May 8, 2020

Dear Sir/Madam:

Enclosed please find Addendum No. 6 to SEPTA’s RFP No. 20-00053-AHAC – Management Consulting Services. Addendum No. 6 must be acknowledged by signing and submitting the acknowledgment with your proposal or emailing the attached Acknowledgement Sheet if the proposal has already been sent.

The due date for submission of proposals has not been changed and is Tuesday, May 12 by 4:30PM.

All inquiries regarding this Procurement must be directed Heather Casullo at (215) 580-7421 or hcasullo@septa.org.

Sincerely,

Heather Casullo
Heather Casullo
Sr. Contract Administrator
Procurement, Supply Chain & DBE Dept.
ADDENDUM NO. 6
ADDENDUM ACKNOWLEDGEMENT SHEET

RFP No. 20-00053-AHAC – Consulting Management Services

May 8, 2020

The attached addendum to the Contract Documents is hereby part of the same and is incorporated in full as part of the Project. Proposer shall acknowledge Addendum No. 6 by signing and returning this Acknowledgement Sheet with the Technical Proposal.

FIRM NAME (typed or printed) ______________________________
AUTHORIZED SIGNATURE _______________________________
TITLE _________________________________
NAME (typed or printed) ___________________________________
DATE_____________________

   Add: Attached revised Contract
   Ref: Accepted changes and modification requests in bold and italicized.
Part II

Contract

for

Management Consulting Services
# Contract
## for
### Management Consulting Services

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THIS CONTRACT, entered into this ________ day of __________________, 20____, by and between the Southeastern Pennsylvania Transportation Authority ("SEPTA"), a body corporate and politic exercising the power of the Commonwealth of Pennsylvania as an agency and instrumentality thereof, with offices located at 1234 Market Street, Philadelphia, Pennsylvania and ______________________ (hereinafter called "Contractor"), a ______________________, organized under the laws of _____________________________________, with principal offices located at ________________________________________________________________.

W I T N E S S E T H:

WHEREAS, SEPTA is involved in an undertaking known as Management Consultant Services (hereinafter known as the "Project"); and

WHEREAS, SEPTA desires to engage Contractor to perform certain technical and professional services in connection with the Project as more fully set forth hereinafter; and

WHEREAS, Contractor has agreed to comply with all requirements of the Contract as set forth in the accompanying Attachments 1 through 11 attached hereto and made part hereof.

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

1. **Incorporation of Recitals**

   The recitals above are hereby incorporated into the Body of the Contract.

2. **Contract Documents**

   Attachments 1 through 11, inclusive, are hereby incorporated into this document and the Attachments are deemed to be a part thereof.

   Attachments 4 and 10 are a notice and a summary of notices by SEPTA of the requirements that the Federal Government and Commonwealth of Pennsylvania impose on contracts which they fund in whole or in part. Contractor/Consultant acknowledges that Attachments 4 and 10 do not constitute legal advice by SEPTA thereon. Hence, Contractor/Consultant, to whatever extent Contractor/Consultant deems necessary, must obtain its own legal advice on these requirements.
3. **Engaging of Contractor/Consultant**

   a. SEPTA hereby agrees to engage Contractor/Consultant to perform, and Contractor/Consultant hereby agrees to perform, all the services hereinabove referenced and hereinafter described and more fully set forth in Attachments 1 through 11.

   b. **Standard of Care** - All Contractor/Consultant services will be provided in a manner consistent with the applicable standard of care, which shall be the degree of care and skill ordinarily exercised by members of the same profession currently providing the same or similar services under similar circumstances and in accordance with applicable standards in effect at the time any services or materials are furnished.

4. **Time of Performance**

   a. Contractor/Consultant shall perform all the services required under the Contract within a total of three (3) years from the effective date stated in SEPTA's written Notice to Proceed.

   b. Contractor/Consultant shall commence performance promptly upon the effective date stated in SEPTA's Notice to Proceed. Time is of the essence in the performance of services under the Contract.

   c. Contractor/Consultant understands and agrees that any costs incurred prior to the effective date stated in a Notice to Proceed are not allowable costs and Contractor/Consultant will not be reimbursed by SEPTA for any such costs.

   d. Contractor/Consultant shall meet all other time limits set forth in Attachments 1 through 11.

