Each Price Proposal must include details on the project financing proposed as follows:

Proposer-Provided Third Party Financing and Business guidelines including:

(i) Identify the proposed Lender or source of funding (including name, address, and telephone number for the relationship manager at the Lender).
(ii) Specify the interest rate or interest rates for each loan term.
(iii) Describe the required collateral.
(iv) Specify any fees that Proposer would charge to facilitate the third-party financing.
(v) Specify the prepayment rights.
(vi) Describe any other material terms and conditions of the financing.
(vii) Provide a copy of financing commitment letter.
(viii) Identifying the Annual Cost of Third-Party Financing and the Total Cost of Third-Party Financing.
(ix) Provide background information that demonstrates Lender’s financial strength, commitment and experience by listing transactions of similar or greater scope that were executed within the last three (3) years.
(x) Describe how your team has the ability to finance and complete this project.
(xi) Provide details on your proposed financing structure for the project, specifically: debt and equity components, term in years of debt frequency and debt structuring, interest rate(s) assumed for the debt, proposed return on equity for the equity portion of the financing.
(xii) Describe the form of operational financial guarantees that
you will provide to ensure continuous delivery of electric and thermal energy.

(e) Report per GESA Requirements
The successful Proposer must also abide by the GESA requirement (See 62 P.S. 3753 (e)(1) and (2)) and provide a report “summarizing estimates of all costs of installation, maintenance, repairs and debt service and estimates of the amount by which energy or operating costs will be reduced.” The report must be available for public inspection.

5.2.13 Mandatory Documents

Each Proposer shall include as part of its Proposal the mandatory documents listed and more particularly described below, each of which shall be included under a separate tab. Proposals that are not accompanied by the completed mandatory documents will be considered non-responsive.

(a) Security: The selected Proposer for the Project, upon written notice from SEPTA after Agreement award or intent to award notice for the Project, shall furnish and maintain properly executed Performance Bonds and Labor and Material Payment Bonds each in the amount of one hundred percent (100%) of the value of the CHP Plant project. The duration of the Performance, Labor and Material Payment Bonds will commence with the Award of the GESA and will be in effect until the Construction of the CHP Base Plant and Mandatory Option (if exercised) is completed. After the acceptance and operation of the CHP Plant, the Contractor shall furnish a performance/guarantee bond that will be in effect from the initial operation of the CHP Base Plant until the end date of the GESA, in the amount of the yearly savings times the term (twenty years). 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, SEPTA requires the Contractor, within ten (10) days to furnish new or additional bonds from the same or different sureties so as to be fully secured at all times. The desired form of Labor, Material Payment Bond and Performance Bond consists of AIA Document A311, (see sample of the desired Performance Bond included in SEPTA Terms & Conditions).

The Performance Bond and Labor and Material Payment Bond and the performance/guarantee bond 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 and authorized to issue bonds at least up to the dollar amount of the bond.

(b) Steel Products Procurement Act of 1978
All steel products used or supplied in the performance of the Agreement 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. Proposer shall insert this requirement as a special condition for any subagreement awarded in the performance of the work.

By submitting a Proposal, Proposer specifically agrees to fully comply with the Commonwealth of Pennsylvania’s Steel Product Procurement Act of 1978 (Act No. 3 of 1978, March 3 P.L. 6 (73 P.S. §1881 et seq.)), as amended.

(c) Non-Collusion Affidavit
As part of the Proposal signed herewith, Proposer shall submit an Affidavit of Non-Collusion, in form acceptable to SEPTA. In addition, upon SEPTA’s request, in the event that the Proposer is awarded the Agreement pursuant to this RFP, the selected Proposer shall agree to re-execute and submit an Affidavit of Non-Collusion prior to the award of the Agreement. A sample Affidavit of Non-Collusion is attached.

(d) Certification Regarding Compliance with Immigration Reform and Control Act of 1986
In connection with this solicitation and any resulting Agreement, the Mandatory Documents of the Proposal must include a signed Certification Regarding Compliance with Immigration Reform and Control Act of 1986.

5.3 Submission of Proposals

One original hard copy, five copies and one electronic copy on a CD of the Proposal must be submitted to SEPTA by 4:30 PM prevailing Eastern Thursday, March 5, 2015. The Proposals shall be submitted to:

John Kerrigan- Manager, Contract Administration
Southeastern Pennsylvania Transportation Authority
1234 Market Street, 11th Floor
Philadelphia, PA 19107-3780

NO ORAL, FACSIMILE, ELECTRONIC MAIL, TELEGRAPHIC OR TELEPHONIC SUBMITTALS WILL BE CONSIDERED.

SECTION 6 SELECTION PROCESS

6.1 Evaluation Criteria
Each Proposer’s Proposal shall be evaluated on the following evaluation criteria, listed in descending order of importance.

The Proposer is responsible and capable of evaluating, recommending, designing, implementing and installing CHP Plants as determined by SEPTA and knowledgeable and, if possible, experienced in providing energy services to transit facilities (or similarly sized facilities with critical loads) and has a demonstrated track record in providing such services. The Proposer exhibits the required capabilities for designing, constructing and placing into service a CHP Plant that is engineered and constructed to (i) be installed at the lowest possible cost, (ii) achieve the highest possible reliability and efficiency standards, thus achieving the lowest life cycle cost, (iii) and realize the greatest length of service for the various structures, systems and components, thus resulting in the ability of the ESCO to offer SEPTA up to a twenty year GESA. The Proposer demonstrates prior successful experience in operation of CHP Plants and provides a quality O&M plan for CHP Plant. The Proposer demonstrates a technical understanding of the scope and the requisite experience in constructing facilities in multi-energy partner environments.

6.1.2 GESA and Financial Strength
The Proposer’s GESA apportions and manages risk to SEPTA’s benefit, provides performance and availability guarantees, and minimizes SEPTA’s fuel cost and escalation risk. The Proposer exhibits the financial strength, stability, creditworthiness and creativity required to provide and deliver upon a financial plan and energy solutions strategy that will result in low cost energy being provided.

6.1.3 Schedule
The Proposer demonstrates the ability to construct and deliver the CHP Plant and distribution system that meets or exceeds the schedule.

6.1.4 Pricing
At the conclusion of the Predevelopment Services under the PDA, the ESCO’s fixed pricing for the Project, electricity and hot water heating for the first five years (year 1 to 5 of GESA) and fixed electrical and thermal heat rates for the following fifteen years (year 6 to 20 of GESA) must include the cost associated with financing, designing, building, owning, operating and maintaining the CHP Plant inclusive of all assumptions and escalation rates. This pricing cannot exceed plus or minus ten percent of the estimated pricing. The successful Proposer must abide by GESA, including, but not limited to, the requirement regarding the guarantee that the ESCO is required to provide energy savings to SEPTA.

6.2 Selection Process - General
SEPTA seeks to select one or more ESCOs whose Proposal is the most advantageous to SEPTA for Pre-Development Services under the PDA, and only one ESCO for the Phase II Work and completion of the FDBOOM of the CHP Plant project, inclusive of fulfillment of the GESA for a period not to exceed twenty (20) years, based on the evaluation criteria. The selected ESCO(s) will be awarded separate PDAs to perform Pre-development Services in accordance with the terms of the PDA.

At the conclusion of Pre-development Services, SEPTA will evaluate the selected ESCO(s) and their respective BAFOs against the evaluation criteria and may award one GESA to the ESCO whose BAFO is the most advantageous to SEPTA. The unsuccessful ESCO(s) will be reimbursed for their Pre-development Services in accordance with the PDA. The successful ESCO will incorporate their Pre-Development Costs into their GESA for payment over the term of the GESA.

If SEPTA does not award the GESA for the FDBOOM of the CHP Plant project, the selected ESCO(s) will be reimbursed for their Pre-Development Services in accordance with the PDA.

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

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

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

Acceptable: Meets the minimum requirements of the RFP; Responses and solutions offer no significant advantages; Offers solutions and responses to the Specifications that have a reasonable probability of success; Weakness and/or deficiencies require some
modifications to conform and comply with the critical elements of the RFP.

Marginal: Responses and solutions to the Specifications provide minimum probability of success. Significant weaknesses and deficiencies in the responses and solutions offered. Responses require significant modifications to conform and comply with the minimum requirements and critical elements of the RFP.

Unacceptable Responses and solutions fail to meet the minimum requirements of the RFP. Offers solutions and responses to the Specifications that have no probability of success. Information provided is insufficient to evaluate the response. Major revisions required to cure deficiencies.

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

After making an evaluation of the proposals on the basis of the evaluation criteria, SEPTA may conduct interviews and request and receive additional information as it deems necessary from any Proposer deemed to be responsive to the RFP. If interviews are conducted, Proposers who are deemed to be non-responsive and have no reasonable chance of being selected will not be interviewed.

After all Proposals have been evaluated in accordance with the evaluation criteria, any Proposal determined to be acceptable based on the evaluation criteria and interviews (if conducted), SEPTA may, without discussion or negotiation, proceed to award the PDA to one or more ESCOs for Pre-Development Services.

However, if no Proposal is acceptable without negotiation, those ESCO(s) whose Proposals are determined by SEPTA to be within the competitive range may be contacted by letter from SEPTA to formally schedule negotiations. Competitive range will be determined by SEPTA and will consist of those ESCO(s) whose proposals are determined to have a reasonable chance of being selected for award of the Pre-Development Services based upon the evaluation criteria.

If negotiations are conducted, all proposers with whom negotiations have been conducted will be informed of the specified time and date to submit their Best and Final Offer (BAFO) for Pre-development Services. The BAFO shall be the Proposer’s most favorable Proposal. The BAFO will be evaluated by SEPTA based on the evaluation criteria.

As stated in Part I, General Information For Proposers, Section 3.1: Modification to PDA, SEPTA Required Terms and Conditions and GESA, the Proposal may be deemed non-responsive if any Proposer fails to submit minor modifications with their Proposal and attempts to submit them subsequently. SEPTA may cancel a recommendation to award to ESCO(s) that makes such requests outside the allotted period. Notwithstanding the foregoing, SEPTA reserves the right to reject any and all Proposals, and to negotiate
separately with any Proposer(s), if SEPTA determines that doing so would be in the best interests of SEPTA.

6.3 **Award of Pre-Development Services**

SEPTA reserves the right to make an award to one or more ESCO that have been determined by SEPTA to be fully responsive and responsible to the RFP requirements, while taking into consideration the evaluation of the Selection Committee of the Proposals, interviews (if conducted), and the budget for Pre-development Services. A recommendation to the SEPTA Board will be made of one or more ESCOs whose proposals are the most advantageous to SEPTA for Pre-Development Services.

6.4 **Execution of the GESA and Award of Phase II Work on the CHP Plant Project**

At the conclusion of Pre-Development Services, SEPTA may request the selected ESCO(s) to submit their proposal BAFO, inclusive of their GESA, firm pricing for electricity and hot water heating for the first five years (year 1 to 5 of GESA) and fixed electrical and thermal heat rates for the following fifteen years (year 6 to 20 of GESA), and the cost associated with financing, designing, building, operating and maintaining the CHP Plant and Mandatory Option inclusive of all assumptions and escalation rates. This pricing cannot exceed plus or minus ten percent of the estimated pricing submitted with their initial Proposal.

After the proposal has been evaluated in accordance with the evaluation criteria, any Proposal determined to be acceptable based on the evaluation criteria and interviews (if conducted), SEPTA may, with or without discussion or negotiation, proceed to award the GESA to one ESCO for the FDBOOM of the CHP Plant project.

The selected ESCO(s) for Pre-Development Services will be notified and any questions, requests for clarifications and/or SEPTA approved modifications will be provided to them in writing. Each Proposer may be invited for a private interview and discussions with SEPTA to discuss answers to written or oral questions, clarifications or any facet of its Proposal and BAFO. SEPTA may commence negotiations with the selected ESCO(s) regarding pricing, financing proposal and the terms and conditions of the GESA which must include SEPTA’s required terms and conditions unless otherwise agreed in writing.

If negotiations are conducted, all selected ESCO(s) with whom negotiations have been conducted will be informed of the specified time and date to submit their BAFO for the Project. The BAFO shall be each Proposer’s most favorable Proposal for the FDBOOM of the CHP Plant (including SEPTA approved modifications to the CHP Plant Design and/or Innovative Alternative Concepts for financing and to the CHP Plant), including any options elected by SEPTA prior to BAFO, and the GESA terms (including SEPTA approved modifications to the terms and conditions made pursuant to this RFP) which have been clarified and agreed upon during discussions and negotiations. The request for BAFOs will set forth the specific time and date for the submission of the BAFO.
The BAFO will be evaluated by SEPTA based on the evaluation criteria. As stated in Part I, General Information For Proposers, Section 3.1: Modification to Pre-Development Agreement, SEPTA Required Terms and Conditions and Energy Services Agreement, if any Proposer fails to submit minor modifications with their Proposal and attempts to submit them subsequently, the Proposal may be deemed non-responsive. SEPTA may cancel a recommendation to award to an ESCO that makes such requests outside the allotted period. Notwithstanding the foregoing, SEPTA reserves the right to reject any and all Proposals, and to negotiate separately with any Proposer(s), if SEPTA determines that doing so would be in the best interests of SEPTA.

SEPTA will make an award of the GESA, if any, only to a single ESCO who has been determined by SEPTA to be fully responsive and responsible to the RFP requirements, taking into consideration the evaluations of the Selection Committee, interviews, (if conducted), and the BAFO that is the most advantageous to SEPTA. Furthermore, SEPTA will elect to enter into the GESA with an ESCO determined by SEPTA to be a qualified provider only if SEPTA finds that the amount it would spend on the energy conservation measures recommended in the Proposal and/or BAFO would not exceed the amount of energy, water or wastewater cost savings, operational cost savings or revenue increases resulting from the energy conservation measures within a period not to exceed 20 years from the date of final installation if the recommendations in the Proposal and/or BAFO were followed and the qualified provider provides a written guarantee that the energy, water or wastewater cost savings, or operational cost savings or revenue increases will meet or exceed the cost of the GESA.

In accordance with 62 P.S. § 3753 (d), the GESA, if awarded, will be awarded to the qualified provider that best meets the needs of SEPTA. For additional detail, please see Evaluation Criteria and Selection Process. The finalists will be informed in writing of the selection decision.

In accordance with 62 P.S. § 3753 (e), before the GESA can be awarded the qualified provider must provide as part of its proposal a report, which shall be made available for public inspection, summarizing estimates of all costs of installation, maintenance, repairs and debt service, and estimates of the amounts by which energy or operating costs will be reduced, and which shall contain a listing of contractors and subcontractors to be used by the qualified provider with respect to the energy conservation measures.

SEPTA reserves the right to reject all proposals received and further reserves the right to waive any informality in proposals received as a result of the RFP.

Note - Funding Contingency. Since the GESA will have a term extending beyond one fiscal year, by law [62 Pa.C.S.A. § 3755(a)], the GESA must include a provision that allows SEPTA to terminate the GESA if in any fiscal year during the term of the GESA SEPTA does not receive sufficient funds in its annual appropriations to make the payments required under the GESA.
Note - **Davis-Bacon Act.** In the event that the GESA includes work on a “public work” within the meaning of the Davis Bacon Act, all workers employed on such “public work” shall be paid these wages. A copy of the current Davis-Bacon Act wages for all trades associated with this project will be provided. It is the ESCO’s responsibility to ensure compliance with the current Davis-Bacon Act wage reporting requirements for all aspects of the project.

**Note - Taxes, Fees, Codes Compliance, Licensing.** The ESCO performing the PDA services and the Phase II Work shall be responsible for payment of any required taxes or fees associated with the execution of the PDA and the GESA. The ESCOs shall be responsible for compliance with all applicable codes, statutes, and permitting requirements.

A recommendation to the SEPTA Board will be made of the ESCO whose BAFO is most advantageous to SEPTA.

**END OF SECTION**
Southeastern Pennsylvania Transportation Authority

Part II

Pre-Development Agreement
to
Finance, Design, Build, Own, Operate and Maintain a Guaranteed Energy Savings Measure Consisting of a
Combined Heating and Power (CHP) Plant
at SEPTA’s Midvale, Philadelphia, Pennsylvania, facility

EFFECTIVE ______________________

SEPTA RFP No. 14-297-JFK
Pre-Development Agreement

Finance, Design, Build, Own, Operate and Maintain a Guaranteed Energy Savings Measure Consisting of a Combined Heating and Power (CHP) Plant Midvale, Philadelphia, Pennsylvania (the “Project” of the “CHP Plant project”)

ARTICLE I

Section 1.1 Certain Defined Terms

For purposes of the Agreement the terms set forth in this section, whenever capitalized in the Agreement, shall have the indicated meanings. Other terms are defined in this Agreement as necessary. When used in the Agreement the singular shall apply to the plural, the plural to the singular and the use of either gender shall apply to both genders.

a. “Notice to Proceed” means the written notice SEPTA provides to Contractor indicating the commencement date of Pre-Development Services, which date shall follow after Contractor’s satisfaction of all prerequisites to the commencement of the Pre-Development Services.

b. “Day” or “day” shall mean calendar day unless otherwise specified.

c. “Phase I,” the “Phase I Work,” or the “Phase I Pre-Development Services” shall mean all work defined in the RFP as the Pre-development Agreement (the “Agreement” of the “PDA”) and the Contract Documents, and shall be from the Notice to Proceed Date for Phase I to the final submittal of deliverables (as defined herein) and on the terms and conditions set forth in this Agreement (“Pre-Development Services”).

d. “Phase II Work” shall mean completion of the CHP Plant Project after completion of the Phase I work, and shall include the securing of financing, completing the design, constructing, procuring, owning, operating and maintaining (“FDBOOM”) the CHP Base Plant and Mandatory Option, if exercised, for a period of up to twenty years as stipulated in the Guaranteed Energy Services Agreement (“GESA”) from the Notice to Proceed Date for Phase II Work (“Project”), leasing ground from SEPTA on which the Project is to be constructed and operated as required in the RFP, and the eventual sale of the CHP Plant project to SEPTA at conclusion of the GESA in accordance with the terms of the GESA.
e. “SEPTA Contract Administrator” means John Kerrigan, SEPTA, 1234 Market Street, 11th Floor, Philadelphia, PA 19107-3780; email: JKerrigan@septa.org; and telephone number: 215-580-8360, or his representative(s) as designated in writing.

f. “SEPTA Project Manager” means Michael Kopistansky, Project Manager Engineering, SEPTA, 1234 Market Street, 12th Floor, Philadelphia, PA 19107-3780; email: mkopistansky@septa.org; and telephone number: 215-580-7913, or his/her representative(s) as designated in writing.

g. "Subcontractor" or “Subcontractors” means an individual or organization, or the authorized representative of an individual or organization, who enters into a contract to furnish labor, materials, equipment and/or services with the Contractor in connection with the Pre-Development Services directly or indirectly for or on behalf of Contractor.

h. “Contractor” shall mean Energy Services Company (“ESCO”) performing the Phase I Work under this Agreement.

ARTICLE II
PHASE I - PRE-DEVELOPMENT SERVICES

Section 2.1 The Contract Documents and the Scope of Phase I – Pre-Development Services

The Contract Documents that comprise this Agreement are this Agreement; all Attachments to this Agreement; Contractor’s Technical and Cost Proposal, which is attached hereto as Attachment ___ and is incorporated herein as necessary for Contractor to timely and fully perform the Pre-Development Services in this Agreement; and the Request for Proposal from SEPTA dated ________ (the “RFP”) related to the Project is incorporated herein to the extent that it references or pertains to the Phase I Pre-Development Services. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Phase I Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, laws, codes, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with more stringent requirement; either or both, at no additional cost to the SEPTA and without any extension of the Project Schedule.

Contractor shall perform the professional and other services required in this Agreement. These services shall be the Phase I Work of the proposed CHP Plant project and shall not be construed to be an award of any contract to perform any services other that those set forth in this Agreement. Contractor recognizes that other contractors may be performing services consistent with this Agreement with respect to their respective Technical and Cost Proposals for the complete CHP Plant project.
The Design Criteria, Technical Specifications, Plans and Drawings (collectively, the “Specifications”) contained in the RFP contain a description of the CHP Plant components ascertained that potentially best meet SEPTA’s goals. In certain instances, the Specifications contain certain equipment and software that may be utilized in the CHP Plant. See also Section 4 of the RFP.

Contractor recognizes and agrees that the RFP, including the Specifications, thereto have been provided to identify the desired plant determined by SEPTA. SEPTA makes no representation or warranty regarding, and affirmatively disclaims any representation or warranty with respect to, the viability, operability or functionality of the CHP Plant set forth in the RFP. It is the obligation of the Contractor to perform Pre-Development Services as required herein, including as necessary for it to, among other things, verify the terms and conditions of its Proposal and develop a Best and Final Offer (“BAFO”) to finance, design, build, own, operate and maintain the CHP Plant to enable the CHP Plant to provide the functionality and performance as needed to meet the requirements of the RFP.

Contractor agrees that the use or adoption of any of the data, information or Specifications by the Contractor in the development of design and construction drawings and specifications for the CHP Plant project is conditioned and premised upon certain assumptions, criteria, reservations, limitations and disclaimers, all of which must be carefully reviewed and analyzed. As such, Contractor agrees that:

1. All design and construction drawings, specifications, sketches and other records related to design, construction or remodeling of the CHP Plant project or related to the Phase I Work or the Phase II Work (“Design Documents”) are required to be prepared and issued by licensed architects, engineers or design professionals licensed and insured to practice such professional services in the jurisdiction of the location of the CHP Plant project (the “Design Professionals”). All Design Documents shall comply with all applicable laws, building codes, ordinances, and other criteria mandated by the jurisdiction in which the CHP Plant project is located (“Applicable Laws”). To the extent that there is any irreconcilable conflict between any Applicable Laws and use of the Specifications, the Applicable Laws shall govern.

2. The Specifications are confidential, and are owned by SEPTA and may not be reused or sold by the Proposers or Design Professionals without the express written approval of SEPTA. The Specifications depict proposed standard design features that may be used for the CHP Plant project. It is the responsibility of the Design Professionals engaged by or employed by the Contractor, in consultation with SEPTA, to determine which Specifications are appropriate for use on the applicable project. The use or adoption of any of the Specifications by the Design Professionals or others is based upon that Design Professional’s or other user’s independent skill and professional judgment, and such use or adoption of the Specifications does not relieve the Design Professionals or other users from their responsibilities and obligations to SEPTA or others assumed under their contract(s) or owed under Applicable Laws. As such, Contractor, Design Professionals or other users of the Specifications agree to indemnify, defend and hold harmless SEPTA, its officers, agents, and employees from and against
any and all claims, suits, losses, damages or costs, including reasonable attorney's fees, arising from or by reason of the Contractor’s Design Professional’s or other user’s use or adoption of the Specifications in Design Documents.

