

**SEVENTH ANNUAL  
SOUTHERN SURETY AND FIDELITY CLAIMS  
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***EVALUATING PUNCH LISTS***

**PRESENTED BY:**

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## **PUNCH LISTS**

### **Summary**

**Punch lists, What are they? If a problem arises involving a Surety bond, why it is important for the Surety to evaluate the remaining scope of work before making their business decisions?**

The Surety is often approached by a principal, when one or more of their jobs are almost completed with the sad story that they cannot financially complete the remainder of the work. Typically, several of the jobs are in the "punch list" stage and principal readily points out to the Surety that they should support the contractor, because it is the least expensive way to complete this minimal amount of work on the project. The Surety finds itself in the uneasy position of having to quickly make a decision to support or not to support. Making a sound judgment on the status of the "punch listed" project(s) involves understanding how the "punch list" was created. Since there is no consistent and precise definition of what a punch list should consist of and there is often a wide variance in interpretation of the contract, some guidelines for interpretation are needed to make sound business decisions, which will minimize the Surety's cost and exposure.

#### **1. INTRODUCTION**

Ideally, the punch list is initially done by the G/C, then after the major items have been completed, the architect and/or engineer prepares the formal punch list. The Owner may participate in preparing that particular list or he may prepare his own list. It is at this time when Sureties often become involved. On problem projects, and of course all projects in which Surety becomes directly involved are labeled "problem projects", the completion of the "punch list", in order to obtain final payment and project close out, can be a most tedious undertaking.

The Punch list stage of a project is that time period between finishing trades and final acceptance. It can also be defined as "the time between substantial completion and final payment."

To begin with there is no set definition of what a "punch list" should be. AIA Contractor/Subcontractor Agreement (A401 1987) gives a broad definition as "items to be completed or corrected". The "completed or corrected" part is clear. However, the definition of "items" is not as clear. Who determines the nature and scope of each item, and who determines when an item is completed?

The amount due to the principal on the contract is often determined by the "value" of the outstanding punch list. A typical municipal contract in New York states "When the Work is substantially complete, as determined by the Architect, the retainage shall be reduced to an amount equal to the total of two (2) times the value of any remaining items to be completed ...". Who shall determine the value of this outstanding work and what circumstances shall be assumed for the completion? The variation in the magnitude of the estimated value can be

a factor of 10 depending on what assumptions are used.

On problem projects the Obligee can also attempt to use the "punch list" to punish the contractor with whom he is not satisfied. Through a strict interpretation of the specifications he can develop extensive lists of "items" on the punch list and place a high value on each one to the extent that the total value will equal the remaining contract balance. Using this quantification as leverage, the Obligee tenders an offer to Surety, that the Obligee will simply keep the outstanding contract balance in exchange for the Surety not completing the punch list. The Obligee thus reduces the cost of the project by this amount and likely has its own maintenance personnel complete the items in the future or leaves them undone. It is a neat way to reduce the cost of the project by 5% to 10% and have Surety pay the subcontractors their balance under the payment bond.

Sureties have also experienced the situation when the Owner is not ready to accept the "handing over" of the project to them. In many instances the Owner's financing changes at this point, and the Owner finds that he can neither afford the re-financing nor the expense of occupying the facility.

Four problems thus exist with "punch lists".

1. "Punch Lists", what are they?
2. Quantification - How can the cost of completion be realistically estimated?
3. Punch list as a weapon:
  - a. Is the punch list being used to punish the principal (and Surety)?
  - b. Can the Owner afford to take occupancy? Is the Owner using the punch list to avoid doing so?

## 2. IDEAL "PUNCH LISTS", WHAT ARE THEY?

Ideally, the punch list is developed by a joint effort of the Obligee/Owner, or its representative and the contractor. The list has individually identified work items, each of a small scope, with the party responsible for completion identified and an estimate provided for the level of effort needed to complete the item.

The ideal punch list does not contain questions or investigative type items such as "the heating system does not work on the first floor, correct", or "it does not appear that the electrical contractor met code on the third floor installation".

The ideal punch list also does not contain items which require a sequence of work activities to complete such as "excavate and replace the leaking tank". This is obviously not a simple one step process.

The ideal punch list, additionally, does not contain work which must be done by interfacing several subcontractors such as "clean out area, acid wash surface, apply two coatings, paint and finish trim".

Finally, the ideal punch list does not contain undefined documentation items such as "missing all as-built drawings and manuals".

