

**EXHIBIT "B"**



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November 2, 2010

**VIA HAND DELIVERY**

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

**RE: SEPTA P.O. No. S770856 - Allen Lane Station Improvement Project**  
**Contractor: Crossing Construction Co., Inc.**

Dear Mr. Patel:

We are counsel for Crossing Construction Co., Inc. in connection with matters relating to the above-referenced Project.

Pursuant to Section XIX of the Contract for the Project, please accept this letter as Crossing Construction's submission of the following unresolved claims and disputes on the Project. Enclosed with this claim submission letter is a binder of back-up documentation and information with regard to the identified claims. The claims are submitted for initial decision in accordance with Section XIX of the Contract.

**1. Claim No. 1 – Groundwater Elevation.**

Crossing Construction encountered groundwater conditions at the Project site that differed materially from the information that SEPTA provided in the Contract Documents for the Project, resulting in additional costs for Crossing Construction and delays in Crossing Construction's ability to perform and complete its work on the Project. Crossing Construction seeks additional compensation and time for this claim.

**a. The Geotechnical Report.**

Addendum No. 3 to the Bid Documents for the Project, dated July 24, 2008, provided Hunt Engineering Company's Geotechnical Report and Soil Boring Logs for the Project. See

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Claim Binder, at Tab 1. Pursuant to Section III.B.5 of the Contract, Addendum No. 3 – the Geotechnical Report – was expressly made a Contract Document for the Project.

The Geotechnical Report does not provide the contractor with any notice, warning or information concerning potential groundwater elevation issues on the Project. The Report only mentions potential “surface water” conditions that the contractor might encounter in the work, and, in fact, contains affirmative representations concerning groundwater elevations at eight boring locations on the Project site. The groundwater elevations indicated in the Report were materially different from the groundwater elevations that Crossing Construction encountered on the Project.

For example, the Geotechnical Report indicates the following groundwater conditions on the “inbound” side of the tracks:

- Boring AI-2 -- 302.2 feet
- Boring AI-3 -- 300.9 feet
- Boring AI-1 -- No groundwater
- Boring AI-4 -- No groundwater

Crossing Construction, however, encountered groundwater for footing excavations on the “inbound” side of the track at an elevation of 304.7 feet and at the adjacent T-wall at an elevation of 305.00 feet. The groundwater encountered, therefore, was markedly higher – in excess of two feet higher – than that represented in SEPTA’s Contract Documents.

SEPTA’s contract drawings show all footing excavations (bottom of footing) above the highest indicated groundwater elevations in the Geotechnical Report.

Likewise, on the “outbound” side of the tracks, the Geotechnical Report indicates the following groundwater conditions:

- Boring AO-2 -- No groundwater
- Boring AO-3 -- No groundwater
- Boring AO-4 -- No groundwater

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Nonetheless, Crossing Construction encountered groundwater for footings excavation in these areas at significant elevations. For example, Crossing Construction encountered groundwater at footing line 209 at an elevation of 304.29 – almost six feet higher than the boring depths.

Consistent with the Geotechnical Report's findings and representations detailing the absence of elevated groundwater conditions (or no groundwater at all), SEPTA's Contract Documents for the Project did not include a groundwater dewatering program.

**b. Additional Work.**

By letter dated October 15, 2009, Crossing Construction provided written notice to SEPTA with regard to Crossing Construction encountering groundwater at higher elevations than represented in the Contract Documents. See Claim Binder, at Tab 2. Representative photographs reflecting the elevated groundwater conditions and the clear impact on Crossing Construction's work operations on the Project are included in the Claim Binder at Tab 3.<sup>1</sup> Among other things, Crossing Construction was forced to run dewatering pumps almost constantly to alleviate the elevated groundwater conditions; to work in saturated, muddy conditions; and to spend significant time and money to dewater, remove muck and stabilize conditions prior to proceeding with and performing its work on the Project.