3. Under no circumstances does SEPTA warrant or certify that the information or data in the Specifications are free of errors, omissions or deficiencies of any kind. SEPTA specifically disclaims all warranties, express or implied, associated with the Specifications, including but not limited to the warranties of merchantability and fitness for a particular purpose.

4. The information in the Specifications is subject to change by SEPTA or by Applicable Laws. Anyone using or relying upon the Specification should satisfy himself/herself as to the most current version of the Specifications and Applicable Laws. Contractor, Design Professionals and other users of the Specifications agree to assume and accept all risks and consequences flowing from or related to the use, retention, distribution, alteration, or deletion of the information in the Specifications. Use or adoption of the Specifications does not entitle Contractor, Design Professionals or other users to compensation for damages of any kind that could be attributed to such use, and Contractor, Design Professionals or other users waive and release SEPTA, its agents, employees, officers and directors from any such damages or claims related to the Specifications. SEPTA will in no instance be liable for any loss of profit or other damage of any kind related to the use or adoption of the Specifications, including but not limited to special, incidental, consequential, or other damages, even if apprised of the likelihood of such damages.

5. These terms and conditions constitute the complete and final agreement of the parties hereto with respect to the use or adoption of the Specifications in any Design Documents.

During Phase I, the Contractor will be eligible to update and amend its Technical and Cost Proposal(s) and prepare a Best and Final Offer (“BAFO”) containing the Contractor’s Technical and Cost Proposal with a fixed price of the cost of electricity and hot water heating for twenty years, inclusive of all assumptions and escalation, and based upon executing a Guaranteed Energy Services Agreement (“GESA”) and ground lease not to exceed twenty years with SEPTA, consistent with the Guaranteed Energy Savings Act, 62 Pa C.S. §3751 et seq. and the terms of the RFP and the GESA.

At the conclusion of the services required under this Agreement, SEPTA may award a GESA to a single Contractor to:

i) Lease land on SEPTA’s Midvale Site;

ii) Undertake and fully bear all of the costs to FDBOOM Project (Phase II of the CHP Plant project, based upon the evaluation criteria and process as set forth in the RFP); and,

iii) transfer ownership of the CHP Plant to SEPTA at the successful conclusion of the Project consistent with the terms of the GESA.
Contractor shall, diligently, with good faith effort, and in a professional and workmanlike manner, perform the following Pre-Development Services, including providing all labor and services necessary to complete the Phase I Pre-Development Services, all material and equipment needed for or incorporated into the Pre-Development Services, and all bonds, insurance, and any other performance assurances (collectively, “Phase I - Pre-Development Services”) from the Notice to Proceed Date to the final submittal of deliverables (as defined herein) and on the terms and conditions set forth in this Agreement:

a. Preparation of preliminary drawings, conceptual designs, schematic designs, preliminary specifications, design development and construction documents for the Project (collectively, the “Plans”), including, but not limited to, the materials and equipment necessary to implement and complete the Phase II Work (FDBOOM of the Project), all for review and written approval by SEPTA, as well as preliminary construction pricing and any other pricing and preliminary development analyses related to the Project for review and written approval by SEPTA;

b. Detailed assessment of the Project Site and the Wayne Junction Facility, including, but not limited to, title review, boundary/topographical surveys, soil borings and testing, waste water management, air quality control, environmental site assessment, connections necessary for gas, water, sanitary sewer and steam to implement hot water heat as required by the Project, and building modifications necessary to implement hot water heat as required by the Project, for review and written approval by SEPTA;

c. Further refinement of the Plans at the request of SEPTA or as otherwise reasonably needed to complete SEPTA’s evaluation of the Project and/or completion of the Project and based upon any Project Site constraints and/or Wayne Junction Facility constraints determined by the assessment of the Project Site and Wayne Junction Facility;

d. Preparation of a detailed development and completion schedule for the Project, including, but not limited to, sequencing of the development and construction, for review and written approval by SEPTA;

e. Additional preliminary construction pricing based upon actual Project Site conditions and Wayne Junction Facility conditions, refined conceptual designs, costs for materials and equipment necessary to implement the Project, and the ultimate development schedule for the Project for review and written approval by SEPTA;

f. Evaluation and verification of Contractor’s financing alternatives available for the Project for review and prior written approval by SEPTA;

g. Preparation of pro forma analyses related to the finance, design, building, operation and maintenance of the Project for the life of the Project for review and written approval by SEPTA;
h. Preparation of a final Guaranteed Energy Savings Agreement ("GESAs") for the Project subject to evaluation by SEPTA;

i. Performance of any other actions necessary for SEPTA to evaluate whether to definitely proceed with the Project;

j. During Phase I, the Contractor will be eligible to update and amend its Technical and Cost Proposal(s) and prepare a Best and Final Offer ("BAFO") containing the Contractor’s Technical and Cost Proposal with a fixed price of the cost of electricity and hot water heating for twenty years, inclusive of all assumptions and escalation. The BAFO shall also be based upon executing a Guaranteed Energy Services Agreement ("GESAs") and ground lease not to exceed twenty years with SEPTA, consistent with the Guaranteed Energy Savings Act, 62 Pa C.S. §3751 et seq. and the terms of the RFP. Discussions and negotiations may be conducted with responsible Proposer(s)/ESCO(s) for the purpose of clarification and of obtaining Best and Final Offers ("BAFOs"). The responsible Proposer(s) whose proposal(s) is(are) determined to be the most advantageous to SEPTA, taking into consideration the technical issues, price and all evaluation factors, shall be selected for contract negotiation for a potential GESA.

After reviewing the proposals at the conclusion of Phase I Work, SEPTA may enter into a GESA with a qualified provider ESCO for the Phase II Work if SEPTA finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount of energy, water or wastewater cost savings, operational cost savings or revenue increases resulting from the energy conservation measures within a period not to exceed 20 years from the date of final installation if the recommendations in the proposal were followed and the qualified provider ESCO provides a written guarantee that the energy, water or wastewater cost savings, or operational cost savings or revenue increases will meet or exceed the cost of the GESA to SEPTA.

Section 2.2 Cooperation between SEPTA and Contractor

Contractor and SEPTA agree to reasonably and expeditiously cooperate with one another in good faith in connection with the Project, the performance of the Pre-Development Services and the obtaining of all required approvals in connection therewith. Contractor shall keep SEPTA informed as to progress of all Pre-Development Services and provide SEPTA with all material information needed or requested by SEPTA to make Project related decisions.

Contractor shall also (i) keep SEPTA reasonably apprised of any and all actions, decisions, and contracts that could materially affect SEPTA and/or the Project; (ii) promptly deliver to SEPTA copies of all Plans, specifications, reports, studies, data, plans, surveys, title reports, feasibility studies, consultant reports, and other material work product related to the Project; and (iii) obtain the prior written approval for and with respect to any and all actions, decisions and contracts relating to the Project that could materially affect SEPTA and/or the Project.

Section 2.3 Ownership of Work Product
The Drawings, Specifications and other documents furnished or created by the Contractor or any architect or engineer or Design Professional engaged by the Contractor, including the Design Documents, the Specifications in the RFP, and with those related to any of the Pre-Development Services under this Agreement, shall become the property of SEPTA, whether the facility is commenced or not. Nothing herein shall be construed, however, as limiting or barring the Contractor from using such Drawings, Specifications or other documents for its own purposes with respect to this Project. Copies of said Drawings, Specifications and other documents, including reproducible copies, shall be delivered to SEPTA, and may be used by SEPTA on other projects, for additions to the Project and for completion of the Project by others.

Submission or distribution of Design Documents, by Contractor to meet official regulatory requirements or for other purposes in connection with the Project shall not be construed as publication in derogation of the rights of SEPTA as owner thereof.

Contractor hereby assigns to SEPTA all of its right, title and interest in all work and work product created by Contractor and its Subcontractors in connection with the Project, including all Design Documents and/or all work and work product created by the performance of the Pre-Development Services (collectively, “Work Product”), and Contractor shall take all requisite actions to ensure SEPTA has the sole right, title and interest to the Work Product.

SEPTA may use the Work Product without compensation to Contractor, Subcontractors, or any of their respective contractors, subcontractors, subconsultants, agents or employees, except as required under this Agreement.

This Section of the Agreement shall survive the expiration or termination of the Agreement for any reason.

Section 2.4 Books and Records

The Contractor shall prepare, maintain and make available for inspection and audit by SEPTA all Work and cost records relative to the Pre-Development Services at all times and for a period of five (5) years after final acceptance. Records shall be made available, upon request, at the Contractor's place of business during normal working hours. The 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 Agreement.

Section 2.5 Tests and Inspections

Tests, inspections and approvals of portions of the Pre-Development Services Work required by the Agreement 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 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.

Section 2.6  Value Engineering Incentive as Part of the BAFO and GESA Process

1. Applicability. This section applies to any Contractor developed, prepared, and submitted Value Engineering Change Proposal (VECP) with respect to the BAFO, the GESA or the Project. Any such proposal must be identified as VECP at the time of its submission to SEPTA, and may be set forth in the BAFO from the Contractor.

2. Definitions.

   a. "Contractor's development and implementation costs" means those costs incurred on a VECP before SEPTA acceptance and those costs the Contractor incurs specifically to make the changes required by SEPTA acceptance of a VECP.

   b. "SEPTA costs" means those SEPTA costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistic support. They do not include the normal administrative costs of processing the VECP.

   c. "Contract savings" means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs (including Subcontractors' development and implementation costs). (See subparagraph 7.)

   d. "The Value Engineering Change Notice (VECN)" shall be submitted by the Contractor to SEPTA for initial notification of a change to be considered under the Value Engineering provision of the Contract. The VECN precedes the Value Engineering Change Proposal (VECP) and shall contain the following:

       (1) brief description of the proposed change; and

       (2) estimated cost saving of the proposed change.

   e. "Value Engineering Change Proposal (VECP)" means a proposal that:

       (1) requires a change to the Contract to implement; and

       (2) results in reducing the Contract Sum or estimated costs without impairing essential functions or characteristics, provided that it does not involve a change in deliverable end-item quantities.

3. VECP Preparation. As a minimum, the Contractor shall include the information described in a. through e., below, in each VECP. If the proposed change affects contractually required configuration management procedures, the instructions in the procedures relating to
format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

a. A description of the difference between the existing Contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

b. A list of the Contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

c. A separate, detailed cost estimate for both the affected portions of the existing Contract requirement and the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under subparagraph 7. The Contractor shall also include a description and estimate of costs SEPTA may incur in implementing the VECP, such as test and evaluation and operating and support costs.

d. A projection of any effects the proposed change would have on collateral costs to SEPTA.

e. A statement of the time by which a Contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any affect on the Contract Time or delivery schedule.

4. Submissions.

a. The VECN shall be in letter form and shall be submitted by the Contractor to notify SEPTA of an identified Value Engineering Change. The VECN shall contain the following:

   (1) brief description of proposed change;

   (2) estimated cost savings of the proposed change.

SEPTA shall respond to the Contractor within five (5) days with approval to proceed with the preparation of the VECP if the proposed change has merit.

b. The Contractor shall submit VECP's to the Project Manager. The Project Manager shall notify the Contractor of the status of the VECP within 45 calendar days after the Project Manager receives it. If additional time is required because of extenuating circumstances, the Contractor shall be notified within the 45-day period and provided the reason for the delay and the expected date of the Project Manager's decision. VECPs shall be processed expeditiously; however, SEPTA shall not be liable for any delay in acting upon a VECP.
c. If the VECP is not accepted, the Project Manager shall provide the Contractor written notification.

If a VECP is similar to a change in the Drawings or Specifications for the Project under consideration by SEPTA at the time said proposal is submitted, SEPTA reserves the right to make such changes without compensation to the Contractor under the provisions of this Section.

d. SEPTA shall be the sole judge of the acceptability of a VECP and of the estimated net savings from the adoption of all or any part of such proposal. In determining the estimated net savings, the right is reserved to disregard the Contract bid prices, if, in the judgment of SEPTA, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

5. Acceptance.

Any VECP may be accepted in whole or in part by the award of a Change Order to the Contract, in accordance with Paragraph XIV.B. of the Agreement, citing this clause, or by the Contractor’s use of the VECP in the BAFO for the GESA. SEPTA may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a Notice to Proceed with the change. Until a Notice to Proceed is issued or a Change Order applies a VECP to the Contract, the Contractor shall perform in accordance with the existing Contract. SEPTA's decision to accept all or part of any VECP shall be final.

Acceptance of the VECP and performance of the work there under shall not extend the Contract Time unless specifically provided for in the Change Order authorizing the VECP proposal.

   a. Payment. Payment of any VECP that SEPTA accepts or that Contractor accepts and incorporates into its BAFO for the GESA will only be made in accordance with the terms for payment in this Contract for those Contractor(s) that are not selected to enter into the GESA, or instead are to be incorporated into the BAFO and paid under the GESA for that Contractor (if any) selected by SEPTA to enter into the GESA.

7. Subcontracts.

The Contractor shall include appropriate VE clauses in any subcontract of $50,000 or more and may include them in subcontracts of lesser value. To compute any adjustment in the Contract Sum under paragraph 6., the Contractor's VECP development and implementation costs shall include any Subcontractor's development and implementation costs that clearly result from the VECP, but shall exclude any VE incentive payments to Subcontractors. The Contractor may choose any arrangement for Subcontractor VE incentive payments, provided that these payments are not made from SEPTA's share of the savings resulting from the VECP.

8. Data.
If a VECP is accepted, the Contractor hereby grants and transfers to SEPTA all and unlimited rights in the VECP and supporting data.

ARTICLE III
PRE-DEVELOPMENT EXPENSES; PRE-DEVELOPMENT EXPENSE BUDGET; PAYMENT PROCEDURES

Section 3.1 Pre-Development Expenses

Subject to Sections 3.2 and 3.3 below, all reasonable costs incurred by Contractor in connection with the Pre-Development Services after the Commencement Date that are direct out-of-pocket costs incurred by Contractor and expenses incurred by Contractor for Pre-Development Services performed by third parties engaged by Contractor, and that are in accordance with the designations and limitations described herein as determined and interpreted by SEPTA in its sole discretion (collectively, “Pre-Development Expenses”), shall be funded by Contractor and shall only be subject to reimbursement to the Contractor who is not selected for the completion of the Project, or if SEPTA does not award the GESA for the Project, or if the Agreement is terminated under Article XIII, as provided in Section 3.4 of this Agreement, as determined and interpreted by SEPTA in its sole discretion.

Pre-Development Expenses include, but are not necessarily limited to, expenditures for environmental studies, architectural documents, engineering analyses, plans and specifications, permits and licenses, and various legal, administrative and financing advisory fees, as well as those other fees and expenses that are reasonable and customarily incurred in furtherance of transactions similar to the Project, all as determined and interpreted by SEPTA in its sole discretion.

Pre-Development Expenses do not include expenses incurred by Contractor in preparing the Proposal its BAFO or any other expenses incurred by Contractor prior to the Notice to Proceed Date in connection with the Pre-Development Services, salaries and benefits paid to employees and independent contractors, overhead costs, and any costs real or claimed for loss of prospective profits, opportunity costs, or any other special, punitive, exemplary, consequential, incidental, or indirect losses or damages, all as determined and interpreted by SEPTA in its sole discretion.

Section 3.2 Pre-Development Expense Budget

The budget for Pre-Development Expenses showing each category of Pre-Development Expenses shall be provided as follows:

[List]

During the term of this Agreement, within ten (10) business days after the end of each month, Contractor shall provide to SEPTA a general accounting of Pre-Development Expenses incurred
by submitting a written report summarizing the Pre-Development Expenses incurred during the previous month and to date.

At the completion of Pre-Development Services and at the request of SEPTA, the Contractor not selected for the Phase II Work on the Project shall submit appropriate documentation evidencing the occurrence of each of the Pre-Development Expenses, in the form of copies of invoices, receipts, vouchers or other information requested by SEPTA evidencing Pre-Development Expenses in such form and containing such information as is necessary for SEPTA to determine that such items constitute Pre-Development Expenses incurred in accordance with the Agreement.

Section 3.3 Maximum Limit on Reimbursable Pre-Development Expenses

The Pre-Development Expenses are set as a not-to-exceed amount of $____________________________, and is the maximum reimbursable Pre-Development Expenses to be paid by SEPTA to Contractor, but only if SEPTA is required to reimburse Contractor pursuant to Section 3.4 of this Agreement.

Section 3.4 Payment Procedures

If Contractor has incurred reimbursable Pre-Development Expenses in accordance with this Agreement, the Contractor who is not selected for the Phase II Work on the Project may submit an itemized invoice ("Application for Payment") to the SEPTA Project Manager for review, approval and payment.

SEPTA shall have ten (10) days to review the Application for Payment for completeness and provide notice to Contractor or any deficiencies. The Application for Payment shall contain a separate affidavit from the Contractor and every Subcontractor, Sub-Subcontractor and Supplier that is the subject of the Application for Payment verifying that the work and services that is the subject of the Application for Payment complies fully with the Contract Documents that there are no claims associated with the Work, that all subcontractors and suppliers have been paid or will be paid fully from the funds that are the subject of that Application, and the Contractor has obtained or concurrently with such payments will obtain the appropriate lien waivers from such subcontractors and suppliers. See Attachment 11 for the required form to be submitted with each Application for Payment. Invoices properly documented will be paid 30 days from the date of approval.

SEPTA may withhold a payment, in whole or in part, to the extent reasonably necessary to protect SEPTA from defects, deficiencies or errors in the work, and may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of a payment previously issued, to such extent as may be necessary in SEPTA’s opinion to protect it from loss for which the Contractor is responsible, including loss resulting from acts and omissions because of:

.1 defective work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to SEPTA is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
.4 reasonable evidence that the Contract Work cannot be completed;
.5 damage to the SEPTA or a separate contractor;
.6 reasonable evidence that the work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay; or
.7 repeated failure to carry out the work in accordance with the Contract Documents.

When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld and will be paid within 30 days.

SEPTA shall issue payment for the amount of the Pre-Development Expenses approved by SEPTA within thirty (30) days following SEPTA’s invoice approval, subject to compliance by Contractor with its obligation as set forth herein, including under Sections 3.2 and 3.3 of this Agreement.

Section 3.5 Survival

Article III of this Agreement shall survive the expiration or termination of the Agreement for any reason.

ARTICLE IV
TERM OF AGREEMENT

Section 4.1 Term for Pre-Development Services

This Agreement shall continue in effect until (i) the date that is ____ days after the Notice to Proceed Date of Phase I, unless on or prior to such date SEPTA and Contractor have executed a written amendment to the Agreement extending the term for the period of time stated in such amendment; or (ii) the date the Agreement is terminated in accordance with Article XIII of this Agreement.

Section 4.2 Project Schedule

Contractor has developed an initial Project schedule (“Project Schedule”) for Pre-Development Services and the Project, as set forth in Attachment _____ and incorporated herein by reference. The Project Schedule will include all activities with respect to the Contractor’s Work, important milestones, any dates required for SEPTA to make decisions or allow access, and all start and finish dates for the Contractor’s Work. The Contractor will complete the Phase I Work as outlined in the Project Schedule. SEPTA may update and revise the Project Schedule over the
course of the Project and the Contractor will conform to the revised Project Schedule. In order to meet the Operation Date, as defined below, Contractor shall use its best good faith efforts to diligently complete all Pre-Development Services no later than ______________, or such later date agreed upon by SEPTA and Contractor, such that the Project will be available for commencement of operations on or before the Operation Date. It is the goal of SEPTA and Contractor for Contractor to commence construction of the Project on or about ______________, to enable the Project to be completed no later than ______________ (“Operation Date”). Completion of the Project on or before the Operation Date assumes timely resolution of, among other things, the final site selection at the Midvale or other facilities by SEPTA, the satisfaction of zoning, permitting and other regulatory requirements, and the occurrence of the financial closing.

The Phase I Work will be completed during the Term for the Pre-Development Services. Time is of the essence as to this obligation.

The parties shall not be deemed negligent, at fault or liable for any delay or failure in performances resulting from acts of God, natural disasters, war, accidents, riots, civil insurrection, terrorist activity, labor disputes or strikes not caused by the Contractor or any of its Subcontractors, or any other cause not the fault of and beyond the reasonable control of the parties; provided, that the parties will give each other prompt notice of the delay in sufficient detail to permit the recipient of the notice the opportunity to minimize the effect of such delay, if practicable.

Section 4.3 Suspensions of Work

The Contractor shall suspend the progress of the Pre-Development Service, or any part thereof, for the necessity or convenience of SEPTA whenever it shall be required by written order of the Contract Administrator. 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 Pre-Development Services 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 Agreement, 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).

ARTICLE V

CONFLICTS, ALL DUTIES OF CONTRACTOR TO BE CUMULATIVE

Section 5.1 All Duties of Contractor to be Cumulative

All terms, covenants and conditions of the Agreement shall be read together and shall be interpreted as a cumulative obligation to perform all the Pre-Development Services described herein completely and in the best and most workmanlike manner in accordance with the provisions of the Agreement.
With respect to any conflicts between requirements or standards of Federal and State or Local Law applicable to the Agreement, the strictest standard shall govern.

ARTICLE VI
RELEASE AND INDEMNIFICATION

Section 6.1 Release and 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 successors, assigns, board members, officers, agents, servants, invitees, workmen, employees, subsidizers and indemmites, and any and all government funding agencies providing funds or services in connection with the Project (hereinafter collectively referred to as "SEPTA"), from and against any and all claims, losses, demands, costs, damages, suits, liabilities, consequential damages, charges, penalties, fines, settlement payments and expenses (including, but not limited to, the fees and costs of attorneys and other professionals), 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, whether known or unknown, accrued or unaccrued, suspected or unsuspected, relating to, or in connection with, or arising out of this Agreement, or while upon the facilities, property or premises of SEPTA in connection therewith, by reason of any action, omission or accident, loss of use of property, or damage to or destruction of property, including, but not limited to, the site of the Pre-Development Services, property of SEPTA and Contractor, and/or property of third parties, or bodily injury, including death, sickness or disease, to any person or persons, including employees of SEPTA, Contractor, subcontractors at any tier or any person working on Contractor’s behalf, or any other persons claiming under or through Contractor, caused by Contractor, which may be sustained either during the term of the Agreement, or upon or after completion of the Pre-Development Services, whether brought directly by these persons or by anyone claiming under or through them including heirs, dependents and estates, whether said losses, damages, personal injuries or death result from the negligence of SEPTA, its officers, agents or employees, or are otherwise caused.

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 Contractor’s agents, servants, subcontractors, material men and employees and Contractor agrees to assume the defense of SEPTA to any such claim or suit at Contractor’s sole cost and expense. Contractor further assumes the risk of loss and damage to materials, machinery and equipment to be incorporated in the Pre-Development Services at all times prior to delivery to the Project Site and/or the Wayne Junction Facility or while in the possession or under the control of Contractor at the Project Site, the Wayne Junction Facility and all other locations.

