

## Plasan North America Supplemental Terms & Conditions for SEPTA Projects

Capitalized terms shall have the meanings ascribed to them in Plasan NA's General Terms and Conditions of Purchase. Capitalized terms only defined herein shall have those meanings ascribed to them.

"Contractor" shall mean the Seller.

1. GENERAL: Contractor warrants that all Material and/or Equipment meets all requirements and standards set by the TDP. All Material and/or Equipment shall be new, the best of its kind or quality, reasonably fit for its intended use as set forth in the TDP, and be of safe, substantial, and durable construction. Contractor further warrants that any Supplies, shall conform to representations and descriptions, either oral or written, made by the Contractor and any literature, sample, or other vehicle of information supplied by Contractor prior to the time set for opening of the bids for the Contract. Contractor further warrants that any sample provided represents a minimum standard of quality for the Supplies furnished hereunder.
2. ADDITIONAL WARRANTIES: In addition to all warranties implied by law, Contractor expressly warrants all Supplies against any defect in design, material or workmanship which may be discovered by Plasan North America (PNA) or PNA's customers within 3 year(s) from the date of PNA's acceptance thereof. Contractor shall make any necessary repairs to and any replacements of all or parts of the Supplies during the period set forth above, at no additional cost to Plasan North America (PNA) or PNA's customers.

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 the insurance as originally required by the Contract when it was in force, with PNA and any other entity required by PNA named as additional insured. The Contractor may be required to procure a Right of Entry Permit from Procurement and Supply Chain Management and may be required to submit proof of insurance before PNA or its customer will issue the permit.

3. INDEMNIFICATION: In addition to all other obligations of Indemnification specified herein, Contractor agrees to release and be liable for and to defend, indemnify and hold harmless PNA, PNA's customers, their 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

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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, except to the extent that 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).

### THIRD-PARTY LEGAL NOTICE

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

### DISTRACTED DRIVING, INCLUDING TEXT MESSAGING WHILE DRIVING

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by the Contractor or their own personal device, and driving a vehicle the driver owns or rents; a vehicle the Contractor owns, leases, or rents; or a privately-owned vehicle when on official business in connection with this Contract, or when performing any work for or on behalf of this Contract.

The Contractor agrees to conduct workplace safety initiatives, including establishing new rules and programs to prohibit text messaging while driving, re-evaluating existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

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

### SEAT BELT USE

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

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

### FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED PROVISIONS FOR CONTRACTS

#### Section A - Federal Contract Requirements

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

##### A. APPLICABILITY

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

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

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

##### A. APPLICABILITY

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

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

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

##### A. APPLICABILITY

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

B. (1). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act. The Contractor agrees to report each violation to SEPTA and understands and agrees that SEPTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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

##### A. APPLICABILITY

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

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

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member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31

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

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

#### A. APPLICABILITY

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

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

### FR-10 6002 OF THE SOLID WASTE DISPOSAL ACT

#### A. APPLICABILITY

This article applies to all purchase orders and contracts.

B. Clean Air Act (42 U.S.C. §§7401-7671q.) and the Federal Water Pollution Control Act (33

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

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

#### A. APPLICABILITY

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

B. (1). Overtime requirements - No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the

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United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work more than the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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

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

(1) through (4) of this section.

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

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

#### A. APPLICABILITY

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

B. (1) SEPTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to SEPTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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

#### A. APPLICABILITY

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

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B. (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. Department Of Transportation regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project.

Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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

### A. APPLICABILITY

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

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

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

### A. APPLICABILITY

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

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

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

### A. APPLICABILITY

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

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

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

### A. APPLICABILITY

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

B. The above statutes apply to the underlying Contract

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

### A. APPLICABILITY

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

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

A. (2) SEPTA and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the Contractor from future bidding as non-responsible.

B. (3) In accordance with 49 CFR 26.13(b), the Contractor also agrees that each subcontract the Contractor signs with a Subcontractor must include the assurances of paragraph B. (2).

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

### A. APPLICABILITY

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

B. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to

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the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SEPTA requests which would cause SEPTA to be in violation of the FTA terms and conditions.

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

#### A. APPLICABILITY

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

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

### FR-25 Transit Employee Protective Agreements

#### A. APPLICABILITY

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

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

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

#### A. APPLICABILITY

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

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

### FR-27 ADA Access

#### A. APPLICABILITY

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



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& engineering, operations/management, rolling stock purchases and construction contracts.

B. Contractor shall comply with 49 U.S.C. §5301(d); all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; The American Disabilities Action of 1990 (ADA), as amended, 42 U.S.C. §12101 et seq.; The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 et seq.; and all applicable requirements of the following regulations and any subsequent amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;

(3) Join U.S. Architectural and Transportation Barriers Compliance Board (U.S. TBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;

(7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64,

Subpart F and

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and

(11) Any implementing requirements FTA may issue.

