

CONTRACT DOCUMENTS AND  
SPECIFICATIONS  
FOR  
SILVERLINER VI RAIL CARS  
**SEPTA REQUEST FOR PROPOSAL NO.: 25-00300-AMJP**

**CONTRACT  
FOR SUPPLY OF EQUIPMENT  
MANUFACTURED SPECIFICALLY FOR SEPTA  
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The following references:

Exhibit - I	Pricing / BAFO
Exhibit - II	Project Schedule
Exhibit – III	Spare Parts
Exhibit - IV	Final Silverliner VI Rail Cars Specification
Exhibit – A	Federal Contract Requirements
Exhibit - B	State & Local Contract Requirements
Exhibit - C	SEPTA EEO/AA Equal Employment Opportunity Contractual Requirements
Exhibit - D	Certifications <ul style="list-style-type: none"> <li>• Buy America Certificate</li> <li>• DBE Approval Certification</li> <li>• Certificate of Compliance With Immigration Reform and Control Act of 1986</li> </ul>
Exhibit - E	Certification regarding Lobbying Forms - Samples <ul style="list-style-type: none"> <li>• Performance Bond</li> <li>• Change Order Form</li> <li>• Maintenance Bond</li> </ul>
Exhibit F	Technical Proposal
Exhibit G	Addenda Acknowledgement



**CONTRACT  
FOR SUPPLY OF EQUIPMENT  
MANUFACTURED SPECIFICALLY FOR SEPTA**

THIS AGREEMENT, entered into the \_\_\_\_\_ day of, \_\_\_\_\_ 20\_\_\_, by and between the Southeastern Pennsylvania Transportation Authority (hereinafter called "SEPTA"), a body corporate and politic exercising the power of the Commonwealth of Pennsylvania as an agency and instrumentality thereof, with offices located at 1234 Market Street, Philadelphia, Pennsylvania, and \_\_\_\_\_ (hereinafter called ("Contractor")), a \_\_\_\_\_ organized under the laws of \_\_\_\_\_, with principal offices located at \_\_\_\_\_.

WITNESSETH:

WHEREAS, SEPTA needs to acquire, and, if required by the Specifications, have installed, certain equipment hereinafter more fully described and set forth in the Specifications attached hereto and incorporated herein, in connection with an undertaking known as **SILVERLINER VI RAIL CARS** as set forth in the SCHEDULE A (hereinafter called the "Project");

WHEREAS, the Contractor, pursuant to SEPTA's Request for Proposal, has submitted a Proposal to furnish all the Material and/or Equipment described in the Specification, as such term is hereinafter defined (hereinafter called "Cars" or "Material and/or Equipment").

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 furnish the Material and/or Equipment described in the Technical Specifications for the Purchase of Silverliner VI Rail Cars Technical Specification ("Specification") which is attached hereto and made a part of the Contract as Exhibit IV.
- II. SEPTA shall pay to the Contractor, in consideration for furnishing the Material and/or Equipment in conformity with the Specification, the Firm Fixed Price(s) as set forth in the Best and Final Offer Pricing Schedule, attached hereto and made a part hereof as Exhibit I, in a total amount not to exceed \$ \_\_\_\_\_, Base Order and Associated Equipment, Items 1A, 2, 3, 4, & 5 of Pricing Schedule (hereinafter called the "Contract Sum").

III. THE CONTRACT

- A. The Contract Documents form the Contract and represent the entire and integrated Contract between the parties 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 the Contractor, supersede all prior negotiations, representations, or Contracts, either written or oral. The Contract Documents which form the Contract consist of the following:
  1. This Contract, including any amendment, modification or change order (as defined in Section XIX) to this Contract mutually agreed to in writing and signed by proper officials of both parties;
  2. Section 1 – Instructions and Information for Proposers RFP 25-00300-AMJP
  3. Performance Bond, and Maintenance (or Guarantee) Bond;
  4. Technical Specification, including any drawings (collectively referred to as the "Specification");

5. Any other attachment or exhibit attached hereto, including but not limited to: Exhibit A – Federal Contract Requirements; Exhibit B – State and Local Contract Requirements; Exhibit C – SEPTA EEO/AA Equal Employment Opportunity Contractual Requirements; and Exhibit D – Buy America;

Proposal Documents as follows:

- a. Addenda
  - b. Technical Proposal
- B. Order of Precedence: In the event of any conflicts among the Contract Documents listed in Paragraph III. A. above, the terms and requirements of the document which appears earliest in the listing shall govern.
  - C. Responsibility for Those Performing Work: 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.
  - D. The Contractor shall cooperate with SEPTA's Project Representatives, namely the Project Manager of SEPTA, or his/her representative(s) designated in writing (hereinafter called the "Project Manager"), who shall be responsible for technical direction provided by SEPTA, and the Contract Administrator of SEPTA, or his/her representative(s) designated in writing (hereinafter called the "Contract Administrator"), who shall be responsible for the administration of the Contract on SEPTA's behalf.

#### IV. CONTRACT STANDARD

The Specification, and Technical Proposal including any addenda and modifications issued thereto, shall provide the standard for determining whether the Material and/or Equipment meets the Contract requirements.

Viewed individually and as a finished product, all material, components and parts installed in or on the Rail Cars during its manufacture shall be newly made of the current model year under standard production by the manufacturer. Used, reconditioned or obsolete parts or components are not to be used in the assembly of the Rail Cars or to be installed in or on it under any circumstances. Components or parts damaged prior to or during delivery are not acceptable and shall be replaced at the Contractor's own expense with a new component or part. The Rail Cars and all its components and parts shall be designed to permit ready accessibility for maintenance purposes with minimal disturbances of other components or parts. The term "heavy duty" where used in the Specification to describe a part or component shall be defined to mean "in excess of the usual or normal quantity, quality, or capacity that is supplied or manufactured."

#### V. TIME OF PERFORMANCE

The Contractor shall commence performance under the Contract within five (5) working days of issuance of SEPTA's Notice to Proceed and shall fully complete performance of the Contract within the time specified in Exhibit II. All time limits contained in the Contract Documents are of the essence.

VI. LIQUIDATED DAMAGES

A. Delay

In the event that the Cars to be furnished under the Contract are not furnished and delivered in accordance with the Specifications, on the dates as set forth in the attached Exhibit II, values per the following Liquidated Damages table shall be paid to SEPTA by the Contractor, or shall be deducted from any amount due to the Contractor by SEPTA, as liquidated damages for every day or part thereof that the performance of the Contract shall remain uncompleted in accordance with the delivery requirements (delivery schedule) as set forth in Exhibit II. The total amount of liquidated damages due to time delay only payable under Articles VI.A and XVII shall not exceed 10% of the Contract Sum (“Delay LD Cap”).

<i><b>Liquidated Damages</b></i>	<i><b>Daily Damages (Calendar Day)</b></i>
<i>SEPTA's written acceptance or conditional acceptance of the Pilot Married Pairs #1, #2, and #3 after Contractual date.</i>	\$6,980
<i>SEPTA's acceptance or conditional acceptance of the production cars (per married pair) after Contractual date</i>	\$270
<i>SEPTA's acceptance or conditional acceptance of the Last Production Married Pair after Contractual date</i>	\$7,722

Costs are incremental and additive, so that the last production pair has both “[...]production cars (per married pair)” and “[...]Last Production Married Pair” running simultaneously. As the pilot cars are not production cars, only the first line applies to them.

In the event of delays which are not subject to Paragraph VII, Delay in Completion Beyond Contractor's Control, in delivery of certain items other than the railcars, namely, both the approved drafts and the final completed versions of the Operator’s Manual, Running Maintenance Manual, Heavy Repair Manual, Engineering Data Book, Illustrated Parts Catalog, Maintenance Parts Price List, the completion of the Education Program (other than the overhaul modules), Spare Parts, and Portable Test Equipment, all Bench Test Equipment, the Air Brake Test Rack, and all computer Software and Special Test Equipment Manuals beyond the dates and schedule specified in the Contract Documents, SEPTA shall assess liquidated damages in the amount of \$ 100.00 per calendar day for each of the above listed item or service not delivered or accomplished.

B. Weight

In the event that the Cars to be furnished under the Contract are not furnished and delivered in accordance with the Specifications and are heavier than the Target Weights identified in Exhibit IV, values per the following Liquidated Damages table shall be paid to SEPTA by the Contractor, or shall be deducted from any amount due to the Contractor by SEPTA, as liquidated damages for excess weight.

<i><b>Liquidated Damages</b></i>	<i><b>Damages (per pound, per car)</b></i>
<i>Married Pair Weight in excess of the AW0 target, 1-1000 lbs overweight</i>	\$13
<i>Married Pair Weight in excess of the AW0 target, 1001+ lbs overweight, applied marginally (ex: the 1001st pound per car incurs \$26, not \$39)</i>	\$26

C. Energy Efficiency

In the event that the Cars to be furnished under the Contract are not furnished and delivered in accordance with the Specifications and consume more energy than identified in the table below, values per the following Liquidated Damages table shall be paid to SEPTA by the Contractor, or shall be deducted from any amount due to the Contractor by SEPTA, as liquidated damages for excess energy consumption.

Damages will be via one-time assessment using seasonally-adjusted analysis (e.g., accounting for all heating and cooling modes and averaging HVAC consumption) after completion of testing per Exhibit IV Section 15.8.8.8 Power and Energy Consumption. Contractor may elect to repeat testing for purposes of Liquidated Damages assessment after making approved changes to improve efficiency. Modifications to the cars after completion of testing that decrease energy efficiency shall result in a revised assessment.

<b>Liquidated Damages</b>	<b>Damages</b>
<i>Net Wh consumed while operating in excess of 3.1125 kWh/mile averaged per car</i>	\$231.80/Wh/mile per car
<i>Net kW consumed by auxiliary loads in excess of 45.895kW per car</i>	\$33,311 per kW averaged per car

D. Reliability, Availability, and Maintainability

In the event that the Cars to be furnished under the Contract are not furnished and delivered in accordance with the Specifications and fail to meet reliability, availability, and maintainability requirements identified in Exhibit IV, values per the following Liquidated Damages table shall be paid to SEPTA by the Contractor, or shall be deducted from any amount due to the Contractor by SEPTA, as liquidated damages for failure to meet reliability, availability, and maintainability requirements.

<b>Liquidated Damages</b>	<b>Assessment Period</b>	<b>Damages</b>
<i>MDBD lower than requirement</i>	Per Month, beginning with the first month after 10% of base order cars have entered the reliability demonstration period, until Reliability and Availability Test Completion	\$7 per mile below requirement
<i>Car Level MDBF- ALL lower than requirement</i>	Per Month, beginning with the first month of the Reliability and Availability Test, until Reliability and Availability Test Completion	\$7 per mile below requirement
<i>Fleet availability lower than requirement</i>	Per Peak Period, beginning with the first month of the Reliability and Availability Test, until Reliability and Availability Test Completion	\$2,352 per pair below required level
<i>MTTR above requirement</i>	via one-time assessment after completion of Fleet Maintainability Monitoring per Exhibit IV Section 21.7.2.3	Modeled over service life of cars using actual time to repair less requirement multiplied by craft hourly rate

#### E. Limitation on Liquidated Damages

The total amount of liquidated damages payable under Articles VI subparagraphs B through D shall not exceed 10% of the Contract Sum (“Functional LD Cap”).

#### VII. DELAY IN COMPLETION BEYOND CONTRACTOR'S CONTROL

If the Contractor shall be delayed in the completion and performance under the Contract by reason of unforeseeable causes beyond its control and without its contribution, neglect, fault, or negligence, including but not restricted to acts of God, acts of neglect of SEPTA, acts of neglect of any other contractor, fires, floods, epidemics, quarantines, strikes, or freight embargoes, the time herein specified for completion of Contract performance may be extended, without penalty, at the reasonable discretion of SEPTA, by such time as shall be fixed by SEPTA in writing. The Contractor shall not be entitled to any damages, compensation, or adjustment from SEPTA on account of any delay or delays, including delays in payment to Contractor, resulting from any of the aforesaid causes, except for delays caused by the negligent acts of SEPTA and the negligent acts of any SEPTA contractor.

#### VIII. EXTENSION OF TIME, NOT WAIVER OF TIMELY PERFORMANCE

- A. Any extension of time granted by SEPTA pursuant to Paragraph VII above shall operate only to mitigate liquidated damages contained in Paragraph VI, no such extension of time shall be deemed a waiver by SEPTA of its right to terminate the Contract for delay by the Contractor, nor shall such extension relieve the Contractor from full responsibility for performance of its obligations hereunder.
- B. If the Contractor desires to apply for an extension of time pursuant to Paragraph VII above, the Contractor shall notify SEPTA in writing within fourteen (14) days after becoming aware of the possibility of delay and any reasons for the delay and its estimated duration.

#### IX. INSPECTION

- A. Definition. “Material and/or Equipment” or “Cars” as used in this paragraph, includes but is not limited to raw materials, components, intermediate assemblies, end products and supplies.
- B. The Contractor shall provide and maintain an inspection system acceptable to SEPTA covering Material and/or Equipment under the Contract and shall tender to SEPTA for acceptance only Material and/or Equipment that has been inspected in accordance with the inspection system and has been found by the Contractor to be in conformity with Contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to SEPTA. SEPTA, or its agents, may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the Contract.
- C. SEPTA, or its agents, has the right to inspect and test all Material and/or Equipment called for by the Contract, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. SEPTA shall perform inspections and tests in a manner that will not unduly delay the work. SEPTA assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor.

- D. In the event SEPTA, or its agents, performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge all necessary facilities and assistance for the safe and effective performance of these duties.
- E. When Material and/or Equipment is not ready at the time specified by the Contractor for inspection or test, SEPTA may charge the Contractor for the additional cost of inspection or test. SEPTA may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary.
- F. SEPTA, or its agents, has the right either to reject or to require correction of nonconforming Material and/or Equipment. Material and/or Equipment is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with Contract requirements. SEPTA may reject nonconforming Material and/or Equipment with or without disposition instructions.
- G. The Contractor shall remove Material and/or Equipment rejected or required to be corrected. However, SEPTA may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance any corrected or rejected Material and/or Equipment without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- H. In the event the Contractor fails to promptly remove, replace, or correct rejected Material and/or Equipment that is required to be removed or to be replaced or corrected, SEPTA may either (1) by contract or otherwise, remove, replace, or correct the Material and/or Equipment and charge the cost to the Contractor; or (2) terminate the Contract for default. Unless the Contractor corrects or replaces the Material and/or Equipment within the delivery schedule SEPTA may require their delivery and make an equitable price reduction in accordance with Paragraph XIX, Changes.
- I. In the event the Contract provides for the performance of SEPTA quality assurance at the source, and if requested by SEPTA, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the Contract and (ii) when the Material and/or Equipment will be ready for SEPTA inspection. SEPTA's request shall specify the period and method of the advance notification and the SEPTA representative to whom it shall be furnished. Requests shall not require more than two (2) workdays of advance notification if a SEPTA representative is in residence in the Contractor's plant, nor more than seven (7) workdays in other instances.
- J. SEPTA shall accept or reject Material and/or Equipment as promptly as practicable after delivery. SEPTA's failure to inspect and accept or reject the Material and/or Equipment shall not relieve the Contractor from responsibility, nor impose liability on SEPTA for nonconforming Material and/or Equipment.
- K. Approvals, inspections and tests by SEPTA do not relieve the Contractor of responsibility for defects or other failures to meet Contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes, or as otherwise provided in the Contract.
- L. If acceptance is not conclusive for any of the reasons in Paragraph K above, SEPTA, in addition to any other rights and remedies provided by law, or under other provisions of the Contract, shall have the right to require the Contractor (1) at no increase in Contract Sum, to correct or replace the defective or nonconforming Material and/or Equipment at the original point of delivery or at the Contractor's plant at SEPTA's election, and in

accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and SEPTA; provided, that SEPTA may require a reduction in the contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the Contract as is equitable under the circumstances if the Contract Administrator elects not to require correction or replacement.

When Material and/or Equipment is returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point of delivery. If the Contractor fails to perform or act as required in (1) or (2) above and does not provide a plan to cure such failure to SEPTA's satisfaction within a period of ten (10) calendar days (or such longer period as SEPTA may authorize in writing) after receipt of notice from SEPTA specifying such failure, SEPTA shall have the right by contract or otherwise to replace or correct such Material and/or Equipment and charge to the Contractor the cost occasioned SEPTA thereby.