**c. Costs and Delays.**

As a result of the excessive groundwater conditions, Crossing Construction has:

- (a) incurred substantial additional dewatering costs; and
- (b) been significantly delayed in its ability to perform work in a timely and efficient manner.

With regard to additional costs for dewatering operations from trench excavations and related site work, Crossing Construction submitted Letter No. GS0037, dated July 23, 2010, to SEPTA, seeking a change order (PCO #4) for total additional dewatering costs of \$176,939.<sup>2</sup>

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<sup>1</sup> Crossing Construction has numerous additional photographs of the elevated groundwater conditions and the impacts on Crossing Construction's work and can and will provide additional photographs upon request.

<sup>2</sup> Although Letter No. GS0037 stated an additional cost of \$179,939, there was a typographic error in the letter and the actual total additional cost is \$176,939.

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See Claim Binder, at Tab 4. The \$176,939 is calculated based on additional dewatering costs of \$245,380 for Phases 1 and 2 less a credit of \$68,441 for 2A modified aggregate in the leveling pad for 1<sup>st</sup> and 2<sup>nd</sup> foundations installed together in the trench box for Phases 1 and 2. Included within the additional \$245,380 for dewatering costs are, without limitation, costs for labor, equipment (including multiple pumps) and materials (including stone for stabilization and additional concrete). See back-up documentation in Claim Binder, at Tab 6.

Additionally, as set forth in Crossing Construction Letter No. GS0040, dated August 17, 2010, the excessive groundwater elevations delayed the work for a total of 144 days and resulted in delay costs totaling \$243,480. See Claim Binder, at Tab 5. Without question, Crossing Construction could not access and proceed with its work on the Project in a timely and efficient manner as a result of the elevated groundwater, necessary dewatering operations and resultant, unexpectedly wet conditions. A detailed calculation of Crossing Construction's delay costs resulting from the elevated groundwater conditions is included in the Claim Binder at Tab 5 and back-up documentation for the calculation is included in the Claim Binder at Tab 6.

**d. SEPTA's Position.**

In response to Crossing Construction's submission of PCO # 4, seeking additional time and costs resulting from the groundwater conditions, SEPTA, by letter dated September 15, 2010, denied the claim in full. See Claim Binder, at Tab 7. SEPTA's sole bases for its denial of the claim were: (a) SEPTA's "understanding that the water table fluctuates throughout the year and from year to year" and (b) that the Geotechnical Report for the Project referenced "surface waters." Neither of SEPTA's purported bases for denying Crossing Construction's claim has merit.

First, any alleged or, more accurately, hypothetical fluctuation in groundwater levels is immaterial. SEPTA made Hunt Engineering's September 2006 Geotechnical Report a Contract Document for the Project, and Crossing Construction reasonably and properly relied on the Report. To the extent that SEPTA now claims that borings taken at different times of year or in different years "could have been very different" with regard to groundwater levels, responsibility for SEPTA's incorrect, incomplete and/or outdated Geotechnical Report lies with SEPTA and not with Crossing Construction. Regardless, the information in the Report constitutes affirmative representations concerning the conditions to be encountered and where, as here, the contractor encounters conditions that differ materially from those indicated in the Owner's Contract Documents, the contractor is entitled to additional time and compensation.

Moreover, as "support" for SEPTA's theory concerning groundwater fluctuations, SEPTA cites research from Allentown, Pennsylvania in 1968 and from Big Spring, Missouri in

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2006-07. Alleged groundwater fluctuations in other locations – one of which is hundreds of miles from the Project and the other of which is over fifty miles away and forty years old – provide no rational basis for any findings concerning groundwater elevations in Philadelphia. To that end, it is remarkable that SEPTA concedes in its September 15, 2010 letter that “[c]omparable data specifically for the Philadelphia area” could not be found. One would think that borings taken from the project site within a reasonable time prior to the commencement of construction would take precedence over “research” culled from a location almost one thousand miles away and/or conducted forty years ago.