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, for any claims made by an employee, board member, officer, agent, servant, workman,
contractor, subcontractor, licensee, invitee, 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 agrees to release, and be liable for and to defend, indemnify and save harmless SEPTA from any fines, legal fees and costs, and any other expenses incurred because employees, agents, or workers supplied by Contractor are not authorized to work in the United States.

In the event Contractor is obliged to defend SEPTA with regard to the Pre-Development Services or for anything arising under the Agreement, the attorney(s) and insurer(s) whom the Contractor retains on behalf of SEPTA shall keep SEPTA fully informed of all matters involving, concerning or relating to the defense and indemnification of SEPTA. SEPTA shall have the right to review any and all correspondence, pleadings, or filings prior to any such correspondence, pleading, or filing being submitted. Contractor and its attorney(s) and insurer(s) shall take no factual or legal position that is contrary to SEPTA’s position or rights including, but not limited to, the immunities, defenses and limitations on damages that SEPTA enjoys under 42 Pa.C.S. § 8501 et seq., and other law. In the event Contractor or its attorney(s) or insurer(s) fails or refuses to defend and indemnify SEPTA or SEPTA reasonably believes that its rights may be adversely affected or prejudiced, SEPTA may select counsel of its own choice and defend against any such claim at Contractor’s sole cost and expense.

Section 6.2 Contractor’s Obligations and Liabilities

Contractor’s obligations and liabilities under this Section of this Agreement shall survive the expiration or termination of the Agreement for any reason.

In the event of a breach by Contractor, SEPTA will notify Contractor in writing and Contractor will have five (5) business days within which to remedy the breach as set forth in SEPTA's notice and to SEPTA’s satisfaction. Contractor's failure to remedy the breach within this time period, or the occurrence of a second breach (even if different in nature) prior to the completion date for the Work, will constitute an "Event of Default" entitling SEPTA to exercise any and all remedies available to it at law or in equity and Contractor indemnifies SEPTA against any and all loss, cost, damage, liability, claim or expense (including reasonable attorneys' fees) incurred by SEPTA in connection with any breach or Event of Default.

ARTICLE VII
TAXES

Section 7.1 Taxes

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

ARTICLE VIII
PERMITS, FEES AND NOTICES

Section 8.1 Permits and Fees
Contractor shall obtain and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the Pre-Development Services.

Section 8.2 Notices
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 Pre-Development Services and anything related to the Project. If the Contractor observes that any of the Agreement Documents are at a variance therewith in any respect, it shall promptly notify the Project Manager in writing, and any necessary changes shall be adjusted by appropriate modification 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.

ARTICLE IX
STATE CONTRACT REQUIREMENTS

Section 9.1 State Contract Requirements
Agreements entered into with SEPTA, as an instrumentality of the Commonwealth of Pennsylvania, are subject to the Commonwealth of Pennsylvania laws set forth in Attachment 1 to this Agreement (“Pennsylvania Contract Requirements”), which is incorporated herein by reference. Contractor acknowledges that SEPTA is not providing legal advice to Contractor as to the applicability of the Pennsylvania Contract Requirements and Contractor, to the extent Contractor deems necessary, must obtain its own legal advice with regard to the Pennsylvania Contract Requirements. Contractor agrees to include Attachment 1 in all subcontracts that Contractor enters into relating to the Pre-Development Services under the Agreement.

ARTICLE X
FEDERAL, STATE AND LOCAL LAWS

Section 10.1 Federal, State And Local Laws
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 Agreement.

**ARTICLE XI
INSURANCE**

**Section 11.1 Insurance**

Contractor must secure and maintain the requisite insurance, as set forth below, at no cost and expense to SEPTA. All insurance must be obtained from an insurance carrier with at least an A- (excellent) rating from a reputable agency (e.g. A.M. Best). The insurance shall provide for at least thirty (30) days prior written notice to SEPTA in the event coverage is changed, cancelled or non-renewed and if such a notice is not provided for within the basic terms of the policy, it shall be provided by endorsement or notation on the certificate of insurance. Self-insured retentions or deductible over $50,000 must receive prior written approval by SEPTA.

**Section 11.2 Contractor's Liability Insurance**

Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from Contractor's operations under the Agreement, whether such operations are by itself or by any Subcontractor or by anyone directly or indirectly employed or engaged by any of them or by anyone for whose acts any of them may be liable:

a. Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

b. Claims for damages because of bodily injury, occupational or other sickness, disease or death of its employees;

c. Claims for damages because of bodily injury, sickness, disease or death of any person other than its employees;

d. Claims for damages insured by personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor; or (ii) by any other person; and

e. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

**Section 11.3 Evidence of Compliance**

a. **Certificates of Insurance**

Within ten (10) days after receipt from SEPTA of notice of award of the Agreement, Contractor shall furnish SEPTA with certificates of insurance (SEPTA’s RFP number
must be noted on certificates of insurance) and any other documents which SEPTA may require, such as copies of policies or endorsements, as evidence of compliance with the insurance requirements under the Agreement.

b. **Written Approval Required**

The certificates of insurance and other insurance documents required by SEPTA must be approved in writing by SEPTA before a Notice to Proceed will be given.

**Section 11.4 Policies to Remain in Force**

1. **Until Completion and Acceptance**

All insurance coverage which the Contractor is required to provide for the Agreement shall be maintained in full force and effect during the performance of, and until the final completion and acceptance by SEPTA of, the Pre-Development Services.

2. **Warranty Period**

All insurance coverage which the Contractor is required to provide for the Agreement shall be maintained in full force and effect until any warranty period has expired.

3. **Replacement Coverage Required**

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

**Section 11.5 Additional Insureds Required**

SEPTA shall be named as additional insured on all applicable coverages required by Article 11 of this Agreement, excluding Worker’s Compensation. Contractor shall have all policies designated "Additional Insureds Required" written or endorsed to include the following as additional insureds: Southeastern Pennsylvania Transportation Authority.

**Section 11.6 Waiver of Liability for Premiums**

All policies, wherein the parties designated in Section 13.5 of the Agreement are included as additional insureds, shall contain a waiver of liability for the payment of premiums covering those additional insureds.

**Section 11.7 Limits of Liability**

The insurance required by Article 11 of the Agreement 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 – Not less than $1,000,000 per accident.
b. **General Liability Insurance (Excluding Vehicles)**
   Comprehensive general liability insurance for bodily injury and property damage to others shall have the following requirements:

   (i) **Minimum Limits of Liability**
       $5,000,000 Combined Single Limit (Bodily Injury and Property Damage) per occurrence, with $5,000,000 Products Liability and $5,000,000 completed operations for 5 years after generator is installed.

   (ii) **Additional Insureds**
       Policy shall be written or endorsed to include as additional Insureds those parties or persons designated in Article 11 of the Agreement.

   (iii) **Contractual Liability (Hold Harmless) Coverage**
       Policy shall be written or endorsed to include coverage for the liability assumed by the terms of the Agreement. Certificate or policy will state that the coverage applies to the Agreement described as: SEPTA GESA FDBOM Co-Gen Project.

c. **Vehicle Liability Insurance**
   Vehicle liability insurance (covering all autos, trucks, and other vehicles used in connection with the Phase I – Pre-Development Services or this Agreement) for bodily injury and property damage to others shall have the following requirements:

   (i) **Minimum Limits of Liability**
       $2,000,000 combined single limit (bodily injury and property damage) per occurrence.

   (ii) **Additional Insureds**
       Policy shall be written or endorsed to include as additional insureds those parties or persons designated in Article 11 of the Agreement.

   (iii) **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**
   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 arises from the Pre-Development Services and/or the Project, shall have the following requirements:

   (i) **Limits of Liability**
Coverage under this policy shall have limits of liability of not less than $2,000,000 combined single limit per occurrence, and not less than $2,000,000 annual aggregate.

(ii) Additional Insureds
Policy shall be written or endorsed to include as additional insureds those parties or persons designated in Article 11 of the Agreement.

e. Professional Liability Insurance
(i) $5,000,000 Combined single limit per occurrence.
(ii) If professional liability is written on a claim made basis, policy shall provide a three year extended discovery endorsement.

f. Railroad Protective Liability
To be provided by SEPTA, if needed. This policy will have no sunset clause.

Section 11.8 Primary and Noncontributory Insurance Endorsement
All insurance policies Contractor is required to secure and maintain under the Agreement shall be primary and noncontributory over any other valid and collectable insurance and Contractor’s certificate of insurance shall specifically set forth this primary endorsement.

Section 11.9 Waiver of Subrogation
All insurance policies which Contractor is required to secure and maintain under the Agreement and any other insurance policies Contractor may elect to secure and maintain which are in any way related to the Pre-Development Services shall also be endorsed waiving carrier’s right of subrogation with respect to SEPTA to the extent permissible under such policies.

Contractor waives all rights of recovery against SEPTA which Contractor may have or acquire because of deductible clauses or inadequacy of limits of any policies of insurance that are in any way related to the Pre-Development Services, and that are secured and maintained by Contractor.

Section 11.10 Notice of Loss
Contractor shall provide written notice to SEPTA of any losses which may reduce the limits of liability for any insurance provided for SEPTA’s benefit. Contractor will be required to replace any policy limits which are reduced due to any occurrences covered by such policies. Regardless of Contractor notice to SEPTA of such losses, Contractor will be required to maintain and continue in force all policy limits required by SEPTA throughout the term of the Agreement.

Section 11.11 Suspension of Agreement.
In the event of any failure by Contractor to comply with these insurance provisions, SEPTA may, at its option, on notice to Contractor and with an opportunity to cure as noted in this Agreement, suspend the Agreement until there is full compliance and/or terminate the
Agreement in accordance with applicable provisions of the Agreement. All costs and impacts to Contractor and/or SEPTA caused by such suspension shall be borne by Contractor.

Section 11.12 Payment of SEPTA Claims

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

ARTICLE XII
PROTECTION OF PERSONS AND PROPERTY

Section 12.1 Safety Precautions and Programs

Contractor shall be solely responsible for initiating, maintaining, performing and supervising all safety precautions and programs in connection with the Pre-Development Services.

Section 12.2 Safety of Persons and Property

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 Agreement. Contractor shall be solely responsible for the cost of all changes in such regulations during the term of the Agreement 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.

Section 12.3 Contractor Precautions

Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damages, injury or loss to the following:

(i) Contractor’s employees and agents and Subcontractors engaged in the Pre-Development Services and all other persons who may be affected thereby;

(ii) all the Pre-Development Services, all work and work product resulting from the Pre-Development Services, and all materials and equipment to be incorporated therein, whether in storage on or off the Project site and/or Wayne Junction Facility, under the care, custody or control of Contractor or any of its Subcontractors; and

(iii) 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 engaging in the Pre-Development Services.
All damage or loss to any property referred to in preceding Paragraphs caused in whole or in part by the Contractor, any Subcontractor, at any tier, or anyone directly or indirectly employed or controlled by any of them, shall be remedied by the Contractor.

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 or sub-subcontractors who exhibits unsafe behavior or behavior which involves a reasonable suspicion of being impaired from alcohol or drugs on or about the jobsite. This provision shall be strictly and promptly enforced by the Contractor.

The Contractor shall comply with Section 107 of the Contract Work Hours and Safety Standards Act (40 USC 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 Agreement. The Contractor shall be solely responsible for the costs of all changes in U.S. Department of Labor regulations during the term of the Agreement, whether anticipated or not, regardless of the amount of such costs and that these costs shall not be passed on or through SEPTA under any circumstances.

Section 12.4 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.

Section 12.5 Unsafe Work Practices/Violation of Rules

SEPTA reserves the right, as determined and interpreted within its sole discretion, to preclude any individual from work or continuing work on this or any other SEPTA project, in any capacity, if said individual has engaged in an unsafe work practice or violated SEPTA’s rules and regulations.

ARTICLE XIII
TERMINATION

Section 13.1 Termination for Convenience

SEPTA may terminate the Agreement for convenience in whole or in part at any time by written notice to the Contractor as determined and interpreted in SEPTA’s sole discretion, upon written notice to Contractor, with such termination effective on the date Contractor receives such notice of termination. In the event of termination under this Section of the Agreement, SEPTA shall reimburse Contractor for Contractor’s Pre-Development Expenses incurred, irrevocably committed or obligated at the time of receipt of the notification of termination under this Section of the Agreement, which Pre-Development Expenses shall be determined and interpreted in SEPTA’s sole discretion and shall be subject to the limitations and requirements related to such Pre-Development Expenses as set forth herein. Subject to the cap on expenses as set forth in Section 3.3, 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 Agreement Services performed up to the date of termination; any actual costs associated with termination for convenience, as agreed to by SEPTA; and profit on Services performed up to the time of termination. However, the agreed amount may not exceed the Agreement not-to-exceed amount. Furthermore, SEPTA will not pay any anticipatory profits and/or consequential damages of any nature claimed by the Contractor as a result of termination of the Agreement. The amount of profit paid shall be determined by the parties based on the amount of actual Services actually and properly 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.

**Section 13.2 Termination for Cause**

If Contractor fails to perform its obligations under this Agreement, as determined and interpreted by SEPTA in its sole discretion, then SEPTA may terminate this Agreement after providing written notice to Contractor stating the reason(s) for termination. Should SEPTA, as determined and interpreted in its sole discretion, determine at any time during performance of the Pre-Development Services that the Pre-Development Services, the work resulting from the Pre-Development Services will not meet the terms of the RFP, the Contractor Proposal, and/or GESA, the Agreement shall terminate pursuant to SEPTA’s written declaration of such termination to Contractor and SEPTA shall reimburse Contractor for Contractor’s Pre-Development Expenses incurred, irrevocably committed or obligated at the time of receipt of the notification of termination under this of the Agreement, which Pre-Development Expenses shall be determined and interpreted in SEPTA’s sole discretion.

If Contractor fails to remedy to SEPTA’s satisfaction the breach or default of any of the terms, covenants, or conditions of the Agreement within five (5) 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 Agreement 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 for all costs, expenses and damages caused by the default of Contractor.

In the event that SEPTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of the Agreement, 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 Agreement.

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

Section 13.3 Termination Based On Absence Of Guaranteed Cash Savings

This Agreement shall terminate pursuant to SEPTA’s written declaration of termination under applicable Section of the Agreement if SEPTA determines, as determined and interpreted in its sole discretion, that the Project, if implemented, will not provide SEPTA with the guaranteed energy savings sufficient to fund SEPTA’s payments of all costs and fees associated with the Agreement, including any annual fees to the Contractor under the GESA and any Pre-Development Expenses incorporated in under applicable Section of this Agreement. SEPTA shall reimburse Contractor for Contractor’s Pre-Development Expenses incurred, irrevocably committed or obligated at the time of receipt of the notification of termination under applicable Section of the Agreement, which Pre-Development Expenses shall be determined and interpreted in SEPTA’s sole discretion and shall not exceed the not-to-exceed amount in Section 3.3 of the Agreement.

ARTICLE XIV
MISCELLANEOUS PROVISIONS

Section 14.1 Governing Law; Forum Selection; and Consent to Jurisdiction

All matters or claims arising out of, related to, or in connection with the Agreement, the Project or the relationship between the parties shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to the principles of conflicts of laws of such state. All matters, disputes, claims, litigation, or proceedings of any nature whatsoever based upon, arising out of, under or in connection with the Agreement, the Project or relationship between the parties shall be solely and exclusively brought, maintained, resolved, and enforced in the state or federal courts located in the City of Philadelphia, Pennsylvania, irrespective of any procedural rules or laws related to venue and forum non conveniens, including, but not limited to, any choices Contractor 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 to 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.

Section 14.2 Agreement To Bind SEPTA And Contractor
The Agreement shall be binding upon the parties and their respective successors and assigns.

**Section 14.3 Assignment Prohibited**

Contractor shall not assign, transfer, convey, or otherwise dispose of the Agreement or any right, title or interest in or to the Agreement, 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 Agreement without the prior written consent of SEPTA. If Contractor shall, without such previous written consent, assign, transfer, convey, or otherwise dispose of the Agreement, or of any right, title or interest therein, or any of the monies due or to become due under the Agreement, the Agreement, 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 owed to Contractor and to its assignee or transferee under the Agreement. No right under the Agreement or to any money due or to become due under the Agreement shall be asserted against SEPTA in law or in equity by reason of any so called assignment of the Agreement or of any part thereof or of any monies due or becoming due under the Agreement unless authorized as aforesaid by the prior written consent of SEPTA, provided that the termination of the Agreement shall not release Contractor or its sureties from any liability for any damages sustained by SEPTA by reason of such termination.

**Section 14.4 Rights and Remedies**

The duties and obligations imposed by the Agreement 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.

**Section 14.5 Royalties and Patents**

Contractor shall pay all royalties and license fees. Contractor shall defend all suits and/or claims for infringement of any patent rights and shall release, be liable for, indemnify and save SEPTA harmless from all loss on account thereof.

**Section 14.6 Delays and Claims for Extension of Time or Damages**

The Contractor shall faithfully and timely perform the Phase I Work and deliver it as per the terms of the Contract Documents, and in any event in such manner and time that SEPTA and other parties employed on this Project will not be hindered or delayed by Contractor. Contractor shall be liable for all costs and damages resulting from any delay or breach in performance of its Work, including attorneys’ fees, to the extent that it caused such delay or breach in performance. If the Contractor is delayed at any time in the commencement or progress of the Phase I Work by SEPTA, other contractors, by Force Majeure events or other causes beyond the Contractor’s control, or by other causes which the SEPTA determines may justify delay, then the time to perform the Work shall be extended by Change Order for such reasonable time as SEPTA may determine.
If SEPTA or a contactor engaged by SEPTA causes a delay to the Contractor’s Work and the Project Schedule, including the issuance of any changes to the scope of Work required under this Agreement, then an equitable adjustment will be made to the Project Schedule and the not-to-exceed amount for the Phase I Work to the extent that Contractor proves to SEPTA’s reasonable satisfaction such impacts and timely notice of such claim is submitted by Contractor.

However, no allowance for an extension of time or cost impacts, for any cause whatever, shall be claimed by the Contractor unless the Contractor shall have provided written notice to SEPTA of the event within seventy two (72) hours after the cause for such impact. Failure to provide timely notice is a waiver of all claims. No allowance for an extension of time shall be made or granted for any delay for which the Contractor (or its supplier(s) or Subcontractor(s)) is responsible or when the Contractor by the exercise of reasonable diligence or proper business judgment could have anticipated and avoided the delay in whole or in part.

Section 14.7 Written Notice

All notices, certificates, demands, other communications or approvals required to be given hereunder shall be in writing and delivered personally or by certified mail, return receipt requested, and addressed as follows:

FOR SEPTA: Senior Director, Procurement & Supply Chain Management Southeastern Pennsylvania Transportation Authority 1234 Market Street, 11th Floor Philadelphia, Pennsylvania 19107-3780

FOR CONTRACTOR: [TBD]

Each mailed notice shall be deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, properly addressed in the manner provided above. Each notice shall be deemed to have been given to, or served upon, the party to whom delivered, upon delivery at the addresses provided above. Any party hereto may change its address for the service of notice hereunder by providing written notice of said change to the other party hereunder, in the manner specified above, ten (10) days prior to the effective date of said change.

Section 14.8 Third Party Agreement Rights

It is agreed that nothing 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.

**Section 14.9 Use of Financial Institutions Owned and Controlled by Socially and Economically Disadvantaged Individuals**

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.

**Section 14.10 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 Agreement or the proceeds thereof.

**Section 14.11 Severability**

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

**Section 14.12 Integration**

Subject to SEPTA's right to rely upon substantial representations made by Contractor in making the decision to award the Agreement to Contractor, including its Proposal, this Agreement represents the entire and integrated agreement between SEPTA and Contractor and supersedes all prior or contemporaneous negotiations, representations, or agreements, either written or oral.

Any change or amendment to the Agreement shall not be binding unless set forth in writing, properly signed by SEPTA and Contractor and subject to government concurrence where applicable.

**Section 14.13 Joint and Several Liability**

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

**Section 14.14 No Liens.** As a separate covenant, made in the consideration for this Agreement, Contractor, on behalf of itself and all of its Subcontractors and suppliers, agrees to and does
hereby waive and relinquish the right to file or maintain any mechanics’ lien or claim against the buildings or grounds at which the aforesaid materials or work are to be supplied or delivered, including any extra materials or work to the extent of payments received. Contractor shall indemnify and hold harmless SEPTA with respect to any such liens, including costs, attorneys’ fees and expenses to remove such liens. At the completion of Contractor’s work, Contractor shall furnish Purchaser a complete and acknowledged release of liens in a proper form. Contractor further empowers Purchaser or any attorney or clerk of any court in any jurisdiction where Contractor may have filed a lien claim, to appear for Contractor and in Contractor’s name and to mark satisfied any mechanic’s lien or claim filed by Contractor or in Contractor’s name against the said buildings or grounds, for which this Contract or any certified copy thereof will be good and sufficient warrant.

Section 14.15 Confidentiality. Contractor shall treat all documents, or other things disclosed or provided to Contractor by SEPTA, either directly or indirectly, as proprietary and confidential, and Contractor agrees to, for a period of two years from the date of completion or termination of this Agreement, use such information solely for the benefit of SEPTA and to not to use or disclose any such information to any third party without prior written consent from SEPTA, unless Contractor is required by law or court order to make disclosure. Contractor acknowledges and agrees that it will receive proprietary information from SEPTA in connection with and as consideration for execution and performance of this Purchase Order. “Confidential Information” shall also include, but not be limited to, any designs, concepts, software, drawings, specifications, processes, procedures, marketing, methods, techniques, pricing, production levels, margins, business opportunities, technical data, suppliers, performance data, pro formas, projections, financial information, plans, strategy, investment information, loan information, security information, and project information. Data and information that is in the public domain through no wrongful act of Contractor shall not be considered Confidential Information. Contractor shall promptly, after termination of this Purchase Order or completion of the delivery of the materials pursuant to this Agreement, return to SEPTA all Confidential Information or Contractor acknowledges and agrees that use or disclosure of Confidential Information the confidentiality period provide for in this paragraph will necessarily damage SEPTA and that in such case, there is no adequate remedy at law. All reports and other tangible components of Contractor’s work product prepared hereunder for SEPTA shall be the property of SEPTA

Section 14.16 Counterparts. This Agreement may be executed in one or more counterparts and by the different parties hereto under separate counterparts, any one of which need not contain the signatures of more than one party, but all of which when taken together shall constitute one and the same instrument notwithstanding that all parties have not signed the same counterpart hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned duly authorized officers, under seal, as of the day and the year first above written
ATTEST: ________________________________
(Secretary or Treasurer)

(SOUTH EASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY:
(SEAL)

ATTEST: ________________________________
(Please type name)

CONTRACTOR: ________________________________
(President or Vice-President)

(SEAL)

APPROVED AS TO FORM:

By: ________________________________, Esq.
Office of General Counsel
Southeastern Pennsylvania Transportation Authority
Attachment 1

Commonwealth of Pennsylvania

Contract Requirements
I. **Nondiscrimination Clause**

A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

B. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Contract on account of gender, race, creed, or color.