5. **Data Available to Contractor/Consultant**

   All SEPTA maintained information, reasonably available and necessary for carrying out the services required to be performed under the Contract, shall be furnished to Contractor/Consultant. Contractor/Consultant shall familiarize itself with SEPTA operations and with the Project to the extent necessary to furnish the services required under the Contract.

6. **Personnel To Be Used in Providing Services**

   a. **Responsibility for Personnel**

      Contractor/Consultant agrees that all personnel used in performance of the Contract shall be considered employees of Contractor/Consultant or its subcontractors/subconsultants and in no event shall any of the personnel employed in the performance of the Contract be considered employees of SEPTA.
b. **Only Certain Employees to Perform Services**

Contractor/Consultant shall provide SEPTA with a list of all Proposer’s (and/or subcontractor’s) managers and field representatives who will perform services under the Contract.

Contractor/Consultant shall furnish a resume, brief biographical sketch and services history of each person involved with performing services required under the Contract.

*Except in the event of disability, illness, grave personal circumstances, or separation from service,* personnel designated within the proposal as "Key Personnel" for the performance of the required services, shall not be removed nor have their level of participation reduced by the Contractor/Consultant prior to the completion of their assignment under the Contract without the prior written approval of SEPTA.

Contractor/Consultant agrees that it will perform all the services required under the Contract using employees of Contractor/Consultant or its authorized subcontractors/subconsultants. Contractor/Consultant further agrees that none of the personnel performing services under the Contract has or shall have any contractual, financial or familial relationship with SEPTA or any of its officers, employees or agents or with any agency providing funds to SEPTA at any time during the course of the Contract.

c. **Only Professionally Qualified Employees to Perform Services**

All of Contractor/Consultant’s personnel providing services under the Contract shall be technically qualified to perform the services required hereunder and, unless otherwise provided herein, as required by the nature of the services, will be fully licensed in the Commonwealth of Pennsylvania and authorized in conformity with all state licensing requirements and all governmental statutes, ordinances, and other provisions dealing with the services provided by such personnel.

7. **Contractor/Consultant to Cooperate with SEPTA's Designated Project Representatives**

Contractor/Consultant shall cooperate with and coordinate all of the efforts of its personnel with 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 (sometimes collectively referred to as "Project Representatives"). All changes in the services to be performed must receive the prior written authorization of SEPTA’s Contract Administrator. The Project Representatives shall also monitor and review the progress of the Proposer Services in order to aid in the program coordination. The participation by the Project Representatives shall not relieve the Contractor/Consultant from its obligations under the terms of the Contract.

Contractor/Consultant shall take direction, within the scope of services contemplated by the Contract, from SEPTA’s Project Representatives in carrying out the Project but shall remain solely professionally responsible for the services.
8. **Total Contract Price**

Consultant agrees to complete performance of all services required by the contract documents. This is a requirements-type task order contract and SEPTA is not obligated to expend any specific amount. Task order pricing shall be in accordance with unit prices and hourly rates submitted in “Attachment 3” Price Proposal or Best and Final Offer (BAFO), if applicable. Said total cost to SEPTA hereinafter referred to as “Total Contract Price.”
9. Method of Payment

a. To obtain payment of a portion of the Total Contract Price, Contractor/Consultant may submit to SEPTA, not more than once each calendar month, an invoice for payment for services rendered in the preceding month, in such form and reasonable detail as SEPTA may require. Such invoices shall not be for amounts inconsistent with the actual physical progress of the services Contractor/Consultant has performed on the Project as determined by SEPTA’s Project Representatives. If the Contractor/Consultant uses a DBE, each invoice shall include a DBE Invoice Payment Report (a sample copy of the DBE Invoice Payment Report is attached to the Contract). In each invoice Contractor/Consultant shall:

(1) Certify that all services described were performed in conformity with the terms of the Contract and that it is entitled to receive the amounts specified under the terms of the Contract in accordance with said description.

b. Payments due to Contractor/Consultant under the Contract shall be made within thirty (30) calendar days after written approval of Contractor/Consultant’s invoice by SEPTA’s Project Representatives.

