

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES**

**HVAC TECHNICIAN SERVICES  
SBE SET ASIDE**

**Solicitation #: DCAM-16-NC-0035**

**Amendment No. 2  
Issued: October 30, 2015**

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This Amendment Number 02 is issued by e-mail on October 30, 2015. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

**Item #1**

**Form of Contract:** Attached to this Amendment is the Form of Contract. THE TERMS OF THE FORM OF CONTRACT SHALL PREVAIL OVER THE RFP. TO THE EXTENT THERE IS AN INCONSISTENCY BETWEEN THE FORM OF CONTRACT ISSUED HERewith AND THE RFP, THE FORM OF CONTRACT SHALL GOVERN.

**Item #2**

**The bid date is hereby changed.** Proposals are due by **November 10, 2015 at 2:00 pm EST.** Proposals that are hand-delivered should be delivered to the attention of: Alicia Norris, Contract Specialist, at **Frank D. Reeves Center, 2000 14th Street, NW, 8<sup>th</sup> floor, Washington, DC 20009.**

- End of Amendment No. 2 -

## FORM OF CONTRACT

### CONTRACT FOR HVAC TECHNICIAN SERVICES (SBE SET-ASIDE) DCAM-16-NC-0035

**THIS AGREEMENT FOR HVAC TECHNICIAN SERVICES** (“Agreement” or “Contract”) is entered into by and between the District of Columbia government acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the "Department") and **[CONTRACTOR]** ("Contractor"), (collectively, the “Parties”).

#### WITNESSETH:

**WHEREAS**, the Department is charged with maintaining the HVAC systems for the District of Columbia’s real estate portfolio, including District of Columbia public schools, parks and recreation facilities, and certain other municipal facilities;

**WHEREAS**, the Department issued a Request for Proposals to engage a contractor to provide on-call technician services for the HVAC systems at its various facilities;

**WHEREAS**, the Contractor submitted a proposal in response to the Request for Proposals, and the Department wishes to engage the Contractor to provide the requested services; and

**WHEREAS**, the Department desires that the Contractor provide such on-call technician services for a one year term.

**NOW, THEREFORE**, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Agreement agree as follows:

#### Agreement:

##### **Section 1**     Scope of Work.

**Section 1.1**     General Scope of Work & Intent of Contract. Subject to the terms and conditions of this Agreement, the Contractor shall provide all labor, supervision, tools, material, equipment, transportation, and management necessary to provide “on-call” repairs and upgrades of HVAC systems including replacement to mechanical systems (the “Project”) at various Department facilities (the “Project Facilities”). This Agreement will require the Contractor to provide any necessary upkeep and/or repair of the subject HVAC systems and be available to address any future HVAC problems as directed by the Department. The Contractor will be required to respond to on-call requests within 2 hours of notification by the Department.

**Section 1.2 Contractor's Operations.** At all times while this Agreement is in effect, the Contractor shall comply with the following requirements:

- .1 Central Office.** The Contractor will be required to maintain a staffed central office to manage work associated with this Contract and to dispatch work crews as requested by the Department. At a minimum, this office shall be staffed between 7:00 am and 5:30 pm, Monday through Friday. The Contractor should also provide an “after hours” point of contact for dispatching staff on a 24/7 basis and be equipped with telephone lines, a fax machine and e-mail and such other equipment and supplies as are necessary to fulfill the work required under the Contract.
- .2 Work Records; Weekly Reports.** The Contractor shall maintain a job tracking system that, at a minimum, records for each Work Order: (i) the date and time a request was received by the Contractor; (ii) a description of the problem; (iii) the date and time a crew was dispatched to the site; (iv) the date and time the crew arrived at the site; (v) a description of the problem and corrective work required; (vi) the amount of time spent on the site by the Contractor’s personnel; (vii) the materials and spare parts used by the Contractor; and (viii) the date and time the work or repair was accepted by the Department. The Contractor shall provide the Department with a report that summarizes all such activity on a weekly basis.
- .3 Time Cards.** The Contractor shall maintain a system that requires each employee to track his or her time on an hourly basis. At a minimum, such a system shall require each employee to clock in and out and to sign time cards.
- .4 Equipped Personnel.** The Contractor shall ensure that all of its personnel and subcontractors assigned to tasks on the Contract are properly trained, equipped and, as necessary, licensed. Contractor personnel shall be provided with a fully equipped truck or service van that includes appropriate small tools and spare parts.
- .5 Qualified Personnel.** The Contractor will be required to provide personnel who are at least journeyman level in the following trade categories: (i) HVAC/refrigeration technician; (ii) welders; (iii) burner technicians; (iv) steam fitters; (v) plumbers; and (vi) electricians. All such personnel shall be properly licensed and fully qualified to perform the expected services.
- .6 Security Checks & Procedures.** The Contractor will be required to comply with all standard security procedures of the Project Facilities. Contractor personnel and the Contractor’s subcontractors will not be permitted to enter facilities unless such personnel or subcontractors are properly “badged” in accordance with the applicable security procedures, and the Contractor shall have available a sufficient pool of pre-screened and “badged” personnel and subcontractors to discharge its functions.