#### X. DELIVERY

- A. Delivery shall be as required as set forth in Exhibit II. All Cars are to be delivered in good condition, complete, ready for operation or use as specified, and in conformity with the Specifications and all other terms and conditions of the Contract.
- B. Delivery shall not be construed to have occurred until SEPTA has been furnished with acceptable documentation demonstrating the car's delivery and readiness, including but not limited to:
  - i. Contractor Certification that it has found the car to be in conformity with Contract requirements except:
    - 1. Requirements evaluated by testing after Delivery
    - 2. Specific open items identified on the Certificate of In-Plant Inspection and Release for Shipment
    - 3. Specific open items identified through Inspection and recorded via the system maintained by the Contractor as described in Paragraph IX
  - ii. Contractor's plan for remedying open items that prevent acceptance testing within the time limit for beginning testing identified in Paragraph XII
  - iii. Car History Book travelling with the car as required by Exhibit IV TS 25.18
- C. The number of Cars on SEPTA property, whether Delivered or not, that have not achieved Acceptance or Conditional Acceptance shall not exceed ten (10) cars. SEPTA may choose to waive this and allow more cars to be delivered at SEPTA's sole discretion. SEPTA allowance of this limit from time to time to be exceeded does not waive SEPTA's right to halt further shipments to enforce this limit.
- D. Cars in excess of the rejection weight as detailed in Exhibit IV will not be permitted onto SEPTA property.

#### XI. RISK OF LOSS

- A. All risk of loss or damage to the Cars or any part thereof, prior to delivery and acceptance by SEPTA shall be borne by the Contractor. The Contractor shall pay all transportation and unloading costs to the designated delivery site and shall provide and pay for all insurance as outlined in Paragraph XXII "Insurance" of the Contract. Risk of loss will be passed to SEPTA at the time of delivery and acceptance of each Rail Car by SEPTA.
- B. Any loss or damage to the Material and/or Equipment prior to delivery to SEPTA shall be made good by the Contractor at its own cost and the performance of the Contract shall be

carried forward in accordance with its terms and conditions at no additional cost to SEPTA. SEPTA may, however, grant reasonable extensions to the completion date where loss or damage is not the result of the negligence of the Contractor, its employees or agents.

## XII. ACCEPTANCE

- A. Within fifteen (15) calendar days after arrival at the designated point of delivery and being placed by the Contractor in a ready-to-run condition, the Cars shall undergo tests as defined in the Specifications. If a Car passes these tests, the Car shall receive final written acceptance by SEPTA on the fifteenth calendar day after completion of testing, except that SEPTA reserves the right to accept the Car earlier if SEPTA notifies the Contractor in writing of early acceptance or places the Car in revenue service. If a Car fails these tests, SEPTA shall notify the Contractor that the Car shall not be accepted until the repair procedures defined in Paragraph XII B. have been carried out and the Car has been retested and subsequently passes all required tests to SEPTA's satisfaction. Similar procedures shall be followed for items of non-acceptance for Material and/or Equipment other than the Cars.

Subject to SEPTA's sole discretion and terms, SEPTA may conditionally accept a Car. SEPTA will not unreasonably withhold the consent to conditionally accept a Car that has been delivered with minor defects which, in SEPTA's sole opinion, does not render the Car unfit for revenue service.

Acceptance of all or part of the Material and/or Equipment delivered to SEPTA is conditioned upon SEPTA's final determination that said Material and/or Equipment, as installed if required by the Contract Documents, conforms to the requirements of the Contract.

- B. In the event that SEPTA does not accept a Car, the Contractor must begin work to repair all items of non-acceptance within two (2) working days after receiving notification from SEPTA of the Car having failed to pass the acceptance tests. SEPTA shall make the Car available to the Contractor for repairs. The Contractor shall provide, at its sole expense, all spare parts, tools, personnel and space required to complete the repairs. At SEPTA's sole option, the Contractor may be required to remove the Car from SEPTA property for repair work. Repair procedures must be diligently pursued by the Contractor, and the Contractor shall continue to have all risk of loss until SEPTA's written conditional or final acceptance of the Rail Car. Similar procedures shall be followed for items of non-acceptance for Material and/or Equipment other than the Cars. The Contractor shall be liable for all costs associated with the required repairs.

## XIII. PAYMENT

- A. SEPTA shall pay invoices submitted by the Contractor within thirty (30) days after approval of an invoice by the Project Manager. SEPTA shall make progress payments for the discrete deliverables for which payment is requested and the associated payment amount as shown in Exhibit II.

- B. Unless otherwise agreed, the Contractor shall submit only one invoice per month, excluding any corrected invoices. All payments require written approval of the Project Manager, and in addition any progress payments involving Car assembly at the Contractor's plant require written approval by the SEPTA Resident Inspector. All invoices shall be accompanied with appropriate back-up material to document the discrete deliverables and to substantiate the work for which progress payment is requested have been achieved and document that costs have been incurred. The Contractor shall submit invoices within 30 days of the completion of the deliverable associated with the progress

payment. In the event that an invoice is submitted late, SEPTA reserves the right to consider the invoice date as the date of deliverable completion with respect to Economic Price Adjustment in XIII.B.

The unit price for the base order married pair purchased, as set forth in Exhibit I, shall be adjusted as outlined in XIII.B.

Refer to XX.C regarding additional payment security, if required, and XXX.B regarding SEPTA Audit Rights.

## B. Economic Price Adjustment

### I. Definitions:

- i. Base Month as used in this section means the month prior to the submission of the later of Contractor's Proposal or Contractor's BAFO.
- ii. Escalated Month used in this section means:
  1. For progress payments related to release of shipment of each production car/pair, the month three months prior to the release for shipment of each production cars/pair.
  2. For all other progress payments, the month three months prior to the invoice date.
- iii. Base Price as used in this section means payment in the progress payment schedule, specifically the amount as of Notice to Proceed.
- iv. Adjusted Price as used in this section means Base Price with the Economic Adjustment included via addition or subtraction.

### II. The Base Price for each progress payment related to line 1A through 1C of the price form shall be escalated or deescalated as follows:

- i. Only progress payments associated with material delivery to SEPTA are subject to Economic Price Adjustment. As identified in Exhibit II, the following progress payments are applicable: 8.1, 9.1, 9.2, 19.3, and all progress payments beginning with 10, 11, 13, and 16.
- ii. Change Orders are not subject to Economic Price Adjustment.
- iii. Adjustments in the Base Price shall be computed as:
  - a. 100% of the Base Price shall be deemed to be subject to adjustment.
  - b. The total accumulated economic adjustment of the base price shall not exceed 20% of the Base Price (additive or reductive).
- iv. The adjustment is based on indices determined and reported monthly by the Bureau of Labor Statistics of the U.S. Department of Labor in the monthly Producer Prices and Price Indexes; PCU3365103365108.
- v. The Contractor will submit invoices detailing the Base Price, Economic Adjustment, and Adjusted Price when invoicing for production car/trainset items.
- vi. The calculation for the Economic Adjustment can only be made when the final indices for the escalated month have been published. If invoices have been submitted prior to the finalization of indices, then the Contractor shall separately invoice for the Economic Adjustment appropriate to the previous invoices, including the relevant calculation detail.
- vii. In the event the US Department of Labor discontinues an index or indices cited in this Contract or alters its method of calculating an index or indices cited in this Contract (including a change in the base period), SEPTA, at its sole discretion, shall determine the appropriate substitute index or indices or adjustment for use in determining the price adjustments described in this Contract.
- viii. A true up of the PPI adjustments costs (additive or deductive) shall occur no more than on a quarterly basis or no less than on a yearly basis. The calculation of the Economic Adjustment is as follows:

$$\text{Economic Adjustment} = \left( \frac{(\text{Index for Escalated Month}) - (\text{Index for Base Month})}{(\text{Index for Base Month})} \times (\text{Base Price}) \right)$$

- C. SEPTA shall have the right, to require the Contractor to furnish proof that all suppliers and workmen employed in connection with the performance of the Contract or any part thereof have been fully compensated by the Contractor.
- D. SEPTA shall have the right to take advantage of any discounts offered by the Contractor for prompt payment, less retainage, of full invoiced amounts.
- E. The Contractor agrees that as of Contract Award, any negotiated Progress Payment Schedule is not anticipated to result in a payment which exceeds its actual contract costs incurred since award, inclusive of overhead and profit, as of the invoice date.
- F. SEPTA shall have the right to withhold all or part of a payment to the extent deemed necessary by SEPTA to protect SEPTA from loss because of:
  1. Nonconforming Material and/or Equipment not corrected as required by Paragraph IX;
  2. Inconclusive Acceptance as stated in Paragraph IX.
  3. Third party claims filed, or evidence reasonably indicating that a third-party claim will be filed;
  4. Failure of the Contractor to make payments properly to subcontractors or suppliers, or for labor, materials, or equipment;
  5. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract sum;
  6. Damage to SEPTA;
  7. Reasonable evidence that the work or any portion of work will not be completed in accordance with Exhibit II;
  8. The Contractor's failure to carry out the work in accordance with the Contract; or
  9. The Contractor's failure to comply with any provision or requirement of the Contract.
- G. SEPTA shall have the right to withhold all or part of a payment to the extent deemed necessary by SEPTA due to failure of the Contractor to comply with the requirements of Exhibit II TS 25.5.2, Master Program Schedule. Failure to provide baseline, monthly updates, or revised schedules in accordance with that section shall be sufficient cause to withhold payments until such delinquent submittal is made and accepted by SEPTA.

XIV. ASSIGNMENT OF RIGHTS: DELEGATION OF DUTIES

- A. The Contractor shall not sell, assign, transfer, or dispose of any interest in the Contract without the prior written consent of SEPTA thereto. SEPTA shall not be obligated to give such consent.
- B. The Contractor shall not delegate its duties to be performed under the Contract as the prime contractor without prior written consent of SEPTA thereto. SEPTA shall not be obligated to give such consent.
- C. Any attempt by the Contractor to make such assignment or delegation prior to obtaining SEPTA's written consent shall give SEPTA the right to terminate the Contract with no further obligation to the Contractor or to anyone to whom the Contractor has attempted to assign, transfer, or delegate rights or obligations under the Contract.

Notwithstanding the above, SEPTA hereby authorizes the assignment by the Contractor of any Contractor's receivables and/or credit rights to any money due or which may become due and/or entitlements under this Contract to a bank or financial institution. For avoidance of doubt, this authorization

includes the delivery by the Contractor of the contractual documentation reasonably requested by the bank or financial institution exclusively for such assignment (as part of a factoring agreement or otherwise).

- D. For purposes of Paragraph XIV, a change in control of Contractor, however effected, including by operation of law, shall be deemed to be a transfer or delegation of this Contract. For the purposes of this Paragraph, the term "control" shall mean the possession of the power to direct or cause the direction of the management and policies of Contractor, whether through ownership of voting securities, by contract or otherwise. The change in control provisions of this Paragraph, however, shall not apply if the Contractor is a corporation, the outstanding voting stock of which is listed on a national securities exchange or actively over-the-counter.

#### XV. TERMINATION FOR CAUSE

- A. If the Contractor fails to make delivery of acceptable Material and/or Equipment or to perform the services within the time specified or any extension thereof and/or fails to remedy or does not take reasonable diligent steps towards remedy, to SEPTA's satisfaction, the material breach or default of any of the terms, covenants, or conditions of this Contract within thirty (30) calendar days after receipt by Contractor of written notice from SEPTA setting forth the nature of said material breach or default, SEPTA shall have the right to terminate the Contract without any further obligation to Contractor other than payment for work satisfactorily performed. Any termination for cause shall not in any way operate to preclude SEPTA from also pursuing all available remedies against Contractor and its guarantors and/or sureties for said material breach or default, including recovery of any additional costs incurred by SEPTA in obtaining replacement Material and/or Equipment and services.
- B. In the event that SEPTA elects to waive its remedies for any breach by the 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.

#### XVI. TERMINATION FOR CONVENIENCE

In addition to any other rights of termination which may exist, SEPTA shall have the right to terminate the Contract for SEPTA's convenience. The termination notice shall specify the effective date of termination. Termination for convenience shall create no obligations on the part of SEPTA other than the following:

- A. Payment to the Contractor for Material and/or Equipment delivered, and if required by the Specification, installed, in conformity with the Specification, prior to the effective date of termination.
- B. Payment to the Contractor for Material and/or Equipment which conforms to the Specification and is completed or in at the time the Contractor receives SEPTA's notice of termination for convenience, such payment being contingent upon inspection, acceptance and audit by SEPTA or its designated representatives.
- C. Payment to the Contractor for labor, material and engineering costs identified solely to the Contract and incurred by the Contractor prior to the receipt of SEPTA's notice of termination, subject to audit by SEPTA or its representatives.
- D. Payment to the Contractor for reasonable costs for termination of its subcontracts for the Project subject to audit by SEPTA or its representatives.
- E. Payment to the Contractor for reasonable profit for Items A thru C above, subject to audit by SEPTA or its representatives.

## XVII. WARRANTIES

### A. Definitions:

1. "Acceptance" as used in this Paragraph XVII, means the act of an authorized representative of SEPTA by which SEPTA assumes ownership of existing and identified Material and/or Equipment, or approves specific services rendered, as partial or complete performance of the Contract.
2. "Correction" as used in this paragraph, means the elimination of a defect.
3. "Defect" as used in this paragraph, means any condition or characteristic in any Material and/or Equipment or services furnished by the Contractor under the Contract that is not in compliance with the requirements of the Contract.

B. Title: The Contractor covenants and warrants that good title to all the Material and/or Equipment furnished under the Contract shall vest in SEPTA immediately upon final acceptance or conditional acceptance by SEPTA of the Material and/or Equipment, whichever comes first.

C. General: The Contractor warrants that all Material and/or Equipment, and installation thereof, meets all requirements and standards set by the Specifications. All Material and/or Equipment shall be new, the best of its kind or quality, fit for its intended use as set forth in the Specification, and of safe, substantial, and durable construction.

All installation shall be done in a good and workmanlike manner and shall be safe and operate in the manner intended in the Specification. The Contractor further warrants that any Material and/or Equipment, and installation thereof, shall conform to representations and descriptions, or written, made by the Contractor and any literature, sample, or other vehicle of information supplied by the Contractor in its Technical Proposal prior to the time set for opening of Proposals for the Contract. The Contractor further warrants that any sample provided represents a minimum standard of quality for the Material and/or Equipment, and installation thereof, furnished hereunder.

D. Payment of Suppliers and Subcontractors: The Contractor warrants that payment to all workmen, subcontractors and suppliers will be satisfied by the Contractor, in accordance with Paragraph XVIII.C so that, at the time SEPTA makes final payment to the Contractor, no part of the performance under the Contract shall be subject to any claim or lien.

E. Material and/or Workmanship: In addition to all warranties implied by law or required by the Specifications, the Contractor expressly warrants all Material and/or Equipment, and installation thereof, against any defect in design, material or workmanship which may be discovered by SEPTA within the periods specified below from the date of the Certificate of Acceptance, or Conditional Acceptance for each individual Car or item of Material and/or Equipment. The Contractor shall make any necessary repairs to and any replacements of all or parts of the Cars, and installation thereof, including the cost of all labor and materials, during the periods specified below, and in the Specification at no additional cost to SEPTA. Acceptance of repair or replacement is conditioned upon SEPTA's final determination that said Material and/or Equipment, as installed if required by the Contract Documents, conforms to the requirements of the Contract and Contractor's submittals and designs.

Refer to Paragraph XX Contract Security for requirements for furnishing the Maintenance (or Warranty) Bond. The warranty periods shall be as follows:

#### Fifteen (15) Years Warranted Items

The following items shall be warranted for a period of fifteen (15) years of operation:

- Carbody
- Truck frame and bolster

#### Ten (10) Years Warranted Items

The following items shall be warranted for a period of ten (10) years:

- Floor panels and attachments, leveling compound, floor sheeting and adhesive
- Storage battery
- Filter capacitors

#### Seven (7) Years Warranted Items

The following items shall be warranted for a period of seven (7) years:

- Journal bearings

#### Five (5) Years Warranted Items

The following items shall be warranted for a period of five (5) years:

- Elastomeric parts and bonding
- Axles
- Truck primary and secondary suspension
- Seats and seat covering
- Low Voltage Power Supply/Battery Charger components and controls
- All printed circuit board cards
- All power conversion devices, transformers and capacitors, other than filter capacitors
- All TWDT Components

#### Three (3) Years Warranted Items

The following items shall be warranted for a period of three (3) years:

- The Cars and all other items of Material and/or Equipment delivered as part of this Contract (other than Spare Parts), either on the Cars or installed on the wayside, which is not listed above.

#### Spare Parts

Spare parts supplied under this Contract shall be warranted from the date of delivery to SEPTA in accordance with the applicable time periods for items stated above except for items that are warranted for 3 years. For spare parts supplied for those items warranted for 3 years, those spare parts shall be warranted for 5 years from date of delivery to SEPTA or for a three year period respectively from the date of initial service, whichever occurs first.

#### Consumable Items

No consumable item, excluding air filters, shall require replacement more frequently than every 6 months.