10. Audit and Inspection of Books and Records

Contractor/Consultant shall keep written records in reasonable detail of all services performed by it under the Contract. All written records, reports, work sheets, data, and information prepared, generated, or obtained in connection with Contractor/Consultant’s performance of services for SEPTA shall be made available during the term of the Contract and for a period of five (5) years thereafter, together with all books and other data or information, in whatever form contained, relating to Contractor/Consultant’s performance under the Contract. Contractor/Consultant shall permit the audit and examination of the aforementioned material, including the making of excerpts and transcriptions, by appropriate officers or representatives of SEPTA and any governmental funding agency providing financial assistance for the Project, including the United States Department of Transportation, the Office of the Comptroller General of the United States, and the Pennsylvania Department of Transportation.

Contractor/Consultant shall require its subcontractor/subconsultants to keep written records in reasonable detail of all services performed by them for Contractor/Consultant under the Contract and to maintain all books, data, information and records in a form that will support the invoice billed to Contractor/Consultant. Contractor/Consultant shall further require that all written records, reports, work sheets, data, and information prepared, generated, or obtained in connection with such subcontractor’s/subconsultant’s performance of services for Contractor/Consultant shall be made available during the term of the Contract and for a period of five (5) years thereafter to SEPTA, together with all books and other data or information, in whatever form contained, relating to such subcontractor’s/subconsultant’s performance for Contractor/Consultant.
11. Overpayments

If at any point SEPTA determines that Contractor/Consultant has been overpaid, SEPTA's Contract Administrator shall notify Contractor/Consultant in writing of the overpayment. Contractor/Consultant shall remit the amount of the overpayment to SEPTA within thirty (30) calendar days of said notification or notify SEPTA of its disagreement. If Contractor/Consultant does not agree with SEPTA's determination, it shall follow the dispute process outlined in Paragraph 31, “Disputes.”

12. All Information and Findings to Remain Confidential

Contractor/Consultant agrees that all information relating to research investigations (patentable or unpatentable), specifications and other evaluations, drawings, tracings, plans, and other data which have been obtained by Contractor/Consultant from SEPTA or are evolved or developed by Contractor/Consultant (or by others under his direction or supervision) in connection with the performance of the Contract or the efforts in conjunction with employees of SEPTA shall be deemed to be confidential information belonging solely to SEPTA. Further, except as required by law, during the term of the Contract and thereafter for a minimum period of three (3) years after the services, Contractor/Consultant shall not use or disclose such information for any purpose (or permit its usage or disclosure by others under Contractor/Consultant’s supervision or direction) except to the extent necessary to perform services under the Contract, unless Contractor/Consultant can demonstrate to the reasonable satisfaction of SEPTA that such information was actually known to Contractor/Consultant prior to the Contract or was independently and properly obtained or developed by Contractor/Consultant apart from any connection with SEPTA or its employees, directly or indirectly, without breach of any confidential relationship or was publicly available. Contractor/Consultant, through the use of employment contracts and other legally acceptable methods, shall ensure that during the term of the Contract and for three (3) years after the services, none of its employees or former employees accept any employment or assignment which uses any of the information developed in connection with this Project.

13. Data to Become Property of SEPTA

All data, notes and other works developed in the performance of the Contract shall become the sole property of SEPTA and may be used on any other Project without additional compensation to contractor/consultant, provided however, any such reuse on any other project, SEPTA or any other party shall be without risk or liability to Contractor/Consultant. Contractor/Consultant agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. Contractor/Consultant, for a period of three years after completion of the Project, agrees to furnish all retained works on the request of SEPTA's Project Representative. Unless otherwise provided in the Contract, contractor/consultant shall have the right to retain copies of all works beyond such period.
Contractor/Consultant (or its licensors as applicable) shall retain ownership of any of its intellectual property rights (“IP”) which were existing prior to each respective Task Order, or IP developed, licensed or acquired by or on behalf of contractor/consultant or its licensors independently from the services or the deliverables, in each case including any modifications or derivatives, which may be created as part of the services (collectively “Pre-Existing IP”). Contractor/Consultant hereby grants to SEPTA a revocable, nontransferable, non-exclusive unpaid right and license to use, copy, modify and prepare derivative works of the Pre-Existing IP incorporated into a deliverable for the purposes of SEPTA’s internal business only.

14. Interest of Contractor/Consultant

Contractor/Consultant agrees, for itself and its employees involved in this Project, that it has no interest and shall not acquire any interest, direct or indirect, including any business interest or other pecuniary or beneficial interest which would conflict in any way whatsoever with performance of services in connection with the Project. In addition, Contractor/Consultant is hereby referred to the provisions of Paragraph 6 “Personnel To Be Used in Providing Services,” of the Contract.