The ideal "punch list" is just that: "A list" with easily identifiable items, numbered for identification. Each item on the list should be able to be completed in a single step. If each item is clearly defined, there should be no problem determining the amount of time needed to complete them, the cost to complete each item, who will perform the work, and who will be responsible for final acceptance.

A project which has such an ideal list is indeed at the "punch list stage". An evaluation of a project at this stage would likely lead to the conclusion that the contractor and his subs should continue to clean up these last items and Surety support would be reasonable, if all of other Surety factors also favor support.

Surety claims personnel rarely see ideal punch lists. It is not to say that they do not exist. They exist on projects which are completed without Surety involvement, i.e. "good" jobs.

### **3. NON IDEAL "PUNCH LISTS"**

What is normally presented to Surety claims personnel are not punch lists in the ideal sense. They are usually "problem lists", or "wish lists", prepared by the Obligee, rather than action items needed to complete the project. A project described as being at the "punch list" stage under these conditions is usually far from being complete. If the following questions cannot be answered affirmatively by the contractor, with the responses confirmed by the Obligee, then the status of the project should be investigated more closely:

1. Was the punch list developed as a joint effort by the contractor and the Obligee/Owner (agents) and was the punch list developed as set forth in contract documents?
2. Does the punch list uniquely identify individual action items of work needed to complete the project?
3. Is the punch list numbered and does each line item have the work described, the responsible party identified, and an estimate of the resources required?
4. Is there a date on the punch list and a cover letter or other document identifying it as the "official" (contractual) punch list for the project (or phase of the project)?
5. If the punch list has been revised, are there revision dates and identification of the issuing (reissuing) parties shown?
6. Are the number of items on the list reasonable for the size of the project?

### **4. Evaluation Steps**

Simply because an ideal punch list is not presented to Surety by the principal or Obligee on

the project, does not mean that the contractor has not done his job. It does, however, mean that more investigation should be performed to determine the exact status of the project and other information such as:

1. Has the relationship deteriorated between the contractor and the Obligee?
2. Do major quality or technical problems exist?
3. How is the subcontractor's relationship with subcontractors and vendors and what is their performance level?
4. What is the Owner's (Obligee's) financial condition and motivation at the time?
5. What is the contractor's experience and qualification in completing this type of project?

Upon investigating these items, the nature of the punch list will be more fully understood. These steps are necessary to determine the nature and scope of the items on the punch list. Where should the Surety's confidence be placed with regard to solutions for the problems presented? The investigation needs to be detailed or the Surety may expose itself to greater cost and expense.

## 5. QUANTIFICATION

A major problem is the conversion of a list of problems into a true action punch list. When the problems are of a complex nature, this conversion can be a very tedious and expensive process. This often has to be undertaken by the Surety, simply to determine its position. The process of quantification can proceed when the punch lists are organized and the unique action items are identified.

The quantification of the punch list is dependent to a large measure on who is to perform the work. If the party, who performed the work originally, completes the punch list, the quantification is usually rather simple. If that party is not available or cannot perform the work, then the simplest of tasks may become very expensive to perform, since the completing party will have to become familiar with all the preceding work and take responsibility for the finished product.

For example, if the items of work on the punch list is "a spot of touch-up paint" and the original contractor has the paint available and scaffold, etc. to do the work, the item may require one man hour to complete. However, if someone new must take over this task and must research the paint colors from the specification, procure the paint, bring in scaffold and perform the work, the item could easily take sixteen man hours to complete. There can be a wide variance in the results of the quantification of even the simplest punch list item, as demonstrated by this example. When items of a more complex nature exist, such as "provide warranty on windows per specification", the variance can be even greater than in the touch-up paint case.

The viewpoint taken in quantifying the punch list is critical to the total value determined and there can be more than one valid viewpoint. In most cases, when the Surety becomes involved, there is likely to be a wide divergence in the viewpoints with regard to punch list quantification. The Obligee, or its agent, is likely to push hard for a very high value to be placed upon the completion of the open punch list items. If quality questions have arisen on the project, the punch list may be the means used to assure that no latent problems will be discovered which will require correction later.

A strong position should be taken by the Surety with regard to defining completion of the punch list items. With a clear definition and reasonable quantification of the punch list, the Surety (and Principal) can begin work to discharge their bonded obligations. This may include support for the contractor completing the open items, hiring a completion contractor, or tendering a financial settlement to the Obligee or denying coverage.

