

**EXHIBIT "A"**

CONTRACT  
FOR  
ALLEN LANE STATION IMPROVEMENT PROJECT

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CONTRACT  
FOR

Allen Lane Station Improvement Project

THIS AGREEMENT made this 10<sup>th</sup> day of October 20 08  
between the SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ("SEPTA"), a body  
corporate and politic exercising the powers of the Commonwealth of Pennsylvania as an agency and  
instrumentality thereof, with offices located at 1234 Market Street, Philadelphia, Pennsylvania 19107-3780, AND  
Crossing Construction Company, Inc., a Corporation, established under the laws of  
Pennsylvania (hereinafter called the "CONTRACTOR"), having a principal place of business at  
1087 Taylorsville, Road, Washington Crossing, PA 18977.

WITNESSETH THAT:

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

WHEREAS, the Contractor, pursuant to SEPTA's Invitation to Bid has submitted a bid to perform all the work  
required by this contract and such bid (base bid and indicated alternates as follows:  
Allen Lane Station Improvement Project ) has been accepted by SEPTA.

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

- I. The Contractor shall perform all the Work required by the Contract Documents, more particularly set  
forth in the Specifications for this Contract including the Drawings.
- II. SEPTA shall pay the Contractor for the full and faithful performance of the Work the total sum of  
\$6,873,600.00 (hereinafter called "Contract Sum"), subject to the provisions of, *the Unit Price Exhibit,*  
*attached hereto and made a part hereof*, in current funds constituting legal tender of the United States  
of America, which Contract Sum shall be in full compensation for the furnishing of all labor, materials  
and services required for the completion of the Work, and all other costs and expenses incidental  
thereto.

III. DEFINITIONS

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

A. Contract

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

B. Contract Documents

which form the Contract consist of the following:

1. This Agreement, including any referenced documents or exhibits;
2. The following Special Condition(s): Railroad Protective Liability Insurance;
3. Performance Bonds; Labor and Material Bonds;
4. Specifications and Drawings;
5. Addenda issued prior to execution of this Agreement; and
6. Any written change or amendment to any of the above documents as listed in "1." through "5."

C. Architect or Engineer

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

Transystems/Lichtenstein

1 Oxford Valley Suite 818

Langhorne, PA 19047-3317

D. Government

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

E. Project Manager

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

F. Contract Administrator

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

G. The Work

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

H. Changed Work

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

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

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

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

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

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

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

V. EXECUTION, INTERPRETATION AND INTENT

- A. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning.
- B. The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

- C. Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings, or otherwise will be issued with reasonable promptness by the Project Manager and in accordance with any schedule agreed upon in accordance with Paragraph VIII.M. Written requests for such interpretation may be submitted to the Project Manager. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents, and may be effected by Field Order as defined in Paragraph XIV.J.

VI. ARCHITECT AND ENGINEER

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

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

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

VIII. CONTRACTOR

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

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

- D. Supervision and Construction Procedures

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

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

**E. Labor, Materials and Facilities**

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

**F. Contract Security**

The Contractor shall furnish and maintain properly executed Performance Bonds and Labor and Material Payment Bonds, each written by good and sufficient sureties and in form acceptable to SEPTA, each in the amount of one hundred percent (100%) of the Contract Sum. If any of the sureties on these bonds should become insolvent or bankrupt in a technical or equitable sense, or otherwise become unqualified to underwrite these bonds for one hundred per cent (100%) of the Contract Sum, or the Contract Sum is adjusted so as to exceed the penalties of such bonds, SEPTA may require, on ten (10) days written notice, the Contractor to furnish new or additional bonds from the same or different sureties so as to be fully secured at all times for one hundred percent (100%) of the Contract Sum. The desired form of Labor and Material Payment Bond consists of AIA Document A311, while the Performance Bond must be in form acceptable to SEPTA (see sample of the desired Performance Bond attached to the Contract).

