

**MEMORANDUM OF AGREEMENT
BY AND BETWEEN
Agency/Facility Name Here
AND
THE GENERAL SERVICES ADMINISTRATION**

I. PURPOSE

To establish an agreement between the Agency/Facility Name here (the “Agency”) and the U.S. General Services Administration (“GSA”), (individually a “Party,” collectively “the Parties”), for GSA to enter into contract(s) for public utility services (the “GSA Contract(s)”), to a third-party supplier (the “Contractor”).

II. AUTHORITY

GSA is authorized by 40 U.S.C. 501 to contract for public utility services for periods not exceeding ten-years for federal agencies, mixed-use government corporations, the District of Columbia, and as otherwise permitted by 40 U.S.C. 502.

III. DESCRIPTION OF AGENCY RESPONSIBILITIES

By accepting the contract award, the Agency agrees (a) to purchase public utility services under the GSA Contract(s) at the Agency owned location(s) currently served by GSA public utility services contracts; (b) that it reasonably anticipates that it will continue to require utility services at the same or similar quantities; and (c) that but for this Memorandum of Agreement (MOA), GSA would not have entered into the GSA Contract(s) for the Agency.

No fiscal obligations are created through the execution of this MOA. Thus, there is no requirement that the Agency certify that current year funds are available to enter into this MOA or to defray future year payments. The Agency’s future year responsibility to pay for utility service is subject to the availability of funds, but the Agency agrees to make a good faith effort to meet its payment responsibilities as they arise.

The Agency will be responsible for:

- Issuing a separate task/delivery orders to the Contractor in order to establish an account for the purpose of paying energy bills;
- Entering any task/delivery order in the Federal Procurement Data System for applicable Agencies;
- Paying any costs relating to or arising out of any supplies or services provided by or through the GSA Contract including, but not limited to invoices, fees, penalties, load changes, or termination charges;
- Rendering payments in accordance with the terms and conditions of the GSA Contract;
- Attempting to resolve disputes with the GSA Contractor;
- Providing GSA with any and all information requested regarding the facilities’ account and usage data, including, but not limited to account information, invoices, and historical usage data, which may be shared with potential quoters;
- Granting GSA the authorization to obtain utility and usage data from the local utility;
- Informing GSA of any unique aspects of a facilities’ energy requirements for any of the included accounts (i.e., new or planned energy savings performance contract (ESPC) or utility energy service

contract (UESC) projects, existence of usable backup electric generators and their peak shaving capability, special facility rates, backup heating fuel sources, onsite generation, etc.);

- Providing information and copies of Agency-specific and/or unique regulatory and statutory requirements applicable to the purchase of public utility services; and
- Promptly notifying GSA of any anticipated significant load changes.

IV. DESCRIPTION OF GSA RESPONSIBILITIES

GSA will be responsible for:

- Collecting Agency utility consumption data, including interval data, with Agency authorization;
- Preparing and issuing the RFP;
- Providing the Agency with the price to beat estimate in advance of the auction;
- Evaluating offers and awarding the contract(s) that provides the lowest price to the Government in accordance with the RFP's selection criteria;
- Adhering to the Federal Acquisition Regulation (FAR), the General Services Administration Acquisition Manual (GSAM);
- Managing and administering the GSA Contract; and
- Settling unresolved disputes between the Agency and the Contractor as to the supply and services provided under the GSA Contract.

V. PRICING, SELECTION STRATEGY, AND TERM

In general, GSA's goal is to obtain the lowest priced energy supply from technically qualified contractors. GSA intends to request firm fixed prices for energy and all other pricing elements. Contract prices may be adjusted from time-to-time to reflect regulatory and tax changes that occur during the term of the contract.

GSA has implemented a streamlined approach for award decisions from Agencies. After each auction concludes, if the lowest price is either below, at or no more than 10% higher than the final price to beat estimate for that auction (which will be communicated to Agency prior to the auction), Agency will be deemed to have accepted the price and GSA will accept the price on Agency's behalf. If the lowest bid received is more than 10% higher than the final price to beat estimate, GSA will initiate discussions with our internal Procurement Team and Suppliers to get feedback on why the lowest bid was more than 10% higher than the final price to beat estimate. GSA will then reschedule the auction for a later date, which will be coordinated with the agencies.

VI. CONTRACT TERMINATION, DISPUTES AND PROTESTS

If a contract awarded pursuant to this Agreement is terminated or cancelled or a dispute or protest arises from specifications, solicitation, award, performance or termination of a contract, appropriate action will be taken in accordance with the terms of the contract and applicable laws and regulations.

The Agency shall be responsible for all costs associated with termination, disputes, and protests, including settlement costs, except that the Agency shall not be responsible to GSA for costs associated with actions that stem from errors in performing the responsibilities assigned to GSA. GSA shall consult with the Agency before agreeing to a settlement or payments to ensure that the Agency has adequate time in which to raise or address any fiscal or budgetary concerns arising from the proposed payment or settlement.

GSA will make every effort to negotiate fair and reasonable termination costs in the GSA Contract. However, it is likely that the Agency will incur a termination liability should it either stop contract performance before its expiration or significantly reduce its demand without notifying GSA. The Agency expressly acknowledges and understands that the GSA Contract will contain special language regarding termination. The Agency also understands that the GSA Contract will contain special language regarding load changes, and that the Agency is responsible for any increased costs due to load changes. In addition to any notification contained in the GSA Contract regarding load changes, the Agency also agrees to promptly notify GSA of any anticipated significant load changes as defined in the contract.

VII. AMENDMENTS

Any amendments to the terms and conditions of this Agreement shall be made in writing and signed by both the Agency and GSA.

VIII. AGREEMENT TERMINATION

This Agreement remains in effect unless terminated. This Agreement may be terminated upon 30 calendar days' written notice by either party. If this Agreement is terminated, any implementing contract/order may be, but is not automatically, terminated. If the Agreement is terminated, GSA and the Agency shall agree upon the terms of the termination, including costs attributable to each party and the disposition of awarded and pending actions.

If GSA incurs costs due to the Agency's failure to give the requisite notice of its intent to terminate this Agreement, the Agency shall pay any actual costs incurred by GSA as a result of the delay in notification, provided such costs are directly applicable to the failure to give notice.

IX. INTERPRETATION OF THIS AGREEMENT

If GSA and the Agency are unable to agree about a material aspect of this agreement, the parties agree to engage in an effort to reach mutual agreement in the proper interpretation of this agreement, including amendment, if necessary, by escalating the dispute within their respective organizations.

FOR THE AGENCY/FACILITY NAME HERE

Signature

Name (print)

Title

Date

FOR THE U.S. GENERAL SERVICES ADMINISTRATION

Signature

Name (print)

Title

Date