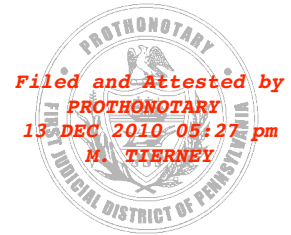


WISLER PEARLSTINE, LLP
By: Mason Avrigian, Jr.
Attorney I.D. No. 51647
By: Jeffrey P. Wallack
Attorney I.D. No. 69112
Office Court at Walton Point
484 Norristown Road, Suite 100
Blue Bell, PA 19422-2326
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CROSSING CONSTRUCTION	:	IN THE COURT OF COMMON PLEAS
COMPANY, INC.,	:	OF PHILADELPHIA COUNTY,
1087 Taylorsville Road, P.O. Box 88	:	PENNSYLVANIA
Washington Crossing, PA 18977	:	
	:	
Plaintiff,	:	_____ Term, 20__
	:	
v.	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	No. _____
TRANSPORTATION AUTHORITY,	:	
1234 Market Street	:	
Philadelphia, PA 19107-3780	:	In the Commerce Program
	:	
Defendant.	:	Jury Trial Demanded

NOTICE TO DEFEND

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose

ADVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona. Se avisado que si usted no se defiende, la corte tomara dedidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u ostros derechos importantes para

money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Philadelphia Bar Association
Lawyer Referral & Information
Service
One Reading Center
Philadelphia, Pennsylvania 19107
Phone: (215) 238-1701

usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA A LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

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SOUTHEASTERN PENNSYLVANIA	:	No. _____
TRANSPORTATION AUTHORITY,	:	
1234 Market Street	:	
Philadelphia, PA 19107-3780	:	In the Commerce Program
	:	
Defendant.	:	

COMPLAINT

Plaintiff, Crossing Construction Company, Inc., by and through its undersigned counsel,
states the following as its Complaint:

Parties and Venue

1. Plaintiff, Crossing Construction Company, Inc. (“Crossing Construction”), is a Pennsylvania corporation with its principal place of business at 1087 Taylorsville Road, P.O. Box 88, Washington Crossing, Pennsylvania 18977.

2. Defendant, Southeastern Pennsylvania Transportation Authority (“SEPTA”) is a Metropolitan Transportation Authority formed under Chapter 17 of the Pennsylvania Public

Transportation Law, 74 Pa.C.S. §1101, *et seq.*, or its predecessor legislation, having its offices located at 1234 Market Street, Philadelphia, Pennsylvania 19107-3780.

3. Venue is proper in Philadelphia County because SEPTA regularly conducts business in Philadelphia County, and further because the construction project at issue is located within Philadelphia County.

The Project

4. This lawsuit arises out of a SEPTA construction project known as the Allen Lane Station Improvement Project, also known as SEPTA Project No. 143/182 and SEPTA P.O. No. S770856 (hereinafter, the “Project”).

The Contract

5. On or about October 10, 2008, Crossing Construction and SEPTA entered into a Contract for work on the Project. A true and correct copy of the Contract (excluding exhibits, all of which are in Defendant’s possession and will be submitted at the time of trial) is attached hereto as Exhibit “A.”

6. Pursuant to the Contract, Crossing Construction agreed to perform all of the work required by the Contract Documents (hereinafter, the “Work”) within the Contract Time, and SEPTA agreed to pay Crossing Construction the sum of \$6,873,600 for Crossing Construction’s performance of the Work required by the Contract Documents (hereinafter, the “Contract Sum”).

7. The Contract Documents for the Project are identified in Section III(B) of the Contract. The Contract Documents are too voluminous to attach hereto, but all Contract

Documents are in the possession of SEPTA, and Crossing Construction will present all of the Contract Documents to the Court at trial.

8. Section XVIII(M) of the Contract provides that if “concealed conditions encountered in the performance of the Contract below the surface of the ground be at variance with the conditions indicated in the Contract Documents,” then “the Contract Sum and/or the Completion Date shall be equitably adjusted by Change Order in accordance with Paragraph XIV as deemed and judged by SEPTA after due deliberation of all the facts in its reasonable discretion.”