15. Assignment of Rights, Delegation of Duties Restricted

Contractor/Consultant shall not assign any rights arising under the Contract without the prior written consent of SEPTA. Contractor/Consultant shall not delegate, without the prior written consent of SEPTA, any duties in performance of services under the Contract.

16. Subcontracting

a. Subcontracting Restricted

Beyond those subcontractors/subconsultants proposed by the Contractor/Consultant and made part of the Contract, Contractor/Consultant shall not subcontract any portion of the services which are the subject of the Contract without the prior written consent of SEPTA. Contractor/Consultant agrees to be fully liable and responsible for the acts and omissions of subcontractors and subconsultants just as Contractor/Consultant is for the acts and omissions of persons employed by Contractor/Consultant.

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

(1) Any new or additional or substituted subcontractor/subconsultant proposed by Consultant after the award shall be subject to the prior written approval of SEPTA's Project Representative.

(2) Consultant shall not make any substitution of any subcontractor/subconsultant or for any person or organization that has been previously accepted by SEPTA as part of the Contract unless and until requested to do so by SEPTA and/or unless such substitution is expressly approved by
SEPTA in writing. No increase in total contract price shall be allowed for any such substitution.

c. **Subconsultant/Subcontractor Relations**
The Contractor/Consultant shall deal with each Subcontractor/Subconsultant in accordance with the terms and conditions of a written Contract between the Contractor/Consultant and such Subcontractor/Subconsultant. Said written Contract 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) business days of the receipt of payment from SEPTA by the Contractor/Consultant, the Contractor/Consultant shall pay each Subcontractor/Subconsultant with whom it has contracted their earned share of the payment the Contractor/Consultant received. In addition, Contractor/Consultant shall pay its Subconsultant(s)/Subcontractor(s) any retainage Contractor/Consultant has withheld from its Subconsultant(s)/Subcontractor(s) within twenty (20) business days after a Subconsultant’s/Subcontractor’s work is satisfactorily completed.

With regard to any claim or dispute with respect to payment of a subconsultant or subcontractor, or supplier at any tier, Contractor/Consultant 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 subconsultants, subcontractors, suppliers and materialmen and in particular, Contractor/Consultant shall assume the defense affirmatively at its sole cost whenever such suit is brought in any jurisdiction.

17. **Interpretation of Scope**
SEPTA’s Project Manager and/or Contact Administrator shall have the right to make, in writing, interpretations of the scope of services.

18. **Changes**
a. The services set forth in Attachments 1 through 11 of the Contract may be reduced, modified or expanded within or beyond the scope of the Contract by written modifications executed by SEPTA and Contractor/Consultant.

Except as provided in paragraph "b" below, in the event that SEPTA requires a reduction, expansion, or modification of the services, SEPTA shall issue to Contractor/Consultant a written notification which specifies such reduction, expansion, or modification. Within fifteen (15) calendar days after receipt of the written notification, Contractor/Consultant shall provide SEPTA’s Contract Administrator with a detailed price and schedule proposal for the services to be performed or to be reduced. This proposal may be accepted or rejected by SEPTA or modified by negotiations between Contractor/Consultant and SEPTA. A written Amendment to the Contract
shall be executed by both parties.

b. Notwithstanding paragraph "a" above, SEPTA may at any time, by written order, make changes within the general scope of the Contract to the services to be performed by Contractor/Consultant. If any such change causes an increase or decrease in the price of, or the time required for, the performance of any portion of the services under the Contract, SEPTA's Contract Administrator shall make equitable adjustment in any one or more of the following: price; completion schedule; or other affected terms; and shall modify the Contract in writing accordingly. Any claim by Contractor/Consultant for adjustment under this paragraph must be asserted within thirty (30) calendar days from the date of receipt by Contractor/Consultant of the notification of change; provided however that SEPTA's Contract Administrator, if the Contract Administrator decides that the facts justify such actions, may receive and act upon such claim at any time prior to final payment under the Contract. Failure to agree to any adjustment shall be a dispute within the meaning of Paragraph 31 Disputes. However, nothing in this paragraph shall excuse Contractor/Consultant from proceeding with the Contract as changed.

c. No services for which an additional amount will be charged by Contractor/Consultant shall be furnished without the prior express written authorization of SEPTA's Contract Administrator.