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

**G. Indemnification**

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

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

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

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

**H. Taxes**

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

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

1. The Contractor warrants to SEPTA and the Architect or Engineer that all materials and equipment furnished under the Contract will be of highest quality and new unless otherwise specified by SEPTA, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after final acceptance, as determined by SEPTA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to SEPTA. As additional security for these guarantees, the Contractor shall, prior to final acceptance by SEPTA, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to SEPTA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for the Contract, unless otherwise permitted by SEPTA in writing. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final acceptance, as determined by SEPTA, and shall be written in an amount equal to one hundred percent (100%) of the Contract Sum, as adjusted (if at all). Samples of the desired bond forms are attached to the Contract for informational purposes.

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

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

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

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

J. Permits, Fees and Notices

1. The Contractor shall obtain and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the Work.

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

K. Superintendent

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall be satisfactory to the Project Manager, and shall not be changed except with the consent or at the direction of the Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in its employ. If the Project Manager orders that the superintendent be changed, then the Contractor shall promptly replace him or her with a new superintendent who is satisfactory to the Project Manager.

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

L. Responsibility for Those Performing The Work

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

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

M. Construction Schedule

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

N. Drawings and Specifications at the Site

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

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

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

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

O. Shop Drawings and Samples

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

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

4. By approving and submitting Shop Drawings and Samples, the Contractor shall represent that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents.
5. The Architect or Engineer will review Shop Drawings and Samples, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. Review of component or sub-assembly items shall not indicate review of an assembly in which the component or sub-assembly functions. Any work done by the Contractor prior to such review by the Architect or Engineer shall be at the Contractor's risk.

6. The Contractor shall make any corrections required by the Architect or Engineer and shall resubmit the required number of corrected copies of Shop Drawings or new Samples until accepted. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections requested by the Architect or Engineer on previous submissions.
7. The Architect's or Engineer's review of Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Architect or Engineer in writing of such deviation at the time of submission and the Architect or Engineer has given written acceptance to the specific deviation, nor shall the Architect's or Engineer's review relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.
8. The Architect or Engineer will review and return Shop Drawings received from the Contractor in a reasonable time after receipt thereof.

**P. Use of Site**

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

**Q. Cleaning Up**

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

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

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

R. Communications

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

S. Federal, State and Local Contract Requirements

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

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

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

U. Insurance

1. Contractor's Liability Insurance

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

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

2. Evidence of Compliance

a. Certificates of Insurance

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

b. Written Approval Required

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

3. Policies to Remain in Force

a. Until Completion and Acceptance

All insurance coverage which the Contractor is required to provide for the Contract shall be maintained in full force and effect until the final completion and acceptance by SEPTA of the Work.

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

c. Replacement Coverage Required

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

4. Additional Insureds Required

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

5. Waiver of Liability For Premiums

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

6. Limits of Liability

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

a. Workmen's Compensation Insurance

As required by the applicable laws of the Commonwealth of Pennsylvania.

b. General Liability Insurance (excluding vehicles)

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

(1) Minimum Limits of Liability

\$ 2,000,000 combined single limit (Bodily Injury and Property Damage) per occurrence.

(2) Additional Insureds

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

(3) Contractual Liability (Hold Harmless) Coverage

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

c. Vehicle Liability

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

(1) Minimum Limits of Liability

\$ 1,000,000 combined Single Limit (Bodily Injury and Property Damage) per occurrence.

(2) Additional Insureds

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

(3) Hired and Other Non-Owned Vehicles

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

7. Payment of SEPTA Claims

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

V. Books and Records

The Contractor shall prepare, maintain and make available for inspection and audit by SEPTA all project Work and cost records relative to this project at all times and for a period of five (5) years after Final Payment. Records shall be made available, upon request, at the Contractor's place of business during normal working hours. The Contractor's cost and financial records shall be maintained in accordance with generally accepted accounting principles and reflect actual costs of all items of labor, material, supplies, services and all other expenditures for which compensation is payable. The Contractor shall include this requirement in all subcontracts awarded by it under the Contract.