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

#### A. APPLICABILITY

This article applies to all purchase orders and contracts

B. If the Federal award meets the definition of "funding agreement" under 37 CFR Part 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit

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Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

### U.S. DEPARTMENT OF TRANSPORTATION NONDISCRIMINATION REQUIREMENTS (49 CFR Part 21)

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

1. **Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the Contract.

2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontractors, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under the Contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.

4. **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by SEPTA or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to SEPTA, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of the Contract, SEPTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:

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

3. **Incorporation of Provisions.** The Contractor shall include the provisions of paragraphs 1. through 6. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as SEPTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a Contractor becomes

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involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request SEPTA to enter into such litigation to protect the interests of SEPTA and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### RESTRICTIONS ON LOBBYING SECTION

(If Contract Sum exceeds \$100,000)

#### 1. Certification Requirements.

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

#### 2. Disclosure Requirements.

a. Each contractor who requests and receives from SEPTA a Federal contract shall file with SEPTA a disclosure form, Standard Form - LLL, "Disclosure of Lobbying Activities," as set forth on pages EI-20 through EI-22 of this Exhibit, if such contractor has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered federal action), which would be prohibited under 49 CFR part 20 if paid for with appropriated funds.

b. Each contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such contractor under paragraph 2.a. of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

c. Any person who requests or receives from a contractor referred to in paragraph 2.a. of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.

d. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Contractor referred to in paragraph 2.a. of this section. That contractor shall forward all disclosure forms to SEPTA.

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### 3. Penalties.

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

b. Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

c. Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

### 4. Cost allowability.

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation.

Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

## STATE CONTRACT REQUIREMENTS

### DEFINITIONS:

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

### SR-1 Nondiscrimination/Sexual Harassment Clause.

#### A. APPLICABILITY

This article applies to all purchase orders and contracts.

#### B. The contractor agrees:

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

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

Any subgrantee, contractor or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in

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easily-accessible and well-lighted places customarily frequented by employees and at or near where the grant services are performed shall satisfy this requirement.

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

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

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

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

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

### **SR-2 ADA Provision**

#### **A. APPLICABILITY**

This article applies to all purchase orders and contracts.

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

Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C. F. R. § 35.130,

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and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by SEPTA through contracts with contractors.

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

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

#### **A. APPLICABILITY**

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

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

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

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

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

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

**"Financial Interest"** means either:

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

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

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

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

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

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

Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to

influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

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

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

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

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and SEPTA will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this

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certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify SEPTA in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that SEPTA may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S.

§13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

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

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

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



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

**SR-4 Contractor Responsibility.**

**A. APPLICABILITY**

This article applies to all purchase orders and contracts.

**B.** For the purpose of these provisions, the term “Contractor” is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under institutions. The term “Contractor” may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The Contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.

**2. The Contractor must also certify, in writing, that as of the date of its execution of any Commonwealth contract, it has no tax liabilities or other Commonwealth obligations.**

**3. The Contractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state governmental entity. Such notification shall be made within 15 days of suspension or debarment.**

**4. The failure of the Contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.**

**5. The Contractor agrees to reimburse the Commonwealth for reasonable costs of investigation incurred by the Office of the Inspector General for investigations of the Contractor’s compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the Contractor’s suspension or debarment.**

**6. The Contractor may obtain the current list of suspended and debarred Commonwealth Contractors by either searching the Internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:**

**Department of General Services**

**Office of Chief Counsel**

**603 North Office Building**

**Harrisburg, PA 17125**

**SR-5 Retainage**

**A. APPLICABILITY**

This article applies to all construction purchase orders and contracts.

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

**SR-6 Steel Products**

**A. APPLICABILITY**

This article applies to all purchase orders and contracts.

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

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

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

**A. APPLICABILITY**

This article applies to all purchase orders and contracts.

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

**SR-8 Right To Know**

**A. APPLICABILITY**

This article applies to all purchase orders and contracts.

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

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

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

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

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

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

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

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

Subgrantee or Contractor may file a legal challenge to any SEPTA decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Subgrantee or Contractor shall indemnify SEPTA for any legal expenses incurred by SEPTA as a result of such a challenge and shall hold SEPTA harmless for any damages, penalties, costs, detriment or harm that

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SEPTA may incur as a result of Subgrantee's or Contractor's failure, including any statutory damages assessed against SEPTA, regardless of the outcome of such legal challenge. As between the parties, Subgrantee or Contractor agrees to waive all rights or remedies that may be available to it as a result of SEPTA's disclosure of Requested Information pursuant to the RTKL.

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