19. Infringement of Patents, Trademarks and Copyrights

Contractor/Consultant shall defend, indemnify and save harmless SEPTA, its Board Members, officers, agents, servants, workers, employees, subsidizers and indemnities from liability of any kind and will pay all costs and expenses, including consequential damages, for or on account of or existing from any infringement or violation or alleged violation by the deliverables any patent, trademark and/or copyright or any property right of any person, firm or corporation resulting from any act, omission or negligence on the part of Contractor/Consultant in performance of the Contract, except to the extent that such infringement or unauthorized use arises from (i) modification other than by contractor/consultant or its subcontractors, or use thereof in a manner not contemplated by the Contract, (ii) the failure of the indemnified party to use any corrections or modifications made available by contractor/consultant, (iii) information, materials, instructions, specifications, requirements or designs provided by or on behalf of the indemnified party, or (iv) the use in combination with any platform, product, network or data not provided by contractor/consultant. If SEPTA’s use of any such infringing item, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, contractor/consultant, at its option and expense, shall have the right to (x) procure for SEPTA the continued use of such item, (y) replace such item with a non-infringing item, or (z) modify such item so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by contractor/consultant, the replacement or modified item is capable of performing substantially the same function. The foregoing provisions of this sub-Section constitute the sole and exclusive remedy of the indemnified parties, and the sole and exclusive
obligation of Contractor/Consultant, relating to a claim that any of items furnished by contractor/consultant infringes any patent, copyright or other intellectual property right of a third party.

20. **Covenant Against Contingent Fees**

Contractor/Consultant hereby warrants that it has not employed or retained any company or person other than a bona fide employee working for Contractor/Consultant solely to solicit or secure the Contract and that it has not paid or agreed to pay any person or company other than a bona fide employee working solely for Contractor/Consultant, any fee, commission, percent or brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Contract. In the event of breach or violation of this warrant, SEPTA shall have the right to terminate the Contract without further liability to Contractor/Consultant or to any third party.

21. **Termination for Convenience of SEPTA**

SEPTA shall have the right to terminate the Contract, in whole or in part, at any time by written notice to the Contractor/Consultant. The Contractor/Consultant 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. Furthermore, SEPTA will not pay any anticipatory profits and/or consequential damages claimed by the Contractor/Consultant 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/Consultant shall submit promptly its termination claim to SEPTA and SEPTA shall determine the settlement amount to be paid the Contractor/Consultant. If the Contractor/Consultant has any property in its possession belonging to SEPTA, the Contractor/Consultant shall account for same and dispose of it in the manner SEPTA directs.

22. **Termination of Contract for Cause**

If Contractor/Consultant 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) calendar days after receipt by Contractor/Consultant of written notice from SEPTA setting forth the nature of said breach or default and/or if the Contractor/Consultant 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/Consultant. Any such termination for cause shall not in any way operate to preclude SEPTA from also pursuing all available remedies against Contractor/Consultant.
In the event that SEPTA elects to waive its remedies for any breach by Contractor/Consultant 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.

In the event that it is ultimately determined by SEPTA that the Contractor/Consultant was not in default or that the failure to perform arose out of causes beyond the control and without fault of the Contractor/Consultant, the termination shall be treated as one of convenience and the Contractor/Consultant's sole rights and exclusive remedies shall be those set forth in Paragraph 21.

The Contractor/Consultant will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

23. Indemnification

In addition to all other obligations of Indemnification specified herein, contractor/consultant agrees to release and be liable for and to defend, indemnify and save harmless SEPTA, its Board members, officers, agents, servants, workers, 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, arising out of any claim, suit or action at law, in equity, or otherwise, of any kind or nature whatsoever, including negligence, only to the extent arising out of the performance of the work by reason of any real or tangible property accident, loss or damage of property, including the work site, real or tangible personal property of SEPTA and contractor/consultant, or injury, including death, to any person or persons, including employees of SEPTA, contractor/consultant, to the extent arising from contractor/consultant’s negligence or intentional misconduct, 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/Consultant also agrees for itself and on behalf of its agents, servants, subconsultants/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 payment of subconsultants/subcontractors and materialmen for the services under this contract and agrees to assume the defense of SEPTA to any such suit at its cost and expense. The contractor/consultant 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/consultant.

