

SEPTA's TERMS and CONDITIONS OF PURCHASE

TC-1 through TC-22 apply to all Purchase Orders and Contracts

TC-1 SEPTA'S POWERS

The Southeastern Pennsylvania Transportation Authority (hereinafter "SEPTA") is a body corporate and politic exercising the powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof. In the absence of a signed formal contract from SEPTA, purchases by SEPTA are made expressly subject to SEPTA's Terms and Conditions of Purchase set forth on this Purchase Order (hereinafter referred to as "P.O."), including any documents incorporated herein by reference, and are further made subject to applicable provisions of SEPTA's Procurement Manual (adopted by the SEPTA Board on April 26, 2001). In the event of a conflict between the terms of a signed formal contract and this P.O., the terms of the signed formal contract shall govern. SEPTA's Procurement Manual is on file and available for examination by the party issued this P.O. (hereinafter referred to as "Seller") by SEPTA at SEPTA's offices at 1234 Market Street, Philadelphia, PA, 19107.

TC-2 TAX INFORMATION/EXEMPTIONS FROM TAXATION

- (1) **Federal Excise Tax:** SEPTA is exempt for purchases by and for SEPTA's exclusive use under Exemption Registration Number A185124, or other applicable current exemption. It is understood that exemption from the Federal Excise Tax in the case of sale of articles under any exemption certificate provided by SEPTA is limited to the sale of articles purchased for SEPTA's exclusive use.
- (2) **Pennsylvania Sales and Use Tax:** As to the sales tax imposed by the Commonwealth and some municipalities, Contractor is directed to the provisions in Pennsylvania law found at 72 P.S. §7201, et seq. SEPTA makes no representation that these statutes are the only relevant statutes that apply.
- (3) Contractor to whatever extent that Contractor deems necessary, must obtain its own legal advice on any question concerning relevant taxes. Contractor is responsible for making its own investigation to determine whether or not it is subject to municipal, Commonwealth or Federal taxes and for paying for such tax if applicable. Contractors are hereby informed that SEPTA is obligated by law to furnish to governmental entities, upon their request, the name and address of any person or firm with whom SEPTA has a contract for goods and/or services.

TC-3 UNAUTHORIZED SUBSTITUTION:

An award, if any, as a result of a solicitation will be for the material specified in said solicitation and at the quoted unit price. Unauthorized substitution of the material specified shall subject the seller to sanctions in accordance with SEPTA's procurement manual.

TC-4 PRICE

This P.O. must not be filled at a price or prices higher than those indicated on the front of this P.O. Price or prices shall be firm and as specified by SEPTA herein.

TC-5 PAYMENT TERMS

Net 30 days unless otherwise stated herein by SEPTA.

TC-6 WARRANTIES

- (1) Seller expressly warrants that all goods ordered according to plans, drawings, specifications or samples furnished by SEPTA, or furnished by Seller and approved and accepted by SEPTA, (which are incorporated by reference and made a part hereof) will conform thereto, and in addition expressly warrants that all goods will be merchantable and will be free from defects in material and workmanship.
- (2) Seller expressly warrants that the goods and/or work purchased hereunder, and the production, sale and use, thereof, do not and will not infringe any third-party patent rights. Seller shall, at its own expense, defend any suit that may arise in respect thereto, provided Seller is notified thereof, and Seller shall indemnify and hold harmless SEPTA, its successors and assigns, its officers, agents, servants, and employees, and the customers of any of them, from all loss, damages, costs, and expenses (including attorney's fees) which may be incurred on account of the assertion of any patent rights by any person.

TC-7 THIRD PARTY CLAIMS

Seller agrees to indemnify and to hold harmless and defend SEPTA against any loss, cost, damage or expense including attorney's fees, arising out of any claim or charge for personal injury, death or property damage asserted against SEPTA attributable to the sale and delivery of the goods to SEPTA or the use thereof by SEPTA pursuant hereto that did not perform in accordance with the Seller's warranties and/or Seller's product specifications, including but not limited, to work negligently performed by Seller. Seller hereby agrees to be liable for and to defend, indemnify and save harmless SEPTA, for any claims made by an employee of Seller, including claims

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for compensation or benefits payable to any extent by or for Seller under any workers' or similar compensation acts or other employee benefit acts, provided that the injuries of Seller's employees were not caused solely by SEPTA. Seller expressly waives its statutory protection under the Pennsylvania Workers' Compensation Act, 77 P.S. §481(b), as amended.