#### Reliability

Certain rail vehicle components have reliability requirements which must be achieved, or component redesign is required, in accordance with Specification Section 21. However, in no case shall the warranty expire for any subsystem of the Cars prior to the successful completion of Reliability Demonstration Testing for that major subsystem, as described in the Specification.

- F. Exclusions: Warranty for items of Material and/or Workmanship shall not cover defects or failures due to accident, vandalism, improper repairs by SEPTA or its agents, neglect and improper or lack of proper maintenance or storage by SEPTA. Defects or failures due to foreign object damage are also excluded from warranty unless the Specification design requirement was to prevent such damage. The same applies to weather-related failures during extreme conditions beyond those identified in the Specification.

These warranty requirements, other than a minimum useful life, do not apply to consumable or expendable items of material, as identified by part number and description by the Contractor and agreed to by SEPTA, such as brake shoes, light bulbs, windshield

wiper blades, etc., unless it is determined by SEPTA that the failure was caused by defective manufacture or design rather than normal wear and tear expected for such consumable items.

- G. Excessive Numbers of Operational Failures (Fleet Defects): In the event that, after 10 Married Pairs are accepted, during the warranty period specific repairs, replacements or modifications necessitated by defects in design, material or workmanship of the same kind or type are required, SEPTA may declare a fleet defect if any of the following occur: (a) failures of the same component in the same application exceeds a failure rate of twenty (20) percent during any period of twelve (12) consecutive months based on the average number of such components in service during such twelve month period or (b) major systems of the Cars have failed the Reliability requirements of Specification Section 21, or (c) a failure analysis of a component, system or subsystem defines a systemic and/or manufacturing problem, the Contractor shall develop a plan to rectify regardless of the failure rate percentage or Reliability Requirements of Specification Section 21, except if the failure is caused by acts of neglect by SEPTA or any third party subcontractor by SEPTA. The Contractor shall promptly institute an approved modification program for all Cars, regardless if the warranty period has expired for an individual Car. In the event that such defects or failures require the removal of major components or assemblies for the purpose of repairs or modifications, and such removals render the Cars inoperable or unfit for safe and efficient operation in regular service, the Contractor shall promptly furnish an adequate number of spare components or assemblies for the temporary use by SEPTA so as to minimize downtime of the affected Cars while repairs or modifications are being done. On a case-by-case basis, SEPTA may authorize the Contractor to utilize SEPTA-owned spare parts for correction purposes. The Contractor shall replace each borrowed spare part with a new part with a renewed warranty within thirty (30) calendar days, or such other time as may be agreed to by the Parties. If Contractor fails to replace the spare part within thirty (30) calendar days, SEPTA may replace such spare part at Contractor's expense. All costs associated with replacing the borrowed spare parts shall be borne by the Contractor. SEPTA decision not to authorize utilization of SEPTA-owned spare parts shall not operate as an excusable delay for the imposition of Liquidated Damages.

Any accepted Cars which during the warranty period (including any extensions) SEPTA has found to be unavailable for service due to the unavailability of these above mentioned spare components shall be treated as a delayed delivery and subject to the conditions of liquidated damages, \$1,390 per day per Married Pair, for each day of delay beginning 14 days after a Car (before 10 Married Pairs have been accepted) or 20% of the fleet (after 10 or more of the Married Pairs have been accepted) is unavailable for service. This requirement shall also apply to items of Material and/or Equipment other than the Cars which are delivered under this Contract.

After 10 or more of the Married Pairs have been accepted, in the event during the warranty period that 20 percent or more of the Cars are simultaneously inoperable, or unfit for safe and efficient operation in regular service even though operable, due to defects in design, materials or workmanship whether or not of the same type or kind, as determined by SEPTA, SEPTA may require the Contractor, within a reasonable time after receipt of written notice, to submit a Contractor's proposal for a "Remanufacturing Program" or "Campaign" to affect the necessary repairs, replacements or modifications, at no additional cost to SEPTA, in the shortest time possible and with the least disruption to or interference with regular service. This shall also apply to any individual Cars in which the warranty period has elapsed.

- H. Warranty Extension: In the event during the warranty period that repairs and/or modifications on all or any Car, made necessary by defective design, material or workmanship, are not permanent or completed due to lack of material or inability to provide the proper repair by the Contractor, the warranty period for all parts and materials on such Car or Material and/or Equipment will be extended by the amount of time the Cars

or Material and/or Equipment are not in operation in regular service due to lack of Contractor material or inability to provide the proper repair, as determined by SEPTA.

In the event a fleet wide retrofit is required due to defects in design, material or workmanship of a component or an assembly under warranty, or of failure to achieve the reliability requirements of Specification Section 21, the warranty on such a component or an assembly after completion of retrofit shall be extended a 1 year on a per unit or assembly basis beyond the limits specified in this Contract.

- I. Performance of Warranty Work: The Contractor shall be completely responsible for the performance of all required warranty work at its sole cost and expense during the warranty period. The Contractor will perform, or have performed, all required warranty work as promptly as possible so as to preclude or minimize any interruptions to, or disruptions of, the operation of normal route service of the Cars resulting from delays in the performance of warranty work under this Contract.

SEPTA shall make any affected Car available to the Contractor, within restrictions imposed by SEPTA's operational requirements, to allow for completion of repairs in a timely manner. Any delay in making the Car available for repairs shall operate as an excusable delay for the imposition of Liquidated Damages related to that car only.

At its discretion, SEPTA or its designated representative may perform such work if it determines it needs to do so based on service or other requirements. Such work shall be reimbursed by the Contractor. Any defective SEPTA workmanship shall be corrected by SEPTA at no cost to the Contractor. The manhours per repair shall be agreed to by the Contractor and SEPTA, but may be revised if actual hours exceed estimated hours by 10 percent per type of repair. The performance of any warranty work by SEPTA with the prior agreement of the Contractor shall not in any way limit or diminish the Contractor's warranty obligations under the Contract. The rate of compensation to be paid by the Contractor to SEPTA for performance of warranty work on behalf of the Contractor shall be \$80.00 (U.S.) per manhour for the duration of the Contract. SEPTA may, at any time during the warranty, decline to perform warranty work even though it has previously performed work of the same or of an identical nature. In that event, the Contractor shall promptly arrange to perform the work itself or arrange to have the work promptly performed by others, and SEPTA shall not be liable for any additional costs for performance of the work by the Contractor or others.

If it becomes necessary to transport any Cars or major components or subassemblies to off-property locations in order to perform warranty work, the Contractor shall bear the cost of transportation from SEPTA property to the off-property location where work is to be performed and the return thereto, and assume all risk of damage while the Material and/or Equipment or materials are in its possession.

In the event of any defect in design, material or workmanship of a unit or an assembly under warranty, the Contractor and SEPTA shall mutually consider whether the unit or assembly is to be changed in its entirety or permanently repaired and the defective parts replaced. The decision as to which alternative will be used will be based upon minimizing downtime and total repair costs, and considerations as to whether or not the failure of the unit might be detrimental to the life of the assembly. All modification work shall be completely documented.

A Failure Analysis to determine the cause and frequency of defects covered by the warranty shall be performed by the Contractor and submitted to SEPTA for concurrence. Such analysis shall be performed and reported within 45 days from the date of each failure.

J. Infringement of Patents: The Contractor shall defend, indemnify, and save harmless SEPTA, its officers, agents, servants, and employees from liability of any kind and will pay all costs and expenses for or on account of or arising from any infringement or violation or alleged violation of any copyright or patent or any right of any person, firm or corporation resulting from any act, omission, or negligence on the part of the Contractor or any Subcontractor in the performance of the Contract.

K. Additional Warranties: If the customary standard warranties for the Material and/or Equipment, and installation thereof, exceed the period specified above, such warranties shall run to SEPTA. If separate or additional warranties covering the Material and/or Equipment are furnished by the manufacturer, supplier, or seller of component part or parts of any item of said Material and/or Equipment, SEPTA shall have the right, but not the duty, to benefit from these separate or additional warranties, along with the primary warranties set forth herein above. SEPTA shall look only to the Contractor for fulfillment of all warranty requirements expressed and implied by the making of the Contract, and shall not be required to look to any other party for fulfillment of warranty provisions. The existence of any separate or additional warranties which run to the Contractor from the manufacturer, supplier, or installer of a component part of an item of Material and/or Equipment shall not relieve the Contractor of its obligation to repair or replace any of the Material and/or Equipment on account of faulty design, manufacture or workmanship during the warranty period.

If the Contractor becomes aware at any time before acceptance by SEPTA that a defect exists in any items of Material and/or Equipment or services, the Contractor shall promptly correct the defect. If SEPTA determines that a defect exists in any of the items of Material and/or Equipment or services accepted by SEPTA under the Contract, SEPTA shall promptly notify the Contractor of the defect, in writing, within 45 days after discovery of the defect.

Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted Material and/or Equipment or services, the Contractor shall submit to SEPTA, in writing, within 20 working days, or such other time period agreed upon by the Parties, a recommendation for corrective actions, together with supporting information in sufficient detail for SEPTA to determine what corrective action, if any, shall be undertaken.

The Contractor shall promptly comply with any timely written reasonable direction from SEPTA to correct a defect, at no increase in the Contract Sum. The Contractor shall also prepare and furnish to SEPTA any data and reports applicable to any correction required under this Paragraph (including revision and updating of all other affected data called for under the Contract) at no increase in the Contract Sum.

The Contractor shall not be responsible for the correction of defects in SEPTA-furnished property, except for defects in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.

L. Remedies Available to SEPTA: The rights and remedies of SEPTA provided in this Paragraph shall not be affected in any way by any terms or conditions of the Contract concerning the conclusiveness of inspection and acceptance; and are in addition to and do not limit any rights afforded to SEPTA by any other Paragraph of the Contract.

Within 30 calendar days after receipt of the Contractor's recommendations, including a schedule, for corrective action and adequate supporting information, SEPTA, at its sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at either Contractor's facility or at a SEPTA provided location, as determined by SEPTA.

In no event shall SEPTA be responsible for any extension or delays in the scheduled deliveries or periods of performance under the Contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a Change Order with adequate consideration to SEPTA. This clause shall not be construed as obligating SEPTA to increase the Contract Sum. Any failure or refusal of the Contractor to take corrective action as required by this Paragraph shall be grounds for Termination for Cause in accordance with Paragraph XV.

## XVIII. SUBCONTRACTS

### A. Definitions:

1. "Subcontractor" is an individual or organization who enters into a contract to furnish labor or materials or apparatus in connection with the Material and/or Equipment directly or indirectly for or on behalf of the Contractor and whether or not in privity of contract with the Contractor. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neutral in gender and means a Subcontractor or its authorized representative.
2. Nothing contained in the Contract Documents shall create any contractual relationship between SEPTA and any Subcontractor.
3. A Major Subcontractor is defined as an individual or organization who supplies the major subsystems of the Rail Car as defined by the Specification chapter headings, i.e., Rail Car body, HVAC, etc.

### B. Award of Subcontracts:

1. If, after the award, SEPTA refuses to accept any Major Subcontractor approved by it prior to award, the Contractor shall promptly submit an acceptable substitute and the Firm Fixed Price(s) set forth in Exhibit I 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 Firm Fixed Price(s) set forth in Exhibit I shall be allowed for any such substitution unless the Contractor has acted in good faith promptly and responsively in submitting a name with respect thereto after notice is given that a proposed Major Subcontractor is unacceptable.
2. Any new or additional or substituted Major Subcontractor proposed to be used by the Contractor after the award shall be subject to SEPTA's prior written approval, which approval shall not be unreasonably withheld. No increase in the Firm Fixed Price(s) set forth in Exhibit I shall be allowed for any such substitution, however, SEPTA reserves the right to request a reduction in the Contract Sum for approving any requested substitution.
3. The Contractor shall not make any substitution for any Major Subcontractor or for any person or for any organization which has been previously accepted by SEPTA as part of the Contract unless and until requested to do so by SEPTA and/or unless such substitution is expressly approved by SEPTA in writing, which approval shall not be unreasonably withheld.
4. Within thirty (30) days of receipt of written request from the Project Manager, the Contractor shall furnish to SEPTA copies of all relevant documentation, which may include: contracts, bonds, insurance certificates and other similar documents

between the Contractor and all Major Subcontractors, if any, for the Material and/or Equipment.

- 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 thirty (30) 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, the Contractor shall pay its Subcontractors any retainage the Contractor has withheld from its Subcontractors 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, the Contractor expressly agrees to defend, indemnify and hold SEPTA, its officers, agents, servants, and employees 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, the Contractor shall assume the defense affirmatively at its sole cost whenever such suit is brought in any jurisdiction, once SEPTA is notified, and it gives prompt and timely notice of such claim or dispute and allows the Contractor access to any and all relevant materials, documents, invoices, etc. that are necessary for such defense.

## XIX. CHANGES

- A. Minor Changes in the Material and/or Equipment: The Project Manager shall have the authority to order minor changes in the Work not involving an adjustment in the Firm Fixed Price(s) set forth in Exhibit I, nor 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.
- B. Change Orders: SEPTA, without invalidating the Contract, may order changes within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Firm Fixed Price(s) set forth in Exhibit I and the Contract time of performance set forth in Exhibit I being adjusted accordingly. All such changes shall be authorized by Change Order, and shall be executed under the applicable conditions of the Contract Documents.

Upon written direction from SEPTA initiating a Change Order, the Contractor shall provide a written response within 60 days with a complete scope of work, impact on contract time of performance, and impact on Firm Fixed Price. SEPTA will either enter negotiation, decline to issue the change order, or issue the change order under the process described in XIX Changes.

It is understood and agreed that refinement or detailing will be accomplished from time to time with respect to the Specifications. No adjustments in the Firm Fixed Price(s) set forth in Exhibit I or the Contract time of performance set forth in Exhibit I shall be made unless such refinement or detailing results in changes in the scope, quality, function and/or intent of the Specification not reasonably inferable or foreseeable by the Contractor.

- C. Definitions:

1. A "Change Order" is a written order to the Contractor, signed by SEPTA's Contract Administrator, issued in accordance with SEPTA's standard procedures and, authorized either by its General Manager or by its Board, as appropriate, after the execution of the Contract, which makes a change in the Work or an adjustment in the Contract Sum or the Contract time. A Change Order shall also be signed by the Contractor if it agrees to the adjustment in the Contract Sum or the Contract time. The Contract Sum and the Contract time may be changed only by Change Order. A sample copy of the Change Order form that will be utilized by SEPTA is attached to this Contract.
  2. "Material", as used in this Paragraph XIX, means an item or items 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 XIX, means a firm providing labor or services necessary to complete a distinct element of the work. The labor or services provided must be substantiated on the basis of direct labor hours at specified fixed hourly rates.
  4. "Equipment", as used in this Paragraph XIX, means apparatus used by the Contractor or a Subcontractor to complete a distinct element of the work.
- D. Changes and Amendments to the Contract: No Change Order or amendment to the Contract shall be binding unless executed in writing by SEPTA, in a form approved by SEPTA and concurred in by the appropriate governmental funding agencies, if required. SEPTA will obtain all required concurrences from governmental funding agencies. All Change Orders or amendments to the Contract by SEPTA shall be transmitted to the Contractor through SEPTA's Contract Administrator. If Contractor disagrees or disputes the Change Order, Contractor may file a dispute in accordance with Section XXXII.

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

- E. Determination of Cost/Credit: The cost or credit to SEPTA resulting from a change in the Material and/or Equipment shall be subject to funding agency concurrence, if required, and determined in one or more of the following ways:
1. Unit Prices: If changes in the Material and/or Equipment are ordered by SEPTA and such Change Order calls for the deletion or addition of items of Material and/or Equipment and/or installation thereof of the same type as those for which unit prices have been stated in the Contract Documents or subsequently agreed upon, the amount to be paid or credited shall be computed on the basis of such unit prices. If the quantities of changed Material and/or Equipment proposed will create a hardship on SEPTA or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship. 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 by one of the following Paragraphs.

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 above, SEPTA may negotiate a fixed price lump sum amount with the Contractor as compensation for such work. The Contractor's price for changed Material and/or Equipment shall follow the guidelines set forth below:

A. Labor:

- (1) Actual Wages: base hourly rate for all levels but excluding premium pay paid to all employees directly engaged in the changed work.
- (2) Labor Burden: to be established as a percent of actual wages paid pursuant to contractual obligation or corporate policy and may include Vacation Allowance, Health and Welfare, Pension, Apprenticeship Programs and other programs as required for each craft, Social Security, Unemployment Insurance and Worker's Compensation Insurance.
- (3) Premium Time: actual premium costs paid, plus paid social security taxes, unemployment insurance, workers' compensation insurance, and fringe benefits if required by contractual obligation or corporate policy.
- (4) Overhead: as a percentage of labor including: All supervision and administration above and including the manufacturing shop floor level, such as Superintendents, Assistant Superintendents, Engineers, Accountants, Clerks, Timekeepers, Office Managers, and all others on staff; office supplies; costs of services; material, small tools and/or equipment not incorporated in the Material and/or Equipment or directly associated with the Material and/or Equipment; bonds; insurance; and all home office costs. Maximum allowable per net amount of labor charge is ten (10) percent.
- (5) Profit: a maximum of ten (10) percent of the sum of subparagraphs (1), (2), (3) and (4) above.