IX. SUBCONTRACTS

A. Definition

1. A "Subcontractor" is an individual or organization who enters into a Contract to

furnish labor or materials or apparatus in connection with the Work directly or indirectly for or on behalf of the Contractor and whether or not in privity of Contract with the Contractor.

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

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

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

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

C. Subcontractor Relations

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

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

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

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

X. SEPARATE CONTRACTS

A. General

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

B. Mutual Responsibility Between Contractors

1. The Contractor shall permit other contractors reasonable opportunity for the introduction and storage of their materials and equipment at this site and facilitate the execution of their Work by properly coordinating its Work with theirs.
2. If any part of the Contractor's Work depends on the proper execution, progress or completion of the Work or assistance of any other contractor, utility, person, or municipal or governmental agency, the Contractor agrees to examine and promptly report to the Project Manager any discrepancies or defects in such Work or assistance that render it unsuitable for proper and timely execution of the Contractor's Work. Failure of the Contractor to so examine and report to SEPTA constitutes an acceptance by the Contractor of the other contractor's work or assistance as fit and proper to receive Contractor's Work except for deficiencies discovered after the initiation of the Contractor's Work which could not have been discovered by Contractor prior thereto.
3. Should the Contractor cause damage to the Work or property of any separate contractor on the Project, the Contractor shall at its own expense, upon due notice, diligently attempt to settle with such other contractor by agreement or arbitration.

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

C. Cutting and Patching Under Separate Contracts

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

D. SEPTA's Right to Clean Up

If a dispute arises between the separate contractors as to their responsibility for cleaning up as

required by Paragraph VIII.Q. SEPTA may clean up and charge the cost thereof to the several contractors as determined by the Contract Administrator.

## XI. TIME

### A. Definitions

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

### B. Progress and Completion

1. All time limits stated in the Contract Documents are of the essence of the Contract.
2. The Work to be performed under the Contract shall be commenced immediately upon receipt of SEPTA's Notice to Proceed. Contractor shall execute the Work continuously and shall complete the Work within Five Hundred Forty Seven (547) calendar days after the date of receipt of SEPTA's Notice to Proceed. The date of the Five Hundred Forty Seventh (547) day after the date of receipt of SEPTA's Notice to Proceed is designated as the "Completion Date" wherever referred to in the Contract Documents. "Completion" as used herein shall mean Final Completion as defined by SEPTA's Project Manager.

### C. Delays and Extensions of Time

1. The Contractor hereby expressly warrants and represents that it shall make no claim for increased costs, charges, expenses or damages against SEPTA for any delays or hindrances experienced in the performance of the Work, whether caused by any act or omission of SEPTA or from any cause whatsoever. In the event completion of any portion of the Work is delayed through no fault or neglect of the Contractor the Completion Date may be extended at no additional cost to SEPTA, in SEPTA's sole discretion, as further provided herein.
2. The Contractor shall promptly report to the Project Manager and Contract Administrator any delays or anticipated delays as soon as it, or any of its supervisory employees, become aware of the same.
3. The Contractor may request a no cost time extension for unusually severe weather. In order for SEPTA to consider such a no cost time extension, the following conditions must be met:
  - a. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather that could reasonably been anticipated for the project location during same period in preceding years.
  - b. The unusually severe weather must actually cause a delay to the completion of

the project, and not have been either concurrent with delays caused by the fault or negligence of the Contractor, or have absorbed any or all of the available positive critical path float, as defined in Exhibit III.

The Contractor, in his request for a weather-related time extension, must provide a schedule of anticipated monthly adverse weather days based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location. This schedule will constitute the baseline for monthly weather time evaluations. The Contractor's progress schedule must reflect the adverse weather delays in all weather dependent activities. For the purpose of this contract, unusually severe weather is defined as daily precipitation equal to or exceeding daily precipitation equal to or exceeding 0.5 inches the average (or mean) precipitation for the month and/or maximum daily temperature not exceeding 32 degrees F. The Contractor shall also meet the provisions of paragraph XI.C.4. below to demonstrate that the severe weather actually delayed the Contractor's Work. Actual adverse weather days must prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday. If the number of actual adverse weather delay days exceeds the number of days anticipated in the NOAA schedule, SEPTA will consider extending the time of completion by the difference between the schedule and actual adverse weather days for the period requested. A no-cost time extension will be issued by SEPTA if the Contractor's Time Impact Analysis, as described below, supports the Contractor's delay claim.