Second, SEPTA’s position that the Geotechnical Report’s reference to “surface waters” and/or limited dewatering of “surface waters” somehow provides Crossing Construction with notice of substantial groundwater at elevations dramatically higher than those referenced, if referenced at all, in the Geotechnical Report is meritless, at best (and in bad faith, at worst). The Geotechnical Report solely references surface water, and surface water and groundwater are two diametrically different things. Moreover, as referenced above, the Contract Documents did not include or even mention any groundwater dewatering plan. If, based on the borings or otherwise, groundwater dewatering had been identified, contractors would have included the cost of a groundwater dewatering plan as part of their bid price. Bidders, however, did not include groundwater dewatering as part of their scope of work. Dewatering plans on the Project were solely limited to surface waters and did not extend to, much less identify, significant and unexpected groundwater conditions on the Project at the elevations encountered.

No basis exists for SEPTA to continue to deny Crossing Construction’s groundwater elevation claim on the Project. SEPTA should issue a Change Order to Crossing Construction for additional time (*144 day extension*) and additional costs (*\$420,419 for dewatering costs and delay costs*) resulting from the unexpected, elevated groundwater conditions that Crossing Construction encountered on the Project.

## **2. Claim No. 2 – Wire Mesh.**

Crossing Construction seeks additional compensation in the amount of \$6,099 for installing wire mesh for certain concrete construction work on the Project that was not required by the Contract Documents.

The work at issue is the 6” Thick Plain (unreinforced) concrete slabs for the ramps for walls A, B, C and F on the Project. The Contract Drawings for this 6” Thick Plain concrete work are drawings S-25 through S-31. Those drawings indicate a 6” concrete slab with 6” of ¾” stone and *no wire mesh*. See Claim Binder, at Tab 8.

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The design information for the 6" concrete work is in sharp contrast to the information in the Contract Drawings for the 4" concrete slab work which specifically detail wire mesh. Specifically, SEPTA drawings C04 and C05 and the typical sidewalk section at drawing C11/1 indicate that wire mesh is to be included for the 4" slab work. See Claim Binder, at Tab 9.

In this manner, the Contract Drawings clearly tell the contractor that wire mesh is required for one type of work (4" concrete slab) but not for other concrete work (6" Plain concrete slab).

Given the difference in design information for the 4" concrete and the 6" plain concrete, Crossing Construction submitted RFI GC-31 on about July 28, 2009, requesting verification "that the 6" ramp concrete shown on Dwgs. S-26 through S-35 does not require wire mesh." See Claim Binder, at Tab 10. The A/E's response to the RFI was that "wire fabric or bar mats are required in all sidewalk slabs on grade per Spec 02530 *unless otherwise noted*." Claim Binder, at Tab 10. Specification Section 02530, however, does not contain a specific section on reinforcing. See Claim Binder, at Tab 11. Moreover, even if Section 02530 generically references wire fabric or bar mats with regard to concrete placement, the A/E's RFI response acknowledges that fabric or mats are only required "unless otherwise noted," and Contract Drawings S-25 through S-31 clearly note 6" thick plain concrete, without wire mesh or other reinforcement. In this regard, pursuant to Letter No. GS0014, dated November 3, 2009, Crossing Construction provided its written disagreement with the A/E's response to RFI GC-31 and notified SEPTA that wire mesh work in the 6" concrete constitutes an extra to the Contract. See Claim Binder, at Tab 12.

Despite the fact that the Contract Documents did not call for wire mesh in the 6" concrete, SEPTA required Crossing to install wire mesh as part of the 6" concrete slab work. See Claim Binder, at Tab 13. Crossing Construction proceeded to perform such work under protest. See Claim Binder, at Tab 13.

