

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

**HVAC TECHNICIAN SERVICES**

**Solicitation #: DCAM-12-CS-0184**

**Addendum No. 2**

**Issued: September 17, 2012**

---

This Addendum Number 02 is issued by e-mail on September 17, 2012. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

**Item #1**

**Form of Contract:** Attached to this Addendum 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 **September 21, 2012 at 2:00 pm EDT.** Proposals that are hand-delivered should be delivered to **Frank D. Reeves Center, 2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> floor, Washington, DC 20009.**

- End of Addendum No. 2 -

## FORM OF CONTRACT

### CONTRACT FOR HVAC TECHNICIAN SERVICES GM-12-CS-0184-FM

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

#### WITNESSETH:

**WHEREAS**, the Department is charged with maintaining the HVAC systems at District of Columbia Public Schools (“DCPS”), parks and recreation facilities, and certain other municipal facilities.

**WHEREAS**, the Department a Request for Proposals to engage a contractor to provide on-call technician services for the HVAC systems at various DCPS facilities, parks and recreation facilities, and certain other municipal 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.

**WHEREAS**, the Department desires that the Project be completed over the course of the fiscal year, with this Agreement terminating on September 30, 2013.

**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 the facilities listed on **Exhibit A** (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 Dispatching Office.** The Contractor will be required to provide a staffed central office from which personnel are dispatched. 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.
- .2 Work Records; Weekly Reports.** The Contractor shall maintain a job tracking system that, at a minimum, records: (i) the date and time a request was received by the Contractor; (ii) the date and time a crew was dispatched to the site; (iii) the date and time the crew arrived at the site; (iv) a description of the problem and corrective work required; (v) the amount of time spent on the site by the Contractor’s personnel; (vi) the materials and spare parts used by the Contractor; and (vii) the date and time the work or repair was accepted by DGS. The Contractor shall provide DGS 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 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 of DCPS and other District building standard security procedures. Contractor personnel will not be permitted to enter facilities unless such personnel are properly “badged” in accordance with DCPS and other District building procedures, and the Contractor shall have available a sufficient pool of pre-screened and “badged” personnel 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 requested under its contract. The repair work for the projects’ scope include work activity 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 capital improvements and upkeep services and adequate on-site supervision on a 24 hour basis. Contractor may be required to provide documented evidence of certification/licensure for any contractor 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 school/administrative/municipal operations and coordinated with the Contract Maintenance Services representative, Principal of the school 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 DGS or obtain prior approval to use substitute materials. Any hazardous material that must be incorporated into Contractor's work 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 equipments necessary to complete assigned work activity. Contractor shall be responsible for safeguarding their own materials, tools, and equipment.

DGS 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 DGS. Personal or business phone calls are not to be made on DGS 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 DGS. Service area must be restored to the condition that existed prior to the start of the work with emphasis on any special finish damage that may have occurred during the work. 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 capital improvement.

**Section 1.4 Coordination with DCPS and Other District Agencies.** The Contractor will be required to coordinate its work with DCPS school activities and other District agency municipal activities. The work will be performed in occupied buildings, and the Contractor may be required to work after hours or on weekends and holidays so as to not adversely impact educational or other municipal activities. The Contractor will be required to develop work plans that are coordinated with and acceptable to the school principals and other agency directors.

**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 students, teachers, school and municipal staff. All such construction barricades and life safety procedures shall be subject to the approval of the Department and its Program Manager.

**Section 2 Additional Work.** As may be requested from time to time by the Department, Contractor agrees to provide similar services at such other schools or municipal facilities within the District of Columbia as may be requested by the Department. With regard to any such Work, 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 will be permitted to subcontract the work in order to meet surge volumes that occur during peak repair periods or to meet LSDBE utilization goals, in accordance with Section 8 herein. However, 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.

**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 on October 1, 2012 and shall terminate on September 30, 2013. 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 Option Year.** The Department shall have the right to extend the term of this Agreement for two additional years, the first of which beginning on October 1, 2013 and ending on September 30, 2014 (such period, the "First Option Year"); and the second beginning on October 1, 2014 and ending on September 30, 2015 (such period, the "Second Option Year"). In the event the Department desires to extend the Agreement to cover an Option Year, the Department shall give the Contractor written notice of such election at least sixty (60) days prior to the beginning of the Option Year. Promptly after issuing such notice, the Department and the Contractor shall meet to negotiate the exact services and the cost thereof that will be provided during the Option Year. In the event the Department and the Contractor cannot agree on such services and pricing, then the Department shall have the right to assign this work to another contractor or to perform such work with its own forces.