C. Contractor and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

D. Contractor shall not discriminate by reason of gender, race, creed, or color, against any subcontractor or supplier who is qualified to perform the work to which the Contract relates.

E. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the Contractor or subcontractor shall furnish such information on reporting forms supplied by SEPTA or the Bureau of Contract Administration and Business Development.

F. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provision will be binding upon each subcontractor.

G. The Commonwealth or SEPTA may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the Commonwealth and/or SEPTA may proceed with debarment or suspension and place a record of the action regarding the Contractor in the Commonwealth Contractor Responsibility Files.
II. Contractor Responsibility

For the purpose of these provisions, the term “Contractor” is defined as any person, including, but not limited to, a Proposer, 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

END OF SECTION
Attachment 2

Disadvantaged Business Enterprise (DBE)
Requirements
Disadvantaged Business Enterprise (DBE) Requirements  

Request for Proposal (Without DBE Goals)

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

A.  DBE CONTRACT GOALS

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

B.  DEFINITIONS

1. "Affiliation" has the same meaning the term has in the Small Business Administration regulations, 13 CFR part 121:

   (a) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

      (1) one concern controls or has the power to control the other; or
      (2) a third party or parties controls or has the power to control both; or
      (3) an identity of interest between or among parties exists such that affiliation may be found.

   (b) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

2. "Contract Sum" means total contract price, including any change orders and amendments.

3. "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern (a) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individual(s); and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it and is certified as such by SEPTA’s DBE Program Office or by Pennsylvania’s Unified Certification Program (PAUCP).
4. "**Joint Venture**" means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct clearly defined portion of the work to be performed by the joint venture and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest (see paragraph D.5. below).

5. "**Small Business Concern**" means a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121), that also does not exceed the following size determinations:

   (a) to be an eligible DBE, a firm (including its affiliates) must be an existing for-profit small business, as defined by Small Business Administration (SBA) standards found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

   (b) In addition to the requirements of (a) above, a firm must also meet the annual gross receipts requirements defined in SBA regulations 13 CFR §121.402

6. "**Socially and Economically Disadvantaged Individuals**" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

   (a) Any individual which SEPTA finds to be a socially and economically disadvantaged individual on a case-by-case basis.

   (b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

      (i) "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;

      (ii) "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

      (iii) "Native Americans" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

      (iv) "Asian-Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U. S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

      (v) "Subcontinent Asian Americans" which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

      (vi) Women;
(vii) any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

C. SUBMISSION REQUIREMENTS

1. In connection with this solicitation and any resulting contract, SEPTA has not established goals for Disadvantaged Business Enterprise (DBE) participation. This is in accordance with the DBE Regulations at 49 CRF §26.39, §26.51, which require SEPTA to attempt to use race-neutral means of obtaining DBE participation whenever possible. If your firm utilizes a certified DBE subconsultant/supplier, a dually executed DBE Participation Schedule which is attached must be submitted for each DBE subconsultant/supplier, with the Proposal and include the following:

(a) The name and address of the DBE firm that will participate in the Contract.
(b) A description of the work that the DBE will perform.
(c) The percent of the participation of the DBE firm participating.
(d) Written documentation of the Proposer’s commitment to use the DBE subconsultant and
(e) Written confirmation from the DBE that it is participating in the Contract as provided in the Proposer’s commitment.

The Proposer is required to submit a dually executed DBE Participation Schedule for each DBE subconsultant/supplier identified to participate in the Contract. The dually executed DBE Participation Schedule(s) represents the Proposer’s commitment (item (d) above) and the DBE subconsultant’s confirmation (item (e) above) of its participation.

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

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

2. The requirements of this section also apply to DBE Proposers for prime contracts. In determining whether a DBE Proposer for a prime contract has met a Contract goal, the work the DBE has committed to perform with its own forces as well as the work it has committed to be performed by DBE subconsultants and DBE suppliers will be counted.

3. SEPTA's DBE Program Office will provide upon request SEPTA's DBE Directory. The DBE Directory is revised on a continual basis; i.e., at least weekly, and identifies all firms eligible to participate as DBEs in SEPTA's program. Additionally, interested persons can obtain access to a state-wide combined directory through SEPTA’s membership in the Pennsylvania Unified Certification Program (PAUCP) at http://www.paucp.com. These DBE directories list the firm’s name, address, phone number, fax number, email address and the types of work the firm has been certified to perform as a DBE.
D. **DETERMINATION OF PERCENTAGE OF DBE PARTICIPATION**

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

1. When a DBE participates in a contract, only the value of the work actually performed by the DBE will be counted toward DBE goals.

2. SEPTA will count the entire amount of that portion of a construction contract (or other contract not covered by paragraph D.3. below) that is performed by the DBE's own forces, including the cost of supplies and materials obtained by the DBE for the work of the contract, and supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subconsultant purchases or leases from the prime contractor or its affiliates).

3. SEPTA will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, toward DBE goals, provided SEPTA determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

5. When a DBE performs as a participant in a joint venture, SEPTA will count a portion of the total value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

6. SEPTA will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract, as determined by SEPTA's DBE Program Office.

(a) A DBE is considered to perform a commercially useful function when it is responsible for execution of a specific scope of work in a contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity when ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, SEPTA will evaluate the amount of work subcontracted; industry practices; whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing; and the DBE credit claimed for its performance of the work and other relevant factors.
(b) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, SEPTA will examine similar transactions, particularly those in which DBEs do not participate.

(c) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, SEPTA will presume that the DBE is not performing a commercially useful function.

(d) When a DBE is presumed not to be performing a commercially useful function, SEPTA will accept evidence from the DBE or prime contractor to rebut this presumption. Evidence from independent sources, such as trade journals or independent studies by consultants, is particular desirable in such circumstances.

7. SEPTA will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.

(c) The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.

(d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.

(e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

(f) For purposes of this paragraph D.7., a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
8. SEPTA will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(a) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials and supplies toward DBE goals. For purposes of this section, a "manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the Specifications.

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

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

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

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

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

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

F. REPORTING AND RECORDKEEPING REQUIREMENTS

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

1. Upon execution of its SEPTA contract, the Contractor shall enter into written subcontract agreement(s) with the DBE(s) listed in its DBE Participation Schedule. Copies of the Contractor’s executed subcontract agreement(s) with DBEs shall be provided to SEPTA’s DBE Program Office by the Contractor immediately upon execution.

2. The Contractor shall submit a work schedule outlining when the DBE subconsultant(s) will commence and complete work on the project, at such times as prescribed by SEPTA’s DBE Program Office.

3. The Contractor shall submit monthly reports of actual contract expenditures to DBE’s by the Contractor. This information must be submitted electronically via SEPTA’s website (http://bizweb.septa.org/bizwebsepta).

4. The Contractor and subconsultant(s) shall permit access to their books, records and accounts by SEPTA (or its designated representative) or the Federal Transit Administration (FTA) for the purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Contractor in a fashion which is readily assessable to SEPTA and/or the FTA for a minimum of five (5) years following completion of this Contract.

5. With regard to any claim or dispute with respect to payment of a subconsultant at any tier, Contractor expressly agrees to defend, indemnify and hold SEPTA harmless in the event any suit is brought on account of a dispute between any of the parties including but not limited to subconsultant(s), supplier(s) and material men and in particular, Contractor shall assume the defense affirmatively at its sole cost whenever such suit is brought in any jurisdiction.

G. FTA DBE AUDIT REQUIREMENT — DBE INVOICE PAYMENT REPORT

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

H. MISCELLANEOUS

The Contractor is encouraged to utilize the services of financial institutions owned and controlled by socially and economically disadvantaged individuals as defined at 49 CFR part 26.5.
As specified in the DBE Participation Section included in the Proposal Documents, the Proposer 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.

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

<table>
<thead>
<tr>
<th>NAME OF DBE FIRM</th>
<th>DESCRIPTION OF WORK TO BE PERFORMED</th>
<th>TOTAL PARTICIPATION TO BE CREDITED TO DBE GOAL</th>
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<tbody>
<tr>
<td>Firm Name:</td>
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### TABLE II. MATERIAL/SUPPLIES TO BE PURCHASED FROM “REGULAR DEALERS”

<table>
<thead>
<tr>
<th>NAME OF DBE FIRM</th>
<th>DESCRIPTION OF MATERIAL TO BE SUPPLIED</th>
<th>TOTAL PARTICIPATION TO BE CREDITED TO DBE GOAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm Name:</td>
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<td>Contact:</td>
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**Name of Proposer:**

**Contact:**

**Signature:**

**DBE FIRM ACKNOWLEDGEMENT**

**PROPOSER AND DBE FIRM MUST SIGN AND DATE ABOVE.**

**ALL EXECUTED DBE PARTICIPATION SCHEDULE(S) MUST BE SUBMITTED WITH THE TECHNICAL PROPOSAL.**

**PROPOSER IS REQUIRED TO SUBMIT A DULY EXECUTED SCHEDULE FOR EACH DBE FIRM DESIGNATED TO PARTICIPATE.**

Proposers 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 must be expressed as a percentage of the Proposer’s total maximum price to SEPTA.
# DBE INVOICE PAYMENT REPORT
(To Be Submitted For Federally Funded Contracts Only)

## PART I: CONTRACT INFORMATION
- **Original Contract Sum:**
- **Net Change by Change Order:**
- **Contract Sum to Date:**
- **Total Billed to Date:**
  - **Retainage:** \( \frac{\%}{\} \)
  - **Total Billed to Date Less Retainage:**
- **Total Previous Invoices Submitted**
  - **Less Retainage:**
  - **Current Amount Due:**

## PART II: DBE INFORMATION
- **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:** \( \frac{\%}{\} \)
  - **Total Invoices Submitted for DBE Payment to Date Less Retainage:**
- **Total Previous Invoices Submitted**
  - **Less Retainage:**
  - **Current DBE Payment Due:**

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

<table>
<thead>
<tr>
<th>DBE Subcontractor Name</th>
<th>DBE Invoice Number</th>
<th>DBE Amount Due</th>
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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, are maintained and made available to SEPTA or its designee upon request.

<table>
<thead>
<tr>
<th>COMPANY OFFICIAL'S SIGNATURE</th>
<th>TITLE</th>
<th>DATE</th>
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© SEPTA 2008, Updated 4/08

DBE Program Office
Revised 8/2012
In accordance with Federal Regulation 49 CFR part 26.11, SEPTA must maintain bidding statistics on all contractors and subcontractors bidding on contracts. Please include copies of this form with your bid/proposal package to any subcontractors/subconsultants. You are required to return the form for each bidder/proposer with your bid/proposal package. This applies to both disadvantaged business enterprises (DBEs) and non-DBEs (a DBE is a firm which meets the certification criteria set forth in 49 CFR part 26).

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

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

Firm Name:  
Firm Address:  
Description of Services:  
NAICS Codes:  (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 (Type or Print):  Date:  
Title:  
Signature:  Telephone No.:  (  )  
Email Address:  Facsimile No.:  (  )
As specified in the DBE Participation Section included in the Solicitation Documents, the Proposer must furnish to SEPTA the details of non-DBE subconsultant participation.

**PROJECT NAME:**

**RFP NO.:**

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

2. **MATERIAL/SUPPLIES TO BE PURCHASED FROM SUPPLIERS**

<table>
<thead>
<tr>
<th>NAME OF FIRM</th>
<th>DESCRIPTION OF WORK/SERVICES TO BE PERFORMED / MATERIAL TO BE SUPPLIED</th>
<th>TOTAL PARTICIPATION</th>
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<td>Firm Name:</td>
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(Type or Print all information)

**Name of Proposer:**

**(Type or print)**

**Tele. No.:** ( )

**Email:**

**Contact:**

**(Type or print)**

**Title:**

**Signature:**

**(Type or print)**

**Date:**
Attachment 3

Project Progress

and

Performance Evaluation Form
**Performance Evaluation**
(Other than Architect-Engineer)

1. Fund Number
2. Purchase Order
3. CPMS Number

**IMPORTANT:** Be sure to complete both pages of this Performance Evaluation. If additional space is necessary for any item, use Remarks Section on next page.

4. Type of Report (Check one)
   - Interim
   - Completion of Service or Study
   - Termination

5. Report Number
6. Date of Report

7. Name and Address of Consultant
8. Project Description and Location

9. Office Responsible for
   - A. Selection of Consultant
   - B. Negotiation/Award of Contract
   - C. Administration of Contract

10. Contract Data
    - A. Type of Work
    - B. Type of Contract
      - Fixed Price
      - Cost Plus Fixed Fee
      - Other (Specify):
    - C. Project Complexity
      - Difficult
      - Simple
      - Routine
    - D. Professional Services Contract
      - Initial Contract sum
      - Amendments
        - No.
        - Amount
      - Claims by Consultant
        - No.
        - Amount
      - Final Contract Sum
    - E. Date of Notice to Proceed
    - F. Contract Completion Date (Including Extensions)
    - G. Actual Completion Date

11. Key Consultant Data
    - A. Names
    - B. Address
    - C. Specialty

12. Overall Rating
    - Excellent
    - Average
    - Poor

13. Recommended for Future Contracts?
    - Yes
    - No (If "No," explain on next page in the "Remarks" column)

14A. Name and Title of Rating Official
15A. Name and Title of Reviewing Official

14B. Signature
14C. Date
15B. Signature
15C. Date
### PERFORMANCE EVALUATION (Other than Architect/Engineer)

(Continuation from previous page)

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**REMARKS** *(Explain all Excellent and Poor ratings.)*
Certificate Regarding Compliance with Immigration Reform and Control Act of 1986
Certification Regarding Compliance with
Immigration Reform and Control Act of 1986

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

1. 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: ____________________________________________________________

END OF SECTION
Attachment 5

SEPTA EEO/AA Contractual Requirements
SEPTA EEO/AA Contractual Requirements

Nondiscrimination:

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

1. The Consultant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, or national origin. The Consultant 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 Consultant 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 Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

3. The Consultant 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 Consultant’s commitments under this Attachment, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Consultant will comply with all Affirmative Action provisions of the Agreement.

5. The Consultant 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 Consultant's noncompliance with the nondiscrimination clause of the Contract, the Contract may be cancelled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further SEPTA contracts.

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

END OF SECTION
Performance Bond
(Sample)
PERFORMANCE BOND  "SAMPLE"

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

1. 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.
AND PROVIDED FURTHER, that no action, suit or proceeding be instituted on this bond after the expiration of one or more (2) years from the date on which final payment under the Contract falls due.

Signed, Sealed and Dated this ___________________ day of ________________, 2012.

_____________________________________________  
(Contractor)

BY ________________________________ (SEAL)

______________________________________________  
(Surety)

BY ________________________________ (SEAL)
Attachment 7

Wage Rates

(To be Inserted)
INSERT WAGE RATES
Special Condition

Release and Agreement
To Conform with Environmental Laws for PCB Removal
SPECIAL CONDITION

RELEASE AND AGREEMENT
TO CONFORM WITH ENVIRONMENTAL LAWS FOR PCB 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 "Agreement," 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 PCB 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 polychlorinated biphenyls (PCBs) or materials that by operation of the Specifications in this Agreement are defined to be PCBs.

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 PCBs, 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 PCBs by Releasors, is strictly regulated in the currently applicable federal regulations, found in Title 40 of the Code of Federal Regulations, Part 761 (and as they may be amended)("EPA Regulation").

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 PCBs 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 PCBs 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 PCBs, which are 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 PCBs. 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 PCBs, 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 PCBs 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 PCBs for the past three years and to the extent required by law, has arranged for lawful disposal of PCBs for the past three years.

E. It is understood by the parties to the Agreement that the PCBs which are the subject of the Agreement pass to Releasor at the time said PCBs are 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 PCBs which are 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 PCBs which are 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 PCBs are 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 PCBs, 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 one or more 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 PCBs 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.

H. 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 PCB 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

(Environmental Laws - PCBs)
Special Condition

Release and Agreement
To Conform with Environmental Laws for Asbestos Removal
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 "Agreement," 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 the Contract 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 one or more 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

__________________________________________
President or Vice President

__________________________________________
Secretary

(Environmental Laws - Asbestos)
Special Condition

Release and Agreement
To Conform with Environmental Laws for Removal of Material Designated as Hazardous Waste by Title 40 CFR
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: 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 "Agreement," 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 the Contract 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 (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 one or more 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

DBE Program Office
Revised 8/2012
Attachment 11

Contractor Guarantee, Acknowledgement of Payment and Waiver of Claims

Contractor (or Subcontractor, as applicable) ____________________________

Owner/Project: ____________________________

Total amount previously paid: ____________________________

Amount paid this date: ____________________________

Retainage (including this payment) held to date: ____________________________

Contractor (or Subcontractor, as applicable) represents and warrants to the Owner that, to the date hereof, it: has fully complied with all obligations required of it under the Contract Documents; is not in default of any of its obligations under the Contract Documents; has fully performed all of the Work required under the Contract Documents that is the subject of this and all prior Applications for Payment; has fully paid all sums due to and/or claimed by its Subcontractors and suppliers from the prior Application for Payment and that it will pay all sums due and/or claimed due its Subcontractors and suppliers with respect to the amount in this Application for Payment; and that it is not aware of any outstanding claims or demands by the Contractor or any of its Subcontractors or suppliers related to the Project except as set forth in the attached list, if any.

In consideration of the receipt of the amount of payment set forth above and any and all past payments received in connection with the Project, the undersigned acknowledges and agrees that it has been paid all sums due or claimed for all labor, materials, overhead, equipment and other costs furnished by the undersigned (and its subcontractors and suppliers) to or in connection with the Project, and the undersigned hereby releases, discharges, relinquishes and waives any and all claims, suits, and rights with respect to or against the Owner or the Project site on account of payment for any labor, materials, overhead, equipment and all other costs furnished through the date hereof except as set forth in the attached list. A list of any outstanding claims must be attached. The undersigned also will defend, indemnify and hold harmless the Owner with respect to any such claims against the Owner or the Project site, including payment of all reasonable attorneys’ fees.

The undersigned individual represents and warrants that he is the duly authorized representative of the undersigned and is empowered and authorized to execute and deliver this document on behalf of the undersigned.

Signed under the penalties of perjury this ___ [date] of _________, 2015.

Contractor/Subcontract/Design Builder (as applicable): ____________________________

Witness: ____________________________

Name (print): ____________________________

By: ____________________________

Date: ____________________________
Part III

Agreement to
Finance, Design, Build, Own, Operate and Maintain a Guaranteed
Energy Savings Measure Consisting of a
Combined Heating and Power (CHP) Plant

EFFECTIVE ________________________

SEPTA RFP No. 14-297-JFK
Agreement to

Finance, Design, Build, Own, Operate and Maintain a Guaranteed Energy Savings Measure Consisting of a Combined Heating and Power (CHP) Plant Midvale, Philadelphia, Pennsylvania (the “Project” of the “CHP Plant project”)

FINANCE, DESIGN, BUILD, OWN, OPERATE AND MAINTAIN CONTRACT FOR A GUARANTEED ENERGY SAVINGS MEASURE

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Exhibit I FTA Required Provisions for Contracts

- Section A - Federal Contract Requirements
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- Section D - Specifications for Project Signs
- Section E - Wage Rates

[NOTE: Additional Sections and identifications on "Restrictions on Lobbying" and/or "Restrictions on Federal Public Works Projects" to be added as applicable.]

Exhibit II State and Local Contract Requirements

Exhibit III Planning, Scheduling and Progress Monitoring Specification

Exhibit IV SEPTA's Equal Employment Opportunity/Affirmative Action Contract Requirements (Note: Only if Applicable)

Special Conditions (To be completed as applicable)
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, PA 19107-3780, AND
a ____________________________________________________________, established under the laws of ________________________ (hereinafter called the
"CONTRACTOR"), having a principal place of business at ____________________________________________________________ .

WITNESSETH THAT

WHEREAS, Contractor submitted a proposal to SEPTA to perform certain guaranteed energy savings
measures to finance, design, build, own, operate and maintain a Guaranteed Energy Savings Measure
consisting of a Combined Heating and Power ("CHP") Plant at SEPTA’s Midvale, Philadelphia,
Pennsylvania facility, hereinafter more fully described (hereinafter called "Project"); and

WHEREAS, the Contractor, pursuant to SEPTA's preliminary acceptance of Contractor's Proposal for the
Project, performed certain Pre-Development Services under a Pre-Development Agreement between the
parties dated as of ______________________ related to the Project, and pursuant to which Contractor has
submitted a Best and Final Offer to SEPTA to finance, design, build, operate, own and maintain the Project
required by and consistent with the Contract Documents as follows: BAFO ATTACHED), which 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 (1) lease land from SEPTA on SEPTA’s Midvale Site as described in and
pursuant to the terms in Attachment _______________; (2) undertake and fully bear the costs to
finance, design, build, own and operate (“FDBOOM”) the Project as required by the Contract
Documents, more particularly set forth in the Specifications for the Contract including the Drawings;
and (3) transfer ownership of the CHP Plant to SEPTA on the 20th anniversary of the
[Commercial Operations Date] (hereinafter, the "Conclusion Date") consistent with the
terms of this Contact.
II. SEPTA shall (1) lease land to Contractor on SEPTA’s Midvale Site as described in and pursuant to the terms in Attachment ____________; (2) pay the Contractor for the full and faithful implementation of the Project the total sum of (hereinafter called "Contract Sum") in current funds constituting legal tender of the United States of America, which Contract Sum shall be in full compensation for the furnishing of all labor, materials and services required for the completion of the Project, and all other costs and expenses incidental thereto, in accordance with the terms of payment as set forth in the Contract Documents; and (3) accept transfer of ownership of the CHP Plant from Contractor to SEPTA at the Conclusion Date consistent with the terms of this Contact.

III. DEFINITIONS

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

Applicable Law means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Project, Work or any relevant Person, whether taking effect before or after the date of this Contract.

As-Built Drawings means, in respect of each aspect of the Work and the final Design Documents submitted by the Contractor, revised to incorporate all changes made in the specifications and working drawings during construction and show the dimensions, geometry, and location of each element in respect of the Project.

Change in Law means the introduction or repeal (in whole or in part) of or amendment, alteration or modification to or change in interpretation of (in each case including, to the extent applicable, by retroactive effect), any Applicable Law or standards, practices or guidelines issued or published by any Governmental Entity that occur at any time after the Contract Date and that are either binding on the Contractor and are necessary in order to comply with Good Industry Practice, excluding however, any such introduction, repeal, amendment, alteration, modification or change in relation to federal Law, standards, practices and guidelines.