9. Pursuant to the Contract and otherwise under applicable law, Crossing Construction is entitled to additional time and compensation for costs and delays resulting from unforeseen underground conditions that differ from conditions identified in the Contract Documents.

10. Additionally, pursuant to Section XIV of the Contract and otherwise under applicable law, if SEPTA orders or requires work other than the Work required by the Contract Documents, Crossing Construction is entitled to a change order that provides an appropriate adjustment to the Contract Sum and Contract Time.

Claims and Disputes

11. During the Project, certain claims and disputes arose between Crossing Construction and SEPTA. The claims and disputes included the following:

- a. Additional costs and delays resulting from groundwater elevations at the Project site that were materially different than the groundwater elevations

and information that SEPTA provided to Crossing Construction in the Contract Documents;

- b. Additional costs resulting from SEPTA requiring Crossing Construction to install wire mesh for certain concrete construction work that was not required by the Contract Documents;
- c. Additional costs resulting from SEPTA requiring Crossing Construction to install concrete foundations for temporary overhead stairs that were not required by the Contract Documents;
- d. Additional costs resulting from SEPTA requiring Crossing Construction to perform additional soil testing in connection with excavation for retaining walls and off-site soil disposal and a corresponding nine day Project delay;
- e. Interest owed on late payments from SEPTA to Crossing Construction; and
- f. Costs associated with SEPTA's failure to release retainage in a timely and proper manner.

12. On November 2, 2010, pursuant to Section XIX of the Contract, Crossing Construction submitted six unresolved claims and disputes, as listed in the foregoing paragraph, to SEPTA's Senior Director of Procurement. A true and correct copy of Crossing Construction's November 2, 2010 claim submission letter, without accompanying back-up documentation binder, is attached hereto as Exhibit "B." Crossing Construction incorporates by reference the claims set forth in its November 2, 2010 claim submission letter as if fully set forth at length herein.

13. SEPTA's Senior Director of Procurement has not, to date, issued any decision with regard to Crossing Construction's November 2, 2010 claim submission.

14. SEPTA has neither requested any additional information nor scheduled a claims review meeting with regard to Crossing Construction's November 2, 2010 claim submission.

15. All conditions precedent under the Contract for Crossing Construction to bring this action for payment and other relief have been met, satisfied and/or waived.

16. By failing to issue payment on Crossing Construction's valid claims for payment and failing to issue time extensions on Crossing Construction's valid claims for additional Contract Time, SEPTA has materially breached the Contract, resulting in losses and damages to Crossing Construction.

COUNT I

(BREACH OF CONTRACT) (Groundwater Elevation)

17. Crossing Construction incorporates by reference herein the allegations of paragraph 1 through 16 above as if they were fully set forth at length.

18. The Contract Documents for the Project contained affirmative representations concerning groundwater elevations on the Project site.

19. The Contract Documents further showed all footing excavations (bottom of footing) above the highest indicated groundwater elevation and did not provide any notice, warning or information concerning elevated groundwater conditions on the Project.

20. Consistent with SEPTA's representations in the Contract Documents detailing the absence of elevated groundwater conditions (or no groundwater at all), the Contract Documents did not include a groundwater dewatering program.

21. Crossing Construction encountered groundwater for footing elevations at substantially higher elevations than represented in the Contract Documents. See Exhibit “B” at Claim No. 1.

22. Crossing Construction encountered groundwater elevations at the Project that were materially different from the information that SEPTA provided in the Contract Documents for the Project.

23. Crossing Construction provided timely written notice to SEPTA regarding the groundwater conditions it encountered and that the conditions were materially different from the groundwater conditions indicated in SEPTA’s Contract Documents for the Project.

24. As a result of the unforeseen groundwater elevations actually encountered, Crossing Construction incurred substantial dewatering and other related costs.

25. The unforeseen groundwater elevations delayed Crossing Construction’s work on the Project and resulted in Crossing Construction incurring significant delay costs.

26. By failing to provide correct and necessary groundwater elevations, SEPTA failed to act in a manner essential to Crossing Construction’s prosecution of its work on the Project.