**Section 1.3 Work Procedures.** The Contractor will be required to provide supervision, labor, materials and equipment necessary to perform the “on-call” services as requested under this Contract. The repair work includes work, but is not limited to, activities such as chiller repair, boiler repair, boiler burner calibration, pump repair/replacement, terminal unit repair, and gas valve repair/replacement. In performing these activities, the Contractor shall comply with the following procedures:

- .1 Provide HVAC certified/licensed technicians to perform the necessary work and provide adequate on-site supervision on a 24 hour basis. To the extent applicable codes require that work be performed by licensed personnel, all such work shall be performed by duly licensed personnel. Contractor will be required to maintain evidence that such work was performed by licensed personnel assigned to perform work under this contract.
- .2 Employ and have sufficient technical personnel capable of responding to 7 sites simultaneously. The Contractor shall also provide DGS a 24-hour emergency telephone number that will serve as the notification and dispatch center for service calls from DGS.
- .3 Respond to all service calls within 2 hours of notification by DGS. Upon arrival at service call site, the Contractor shall determine the cause of the loss of service, the components affected and take corrective action in a manner that restores service as soon as practicable. Repair shall be made in a professional and timely manner for any units, ventilation equipment, conveyance ductwork, pneumatic controls, electronic controls, and/or any other component that makes up the HVAC system, including associated mechanical, plumbing and electrical/electronic connections. Contractor must submit for prior DGS review, prints/drawings, specifications and scopes of work for “on-call” service work activity where such documentation is required. Contractor shall test HVAC operations to ensure service has been restored. Tests must be conducted in accordance with ASME Code 2004 Section VI, and Department of Consumer & Regulatory Affairs (DCRA) regulations.
- .4 Notify DGS of any "temporary" repairs that are necessary due to the unavailability of parts or materials. Permanent capital improvements must be made upon receipt required parts/materials. DGS reserves the right to bring in any other contractor in order to complete a repair that is not completed by Contractor in a timely fashion.
- .5 All work must be performed with the least possible disruption to each facility’s operations and coordinated with the Contract Maintenance Services representative and/or other site designee.
- .6 Contractor shall notify DGS of any conditions that potentially may cause a break in HVAC service if preventive maintenance is not performed.
- .7 Use non-hazardous materials that meet the requirements established by the Department or obtain prior approval to use substitute materials. Any hazardous

material that must be incorporated into a repair shall be approved for use, prior to being brought onto the worksite. The Contractor shall provide MSDS Sheets for all materials used on-site, whenever applicable.

- .8 Provide all equipment necessary to complete an assigned work activity. Contractor shall be responsible for safeguarding their own materials, tools, and equipment. The Department shall not assume any responsibility for vandalism and/or theft of materials, tools and/or equipment.
- .9 Provide a company cellular telephone for employees on-site for making and receiving calls. The cellular telephone number must be provided to the Department. Personal or business phone calls are not to be made on dedicated phones unless it is an “emergency”.
- .10 Contractor must obtain written consent from DGS before utilizing the services of any subcontractor(s). If use of a subcontractor is approved by DGS, all work must be coordinated with DGS.
- .11 All completed work shall be subject to inspection by one or more representatives of the Department. Service area must be restored to the condition that existed prior to the start of repair work with emphasis on any special finish damage that may have occurred during the repair. Any work that is found to not be in compliance with Federal, District and/or Local Safety/Fire codes shall be corrected at the Contractor’s expense.
- .12 Contractor shall be responsible for the proper and safe removal and disposal of all debris and materials generated as part of the service repair.