B. Material:

- (1) All materials incorporated into the final product of the Material and/or Equipment at the Contractor's net cost. Expendable materials, e.g., small tools and welding supplies, and reusable materials are not eligible for direct reimbursement, but are included in Labor item A.2 above.
- (2) Actual freight and transportation costs of materials used.
- (3) Overhead and Profit: a maximum of fifteen (15) percent overhead and profit of the sum of subparagraphs (1) and (2) above.

C. 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: a maximum five (5) percent of the net amount of the Subcontractor's cost of change.

3. Time and Material: Compensation for changed work on a time and material basis will be used only where SEPTA in its sole judgment 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 the Fixed Price Lump Sum Amount procedure.

In the event SEPTA determines to compensate the Contractor for an item of changed work on a time and material basis, the Contractor shall at the end of each day, or at such other intervals as SEPTA shall direct in writing, furnish to SEPTA for such work adequate documentation to support the time and material cost claimed as allowed by law.

- F. Access: Representatives of SEPTA shall have access, after duly communicating the request in writing and within a reasonable time period, during normal business hours to all records and documents of the Contractor relating to any labor, materials, apparatus, plant and equipment, and overhead, 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.

48 CFR, Subpart 31.2 shall be used to determine the allowability and allocability of such costs, except that (those regulations notwithstanding) state and local taxes on net income shall not be allowed.

- G. Other Requirements: In all cases, the costs and percentages detailed in this Paragraph XIX 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.

- G. 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 Firm Fixed Price(s) set forth in Exhibit I, it must give the Project Manager written notice thereof within thirty (30) days after it becomes aware of the occurrence of the event giving rise to such claim or it shall not be entitled to any compensation thereof, unless otherwise agreed to by SEPTA. This notice must be given by the Contractor before proceeding to execute any of the changed work. No claim for any increase in the Firm Fixed Price(s) set forth in Exhibit I 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 in accordance with Paragraph XXXII. 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 of Contractor, it being clearly understood that the Contractor's sole avenue of recovery is against such Subcontractor. The Contractor agrees that failure to comply with the above may result in waiver of its right, if any, to additional compensation.

- H. If Contractor's costs in the performance of its duties under this Agreement are materially increased by the implementation of material tariffs on, or in connection with the Work performed under Agreement, pricing and fees may be escalated accordingly, after consultation and agreement with SEPTA, to compensate Contractor for such increased costs. As such, the parties agree to meet and negotiate in good faith to determine any appropriate and reasonable adjustments to pricing to compensate Contractor for such costs. Prior to any such meeting, Contractor shall provide all

relevant information, invoices and documentation to support its claim of increased tariffs, including but not limited to, the actual amount and date of tariff imposed and the percentage of such tariff directly related to the Work, country of origin of the product or goods and any other documentation supporting or related to the claim of additional costs resulting from tariffs. Any claims for increased costs due to tariffs must for new tariffs imposed by the United States after Best and Final Offer.

## XX. CONTRACT SECURITY

### A. Performance Bond

Within ten (10) days after the notice of award, the Contractor shall furnish and maintain properly executed Performance Bond written by a good and sufficient surety and/or an irrevocable Standby Letter of Credit (LOC) written by a United States bank with headquarters based in the United States in a form and substance satisfactory to SEPTA, as shown below. If the surety shall become insolvent or bankrupt in a technical or equitable sense, or otherwise become unqualified to underwrite this bond for amounts as shown below, or the Contract Sum is adjusted so as to exceed the penalties of such bond, SEPTA may require, on fifteen (15) days written notice, the Contractor to furnish new or additional bond from the same or different surety so as to be fully secured at all times for amounts as shown below. The Performance 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 hereunder. The Performance Bond shall be effective from the award date until the date of completion of the three-year warranty period, provided, however, that thirty (30) days after acceptance or conditional acceptance of the final Rail Car (Base Order plus Options, if elected) the Contractor may substitute a Maintenance (or Warranty) Bond in accordance with Article XX. Contract Security, Paragraph B. The Performance Bond shall be based on the total Contract Sum and subject to the following increments:

- 10% of the Contract Sum from NTP until first Final Design Review submission.
- 25% of the Contract Sum from first Final Design Review submission and until acceptance of the Pilot Rail Car (s).
- 15% of the Contract Sum from acceptance of the Pilot Rail Car (s) and until delivery and acceptance of the last Rail Cars, including Option Rail Cars, if elected.
- 5% of the Contract Sum from acceptance of the last Rail Cars, including Option Rail Cars, if elected until completion of the three (3) year warranty period.

### B. Maintenance (or Warranty Bond)

Thirty (30) days after acceptance or conditional acceptance of the final Rail Car (Base Order plus Options, if elected) the Contractor shall furnish to SEPTA and maintain a properly executed Maintenance (or Warranty) Bond, in form and substance satisfactory to SEPTA, written by a fully qualified surety company and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described hereunder, in the amount of five (5%) percent of the Contract Sum. This bond shall secure the Contractor's faithful performance of its warranty obligations in this Contract, until expiration of warranty coverage and completion of all modification work on all items, including publication changes.

### C. Additional Payment Security

From NTP until delivery and acceptance of the last Rail Cars, including Option Rail Cars, if elected, in the event that the Performance Bond in the increment applicable to the time period as stated in subparagraph A is less than the aggregate amount invoiced by the Contractor to date, the Contractor shall furnish and maintain a properly executed Performance Bond to the same requirements as in subparagraph A except that the security shall be at least the lesser of the aggregate amount of the total amount invoiced to date or the amount given by the formula:

Security=[Line item value 1A in USD]\*([quantity of base order pairs]-[# of conditionally accepted pairs])

In no circumstances shall this subparagraph cause required payment security to be less than that stated in subparagraph A.

## XXI. INDEMNIFICATION

In addition to all other obligations of indemnification specified herein, the Contractor agrees to be liable for and to defend, indemnify, release and save harmless SEPTA, its Board Members, officers, agents, servants, workmen, employees, subsidizers and indemnities, the United States Department of Transportation, 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 Parties"), from and against any and all direct loss, cost, damage, liability and expense, (excluding loss of profit and revenue) counsel fees, whether or not arising out of any claim, suit or action at law, in equity, or otherwise, of any kind or nature whatsoever, including negligence, arising out of the Contractor's performance of this Work, which may be imposed upon, incurred by or asserted against SEPTA Parties or any of them by reason of any accident, loss or damage of property, including the work site, property of SEPTA Parties and the Contractor, or injury, including death, to any person or persons, including employees of SEPTA Parties, the Contractor, Subcontractors at any tier or any person working on the Contractor's behalf, caused by the Contractor, and its agents and/or Subcontractors, or upon, during 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.

The Contractor further agrees to defend, indemnify, release and save harmless SEPTA Parties for any claims or costs to the SEPTA Parties or any of them resulting from acts of misfeasance, malfeasance or nonfeasance by the Contractor. The Contractor also agrees for itself and on behalf of its agents, servants, Subcontractors, materialmen and employees to defend, indemnify, release and save harmless the SEPTA Parties from and against any and all claims of any kind or nature whatsoever regarding Subcontractors and materialmen and agrees to assume the defense of the SEPTA Parties to any such claim at Contractor's 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 regardless of the cause of such loss or damage.

NOT WITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES. LIQUIDATED DAMAGES PAYABLE IN ACCORDANCE WITH THE CONTRACT SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES.

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

SEPTA MUST BE PROVIDED WITH TRUE COPIES OF DECLARATION PAGES OF INSURANCE UPON REQUEST. SEPTA IS TO BE LISTED AS AN ADDITIONAL INSURED ON ALL APPLICABLE LIABILITY POLICIES EXCLUDING WORKERS COMPENSATION AND PROFESSIONAL LIABILITY. WORKERS' COMPENSATION MUST PROVIDE A WAIVER OF SUBROGATION EACH POLICY SHALL STATE THAT THE INSURANCE PROVIDED TO THE ADDITIONAL INSUREDS IS PRIMARY AND NON-CONTRIBUTORY

TO ANY OTHER INSURANCE AVAILABLE TO THE ADDITIONAL INSURED AND SEPTA MUST BE THE CERTIFICATE HOLDER ON ALL APPLICABLE LIABILITY COVERAGE WITH RESPECT TO THIS PROJECT AND IT SHOULD BE NOTED ON THE INSURANCE CERTIFICATE AND POLICIES. SEPTA MUST BE PROVIDED WITH PROOF OF INSURANCE THAT DEMONSTRATES COMPLIANCE WITH THESE REQUIREMENTS AS WELL AS ALL LIMITS AND OTHER MANDATED ASPECTS OF COVERAGE.

Notwithstanding anything to the contrary contained in the Contract, the aggregate liability of the Contractor for any and all Claims resulting from or arising out of the performance of the Work shall not exceed fifty percent (50%) of the Contract Sum (as the same may be adjusted by Change Orders or exercise of Option Cars).

## XXII. INSURANCE

- A. Commercial General 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:
1. Workers' Compensation claims as required by the laws of the State(s) in which the Contractor is conducting operations in connection with this Project, and specifically including the Commonwealth of Pennsylvania;
  2. Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees (Employers Liability Insurance);
  3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;
  4. Claims for damages insured under Personal and Advertising Injury liability coverage which are sections of a standard Commercial General Liability Policy with the "fellow employee" exclusion (if there is one) removed; and
  5. Claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.
- B. Evidence of Compliance: Within thirty (30) days after issuance from SEPTA of a Notice of Award of the Contract, the Contractor shall furnish SEPTA with Certificates of Insurance and any other documents which SEPTA may require, as evidence of compliance with these insurance requirements. All insurance carriers for these coverages shall be acceptable to SEPTA and shall have an A.M. Best Rating of B+ or greater. Such Certificates of Insurance or other documents must be approved in writing by SEPTA before a Notice to Proceed will be issued.
- C. Policies to Remain in Force: All insurance coverage which the Contractor is required to provide for the Contract shall be maintained in full force and effect until all of the Material and/or Equipment, training and for the period specified under the Maintenance (or Warranty) Bond are completed. All policies must provide for thirty (30) days written notice to SEPTA before cancellation or modification of coverages 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 of the Certificate.
- D. Replacement Coverage Required: In the event that any or all of the insurance coverages required by the Contract are either cancelled, reduced below the required minimum limits, or lapse, then the Contractor will be suspended from further prosecution of the Material and/or Equipment until such time as replacement coverage satisfactory to SEPTA has been obtained and is in full force and effect.

If the Contractor fails to comply with its obligations in relation to insurance under this deed or breaches the terms of any Insurances, SEPTA may at its election: (a) remedy the Contractor's breach (including by the payment of premiums); or (b) itself procure equivalent insurance to that required to be maintained by the Contractor under deed, and all costs or expenses incurred by SEPTA in doing so will be a debt due and payable from the Contractor to the Authority.

- E. **Additional Insureds Required:** The Contractor shall have the Commercial General Liability and Automobile Liability Policies endorsed to include the Southeastern Pennsylvania Transportation Authority as Additional Insured.
- F. **Waiver of Liability For Premiums:** All policies wherein the parties are included as Additional Insureds shall contain a Waiver of Liability for the payment of premiums covering those Additional Insureds.
- G. **Limits of Liability:** The insurance required by Paragraph XXII A. shall be written for not less than any limits of liability specified below:
1. Workmen's Compensation/Employers Liability: Not less than \$1 million per accident.
  2. General Liability Insurance (excluding Vehicles): Comprehensive General Liability Insurance for Bodily Injury and Property Damage to others, including Product and completed Operations Liability:
    - (a) **Limits to Liability:** Combined Single Limit (Bodily Injury and Property Damage) - \$5 million combined single limit per occurrence.
      - General Aggregate – Not less than \$5 million limit per occurrence
      - Products Completed - \$5 million Combined Single Limit per occurrence in accordance with the Pennsylvania Statute of Repose
      - Personal and Advertising Injury: \$5 million combined single limit per occurrence
    - (b) **Additional Insureds:** The Policy shall be written or endorsed to include as Additional Insureds those parties or persons designated in Paragraph XXII E and apply on a Primary/Non-Contributory basis.
    - (c) Products Completed Operations  
This insurance must be maintained for at least 12 years after substantial completion and acceptance of the project, or to the applicable Statute of Repose in the jurisdiction where the Project is located, whichever is longer.  
  
Policy shall be written or endorsed to include as additional Insureds those parties or persons designated and apply on a Primary/Non-Contributory basis.
  3. Commercial Automobile Liability: Liability Insurance (covering all autos, trucks, and other vehicles used in connection with the Project or Contract for Bodily Injury and Property Damage to others:
    - (a) **Limits of Liability:** Combined Single Limit (Bodily Injury and Property Damage) \$1 million per occurrence and not less than \$5 million annual aggregate.

- (b) Additional Insureds: The Policy shall be written or endorsed to include as Additional Insureds those parties or persons designated in Paragraph XXII E.
  - (c) Hired and Other Non-Owned Vehicles: The Automobile Liability Policy shall be written or endorsed to include coverage for Hired, Leased or other Non-Owned Vehicles.
- 4. Professional Liability/Errors & Omission Insurance: \$25 million annual each claim/annual aggregate
  - 5. Umbrella/Excess Liability: \$100 million combined single limit per occurrence and \$100 million annual aggregate.
  - 6. Must include Endorsement **CG 2417** (Contractual Liability Railroads) designating “All Railroads” and “All Jobs.”
  - 7. **RAILROAD PROTECTIVE LIABILITY**

Coverage and Limits Provided

In addition to insurance coverage required and minimum limits stated elsewhere in this Agreement, Railroad Protective Liability Insurance with a \$2 Million Combined Single Limit (Bodily Injury and Property Damage) per occurrence and a \$6 million aggregate per policy period shall be provided for this Agreement. This coverage shall be provided by SEPTA, at no cost to the Consultant and/or any of its sub consultants and/or subcontractors for the extent of the Agreement requiring activities within SEPTA's Regional Rail Division Right-of-Way or the Right-of-Way of any other Railroad which SEPTA may have an Operating Agreement currently in force. SEPTA may self-insure in whole or in part of this insurance.

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

**XXIII. FEDERAL, STATE AND LOCAL CONTRACT REQUIREMENTS**

The Contractor shall abide by all requirements attached hereto and made a part hereof in Exhibits A and B for all the work performed in connection with the Contract.

**XXIV. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

The Contractor shall comply with all applicable laws, ordinances, regulations, rules, standards and orders of Federal, State and Local governments or authorities (collectively, the “Applicable Laws”) in effect or which become effective during the term of the Contract. All Material and/or Equipment furnished hereunder shall comply with the provisions of said Applicable Laws.

Except as authorized by the General Manager (or designee) or expressly deemed exempt by virtue of the nature of their job in the course of their duties, no employee, agent, contractor, vendor, or other individual shall either use or possess any weapon while on SEPTA property or are otherwise in pursuit of SEPTA business. A weapon includes, but is not limited to, any firearm; explosive or incendiary device; blackjack sandbag; metal/brass knuckles; non-work-related knife, razor, or

cutting instrument; or any other prohibited offensive weapon as defined under Section 908 of the Pennsylvania Crimes Code. (18 Pa. C.S. Section 908) and SEPTA policy S03 - Workplace Violence Policy when working on SEPTA property.

The Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 and those of all Applicable Laws during the conduct and performance of the Contract. The Contractor shall indemnify the SEPTA Parties against fines, penalties and corrective measures that result from or are required by any acts of commission or omission of the Contractor, Subcontractor(s), agents, employees and assignees and their failure to comply with such safety rules and regulations.

The Contractor shall give all notices and comply with all Applicable Laws bearing on the performance of the Contract, or concerning the production of the Rail Cars and/or items of Material and/or Equipment thereunder, including, but not limited to, any laws referred to in the Contract Documents. Within five (5) days of receipt of a written request from SEPTA, the Contractor shall furnish to SEPTA certificates of compliance with all such Applicable Laws. The Contractor shall be responsible for obtaining all necessary permits and licenses required for performance under the Contract.

SEPTA, after the date of the Best and Final Offer, shall issue a Change Order for any Applicable Laws enacted after the date of the Best and Final Offer that actually modifies the Materials and/or Equipment, or the Rail Cars themselves but will not issue any Change Order for any Applicable Law that affects method or means of manufacture, including but not limited to OSHA regulations, and/or that affects the transport of Rail Cars from the place of final assembly to SEPTA's property, and any cost relating to such Applicable Laws shall be borne solely by the Contractor.. Applicable Laws signed into law or issued prior to the date of the Best and Final Offer but with an effective date after the date of the Best and Final Offer shall be considered as having been enacted prior to the date of the Best and Final Offer.