Contractor/Consultant, for itself and its employees, Board members, officers, agents, servants, workers, contractors/consultants, subconsultants/subcontractors, licensees and invitees, or any other person working on contractor/consultant’s behalf, hereby releases and agrees to be liable for and to
defend, indemnify and save harmless SEPTA, for any claims made by an employee, Board member, officer, agent, workman or servant of the Contractor/Consultant’s or any other person working on contractor/consultant’s behalf, for claims for compensation or benefits payable to any extent by or for contractor/consultant under any workers’ or similar compensation acts or other employee benefit acts, and contractor/consultant expressly waives its statutory protection under §303, as amended, of The Pennsylvania Workers’ Compensation Act, 77 P.S. §481 (b), except to the extent the nonpayment of compensation or benefits is caused by SEPTA.

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

24. **Insurance**

The Contractor/Consultant shall purchase and maintain the minimum types of insurance, with the corresponding limits and other requirements as set forth below in Subsection 24(e). All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Work is to be performed. Contractor/Consultant shall require all subcontractors to carry the insurances required herein.

a. **Proof of Compliance**

   (1) **Evidence of Insurance**
   Within ten (10) calendar days after receipt from SEPTA of notice of award of the Contract, the Contractor/Consultant shall furnish SEPTA’s Contract Administrator with Certificates of Insurance (including endorsements) (SEPTA’s RFP 20-00053-AHAC number must be noted on certificates) and the declaration page for each required insurance. Upon SEPTA’s request, Contractor/Consultant shall provide any other documents which SEPTA may require as evidence of compliance with the insurance requirements. It shall be at SEPTA’s discretion whether the proof of insurance provided by Contractor/Consultant is sufficient evidence of compliance.

   (2) **Written Approval Required**
   Once all proper evidence of insurance has been received and accepted by SEPTA, SEPTA will provide written notification to Contractor/Consultant of such acceptance. SEPTA will not issue the Notice to Proceed until Contractor/Consultant has complied with insurance requirements and SEPTA has accepted the evidence of such compliance.

b. **Policies to Remain in Force**

   (1) Unless otherwise noted below, all required insurance must remain in force until all Work related to the Project is satisfactorily completed and all Work has been formally accepted by SEPTA in accordance in the Contract.
(2) All policies shall provide for thirty (30) calendar days written notice to SEPTA, and all other Named Insured, 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 Declarations Page.

(3) In the event that any or all of the insurance coverages required by the Contract is cancelled, are reduced below the required minimum limits, or lapse, then the Contractor/Consultant will be suspended from further performance of the Work until such time as replacement coverage satisfactory to SEPTA has been obtained and is in force. SEPTA will make no further payments to Contractor/Consultant until such requirement is satisfied.

c. **Included Additional Insureds**
Contractor/Consultant shall include as an "Additional Insured" Southeastern Pennsylvania Transportation Authority in addition to any parties identified below to be designated on the *commercial general liability, auto liability and umbrella/excess liability policies* for each respective type of insurance:

d. **Waiver of Liability for Premiums**
For each policy that includes one or more Named Insured(s) or Additional Insured(s), the policy shall contain a Waiver of Liability, for all Named Insureds and Additional Insureds, for the payment of premiums.

e. **Types of Insurance and Limits of Liability**
Contractor/Consultant shall, as an express condition of payment under the Contract, provide and maintain at its own cost and expense, the following types of insurances with the stated, or greater, respective limits of liability.

(1) **Workers Compensation Insurance**
In compliance with the applicable laws of the Commonwealth of Pennsylvania, covering all employees of the Contractor/Consultant.
(2) **Commercial General Liability Insurance**  
Coverage for Contractor/Consultant liability with respect to bodily injury and property damage to others. Products-completed operations, independent Contractor/Consultants and contractual liability coverages are to be included.  
   (a) **Limits of Liability**  
Coverage under this policy shall have limits of liability of not less than $1,000,000 per occurrence, combined single limit for bodily injury (including disease) and property damage and not less than $2,000,000 in Annual Aggregate.  
General Aggregate not less than $2,000,000 annual aggregate.  
   (b) **Additional Insureds**  
Policy shall be written or endorsed to include **Southeastern Pennsylvania Transportation Authority** as Additional Insured.  
   (c) **Other**  
Policy shall be written or endorsed to include coverage for the liability assumed by the terms of the Contract, including indemnification provisions. Certificate or policy will state the coverage applied to the Contract described as: Management Consultant Services.