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

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

D. Suspensions of Work

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

E. Liquidated Damages for Delays in Completion

Time is of the essence in the completion of the Work of the Contract. Unless the Completion Date is extended as otherwise provided for in the Contract Documents, liquidated damages in the amount of \$805.00 dollars per day (hereinafter called "Liquidated Damages") shall be assessed for each and every Calendar Day, or portion thereof, beyond the Completion Date that the Work is not completed to SEPTA's satisfaction.

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

XII. PAYMENT AND COMPLETION

A. Contract Sum

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

B. Schedule of Payments

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

C. Interim Progress Payments

Until fifty percent (50%) of the Work is completed (as determined exclusively by SEPTA), progress payments will be made monthly on the basis of ninety percent (90%) of the value of labor, overhead, equipment, materials and other direct costs incorporated into the Work in that calendar month, as verified by SEPTA's Project Manager. Upon completion of fifty percent (50%) of the Work, one-half of the amount retained by SEPTA shall be returned to the Contractor, provided, however, that the Project Manager approves the application for

payment and that the Contractor is making satisfactory progress and there is no specific cause for greater withholding. Upon completion of fifty percent (50%) of the Work, progress payments will be made monthly on the basis of ninety-five percent (95%) of the value of labor, overhead, equipment, materials, and other costs incorporated into the Work in that calendar month, as verified by SEPTA's Project Manager. All such monies retained by SEPTA may be withheld from the Contractor until substantial completion of the Work. Such payments shall be made within thirty (30) days after approval of a request for a progress payment ("Invoice") by the Project Manager. Such Invoice shall be submitted in such form and detail as required by the Project Manager, within ten (10) days after the end of each calendar month. Such invoice shall include a DBE Invoice Payment Report (a sample copy of the DBE Invoice Payment Report that is to be utilized by the Contractor is attached to the Contract).

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

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

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

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

Sum then remaining unpaid will not be sufficient to complete the Work in accordance with the Plans and Specifications, whereupon no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Sum then remaining unpaid is determined by SEPTA to be sufficient to so complete the Work; and/or

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

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

**D. Certificates for Payment**

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

**E. Payment Withheld**

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

**F. Substantial Completion and Final Payment**

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

Within a reasonable time after receipt of the Contractor's request, SEPTA, the Contractor and Architect or Engineer shall make an inspection of the Work to determine the status of completion. If SEPTA, the Architect or Engineer do not consider the Work substantially complete, SEPTA will notify the Contractor in writing giving the reasons for the rejection. If SEPTA, and the Architect or Engineer consider the Work substantially complete, the Architect or Engineer will prepare and deliver to SEPTA a Certificate of Substantial Completion, which shall fix the date of Substantial Completion.

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

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

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

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

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

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

G. Failure to Complete the Work

In the event the Work delivered by the Contractor does not fulfill the requirements or intention of the Specifications and Drawings, or otherwise comply with the requirements of the Contract Documents, said Work shall not be considered as being completed and

accepted, and the assessment of Liquidated Damages set forth in Paragraph XI.E. (if used) shall apply and be enforced. Furthermore, if any portion or phase of the Work is incomplete, or contains any defective or damaged materials, said materials shall be removed and new materials shall be furnished promptly by the Contractor, who shall also pay for freight or transportation charges for same, plus the cost of labor for the removal and installation of said materials, all of which shall be furnished at no cost to SEPTA. In such an event, SEPTA will withhold one and one half times the value of the uncompleted Work, in accordance with paragraph XII.C. above.