Thereafter, by Letter No. GS0024, dated May 7, 2010, Crossing Construction submitted its claim for \$6,099 for the cost of the additional work to purchase, unload, move, cut, fit and tie the wire mesh for the 6" plain concrete in the ramps for walls A, B, C and F. See Claim Binder, at Tab 14. Crossing Construction's total additional costs for the wire mesh in the concrete ramps include labor costs, equipment costs and the material costs for the wire mesh itself. Back-up documentation and calculation of the \$6,099 in additional costs is included in the Claim Binder at Tab 14.

Crossing Construction is entitled to additional compensation for the wire mesh at issue in the amount of \$6,099.

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**3. Claim No. 3 – Stair Foundations.**

Crossing Construction seeks additional compensation in the amount of \$4,832 for having to install concrete foundations for temporary overhead stairs on the Project.

SEPTA's Contract Drawings G05 and G08 did not show or require any concrete foundations for the temporary overhead stairs. See Claim Binder, at Tab 15. The first time that Crossing Construction had any knowledge that concrete foundations would be necessary for the temporary stairs was when Crossing Construction's engineer prepared calculations and details for the stairs and recommended installation of foundations. See Claim Binder, at Tab 16. Ultimately, in reviewing Crossing Construction's submittal, SEPTA's consultant, Transystems, agreed that footings were required, but increased the size of the footings. See Claim Binder, at Tab 16.

Transystems' review of the stair submittal and direction to "proceed as noted" with a larger concrete foundation demonstrates that the footings should have been included in the original Contract Drawings, even though the Contract Drawings plainly did not call for concrete foundations for the temporary overhead stairs.

By Letter No. GS0017, dated December 10, 2009, Crossing Construction sought a change order (PCO # 5) for the additional costs to excavate and install concrete foundations for the temporary stairs. See Claim Binder, at Tab 17. Including labor, equipment and materials, the total additional cost of the concrete foundation work at issue is \$4,832. See Claim Binder, at Tab 17.

By e-mail dated August 18, 2010, SEPTA rejected PCO # 5 without any reasonable basis. SEPTA's August 18 denial of the PCO solely stated that the "work is included in the Allen Lane construction contract documents" without providing any explanation or providing any back-up for its position. See Claim Binder, at Tab 18. As above, however, the Contract Documents did not include the work, and Crossing Construction is entitled to a change order for the additional work in the amount of \$4,832.

**4. Claim No. 4 – Costs for Additional Soil Testing and Associated Delay.**

Crossing Construction seeks \$17,813 in costs associated with additional soil testing that SEPTA required and a 9 day time extension that SEPTA has previously approved on a no-cost basis.

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Part of Crossing Construction's work on the Project involved excavation for retaining walls and disposal of unused soils off site. The Contract Documents required Crossing Construction to obtain test reports for these soils to confirm that the material constituted "clean fill" to be disposed appropriately off-site.

Crossing Construction's subcontractor completed the first lift of the soil for wall "B" on August 27, 2009. Crossing Construction then planned to begin excavating a second lift for wall "A&B" on September 1, 2009. SEPTA, however, stopped Crossing Construction from proceeding with the work, requiring Crossing Construction to obtain additional soil testing before material could be removed and disposed off-site.

Prior to that time, Crossing had already obtained soil test results and a soil test report from a licensed geologist certifying that the soil was clean fill. Indeed, Crossing had submitted the prior soil test results and report to SEPTA on or about August 11, 2009.

Notwithstanding the August 11, 2009 submission, SEPTA required a second set of testing that was not called for or otherwise required by the Contract Documents. Based on SEPTA's instructions, Crossing Construction proceeded to obtain the second test results as expeditiously as possible and submitted a second test report to SEPTA on September 9, 2009, again indicating the material was clean fill. Thereafter, on September 10, 2009, Crossing Construction finally proceeded to commence excavation for the second lift of wall "B."

As a result of the additional testing that SEPTA required, Crossing Construction was prevented and delayed from proceeding with its excavation work for 9 days (September 1<sup>st</sup> to September 10<sup>th</sup>).