Change in Ownership means:
(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares or membership interests in the Contractor (including the direct or indirect control over the exercise of voting rights conferred on those shares or membership interests, direct or indirect control over the right to appoint or remove directors or the rights to receive dividends or distributions); and/or
(b) any other arrangements that have or may have or which result in the same effect as clause (a).

Contract means the Contract Documents, as set forth in this section below, which form the Contract (the “Contract,” “Contract Documents” or “GESA”). 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, modification 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.

Contract Documents which form the Contract consist of the following:
1. This Agreement, including any referenced documents or exhibits, including the BAFO;
2. The following Special Condition(s): ____________________________;
3. Performance Bonds; Labor and Material Bonds;
4. Specifications and Drawings as issued by Contractor and/or SEPTA;
5. Addenda issued prior to execution of this Agreement;
6. The Lease of the Project Site to Contractor; and
7. Any written change, modification or amendment to any of the above documents as listed in "1" through "6".

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

Design Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports, management plans, operations plans, maintenance plans, samples, drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), design criteria, reports, studies, calculations, electronic files, records and submittals necessary for necessary or desirable for design, construction, ownership and operations of the Project in accordance with the Contract Documents.

Defect means any defect in any of the Work attributable to:
(a) defective design;
(b) defective workmanship or defective materials, plant or machinery used in such construction having regard to Good Industry Practice and to appropriate industry standards and codes of practice current at the date of construction;
(c) the use of materials in the Work which (whether defective or not defective in themselves) prove to be defective in the use to which they are put;
(d) defective installation of anything in or on the Project; or
(e) defective preparation, maintenance or operation of the Project during the term of the GESA.

Force Majeure Event means the occurrence after the date of this Contract of:
(a) war, civil war, invasion, violent act of foreign enemy or armed conflict;
(b) nuclear, chemical or biological contamination unless the source or cause of the contamination is brought to or near the Project Site by the Contractor or its Subcontractors or is as a result of any breach by the Contractor of the terms of this Contract; or
(c) ionizing radiation unless the source or cause of the ionizing radiation is brought to or near a Project Site by the Contractor or its Subcontractors or is as a result of any breach by the Contractor of the terms of this Contract; or
(d) any blockade or embargo;
(e) any;
(i) official or unofficial strike;
(ii) lockout;
(iii) go-slow; or
(iv) other dispute, generally affecting the construction industry or a significant sector of it;
(f) any act of terrorism,
which directly causes either Party (the Affected Party) to be unable to comply with all or a material part of its obligations under this Contract.
**Good Industry Practice** means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, maintenance contractor or operator or developer seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental Approvals, using accepted design and construction standards and criteria normally used on similar projects in the Commonwealth, and engaged in the same type of undertaking in the United States under similar circumstances and conditions, including environmental conditions.

**Governmental Approval** means all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates) and authorizations (whether statutory or otherwise) which are required from time to time in connection with the Project to be issued by SEPTA or any Governmental Entity.

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

**Hazardous Materials** means any element, chemical, compound, mixture, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Applicable Law, or any other such substances or conditions (including mold and other mycotoxins, fungi or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the Environment or human health and safety.

Hazardous Materials includes the following:

(a) hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances, ignitable, corrosive and reactive substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of hazardous substance, hazardous waste, hazardous material, extremely hazardous waste, acutely hazardous waste, radioactive waste, radioactive materials, bio-hazardous waste, pollutant, toxic pollutant, contaminant, restricted hazardous waste, infectious waste, toxic substance, toxic waste, toxic material, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor Environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, TCLP toxicity or EP toxicity or words of similar import under any Applicable Law);

(b) any petroleum product, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

(c) any solvent, solvent waste, including any refined solvent product, and any waste solvent or waste solvent byproduct, including any additive, byproduct or fraction of any of the foregoing;

(d) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(e) any flammable substances or explosives;

(f) any radioactive materials;

(g) any asbestos or asbestos-containing materials;

(h) silica;

(i) any lead, cadmium, or lead-based paint or any other heavy metal-based paint or material, or any metal listed in or regulated by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);

(j) any radon or radon gas;

(k) any methane gas or similar or regulated gaseous materials;

(l) any urea formaldehyde foam insulation;

(m) electrical equipment and components which contain any oil or dielectric fluid containing polychlorinated biphenyls;

(n) pesticides, herbicides or fungicides;

(o) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety
of the owners, operators, Patrons or any Persons in the vicinity of the Project or to the indoor or outdoor Environment; and

(p) soil, or surface water or groundwater, containing any of the Hazardous Materials as defined above.

**Hazardous Materials Release** means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, surface water, groundwater or indoor or outdoor Environment, including any of the foregoing that exacerbates an existing release or condition of Hazardous Materials contamination.

**Project** shall mean all necessary labor, materials, equipment to the finance, design, build, own, operated and maintenance of the CHP Plant project, including obtaining all necessary approvals, easements, assessments and charges required for the design, construction, use or occupancy of permanent structures, all professional design and construction management services and all labor, materials and equipment used or incorporated in such design and construction.

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

**The Work** comprises the completed finance, design, construction, ownership, operation and maintenance of the CHP Plant project or facility designed under the Project and includes all labor necessary to produce such design, construction, and all materials and equipment incorporated or to be incorporated in such design, construction, operation and ownership as required by the Contract Documents. The parties understand that the Work is to be performed on an expedited basis.

**NOTE – Other Terms may be Added as part of the BAFO and GESA Negotiation**

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

Except as provided in Paragraph XIII.C. 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 (including Attachments), 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. The organization of the Specification into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors (see Paragraph IX.A.1.) or in establishing the extent of Work to be performed by any trade.

B. Written interpretations necessary for the proper execution or progress of the Work will be issued with reasonable promptness by the Project Manager and in accordance with any schedule agreed upon in accordance with Paragraph VIII.L. 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.

VI. OWNERSHIP AND USE OF DOCUMENTS

The Drawings, Specifications and other documents furnished by the Contractor or any architect or engineer engaged by the Contractor shall become the property of SEPTA, whether the facility is commenced or not. Nothing herein shall be construed, however, as limiting or barring the Contractor from using such Drawings, Specifications or other documents for its own purposes. Copies of said Drawings, Specifications and other documents, including reproducible copies, shall be delivered to SEPTA, and may be used by SEPTA on other projects, for additions to the Project and for completion of the Project by others.

Submission or distribution of documents, by Contractor to meet official regulatory requirements or for other purposes in connection with the Project shall not be construed as publication in derogation of the rights of SEPTA as owner thereof.

The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, laws, codes, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with more stringent requirement; either or both, at no additional cost to the SEPTA and without any extension of the Project Schedule.

Contractor shall perform the professional and other services required in this Agreement. The Design Criteria, Technical Specifications, Plans and Drawings (collectively, the RFP Specifications”) contained in the RFP contain a description of the CHP Plant components ascertained that potentially best meet SEPTA’s goals. In certain instances, the RFP Specifications contain certain equipment and software that may be utilized in the CHP Plant.

Contractor recognizes and agrees that the RFP, including the Specifications, thereto have been provided to identify the desired plant determined by SEPTA. SEPTA makes no representation or warranty regarding, and affirmatively disclaims any representation or warranty with respect to, the viability, operability or functionality of the CHP Plant set forth in the RFP. It is the obligation of the Contractor to perform all Work as required herein, including as necessary for it to finance, design, build, own, operate and maintain the CHP Plant to enable the CHP Plant to provide the functionality and performance as needed to meet the requirements of the Contract Documents.

Contractor agrees that the use or adoption of any of the data, information or RFP Specifications by the Contractor in the development of design and construction drawings and specifications for the CHP Plant project is conditioned and premised upon certain assumptions, criteria, reservations, limitations and disclaimers, all of which must be carefully reviewed and analyzed. As such, Contractor agrees that:
1. All design and construction drawings, specifications, sketches and other records related to design, construction or remodeling of the CHP Plant project required under the Contract Documents (“Design Documents”) are required to be prepared and issued by licensed architects, engineers or design professionals licensed and insured to practice such professional services in the jurisdiction of the location of the CHP Plant project (the “Design Professionals”). All Design Documents shall comply with all applicable laws, building codes, ordinances, and other criteria mandated by the jurisdiction in which the CHP Plant project is located (“Applicable Laws”). To the extent that there is any irreconcilable conflict between any Applicable Laws and use of the Specifications, the Applicable Laws shall govern.

2. The Specifications are confidential, and are owned by SEPTA and may not be reused or sold by the Contractor or Design Professionals without the express written approval of SEPTA. The RFP Specifications depict proposed standard design features that may be used for the CHP Plant project. It is the responsibility of the Contractor and Design Professionals engaged by or employed by the Contractor, in consultation with SEPTA, to determine which RFP Specifications are appropriate for use on the applicable project. The use or adoption of any of the RFP Specifications by the Design Professionals or others is based upon that Design Professional’s or other user’s independent skill and professional judgment, and such use or adoption of the RFP Specifications does not relieve the Contractor, Design Professionals or other users from their responsibilities and obligations to SEPTA or others assumed under their contract(s) or owed under Applicable Laws. As such, Contractor, Design Professionals or other users of the Specifications agree to indemnify, defend and hold harmless SEPTA, its officers, agents, and employees from and against any and all claims, suits, losses, damages or costs, including reasonable attorney's fees, arising from or by reason of the Contractor’s Design Professional’s or other user’s use or adoption of the RFP Specifications in Design Documents.

3. Under no circumstances does SEPTA warrant or certify that the information or data in the RFP Specifications are free of errors, omissions or deficiencies of any kind. SEPTA specifically disclaims all warranties, express or implied, associated with the Specifications, including but not limited to the warranties of merchantability and fitness for a particular purpose.

4. The information in the Specifications is subject to change by SEPTA or by Applicable Laws. Anyone using or relying upon the Specification should satisfy himself/herself as to the most current version of the RFP Specifications and Applicable Laws. Contractor, Design Professionals and other users of the Specifications agree to assume and accept all risks and consequences flowing from or related to the use, retention, distribution, alteration, or deletion of the information in the RFP Specifications. Use or adoption of the RFP Specifications does not entitle Contractor, Design Professionals or other users to compensation for damages of any kind that could be attributed to such use, and Contractor, Design Professionals or other users waive and release SEPTA, its agents, employees, officers and directors from any such damages or claims related to the Specifications. SEPTA will in no instance be liable for any loss of profit or other damage of any kind related to the use or adoption of the RFP Specifications, including but not limited to special, incidental, consequential, or other damages, even if apprised of the likelihood of such damages.

5. These terms and conditions constitute the complete and final agreement of the parties hereto with respect to the use or adoption of the RFP Specifications in any Design Documents.

VII. 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 this 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. 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.

C. Supervision and Construction Procedures

Contractor covenants with SEPTA to further the interests of SEPTA by furnishing Contractor's best skills and judgment in co-operation with, and in reliance upon, the services of architects, engineers, construction contractors and others who shall be required to complete the Project. Contractor agrees to furnish business administration and management services and to perform its obligations hereunder in an expeditious and economical manner consistent with the interests of SEPTA and in accordance with the Contract Documents.

All design and engineering services shall be performed by qualified architects, engineers and other professionals selected and paid by Contractor. The professional obligations of such persons shall be undertaken and performed in the interest of Contractor. Construction services shall be performed by qualified construction contractors and suppliers, selected and paid by Contractor and acting in the interest of Contractor. Nothing contained herein shall create any professional obligation or contractual relationship between such persons and SEPTA.

Contractor shall be responsible to SEPTA for acts and omissions of Contractor's employees and parties in privity of contract with Contractor to perform any portion of the Project, including their agents and employees.

Contractor shall commence construction of the work and, subject to authorized adjustments, achieve substantial completion by the date set forth in Paragraph XI.

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

D. Duty to Finance, Design, Build, Own and Operate the CHP Plant project, including paying for all Labor, Materials and Facilities

1. [INSERT BAFO SCOPE AND COMMERCIAL TERMS OVER THE LIFE OF THE GESA – SET FORTH BAFO TERMS ACCEPTED]

2. 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.

The Contractor shall, subject to the terms of the Contract Documents, be deemed to have:
(i) satisfied itself as to the assets to which it will receive rights (including each Project Site and, where applicable, any existing structures, Utilities or work on, over or under such Project Site) and the nature and extent of the risks assumed by it under the Contract Documents;

(ii) satisfied itself as to the nature of the geotechnical, climatic, hydrological, ecological, environmental and general conditions of each Project Site, the nature of the ground and subsoil, the form and nature of each Project Site, the risk of injury or damage to property near to or affecting each Project Site and to occupiers of such property, the nature of the design, work, materials, plant, machinery or equipment necessary for the purpose of carrying out its obligations under the Contract Documents; and

(iii) satisfied itself as to:

(A) the access to and through each Project Site and the adequacy of the Access in respect thereof for the purpose of carrying out its obligations under the Contract Documents;

(B) the precautions and times and methods of working necessary to prevent or (if it is not possible to prevent) to mitigate or reduce, any nuisance or interference, whether public or private, being caused to any third parties; and

(C) the scope of the Contract Document.

The Contractor acknowledges and confirms that it has not entered into this Contract on the basis of, and has not relied upon, any statement or representation (whether negligent, innocent or otherwise) or warranty or other provision (in each case whether oral, written, express or implied) made or agreed to by SEPTA or any of its agents or employees, except those expressly repeated or referred to in the Contract Documents and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract.

Subject to any rights that the Contractor has pursuant to the terms of the Contract Documents, the Contractor shall not in any way be relieved from any obligation under the Contract Documents nor shall it be entitled to claim against SEPTA on grounds that any information, whether obtained from the SEPTA or otherwise (including information made available by SEPTA), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

3. General Duties

In addition to performing all other requirements of the Contract Documents, the Contractor shall:

(i) furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the Contract Documents expressly specify will be undertaken by the SEPTA or other Persons) to construct the Project and to maintain it during construction and thereafter during the GESA term;

(ii) ensure all Construction Work is performed in accordance with Released For Construction Documents;
(iii) ensure that a suitably qualified foreman is present at each Project Site at all times during the performance of any Construction Work on that Project Site;

(iv) comply with, and require that all Contractors and other Persons performing any of the Works comply with, all requirements of all Applicable Laws;

(v) cooperate with the SEPTA and Governmental Entities with jurisdiction in all matters relating to the design, construction and operational Work, including their review, inspection and oversight of the design and construction of the Project as required by Applicable Law or required herein;

(vi) exercise reasonable efforts to mitigate any delay and any damages due to delay regardless of the cause of the delay, including by re-sequencing, reallocating, or redeploying the Contractor's and its Contractors' employees to other work, as appropriate;

(vii) remove silt, debris and any other deposits and objectionable material, and clean and remove surplus and discarded material, equipment, and temporary structures, from each Project Site and any other areas used or disturbed by the Construction Work, including waste and borrow areas, and remove paint marks or spills, stains, rust marks, oil, or any other unsuitable marks caused by the Construction Work, as directed by the SEPTA.

4. Performance, Design and Construction Standards. The Contractor shall perform the Work in accordance with (i) Good Industry Practice, (ii) the requirements, terms and conditions set forth in the Contract Documents, (iii) all Applicable Laws, and (iv) the requirements, terms and conditions set forth in all Governmental Approvals.

5. Government Approvals. The Contractor shall be solely responsible for securing and obtaining all governmental approvals (including any permits, revision, modification, amendment, supplement, renewal or extension thereof), required in connection with its performance of this Contract. The Contractor shall be responsible for obtaining amendments or modifications to any SEPTA-obtained governmental approval necessary to reflect the Contractor’s Final Design Documents. In the event that any modifications are not permitted by the Governmental Entity, the Contractor shall be responsible, at its own risk of delay and cost, for revising its Final Design Documents in respect of the relevant completion date. The Contractor shall promptly deliver to the SEPTA true and complete copies of all applications for Governmental Approvals and new or amended Governmental Approvals obtained by it.

6. Guaranteed Energy Savings by the CHP Plant. Contractor represents and warrants to SEPTA that the amount SEPTA would spend on the energy conservation measures recommended in the BAFO would not exceed the amount of energy, water or wastewater cost savings, operational cost savings or revenue increases resulting from the energy conservation measures within a period not to exceed 20 years from the date of final installation if the recommendations in the BAFO were followed. Contractor hereby unconditionally guarantees to SEPTA that the energy, water or wastewater cost savings, or operational cost savings or revenue increases will meet or exceed the cost to SEPTA of the GESA.

In accordance with 62 P.S. § 3753 (e), Contractor has made available a report, which shall has been made available for public inspection, summarizing estimates of all costs of installation, maintenance, repairs and debt service, and estimates of the amounts by which energy or operating costs will be reduced, and which contained a listing of contractors and subcontractors to be used by the qualified provider with
respect to the energy conversation measures. Contractor agrees to provide any additional data, documents and reports to meet this requirement.

7. Funding Contingency. Since the GESA will have a term extending beyond one fiscal year, by law [62 Pa.C.S.A. § 3755(a)], this GESA includes a provision that allows SEPTA to terminate the GESA if in any fiscal year during the term of the GESA SEPTA does not receive sufficient funds in its annual appropriations to make the payments required under the GESA. Except with respect to those sources of funds that as a matter of law are not subject to appropriations, the Parties acknowledge that:

(A) the source of funds for payment of all amounts due and owing or scheduled to become due and owing from SEPTA to the Contractor hereunder is subject to the availability of funds appropriated to SEPTA by the General Assembly of the Commonwealth and approved by the Governor of the Commonwealth; and

(B) SEPTA’s obligations to provide funding under this Contract are subject to the appropriation of funds for such purposes by the General Assembly of the Commonwealth and the certification of the availability of such funds by the Commonwealth’s Office of the Budget pursuant to Section 327 of the Commonwealth Procurement Code, 62 Pa.C.S. §327. SEPTA shall notify the Contractor in writing promptly upon becoming aware of any failure of (i) the Governor of the Commonwealth to approve such appropriation, or (ii) the Commonwealth’s Office of the Budget to certify as to the availability of such funds.

8. Davis-Bacon Act. In the event that the GESA includes work on a “public work” within the meaning of the Davis Bacon Act, all workers employed on such “public work” shall be paid these wages. A copy of the current Davis-Bacon Act wages for all trades associated with this project will be provided. It is the ESCO’s responsibility to ensure compliance with the current Davis-Bacon Act wage reporting requirements for all aspects of the project.

9. Taxes, Fees, Codes Compliance, Licensing. The Contractor shall be responsible for payment of any required taxes or fees associated with the execution of the GESA. The Contractor shall be responsible for compliance with all applicable codes, statutes, and permitting requirements.

10. 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 or her.

11. 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.

12. 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.

13. 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.
E. **Tax Ownership of CHP Plant.**

Notwithstanding that Contractor shall be the legal owner of the CHP Plant until the Conveyance of the CHP Plant at Conclusion Date, Contractor and SEPTA acknowledge and agree that SEPTA shall be treated as the owner of the CHP Plant solely for U.S. federal income tax purposes, and state and local income tax purposes to the extent based on federal income tax principles (collectively, “Tax Purposes”) beginning upon the [Commercial Operations Date] as a result of the Conveyance obligations set forth in Section VIII. F. below and the payment obligations set forth in Section XIII. below. In accordance therewith, solely for Tax Purposes, Contractor shall be treated as having sold the CHP Plant to SEPTA on the [Commercial Operations Date] in exchange for installment payments consisting of a portion of the payment obligations set forth in Section XIII. below (which shall include a deemed interest component) based on the estimated fair market value of the CHP Plant on the [Commercial Operations Date] with the remaining portion of the payment obligations set forth in Section XIII. being treated as paid in exchange for services provided by Contractor to SEPTA. SEPTA shall prepare a schedule within ten (10) days of the [Commercial Operations Date] setting forth in detail the intended tax treatment of SEPTA and Contractor pursuant to this Section VIII. E. Each of SEPTA, Contractor and their respective affiliates, shall prepare all applicable books, records, and tax returns in a manner consistent with such schedule and this Section VIII. E.

F. **Conveyance of CHP Plant at Conclusion Date.**

On the Conclusion Date, Contractor shall (i) peacefully surrender the CHP Plant to SEPTA, (ii) terminate all of its right, title and interest in and to the CHP Plant and the land on which the CHP Plant is located and (iii) convey, transfer, assign and delivers to SEPTA without payment of any additional consideration therefore, as of the Conclusion Date, all of Contractor’s right, title and interest in and to the CHP Plant and the land on which the CHP Plant is located, free and clear of any and all liens and encumbrances.

Contractor acknowledges that its reasonable, good faith cooperation is necessary to implement the terms of this Contract, including the Conveyance of CHP Plant at Conclusion Date. If Contractor reasonably determines or is advised that any further instruments, agreements or other matters are necessary or desirable to carry out the terms of this Contract, including the Conveyance of CHP Plant at Conclusion Date, it shall do all things reasonably necessary and appropriate to carry out the terms hereof and to execute and deliver all such instruments, agreements and to otherwise address such matters.

G. **Contract Security.**

The Contractor shall furnish and maintain properly executed Performance Bonds and Labor and Material Payment Bonds, and a Performance/Guarantee Bond, each written by good and sufficient sureties and in form acceptable to SEPTA, in the amount of one hundred percent (100%) of the Contract Sum, including to the full term of the GESA. 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 percent (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 desired form of Labor and Material Payment Bond consists of AIA Document A311, while the Performance Bond must be in form acceptable to SEPTA.

The Performance Bond and Labor and Material Payment Bond 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.

The duration of the Performance, Labor and Material Payment Bonds will commence with the Award of the GESA and will be in effect until the Construction of the CHP Base Plant and Mandatory Option (if exercised) is completed. The Performance/Guarantee Bond will be in effect from the initial operation and final acceptance of the CHP Base Plant until the end date of the GESA period, in the amount of the yearly savings times the term (twenty years). 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, SEPTA requires the Contractor, within ten (10) days to furnish new or additional bonds from the same or different sureties so as to be fully secured at all times.

The Performance/Guarantee 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 and authorized to issue bonds at least up to the dollar amount of the bond.

H. Indemnification

In addition to all other obligations of Indemnification specified herein, 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, its Board Members, officers, agents, servants, workmen, employees, subsidizers and indemnitees, 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 (i) 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, (ii) any breach by Contractor of its covenants and obligations set forth herein, or (iii) [full environmental indemnity for Hazardous Materials and any Hazardous Materials Release to be added addressing period of construction and operation and full indemnity for environmental condition existing at the time of the conveyance of the CHP Plant to SEPTA at the Conclusion Date], including, but not limited to, any such claims arising out of SEPTA’s own negligence or fault (excluding only indemnitees’ intentional or grossly reckless negligence), strict liability, breach or violation of a statute, ordinance, governmental regulation, standard, rule, or breach of this Contractor, in whole or in part.