**Section 1.4 Coordination with Department Facilities.** The Contractor will be required to coordinate its work with activities of the facility. The work will be performed when these facilities are occupied and in use, and the Contractor may be required to work after hours or on weekends and holidays so as to not adversely impact educational activities. The Contractor will be required to develop work plans that are coordinated with and acceptable to the site designee.

**Section 1.5 Project Site Safety.** The Contractor will be required to ensure that its work is conducted in a safe manner and that appropriate barricades and other life safety procedures are employed to ensure the safety of facility populations. All such construction barricades and life safety procedures shall be subject to the approval of the Department and its Program Manager.

**Section 1.6 Program Manager.** The Department has assigned a Program Manager to oversee the Contractor’s efforts in furtherance of this Project. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Contractor. The name and contact information for the assigned Program Manager is specified in the Project Information section of this Agreement. The Contractor shall take direction from, and coordinate its Work

with, the assigned Program Manager. **The Contractor acknowledges, however, that the Program Manager is not authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to this Contract, or to issue Change Orders or Change Directives.**

**Section 1.7 Prolog.** The Contractor shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; and (v) applications for payment. The Contractor also shall require all major subcontractors and subconsultants to utilize prolog for the Project.

**Section 1.8 Letter Contract.** It is understood and agreed that certain of the activities described above were performed while the Letter Contract was in place, and the terms of the Letter Contract shall merge into and be superseded by this Agreement upon the execution of this Agreement.

**Section 2 Additional Work.** As may be requested from time to time by the Department, Contractor agrees to provide similar services at such other facilities within the District of Columbia's real estate portfolio as may be requested by the Department. The Contractor shall be compensated at the rates established in **Exhibit B** for such work.

**Section 3 Contractor's Fees.**

**Section 3.1 Type of Contract.** This is a time and materials contract. Contractor shall be compensated at the hourly rates established in **Exhibit B** for the personnel classifications set forth therein. Other than the Cost of Parts and Materials, which will be reimbursed at the verifiable wholesale price of such Parts or Materials plus a markup of [INSERT] percent (\_\_\_%), and Specialized Services, which will be reimbursed at cost plus a 5% markup), these rates will be the Contractor's sole compensation for work performed by such personnel and as such should include adequate amounts to cover the Contractor's labor, field equipment (i.e. small tools, transportation, trucks and vans, etc.), overhead, insurance and profit and regardless of whether such services are provided by the Contractor's own forces or a subcontractor. **Exhibit B** includes a premium rate that shall apply to any calls for which work must be performed between the hours of 4:00 PM and 7:00 AM or which is required on weekends or on Federal Holidays.

**Section 3.2 Cost of Materials.** The Contractor shall be reimbursed for any parts or materials that are incorporated into the Project Facilities. The Contractor shall be reimbursed for such parts and materials at the verifiable wholesale price of such parts or materials plus a markup of [INSERT] percent (\_\_\_%). Within ten (10) days after this Agreement is executed, the Contractor shall provide the Department with a list of the typical parts and materials that may be expected to be consumed by the Work and the current wholesale list price for each. The Contractor shall be entitled to a [INSERT] percent (\_\_\_%) markup on all such parts and materials.

**Section 3.3 Travel Time.** Contractor shall be compensated for reasonable travel time to the job site.

**Section 3.4 Prior Authorization.** For service calls that are estimated to cost less than \$500, Contractor shall be authorized to perform such work without any further approval from DGS (“Tier 1 Work”). For service calls that are estimated to cost between \$500 and \$2,500, Contractor shall be required to confirm that the work can be completed for this amount and will be required to notify DGS prior to undertaking the work (“Tier 2 Work”). For service calls that are estimated to cost more than \$2,500, Contractor shall be required to provide a written estimate and DGS authorization prior to proceeding with the work.