(3) **Vehicle Liability**  
Liability Insurance (cover all autos, trucks, and other vehicles used in connection with this Project) for bodily injury and property damage to others.  
   (a) **Limits of Liability**  
Coverage under this policy shall have limits of liability of not less than $1,000,000 per accident, combined single limit for bodily injury and property damage (including loss of use).  
   (b) **Other**  
This policy shall be written or endorsed to include coverage for hired, leased or other non-owned vehicles.

(4) **Professional Liability**  
$1,000,000 per claim.  
   (a) **Named Insureds**  
Southeastern Pennsylvania Transportation Authority

(5) **Umbrella / Excess Liability**  
$1,000,000 combined single limit per occurrence

(6) **Umbrella Excess Aggregate**  
$1,000,000 Annual Aggregate

(7) **Products Completed Operations Liability**
$2,000,000 Combined Single Limit per Occurrence

(8) **Personal and Advertising**
$1,000,000 Combined single limit per occurrence

f. Payment of SEPTA Claims Against Contractor/Consultant’s Insurance
   Contractor/Consultant shall require its insurance carrier(s) to make checks in payment for claims payable to SEPTA.

25. **Personnel Security Measures**

SEPTA reserves the right to impose *reasonable* personnel security measures upon the Contractor/Consultant and its employees as SEPTA *reasonably* 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/Consultants and its subcontractors/subconsultants 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 *reasonable* personnel security measures, which may be imposed at any time during the course of the Work. SEPTA shall assume the costs of such security measures. The Contractor/Consultant and its employees shall cooperate fully with SEPTA in implementing and enforcing security measures on SEPTA property. The Contractor/Consultant 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/Consultant.

26. **Notices**

All Notices given by either party to the other shall be effective only if given in writing and sent to the following addresses of the parties, or to such other address as may be designated in writing by the parties:

TO SEPTA: Assistant General Manager of Procurement, Supply Chain & DBE Procurement, Supply Chain & DBE Division Southeastern Pennsylvania Transportation Authority 1234 Market Street, 11th Floor Philadelphia, PA 19107-3780

TO CONTRACTOR/CONSULTANT: ________________________________
______________________________
______________________________
______________________________
27. **Compliance with Federal, State and Local Laws and Contract Requirements**

Contractor/Consultant shall comply in performance of services hereunder with all applicable laws, ordinances and regulations, judicial decrees or administrative orders, ordinances and codes of federal, state and local governments. See Attachments 4 and 10.

28. **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 convenes, including but not limited to any choices Contractor/Consultant may have under any such rules or law. Contractor/Consultant 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/Consultant 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/Consultant. Contractor/Consultant represents and acknowledges that the choice of jurisdiction and venue described above is reasonable and has been freely and voluntarily made by Contractor/Consultant. Further, the choice of jurisdiction and venue described above shall be mandatory and not permissive in nature, thereby precluding the possibility by Contractor/Consultant 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.

29. **Waiver of Breach of Contract**

No waiver of any breach of any covenant, term, or condition of the Contract shall constitute a waiver of such covenant, term, or condition, or of any subsequent breach thereof.

30. **SEPTA Equal Employment Opportunity/Affirmative Action Contractual Requirements**

Contractor/Consultant covenants and agrees to abide by all stipulations attached hereto and made a part hereof as Attachment 11 for all services to be performed in connection with the Contract.

31. **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 Assistant General Manager of Procurement, Supply Chain & DBE of
Procurement. This decision shall be final and conclusive, unless within ten (10) calendar days from the date of receipt of its copy, the Contractor/Consultant or SEPTA Project Manager mails or otherwise furnishes a written appeal to the Assistant General Manager of Procurement, Supply Chain & DBE of Procurement. The Assistant General Manager of Procurement, Supply Chain & DBE of Procurement may authorize a representative not involved with the initial decision to review the appeal. In connection with any such appeal, the Contractor/Consultant or SEPTA Project Manager shall be afforded an opportunity to offer evidence in support of its position. The decision of the Assistant General Manager of Procurement, Supply Chain & DBE of Procurement, or his/her authorized representative, shall be the final determination of SEPTA.

b. Performance During Disputes

Unless otherwise directed by SEPTA, Contractor/Consultant shall continue performance under the Contract while matters in dispute are being resolved.