#### XXV. TAXES

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

#### XXVI. NOTICES

All notices given by either party to the other shall be effective only if given in writing and sent to the following addresses of the parties, or to such other addresses as may be designated by the parties in writing. Notice shall be effective upon receipt. The Contractor shall maintain an office or location within the United States of America to which notices shall be sent.

TO SEPTA:     Assistant General Manager  
                  Procurement and Contracts Department  
                  Southeastern Pennsylvania Transportation Authority (SEPTA)  
                  1234 Market Street, 11<sup>th</sup> Floor  
                  Philadelphia, PA 19107-3780

TO THE CONTRACTOR:

The Contractor shall notify SEPTA of any current or prospective legal matters that may affect the Federal Government, including but not limited to fraud, waste, and abuse. When apprised, SEPTA shall promptly notify FTA Chief Counsel and FTA Counsel for Region 3. Contractor shall include an equivalent notification clause in its Third-Party Agreements and shall require each Third-Party Participant to include an equivalent notification clause in its sub-agreements, so that such third-party legal notice requirement will be binding on parties at every tier in all agreements deemed a “covered transaction” according to 2 C.F.R. §§180.220 and 1200.220.

XXVII. FINANCING

SEPTA may enter into third-party financing agreements to fund the Project which may be in the form of municipal bonds, a direct loan, lease or other structured financing arrangement. SEPTA is willing to consider financing alternatives that may be presented by Proposers. Proposers wishing to submit financing alternatives should do so at the time their Proposal is submitted. Should SEPTA elect a third-party financing arrangement, Contractor agrees to use its best efforts to cooperate with SEPTA and any lender regarding inspections, acceptance of equipment and any other reasonable administrative matters in connection with any equipment financing, and shall enter into such reasonable and customary agreements as required by SEPTA and/or the lender in order to effect such financing. Any costs directly associated with such efforts will be borne by SEPTA.

XXVIII. CLAIM AGAINST MEMBER OF SEPTA BOARD OR SEPTA EMPLOYEE

The Contractor shall make no claim against any of the members of the SEPTA Board or its officers, servants, agents, or employees in their individual capacity.

XXIX. GOVERNING LAW/JURISDICTION

The Contract shall be governed by the laws of the Commonwealth of Pennsylvania. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Contract shall be brought against any of the parties only in the courts of the State of Pennsylvania, County of Philadelphia or, if it has or can acquire the necessary jurisdiction, in the United States District Court for the Eastern District of Pennsylvania and each of the parties consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and irrevocably waives any objection based upon inconvenience of the forum or otherwise to venue laid therein.

XXX. SEPTA AUDIT RIGHTS

- A. The Contractor shall prepare, maintain and make available for inspection and audit by SEPTA all of the Project work and cost records relative to this Project at all times during the Contract term and for a period of five (5) years after final payment, including Options. Records shall be made available, upon request, at the Contractor's place of business during normal working hours. The Contractor's cost and financial records shall be maintained in accordance with generally accepted accounting principles and reflect actual costs of all items of labor, material, supplies, services and all other expenditures for which compensation is payable. The Contractor shall include this requirement in all subcontracts awarded by it under the Contract.
- B. The Contractor shall maintain and make available for inspection and audit by SEPTA all records necessary to confirm compliance with Article XII; cost and financial records requested to confirm that payments do not exceed actual costs shall be made available for review remotely upon request during normal working hours.

XXXI. PROHIBITED INTEREST

No member, officer, or employee of SEPTA, or of a local public body, during his or her tenure or one (1) year thereafter shall have any financial interest, direct or indirect, in the Contract or the proceeds thereof.

XXXII. DISPUTES

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 the SEPTA Senior Director of Procurement. 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 SEPTA Senior Director of Procurement. 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. Should the dispute not be resolved to the satisfaction of both parties, by the SEPTA Senior Director of Procurement, the Contractor can bring the case before the competent judicial court subject to Section XXIX above. Notwithstanding anything to the contrary, either Party may seek available legal and equitable remedies, including injunctive relief, with respect to violations of confidentiality or as necessary to protect its intellectual property rights or meet statutory filing deadlines. Unless otherwise directed by SEPTA, the Contractor will continue performance under the Contract while matters in dispute are being resolved.

XXXIII. LABELS

The Contractor shall not place its name, stencil, stamping, or marking of any type as advertisement on any of the Rail Cars and/or Materials and/or Equipment other than concealed trademarks or trade names normally installed by the Contractor.

XXXIV. USE OF "SEPTA" NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS

The Contractor shall not allow any information and/or material of any kind whatsoever related to the Contract to be used in the Contractor's advertisements or public relations programs until submitting the said material to SEPTA in advance and receiving prior written approval from SEPTA. The Contractor covenants and agrees that any published information on the Contract permitted by SEPTA shall be factual and in no way imply endorsement of the Contractor's firm, service, or product by SEPTA. This paragraph does not preclude the Contractor's utilization of "SEPTA" as a reference to potential clients.

XXXV. SEPTA'S RIGHTS IN PROPERTY

A. Technology License

1. The Contractor hereby grants to SEPTA on the Contractor's behalf, and on behalf of its Subcontractors, suppliers and manufacturers (as to whom the Contractor represents and warrants that it has the power and authority to grant such sublicense), an irrevocable, perpetual, royalty-free, nonexclusive license and sublicense ("Technology License") to use, itself or through its agents, for the approved purposes described in Paragraph A.2 of this Article without recourse to the original Contractor, Subcontractor, supplier or manufacturer: all patented, copyrighted and unpatented technology, know-how, trade secrets and other proprietary rights, and documentation thereof (except manufacturing detailed drawings and software, which is separately defined at and licensed pursuant to Paragraph B), which is included in the Material and/or Equipment, including but not limited to all systems, subsystems, assemblies, subassemblies, components, and interface systems and controls which are necessary for the maintenance and repair, modification and upgrading, overhaul and/or remanufacture of the Material and/or Equipment, and for the manufacture of parts which are unavailable for

purchase, as defined below, all of which shall be designated the "Licensed Technology".

2. SEPTA's rights under this Technology License shall be limited to its use for the following:

- i) evaluation and qualification for the purposes of future Material and/or Equipment procurements of systems, subsystems and components of subsystems on the Material and/or Equipment to be delivered under this Contract;
- ii) preparation of specifications for future production orders of passenger Material and/or Equipment employing some or all of the Licensed Technology (the "Specification Purpose");
- iii) maintenance and repair of the Material and/or Equipment;
- iv) modification and upgrading of the Material and/or Equipment;
- v) overhaul and/or remanufacture of the Material and/or Equipment;
- vi) manufacture of parts for the Material and/or Equipment which become unavailable for purchase. The term "unavailable for purchase" means that a part is no longer being manufactured; or an inventory of the part in sufficient quantities to meet SEPTA's needs is not available for purchase; or no supplier will sell a part to SEPTA or cannot supply the part according to a delivery schedule that meets SEPTA's needs; or that no supplier will offer the part at a commercially reasonable price.

3. SEPTA shall not have the right under this Technology License either to use the Licensed Technology to manufacture itself, or to have manufactured for it by a third party as a sublicensee of SEPTA, either the Material and/or Equipment, systems, subsystems or components thereof, except as specified in the foregoing subparagraph (vi). The purposes described in the foregoing subparagraphs (i) through (vi) as limited by the immediately preceding sentence are referred to in this Article as the "Approved Purposes."

4. The Contractor shall provide SEPTA with all source code in third-party escrow for all software obtained or governed by this Contract, in accordance with an Escrow Agreement to be mutually developed and agreed upon by both parties.

#### B. Software License

1. The Contractor hereby grants to SEPTA on the Contractor's behalf, and on behalf of its Subcontractors, suppliers and manufacturers (as to whom the Contractor represents and warrants that it has or will have the power and authority to grant such sublicense), an irrevocable, perpetual, royalty-free, nonexclusive license and sublicense ("Software License") to use, itself or through its agents, for the approved purposes without recourse to the original Contractor, Subcontractor, Supplier, or Manufacturer: all of the Software and the Documentation (defined in Paragraph B.2 and B.3) which is included in the Material and/or

Equipment, and in all systems, subsystems, assemblies, subassemblies and components thereof, all interface systems and controls with respect to all of the above, all diagnostic and testing systems, and all other microprocessor-based systems and software necessary to permit SEPTA to implement the Approved Purposes, including all such systems and software which are necessary for the maintenance and repair, modification and upgrading, overhaul and/or remanufacture of the Material and/or Equipment and for the manufacture of parts which become obsolete or otherwise unavailable for purchase, all of which shall be designated the "Licensed Software."

1. The term "Software" shall mean any and all computer application programs which are incorporated as part of any system, subsystem, assembly, subassembly or components thereof, or any interface system control between or among the systems, subsystems, assemblies, subassemblies, or component thereof, in the Cars, or which are used in connection with a system (which use involves microprocessors, controllers, drivers, or other electronic data processing elements) or which are used in connection with any related diagnostic or testing equipment (if any), together with all related documentation, including without limitation the object code, source code (which, in the alternative may be required to be provided to an Escrow agent for the benefit of SEPTA) and pseudo-code versions of such assemblies, subassemblies, programs, firmware containing such programs, know-how protocols, listings, instruction sets, indices and other intellectual property necessary for SEPTA's use of the Software for the Approved Purposes in the form prepared by the Contractor, subcontractor, supplier or manufacturer in the regular course of its business, or to the extent that the Specification requires a different form, then in the form required by the Specification.

3. The term "Software License Documentation," except as applicable to commercially available software, includes all user manuals, systems manuals, training materials, guides, logic diagrams, programmer's notes, flow charts, algorithms, development tools and development platforms, including Input/Output Documentation (defined in Paragraph B.5) and other materials necessary for SEPTA's understanding and use of the Software for the Approved Purposes in the form prepared by the Contractor, Subcontractor, supplier or manufacturer in the regular course of its business, or, to the extent that the Specification requires a different form, then in the form required by the Specification.

4. Notwithstanding requirements otherwise set forth in this Article, for all Software determined by the Engineer to be commercially available software ("Third Party Software"), for example, third party operating system software supplied by the Contractor, the Contractor shall at its own expense secure and administer for SEPTA, in SEPTA's name, any and all necessary sublicenses or direct licenses for such Third Party Software that allow SEPTA to use Third Party Software for the operations, maintenance and repair of the Cars. The Contractor shall use its best efforts to secure such sublicenses or direct licenses upon the same terms and conditions as the Licensed Software, or upon other terms and conditions which are acceptable to SEPTA. The scope of the Software License granted to SEPTA hereunder with respect to such Third Party Software shall be that provided in the applicable license as provided by the supplier thereof. The term "Software License Documentation" with respect to Third Party Software includes all user manuals, systems manuals, training manuals,

guides and all other materials made available by the software developer to users of its software, including the Contractor.

5. The Contractor shall provide SEPTA with full documentation, in the form(s) required by the Specification, as to all input/output protocols and operating parameters for microprocessor-based control systems installed in the Cars, provided, however, that SEPTA's right to disclose or use such information shall be limited to the Approved Purposes. The term "Input/Output Software License Documentation" shall mean a complete listing of all commands and operating parameters generated by electronic input devices, such as manual controls, sensors and test equipment used with the system, and responses generated by the controller to such devices, directives and responses sent between controllers and the output to the controlled system. Input/Output Software License Documentation shall also include complete specifications for all communication interfaces, external device drivers and analog/digital converters used by the control system, the addresses, parameters, priority and functions of all operating routines and the locations, structure and functions of all data stores.

C. Software Standards

In its design of the Material and/or Equipment, the Contractor shall insure that all Software (i) conforms to those standard industry interfaces and protocols specified by SEPTA to permit interchangeability of systems and subsystems, (ii) is capable of maintenance, modification and upgrades in accordance with conventional software standards and practices, (iii) utilizes conventional command sequence and structure, and (iv) in all respects meets the software standards requirements of the Specifications.

D. Use of Copyrighted Material

The Licenses granted herein each shall entitle SEPTA to copy, modify and disseminate, solely for the Approved Purposes, all copyrighted material included in the Licensed Technology, and the Licensed Software, including (without limitation) manuals, drawings, diagrams, schematics, data bases, all materials furnished pursuant to Paragraphs B.5 and F.

E. Tangible Materials

The tangible copies of all drawings, schematics, parts lists, diagrams, manuals, Software, Software License Documentation and other data and documents, regardless of the media or form of its storage or use, furnished to SEPTA in connection with this Contract shall become the property of SEPTA; provided, however, the use, storage, reproduction, handling, disclosure and dissemination of any such materials shall be subject to this Article.

F. Deliverables

In addition to the Licensed Technology, and the Licensed Software, and to the extent not otherwise included therein, the Contractor shall furnish to SEPTA, in the form(s) required by the Specification, as-built drawings, parts lists, schematics, diagrams, manuals, other data, documents and information, including but not limited to all systems, subsystems, assemblies, subassemblies, components and interface systems and controls required by the Specification for use by SEPTA for the Approved Purposes. The parties shall agree on procedures for verifying the completeness of each delivery, and at the time of the first delivery and each

delivery thereafter, SEPTA and the Contractor shall jointly verify the deliverables in accordance with agreed-upon procedures.

G. Delivery Schedule

In furtherance of the Licenses granted in this Article, the Contractor covenants that it shall deliver to SEPTA complete and current copies of all of the Licensed Technology, and the Licensed Software, as described in Paragraph F, not later than the time that Contractor delivers the Cars. The Contractor shall deliver to SEPTA all corrections, modifications and upgrades (collectively, "updates") to the documentation of the Licensed Technology, and the Licensed Software previously delivered as soon as such updates become available, but no later than the date of delivery of the last Car. Final updates shall be provided no later than eighteen (18) months after final delivery. With this final delivery, the Contractor shall certify that SEPTA has received all Licensed Technology, and all Licensed Software representing the "as-built" Material and/or Equipment.

H. Use of Agents

SEPTA may employ agents for the Approved Purposes, as needed, and may sublicense its rights to use the Licensed Technology, and the Licensed Software to such agents for the Approved Purposes; provided, however, that each such agent (i) shall receive such sublicense only pursuant to a written agreement subjecting the agent to the same restrictions on use and disclosure of the licensed property as SEPTA; and (ii) the agent shall have no right to sublicense the Licensed Property, and (iii) except with respect to the Approved Purposes set forth in subparagraph A.2.(vi), the agent shall not be a direct competitor of the Licensor.

I. The Contractor and its subcontractors shall grant to SEPTA in connection with this Contract the right to use, duplicate or disclose, in whole or in part and without charge, all technical data required by SEPTA to install, operate, understand, maintain, modify, replace, test, repair or overhaul the Cars and the Material and/or Equipment. SEPTA shall not disclose proprietary information and data being supplied under this Contract except for the limited purpose of obtaining individual part repairs or specialized testing or repair services outside the ability of its shops, and then only on a confidential basis. "Technical data" means information of a scientific or engineering nature, regardless of form or characteristics, to be furnished by the Contractor pursuant to this Contract. Examples are research and engineering data, engineering drawings and associated lists, specifications, standards, schematics, process sheets, manuals, technical reports, catalog item identifications or related information. The Contractor shall not patent or copyright any original materials or information created by this procurement.

XXXVI. SOFTWARE WARRANTY

In addition to any other requirements set forth in the Contract, the Contractor warrants that, for the period of the Warranty otherwise applicable hereunder, the Software (including any Licensed Software) shall; (i) be of a language that is commercially available in the United States and for which software tools are available; (ii) be capable of being copied by SEPTA (for the Approved Purposes); (iii) not contain viruses or pre-programmed devices or require use of any dongle or any adapter or any hardware or software device which will cause any software utilized by SEPTA to be erased or become inoperable or incapable of processing accurately or incapable of being copied by SEPTA; (iv) the Software and each module and function thereof shall be capable of operating fully and correctly and; (v) the Software does not contain any code that will, upon the occurrence or the nonoccurrence of any event, disable the Software. This Warranty shall not apply to any Software modified by SEPTA without the approval of the Contractor.

XXXVII. CONTRACTOR'S PROGRAM MANAGEMENT OFFICE

The Contractor shall establish and maintain a full-time program management office within 30 days following the date of the Notice to Proceed until two (2) years following the date of the Certificate of Acceptance of the final Car to be delivered, including Options. This office shall be the receiving point for all technical correspondence from SEPTA, being staffed for a minimum of 8 hours each weekday, with a telephone recording device and e-mail used to record messages at other times.