H. No Release Upon Acceptance

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

I. Final Payment

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

XIII. PROTECTION OF PERSONS AND PROPERTY

A. Safety Precautions and Programs

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

B. Safety of Persons and Property

1. The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction over the safety of persons or property for their protection from damage, injury or loss which are in effect or become effective during the term of the Contract. The Contractor shall be solely responsible for the cost of all changes in such regulations during the term of the Contract whether anticipated or not, regardless of the amount of such costs and these costs shall not be passed on or through SEPTA under any circumstances.
2. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damages, injury or loss to:
  - a. employees on the Work and all other persons who may be affected thereby;
  - b. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of its Subcontractors; and
  - c. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

3. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safe guards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.
4. When the use or storage of hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. The use of explosives on SEPTA property is strictly prohibited, unless expressly permitted by the specifications. In no event shall any explosives be stored on SEPTA property.
5. All damage or loss to any property referred to in Paragraphs XIII.B.2.b. and XIII.B.2.c. caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly employed or controlled by any of them, shall be remedied by the Contractor.
6. The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent (see Paragraph VIII.K.) unless otherwise specified by SEPTA, designated in writing by the Contractor and approved by the Project Manager.
7. The Contractor shall neither load nor permit any part of the Work to be loaded so as to endanger its safety.
8. Contractors shall maintain an alcohol and drug free environment and shall not permit any person under its control or the control of any of its Subcontractors at any tier, who exhibits unsafe behavior or behavior which involves a reasonable suspicion of being impaired from alcohol or drugs to remain on or about the jobsite. This provision shall be strictly and promptly enforced by the Contractor.
9. The Contractor shall comply with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and the U.S. Department of Labor regulations set forth in 29 CFR Parts 1910 and 1926 which are in effect or become effective during the term of the Contract. The Contractor shall be solely responsible for the cost of all changes in such regulations during the term of the Contract whether anticipated or not, regardless of the amount of such costs and these costs shall not be passed on or through SEPTA under any circumstances.

C. Personnel Security Measures

SEPTA reserves the right to impose personnel security measures upon the Contractor and its employees as SEPTA deems necessary and appropriate to ensure the safety of its patrons, employees and property. These measures may include, but are not limited to, registration of all employees of the Contractor and its subcontractors who shall be working on SEPTA property, photo identification of all registered employees, and background investigations of all registered employees. In addition, SEPTA reserves the right to institute personnel security measures, which may be imposed at anytime during the course of the Work. SEPTA shall assume the costs of such security measures. The Contractor and its employees shall cooperate fully with SEPTA in implementing and enforcing security measures on SEPTA property. The Contractor shall be notified by SEPTA, in writing, regarding what is required by SEPTA to carry out any personnel security measures that are being imposed on the Contractor.

D. Emergencies

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

XIV. CHANGES IN THE WORK

A. Change Orders

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

B. Definitions

1. A "Change Order" means a written order to the Contractor, signed by the Contract Administrator, issued in accordance with SEPTA's standard procedures and, authorized either by its General Manager or by its Board, as appropriate, after the execution of the Contract, which makes a Change in the Work or an adjustment in the Contract Sum or the Contract Time. A Change Order shall also be signed by the Contractor if it agrees to the adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A sample copy of the Change Order form that will be utilized by SEPTA is attached to the Contract.
2. "Material", as used in this Paragraph XIV., means an item or items that is provided by:
  - a. a factory or established facility that produces on its premises the item(s) obtained by the Contractor; or
  - b. a firm that owns, operates, or maintains a store, warehouse, or other established facility in which the item(s) required for the performance of the Contract are brought, kept in stock, and regularly sold to the public in the usual course of business.
3. "Subcontractor", as used in this Paragraph XIV., means a firm providing labor or services necessary to complete a distinct element of the Work. The labor or services provided must be provided on the basis of direct labor hours at specified fixed hourly rates.
4. "Equipment", as used in this Paragraph XIV., means apparatus used by the Contractor or a Subcontractor to complete a distinct element of the Work.