**Section 3.5 Specialized Services.** Only services that cannot be performed by a licensed HVAC technician will be considered Specialized Services. Such services include, but are not necessarily limited to, work on proprietary control systems, work on high pressure boilers that requires an R Stamp, etc. With regard to Specialized Services, the Contractor shall be reimbursed for the actual cost of such work plus a markup of 5%; provided, however, that any parts or materials required for or incorporated in such work shall be reimbursed in accordance with Section 3.2 of this Agreement. The Contractor shall be required to obtain the Department’s consent before proceeding with any Specialized Services.

**Section 3.6 Subcontracted Work.** The Contractor shall perform the work with its own forces. In the event that the Contractor desires to engage any subcontractors to assist with the work, it shall advise the Department and obtain the Department’s written approval of any such subcontractor. All subcontractors shall be required to comply with the insurance requirements set forth herein. In addition, the Contractor shall be responsible for all work performed by the subcontractors and shall assume the risk of the subcontractors’ non-performance. For all work other than Specialized Services, the Contractor’s compensation will be based on the hourly rates established in Exhibit B, and thus, such rates must be sufficient to cover the cost of subcontracting in the event the Offeror plans to satisfy its contractual obligations through subcontracting. To the extent the Contractor intends to subcontract a portion of the Work, any subcontract in excess of Twenty Five Thousand Dollars (\$25,000) shall include the following provisions:

- .1 that, to the extent of the Work or supply within the Contract’s scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;
- .2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;
- .3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- .4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

- .5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;
- .6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in Contract and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- .7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia. It is understood that this provision is not applicable to supply agreements;
- .8 that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;
- .9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it; and
- .10 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost.

**Section 3.7 Certified Subcontractors.** The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

**Section 3.8 Not-to-Exceed Amount.** This contract has a not-to-exceed amount of [Amount] Dollars (\$[AMOUNT]) (the "NTE Amount"), and in no event shall the Contractor be entitled to recover more than the NTE Amount unless the Department has authorized the Contractor to exceed the NTE Amount in advance through a duly executed change order. The Contractor shall advise the Department in writing when it has reached eighty percent (80%) of the NTE Amount.

**Section 4 Term.**

**Section 4.1 Time of the Essence.** Time is of the essence in the performance of the Contractor's obligations under this Agreement.

**Section 4.2 Term.** This Agreement shall begin upon execution of this Agreement and shall terminate one year from such date (the “Base Year”). The Contractor shall be required to provide HVAC technician services for all of the Project Facilities during the term of this Agreement.

**Section 4.3 Term & Option Years.** The Department shall have the right to extend the term of this Agreement for two (2) one-year option periods (each such period, an “Option Year”), the first of which would begin on the date that the Base Year Term expires and end one year from the date that such Base Year Term expires; and the second of which would begin on the date that Option Year 001 expires and end one year from the date that Option Year 001 expires. In the event the Department desires to extend the Term of this Agreement pursuant to this Section 4.3, the Department shall give the Contractor written notice of such election at least sixty (60) days prior to the beginning of the applicable Option Year. In the event the Department fails to provide such notice by the required date, this Agreement shall automatically terminate and the Contractor shall not be required to provide further services, but may if so requested by the Department during the option period as if notice of the intent to exercise of the option had been timely, and in which case the Agreement shall not be terminated.

**Section 5 Changes.**

**Section 5.1 Changes Authorized.** The Department may, without invalidating the Contract, and without notice to or approval of any surety, order changes in the work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

**Section 5.2 Executed Change Directive/Order Required.** Changes to the Contract may be made only by a written Change Directive or Change Order executed by the Department.

**Section 5.3 Department-Initiated Changes.** If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that the completion date for work authorized under the Contract and/or the cost of the work should be adjusted to take the Change Order or Change Directive into account.

**Section 5.4 Notice of Change Event.** The Contractor must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Contractor knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the completion date for work authorized under the Contract, or the cost of the work arising from the Change Event and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the completion date for work authorized under the Contract or the cost of the work arising from the Change Event.

**Section 5.5 Detailed Change Request.** Within twenty (20) days after giving notice of a change event, the Contractor shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the completion date for work authorized under the Contract or the cost of the work as a result of the Change Event. The change request shall include the same information as described in Section 5.3 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the cost of the work shall be limited in accordance with that Subsection.