TC-8 SURETY BOND REQUIREMENTS

If bonds are required under this P.O., they shall be in form acceptable to SEPTA and issued by a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority thereunder.

TC-9 WORKING ON BUYER'S PREMISES

In the event that installation or any other work in connection with the goods or services purchased hereunder is to be performed on SEPTA's premises, the following terms and conditions shall apply:

- (1) Upon request of SEPTA, Seller agrees to furnish evidence acceptable to SEPTA of adequate insurance coverage of public liability, automobile liability, property damage liability and workers' compensation.
- (2) Seller agrees that all persons who were compensated by Seller shall be deemed to be its employees for the purpose of any tax or contribution levied by the federal, state and local government, as well as Seller's obligations in 6. above, and accepts exclusive liability for any payroll tax or contribution imposed by federal, state and local laws covering such persons.
- (3) Seller agrees to comply with all rules and regulations including, but not limited to, general rules and regulations, electronic regulations, smoking restrictions and safety requirements.

TC-10 CLAIMS

- (1) All goods furnished hereunder will be subject to final inspection and approval of SEPTA after delivery (irrespective of date of payment) and SEPTA may reject nonconforming goods within 60 days of its receipt. Rejected goods may be returned by SEPTA to Seller at Seller's expense and SEPTA shall have no further obligation with respect to such goods. In no event shall SEPTA incur any liability for payment of rejected goods.
- (2) SEPTA shall have a reasonable time to submit claims of count, weight, quality, loss or damage to goods delivered hereunder provided that in no event shall a reasonable time be deemed to be less than 10 days from the date of delivery of goods. Damages with respect to such claims shall be calculated by SEPTA and the amount thereof deducted from Seller's invoice; or, if previously paid, shall be reimbursed by Seller to SEPTA.
- (3) Seller shall assume responsibility for and agrees to pay any and all loss, cost, damage (including incidental and consequential damages) or expense, including attorney's fees, incurred by SEPTA arising directly or indirectly out of the sale of the goods hereunder or the use thereof by SEPTA. The above remedies are cumulative and in addition to all other remedies which SEPTA has at law or in equity.

TC-11 PACKING

No charge will be allowed for packing, boxing or cartage unless specifically stipulated herein. A packing list bearing SEPTA's name, address and P.O. number must be placed in each packing container. SEPTA's weight and/or count shall be accepted as final and conclusive on all shipments not accompanied by such packing list.

TC-12 TERMINATION

For Cause: SEPTA may cancel this P.O. without penalty or payment of cancellation charges if Seller fails to make delivery as specified, or within a reasonable time if no time for delivery is specified, or fails to comply with any other provision of this P.O. or for any other good cause.

For Convenience: SEPTA may cancel any unfilled portion of this P.O. at any time without cause upon giving Seller written notice. If SEPTA elects to cancel this P.O. on such notice, Seller shall immediately discontinue the work and shall make every reasonable effort to cancel all existing orders upon terms satisfactory to SEPTA. Seller shall thereafter do only such work as may be necessary to preserve and protect work already in progress. In case of such cancellation, it is agreed that Seller shall be entitled to compensation for its costs, but not for any profits for the portion of the P.O. not performed, including material for which orders have been placed. SEPTA shall have the option to take any goods and services included in this P.O., whether finished, unfinished or in progress, upon such terms as SEPTA and Seller may agree, in no event to exceed the price or prices indicated on the front of this P.O. All payments shall be subject to audit and approval by SEPTA.

TC-13 ACTS BEYOND CONTROL OF PARTIES

Fires, floods, strikes, epidemics, accidents, shortages or transportation or any other causes beyond the reasonable control of the parties, which prevent Seller from delivering, or SEPTA from receiving any of the goods and services covered by this P.O. shall operate to suspend deliveries during the period required to remove such cause or causes, subject, however, to SEPTA's right of cancellation under 12(b) above.