XXXVIII. CONTRACT OPTION FOR ADDITIONAL SILVERLINER VI RAIL CARS

SEPTA, at its sole discretion, shall have the right to exercise thirty (30) months before the last base order married pair is delivered the Option(s) as listed in Schedule A. If SEPTA exercises an Option, the Notice to Proceed for the Option will not be given by SEPTA to the Contractor until, and is contingent upon, SEPTA's receipt of the required insurance certificates as set forth in Section XXII Insurance, and additional Performance Bond, in the amount as of 15% of the Option-Specific Total Price. The insurance certificate and Performance Bond must be submitted to SEPTA by the Contractor within ten (10) calendar days of SEPTA's written notice of its decision to exercise the option.

The Performance Bond shall be effective from the award date of the Option until the date of completion of the three-year warranty period, provided, however, that thirty (30) days after acceptance or conditional acceptance of the final married pair of the Option, the Contractor may substitute a Maintenance (or Warranty) Bond in the amount of five (5%) percent of the Option Specific Total Price.

The required bonds must be written by a fully qualified surety company as described in Section XX of this Agreement 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 required bonds.

XXXIX. CONTRACT OPTION PRICE ADJUSTMENT AND PAYMENT TERMS FOR OPTION FOR ADDITIONAL SILVERLINER VI RAIL CARS

SEPTA shall make progress payments and any price adjustments to the Contractor for any or all Option Silverliner VI Rail Cars in accordance with XIII.

XL. DOCUMENTS AND SPARE PARTS

A. Documents

Contractor shall provide current maintenance and parts manuals as outlined in the Specification. The Contractor shall provide revised pages governing any changes to these manuals, whether required by the Field Modification Instructions, Engineering Change Notes, equipment modifications, changes of design, drawings or procedures, incompleteness due to error or omission or any other reason. Each publication shall be kept current by the Contractor during the warranty period.

B. Spare Parts Availability Guaranty

The Contractor agrees to continuously offer to supply, either directly or through a designated source to SEPTA within a commercially reasonable period of time in the case of each part ordered, the spare parts and customer-accessible software necessary to maintain and repair the Material and/or Equipment supplied under this Contract, at the then-current or last price published in Contractor's catalogs, price list, or other general sales materials, for a period of at least fifteen (15) years after the date of the final acceptance of the last Car by SEPTA; provided, however, that if Contractor

discontinues the general distribution of such part, it shall notify and give SEPTA the opportunity to make a one-time buy of its requirements. Parts shall be interchangeable with the original equipment. The Contractor shall not make exclusive agreements with the Sub-suppliers that would preclude SEPTA from purchasing components directly from sub-suppliers.

**XLI. INTEGRATION**

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

**XLII. SEVERABILITY**

If any paragraph, clause, section or part of the Contract is held 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.

**XLIII JOINT AND SEVERAL LIABILITY**

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

**XLIV SEAT BELT USE**

Contractor agrees to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally-operated vehicles while working on SEPTA projects, whether on SEPTA property or in transit to or from SEPTA property, at all times during the entire duration of the project.

Contractor also agrees to include a "Seat Belt Use" provision in any and all of its third-party agreements related to the Contractor's performance under this Contract.

**XLV DISTRACTED DRIVING, INCLUDING TEXT MESSAGING WHILE DRIVING**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by the Contractor or their own personal device, and driving a vehicle the driver owns or rents; a vehicle the Contractor owns, leases, or rents; or a privately-owned vehicle when on

official business in connection with this Contract, or when performing any work for or on behalf of this Contract.

The Contractor agrees to conduct workplace safety initiatives, including establishing new rules and programs to prohibit text messaging while driving, re-evaluating existing programs to prohibit text messaging while driving, and providing education, awareness,

and other outreach to employees about the safety risks associated with texting while driving.

The Contractor also agrees to include the above-referenced provisions in any and all of its third-party agreements, all third parties of whom must comply with this Section.

XLVI

INFRASTRUCTURE INVESTMENT AND JOBS ACT

None of the funds provided under this award may be used for a project for infrastructure unless:

A.) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

B.) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

C. ) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

XLVII

AVAILABILITY OF FUNDS

SEPTA's obligations to make payments under this Contract are subject to the availability of appropriated or otherwise designated funds, including but not limited to, Federal, State and/or local financial assistance from which payments can be made. No legal liability on the part of SEPTA for any payment may arise until such funds are made available to SEPTA, and SEPTA receives notice of such availability in writing. SEPTA shall have the right to terminate this Contract, in whole or in part, due to unavailable funds, in accordance with Article XVI (Termination for Convenience). Contractor shall be reimbursed for all reasonable costs determined by SEPTA in accordance with Article XVI. The reimbursement may be paid from any funds available for that purpose.

**[END OF PAGE]**

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

Attest:

**Southeastern Pennsylvania  
Transportation Authority**

\_\_\_\_\_  
Carol L. Looby  
Secretary

\_\_\_\_\_  
Scott A. Sauer  
General Manager

Attest:

**Name of Firm**

\_\_\_\_\_  
(Print Name)

By: \_\_\_\_\_  
\_\_\_\_\_  
(Name)  
President and CEO

Approved as to Form:

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

**EXHIBIT I**

**PRICING SCHEDULES**



Southeastern Pennsylvania Transportation Authority

**New Rail Vehicle Department**

1234 Market Street, 14th Floor, Philadelphia, PA 19107-3780

**Price Schedule – Silverliner VI Rail Cars**

Item	Description	Quantity	Unit Price	Extended Prices
1A	Silverliner VI Rail Cars, including site support and warranty, per Specification	234 Cars	\$	\$
1B	Optional Silverliner VI Rail Cars, including site support and warranty, per Specification ***SEPTA may exercise an option to configure up to 30 cars of the first option orders as an Airport configuration as detailed in the Technical Specification. If this option is executed, Airport conversion kits per Exhibit III Item A-21 are not to be supplied as spares***	46 Cars	\$	\$
1C	Optional Silverliner VI Rail Cars, including site support and warranty, per Specification	46 Cars	\$	\$
2	Publications and Training, Including Training Simulators, per Specification Section 26	Lot	-	\$
3	Spare Parts per Attachment A-1 thru A-181 Section 1.14.3 – Exhibit III, Attachment A	Lot	-	\$
3A	Optional additional spare parts for 46 cars. (20% of the quantity delivered under Item 3. Where fractional, quantities to be rounded up)	Lot	-	\$
3B	Optional additional spare parts for 46 cars. (20% of the quantity delivered under Item 3. Where fractional, quantities to be rounded up)	Lot	-	\$
4	Special Tools per Specification	Lot	-	\$

5	Diagnostic and Test Equipment per Specification Section 27	Lot	-	\$
6	Optional Silverliner VI Test and Inspection Married Pair configuration, including site support and warranty, per Specification. *** This option would configure two (2) of the base order cars as Test and Inspection vehicles as detailed in the Technical Specification. SEPTA may designate any production married pair as the Test and Inspection vehicles provided the contractual delivery date for that married pair is at least 30 months from the option execution date.	Lot	\$	\$
	<b>Total Firm Fixed Price</b> (in US Dollars), for all items (1 thru 6), to include all Shipping Charges, F.O.B. SEPTA:			\$

**EXHIBIT II**

**MILESTONE AND PROGRESS PAYMENT SCHEDULE**

**SEPTA Silverliner VI Rail Cars - Project Schedule**

Schedule Milestone	Schedule Milestone Description	Scheduled Months from NTP	Progress Payment #	Discrete Deliverables to Substantiate the Work for Which Payments is Requested	CDRL/ Reference	Payment Amount for Submittal
1.0	Completion of the Kickoff Meeting, Specification Review Conferences, written approval of the deliverables designated "Initial" in the Contract Deliverables Requirements List (Exhibit IV Table 25-2) and the furnishing to SEPTA of the required bonds and insurance in accordance with Paragraphs XX and XXII of the Contract	1-4	1.1	Completion of Kickoff Meeting and Specification Review Conference and submission of the Specification Compliance Matrix.		
			1.2	First Conditional Approval of all "Initial" Contract Deliverables Requirements List items and furnishing to SEPTA of the required bonds and insurance in accordance with Paragraphs XX and XXII of the Contract.		
			1.3	Approval of all "Initial" Contract Deliverables Requirements List items.		
2.0	Award and issuance of all Major Systems POs & Subcontracts for the following items:	6-12	2.0	Submittal of Redacted Copies of Major Systems POs & Subcontracts for:		
			2.1	(Contractor to list Major Systems and Subcontracts 2.1.01-2.1.XX)		
			2.2	...		
3.0	Satisfactory completion in accordance with requirements in Paragraph 25.16 of all major system Design Reviews of which there are three (3) phases.					
3.1	Completion and Closure of Action Items for Conceptual Design Review (CDR) and written approval of the deliverables designated "CDR" in the Contract Deliverables Requirements List (Exhibit IV Table 25-2)	4	3.1.1	Completion of all CDR meeting(s), issuance of Minutes of Meetings, and Closure of CDR Action Items not deferred to a later stage.		
			3.1.2	First Conditional Approval of all "CDR" Contract Deliverables Requirements List items including all CDR packages.		
			3.1.3	Approval of all "CDR" Contract Deliverables Requirements List items including all CDR packages		
3.2	Completion and Closure of Action Items for Preliminary Design Review (PDR) and written approval of the deliverables designated "PDR" in the Contract Deliverables Requirements List (Exhibit IV Table 25-2)	8	3.2.1	Completion of all PDR meeting(s), issuance of Minutes of Meetings, and Closure of PDR Action Items not deferred to a later stage.		
			3.2.2	First Conditional Approval of all "PDR" Contract Deliverables Requirements List items including all PDR packages.		
			3.2.3	Approval of all "PDR" Contract Deliverables Requirements List items including all PDR packages		
3.3	Completion and Closure of Action Items for Final Design Review (FDR) and written approval of the deliverables designated "FDR" in the Contract Deliverables Requirements List (Exhibit IV Table 25-2)	16	3.3.1	Completion of all FDR meeting(s), issuance of Minutes of Meetings, and Closure of FDR Action Items not deferred to a later stage.		
			3.3.2	First Conditional Approval of all "FDR" Contract Deliverables Requirements List items including all FDR packages.		
			3.3.3	Approval of all "FDR" Contract Deliverables Requirements List items including all FDR packages		
4.0	Satisfactory completion in accordance with requirements in Paragraph 22.1.3.8 of all major system First Article Inspections at the subcontractor plants.	40	4.0	Approval of FAI:		
			4.1	(Contractor to list Major Systems 4.1-4..XX)		
			4.2	...		
5.0	Completion and satisfactory testing of the first carbody shell.	30	5.1	Contractor's completion of the first carbody shell and Authority witness of carbody shell dimensional inspection		
			5.2	Approval of Carbody Structure Design Qualification Test Reports		
6.0	Delivery and Approval of <b>Draft</b> Technical Manuals	39	Separate Schedule to be proposed			
7.0	Delivery and Approval of <b>Draft</b> Training Material	39	Separate Schedule to be proposed			

8.0	SEPTA's release for shipment from the Contractor's plant of the <b>Pilot</b> Married Pairs #1, #2, and #3 and upon completion of the <b>Buy America Post-Delivery Audit</b> to the satisfaction of SEPTA.	42	8.1	SEPTA's release for shipment from the Contractor's plant of the <b>Pilot</b> Married Pairs #1, #2, and #3 and upon completion of the <b>Buy America Post-Delivery Audit</b> to the satisfaction of SEPTA.		
9.0	SEPTA's written acceptance or conditional acceptance of the <b>Pilot</b> Married Pairs #1, #2, and #3.	50	9.1	SEPTA's written conditional acceptance of the <b>Pilot</b> Married Pairs #1, #2, and #3.		
			9.2	SEPTA's written acceptance of the <b>Pilot</b> Married Pairs #1, #2, and #3.		
			9.3	First Conditional Approval of all "Pilot" Contract Deliverables Requirements List items.		
			9.4	Approval of all "Pilot" Contract Deliverables Requirements List Items.		
10.00	SEPTA's acceptance or conditional acceptance of the production cars.					
10.01	Married Pair #4	51	10.1.01	Release for Shipment		
			10.1.02	Conditional Acceptance		
			10.1.03	Acceptance		
10.02	Married Pair #5	51	Repeat of Schedule Milestone 10.01			
10.03	Married Pair #6	51	Repeat of Schedule Milestone 10.01			
10.04	Married Pair #7	52	Repeat of Schedule Milestone 10.01			
10.05	Married Pair #8	52	Repeat of Schedule Milestone 10.01			
10.06	Married Pair #9	52	Repeat of Schedule Milestone 10.01			
10.07	Married Pair #10	53	Repeat of Schedule Milestone 10.01			
10.08	Married Pair #11	53	Repeat of Schedule Milestone 10.01			
10.09	Married Pair #12	53	Repeat of Schedule Milestone 10.01			
10.10	Married Pair #13	54	Repeat of Schedule Milestone 10.01			
10.11	Married Pair #14	54	Repeat of Schedule Milestone 10.01			
10.12	Married Pair #15	54	Repeat of Schedule Milestone 10.01			
10.13	Married Pair #16	55	Repeat of Schedule Milestone 10.01			
10.14	Married Pair #17	55	Repeat of Schedule Milestone 10.01			
10.15	Married Pair #18	55	Repeat of Schedule Milestone 10.01			
10.16	Married Pair #19	56	Repeat of Schedule Milestone 10.01			
10.17	Married Pair #20	56	Repeat of Schedule Milestone 10.01			
10.18	Married Pair #21	56	Repeat of Schedule Milestone 10.01			
10.19	Married Pair #22	57	Repeat of Schedule Milestone 10.01			
10.20	Married Pair #23	57	Repeat of Schedule Milestone 10.01			
10.21	Married Pair #24	57	Repeat of Schedule Milestone 10.01			
10.22	Married Pair #25	58	Repeat of Schedule Milestone 10.01			
10.23	Married Pair #26	58	Repeat of Schedule Milestone 10.01			
10.24	Married Pair #27	58	Repeat of Schedule Milestone 10.01			
10.25	Married Pair #28	59	Repeat of Schedule Milestone 10.01			
10.26	Married Pair #29	59	Repeat of Schedule Milestone 10.01			
10.27	Married Pair #30	59	Repeat of Schedule Milestone 10.01			
10.28	Married Pair #31	60	Repeat of Schedule Milestone 10.01			
10.29	Married Pair #32	60	Repeat of Schedule Milestone 10.01			
10.30	Married Pair #33	60	Repeat of Schedule Milestone 10.01			
10.31	Married Pair #34	61	Repeat of Schedule Milestone 10.01			
10.32	Married Pair #35	61	Repeat of Schedule Milestone 10.01			
10.33	Married Pair #36	61	Repeat of Schedule Milestone 10.01			
10.34	Married Pair #37	62	Repeat of Schedule Milestone 10.01			
10.35	Married Pair #38	62	Repeat of Schedule Milestone 10.01			
10.36	Married Pair #39	62	Repeat of Schedule Milestone 10.01			