**Section 5.6 Executed Change Orders Final.** The Contractor agrees that any Change Order executed by the Department and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

**Section 5.7 Failure to Agree.** If the Contractor claims entitlement to a change in the Contract, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Contract, as it determines are appropriate pursuant to the terms of this Agreement. The Contractor shall proceed with the work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 11 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

**Section 6 Indemnification.** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Department and the Department's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**Section 7 Payments.**

**Section 7.1 Invoicing.** The Contractor shall bill the Department on a monthly basis. Each such invoice shall cover all of the work performed during the preceding month and shall be broken down by service call. For each such service call, the invoice shall include: (i) a listing of hours worked including the date(s) on which such labor was performed, the name of the worker, the classification of the worker and the hourly rate applicable to each such hour; (ii) a listing of parts and materials used; (iii) a brief description of the problem; (iv) a statement as to whether the problem was resolved; and (v) the facility name and address.

**Section 7.2 Supporting Documentation.** The Contractor shall submit with each invoice cost backup supporting such invoice. Such back-up information shall include: (i) time sheets for all reimbursable labor; and (ii) a log of all materials used during that period.

**Section 7.3 Right to Withhold Payments.** The Department will notify the Contractor within fifteen (15) calendar days after receiving any invoice for payment of any defect in the invoice or the work which may result in the Department's declining to pay all or a part of the invoiced amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

- .1 the work is defective and such defects have not been remedied; or
- .2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
- .3 the Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or
- .4 the Contractor is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with the Economic Inclusion Requirements in Section 9).

**Section 7.4 Payment Not Acceptance.** Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

## **Section 8 Designated Representatives.**

**Section 8.1 Department's Designated Representative.** The Department designates Christopher Weaver, Acting Director, Department of General Services, as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization; provided, however, that James Marshall and Kimberly Gray, Supervisory Contract Specialists in the Contracts & Procurement Division, shall have the express authority to bind the Department for matters that are administrative in nature or of a value no greater than One Hundred Thousand Dollars (\$100,000). These representatives shall have the exclusive authority to make decisions on behalf of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. In order for the Department to effectively manage the Project and assure that the Contractor does not receive conflicting instructions regarding the Work, the Contractor shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Contractor's Work from any employee of the Department or other purported agent of the Department other than the Department's representative.

**Section 8.2 Contractor's Designated Representative.** The Contractor designates the individual(s) identified in **Exhibit E** as its representative with express authority to bind the Contractor with respect to all matters requiring the Contractor's approval or authorization. In addition, the Department retains the right to approve candidates for key on-site personnel in accordance with their experience with similar projects and local marketplace conditions. Once approved, individuals cannot be changed without the Department's prior approval. During the entire term, it is agreed that the Contractor's designated representative will devote his time exclusively to the Project, unless the Department consents to a reduction in time. All services provided by the Contractor shall be performed in accordance with the highest professional standards recognized and adhered to by Contractors that perform HVAC technician services for municipal facilities.

**Section 9 Economic Inclusion**

**Section 9.1 CBE Utilization.**

**Section 9.1.1** The Contractor shall perform at least 35% of the contracting effort with its own forces, and if the Contractor subcontracts any work, 35% of the subcontracted effort must be subcontracted to CBEs. For subcontracted work, pass through entities will not count toward this goal. In order to count toward the subcontracting requirement, the SBE must perform at least thirty five percent (35%) of the work that is being counted toward the goal with its own forces. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal. The Contractor has developed an LSDBE Utilization Plan that is attached hereto as **Exhibit C**. The Contractor shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subcontracts and Supply Agreements.

**Section 9.1.2** Neither the Contractor or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal. The Department may condition its approval upon the Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

**Section 9.2 First Source Agreement**

**Section 9.2.1** Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

**Section 9.2.2** The Contractor and its constituent entities shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the *Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011*, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at

the Project site. The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's Team and every subconsultant's and subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Contractor, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

**Section 9.2.3** The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**Section 9.2.4** The Contractor shall be responsible for: (i) including the provisions of this Section 9.2 in all subcontracts; (ii) collecting the information required in this Section 9.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 9.2.