32. Third Party Contract Rights

It is agreed that SEPTA, neither by this paragraph nor by any other provisions in the Contract or other statements prior to or contemporaneous with the Contract creates any right or expectation in any third party or third parties (including, without limitation, subcontractors/subconsultants) enforceable at law or in equity or any other proceeding against SEPTA, its Board Members, officers, agents, servants, workers, employees, subsidizers, indemnities or assigns.

33. Prohibited Interest

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

34. Integration

Subject to SEPTA’s right to rely upon substantial representations made by Contractor/Consultant in making the decision to award the Contract to Contractor/Consultant, the Contract represents the entire and integrated contract between SEPTA and Contractor/Consultant and supersedes all prior or contemporaneous negotiation, representation, or contract, either written or oral. The Contract may not be amended, modified, or changed except as provided in Paragraph 18, “Changes.”

35. Severability

If any paragraph, clause, section or part of the Contract is held or declared to be void or non-enforceable for any reason, all other paragraphs, clauses, sections or parts shall nevertheless continue in full force and effect.
36. **Disadvantaged Business Enterprise (DBE) Requirements**

The Contractor/Consultant shall fully comply with the DBE requirements as found in Attachment 6 which is attached hereto and made a part hereof.

37. **Joint and Several Liability**

If two or more individuals, corporations, partnerships, or other business associations (or any combination of two or more thereof) shall sign the Contract as Contractor/Consultant, the liability of each such individual, corporation, partner or other business association to perform the obligations hereunder shall be deemed to be joint and several and all notices, payments and agreements given or made by, with or to any such individual, corporation, partner or other business association shall be deemed to have been given or made by, with or to all of them. In like manner, if Contractor/Consultant shall be a partnership or other business association, the members of which are by virtue of state or federal law are subject to personal liability, the liability of each member shall be joint and several.

38. **Warranties. -**

Contractor/consultant warrants that its Services will be performed in a good and workmanlike manner, in accordance with the Contract, and that deliverables will materially comply with their applicable specifications. Contractor/Consultant will re-perform any work not materially in compliance with this warranty which is brought to its attention within 30 days after that the work has been performed. The preceding are the only warranties and over-ride all other warranties, conditions and representations, express or implied, including fitness for purpose, merchantability, non-infringement.

39. **Performance Bond – NOT USED**

40. **Liquidated Damages - NOT USED**

41. **Delivery**

   a. Delivery shall be as required in the Scope of Services.

   b. All items shall be delivered in good condition, complete, ready for operation or use, and in conformity with the Scope of Services and other terms and conditions of this Contract.

42. **Inspection – NOT USED**

43. **Limitation on Damages**

*Contractor/Consultant, its affiliates and subcontractors, and their respective personnel shall not be liable to SEPTA for any claims, liabilities, or expenses relating to or in connection with this*
Contract ("Claims") for an aggregate amount in excess of the fees paid by SEPTA to Contractor/Consultant under the Contract, except (i) to the extent resulting from the recklessness, bad faith or intentional misconduct of contractor/consultant or its subcontractors, or (ii) for payment for services performed. In no event shall contractor/consultant, its affiliates or subcontractors, or their respective personnel be liable to SEPTA for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to or in connection with this Contract. In circumstances where any limitations or exculpations set forth herein are unavailable, the aggregate liability of contractor/consultant, its affiliates and subcontractors, and their respective personnel for any Claim shall not exceed an amount that is proportional to the relative fault that the conduct of contractor/consultant and its subcontractors bears to all other conduct giving rise to such Claim.

[END OF PAGE]
IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by the undersigned duly authorized officers, as of the day and the year first above written.

ATTEST:            SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

CAROL R. LOOBY       LESLIE S. RICHARDS
SECRETARY TO THE BOARD GENERAL MANAGER

ATTEST:

(SECRETARY)           PRESIDENT OR VICE PRESIDENT

(Please type name) (Please type name)

APPROVED AS TO FORM:

BY: ____________________, Esquire
     Office of General Counsel
     Southeastern Pennsylvania Transportation Authority

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