C. Changes and Amendments to the Contract

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

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

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

D. Determination of Cost/Credit

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

1. Unit Prices

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

2. Fixed Price Lump Sum Amount

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

a. Labor

- (1) Actual Wages - base hourly rate by craft for all levels below the General Foreman but excluding premium pay paid to all employees directly engaged in the Work.
- (2) Labor Burden - to be established as a percent of actual wages paid pursuant to contractual obligation and paid for each craft and shall

include: Vacation Allowance, Health and Welfare, Pension, Apprenticeship Programs and other programs as required for each craft, Social Security, Unemployment Insurance and Workers' Compensation Insurance.

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

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

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

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

b. Material

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

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

c. Equipment Rental

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

d. Subcontractor Cost

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

e. Miscellaneous

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

3. Time and Material

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

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

E. Access

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

F. Allowability and Allocability of Costs

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

G. Other Requirements

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

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

If the Contractor wishes to make any claim for any increase in the Contract Sum, it must give the Project Manager written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim or it shall not be entitled to any compensation therefor. This notice must be given by the Contractor before proceeding to execute any of the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph XIII.D. No claim for any increase in the Contract Sum shall be valid unless so made. To be considered for any additional money such claim must set forth the factual basis of the claim in sufficient detail for the party receiving it to

know and understand, the nature, amount and extent of the claim and the event or events and fact or facts upon which the claim is based. The parties hereto agree that in the event of such claim or claims that they shall not proceed to litigation without first giving such notice and making reasonable efforts thereafter to resolve the claim or claims without the necessity of seeking recourse in the courts. The Contractor expressly agrees that it shall not make any claim, nor be entitled to any additional cost, against SEPTA resulting from the actions of any Subcontractor or other and separate contractors on the Project it being clearly understood that the Contractor's sole avenue of recovery is against such Subcontractor or other and separate contractors on the Project.

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

**I. Minor Changes in the Work**

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

**J. Field Orders**

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

**K. Value Engineering Incentive -- Construction**

1. **Applicability.** This Paragraph applies to any Contractor developed, prepared, and submitted Value Engineering Change Proposal (VECP). Any such proposal must be identified as VECP at the time of its submission to SEPTA.
2. **Definitions.**
  - a. "Contractor's development and implementation costs" means those costs incurred on a VECP before SEPTA acceptance and those costs the Contractor incurs specifically to make the changes required by SEPTA acceptance of a VECP.
  - b. "SEPTA costs" means those SEPTA costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistic support. They do not include the normal administrative costs of processing the VECP.
  - c. "Contract savings" means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs (including Subcontractors' development and implementation costs). (See subparagraph 7.)
  - d. "The Value Engineering Change Notice (VECN)" shall be submitted by the Contractor to SEPTA for initial notification of a change to be considered under the Value Engineering provision of the Contract. The VECN precedes the Value Engineering Change Proposal (VECP) and shall contain the following:

- (1) brief description of the proposed change; and
  - (2) estimated cost saving of the proposed change.
- e. "Value Engineering Change Proposal (VECP)" means a proposal that:
  - (1) requires a change to the Contract to implement; and
  - (2) results in reducing the Contract Sum or estimated costs without impairing essential functions or characteristics, provided that it does not involve a change in deliverable end-item quantities.
3. **VECP Preparation.** As a minimum, the Contractor shall include the information described in a. through e., below, in each VECP. If the proposed change affects contractually required configuration management procedures, the instructions in the procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:
  - a. A description of the difference between the existing Contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.
  - b. A list of the Contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
  - c. A separate, detailed cost estimate for both the affected portions of the existing Contract requirement and the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under subparagraph 7. The Contractor shall also include a description and estimate of costs SEPTA may incur in implementing the VECP, such as test and evaluation and operating and support costs.
  - d. A projection of any effects the proposed change would have on collateral costs to SEPTA.
  - e. A statement of the time by which a Contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any affect on the Contract Time or delivery schedule.
4. **Submissions.**
  - a. The VECN shall be in letter form and shall be submitted by the Contractor to notify SEPTA of an identified Value Engineering Change. The VECN shall contain the following:
    - (1) brief description of proposed change;
    - (2) estimated cost savings of the proposed change.