10.87	Married Pair #90	79	Repeat of Schedule Milestone 10.01			
10.88	Married Pair #91	80	Repeat of Schedule Milestone 10.01			
10.89	Married Pair #92	80	Repeat of Schedule Milestone 10.01			
10.90	Married Pair #93	80	Repeat of Schedule Milestone 10.01			
10.91	Married Pair #94	81	Repeat of Schedule Milestone 10.01			
10.92	Married Pair #95	81	Repeat of Schedule Milestone 10.01			
10.93	Married Pair #96	81	Repeat of Schedule Milestone 10.01			
10.94	Married Pair #97	82	Repeat of Schedule Milestone 10.01			
10.95	Married Pair #98	82	Repeat of Schedule Milestone 10.01			
10.96	Married Pair #99	82	Repeat of Schedule Milestone 10.01			
10.97	Married Pair #100	83	Repeat of Schedule Milestone 10.01			
10.98	Married Pair #101	83	Repeat of Schedule Milestone 10.01			
10.99	Married Pair #102	83	Repeat of Schedule Milestone 10.01			
10.100	Married Pair #103	84	Repeat of Schedule Milestone 10.01			
10.101	Married Pair #104	84	Repeat of Schedule Milestone 10.01			
10.102	Married Pair #105	84	Repeat of Schedule Milestone 10.01			
10.103	Married Pair #106	85	Repeat of Schedule Milestone 10.01			
10.104	Married Pair #107	85	Repeat of Schedule Milestone 10.01			
10.105	Married Pair #108	85	Repeat of Schedule Milestone 10.01			
10.106	Married Pair #109	86	Repeat of Schedule Milestone 10.01			
10.107	Married Pair #110	86	Repeat of Schedule Milestone 10.01			
10.108	Married Pair #111	86	Repeat of Schedule Milestone 10.01			
10.109	Married Pair #112	87	Repeat of Schedule Milestone 10.01			
10.110	Married Pair #113	87	Repeat of Schedule Milestone 10.01			
10.111	Married Pair #114	87	Repeat of Schedule Milestone 10.01			
10.112	Married Pair #115	88	Repeat of Schedule Milestone 10.01			
10.113	Married Pair #116	88	Repeat of Schedule Milestone 10.01			
10.114	Married Pair #117	88	Repeat of Schedule Milestone 10.01			
10.115	Option Married Pairs	89	Separate Schedule to be established			
11.0	Completion of Delivery of Capital Spare Parts	88	Separate Schedule to be established			
12.0	Delivery and Acceptance of <b>Final</b> Manuals	62	Separate Schedule to be established			
13.0	Completion of Delivery of Special Tools	50	Separate Schedule to be established			
14.0	Approval of Warranty Plan	42	14.1	Submission of Warranty Plan		
			14.2	Approval of Warranty Plan		
15.0	Following all car deliveries to SEPTA and the issuance of the Maintenance (or Warranty) Bond per Paragraph XX	88	15.1	Following all car deliveries to SEPTA and the issuance of the Maintenance (or Warranty) Bond per Paragraph XX.		
16.0	Completion of Delivery of Bench Test Equipment	88	Separate Schedule to be proposed			
17.0	Completion of the following requirements:	90				
	a) Delivery to and written acceptance by SEPTA of all Contract deliverables;		17.1	a) Delivery to and written acceptance by SEPTA of all Contract deliverables;		
	b) Rectification by the Contractor of all deficiencies noted by SEPTA;		17.2	b) Rectification by the Contractor of all deficiencies noted by SEPTA;		
	c) Receipt of all required certifications in form and substance satisfactory to SEPTA in its sole Judgment;		17.3	c) Receipt of all required certifications in form and substance satisfactory to SEPTA in its sole Judgment;		
	d) Completion or all post delivery audits to SEPTA's sole satisfaction.		17.4	d) Completion or all post delivery audits to SEPTA's sole satisfaction.		

	e) Any and all outstanding as-built drawings, photographs, models		17.5	e) Any and all outstanding as-built drawings, photographs, models		
18.0	Successful fulfillment and completion of all training classes	54	Separate Schedule to be proposed			
19.0	Operator Training Simulator	51	19.1	Completion of Detailed Design Review Phase	26-17	
			19.2	Completion and Approval of First Article Inspection	26-18	
			19.3	Acceptance of Operator Training Simulator	26-19	

1. Column titled "Payment Amount for Submittal" must add up to Price Schedule line 1A.
2. All proposed price schedules and major system payments shall be based on costs for actual work performed to date.

**EXHIBIT III****SPARE PARTS**

<b>ITEM</b>	<b>SYSTEM/DESCRIPTION</b>	<b>PERCENTAGE OF TOTAL DELIVERED PARTS</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
	<b>CARBODY AND CAR EXTERIOR</b>			
A-1	Complete set of all stainless steel and aluminum carbody elements, as individual parts (structural framing, sheathing, cross members, etc.).	2.0%	\$	\$
A-2	Side, roof and end exterior sheathing, as individual parts.	2.0%	\$	\$
A-3	End underframe assembly, complete with bolster, collision post lugs and corner post lugs, for "F" end.	4.0%	\$	\$
A-4	End underframe assembly, complete with bolster, collision post lugs and corner post lugs, for "A" end.	4.0%	\$	\$
A-5	Cab-end structure and sheathing (collision posts, corner posts, end sheathing, anti-telescoping plates, etc.).	8.0%	\$	\$

<b>ITEM</b>	<b>SYSTEM/DESCRIPTION</b>	<b>PERCENTAGE OF TOTAL DELIVERED PARTS</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
A-6	Non cab-end structure and sheathing (collision posts, corner posts, end sheathing, anti-telescoping plates, etc.).	4.0%	\$	\$
A-7	Floor panels and floor covering with fasteners.	1.0%	\$	\$
A-8	Carbody bolster anchor brackets, anchor bracket rods and connecting hardware sets.	10.0%	\$	\$
A-9	Cab-end pilot assembly, complete, including framing.	8.0%	\$	\$
A-10	All car glazing, including windshields, side glazing, end door and side door glazing, cab sliding window sash, etc., and all related elastomers.	4.0%	\$	\$
A-11	All interior windscreen partition glazing and mounting elastomers.	5.0%	\$	\$
A-12	End buffer face plate wearing surface, with hardware.	20.0%	\$	\$
A-13	End buffer walkway foot plate.	5.0%	\$	\$

ITEM	SYSTEM/DESCRIPTION	PERCENTAGE OF TOTAL DELIVERED PARTS	UNIT PRICE	EXTENDED PRICE
A-14	Pantograph side gates, complete.	5.0%	\$	\$
A-15	"F" end safety chains with mounting hardware.	5.0%	\$	\$
A-16	"A" end diaphragm assembly, with mounting hardware.	5.0%	\$	\$
A-17	Exterior steps and handholds, complete	2.0%	\$	\$
A-18	Exterior handles and safety appliances.	2.0%	\$	\$
A-19	Side doorway and end doorway thresholds, complete, with mounting hardware and any heater elements.	5.0%	\$	\$
A-20	Side doorway stepwell assemblies, with bottom threshold with heater	4.0%	\$	\$

ITEM	CAB AND CAR INTERIOR	PERCENTAGE OF TOTAL DELIVERED PARTS	UNIT PRICE	EXTENDED PRICE
A-21	Airport Luggage Rack conversion kit *Provide kits to convert 30 vehicles to airport configuration*	Kits for 30 vehicles	\$	\$
A-22	Cab console, complete, including all control panels.	2.0%	\$	\$
A-23	All cab switches and indicators, etc.	4.0%	\$	\$
A-24	All operator's displays and monitors including all Train Operator Displays	4.0%	\$	\$
A-25	All cab door assemblies, including locks and hinges.	4.0%	\$	\$
A-26	Operator's cab seat assembly and cab sun visors.	6.0%	\$	\$
A-27	All cab interior linings, including all trim and moldings, complete with hardware.	2.0%	\$	\$
A-28	Body end door, complete with weatherstrip, nosing, hardware, and locks for F end.	5.0%	\$	\$
A-29	All passenger seat frames, mounts, pedestals, shrouds, complete, including folding seats.	1.0%	\$	\$
A-30	All passenger seat cushion assembly bottoms and backs including folding seats.	2.0%	\$	\$

A-31	All side doorway leafs, including glazing, weatherstrip, and nosing complete.	4.0%	\$	\$
A-32	Interior windscreens, complete.	1.0%	\$	\$
A-33	PIS displays	4.0%	\$	\$
A-34	Luggage racks, including supporting brackets, complete.	1.0%	\$	\$
A-35	Interior locker doors, complete with hinge and lock.	4.0%	\$	\$
A-36	Interior stanchions and handrails	2.0%	\$	\$
A-37	All interior linings (side, end, ceiling stairway and window), including all trim and moldings, complete with hardware.	2.0%	\$	\$
A-38	Windshield wiper assembly (including motor and arm).	5.0%	\$	\$
A-39	Covers, including hardware, for all underfloor and roof equipment boxes on car.	7.0%	\$	\$
A-40	Cab master controller assembly.	10.0%	\$	\$

<b>ITEM</b>	<b>COUPLER</b>	<b>PERCENTAGE OF TOTAL DELIVERED PARTS</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
A-41	Coupler and draft gear assembly, complete with draft gear anchorage, cables, and hoses.	5.0%	\$	\$
A-42	Electrical head, including car network connections, complete.	5.0%	\$	\$
A-43	Drawbar assembly, complete with all cables, hoses, and draft gear. assembly.	5.0%	\$	\$
A-44	All bushings and wear items for F-end coupler assembly.	5.0%	\$	\$
A-45	Mechanical coupler adapter.	2.0%	\$	\$
A-46	Inter-car Jumpers	5.0%		
<b>ITEM</b>	<b>PASSENGER DOOR SYSTEM</b>	<b>PERCENTAGE OF TOTAL DELIVERED PARTS</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
A-47	Door operator assembly, complete, including linkages, drives, door tracks, actuators, mounting hardware, switches, etc.	3.0%	\$	\$
A-48	Door local control board or module, complete.	3.0%	\$	\$
A-49	Door car control board or module, complete.	10.0%	\$	\$

A-50	Conductor doorway control panels, both high and low level, complete.	4.0%	\$	\$
A-51	Door track assembly, if separate from drive assembly.	3.0%	\$	\$
A-52	Exterior crew key switches, complete with cover.	5.0%	\$	\$
A-53	Door cutout mechanical lock assembly.	5.0%	\$	\$
A-54	End stops with mounting hardware.	5.0%	\$	\$
A-55	Door emergency release covers.	20.0%	\$	\$
A-56	All door control system limit switches, solenoids and sensors.	10.0%	\$	\$
A-57	All door emergency release mechanical components, cables, etc.	2.0%	\$	\$

ITEM	ELECTRICAL SYSTEMS	PERCENTAGE OF DELIVERED PARTS	UNIT PRICE	EXTENDED PRICE
A-58	Battery.	2.0%	\$	\$
A-59	Auxiliary power inverter.	3.0%	\$	\$
A-60	All circuit breakers.	2.0%	\$	\$
A-61	Low voltage power supply, complete.	5.0%	\$	\$
A-62	All fuses.	25.0%	\$	\$
A-63	Contact tips (Sets) - all types.	5.0%	\$	\$
A-64	All auxiliary power supplies and DC/DC converters used on car subsystems (door system, signaling system, etc.).	10.0%	\$	\$
A-65	All auxiliary power inverter power conversion modules, complete with heat sinks.	5.0%	\$	\$
A-66	Control relays, contactors, and sensors, all types.	8.0%	\$	\$
A-67	Ground switch assembly with all cabling and mounting hardware.	4.0%	\$	\$
A-68	Main circuit breaker.	4.0%	\$	\$
A-69	Primary circuit breaker contact tips, line contactor, charging contactor, and charging resistor.	10.0%	\$	\$

A-70	Pantograph assembly with all cabling and mounting hardware.	5.0%	\$	\$
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ITEM	HVAC SYSTEM	PERCENTAGE OF DELIVERED PARTS	UNIT PRICE	EXTENDED PRICE
A-71	Air conditioning unit, complete.	4.0%	\$	\$
A-72	Ceiling air grills.	2.0%	\$	\$
A-73	Overhead heater assembly.	4.0%	\$	\$
A-74	Thermal fuse assembly.	4.0%	\$	\$
A-75	Floor heater elements and mounting elements.	4.0%	\$	\$
A-76	Floor heater cover grills.	3.0%	\$	\$
A-77	Cab heater assembly, complete.	4.0%	\$	\$
A-78	Cab heater elements and fan motors.	4.0%	\$	\$
A-79	Cab HVAC assembly and controls, complete.	4.0%	\$	\$
A-80	All filter assemblies.	5.0%	\$	\$
A-81	Evaporator motor and fresh air motor assembly.	4.0%	\$	\$
A-82	Refrigerant compressor.	4.0%	\$	\$
A-83	Condenser coil assembly.	4.0%	\$	\$

A-84	Evaporator coil assembly.	4.0%	\$	\$
A-85	Condenser fan assembly.	4.0%	\$	\$
A-86	Evaporator blower assembly and fresh air blower assembly.	4.0%	\$	\$
A-87	Drain pan.	2.0%	\$	\$
A-88	All solenoid and expansion valves.	4.0%	\$	\$
A-89	Temperature control unit and all other HVAC control system items (complete).	4.0%	\$	\$
A-90	All sets of thermistors.	4.0%	\$	\$
A-91	Complete set of HVAC motor starters.	4.0%	\$	\$
A-92	Contact tips (Sets) - all types.	10.0%	\$	\$
A-93	Smoke detectors.	5.0%	\$	\$
A-94	Threshold heater assembly, high level door (if separate from threshold)	5.0%	\$	\$
A-95	Threshold heater assembly, low level door (if separate from threshold)	5.0%	\$	\$

<b>ITEM</b>	<b>LIGHTING</b>	<b>PERCENTAGE OF DELIVERED PARTS</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
A-96	Interior light fixtures, complete.	2.0%	\$	\$

A-97	Exterior light fixtures, complete.	4.0%	\$	\$
A-98	All interior and exterior LED indicators.	5.0%	\$	\$
A-99	Lenses and hardware for all interior and exterior light fixtures.	5.0%	\$	\$
A-100	Headlight, marker, and auxiliary light assemblies.	4.0%	\$	\$

ITEM	COMMUNICATIONS AND NETWORK EQUIPMENT	PERCENTAGE OF DELIVERED PARTS	UNIT PRICE	EXTENDED PRICE
A-101	Radio communications system, complete. (include antennas)	4.0%	\$	\$
A-102	Destination sign system, including all front and side signs, control equipment, control input devices, Automatic Passenger Information System, etc.	4.0%	\$	\$
A-103	Automatic Vehicle Location system, including all GPS system components and antennas, complete.	4.0%	\$	\$
A-104	All Public Address and Intercom pre-amplifiers and amplifiers, complete assembly.	4.0%	\$	\$
A-105	Interior speakers, including enclosure and grill.	4.0%	\$	\$
A-106	Exterior speakers, including enclosure and grill.	4.0%	\$	\$
A-107	Passenger emergency intercoms	5.0%	\$	\$
A-108	Communications control panel, complete.	4.0%	\$	\$
A-109	Event recorder, complete	5.0%	\$	\$
A-110	Horn systems, complete	5.0%	\$	\$

A-111	All other communication and network system components not listed above, such as communications control unit, network switches, complete train-to-wayside system components, and complete assistive listening system components.	3.0%	\$	\$
A-112	Conductor Buzzer signal system, including all pushbuttons and buzzers.	5.0%	\$	\$

ITEM	FRICION BRAKE SYSTEM	PERCENTAGE OF DELIVERED PARTS	UNIT PRICE	EXTENDED PRICE
A-113	Brake control unit and valves, complete including mounting manifolds.	5.0%	\$	\$
A-114	Air Compressor control unit, complete.	5.0%	\$	\$
A-115	Air dryer assembly, complete.	10.0%	\$	\$
A-116	Pressure Transducers	10.0%	\$	\$
A-117	All reservoirs.	2.0%	\$	\$
A-118	Air Compressor assembly, complete.	10.0%	\$	\$
A-119	All pneumatic cutouts and drain cocks on car.	5.0%	\$	\$

A-120	Air compressor motor assembly, complete with coupling assembly.	5.0%	\$	\$
A-121	Wheel spin/slide system controller. If integrated into propulsion control; provide control module.	5.0%	\$	\$
A-122	All parts required for load leveling system.	5.0%	\$	\$
A-123	Brake unit assemblies, including any disc, actuator, caliper, park brake assembly and all mounting hardware, complete.	5.0%	\$	\$
A-124	All other brake components not listed above.	5.0%	\$	\$
A-125	Air compressor system automatic drain valves, complete.	5.0%	\$	\$
A-126	Cab automatic brake handle assembly.	10.0%	\$	\$
A-127	Parking brake control module, complete.	5.0%	\$	\$
A-128	Parking brake cables, mechanical releases, and indicators.	5.0%	\$	\$
A-129	All propulsion system interlock and interface relays.	5.0%	\$	\$
A-130	Conductor's Emergency Brake Valve.	5.0%	\$	\$
A-131	All parts required for FRA COT&S.	5.0%	\$	\$
A-132	Disc brake unit assembly, including disc, caliper and all mounting hardware, complete.	5.0%	\$	\$
A-133	Brake disc assembly, with wheel mounting hardware.	5.0%	\$	\$

A-134	Pneumatic pantograph control module.	5.0%	\$	\$
A-135	Pressure regulator for horn assembly.	5.0%	\$	\$

<b>ITEM</b>	<b>PROPULSION SYSTEM</b>	<b>PERCENTAGE OF DELIVERED PARTS</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
A-136	Traction motor, complete with motor half coupling.	10.0%	\$	\$
A-137	Traction motor bearings, complete set per motor.	10.0%	\$	\$
A-138	Gear units, complete, with truck mounts and coupling half.	10.0%	\$	\$
A-139	All gear unit rotating components (quill, gears, bearings, shafts, etc.) and seals, complete set per gear unit.	5.0%	\$	\$
A-140	Ground brush box assembly, less axle ring.	5.0%	\$	\$
A-141	Speed sensors or tach generators, with connector, each type.	10.0%	\$	\$
A-142	All traction motor/gear unit to truck mounting elastomers and hardware.	5.0%	\$	\$
A-143	Propulsion and train-level microprocessor control units, complete.	5.0%	\$	\$