**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 Prompt Notice.** In the event the Contractor encounters a situation which the Contractor believes to be a change to this contract, the Contractor shall provide the Department with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than ten (10) calendar days after encountering the situation. The Contractor acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Contractor shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Contractor shall include provisions similar to this provision in all of its subcontracts.

**Section 5.4 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 5.5 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 12 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 Bonds.**

**Section 1.1 Payment and Performance Bond.** Upon execution of this Agreement and before commencing any work pursuant to this Agreement, the Contractor shall provide to the Owner a payment bond and performance bond, each with a penal sum of One Million Dollars (\$1,000,000). Such bonds shall be issued by a surety approved by the United States Department of Treasury and shall remain in full force and effect throughout the duration of the Contract Term, including the 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.

**Section 1.2** 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 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 of these Special Provisions).

**Section 8 Subcontracts.** The Contractor shall perform the work with its own forces. In the event that the Contractor desires to engage one or more 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.

**Section 9 Economic Inclusion**

**Section 9.1 CBE Utilization.**

**Section 9.1.1** The Contractor shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least 50% of the Contract. Thirty-five percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Owner and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises. 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.

**Section 9.1.2** The Contractor has developed a CBE Utilization Plan that is attached hereto as **Exhibit C**. The Contractor shall comply with the terms of the CBE Utilization Plan in making purchases and administering its Subcontractors and Supply Agreements.

**Section 9.1.3** 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 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. In addition, the Contractor shall be required to comply with the workforce percentage goals established by the recently adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*) and any implementing regulations, including, but not limited to the following requirements:

- (i) At least 20% of journey worker hours by trade shall be performed by District residents;
- (ii) At least 60% of apprentice hours by trade shall be performed by District residents;
- (iii) At least 51% of the skilled laborer hours by trade shall be performed by District residents; and
- (iv) At least 70% of common laborer hours shall be performed by District residents.

**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 10 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 11 Alternate 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 Proposal, or has failed to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item, it shall inform the Department, in writing, of its claim. The notice must be delivered to the Department within

fifteen (15) days of the Department's decision, or within thirty (30) days of the written request for a Change Order, if the Department has failed to respond to the request. If the Contractor wishes to assert a claim, as such term is defined in the General Conditions, over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, the written notice of claim must be delivered within fifteen (15) days of the date the Contractor knew or should reasonably have known of the events giving rise to the claim or dispute.

**Section 11.2 Contents of Notice.** 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 in arbitration with respect to the claimed items.

**Section 11.3 Mediation.** Unless the parties hereafter otherwise agree, all disputes arising from or in connection with this Contract or its breach, or relating to the Project, whether framed in contract, tort or otherwise, shall first be referred to non-binding mediation in accordance with the American Arbitration Association's Construction Industry Mediation Rules. Within a reasonable time following the execution of the Contract, the Department, subject to the Contractor's reasonable approval, shall appoint an independent mediator(s), which will be charged with overseeing the mediation process.

**Section 11.4 Procedures.** Unless the parties hereafter otherwise agree, all disputes 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 by mediation, shall be resolved by 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 2 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.

**Section 12.2 Additional Insureds.** Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured the Department, the District of Columbia Public Schools, and the District of Columbia and shall not be cancelable or reduced without thirty (30) calendar days' prior written notice to the Department.

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

**Section 12.4 Strength of Insurer.** All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

**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 § 2-308.14.

**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 former Department or District 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.**

**IN WITNESS WHEREOF**, each of the parties to this Agreement has caused this Agreement to be signed by its duly authorized representative.

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

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

**[COMPANY NAME]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A**

**Project Facilities**

**Exhibit B**

**Hourly Rates**

**Exhibit C**

**CBE Utilization Plan**

**Exhibit D**

**Service Contract Act Wage Rates**