## 6. PUNCH LIST AS A WEAPON

We have seen efforts by the Obligee to use the punch list as a weapon to keep the principal from recovering the last 5 to 10% of the project contract balance. Lack of performance on the completion of the punch list by the principal is first used to find the contractor in default. An evaluation is then made by the Obligee and his agent which equates the value of the incomplete punch list to the remaining contract balance.

Sureties need to look at Obligee's ability to pay and/or assess Obligee's reasons, if the Obligee's/Owner's actions appear unreasonable.<sup>1</sup>

## DEFINING COMMON TYPES OF PUNCH LISTS

### Tall Thin List

This list is composed of a large number of relatively small problems originated by the Obligee to impress the contractor and Surety. The intent may be to get the Surety to buy out of the job for an amount equal to the contract balance. This appears to be used in circumstances, such as schools, where the Obligee/Owner believes that they can justify keeping the contract balance if they create a long list which will overwhelm the Surety. The Surety pays the subs, the contractor is defaulted, and the Obligee keeps the last 10% of the original contract. This approach appears more common today. In this case the Surety can save money by performing a rigorous analysis of the punch list.

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<sup>1</sup>The reader must keep in mind that an obligee may be an owner or a general contractor while reading this material.

## Short Fat List

This type of list is usually the product of a serious deterioration of the relationships between the contractor and the Obligee. The list may seem to contain only a few items but these items encompass major problems which are endemic to the whole relationship between the parties. Items such as "missing all as-builts", "lack of conformance to specified drawings", "correction of major quality concerns" are indications that a major misunderstanding between the contractor and the Obligee has existed for some time. The Obligee is not even at the stage where a detail action list can be compiled. The project is not at the "punch list" stage. It is simply at an impasse, and a list is being used to convey this fact. In this case the Surety must carefully evaluate any support of the contractor since it will be difficult to improve relationships which have broken down.

## Disorganized List

Punch lists originate in many ways. Some are developed on an area basis, some on a discipline basis, some on a contract breakdown basis. If the list appears to be redundant, unstructured, with no unique identification of each item, it is likely that it was created by only one party, i.e., the contractor, the AE, the CM, or the Owner/Obligee. If communication has broken down between the parties, it is likely that the existing list is slanted heavily in favor of the party which created it. This situation is difficult to evaluate until the list can be sorted through and reorganized. A complete investigation will likely save the Surety money in the long run in this case.

## Incomplete List

Many complex projects are completed in phases. There may be a detailed punch list of action items for an early phase, while phases completed at a later time may have only a preliminary list developed. On projects of this nature, it is important to differentiate between the portion of the project which is actually in the "punch list" stage from that which has not reached this point. It may be that only a small portion of the job is actually punched out.

## Changing Lists

Punch lists can increase in size. It is important to limit these increases, if possible. Getting the Obligee to agree that any list is the "final" list is difficult. The method is usually to complete items on the list and "whittle" it down in some geometric fashion, i.e., 200 items, to 100 items, to 50 items, to 25, to nothing. Rarely will all items be totally completed. No job is ever perfect and most Surety claim jobs are far from perfect. A buy-out on some items is often the simplest solution. In many cases a contractor in good standing might be forgiven on some punch list items of a minor nature upon the completion of the job. A contractor in bad standing, however, and thus its Surety, will not be given such consideration to get rid of the last few items. A small cash offer in exchange for a release will often minimize additional administrative costs for the Surety.

## **SUMMARY AND CONCLUSIONS**

Controlling the size and managing the punch list completion is a very detailed and time consuming effort. With all these punch list scenarios it is necessary to work hard to get past the basics, which are to:

1. Carefully define and limit the scope of the items on the list.
2. Realistically quantify their value given the circumstances.
3. Eliminate the ability of the Obligee to use the punch list as a reason for not paying the contract balance owed on the project.

If these basics can be achieved, the project can normally be brought to a reasonable conclusion. Without these basic steps completed, it will be difficult to make reasonable and defensible decisions on the best course of action to take and forecast the cost to complete.

Surety will find itself in a situation where it has spent the original estimated cost to complete the punch list only to have a new one generated. The Surety can save itself the possible added expense of its consultant by insisting that the punch list is detailed, as set forth in this paper, from the outset. If the Obligee and contractor cannot reach closure on this type of list, the Surety will know early on that it has a different problem to deal with and will be in a better position to analyze how it wants to proceed on their "uncompleted" contract, when the Obligee/Owner makes a claim against the Performance Bond.

within three working days after the Contractor receives payment from the Owner. If the Architect does not issue a Certificate for Payment or the Contractor does not receive payment for any cause which is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, on demand, a progress payment computed as provided in Paragraphs 11.7 and 11.8.