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

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

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

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

5. Acceptance.

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

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

6. Sharing.

- a. Rates. The Contractor's share of savings is determined by subtracting SEPTA costs from instant contract savings and multiplying the result by 50 percent.
- b. Payment. Payment of the share due the Contractor for use of a VECP on the Contract shall be in accordance with Paragraph XII., Payment and Completion, of the Agreement and shall be authorized by a Change Order to the Contract to:
  - (1) accept the VECP;
  - (2) reduce the Contract Sum or estimated cost by the amount of instant contract savings; and
  - (3) provide the Contractor's share of savings by adding the amount calculated in subparagraph 6. a. to the Contract Sum.

7. Subcontracts.

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

8. Data.

If a VECP is accepted, the Contractor hereby grants SEPTA unlimited rights in the VECP and supporting data.

XV. UNCOVERING AND CORRECTION OF WORK

A. Uncovering of Work

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

B. Correction of Work

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

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

C. Acceptance of Defective or Non-Conforming Work

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

XVI. TERMINATION FOR CONVENIENCE

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

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

XVII. TERMINATION FOR CAUSE

- A. If Contractor fails to remedy to SEPTA's satisfaction the breach or default of any of the terms, covenants, or conditions of the Contract within ten (10) days after receipt by Contractor of written notice from SEPTA setting forth the nature of said breach or default and/or if the Contractor is suspended or debarred by any federal agency or by the Commonwealth of Pennsylvania, SEPTA shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for cause shall not in any way operate to preclude SEPTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

#### **XVIII. MISCELLANEOUS PROVISIONS**

A. **Governing Law; Forum Selection; and Consent to Jurisdiction**

All matters or claims arising out of, related to, or in connection with the Contract, the Project or the relationship between the parties shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to the principles of conflicts of laws of such state. All matters, disputes, claims, litigation, or proceedings of any nature whatsoever based upon, arising out of, under or in connection with the Contract, the Project or relationship between the parties shall be solely and exclusively brought, maintained, resolved, and enforced in the state or federal courts located in the City of Philadelphia, Pennsylvania, irrespective of any procedural rules or laws related to venue and forum non conveniens, including but not limited to any choices Contractor may have under any such rules or law. Contractor hereby expressly consents to the jurisdiction of the state and federal courts located in the City of Philadelphia and hereby expressly and irrevocably waives any objection which Contractor may have or hereafter may have to jurisdiction or venue in the state and federal courts located in the City of Philadelphia and any claim that such court is inconvenient or lacks personal jurisdiction over Contractor. Contractor represents and acknowledges that the choice of jurisdiction and venue described above is reasonable and has been freely and voluntarily made by Contractor. Further, the choice of jurisdiction and venue described above shall be mandatory and not permissive in nature, thereby precluding the possibility by Contractor of litigation or trial in any other jurisdiction, court or venue other than specified above, except that any final judgment may be enforced in other jurisdictions in any manner provided by law.

B. **Contract to Bind SEPTA and Contractor**

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

C. **Assignment Prohibited**

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

SEPTA; provided, that the termination of the Contract shall not release Contractor or its sureties from any liability for any damages sustained by SEPTA by reason of such termination.

D. Government Financial Assistance

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

E. Reimbursable Work and Expenses

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

F. SEPTA's Right To Stop the Work

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

G. SEPTA's Right to Carry out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, SEPTA may, after seven (7) days written notice to the Contractor and without prejudice to any other remedy, make good such deficiencies. In such case, an appropriate Change Order shall be issued, deducting from the payments then or thereafter due to the Contractor the cost of correcting such deficiencies, including the cost of the Architect's or Engineer's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to SEPTA.