On September 11, 2009, Crossing Construction requested a 9 day time extension as a result of the additional testing that SEPTA required. See Claim Binder, at Tab 19. On August 10, 2010, SEPTA presented Change Order No. 2 to Crossing Construction, providing for a no-cost 9 day extension. See Claim Binder, at Tab 20. Crossing Construction did not, and does not, accept a no-cost time extension for the 9 day delay on account of SEPTA's additional soil testing requirements. See Claim Binder, at Tabs 20 and 21.

Crossing Construction's costs for the additional soil testing and the 9 day delay total \$17,813, and Crossing Construction is entitled to a change order not only for 9 days of time, but also for all costs incurred. See Claim Binder, at Tab 22.

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**5. Claim No. 5 – Interest on Late Payments.**

SEPTA's progress payments to Crossing Construction on the Project have been inordinately delayed or otherwise not delivered. Some progress payments have taken up to 60 days from invoice submission for payment to be received.

The following chart sets forth late payments, to date, and interest due and owing therefor (using an interest rate of 6% per year):

<u>Invoice</u>	<u>Due Date</u>	<u>Received Date</u>	<u>Days Late</u>	<u>Amount</u>	<u>Interest</u>
144/8	12/23/09	1/6/10	14	\$337,446	\$ 776
144/9	1/19/10	2/11/10	23	\$249,750	\$ 944
144/10	2/20/10	3/23/10	31	\$295,848	\$1,508
144/11	4/1/10	4/14/10	13	\$151,650	\$ 324
144/12	5/12/10	5/25/10	13	\$748,585	\$ 1,600
144/13	6/16/10	6/30/10	14	\$506,421	\$ 1,165
144/14	7/15/10	8/11/10	27	\$219,972	\$ 976
144/15	8/19/10	10/5/10	47	\$329,640	\$ 2,343

The total due and owing to Crossing Construction for interest on late payments, to date, is \$9,636.

**6. Claim No. 6 – Retainage.**

For quite some time after Crossing Construction had completed fifty percent (50%) of its work on the Project, SEPTA refused to reduce Crossing Construction's retainage in accordance with the Contract Documents for the Project. Specifically, Crossing Construction achieved 50% completion of its work on or about April 30, 2010 and submitted a request for retainage reduction to SEPTA. SEPTA, however, did not reduce Crossing Construction's retainage by any amount until August 11, 2010 and, even then, did not reduce Crossing Construction's retainage to a proper amount.

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As a result of SEPTA's failure to release retainage, Crossing Construction is entitled to collect interest on the \$91,102.80 that SEPTA, in fact, released on August 11, 2010. Using an interest rate of 6% per year, the interest due and owing is \$1,822.

Additionally, Crossing Construction reiterates its request that total retainage be reduced to 5% in accordance with the Contract Documents.

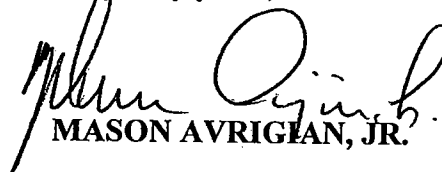
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If you or your authorized representative have any questions or need any additional information with regard to any of Crossing Construction's claims set forth above, I can be reached at (610) 834-3450. Additionally, Crossing Construction will make itself available for any claims review meeting or hearing that SEPTA wishes to conduct in order that Crossing Construction's claims are addressed as expeditiously as possible.

Crossing Construction reserves all of its rights, claims and remedies.

We look forward to hearing from you.

Very truly yours,

  
MASON AVRIGIAN, JR.

MAJR/cp  
Enclosures

cc: Nicholas J. Staffieri, Esquire, General Counsel (via email, w/o enclosure)  
David J. Shaw, Vice President (via email)  
Mark Stitz, Vice President (via email)  
Scott Rinck, Project Manager (via email)  
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