The foregoing defense and indemnification obligations shall not be limited in any way by any limitation on the amounts or type of damages, compensation, completion expiration or termination of this Contract, warranty or guarantee period, or benefits payable by or for Contractor or its employees under worker’s compensation acts, disability benefit acts or other employee benefit acts. The maintenance of insurance required by this Contract or otherwise shall not diminish or limit Contractor’s defense and indemnification obligations.
Contractor also agrees for itself and on behalf of its agents, servants, subcontractors, materialmen 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 materialmen 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, even if 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).
I. **Taxes**

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

J. **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to SEPTA 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 for the GESA period. 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 the GESA term or period, 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 the GESA term or period, 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.

K. **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 variance therewith in any respect, it shall promptly notify the Project Manager in writing, and any necessary changes shall be adjusted by appropriate modification 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.

L. Project Management Team

The Contractor shall employ a competent Project Management Team which shall supervise all aspects of the Project from design initiation through completion of construction and which shall be in attendance at the Project site during the progress of the Work. Contractor's Project Management Team 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 any individual member of the Project Management Team proves to be unsatisfactory to the Contractor and ceases to be in its employ. If the Project Manager orders that a member of the Project Management Team be changed, then the Contractor shall promptly replace him or her with an individual who is satisfactory to the Project Manager.

The leader of the Project Management Team shall represent the Contractor and all communications given to this individual 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.

M. Responsibility for Those Performing The Work

The Contractor shall be responsible to SEPTA for the acts and omissions of all its employees and all 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.

N. Project Schedule

Contractor shall abide by all requirements attached hereto and made a part hereof in EXHIBIT ____. Contractor has developed its initial Project schedule (“Project Schedule”) for all Work required for the as set forth in Exhibit III. The Project Schedule will include all activities with respect to the Contractor’s Work, important milestones, any dates required for SEPTA to make decisions or allow access, and all start and finish dates for the Contractor’s Work. The Contractor will complete the Work as outlined in the Project Schedule. SEPTA may update and revise the Project Schedule over the course of the Project and the Contractor will conform to the revised Project Schedule. In order to meet the required Operation Date, as defined below, Contractor shall use its best good faith efforts to diligently complete all Work no later than ____________, or such later date agreed upon by SEPTA and Contractor, such that the Project will be available for commencement of operations on or before the Operation Date.

The Work will be completed during the Term for the Pre-Development Services. Time is of the essence as to this obligation.
The parties shall not be deemed negligent, at fault or liable for any delay or failure in performances resulting from acts of God, natural disasters, war, accidents, riots, civil insurrection, terrorist activity, labor disputes or strikes not caused by the Contractor or any of its Subcontractors, or any other cause not the fault of and beyond the reasonable control of the parties; provided, that the parties will give each other prompt notice of the delay in sufficient detail to permit the recipient of the notice the opportunity to minimize the effect of such delay, if practicable.

O. Drawings and Specifications at the 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 an 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 be 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.

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.

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 and _____ 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 Federal, State and Local governments which are in effect or become effective during the term of the Contract. Contractor further agrees to require that the design and engineering of the Project fully complies with all applicable codes and standards including handicap accessibility standards.

U. Insurance

During the term of the Contract, Contractor shall procure and maintain the following 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;

e. claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom;

f. excess coverage; and,

g. claims for professional liability.

2. Evidence of Compliance

a. Certificates of Insurance

Within the same day of 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 of 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 completion and acceptance by SEPTA of the Work at the end of the GESA term.

b. All policies shall provide for thirty (30) days written notices 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 endorse to include the following as Additional Insureds: SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY.

5. Waiver of Liability for Premiums

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All policies wherein the parties designated in Paragraph VIII.S.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.S.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.

(1) Minimum Limits to Liability

$2,000,000 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.

(3) Contractual Liability (Hold Harmless) Coverage

Policy shall be written or endorsed to include coverage for the liability assumed by the terms of the Contract and the Indemnification Agreement. Certificate or policy will state that the coverage applies to the Contract described as:

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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

$2,000,000 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 this Paragraph.

(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. Professional Liability Insurance

$5,000,000 Aggregate Limit per occurrence or claims made.

If Professional Liability Policy is written on a claim made basis, policy shall provide a three year discovery endorsement.

e. Excess of Umbrella Policy

$10,000,000, covering excess above the insurance in subsections a, b, and c above. Policy shall be written or endorsed to include as Additional Insureds those parties or persons designated in this Paragraph.

f. Builder's Risk Insurance

SEPTA shall provide and maintain Builder's Risk Insurance including Fire and Extended coverage equal to One Hundred Percent (100%) of the Completed Value of the Insurable Portion of the Contract Construction subject to a $5,000 deductible per occurrence.

Contractor shall be responsible for $5,000 deductible per occurrence under this SEPTA provided and maintained insurance.

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 the Project at all times and for a period of five (5) years after final acceptance of the Work, and then five (5) years after the term of the GESA. Records shall be made available, upon request, at the Contractor's place of business during normal working hours. The 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.

W. Separate Bids for Construction/Equipment

1. As soon as practicable after the opening of bids and/or proposals for each of the principal portions of the work, Contractor shall furnish to SEPTA in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) Contractor proposes for each of the principal portions of the work. If SEPTA has reasonable objection to any such proposed persons or entity, the Contractor shall submit a substitute to whom SEPTA has no reasonable objection. The persons or entities with whom Contractor enters into contracts for construction of, and furnishing of materials and equipment for, the Project are hereinafter referred to as "Subcontractors".

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 in 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 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 Contractor 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 responsibly 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 written request from SEPTA's Project Manager 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 may perform work related to, but not part of, the Project and award separate contracts, provided that SEPTA gives Contractor reasonable prior notice of such awards, in connection with other work at the Project site and shall help to coordinate such work. SEPTA will insure that the performance of such work does not disrupt Contractor's scheduled Work.

B. **Mutual Responsibility Between Contractors**

1. The Contractor shall afford other contractors of SEPTA reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work and shall properly connect and coordinate its Work with theirs as permitted by the Contract Documents.

2. 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.

XI. **TIME**

A. **Definitions**

1. The Contract Time is 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 __________ calendar days after the date of receipt of SEPTA's Notice to Proceed. The date of the __________ 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 Extension 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 carrying out the Project, 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 Project 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 any delays or anticipated delays as soon as it, or any of its supervisory employees, become aware of the same.

3. In the event that the Contractor decides to claim any extension of time as a result of change orders, or delays, the Contractor shall submit to SEPTA a written Time Impact Analysis illustrating the influence of each 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 change 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) days after a delay occurs or notice or direction of a 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 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.

4. 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 accordance with 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 Contract Administrator. 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 Project under the Contract. Unless the Completion Date is extended as otherwise provided for in the Contract Documents, liquidated damages in the amount of $__________ 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 Project 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 as Liquidated Damages. This provision shall not be construed as a penalty, but as a bona fide attempt to establish an agreed measure of damages which SEPTA will suffer as a result of delays in completion beyond the Completion Date. This provision shall be in addition to any other rights or remedies SEPTA may have in law or equity.

F. Responsibility for Completion

The Contractor agrees that whenever, in SEPTA's sole opinion, Contract interim milestone or completion milestone dates will not be met, it shall take some or all of the following actions, as directed by SEPTA:

1. Increase engineering and design staffing, when necessary, to meet design milestones.
2. Increase manpower in such quantities and crafts to eliminate the backlog of work.
3. 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.
4. Propose a Recovery Schedule for the work under its contract in conformance with EXHIBIT III.

All of the above shall be subject to SEPTA's approval.

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

INSERT BAFO COMMERCIAL TERMS OVER THE LIFE OF THE GESA

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. In the event a dispute arises between SEPTA and any prime contractor, which dispute is based upon increased costs claimed by one (1) prime contractor occasioned by delays or other actions of another prime contractor, additional retainage in the sum of one and one-half times the amount of any possible liability may be witheld by SEPTA until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the Contractor causing the additional claim furnishes a bond satisfactory to SEPTA to indemnify SEPTA against the claim.

6. 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. If the Contractor has made application for payment as above, the Architect or Engineer will, with reasonable promptness, after receipt of the invoice, furnish the same to the Project Manager for his or her review and determination as to the amount to be properly due.
2. 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.

3. 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.

4. 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 of the Construction of the CHP Plant

1. When the Contractor considers that the entire construction 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 completed Work, in accordance with paragraph XIC 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 FI 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.

No payments under the GESA 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.

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.E, 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 XIIC 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
XIII. PROTECTION OF PERSONS AND PROPERTY

A. Safety Precautions and Programs

The Contractor shall be 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 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.

2. 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.

3. When the use or storage of explosives or other 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.

4. All damage or loss to any property referred to in Paragraphs XIII.B.1.b. and XIII.B.1.c. caused in whole or in part by the Contractor, any Subcontractor, at any tier, or anyone directly or indirectly employed or controlled by any of them, shall be remedied by the Contractor.

5. 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 unless otherwise designated in writing by the Contractor to the Project Manager.

6. The Contractor shall neither load nor permit any part of the Work to be loaded so as to endanger its safety.

7. 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 or subcontractors who exhibits unsafe behavior or behavior which involves a reasonable suspicion of being impaired from alcohol or drugs on or about the jobsite. This provision shall be strictly and promptly enforced by the Contractor.
8. The Contractor shall comply with Section 107 of the Contract Work Hours and Safety Standards Act (40 USC 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 costs of all changes in U.S. Department of Labor regulations during the term of the Contract, whether anticipated or not, regardless of the amount of such costs and that these costs shall not be passed on or through SEPTA under any circumstances.

C. 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. Additional approvals may be required for Change Orders under Paragraph XVIII.O. A sample 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, Modifications and Amendments to the Contract

No Change Order, modification 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, modifications 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. 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. The Contractor's proposal for changed Work shall follow the guidelines set forth below:

   a. Labor For Other Than Professional Services Performed By Architectural/Engineering Firms
(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. No bonuses or incentive compensation shall be as part of this rate.

(3) **Subsistence and/or Mileage** - if required in union agreements.

(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.

(5) **Overhead** - percent of labor includes: All supervision and administration above and including the General Foreman Level, such as Superintendents, Engineers, Accountants, Clerks, Timekeepers, Office Managers, and all others on staff; office supplies; drinking water; temporary heat, light and power; field toilets; costs of services; material, small tools and/or equipment not incorporated in the Work or directly associated with the Work; bonds; and all home office costs. Maximum allowable per net amount of labor charge (subparagraphs (1) and (2) above) is ten (10%) percent.

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

b. **Labor For Professional Services Performed By Architectural/Engineering Firms**

(1) **Actual Wages** - base hourly rate for all levels below that of principals of the firm, such as partners or owners, but excluding premium pay paid to all employees directly engaged in the Work.

(2) **Premium Time** - actual premium costs paid, plus paid social security taxes, unemployment insurance, workers' compensation insurance.

(3) **Combined Labor Burden, Overhead and Administrative Expense** - to be established as a percent of actual wages paid under subparagraph (1) above, exclusive of premium time paid under subparagraph (2) above, and shall include all types of costs covered by subparagraphs 2.a.(2) and 2.a.(5) and compensation for principles of the firm, such as partners or owners. Maximum allowable per net amount of labor charge is eighty (80) percent.

(4) **Profit** - a maximum ten (10) percent of the sum of subparagraphs (1) and (3) above.

c. **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. above.

(2) Actual freight and transportation costs of materials used.

(3) Overhead and Profit: A maximum of fifteen (15%) percent overhead and profit on subparagraphs (1) and (2) above.

d. 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 Contractor owned equipment.

e. 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.

f. Additional Insurance Costs

(1) The net increase in premiums for general liability and property damage, and professional liability insurance charged by insurance company(ies) which net increase is occasioned solely by authorized change order Work.

(2) No additional overhead or profit will be authorized, permitted or paid on additional insurance costs allowed under subparagraph 2.f.(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 (a) daily time slips showing the name of each employee on such work, the number of hours which the employee was employed thereon, the character of the employee's 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 subparagraphs a. through e. 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 on 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 Sub part 31.2 et seq. of the Federal Acquisition Regulations, 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 Sum 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 five (5) days after the occurrence of
the event giving rise to such claim or it shall not be entitled to any compensation therefore. 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.C. 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 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 his or her observation and replaced at the Contractor's expense.

2. If any other Work has been covered which the Project Manager as 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.

B. Correction of Work

1. During the entire GESA term, the Contractor shall promptly correct all defective or incomplete Work, including any 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.

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 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.

5. If the Contractor does not remove such defective or non-conforming Work within a reasonable time fixed by written notice from SEPTA, 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 handling fees. 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.

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 in accordance with FAR 31.2.

Such cost will include contract close-out costs 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. The amount of profit paid shall be determined by the parties, and shall not exceed 10% of the Contract Sum. The Contractor shall submit promptly its termination claim to SEPTA and the parties shall negotiate a termination settlement 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 is adjudged a bankrupt, or if it makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency, or if it refuses or fails to supply enough properly skilled workmen or proper materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a
material violation of any provision of the Contract Documents, then SEPTA, may, without prejudice to any right or remedy and after giving Contractor and its surety, if any, ten (10) days written notice, terminate the employment of Contractor and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by Contractor and finish the Work by whatever method SEPTA may deem expedient. If the expense of finishing the Work exceeds the unpaid balance of the Contract Sum, Contractor shall pay the difference to SEPTA.

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.
XVIII. MISCELLANEOUS PROVISIONS

A. Governing Law

The Contract shall be governed by the law of the Commonwealth of Pennsylvania and any disputes or controversies between the parties arising from the Contract shall be commenced in, and decided by, the courts of the Commonwealth of Pennsylvania.

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. 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 of 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 an patent, it shall be responsible for such loss unless it promptly gives such information to the Project Manager.

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 to by mail to:

For SEPTA: Senior Director of Procurement - Material and Contracts
Southeastern Pennsylvania Transportation Authority (SEPTA)
1234 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107-3780

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. SEPTA's EEO/AA Contractual Requirements (If Applicable)

Contractor shall abide by all requirements attached hereto and made a part hereof in EXHIBIT IV for all the Work performed in connection with the Contract.

P. Financing

1. It is understood and agreed that SEPTA may obtain financing for the Project. Such financing may be in the form of a direct construction loan or may be provided through other contractual or lease arrangements. Notwithstanding the form of such financing, the source thereof is herein called the “Lender”. As a consequence thereof, the Lender will be interested in the performance of the Contract by Contractor in accordance with its terms and provisions. Accordingly, it is agreed by the parties hereto that:

a. No Change Order shall be effective unless and until the Lender approves the same if the financing documents so require.

b. Contractor shall cooperate with the Lender, shall comply with procedures established by the Lender with respect to inspections, applications for payment and other administrative matters in connection with the financing and shall enter into such reasonable and customary agreements as the Lender may require in order to afford the aforesaid financing to SEPTA.

c. The parties agree that on the request of any Lender providing construction or permanent financing, Contractor will amend the Agreement in order to conform to such Lender's requirements; provided that such amendment would not require Contractor to perform services or assume obligations significantly greater than Contractor has agreed to perform or assume hereunder.

Q. Waiver of Liens

1. Contractor for itself and anyone else acting through or under it, covenants and agrees that no mechanics' or materialmen's liens or claims shall be filed or maintained by it, them, or any of them, for or on account of any Work to be done or materials furnished under the Agreement. Contractor for itself and any subcontractor and anyone else acting or claiming through or under it, hereby waives and relinquishes all right to file a mechanics' lien, claim, or notice of intention to file any lien or claim. This Paragraph XVIII.P. is a separate and independent covenant and shall be operative and effective with respect to Work or labor done and materials furnished under any supplemental contract or contracts for extra or different work, although the covenant might not be referred to therein, as well as to Work and labor to be done or materials to be furnished under the Agreement. This undertaking shall be further implemented by the execution and delivery by Contractor to SEPTA simultaneously with the execution of the Agreement of a general Waiver of Liens to be filed on record prior to the commencement of any Work by Contractor.

2. In order to give SEPTA and the Lender full power and authority to protect themselves and the real estate and improvements described in the Contract Documents, against any or all mechanics' liens, or claims filed by Contractor or by any subcontractor or anyone else under or through it in violation of this Paragraph XVIII.P.:
a. Contractor for itself and for any subcontractor and anyone else acting under or through it hereby irrevocably authorizes and empowers any attorney of any court of competent jurisdiction of the Commonwealth of Pennsylvania, or elsewhere, to appear as attorney for it, them, or any of them in any such court and, in its or their name or names, mark satisfied of record at the cost and expense of Contractor or of them or any of them, and all such claim or claims, lien or liens, filed in violation of this Paragraph, or cause to be filed in connection with such claim or claims, lien or liens (in the name of Contractor or any subcontractor or anyone else acting under or through it) any pleading or instrument or any amendment to any pleading or instrument previously filed by it or them, to incorporate therein as part of the record the waiver contained in this Paragraph and for such act or acts the Agreement shall be good and sufficient warrant and authority, and Contractor for itself, and for all rights and all manner of errors, defects, and imperfections whatsoever in entering such satisfaction or in filing such pleading, instrument or amendment, or in any way concerning them.

b. SEPTA and the Lender shall each have the absolute right in their own respective names or in the name of Contractor or any subcontractor or any other person who shall have filed such a claim or lien, to cause any and all such claims or liens to be discharged by any other instrument, pleading or proceeding permitted at law or in equity. Contractor, any subcontractor, and any other person who shall have filed any such claim or lien shall indemnify SEPTA and the Lender against the claim or lien, and against all direct or consequential loss resulting in any way from the filing of any mechanics claim or lien, and shall pay or cause to be paid to SEPTA and the Lender, respectively, the amount of its loss, with interest and all expense incident to their having discharged such claim or lien, including attorney's fees, costs and other disbursements. The Lender shall have the right to deduct from any and all sums due to Contractor or subcontractor thereafter, without prejudice to the right of SEPTA or of the Lender to recover any amount due to either of them, respectively, as a result of this indemnity agreement.

The provisions of this Paragraph XVIII.P. shall be included in all Subcontracts.

R Third Party Contract Rights

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

S Use if 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.

XIX. DISPUTES

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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 - Material and Contracts. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Senior Director of Procurement - Material and Contracts. In connection with any such appeal, the Contractor 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 - Material and Contracts shall be binding upon the Contractor and the Contractor shall abide by the decision.

B. Performance During Disputes. Unless otherwise directed by SEPTA, Contractor will 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 Agreement to Contractor, this Agreement 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, under seal, as of the day and the year first above written

ATTEST: ________________________________  ATTEST: ________________________________
(Secretary or Treasurer)  (Secretary or Treasurer)

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY:

(SEAL)

CONTRACTOR:

(Please type name)  (Please type name)

(President or Vice-President)

APPROVED AS TO FORM:

By: ________________________________
  Office of General Counsel
  Southeastern Pennsylvania Transportation Authority

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EXHIBIT I

FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED PROVISIONS FOR CONTRACTS

SECTION A
FEDERAL CONTRACT REQUIREMENTS

1. **Contract Changes.**

   Any proposed change in the Contract shall be submitted to SEPTA for its prior approval.

2. **Government Inspections.**

   The Government shall have access to the site of construction and shall have the right to inspect all Project works.

3. **Debarment and Suspension (Executive Orders 12549 and 12689).**

   No contract shall be made by the Contractor to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement and Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. This list contains the name of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Subcontractors with awards that exceed $100,000 shall provide the required certification regarding its exclusion status and that of its principle employees to the Contractor. Contractor shall promptly forward these certifications to SEPTA.

4. **Nondiscrimination.**

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

   a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, 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, religion, sex, 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.

   b. 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, or national origin.

   c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and with the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the FTA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations or orders, the Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Federal or Federally assisted contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that if a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

5. **Affirmative Action.**

   Goals, Timetables and requirements for Affirmative Action are found in Exhibit I, Section B.


   In connection with contract implementation, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, age, creed, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, age, creed, 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.

   Contractor further agrees to insert the foregoing provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
7. **Wage Rates.**

Minimum wages to be paid on this construction project have been established by the U. S. Department of Labor and are found in Exhibit I, Section E.

8. **Labor Provisions - Construction**

   a  **Minimum Wages**

   (1) All laborers and mechanics employed or working upon 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), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, 29 CFR Part 3), the full amount of wages and bona-fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona-fide fringe benefits under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR § 5.5 (a) (1) (iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs that cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided at 29 CFR § 5.5 (a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR § 5.5 (a) (1) (ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

   (2)  

   The contracting officer shall require that any class of laborers or mechanics, including helpers, that is not listed in the wage determination and that is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

   (i) Except with respect to helpers as defined in 29 C. F. R. § 5.2 (n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

   (ii) The classification is utilized in the area by the construction industry; and
(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR § 5.5 (a)(i)(1) (B) or 29 CFR § 5.5 (a)(i)(1) (C), shall be paid to all workers performing work in the classification under the Contract from the first day on which work is performed in the classification.

(e) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(f) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
b. **Withholding.**

The FTA 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 the Contract or any other Federal contract with the same, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is withheld 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 apprentices, 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, the FTA 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.

c. **Payrolls and Basic Records.**

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at 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). Such records shall contain the name, address, and Social Security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section l(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5 (a)(1) (iv) that the wages of any laborers or mechanics include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section l(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (a) The Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to SEPTA for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5 (a) (3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock no. 029-005-00014-1), U.S. Government Printing Office, Washington D.C. 20402. The prime contractor is responsible for submission of copies of payrolls by all subcontractors.
(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under 29 CFR § 5.5 (a) (3) (i) and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of optional form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR § 5.5 (a) (3) (ii) (B).

(d) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under 18 U.S.C. § 1001 and 31 U.S.C. § 231.

(3) The Contractor or Subcontractor shall make the records required under 29 CFR § 5.5 (a) (3) (i) available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the FTA 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. Furthermore, failure to submit the required records upon request or to make such records available may by grounds for debarment action pursuant to 29 CFR § 5.12.

d. **Apprentices and Trainees**

(1) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeyman on the job site in any craft classification shall not be
greater than the ratio permitted to the Contractor as to the entire work force under
the registered program. Any worker listed on a payroll at an apprentice wage rate,
who is not registered or otherwise employed as stated above, shall be paid not less
than the applicable wage on the wage determination for the classification of work
actually performed. In addition, any apprentice performing work on the job site in
excess of the ratio permitted under the registered program shall be paid not less
than the applicable wage rate on the wage determination for the work actually
performed. Where a contractor is performing construction on a project in a locality
other than that in which its program is registered, the ratios and wage rates
(expressed in percentages of the journeyman's hourly rate) specified in the
Contractor's or Subcontractor's registered program shall be observed. Every
apprentice must be paid at not less than the rates specified in the registered program
for the apprentice's level of progress, expressed as a percentage of the journeyman's
hourly rate specified in the applicable wage determination. Apprentices shall be
paid fringe benefits in accordance with the provisions of the apprenticeship
program. If the apprenticeship program does not specify fringe benefits,
apprentices must be paid the full amount of fringe benefits listed on the wage
determination for the applicable classification. If the Administrator determines that
a different practice prevails for the applicable apprentice classification, fringe
benefits shall be paid in accordance with that determination. In the event the
Bureau of Apprenticeship and Training, or a state apprenticeship agency
recognized by the Bureau, withdraws approval of an apprenticeship program, the
Contractor will no longer be permitted to utilize apprentices at less than the
applicable predetermined rate for the work performed until an acceptable program
is approved.