27. At the time of contracting, Crossing Construction could not, and did not, reasonably anticipate delays resulting from unforeseen groundwater elevations.

28. SEPTA has materially breached the Contract by failing and refusing to provide Crossing Construction with: (a) an extension of the Contract Time for delays relating to

unforeseen groundwater elevations; and (b) an increase to the Contract Sum for costs that Crossing Construction's incurred as a result of the unforeseen groundwater elevations.

29. No proper basis, reason or justification exists for SEPTA to fail and refuse to reimburse Crossing Construction for the substantial additional costs that Crossing Construction incurred as a result of the unforeseen groundwater elevations.

30. SEPTA's material breach of the Contract has caused Crossing Construction to suffer damages in an amount in excess of \$420,000.

WHEREFORE, Crossing Construction Company, Inc. requests that a judgment be entered in its favor and against SEPTA for contract damages in an amount in excess of \$50,000, together with prejudgment and post-judgment interest, costs and such other and further relief as the Court deems necessary and proper.

COUNT II

(DECLARATORY JUDGMENT) (Groundwater Elevation)

31. Crossing Construction incorporates by referenced herein the allegations of paragraph 1 through 30 above as if they were fully set forth at length.

32. As a result of the facts, conditions and circumstances set forth above in this Complaint, there exists an actual and justiciable controversy between the parties, and Crossing Construction is entitled to a declaration of its rights.

33. Crossing Construction encountered unforeseen underground groundwater elevations at the Project that were materially different from the information that SEPTA provided in the Contract Documents for the Project. See Exhibit “B” at Claim No. 1.

34. SEPTA has failed and/or refused to provide Crossing Construction with an extension of the Contract Time as a result of the unforeseen groundwater elevations.

35. No proper basis, reason or justification exists for SEPTA to fail and refuse to provide Crossing Construction with an extension of the Contract Time for delays relating to unforeseen groundwater elevations.

WHEREFORE, pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa. C.S. § 7531, *et seq.*, Crossing Construction respectfully seeks a declaration from this Court that:

- a. SEPTA has materially breached Contract duties and obligations owed to Crossing Construction on the Project; and
- b. Crossing Construction is entitled to an extension of Contract Time of 144 days as a result of unforeseen groundwater elevations and SEPTA is required to provide such an extension of time to Crossing Construction on the Project.

COUNT III

(BREACH OF CONTRACT) (Wire Mesh)

36. Crossing Construction incorporates by reference herein the allegations of paragraph 1 through 35 above as if they were fully set forth at length.

37. SEPTA required Crossing Construction to install wire mesh for certain concrete construction work on the Project that was not required by the Contract Documents. See Exhibit “B” at Claim No. 2.

38. Crossing Construction performed the wire mesh work under protest and timely notified SEPTA of its claim for additional compensation.

39. Crossing Construction's performance of the wire mesh work caused Crossing Construction to incur additional costs for labor, equipment and materials in the amount of \$6,099.

40. SEPTA materially breached the Contract by failing and refusing to provide Crossing Construction with a change order for the additional \$6,099 cost of the wire mesh work.

41. No proper basis, reason or justification exists for SEPTA to fail and refuse to reimburse Crossing Construction for the additional costs that Crossing Construction incurred as a result of the wire mesh work.

WHEREFORE, Crossing Construction Company, Inc. requests that a judgment be entered in its favor and against SEPTA for damages in the amount of \$6,099, together with prejudgment and post-judgment interest, costs and such other and further relief as the Court deems necessary and proper.

COUNT IV

(BREACH OF CONTRACT) (Stair Foundations)

42. Crossing Construction incorporates by reference herein the allegations of paragraph 1 through 41 above as if they were fully set forth at length.

43. SEPTA required Crossing Construction to install concrete foundations for temporary overhead stairs on the Project that were not required by the Contract Documents. See Exhibit “B” at Claim No. 3.

44. Crossing Construction performed the concrete foundations work under protest and timely notified SEPTA of its claim for additional compensation.