**Section 9.3** **Workforce Utilization Plan.** The Contractor shall comply with the requirements of the approved Workforce Utilization Plan attached as **Exhibit F.** At least Forty Percent (40%) of the percentage labor hours for the Project must be performed by District of Columbia residents (such requirement, the "Workforce Utilization Requirement").

## **Section 10** **Termination.**

**Section 10.1** **Termination for Convenience.** The Department may at any time terminate this Agreement, in whole or specified part, for convenience. In such an event, the Contractor shall be entitled to receive compensation for services performed through the effective date of termination in accordance with the terms of this Agreement. In no event, however, shall the Contractor be entitled to recover lost profits or opportunity costs on the unperformed portion of work.

**Section 10.2** **Termination for Default.** The Department may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the Contract. The Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.

## **Section 11** **Claims Dispute Resolution.**

**Section 11.1** **Notice of Claim.** If the Contractor has complied with all provisions in Section 5 regarding changes, and the Department has denied the changes requested in a written Change Order proposal, or has failed to respond to a written Change Order proposal within thirty (30) calendar days, and the Contractor wishes to pursue a claim over the disputed item or if the Contractor wishes to assert a claim over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, it shall inform the Department, in writing, of its claim. The written notice of claim must be submitted to the Department pursuant to procedures

set forth in section 4733 of the Department's procurement rules and section 908 of the District's Procurement Practices Reform Act of 2010 (PPRA).

**Section 11.2 Contents of Notice of Claim.** The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department.

**Section 11.3 Appeal Procedures.** All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

**Section 12 Insurance.**

**Section 12.1 Required Insurance.** The Contractor will be required to maintain the following types of insurance throughout the life of the Contract.

- .1 Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance written on an occurrence basis to be in an amount not less than Five Million Dollars (\$5,000,000.00) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars (\$5,000,000.00) from the aggregate of all occurrences within each policy year. The policies shall contain blanket contractual coverage (including coverage for the indemnity clauses to be provided under the Agreement) and completed operations coverage (for 3 years beyond completion of the work).
- .2 Workers' compensation providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the work.
- .3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000.00) for each occurrence for bodily injury and property damage.
- .4 Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Five Million Dollars (\$5,000,000).

- .5 To the extent any design services are required, errors and omissions coverage written on a claims made basis and having an aggregate policy limit of at least Two Million Dollars (\$2,000,000). This coverage shall be maintained for a period of at least three (3) years after completion of the work.
- .6 Contractor's Pollution Liability coverage in the amount of at least Two Million Dollars (\$2,000,000) for each occurrence. Such coverage shall be maintain for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved.

**Section 12.2 Additional Insureds.** Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Department, and the District of Columbia, and the officers, agents and employees of each. Such insurance policies shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

**Section 12.3 Waiver of Subrogation.** All such insurance policies shall contain a waiver of subrogation against the Department, the District of Columbia, and their respective agents.

**Section 12.4 Strength of Insurer.** All such insurance policies shall be written by a company that is rated at least A- by A.M. Best and having a surplus size rating of at least XV and is licensed/approved to do business in the District of Columbia.

**Section 12.5 Payment and Performance Bond.** The Contractor must comply with the bonding requirements set forth in D.C. Code § 2-201.01, and any other relevant laws. In general, Contractor shall be required to provide a performance bond and a payment bond. If the Contract's NTE Amount is less than \$1,000,000, the payment bond shall be in a sum equal to fifty percent of the NTE Amount. If the NTE Amount is more than \$1,000,000 and not more than \$5,000,000, the payment bond shall be in a sum equal to forty percent of the NTE Amount. If the NTE Amount is more than \$5,000,000, the payment bond shall be in the sum of \$2,500,000. Such bonds shall remain in full force and effect throughout the duration of the Contract Term, including any Option Year if such option is exercised. The Owner shall be able to draw upon such bonds regardless of the amount paid by the Owner to the Contractor, even if such amount exceeds the penal value of such bonds. All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties.