(2) **Trainees.** Except as provided in 29 CFR § 5.16, trainees will not be permitted to
work at less than the predetermined rate for the work performed unless they are
employed pursuant to and individually registered in a program which has received
prior approval, evidenced by formal certification by the U. S. Department of Labor,
Employment and Training Administration. The ratio of trainees to journeymen on
the job site shall not be greater than permitted under the plan approved by the
Employment and Training Administration. Every trainee must be paid at not less
than the rate specified in the approved program for the trainee's level of progress
expressed as a percentage of the journeyman's hourly rate specified in the
applicable wage determination. Trainees shall be paid fringe benefits in
accordance with the provisions of the trainee program. If the trainee program does
not mention fringe benefits, trainees shall be paid the full amount of fringe benefits
listed on the wage determination unless the Administrator of the Wage and Hour
Division determines that there is an apprenticeship program associated with the
corresponding journeyman wage rate on the wage determination, which provides
for less than full fringe benefits for apprentices. Any employee listed on the
payroll at a trainee rate who is not registered and participating in a training plan
approved by the Employment and Training Administration shall be paid not less
than the applicable wage rate on the wage determination for the classification of
work actually performed. In addition, any trainee performing work on the job site in
excess of the ratio permitted under the registered program shall be paid not less
than the applicable wage rate on the wage determination for the work actually
performed. In the event the Employment and Training Administration withdraws
approval of a training program, the Contractor will no longer be permitted to utilize
trainees at less than the applicable predetermined rate for the work performed until
an acceptable program is approved.

Helpers. Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in 29 CFR § 5.5(a)(1)(ii). The allowable ratio of helpers to journeymen employed by the Contractor or Subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each Contractor's or in each Subcontractor's own work force employed on the job site.) Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR § 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

e. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated herein by reference.

f. 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.

g. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and related acts contained in 29 CFR Parts 1, 3, and 5 are incorporated herein by reference.

h. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provision of the Contract shall not be subject to the general disputes clause of the 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 the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

i. (1) Certification of Eligibility. By entering into the 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).

(2) No part of the Contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12 (a) (1).

j. **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 laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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 work week.

k. **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the requirements of 29 CFR Section 5.5 (b)(1), the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or such territory) 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 29 CFR § 5.5 (b)(1), in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by 29 CFR § 5.5 (b)(1).

l. **Withholding for Unpaid Wages and Liquidated Damages.** The FTA or 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 at 29 CFR § 5.5 (b)(2).

m. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs a. through l. of this paragraph and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier Subcontractor with the clauses set forth in subparagraphs a. through m. of this paragraph.

9. **Certified Payrolls-Construction Projects.**

SEPTA shall obtain from each Contractor and Subcontractor a certified copy of each weekly payroll within seven days after the regular payroll date. Following a review by SEPTA for compliance with State and Federal labor laws, the payroll copy shall be retained at the project site for later review by the FTA. A Contractor may use the Department of Labor Form WH-347, "Optional Payroll Form," which provides for all the necessary payroll information and certifications. This Department of Labor form may be purchased at nominal cost from the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402. However, the Contractor may use his own payroll form provided it includes the same information and certifications as the Department of Labor Form WH-347, "Statement of Compliance."

10. **Air Pollution.** (for construction contracts with a Contract Sum over $100,000)

Contractors and suppliers providing facilities or equipment must submit evidence to SEPTA that the facilities and equipment are or will be designed and equipped to limit air pollution as provided in accordance with appropriate FTA directives and all other applicable standards. This evidence and related documents will be retained by SEPTA for on-site examination by the FTA.

   **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.

   **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.

12. **Cargo Preference - Use of United States-Flag Vessels.**

   The Contractor agrees-

   **a.** To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to 46 CFR Part 381, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

   **b.** To furnish within 30 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in Paragraph a. above to SEPTA (through the prime contractor in the case of subcontractor bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh St. S.W., Washington, D.C. 20590, marked with appropriate identification of the Project.

   **c.** To insert the substance of the provisions of this clause in all subcontracts issued pursuant to the Contract.

13. **The Contractor shall comply with the following requirements stated in 49 CFR Part 18:**

   **a.** Contractor shall recognize 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 (P.L. 94-163) (42 USC Section 6321 et seq.).

   Grantor Agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

   **b.** Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms.
(1) It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources for supplies, equipment, construction and services. Affirmative steps shall include the following:

(a) Including qualified small and minority businesses on solicitation lists.

(b) Assuring that small and minority businesses are solicited whenever they are potential sources.

(c) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(d) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(e) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(f) If any subcontracts are to be let, requiring the prime contractor to take affirmative steps in (a) through (e) above.

c. For all contracts and subcontracts in excess of $100,000, the Contractor agrees to comply with the applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and the Environmental Protection Agency (EPA) regulations (40 CFR Part 15), which prohibit the use of non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations will be reported to the FTA and to the appropriate EPA Regional Office.

14. **Buy America Requirements.** *(if the Contract Sum is over $100,000)*

The Contract is subject to 49 U.S.C. § 5323(j) [formerly Section 165 of the Surface Transportation Assistance Act of 1982, as amended] and the applicable regulations in 49 CFR Part 661.

15. **Use of United States Flag Air Carriers.**

a. Definitions.

(1) "International air transportation," as used in this Paragraph 13, means transportation by air between a place in the United States and a place outside the United States or between two (2) places both of which are outside the United States.

(2) "United States," as used in this Paragraph 13, means the fifty (50) States, the District of Columbia, the Commonwealth of Puerto Rico and possessions of the United States.

(3) "U. S. - Flag carrier," as used in this Paragraph 13, means as air carrier holding a certificate under Section 401 of the Federal Aviation Act of 1958, as amended (49 USC 1371).
b. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC 1517) (Fly America Act) requires that all of SEPTA's contractors and their subcontractors use U.S. - flag air carriers for U. S. Government financed international air transportation of personnel (and their personal effects) or freight, to the extent that services by those carriers is available. It requires that the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of SEPTA, for international air transportation secured aboard a foreign-flag air carrier if a U.S. - flag air carrier is available to provide such services.

c. The Contractor agrees, in performing Work under the Contract, to use U.S. - flag air carriers for international transportation of personnel (and their personal effects) or freight to the extent that service by those carriers is available.

d. In the event that the Contractor selects a carrier other than a U. S.- flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. - FLAG AIR CARRIERS

I hereby certify that international air transportation of persons (and their personal effects) or freight by U.S. - flag air carrier was not available or it was necessary to use foreign-flag air carrier services for the following reasons (see 48 CFR 47.403):

(State reasons)

Date

Signature of traveler or authorizing officer

Title or position

Company

e. The Contractor shall include the substance of this Paragraph 13, including this subparagraph, in each subcontract or purchase under the Contract that may involve international air transportation.

16. Use of Seat Belts.

Pursuant to Executive order No. 13043, dated April 16, 1997, 23, U. S. C. § 402, the Contractor is encouraged to adopt an on-the-job seat use policy and program for its employees when operating company-owned, rented, or personally-operated vehicles and include this provision in all subcontracts and subagreements entered into under this Project.
17. **Federal Changes.**

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 applicable Master Funding Agreement between SEPTA and the FTA, as they may be amended or promulgated from time-to-time during the term of this Contract. Contractor’s failure to comply shall constitute a material breach of this Contract.

18. **No Obligation by the Federal Government to Third Parties.**

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

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

19. **Program Fraud and False or Fraudulent Statements or Related Acts.**

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. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. 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 cause 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 the 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 the FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
20. **Incorporation of Federal Transit Administration (FTA) Terms.**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the United Stated Department of Transportation (U.S. DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F, dated June 19, 2003 or any subsequent revision or replacement of this Circular, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all the FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. 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.

21. **Exclusionary or Discriminatory Specifications Prohibited.**

Apart from any inconsistent requirements imposed by Federal statutes or regulations, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using exclusionary or discriminatory specifications.
EXHIBIT I
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:

<table>
<thead>
<tr>
<th>Goals for minority participation for each trade (all trades)</th>
<th>Goals for female participation for each trade (all trades)</th>
</tr>
</thead>
<tbody>
<tr>
<td>17.3%</td>
<td>6.9%</td>
</tr>
</tbody>
</table>

b. 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.
c. 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.

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).
EXHIBIT I

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.


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 is 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.
EXHIBIT I
SECTION D

RESTRICTIONS ON LOBBYING

(If Contract Sum exceeds $100,000)

1. Certification Requirements.

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

2. Disclosure Requirements.

a. Each contractor who requests or 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 DB-I-25 through DB-I-27 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.
## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure)

1. **Type of Federal Action:**
   - G a. contract
   - b. grant
   - c. cooperative agreement
   - d. loan
   - e. loan guarantee
   - f. loan insurance

2. **Status of Federal Action:**
   - G a. bid/offer/application
   - b. initial award
   - c. post award

3. **Report Type:**
   - G a. initial filing
   - b. material change

   For Material Change Only:
   - year
   - quarter
   - date of last report

4. **Name and Address of Reporting Entity**
   - G Prime  G Subawardee
   - Tier
   - Congressional District, if known:

5. **If reporting entity in No. 4 is Subawardee, Enter Name and Address of Prime**

6. **Federal Department/Agency:**

7. **Federal Program Name/Description:**
   - CFDA Number, if applicable:

8. **Federal Action Number, if known:**

9. **Award Amount, if known:**

10. **a. Name and Address of Lobbying Entity**
    (if individual, last name, first name, MI):

11. **b. Individuals Performing Services**
    (including address if different from No. 10a)

12. **Amount of Payment**
    (check all that apply):

13. **Type of Payment**
    (check all that apply):

14. **Brief Description of Service Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

15. **Continuation Sheet(s) SF-LLL-A attached:**
   - G Yes  G No

16. **Information requested through this form is authorized by title 33 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**

   Signature:
   - Print Name:
   - Title:
   - Telephone No:
   - Date:

Federal Use Only

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Standard Form - LLL
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.
EXHIBIT I

SECTION E

WAGE RATES

(Note: Current Wage Rate determinations can be obtained by the Project Manager from Contract Grant Compliance Department for insertion prior to bidding. THIS NOTE IS TO BE DELETED FROM ACTUAL BIDDING/CONTRACTING DOCUMENTS!!!)
EXHIBIT II
STATE AND LOCAL CONTRACT REQUIREMENTS

I. **Nondiscrimination Clause.**

A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

B. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Contract on account of gender, race, creed, or color.

C. Contractor and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

D. Contractor shall not discriminate by reason of gender, race, creed, or color, against any subcontractor or supplier who is qualified to perform the work to which the Contract relates.

E. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the Contractor or subcontractor shall furnish such information on reporting forms supplied by SEPTA or the Bureau of Contract Administration and Business Development.

F. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provision will be binding upon each subcontractor.

G. The Commonwealth or SEPTA may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the Commonwealth and/or SEPTA may proceed with debarment or suspension and place a record of the action regarding the Contractor in the Commonwealth Contractor Responsibility Files.

II. **Air Pollution and Environmental Protection.**

The Contract is subject to the provisions of the Air Pollution Control Act of 1960, as amended (35 P.S. 4001, et seq.) and any rules, regulations or orders issued by the Pennsylvania Department of Environmental Resources under the provisions of that Act.
III. **Additional Work Due to Changes in Environmental Protection Requirements.**

a. For purposes of this Paragraph, "Environmental Laws" shall mean the provisions of the Air Pollution Control Act of 1960, as amended (35 P.S. 4001, et seq.), and any rules, regulations or orders issued by the Pennsylvania Department of Environmental Resources under the provisions of that Act.

b. If the Contractor must undertake additional work due to the enactment of new or the amendment of existing Environmental Laws occurring after the submission of the successful bid, SEPTA shall issue a change order setting forth the additional work that must be undertaken which shall not invalidate the Contract. The cost of such a change order to SEPTA shall be determined in accordance with the provisions of Paragraph XIV. of the Agreement; provided, however, that such additional costs to undertake work not specified in the invitation for bid shall not be approved unless written authorization is given the Contractor prior to its undertaking such additional activity. In the event of a dispute between SEPTA and the Contractor, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, the then obtaining rules of the American Arbitration Association.

IV. **Steel Products.**

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 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 this Work.

V. **Contractor Responsibility.**

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 do 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](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
EXHIBIT III

PLANNING, SCHEDULING AND PROGRESS MONITORING SPECIFICATIONS
NETWORK

DESIGN/BUILD

1. DEFINITION OF TERMS

1.1 Contract Skeleton Form:

A form generated by SEPTA's Capital Program Management System. This form is used to record progress and initiates the payment process for the Contractor.

1.2 CPM Schedule (Critical Path Method Schedule):

The project management tool used for planning, scheduling and monitoring project progress. The CPM Schedule will be presented in the precedence diagramming method format.

1.3 Value Line Breakdown:

A list of cost items and associated CPM Schedule activities. The value line breakdown must total the Contractor's Contract Sum.

2. SCHEDULE COORDINATION AMONG OTHER PROJECTS

If this Project interfaces with one or more other SEPTA projects, and, in the event that two or more parties with whom SEPTA has contracts interface on specific project tasks, the Project Manager shall have the authority to direct that Contractor conforms to a schedule approved by the Project Manager for the interfacing items. The Project Manager can direct one of the involved contractors to develop the coordinated schedule for these interface items for the Project Manager's review and approval.

3. BASELINE SCHEDULE SUBMISSION REQUIREMENTS

3.1 CPM Capability Statement

The Contractor shall submit a CPM Capability Statement, if requested, after Notice to Proceed. This Statement will verify that the Contractor's organization either has the in-house capability to meet the requirements of this Exhibit III and the time impact analysis requirements, as specified in the contract, or that the Contractor employs a consultant who is so qualified.
"Capability" will be verified by a description of construction projects to which the Contractor or his consultant has successfully applied CPM and will include at least two (2) projects valued at least half of the expected value of this project, at least one project which was controlled throughout the duration of the project by means of periodic systematic review of the CPM schedule. Samples of CPM network diagrams, and computer reports, for both the initial and updated schedules, will be supplied to SEPTA for its review and approval, if requested.

SEPTA has the right to approve or reject the Contractor's CPM Capability Statement and will notify the Contractor of SEPTA's decision. If SEPTA does not accept the Contractor's proposed in-house services or consultant, it shall submit another CPM capability statement with a substitute that is acceptable to SEPTA within ten (10) calendar days after SEPTA's notification.

3.2 Part I Submittal

This initial submittal is a schedule of the Contractor's work during the first 90 calendar days after receipt by the Contractor of the Notice to Proceed. It is a detailed schedule of design, engineering, mobilization, procurement and construction during this period. This submittal shall include a CPM network diagram, in precedence format, which graphically depicts the activities of the Contractor and will include activity numbers, descriptions, durations, responsibility codes, work area codes, and relationships among these activities. The Contractor is responsible for making the Part I submittal.

The Contractor shall attend a planning meeting with SEPTA's Project Manager and scheduling and budgeting personnel within fourteen (14) calendar days after receipt of the Notice-To-Proceed. At this meeting, the Contractor shall submit the Part I Submittal.

3.3 Part II Submittal

This submittal is a schedule of the Contractor's work for the entire contract period. It is a detailed schedule and shall be delivered to SEPTA no later than thirty-five (35) calendar days after receipt by the Contractor of his Notice to Proceed. The Contractor is responsible for making the Part II submittal.

The Part II submittal shall include all of the Work, as specified in the Contract. Failure to include any element of Work required for the performance of the Contract shall not excuse the Contractor from completing all of the Work required within the Contract Time.

The Contractor shall submit to SEPTA for its review and approval the following as the Part II Submittal:

a. Five (5) copies of a CPM network diagram electromechanically drawn in the precedence format as described in Section 3.3.1 of these specifications.

b. Five (5) copies of each computer report as described in Section 3.3.2 of these specifications.

c. Five (5) copies of a written narrative explaining the CPM schedule and the Contractor's general approach for meeting interim and completion milestones as described in Section 3.3.3 of these specifications.
3.3.1 CPM Network Diagram

The CPM Network Diagram shall include all of the Contractor's work activities with sufficient detail so that all interfaces with all direct and related parties are highlighted. Direct and related parties include, but are not limited to, force account work by SEPTA or other agency(ies) and work by public utilities.

A minimum of ___ work activities are required.

The Contractor shall prepare the CPM schedule in accordance with the following instructions:

a. Early and late start and finish dates shall be in total calendar days from the date of receipt of Notice to Proceed and shall be calculated according to CPM principles.

b. The critical path shall be determined according to CPM principles and shall be highlighted on the electromechanical network diagram to distinguish critical activities from other activities. Milestones shall be highlighted by a flag or other symbol.

c. The CPM Network Diagram shall have all major procurement activities identified for major and time critical materials and equipment. This shall include shop drawing submittal and approval, lead times for the fabrication and delivery of materials and equipment, and installation of materials and equipment.

d. The CPM Network Diagram shall be sufficiently detailed to accurately depict all the work required by the Contractor. Activity durations shall be the Contractor's estimate, in calendar days, of the time required to perform each activity. No individual activity will have a duration exceeding thirty (30) calendar days. Activities with durations of less than five (5) days shall be held to the absolute minimum. For an equipment or material fabrication item whose duration exceeds thirty (30) calendar days, shall be used. Each activity shall have a detailed description and shall include the estimated percentage of total work as part of the description.

e. Contract milestone and completion dates must be shown on the CPM Network Diagram. These dates shall be input as finish constraint dates and shall agree with such dates specified in the Contract.

f. Constraint dates used in the schedule shall be justified and are subject to SEPTA's approval.

g. Contractor responsibility code must be associated with each respective CPM schedule activity. This code shall use the fourth activity code field in the Contractor's project management software. This code shall include SEPTA subcontractor responsibilities. (Section 6 of these specifications defines the activity code requirements for the first three fields.)
h. The minimum activity information required on the CPM Network Diagram shall include the following:

(1) A unique activity number (maximum seven (7) numeric characters) for each activity. Special characters or embedded blanks may not be used.

(2) A concise description of the work represented by the activity. Descriptions will indicate definable items of work. The use of the words "start", "continue", "complete", and "similar" are not acceptable.

(3) An expected activity duration and remaining duration in calendar days. For time-scaled Networks, these durations may be presented graphically.

i. Activity relationships consistent with proper logic shall be shown with lag codes.

j. The activities which are displayed on the Network Diagram shall be grouped into major components of work. The description of these components shall appear on the left hand side of the Diagram.

k. The project title and data date shall be displayed on the Network Diagram.

l. A legend shall be provided which indicates the various symbols used and their meanings.

The Contractor may submit either a time-scaled or non-time scaled (pure logic) CPM Network Diagram in precedence format, subject to the approval of the Project Manager. Approval will be made on or before the planning meeting held within 14 calendar days of receipt of Notice to Proceed.

3.3.2 Computer Reports

Computer generated activity reports shall include all activities organized in the following activity sorts:

a. Activity number.

b. Total float, then by early start.

c. Responsibility, then by early start.

d. Major work component or area, then by early start.

e. Early start, then total float for the project duration.

f. Predecessor-successor report sorted by activity number showing the relationship of each activity to other activities in the CPM network with associated lag codes.

g. Constraint date report showing all contract milestones and other constraint dates, as approved by SEPTA.
3.3.3 Narrative Report

The Contractor shall submit a written narrative explaining the CPM schedule and the Contractor's approach for meeting interim and completion milestone dates. This report shall include an analysis and summary of the contents of the computer reports and will address, as a minimum: the critical path, construction sequencing, major procurement items that may influence the critical path, and activities that influence interim contract milestones and SEPTA approved constraint dates.

3.3.4 Summary Schedule Submittal

If specified in Division 1 of the Specifications which form part of the Contract Documents, the Contractor shall provide a schedule consisting of seventy-five (75) to one hundred (100) summary activities which represent the approved CPM Schedule. The summary activities shall be a roll-up of the activities in the approved Part II submittal. The activities which make up each summary activity shall be clearly defined. The summary schedule shall identify, as a minimum, the following:

a. The Project critical path.

b. Milestones which are defined in the Contract, representative of interfaces with all direct and related parties, and SEPTA approved constraint dates.

c. Activity relationships reflecting the logic upon which the Contractor's construction sequencing is based.

The Summary Schedule's activities shall conform to the requirements described in Section 3.3.1.

4. REVIEW AND ACCEPTANCE OF SCHEDULE

After review by SEPTA, the CPM schedule shall be revised and resubmitted as required within fourteen (14) calendar days. SEPTA will direct all changes and the Contractor shall comply accordingly. Revision and resubmittal will continue until SEPTA acceptance is achieved. When SEPTA accepts the CPM Schedule, the Contractor shall sign and date the CPM Network Diagram in the lower right hand corner of the first sheet.

5. VALUE LINE BREAKDOWN SUBMISSION REQUIREMENTS

After approval of the Part II submittal, the Contractor shall submit for SEPTA's approval the contract price broken into value lines, assigning values to relevant CPM schedule activities. The Value Line Breakdown shall be presented in tabular form, identifying each value line and related information, and in graphical form, showing the Contractor's cash flow projection. The schedule data and value line data shall be included in the computer disk as described in Section 6 of these specifications.

The tabular submittal shall include a unique value line number, a description, unit of measure, quantity and unit rate (if applicable), and total cost for each value line. The value line numbers must be the same as the approved Part II schedule's activity numbers to which they are associated. The sum of value line costs shall be equal to the total contract amount.
The graphical representation of the value line breakdown shall show the Contractor's anticipated cash flow projection from Notice-To-Proceed through contract completion. The graph shall show cash flow on a monthly basis both incrementally and cumulatively, and must be consistent with the approved Part II schedule's early and late dates.

After review by SEPTA, the Contractor shall resubmit, if necessary, the Value Line Breakdown in tabular, graphical and computer disk form within seven (7) calendar days. Review, revision, and resubmission will continue until SEPTA approval is achieved.