45. Crossing Construction’s performance of the concrete foundations work caused Crossing Construction to incur additional costs for labor, equipment and materials in the amount of \$4,832.

46. SEPTA materially breached the Contract by failing and refusing to provide Crossing Construction with a change order for the additional \$4,832 cost of the concrete foundations work.

47. No proper basis, reason or justification exists for SEPTA to fail and refuse to reimburse Crossing Construction for the additional costs that Crossing Construction incurred as a result of the concrete foundations work.

WHEREFORE, Crossing Construction Company, Inc. requests that a judgment be entered in its favor and against SEPTA for damages in the amount of \$4,832, together with prejudgment and post-judgment interest, costs and such other and further relief as the Court deems necessary and proper.

COUNT V

**(BREACH OF CONTRACT)
(Additional Soil Testing)**

48. Crossing Construction incorporates by reference herein the allegations of paragraph 1 through 47 above as if they were fully set forth at length.

49. The Contract Documents required Crossing Construction to obtain certain test reports prior to the disposal of unused excavation soils in order to confirm that the soils constituted “clean fill.” See Exhibit “B” at Claim No. 4.

50. In or around late August and early September 2009, Crossing Construction was performing excavation work for certain retaining walls on the Project and had to dispose of certain unused soils off-site.

51. Prior to disposal, Crossing Construction obtained necessary soil test results and a soil test report from a licensed geologist certifying the “clean fill” and submitted the soil results and report to SEPTA on or about August 11, 2009.

52. Irrespective of the August 11, 2009 submission, SEPTA stopped Crossing Construction from proceeding with excavation work on September 1, 2009 and required a second set of soil tests that were not required by the Contract Documents.

53. On September 9, 2009, Crossing Construction obtained a second set of test results and a second test report again indicating that the soil was “clean fill.”

54. On September 10, 2009, SEPTA permitted Crossing Construction’s excavation work to resume.

55. SEPTA has acknowledged that Crossing Construction is entitled to a nine day time extension as a result of SEPTA requiring a second set of soil results that were not set forth in the Contract Documents.

56. Due to SEPTA requiring the second set of soil test results, Crossing Construction incurred additional test costs and delay costs in the total amount of \$17,813.

57. SEPTA actively interfered with Crossing Construction's work on the Project by requiring the second set of soil test results, and Crossing Construction could not reasonably anticipate delays resulting from additional soil testing at the time of contracting.

58. SEPTA materially breached the Contract by failing and refusing to provide Crossing Construction with a change order for the additional \$17,813 in costs related to the additional soil testing.

59. No proper basis, reason or justification exists for SEPTA to fail and refuse to reimburse Crossing Construction for the additional costs that Crossing Construction incurred as a result of the additional soil testing.

WHEREFORE, Crossing Construction Company, Inc. requests that a judgment be entered in its favor and against SEPTA for damages in the amount of \$17,813, together with prejudgment and post-judgment interest, costs and such other and further relief as the Court deems necessary and proper.

COUNT VI
(BREACH OF CONTRACT)
(Late Payments)

60. Crossing Construction incorporates by reference herein the allegations of paragraph 1 through 59 above as if they were fully set forth at length.

61. Pursuant to the Contract, SEPTA was required to issue monthly progress payments to Crossing Construction

62. SEPTA's monthly progress payments to Crossing Construction were to be made, at the latest, within thirty days after approval of a request for progress payment by SEPTA's Project Manager.

63. Many of SEPTA's progress payments to Crossing Construction were inordinately delayed. See Exhibit "B," at Claim No. 5.

64. SEPTA materially breached the Contract by failing and refusing to provide Crossing Construction with timely progress payments.

65. SEPTA's material breach of the Contract has caused Crossing Construction to sustain damages, and as compensation therefor, Crossing Construction is entitled to interest on SEPTA's late progress payments.

WHEREFORE, Crossing Construction Company, Inc. requests that a judgment be entered in its favor and against SEPTA for interest on late progress payments, together with costs and such other and further relief as the Court deems necessary and proper.

COUNT VII
(BREACH OF CONTRACT)
(Retainage)

66. Crossing Construction incorporates by reference herein the allegations of paragraph 1 through 65 above as if they were fully set forth at length.