11.4 If an application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next Application for Payment submitted to the Architect.

11.5 Each application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows.

11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work which have been properly authorized by Construction Change Directive, amounts not in dispute may be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's Application for Payment;

11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

11.7.4 Subtract amounts, if any, calculated under Subparagraph 11.7.1 or 11.7.2 which are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a Certificate of Payment for a cause which is the fault of the Subcontractor.

#### 11.8 SUBSTANTIAL COMPLETION

11.8.1 When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the Certificate for Payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the Certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the Certificate.

### ARTICLE 12 FINAL PAYMENT

12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Contract Documents, the Architect has issued a Certificate for Payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a Certificate for Payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within three working days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.

*(Insert provisions for earlier final payment to the Subcontractor, if applicable.)*

12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied.

4.20 When Contractor is performing layout of the Work, Contractor shall give prior notice to Construction Manager and Architect who shall have the option to be present during such layout.

4.21 Contractor shall maintain all customary forms and records for the Work including, without limitation, daily logs, complete sets of all Drawings and Specifications, notes and memoranda, reports, permits, approvals, certificates and other pertinent documents. Owner shall have the right to inspect and review Contractor's books, documents and other records pertaining to the Work and the Project at any time and from time to time during and after the completion of the Work. During the progress of its Work, Contractor shall maintain its records at the Project and at its home office and thereafter retain such records for a period of seven (7) years following completion of the Work. Owner shall be given access to such books, documents and other records immediately after request therefor during the course of the Work and at any time thereafter upon five (5) days, notice. Permits and other public notices shall be properly and prominently displayed at Contractor's office at the Site.

4.22 Contractor shall complete all "punch list" timely so as to cause no delay to the final completion of the Work or the work of Other Contractors. Should Contractor fail to complete or prosecute punch list work timely, Owner shall have the right to cause such punch list to be completed by others and the cost thereof shall be deducted from the Contract Price.

ARTICLE V - CONTRACT PRICE AND PAYMENTS

5.01 The total compensation payable to Contractor for performance of the Work and its obligations under this Contract shall be the Contract Price which shall not be subject to increase by reason of any change in the cost of material, services or wage rates during the term of this Contract. The Contract Price shall include all applicable sales, use, import and excise taxes, license and permit fees, certifications and any other costs related to the Work.

5.02 Within five (5) days following award of this Contract, Contractor shall submit for approval by Construction Manager (i) a trade payment breakdown indicating by item the values allocated to each portion of the Work and (ii) wage rate sheets. Such approved trade payment breakdown and wage rate sheets shall be a condition precedent to the basis for making progress payments to Contractor.

5.03 Contractor shall submit Applications for Payment to Construction Manager for approval for Work performed and to be performed during the month for which the Application is submitted. Each Application for Payment shall: (i) be in triplicate and in the form prescribed by Construction Manager; (ii) set forth the cost and expenses incurred or paid by Contractor in connection with the Work during the month for which Contractor is requesting payment; (iii) include copies of invoices, equipment rental schedules and such other evidence as Architect may request to review Contractor's costs and trade payment breakdown; and (iv) include lien waivers for all payments for the Work including that portion of the Work included in the Application for Payment.

5.04 The Contract Price will be paid in installments equal to (i) ninety-five percent (95%) of the full proportionate amount of Work completed and in place through the date upon which Architect or any construction lender's architect shall have certified that such portion of the Work has been performed and is in place and satisfactory, less (ii) the sum of all amounts previously paid on account of the Contract Price, back charges and credits resulting from work performed by persons other than Contractor, fines and penalties imposed on Owner due to acts or omissions of Contractor and clean up of waste created by Contractor.

(b) When the Work is substantially complete as determined by the Architect, the retainage shall be reduced to an amount equal to the total of two (2) times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens, or judgments against the Contractor which have not been suitably discharged.

5.05 The final installment of the Contract Price including all retained amounts will be paid after approval of the final Application for Payment by Owner for the Work to be performed under this Contract and provided (a) Contractor has delivered to Construction Manager (i) all written warranties, guarantees operating manuals, as-built Drawings relating to the Work; (ii) evidence satisfactory to Construction Manager that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work; (iii) an Affidavit and Final Release, in form and substance satisfactory to Construction Manager, in favor of Owner; (b) Architect and any construction lender's architect shall have certified as to the satisfactory

(b) When the Work is substantially complete as determined by the Architect, the retainage shall be reduced to an amount equal to the total of two (2) times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens, or judgments against the Contractor which have not been suitably discharged.

is to utilized by the Contractor is attached to this Contract). SEPTA may, at its election, withhold any amounts deemed to be Liquidated Damages as otherwise described herein. The Contractor recognizes that SEPTA receives a large quantity of funds from Local, State and Federal Governments and that the time required for payment of invoices may, on rare occasions, be affected thereby.