6. COMPUTER DISK SUBMISSION REQUIREMENT

After SEPTA approves the Part II Schedule Submittal, the Contractor shall submit a computer disk in Primavera Project Planner (P3) format (version 4.1 or higher). The disk will contain the approved Part II Schedule data and the Value Line Breakdown of dollar values assigned to the relevant CPM schedule activities. The Contractor shall submit this data on standard 3-1/2 inch computer disk.

If the Contractor uses project management software other than P3, it must notify SEPTA which shall provide him with an ASCII file format of schedule and value line data. The Contractor shall submit his schedule and value line data in this format in accordance with the submittal requirements specified.

If the Contractor uses unit rates on any value line rather than lump sum, it must clearly identify those value lines with their quantities, unit rates, units of measure and total cost in a listing accompanying the computer disk.

The following criteria shall be adhered to in preparing the P3 disk:

1. The activity number shall be seven (7) numeric characters or less. No alphabetic characters shall be used.

2. The first three (3) activity code fields must be defined in P3's Activity Codes Dictionary as follows:
   a. The first activity code shall define the Contractor's responsibility code. The classification name shall be "CONT" and shall have a field length of two (2) characters. The activity code titles shall be "GC" for each activity in the schedule.
   b. The second activity code shall define the work area. The classification name shall be "AREA" and shall have a field length of two (2) characters.
   c. The third activity code field shall define the constraint date for that particular CPM activity, if applicable. This field shall have a classification name of "CONS" and shall have a field length of ten (10) characters. This field must conform to the following format:
      1. Character 1 shall be either an "S" for start or "F" for finish.
      2. Characters 2 through 4 shall be "NET" for not-earlier-than, "NLT" for not-later-than, or "ON" for on.
3. Characters 5 through 10 shall be the date in MMDDYY format.

The approved schedule data and approved value line data on this computer disk will be used as the basis for input to SEPTA's Capital Program Management System and progress payments.

The Contractor's failure to submit the CPM Schedule and Value Line Breakdown, and computer disks as required shall result in the withholding of progress payments to the extent permitted by Paragraph XII. C. of the Agreement until such submission requirements are met. No payment will be made until the CPM Schedule and Value Line Breakdown have been approved by SEPTA, and the computer disk of approved schedule data and approved value line data is submitted to SEPTA.

7. MANPOWER LOADING SUBMITTAL

If specified in Division 1 of the Technical Specifications of these Contract Documents, the Contractor shall submit a manpower loading chart showing his anticipated usage of manpower on a monthly basis, unless otherwise specified. This chart will include the Contractor's and all subcontractors' expected manpower, by craft and supervisory personnel, from Notice-to-Proceed through contract completion. The manpower loading chart will be in the form of a histogram and will include a legend for each craft and supervisory position and a table showing the number of persons in each position to be used during each monthly period of the contract period. This chart shall be submitted with the value line breakdown submittal.

8. SCHEDULE UPDATING AND PAYMENT REQUISITION

8.1. CPM 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 CPM shall reflect actual start and actual finish dates for all completed activities and actual start and estimated completion dates for all in-progress activities. The Contractor shall be represented at each monthly progress meeting by his project manager and/or superintendent, who shall be prepared to provide progress information.

The Contractor shall submit to SEPTA four (4) copies of the monthly Schedule update which includes the following:

a. CPM Network Diagram showing all progress to date, including completed activities, for the activities on the Part II detailed schedule in accordance with the requirements of Section 3.3.1 of these specifications.

b. Updated summary Schedule Network Diagram (if required by Division 1 of the Technical Specifications) showing all progress to date in accordance with the requirements of Section 3.3.4 of these Specifications.

c. Computer reports for all sorts as described in Section 3.3.2 of these Specifications.
The Contractor shall submit the monthly Schedule update no later than five (5) calendar days following the monthly progress meeting.

Failure by the Contractor to furnish an acceptable CPM Network Diagram, computer reports, and computer disk on time may result in the progress payment of the Contractor being delayed until the required action is taken to the extent permitted by Paragraph XII. C. of the Agreement.

The CPM Schedule shall be updated monthly and will continue to be updated every month to project completion. After the Project Manager issues a date of substantial completion, the Contractor shall submit one (1) as-built schedule, including network diagram, computer reports, and disk to SEPTA.

8.2 CPM Schedule Logic Revisions

Any revision to the approved Part II submittal's logic must be approved by SEPTA. After approval, logic revisions shall be incorporated into the CPM Schedule and will be addressed in the monthly narrative report by means of both a description of the revisions and a listing of those network elements affected by such change. This listing will include the following, when applicable:

a. Addition and deletion of activities
b. Addition and deletion of relationships
c. Changes to activity descriptions and durations
d. Changes to relationship types and lag codes
e. Changes to contract milestone dates and approved constraint dates
f. All other revisions to the network logic.
The Contractor shall maintain the CPM logic such that it reflects the planned work sequence of the Contractor as of the date of the update. Out of sequence logic shall be revised, as necessary.

Failure to comply with the logic 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.

8.3. Payment Requisition

Concurrent with the updating of the CPM Schedule, the Contractor shall update the SEPTA-supplied Contract Skeleton Form. The Contractor is responsible for ensuring that the actual dates on the CPM Schedule agree with the Schedule dates on the Contractor's Contract Skeleton Forms. The Contract Skeleton Form shall be available to the Contractor on, or before, the monthly progress meeting.

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

9. RECOVERY SCHEDULE

When in SEPTA's opinion, the CPM Schedule fails to reflect the project's actual plan and method of operation, or the projected completion date, as indicated by the CPM Schedule, is more than thirty (30) calendar days behind the contract completion date, SEPTA may require that the Contractor submit for review within fourteen (14) calendar days, a Recovery Schedule for completion of the remaining work by the contract completion date. The format shall be as described in Section 3.3.1, 3.3.2, and 3.3.3. The Summary Schedule, as described in Section 3.3.4 shall also be submitted, if applicable. The Contractor shall be responsible for any additional costs incurred in revising the CPM Schedule.

10. CHANGE ORDERS

When a change order(s) is proposed by SEPTA or the Contractor, the Contractor must identify in a sketch, all logic changes and additions required as a result of said change order(s). This sketch shall show all CPM logic revisions on an approved form for the work in question and its relationship to other activities in the network plan. Upon acceptance of the revision, the project schedule shall be modified to reflect the change order work. The Contractor shall also revise his Value Line Breakdown to reflect the addition of any change orders. The cost of all logic changes required to reflect change order work shall be borne by the Contractor.

11. RESPONSIBILITY FOR COMPLETION

The Contractor agrees that whenever, in SEPTA's sole opinion, Contract interim milestone or completion milestone dates will not be met, the Contractor 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 for the Work under the Contract in conformance with these specification requirements.

Prior to proceeding with any of the above actions, the Contractor shall notify and obtain acceptance from SEPTA for the proposed Schedule changes. If actions are approved, the CPM revisions shall be incorporated by the Contractor into the CPM Schedule during the next update period. Any additional costs incurred by Contractor as a result of his failure to meet the latest approved CPM Schedule shall be borne by the Contractor.

12. ADJUSTMENT OF CONTRACT COMPLETION

If the Contractor requests an extension of time for the completion of an interim milestone date or completion date of Work as provided for in the contract, the Contractor shall, in addition to the requirements specified therein, furnish such justification, CPM data and supporting evidence as SEPTA may deem necessary for the determination as to whether or not the Contractor is entitled to an extension of time under the provisions of the contract. Submission of proof based on revised activity logic, durations and costs is obligatory to any approvals. The cost of all time extension requests, including time impact analyses, is to be borne solely by the Contractor.

The schedule must clearly display that the Contractor has used, in full, all the float time available for the work involved in his request. Float time in the CPM Schedule is not for the exclusive use of either SEPTA or the Contractor. SEPTA will control the allocation of the CPM Schedule's float time for the various stages of the work.

SEPTA’s determination as to the total number of calendar days of contract extension shall be based upon the current computer-produced schedule for the time period in question and all other relevant information.

The CPM data shall be included in the next monthly updating of the Schedule. Actual delays to activities which, according to the computer-produced Schedule, do not affect the extended contract completion date as shown by the critical path in the network 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 Contractor in writing of SEPTA’s decision. If SEPTA determines that the 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 Contractor are unable to agree as to the amount of the extension to be reflected in the CPM schedule, the Contractor shall reflect that amount of time extension in the CPM 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 Contractor for any other purpose and that, after SEPTA has made a final determination as to any time extension, the Contractor shall revise the CPM schedule in accordance with the final decision.
13. SUMMARY OF SUBMISSION REQUIREMENTS

Following is a summary of the CPM schedule and Value Line Breakdown and computer disk submission requirements and their respective project calendar day numbers:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Days After Event</th>
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<tbody>
<tr>
<td>Contractor's receipt of Notice To Proceed</td>
<td>1</td>
</tr>
<tr>
<td>Planning meeting among SEPTA and Contractor; Contractor submits 90 calendar day schedule (Part I submittal)</td>
<td>14</td>
</tr>
<tr>
<td>CPM Schedule due to SEPTA (Part II submittal)</td>
<td>35</td>
</tr>
<tr>
<td>Re-submission of CPM Schedule, <em>if necessary</em></td>
<td>14 calendar days after review by SEPTA</td>
</tr>
<tr>
<td>Value Line Breakdowns on computer disk to SEPTA</td>
<td>After SEPTA approves Part II submittal</td>
</tr>
<tr>
<td>Re-submission of Value Line Breakdowns and computer disk, <em>if necessary</em></td>
<td>7 calendar days after review by SEPTA</td>
</tr>
<tr>
<td>Contractor's monthly CPM schedule update due to SEPTA</td>
<td>5 calendar days after monthly progress meeting</td>
</tr>
<tr>
<td>Re-submission of Value Line Breakdowns and computer disk, <em>if necessary</em></td>
<td>7 calendar days after review by SEPTA</td>
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EXHIBIT IV
SEPTA'S EEO/AA CONTRACTUAL REQUIREMENTS
(If Applicable)

1. As used in these specifications:
   a. "Covered area" means the area served by SEPTA at the time the bid is issued.
   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; and
   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 people 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 people 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 this contract resulted.

3. If the Contractor is participating in a hometown plan approved by the Department of Labor, the covered area either individually or through an association, its affirmative action obligations 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 overall 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 this 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. 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.

6. In order for the non-working 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 action. 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 modification to minority organization 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, 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-site 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 any 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 foremen, 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 its 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 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 notification 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.

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 specification are being carried out.
n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontractors 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 which assist in fulfilling one or more of their affirmative action obligations [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 participate, 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 which 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 SEPTA contract if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the contractor may be in violation of the SEPTA contract 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 nation origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from SEPTA contracts.

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 subcontractors as may be imposed or ordered pursuant to Exhibit I, Section B. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and the SEPTA contract.
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 Exhibit I, Section B of the SEPTA contract, the EEO Compliance Officer shall proceed in accordance with SEPTA's noncompliance procedures.

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 SEPTA 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 degree that existing records satisfy this requirement, Contractor shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which 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).

16. Contractors will provide to the Disadvantaged Business Enterprise(1) monthly updates on SEPTA projects, and (2) monthly reports of their entire workforce hours on all projects, including federally assisted projects as well as Federal and privately funded projects. These monthly reports (CC-257 Reports) will be due by the 5th of each month beginning with the date of SEPTA's notice to proceed until contract completion. The Contractor will notify all construction subcontractors with subcontracts totaling $10,000 that they are also required, as SEPTA subcontractors, to submit these reports directly to SEPTA. These reports may also be submitted indirectly through the prime contractor if that is the prime contractor's policy.

17. SEPTA reserves the right to monitor and periodically audit its contractor's and subcontractors' compliance with the specifications discussed in this section. In the event the contractor fails to comply with the non-discrimination provisions of the contract, the Disadvantaged Business Enterprises shall recommend to the contracting department such contract sanctions as the General Counsel shall advise are available. The Disadvantaged Business Enterprises shall make a report of such non-compliance to the Office of Federal Contract Compliance Programs (OFCCP).

(See Exhibit I, Section B of the Contract).

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Contractor's attention is called to the "Equal Opportunity Clause" and the SEPTA Construction Contract Specifications set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce 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)

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<td>17.3%</td>
<td>6.9%</td>
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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.

The Contractor's compliance with Exhibit I, Section B of the SEPTA contract shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in Exhibit I, Section B, and its efforts to meet the goals established for the covered area. 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 in violation of the Contract. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to SEPTA's EEO Compliance Officer within ten (10) working days of award of any construction subcontract in excess of $10,000 at any tier of 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; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is the area served by SEPTA at the time the bid is issued.

5. Contractor agrees to include this notice in all construction subcontracts over $10,000.
# DBE INVOICE PAYMENT REPORT

(To Be Submitted For Federally Funded Contracts Only)

## PART I: CONTRACT INFORMATION

- **Original Contract Sum:**
- **Net Change by Change Order:**
- **Contract Sum to Date:**
- **Total Billed to Date:**
- **Total Invoices Submitted for DBE Payment to Date:**
- **Retainage:** %
- **Total Billed to Date Less Retainage:**
- **Total Previous Invoices Submitted Less Retainage:**
- **Current Amount Due:**

## PART II: DBE INFORMATION

- **Original DBE Subcontractor(s) Sum:**
- **Net Change by Change Order:**
- **DBE Subcontractor(s) Sum to Date:**
- **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:**

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

<table>
<thead>
<tr>
<th>DBE Subcontractor Name</th>
<th>DBE Invoice Number</th>
<th>DBE Amount Due</th>
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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.

<table>
<thead>
<tr>
<th>COMPANY OFFICIAL’S SIGNATURE</th>
<th>TITLE</th>
<th>DATE</th>
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</table>

SEPTA Project Manager

© SEPTA 2008, Updated 4/08

Sample DBE Invoice Payment Report 1 -
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 the 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.
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)
THIS ORDER, WHEN PROPERLY EXECUTED, CONSTITUTES AUTHORIZATION TO PROCEED WITH THE CHANGES DESCRIBED BELOW, AND TO CHANGE THE AMOUNT OF THE CONTRACT AS NOTED.

<table>
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<tr>
<th>DESCRIPTION OF CHANGE</th>
<th>AMOUNT</th>
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<td>ADD</td>
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</table>

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

"SAMPLE"

SEPTA Fund No. ________
CPMS No. ________
Federal Grant No. ________

Contractor:
SEPTA Commitment 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.

Is specific SEPTA Board Approval Required YES NO, if YES Date of Approval ________.
Is Funding Agency Approval Required YES NO, if YES Date of Approval ________.

SEPTA CONTRACT ADMINISTRATOR
PROJECT MANAGER

PROJECT MANAGER SEAL:
SEAL:

GENERAL MANAGER PRESIDENT, VICE PRESIDENT

ATTEST: ATTEST:

SECRETARY SECRETARY, ASST. SECRETARY
TREASURER, ASST. TREASURER

APPROVED AS TO FORM:

BY: ____________________________Esq.
GENERAL COUNSEL'S OFFICE

SAMPLE CHANGE ORDER – 2 – 01/10
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:

1. 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

2. 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
"SAMPLE"

General Release by Contractor

by Agreement, dated ____________.

as amended ("Contract") on ____________.

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 remise, 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 virtue of the Contract, as amended on ____________, 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

SAMPLE GENERAL RELEASE - 1 -
MAINTENANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, ____________________________,
Authorized by the terms of this agreement, do hereby give and grant 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)
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 XIIF3 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 _____

By: ________________________________
Title: _______________________________
AFFIDAVIT OF RELEASE OF LIENS

SEPTA Purchase Order # _________________________________

Project ________________________________

Contractor _______________________________________

__________________________________________

Contract for __________________________________________

Contract NTP Date __________

STATE OF:

COUNTY OF:

The undersigned, pursuant to Paragraph XIIIF3 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.

this

CONTRACTOR

_____ day of _______ 20

My Commission expires _____, 20____

By: ________________________________

Title: _______________________________
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 ___________________________________________________________________________________________________________________________________________

Page 1 of 3 01/10
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
The following documents are attached to and made a part of this Certificate:

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
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
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:
_______________________________________________________________________________
_______________________________________________________________________________
_______________________________________________________________________________

CONTRACTOR:
_______________________________________________________________________________
_______________________________________________________________________________
_______________________________________________________________________________

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.

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

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.

Recommended by ARCHITECT/ENGINEER on ________________, 20______
CONTRACTOR accepts this Certificate of Substantial Completion on ________________________, 20 ___

__________________________________________  Contractor

By

__________________________________________   __________________________________________

Project Manager
Contract Administration
CONSENT OF SURETY TO FINAL PAYMENT

SEPTA Purchase Order # _________________________________

Project ________________________________________________

Contractor _____________________________________________

Contract for ____________________________________________  Contract NTP Date ______

In accordance with the Agreement for Construction, Paragraph XII3 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
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

Attest: ______________________________

Signature of Authorized Representative

(Seal): ______________________________

Title
GESA LEASE TERMS

The basic terms and conditions of the ground lease associated with the Combined Heating and Power Plant Project in Philadelphia, Pennsylvania:

Landlord: Southeastern Pennsylvania Transportation Authority ("SEPTA")

Tenant: The contractor selected by SEPTA to enter into a Guaranteed Energy Services Agreement ("GESAs").

Leased Premises: A portion of the land within the SEPTA Midvale Facility in Philadelphia, Pennsylvania, as more particularly determined in the GESA. During the Term, Tenant shall own the improvements on the Leased Premises, bear the risk of loss and be responsible for the repair and maintenance thereof at Tenant’s sole cost and expense.

Project/Use: Combined Heating and Power Plant in accordance with the GESA.

Term/Surrender Condition: As determined in the GESA, but the lease term will not exceed twenty (20) years. The lease commencement date shall be as determined in the GESA. At the end of the Term, the improvements on the Leased Premises shall be in good and operating condition, free and clear of liens and encumbrances, with all trade fixtures in place.

Rent: Rent shall be paid in the amount and on the terms set forth in the GESA with respect to the components of the Project that shall be transferred to SEPTA at the end of the Term of the lease.

Tenant's Right to Leasehold Mortgage: Tenant shall have the right to mortgage and grant a security interest in its leasehold interest in the lease, upon the prior written consent of Landlord; provided, however, Tenant’s leasehold financing shall be and remain, during the Term of the lease, subordinate to any lien granted by the Landlord in Landlord’s fee simple interest in the Leased Premises, whether prior or subsequent in time to Tenant’s leasehold mortgage. The ground lease shall be in financeable form and a Memorandum of Ground Lease may be recorded against the Leased Premises, at Tenant’s sole cost and expense, subject to Landlord’s review and prior approval.

Sublease and Assignment: Tenant shall have the right to assign the lease or sublease the Leased Premises, upon the prior written consent of Landlord, to a wholly-owned special purpose entity for purposes of obtaining leasehold financing by Tenant and Tenant may assign the lease as security to the lender involved in the leasehold financing, but for no other purpose.

Construction and Compliance with Laws: Tenant’s design, construction, operation (including requisite Department of Environmental Protection permits) and maintenance of the Project shall comply with the requirements set forth in the GESA, comply at all times with all laws, rules, regulations, codes and ordinances applicable to the Leased Premises and Project and comply with such additional requirements as may be set forth in the lease agreement.

Taxes: Tenant shall be responsible for the payment of any and all taxes, including but not limited to use, occupancy and real estate taxes, on, applicable to, related to and associated with the lease, the Project and Tenant’s use of the Leased Premises throughout the Term. To the extent a separate tax bill is not
available for the Leased Premises, Landlord shall apportion such tax bill and Tenant shall promptly reimburse Landlord for Tenant’s share of such taxes.

**Insurance:** Tenant shall secure and maintain the insurance required by the GESA, and any additional insurance required by Landlord, throughout the Term of the lease. SEPTA and any additional parties required by Landlord shall be named as additional insured on all applicable coverages.

**Utilities:** Tenant shall be responsible for payment, directly to the utility provider, of all utilities serving the Leased Premises or used by the Project.

**Services:** Landlord shall have no obligation to furnish any services or facilities or to maintain or make any restoration, rebuilding, repairs, replacements or alterations of any kind or nature in or to the Leased Premises or any part thereof during the Term.

**Environmental:** Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims related to: (a) any violation of environmental laws, (b) any discharges, emissions, spills, storage, releases and/or disposal of hazardous substances, or (c) the exacerbation of any existing environmental conditions, if any, occurring during the Term in connection with Tenant’s use or occupancy of the Leased Premises or any portion thereof, or the use or occupancy of any subtenant or assignee of Tenant whether or not caused directly or indirectly by Tenant. This provision shall survive the expiration or termination of the lease, and the Tenant’s obligations under this provision shall apply whenever (i) Landlord incurs, or is threatened with costs or liabilities as a result of or in connection with the Tenant’s or Tenant’s representatives’ actions or omissions, or (ii) Landlord incurs costs or liabilities directly or indirectly related to Tenant’s obligations under this provision.

**Casualty:** Tenant shall bear all risk of loss if all or any part of the improvements on the Leased Premises shall be damaged or destroyed by fire or any other hazard, risk or casualty whatsoever occurring during the Term. Landlord and Tenant each waive any right to terminate the lease or to suspend, diminish, abate or reduce the rent due under the lease or the performance of their respective obligations as a result of such damage or destruction.

**Options to Expand or to Extend the Term:** None.

**Landlord’s Option to Purchase:** Landlord shall have the right to purchase the improvements on the Leased Premises upon the expiration of the Term of the lease on the terms and conditions as set forth in the GESA.

**Landlord’s Right to Transfer the Leased Premises:** Landlord shall have the right to transfer the Leased Premises, and assign Landlord’s interest in the lease, upon notice thereof to Tenant.

**Access:** Tenant shall have the right to access the Leased Premises 24 hours day/7 days week during the Term of the lease. Access rights to the Leased Premises necessitated by the design and construction of improvements on the Leased Premises shall be more specifically set forth in the lease and shall be in conformance with the GESA.

**Security Deposit:** None.

**Guaranty:** As required by the GESA.

**Brokerage:** Neither party shall be represented by a broker in the procurement and/or negotiation of the lease and Tenant shall indemnify, defend and hold Landlord harmless from and against any and all
claims, costs, expenses or liabilities, including reasonable attorneys’ fees, for commissions or other compensation claimed by any other broker or agent with regard to the lease agreement as a result of any dealings with Tenant or claiming by or through Tenant.

These terms and conditions are not a definitive agreement to ground lease property and is not intended to constitute, and shall not constitute, a legal and binding offer, acceptance and/or other obligation to enter into a ground lease. These terms and conditions are expressly non-binding unless and until the final terms and condition are mutually drafted, negotiated and agreed to, as evidenced by a written, signed ground lease delivered between parties. Landlord reserves the right to withdraw unilaterally from negotiating or dealing at any time, for any reason or no reason, in its sole discretion.