H. Rights and Remedies

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

I. Royalties and Patents

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

J. Tests and Inspections:

1. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to SEPTA and shall bear all related costs of tests, inspections and approvals. The Contractor shall give SEPTA and the Architect or Engineer timely notice of when and where tests and inspections are to be made so SEPTA and/or the Architect or Engineer may observe such procedures.
2. If after the commencement of the Work SEPTA determines that any Work requires special inspection, testing, or approval which Paragraph XVIII.J.1. does not include, SEPTA will instruct the Contractor to order such special inspection, testing or approval and the Contractor shall give notice as in a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the work with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including the Architect's or Engineer's additional services made necessary by such failure; otherwise SEPTA shall bear such costs, and an appropriate Change Order shall be issued.
3. During the performance of the Work SEPTA reserves the right and shall be at liberty to inspect all materials and workmanship at any time and shall have the right to reject all material and workmanship which does not conform with the Specifications.  
  
Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by it to the Project Manager.
4. If the Project Manager wishes to observe the inspections, tests, or approvals required by this Paragraph XVIII.J. the Project Manager will do so promptly and, where practicable, at the source of supply.
5. Neither the observations of the Project Manager or any representative of SEPTA in the administration of the Construction Contract, nor inspection tests or approvals by persons other than the Contractor shall relieve the Contractor from its obligations to perform the Work in accordance with the Contract Documents.

K. Claims for Damages

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

**L. Written Notice**

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

FOR SEPTA:

Neil P. Patel, Senior Director, Procurement  
Southeastern Pennsylvania Transportation Authority (SEPTA)  
1234 Market Street, 11th Floor  
Philadelphia, Pennsylvania 19107-3780

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

FOR CONTRACTOR:

David Shaw, Vice President  
Crossing Construction Company, Inc.  
1087 Taylorsville Road  
Washington Crossing, PA 18977

**M. Unforeseen Underground Conditions**

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

**N. Overhead Obstacles**

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

**O. Third Party Contract Rights**

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

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

The Contractor is encouraged to utilize the services of financial institutions owned and controlled by socially and economically disadvantaged individuals as defined at 49 CFR §26.5.

Q. Disadvantaged Business Enterprise (DBE) Requirements

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

XIX. DISPUTES

- A. Disputes arising in the performance of the Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of SEPTA's Senior Director of Procurement. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor or SEPTA Project Manager mails or otherwise furnishes a written appeal to the Senior Director of Procurement. In connection with any such appeal, the Contractor or the SEPTA Project Manager shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Senior Director of Procurement shall be binding upon the Contractor and SEPTA.
- B. Performance During Disputes. Unless otherwise directed by SEPTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.

XX. PROHIBITED INTEREST.

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

XXI. SEVERABILITY.

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

XXII. INTEGRATION.

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

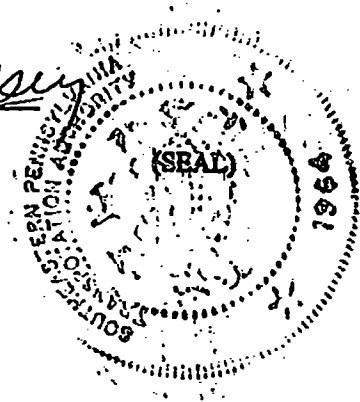
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned duly authorized officers, under seal, as of the day and the year first above written.

ATTEST:

SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY:

Elizabeth M. Hunt  
SECRETARY

Joseph M. Casey  
Joseph M. Casey  
General Manager



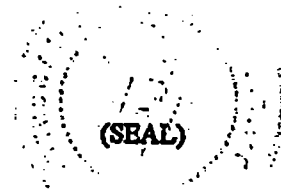
ATTEST:

CONTRACTOR:

Kendy D. Curtin  
(Secretary or Treasurer)

David J. Shaw  
President or Vice-President

David J. Shaw  
(please type name)



APPROVED AS TO FORM:

By [Signature], Esq.  
General Counsel's Office

October 5, 2008