**Section 12.5.1** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### **Section 13 Miscellaneous Provisions.**

**Section 13.1 Service Contract Act Provision.** The Contractor agrees that the work performed under this Contract shall be subject to the Service Contract Act. The wage rates applicable to this Project are attached as **Exhibit D.**

**Section 13.2 False Claims Act.** The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-381.02.

**Section 13.3 Retention of Records: Inspections and Audits.**

**Section 13.3.1** The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

**Section 13.3.2** The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

**Section 13.3.3** The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

**Section 13.3.4** The Contractor agrees to include the wording of this Section 13 in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

**Section 13.3.5** Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

**Section 13.3.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

**Section 13.3.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

**Section 13.4 Gratuities and Officers Not to Benefit Provisions.**

**Section 13.4.1** If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

**Section 13.4.2** In the event the Contract is terminated as provided in Section 13.4.1, the Department shall be entitled:

- .1 to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
- .2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

**Section 13.4.3** No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimis.

**Section 13.5 Ethical Standards For Department's Employees And Former Employees.** The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any work required, contemplated or performed under the Contract. The Contractor may not assign to any officer, employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially

similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

**Section 13.6 Anti-Deficiency Act.** The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

**Section 13.7 Extent of Contract.** The Contract, which includes this Agreement and the other documents incorporated herein by reference, such as Work Orders, Change Orders, and Exhibits, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

**Section 13.8 Governing Law.** The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

**Section 13.9 Buy American Act Provision.** The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

**Section 13.10 No Third-Party Beneficiary Rights.** Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

**Section 13.11 Limitations.** The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall not begin to run, or shall be deemed to be tolled, until all work required by this Contract is completed or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

**Section 13.12 Binding Effect; Assignment.** The Contract shall inure to the benefit of, and be binding upon and enforceable by, the Parties and their respective successors and permitted assigns. The Contractor shall not assign its rights under the Contract, including the

right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

**Section 13.13 Survival.** All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

**Section 13.14 No Waiver.** If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

**Section 13.15 Remedies Cumulative.** Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

**Section 13.16 Entire Agreement; Modification.** The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

**Section 13.17 Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

**Section 13.18 Anti-Competitive Practices and Anti-Kickback Provisions.**

**Section 13.18.1** The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

**Section 13.18.2** The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i)

provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

**Section 13.18.3** The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

**Section 13.19 Covenant Against Contingent Fees Provisions.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

**Section 13.20 Conformance with Laws.** It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Regulations (27 DCMR § 4700 *et seq.*) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder. This Section 13.20 shall apply throughout the term of the Agreement.

**Section 13.21 Warranties and Representations**

**Section 13.21.1** All disclosures, representations, warranties, and certifications the Contractor makes in its proposal in response to the RFP shall remain binding and in effect throughout the term of the Contract. The Contractor reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

**Section 13.21.2** If any disclosure, representation, warranty or certification the Contractor has made or makes pursuant to the RFP or the Contract, including, without limitation, representations concerning the Contractor's construction or design experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of the Contract, entitling the Department to all available remedies.

**Section 13.21.3** The terms and conditions of Section 13.21 shall apply throughout the term of the Agreement.

**Section 13.22 Responsibility for Agents and Contractors.** At all times and during the term of this Contract, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying work in connection with the Project. This Section 13.22 shall apply throughout the term of this Agreement.

**Section 13.23 Independent Contractor.** In carrying out all its obligations under the Contract, the Contractor shall be acting as an independent contractor, and not as an employee or agent of the Department, or joint venturer or partner with the Department. The Contractor shall have exclusive authority to manage, direct, and control the work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

**Section 13.24 Living Wage Act.** In addition to the requirements set forth in the First Source Employment Agreement, the Contractor shall comply with all applicable provisions of the Living Wage Act of 2006, as amended (codified at D.C. Official Code §§ 2-220.01 et seq.) and its implementing regulations.

**IN WITNESS WHEREOF,** each of the Parties have executed this Agreement as of the date first written below.

**DEPARTMENT OF GENERAL SERVICES,** an agency within the executive branch of the Government of the District of Columbia

**By:** \_\_\_\_\_  
**Name:** Christopher Weaver  
**Title:** Acting Director  
**Date:** \_\_\_\_\_

[COMPANY NAME]

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**Exhibit A**

**Project Facilities**

**Exhibit B**

**Hourly Rates**

**Exhibit C**

**CBE Utilization Plan**

**Exhibit D**

**Service Contract Act Wage Rates**

**Exhibit E**

**Contractor's Designated Representative**

**Exhibit F**

**Workforce Utilization Plan**