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

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

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

1. Contractor is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents;
2. Any part of such payment is attributable to Work which is defective or not performed in accordance with the Plans and Specifications; provided, however, such payment shall be made as to the part hereof attributable to Work which is performed in accordance with the Plans and Specifications and is not defective;
3. Contractor has failed to make payments promptly to Contractor's Subcontractors or for material or labor used in the Work for which SEPTA has made payment to Contractor;
4. If SEPTA, in its good faith judgement, determines that the portion of the Contract Sum then remaining unpaid will not be sufficient to complete the Work in accordance with the Plans and Specifications, whereupon no additional payments will be due Contractor hereunder

unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Sum then remaining unpaid is determined by SEPTA to be sufficient to so complete the Work; and/or

5. SEPTA assesses Liquidated Damages as otherwise described herein.

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

D. Certificates for Payment

1. If the Contractor has made application for payment as above, the Architect and/or Engineer will, with reasonable promptness, after receipt of the Invoice, furnish the same to the Project Manager for his review and determination as to the amount to be properly due.

2. The Project Manager shall be the individual responsible for the approval or disapproval of payments. If the Project Manager approves, SEPTA shall make payment in the manner provided in the Agreement.

3. No Certificate for a Payment, nor any payment, nor any partial or entire use or occupancy of the Project by SEPTA, shall constitute an acceptance of any Work not in accordance with the Contract Documents and/or including the contract schedule.

E. Payment Withheld

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

F. Substantial Completion and Final Payment

1. When the Contractor determines that the Work or a designated portion thereof acceptable to SEPTA is substantially complete, the Contractor shall prepare for submission to the Project Manager a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

2. Within thirty (30) days of receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Project Manager shall have the Architect or Engineer make such inspection and, when the Work is found acceptable under the Contract Documents, issue a Certificate of Completion.

If the work is substantially completed, the Architect or Engineer shall issue a Certificate of Completion. The Certificate of Completion given by the Architect or Engineer shall list in detail each and every uncompleted item and a reasonable cost of completion, and shall state the responsibilities of SEPTA and the Contractor for maintenance, heat, utilities, and insurance, and shall fix the time within which the Contractor shall complete the uncompleted items listed therein.

3. SEPTA will make final payment in full within forty-five (45) days of issuance of the Certificate of Completion by the Architect or Engineer, except as provided in Item XII.C. less only one and one-half times such amount as is required to complete any then remaining uncompleted minor items, which amount shall be certified by the Architect or Engineer, provided, however, that the final payment shall not become due until the Contractor submits to the Project Manager (1) Affidavits that all payrolls, bills for material and equipment, and other indebtedness connected with the Work for which SEPTA or its property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, (3) SEPTA's General Release form, and (4) if required by SEPTA, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by SEPTA. The desired forms of Affidavit consist of AIA Document G706, G707, and G706A, respectively, with AIA Document G706 and G706A modified by the deletion of reference to "Article 9 of the General Conditions of the Contract for Construction, AIA Document A201" and its replacement by reference to Item XII. of the Agreement.

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

4. Final payment of any amount withheld for uncompleted items shall be made by SEPTA upon completion of the items in the Certificate of the Architect or Engineer.

G. Acceptance of the Work

In the event the Work delivered by the Contractor does not fulfill the requirements or intention of the Specifications and Drawings, or otherwise comply with the requirements of the Contract Documents, said Work shall not be considered as being completed and accepted, and the assessment of Liquidated Damages set forth in Item XI.E. shall apply and be enforced. Furthermore, if any portion of the Work is incomplete, or contains any defective or damaged materials, said materials shall be removed and new materials shall be furnished promptly by the Contractor, who shall also pay for freight or transportation charges for same, plus the cost of labor for the removal and installation of said materials, all of which shall be furnished at no cost to SEPTA. If within ten (10) days after receipt by Contractor of written notice from SEPTA setting forth Work not performed by the Contractor which should have been done by the Contractor within the requirements or intent of the Contract Documents, SEPTA may perform, or have performed, such Work and the Contractor shall reimburse SEPTA for all costs incidental thereto, including materials, labor, overhead, and profit.