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TC-14 INSOLVENCY

In the event that the Seller shall become bankrupt, shall have a receiver appointed to its property or shall assign for the benefit of its creditors, SEPTA shall have the right to forthwith cancel this P.O. or so much thereof as had been completed.

TC-15 APPLICABLE LAWS

When this order and contract refers to manufactured goods or to work, Seller warrants and agrees that it has complied and will comply with all applicable Federal, State and local laws, codes, regulations. Seller agrees to indemnify and defend SEPTA and save SEPTA harmless if Seller fails to comply with the foregoing, and in the event of such failure, SEPTA may in addition, cancel this order and contract.

TC-16 ASSIGNMENT

This order or any right or obligation thereunder may not be assigned, transferred or subcontracted by Seller without the written consent of SEPTA and any assignment, transfer or subcontract made without such written consent shall be void and ineffective.

TC-17 WAIVER

Failure of SEPTA to insist on strict performance by Seller of the terms and conditions of this P.O. at any time shall not be construed as a waiver by SEPTA of such performance in the future.

TC-18 TITLE AND RISK OF LOSS

Unless specifically agreed otherwise, title to and risk of loss of all goods furnished hereunder shall remain in Seller until twenty-one (21) days after receipt of the goods at SEPTA's location. Notwithstanding restrictive legends to the contrary, title to customized plans, drawings and specifications with respect to the goods shall be vested in and remain with SEPTA and may be used by SEPTA.

TC-19 NON-DISCLOSURE

If SEPTA discloses or grants access to Seller to any research, development, technical, economic or other business information of a confidential nature, whether reduced in writing or not, Seller agrees not to disclose any such information to any other person at any time without SEPTA's written consent.

TC-20 CONFLICT OF CONDITIONS

Any different terms or conditions in Seller's quotation or acknowledgment of this order are not binding on SEPTA, unless accepted in writing by SEPTA, and shipment of any goods or rendering of any services pursuant to this P.O. shall be deemed to be an acceptance of the terms of this P.O. by Seller. No modification or release of this P.O. shall be binding upon SEPTA unless specifically agreed to in writing.

TC-21 STATE AND FEDERAL REQUIREMENTS

- (1) Seller agrees to comply with the Commonwealth of Pennsylvania's Nondiscrimination clause (available upon request to SEPTA) and with the applicable provisions of the Steel Products Procurement Act, 73 P.S. §1881, et seq.;
- (2) Seller agrees to comply with the applicable federal provisions set forth in 49 CFR 18.36, "Procurement."

TC-22 GOVERNING LAW

This P.O. shall be subject to and governed under the laws of the Commonwealth of Pennsylvania. Any formal legal dispute arising out of this P.O. shall be decided by courts situated in the Commonwealth of Pennsylvania, City of Philadelphia, where this P.O. is made.

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FEDERAL REQUIREMENTS - Section A - Federal Contract Requirements

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

- A. **APPLICABILITY** - This article applies to all federally funded if the purchase order is over \$3,000; contracts; or subcontracts may involve the international transportation of goods, equipment or personnel by air.
- B. The Contractor agrees to comply with the Fly America Act and its regulations. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation

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

- A. **APPLICABILITY** - This article applies to all federally funded rolling stock purchases, construction contracts; and contracts for material and supplies for steel, iron or manufactured products over \$100,000.
- B. The Contractor agrees to comply with the Buy America Act and its regulations

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

- A. **APPLICABILITY** - This article applies to all federally funded rolling stock purchases, construction contracts; and contracts for material and supplies which may be transported by ocean vessels.
- B. The Contractor agrees: a. to comply with the Cargo Preference Act of 1954 and its regulations. The Contractor agrees to include the requirements of this section in all subcontracts that involve the transport of equipment, material or commodities by ocean vessel.

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

- A. **APPLICABILITY** - This article applies to all federally funded architectural & engineering and constructions contracts for the design or construction of new buildings or additions to existing buildings.
- B. The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the National Earthquake Hazards Reduction Program Reauthorization Action of 2004 and its regulations. The Contractor will certify to compliance to the extent required by the regulations. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the Act and its regulations and the certification of compliance issued on the Project.