67. Pursuant to Section XII of the Contract and otherwise under applicable law, upon Crossing Construction completing 50% of its Work on the Project, SEPTA was to return one-half of amounts retained from progress payments to Crossing Construction and thereafter solely withhold retainage on future progress payments in the amount of 5%.

68. Crossing Construction achieved 50% completion of its work on the Project on or about April 30, 2010 and submitted a request for retainage reduction to SEPTA. See Exhibit “B,” at Claim No. 6.

69. SEPTA, however, did not reduce Crossing Construction’s retainage whatsoever until August 11, 2010 and even then, did not reduce the retainage to a proper amount.

70. SEPTA has materially breached the Contract by failing and/or refusing to reduce retainage to a proper amount and in a timely manner.

71. As a result of SEPTA’s material breaches of the Contract, Crossing Construction has sustained monetary losses and damages, including but not limited to the time value of monies improperly withheld from payment.

WHEREFORE, Crossing Construction Company, Inc. requests that a judgment be entered in its favor and against SEPTA for compensatory damages, together with prejudgment

and post-judgment interest, costs and such other and further relief as the Court deems necessary and proper.

COUNT VIII

(VIOLATION OF CONTRACTOR AND SUBCONTRACTOR PAYMENT ACT)

72. Crossing Construction incorporates by reference herein the allegations of paragraph 1 through 71 above as if they were fully set forth at length.

73. The Pennsylvania Contractor and Subcontractor Payment Act, 73 Pa.C.S. § 501, *et seq.* (“CASPA”) requires, inter alia: (a) prompt payment from an owner to a contractor for all work items that have been satisfactorily completed and (b) timely and proper reductions of retainage being withheld.

74. Absent prompt payment from an owner to a contractor for completed work items, CASPA provides that the owner shall pay interest to the contractor at the rate of 1% per month.

75. Absent full and timely release of retainage, CASPA provides that the owner shall pay interest to the contractor at the rate of 1% per month.

76. Additionally, pursuant to CASPA, if an owner wrongfully withholds progress payments or retainage from a contractor, the court shall award to the contractor a penalty equal to 1% per month of the amount wrongfully withheld.

77. Finally, the court shall award reasonable attorneys’ fees and expenses to the substantially prevailing party in any action, as here, to recover monies pursuant to CASPA.

78. In violation of CASPA, SEPTA has failed and refused to provide prompt payment to Crossing Construction for all work items satisfactorily completed on the Project and has further failed and refused to timely and properly release retainage.

79. Pursuant to CASPA, Crossing Construction is entitled to monetary damages, together with interest at the rate of 1% per month, penalties at the rate of 1% per month and an award of Crossing Construction's attorneys' fees and expenses.

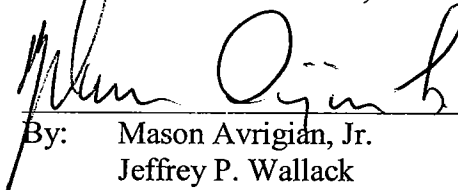
WHEREFORE, Crossing Construction requests that a judgment be entered in its favor and against SEPTA for compensatory damages, together with interest at the rate of 1% per month, penalties in the amount of 1% per month, Crossing Construction's attorneys' fees and costs and such other and further relief as the Court deems necessary and proper.

Demand for Trial by Jury

Plaintiff hereby demands a trial by jury on all claims triable by jury.

Dated: December 13, 2010.

WISLER PEARLSTINE, LLP



By: Mason Avrigian, Jr.

Jeffrey P. Wallack

Office Court at Walton Point

484 Norristown Road, Suite 100

Blue Bell, PA 19422-2326

(610) 825-8400

Attorneys for Plaintiff

Crossing Construction Company, Inc.

VERIFICATION

I, David J. Shaw, Vice President of Crossing Construction Company, Inc., hereby verify that I am authorized to execute this Verification on behalf of Crossing Construction Company, Inc. and that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge or information and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.



DAVID J. SHAW, VICE PRESIDENT

Dated: December 8, 2010.