A-144	All printed circuit boards, circuit boards, logic boards, processor and micro-processor boards, and other related boards, used for propulsion control.	10.0%	\$	\$
A-145	Control relays and sensors, all types (except speed sensors or tach generators).	5.0%	\$	\$
A-146	Propulsion inverter unit, complete.	5.0%	\$	\$
A-147	All propulsion drive unit power conversion devices (Semiconductors, diodes, rectifiers, etc.).	5.0%	\$	\$
A-148	Filter capacitors, including bleeder resistors, all reactors and inductors.	5.0%	\$	\$
A-149	All propulsion system ventilation/cooling motor-blowers, including mounting elastomers.	10.0%	\$	\$
A-150	Dynamic brake resistor assembly, complete with mounting insulators and guards.	5.0%	\$	\$
A-151	Traction motor coupling assembly, complete.	5.0%	\$	\$

<b>ITEM</b>	<b>TRUCKS</b>	<b>PERCENTAGE OF DELIVERED PARTS</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
A-152	Trucks - complete and ready to install, including all braking apparatus and speed sensors.	3.0%	\$	\$

A-153	Truck Frames	0.5%	\$	\$
A-154	Wheel and axle assembly, complete with gear unit, ground brush, brake discs, couplings, and journal bearings.	4.0%	\$	\$
A-155	Journal boxes, including bearings, wear rings, and seals	10.0%	\$	\$
A-156	Ground brush ring and holder.	10.0%	\$	\$
A-157	All truck hoses, wiring, links, bars, and radius rod assemblies, with elastomer bushings.	10.0%	\$	\$
A-158	Primary and secondary suspension elements, complete.	5.0%	\$	\$
A-159	Dampers, complete.	10.0%	\$	\$
A-160	Center bearing assembly.	5.0%	\$	\$
A-161	All elastomer parts on truck.	5.0%	\$	\$
A-162	Wheels.	10.0%	\$	\$
A-163	Axles, finished.	4.0%	\$	\$
A-164	Truck cable quick-disconnect box assembly, complete.	5.0%	\$	\$
A-165	Truck bolster	2.0%	\$	\$
A-166	Pedestal liners, side bearings, etc	5.0%	\$	\$

ITEM	ACSES/ATC SYSTEMS	PERCENTAGE OF DELIVERED PARTS	UNIT PRICE	EXTENDED PRICE
A-167	Track receivers, complete with mounting brackets hardware and debris shields.	5.0%	\$	\$
A-168	Cab aspect display unit, complete.	5.0%	\$	\$
A-169	ACSES/ATC system, complete.	5.0%	\$	\$
A-170	Speed sensor, with connector, all types.	5.0%	\$	\$
A-171	ACSES/ATC power supply.	5.0%	\$	\$
A-172	Brake system pressure transducers.	5.0%	\$	\$
A-173	All cutout switches.	5.0%	\$	\$
A-174	Cab acknowledge switches.	5.0%	\$	\$
A-175	Roadway Worker Protection system, complete.	5.0%	\$	\$
A-176	All printed circuit boards, circuit boards, logic boards, processor and microprocessor boards, and other related boards used on ACSES/ATC system, all types	10.0%	\$	\$
A-177	Penalty magnet valve assembly	5.0%	\$	\$

A-178	Deadman Pedal Assembly	5.0%	\$	\$
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<b>ITEM</b>	<b>VIDEO SURVEILLANCE SYSTEM</b>	<b>PERCENTAGE OF DELIVERED PARTS</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
A-179	Complete car set of all video surveillance system equipment.	5.0%	\$	\$

<b>ITEM</b>	<b>AUTOMATIC PASSENGER COUNTING SYSTEM</b>	<b>PERCENTAGE OF DELIVERED PARTS</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
A-180	Complete car set of all automatic passenger counting system equipment.	5.0%	\$	\$

<b>ITEM</b>	<b>PRINTED CIRCUIT BOARDS</b>	<b>PERCENTAGE OF DELIVERED PARTS</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
A-181	All printed circuit boards, circuit boards, logic boards, processor and microprocessor boards, and other related boards used on all car systems, all types (except for propulsion and ACSES/ATC systems)	15.0%	\$	\$

Additional Spare Parts Requirements:

- All items are to be provided in their listed quantity, regardless of those items also being provided as part of a subcomponent or subassembly of another listed item, e.g., ten complete sets of traction motor bearings are to be provided to satisfy Item A-136, in addition to those provided as part of the traction motor provided to satisfy item A-135.
- If Proposer offers a modification to a Spare Parts list item as part of their proposal that consolidates items because they are identical to another item or items, the Proposer shall amend the list to provide the total quantity in one line that would be provided under the sum of all original line items.
- If component count based on spares is a fraction then it shall be rounded up to the next whole number.
- Exhibit III pricing shall account for base order rail cars per Exhibit I – Item 1A only. Pricing for optional spare parts per Exhibit I Item 3A and 3B shall include the price for additional spare parts for 46 cars as described in Exhibit I except for Item A-21 which is only to be provided as part the base order.

TOTAL PRICE OF ATTACHMENT A - SPARE PARTS (LUMP SUM): \$ \_\_\_\_\_

SILVERLINER VI RAIL CARS

Attachment A – Spare Parts

Name of Proposer \_\_\_\_\_

**EXHIBIT IV**

**FINAL SILVERLINER VI RAIL CARS SPECIFICATION**

**(To be Inserted)**

**EXHIBIT A**

**FEDERAL CONTRACT REQUIREMENTS**

# FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED PROVISIONS FOR CONTRACTS

## Section A - Federal Contract Requirements

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

#### **A. APPLICABILITY**

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

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

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

#### **A. APPLICABILITY**

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

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

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

#### **A. APPLICABILITY**

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

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

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

#### **A. APPLICABILITY**

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

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

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

#### **A. APPLICABILITY**

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

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

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

**A. APPLICABILITY**

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

- B. (1). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act. The Contractor agrees to report each violation to SEPTA and understands and agrees that SEPTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.  
  
(2). The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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

**A. APPLICABILITY**

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

- B. (1) Contractor agrees to provide SEPTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.  
  
(2). The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.  
  
(3). The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until SEPTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.  
  
(4). FTA does not require the inclusion of these requirements in subcontracts.

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

**A. APPLICABILITY**

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

- B. Contractor, if this Contract is for \$100,000 or more, shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying," and shall include this clause in each subcontract for \$100,000 or more and shall require its inclusion in all lower tier transactions for \$100,000 or more. Each contractor tier shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency,

a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. §1352. Each contractor tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. §1352. Such disclosures are forwarded from contractor tier to tier up to SEPTA.

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

##### **A. APPLICABILITY**

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

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

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

##### **A. APPLICABILITY**

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

- B.** (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, and its regulations. The Contractor agrees to report each violation to SEPTA and understands and agrees that SEPTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed under this Contract

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

##### **A. APPLICABILITY**

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

- B.** (1) The Contractor agrees to comply with the Davis-Bacon and Copeland Anti-Kickback Acts.
- (2) **Withholding** - SEPTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, SEPTA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration

may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

### **A. APPLICABILITY**

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

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

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

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

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

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

## **FR-13 Veterans Employment**

**A. APPLICABILITY**

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

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

**FR-14 No Obligation by the Federal Government**

**A. APPLICABILITY**

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

- B.** (1) SEPTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to SEPTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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

**A. APPLICABILITY**

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

- B.** (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. Department Of Transportation regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**FR-16 Government Wide Suspension and Debarment (13 CFR §500.109, 31 U.S.C. 6101 et seq., 48 CFR §404).**

**A. APPLICABILITY**

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

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

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

**A. APPLICABILITY**

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

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

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

**A. APPLICABILITY**

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

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

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

**A. APPLICABILITY**

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

- B.** (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.

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

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

**A. APPLICABILITY**

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

- B. The above statutes apply to the underlying Contract

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

### **A. APPLICABILITY**

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

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

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

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

### **A. APPLICABILITY**

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

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

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

### **A. APPLICABILITY**

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

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

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

### **A. APPLICABILITY**

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

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

## **FR-25 Transit Employee Protective Agreements**

### **A. APPLICABILITY**

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

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

## **FR-26 Texting While Driving and Distracted Driving**

### **A. APPLICABILITY**

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

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

## **FR-27 ADA Access**

### **A. APPLICABILITY**

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

- B. Contractor shall comply with 49 U.S.C. §5301(d); all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; The American Disabilities Action of 1990 (ADA), as amended, 42 U.S.C. §12101 *et seq.*; The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et seq.*; and all applicable requirements of the following regulations and any subsequent amendments thereto:
  - (1) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
  - (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
  - (3) Join U.S. Architectural and Transportation Barriers Compliance Board (U.S. TBCB)/U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38;

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

## **FR -28 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

### **A. APPLICABILITY**

This article applies to all purchase orders and contracts

- B.** If the Federal award meets the definition of "funding agreement" under 37 CFR Part 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**[END OF PAGE]**

# FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED PROVISIONS FOR CONTRACTS

## EEO/AA Contractual Requirements

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

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

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

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

nondiscrimination provisions of the Contract, SEPTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:

- a. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
- b. Cancellation, termination or suspension of the Contract, in whole or in part.

**[END OF PAGE]**

## RESTRICTIONS ON LOBBYING SECTION

(If Contract Sum exceeds \$100,000)

### 1. Certification Requirements

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

### 2. Disclosure Requirements

- a. Each contractor who requests and receives from SEPTA a Federal contract shall file with SEPTA a disclosure form, Standard Form - LLL, "Disclosure of Lobbying Activities," as set forth on pages 41 through 43 of this Contract, if such contractor has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered federal action), which would be prohibited under 49 CFR part 20 if paid for with appropriated funds.
- b. Each contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such contractor under paragraph 2.a. of this section. An event that materially affects the accuracy of the information reported includes:
  - (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
  - (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- c. Any person who requests or receives from a contractor referred to in paragraph 2.a. of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- d. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Contractor referred to in paragraph 2.a. of this section. That contractor shall forward all disclosure forms to SEPTA.

### 3. Penalties

- a. Any person who makes an expenditure prohibited under 49 CFR part 20 shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

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

**4. Cost allowability**

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

**[END OF PAGE]**



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

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

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

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

**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

Approved by OMB  
0348-0046

Reporting Entity: \_\_\_\_\_

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

**EXHIBIT B**

**STATE AND LOCAL CONTRACT REQUIREMENTS**

# Commonwealth of Pennsylvania Contract Requirements

## DEFINITIONS:

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

## SR-1 Nondiscrimination/Sexual Harassment Clause.

### A. APPLICABILITY

This article applies to all purchase orders and contracts.

### B. The contractor agrees:

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

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

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

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

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

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

Each subgrantee's, contractor's and subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the agreement through the termination date thereof. Each

subgrantee, contractor and subcontractor shall have an obligation to inform the SEPTA if, at any time during the term of the agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.

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

## **SR-2 ADA Provision**

### **A. APPLICABILITY**

This article applies to all purchase orders and contracts.

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

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

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

## **SR-3 Contractor Integrity Provisions.**

### **A. APPLICABILITY**

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

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

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

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

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

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

**"Financial Interest"** means either:

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

“**Gratuity**” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

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

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

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

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

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

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

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

- (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S.3A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

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

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

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

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

## **SR-4 Contractor Responsibility.**

### **A. APPLICABILITY**

This article applies to all purchase orders and contracts.

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

#### **SR-5 Retainage**

##### **A. APPLICABILITY**

This article applies to all construction purchase orders and contracts.

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

#### **SR-6 Steel Products**

##### **A. APPLICABILITY**

This article applies to all purchase orders and contracts.

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

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

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

##### **A. APPLICABILITY**

This article applies to all purchase orders and contracts.

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

#### **SR-8 Right To Know**

##### **A. APPLICABILITY**

This article applies to all purchase orders and contracts.

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

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

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

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

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

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

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

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

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

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

**[END OF SECTION]**

**EXHIBIT C**

**SEPTA'S EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE  
ACTION CONTRACTUAL REQUIREMENTS**

# SEPTA EEO/AA Contractual Requirements

## NONDISCRIMINATION:

During the performance of the Agreement, 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 section, 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 Agreement, the Agreement 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 paragraphs 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. SEPTA shall assure compliance with this requirement and promptly investigate suspected or reported violations.
9. SEPTA reserves the right to monitor and periodically audit its Consultants' compliance with the specifications discussed in this section. In the event the Consultant fails to comply with the nondiscrimination provisions of the Agreement, the Consultant may also be subject to termination

of the contract or other remedies as provided in 49 CFR Part 26.13(b). SEPTA shall make a report of any such compliance issues to the Office of Federal Contract Compliance Programs (OFCCP).

**[END OF SECTION]**

**EXHIBIT D**

**CERTIFICATIONS**

**BUY AMERICA CERTIFICATION** (Signed Buy America Certification to be inserted)

**DBE APPROVAL CERTIFICATION** (Signed DBE Approval Certification to be inserted)

**CERTIFICATE OF COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT OF 1986**  
(Signed Immigration Reform Certification to be inserted)

**Certification Regarding Lobbying** (Signed Buy America Certification to be inserted)



**BUY AMERICA CERTIFICATION**  
**RFP 25-00300-AMJP – SILVERLINER VI RAIL CARS**

**BUY AMERICA CERTIFICATE**

Certification requirement for the procurement of buses, other rolling stock, and associated equipment,

*Certificate of Compliance With 49 U.S.C. § 5323(j)(2)(C)*

The Proposer hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) [formerly Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended] and the regulations of 49 CFR Part 661.11.

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

**Company Name:** \_\_\_\_\_

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

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

or

*Certificate of Non-Compliance With 49 U.S.C. § 5323(j)(2)(C)*

The Proposer hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) [formerly Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended] but may qualify for an exception to the requirement consistent with 49 U.S.C. § 5323(j)(2)(B) or (j)(2)(D) [formerly Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended] and the regulations in 49 CFR Part 661.7.

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

**Company Name:** \_\_\_\_\_

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

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

1234 Market Street  
Philadelphia, PA 19107-3780



Southeastern Pennsylvania Transportation Authority  
*Courtesy • Cleanliness • Communication • Convenience*

**DBE APPROVAL CERTIFICATION**  
**RFP 25-00300-AMJP – SILVERLINER VI RAIL CARS**

**DBE APPROVAL CERTIFICATION**

I hereby certify that the Proposer has complied with the requirements of 49 CFR Part 26.49, “How are overall goals established for Transit Vehicle Manufacturers”, and that its goals have been either approved or not disapproved by the Federal Transit Administration.

**As required, a copy of the company’s official Transit Vehicle Manufacturers Certificate attesting to the requirements of 49 CFR Part 26.49 is to be included with this signed DBE Approval Certification.**

Proposer is required to initial one of the two boxes below:

Approved

Not Disapproved

**Signature of  
Proposer's Authorized Official:**

---

**Name and Title of  
Proposer's Authorized Official:**

---

**Company Name:**

---

**Date:**

---



**CERTIFICATE OF COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT OF 1986**  
**RFP 25-00300-AMJP – SILVERLINER VI RAIL CARS**

**CERTIFICATION REGARDING COMPLIANCE WITH IMMIGRATION  
REFORM AND CONTROL ACT OF 1986**

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

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

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

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

Company Name: \_\_\_\_\_

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

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



**Certification Regarding Lobbying**  
**RFP 25-00300-AMJP – SILVERLINER VI RAIL CARS**

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

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

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

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

**Company Name:** \_\_\_\_\_

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

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

**[END OF SECTION]**

**EXHIBIT E**

**FORMS**

**SAMPLES**

**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
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)

Change Order No.:

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

Contractor:

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

SEPTA Commitment No:

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

Contract Title:

Requested by:

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

DESCRIPTION OF CHANGE	AMOUNT	
	ADD	DEDUCT

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

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

Change Order No.:

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

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

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

Requested by:

Contractor:

SEPTA Commitment No:

Contract Title:

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

VENDOR/CONTRACTOR

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

MAINTENANCE BOND

"SAMPLE"

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

(hereinafter called "Principal"), and

(Surety Company)

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

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

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

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

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

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

Contractor:

(Authorized Signature)

(Authorized Signature)

(SEAL)

Surety Company:

(Authorized Signature)

(Authorized Signature)

(SEAL)

NON-COLLUSION AFFIDAVIT

"SAMPLE"

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

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

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

deposes and says that he/she is

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

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

Signed:

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

NOTARY PUBLIC

(Seal of Notary)

**EXHIBIT F**

**TECHNICAL PROPOSAL**

AWARDED VENDORS TECHNICAL PROPOSAL TO BE INSERTED HERE

**EXHIBIT G**

**ADDENDA ACKNOWLEDGENT**

AWARDED VENDORS ADDENDA ACKNOWLEDGEMENT SHEETS TO BE INSERTED HERE

**EXHIBIT H**

**ADDENDA**

ADDENDA TO BE INSERTED HERE