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

- A. **APPLICABILITY** - This article applies to all federally funded purchase orders over \$3,000 and contracts.
- B. The Contractor or agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act and its regulations.

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

- A. **APPLICABILITY** - This article applies to all federally funded contracts over \$100,000.
- B. (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act. The Contractor agrees to report each violation to SEPTA and understands and agrees that SEPTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

FR-07 Access to Records (49 U.S.C. §5325 et seq., 49 CFR 633.15 – 633.17)

- A. **APPLICABILITY** - This article applies to all federally funded purchase orders over \$3,000 and contracts.
- B. (1) Contractor agrees to provide SEPTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access

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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 6002 OF THE SOLID WASTE DISPOSAL ACT

- A. APPLICABILITY** - This article applies to all purchase orders and contracts.
- B.** Clean Air Act (42 U.S.C. §§7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended— Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act as FY2019 Comprehensive Review Guide – TC Program Management 4-13 amended (33 U.S.C. §§1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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

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such violations have ceased.

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

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

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

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

- A. APPLICABILITY** - This article applies to all federally funded construction contracts (including ferry vessels), rolling stock purchases and operations/management contracts (except transportation services) over \$100,000.
- B. (1). Overtime requirements** - No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages** - SEPTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
- (5) **Disputes** - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and SEPTA, the U.S. Department of Labor, or the employees or their representatives.

FR-13 Veterans Employment

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

FR-14 No Obligation by the Federal Government

- A. APPLICABILITY** - This article applies to all federally funded purchase orders over \$3,000 and contracts.
- B. (1)** SEPTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to SEPTA, Contractor, or

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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.

(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 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.

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(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) 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. Therefore, the DBE requirements of 49 CFR Part 26 apply to this agreement.
(2) SEPTA and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the Contractor from future bidding as non-responsible.(3) In accordance with 49 CFR 26.13(b), the Contractor also agrees that each subcontract the Contractor signs with a Subcontractor must include the assurances of paragraph B. (2).

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

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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 Act of 1990 (ADA), as amended, 42 U.S.C. §12101 *et seq.*; The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et seq.*; and all applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
 - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
 - (3) Join U.S. Architectural and Transportation Barriers Compliance Board (U.S. TBCB)/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
 - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
 - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
 - (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
 - (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
 - (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F and
 - (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194;
 - (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and
 - (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.

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STATE CONTRACT REQUIREMENTS

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

SR-1 Nondiscrimination/Sexual Harassment Clause

A. APPLICABILITY - This article applies to all purchase orders and contracts.

B. The contractor agrees:

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

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

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

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

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

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

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

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

SR-2 ADA Provision

A. APPLICABILITY - This article applies to all purchase orders and contracts.

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

Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 CFR Part 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 CFR Part 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to

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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 because 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 4 Pa. Code §7.153, as amended, shall apply.

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

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

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

Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the SEPTA and SEPTA employees, and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily accessible and well-lit 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.

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

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

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

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

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SR-4 Contractor Responsibility

- A. APPLICABILITY** - This article applies to all purchase orders and contracts.
- B.** For the purpose of these provisions, the term "Contractor" is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under institutions. The term "Contractor" may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.
1. The Contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.
 2. The Contractor must also certify, in writing, that as of the date of its execution of any Commonwealth contract, it has no tax liabilities or other Commonwealth obligations.
 3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state governmental entity. Such notification shall be made within 15 days of suspension or debarment.
 4. The failure of the Contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
 5. The Contractor agrees to reimburse the Commonwealth for reasonable costs of investigation incurred by the Office of the Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the Contractor's suspension or debarment.
 6. The Contractor may obtain the current list of suspended and debarred Commonwealth Contractors by either searching the Internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

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

SR-5 Retainage

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

SR-6 Steel Products

- A. APPLICABILITY** - This article applies to all purchase orders and contracts.
- B.** All steel products used or supplied in the performance of the Contract shall be products produced from steel made in the United States in conformity with the Steel Products Procurement Act of 1978, 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 49U.S.C. §5323(j) 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.

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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 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.

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