Des Moines Public Schools
Purchasing Department
515-242-7649

PROFESSIONAL SERVICES AGREEMENT – RFP7605 HVAC Services

THIS AGREEMENT is entered into the date listed below written between the Des Moines Public Schools (**District**) and (**Provider**)

Name: Innovative Mechanical Services

Address: 613 SE Magazine Road

City State Zip: Ankeny, Iowa 50021

Phone: 515-964-7215

Email: agardiner@irsims.com

1. **SERVICES BY PROVIDER**
   - **A. Performance of Services:** The Provider shall perform the services described in the scope of work detailed Section Four (IV) of Request for Proposal RFP7605 HVAC Services. All services will be rendered to the best of the Providers ability and in a timely and professional manner in compliance with all the terms and conditions established by the District.
   - **B. Modification:** The District may make changes to the services that were described in Section four (IV) in Request for Proposal RFP7605 HVAC Services. In the event of a modification to the original document, the District shall notify the Provider by written notice. If any modification results in an increase or a reduction of the work described in this section, then the compensation hereunder shall be modified, if mutually accepted by both parties.

2. **PAYMENT**
   - **A. Payment Terms:** The District shall pay the Provider as detailed in the Scope of Work and stated below: The District plans to pay the Provider using a procurement or virtual credit card, or may make payments by electronic funds transfer and recommends that the Provider accepts one of these forms of payment. Invoices should be sent to the District within 2 business days after completion of work.

3. **DISCRIMINATION AND COMPLIANCE WITH LAWS**
   - **A. Compliance:** The Provider shall be familiar and comply with all local, state, and federal directives, ordinances, rules, orders, and laws as applicable to, and affected by, this contract. It is the policy of the Des Moines Community School District not to illegally discriminate on the basis of race, color, national origin, sex, disability, religion, creed, age (for employment), marital status (for programs), sexual orientation, gender identity and socioeconomic status (for programs) in its educational programs and its employment practices. There is a grievance procedure for processing complaints of discrimination. If you believe you have been discriminated against or treated unjustly, please contact the Director of Human Resources, Anne Sullivan at 2323 Grand Avenue, Des Moines, IA 50312, 515-242-7662 anne.sullivan@dmschools.org Section 504 34 CFR 104.8, Title IX 34 CFR 106.9, OCR Guidelines IV.O and V.C
   - **B. Violation**: Violation of this Section 3 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension of the Agreement by the District, in whole or in part, and may result disqualification for further work for the District.

4. TERMINATION OF AGREEMENT

A. Termination: In order to protect the vested interests of the taxpayers of the Des Moines Public School District, and to ensure the efficient utilization of their tax dollars, Provider shall comply with all contractual obligations contained herein, with respect to these obligations, the District will report any non-compliance issues in writing, to the Provider for corrective action. Continued non-compliance by the Provider shall be the District's justification for placing the Bidder's contract on probation status or termination.

B. Debarment: The District is prohibited from entering into a contract where an organization or, its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State or Local department or agency.

C. All other terms and conditions as listed @ http://www.dmschools.org/wp-content/uploads/2015/08/General-Terms-n-Conditions-New.pdf as stated in Request of Proposal RFP7605 HVAC Services.

5. DISCLOSURE & OWNERSHIP OF WORK

A. Non-Disclosure Agreement: The provider agrees to all terms and conditions as specified in their executed Non-Disclosure Agreement, and is subject to Iowa code chapter 22 regarding public open records. If necessary for the service provided.

B. Information: All data, materials, reports, memoranda and other documents developed under this Agreement whether finished or not shall become the property of the District, shall be forwarded to the District at its request and may be used by the District as it sees fit.

6. ADMINISTRATION

A. The Facility Management Director, Jamie Wilkerson, or his designee shall be the District's representative, and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices under this agreement.

7. INDEMIFICATION

The Provider and the District agree on the following terms as stated in the Request for Proposal RFP7605 HVAC Services.

8. INSURANCE: RISK OF LOSS

The Provider and the District agree on the following terms as stated in the Request for Proposal RFP7605 HVAC Services.

9. INDEPENDENT PROVIDER

A. Employees: All employees of the Provider shall be considered to be, at all times, employees of the Provider under its sole direction and not an employee or agent of the District. The Provider shall supply competent and physically capable employees in a number that is consistent with the requirements detailed in the scope of work. Where required, employees shall be licensed and accredited. The Provider shall certify that all employees employed in support of this contract who have direct contact with students, which is defined to mean being in the presence of students during regular school hours or during school-sponsored activities, have not been convicted of (i) a felony; (ii) any offense involving the sexual molestation, physical or sexual abuse or rape of a child; or (iii) a crime of moral turpitude. In signing the Professional Services Contract the Provider has read, understands and will comply with the attached Offender's Acknowledgement Form below (Appendix A). The Provider will be responsible for the cost of all the equipment, accessories, labor, and materials in order to the work as detailed in the Scope of Services.

9. INDEPENDENT PROVIDER

B. Removal of Employees: The District may require the Provider to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on District property is not in the best interest of the District.

C. Controlled Substances: In accordance with the District's policy regarding the use of tobacco and alcohol products and/or illegal drugs, no employee of the Provider shall be permitted to use these substances when performing work on District property.

10. CONTRACT ASSIGNMENT

Neither the District nor the Provider shall assign, transfer, or encumber any rights, duties or interests accruing from this Agreement without the express prior written consent of the other.

11. FUTURE SUPPORT

The District makes no commitment and assumes no obligations for the support of the Providers activities except as set forth in this Agreement.

12. GENERAL PROVISIONS

A. Governing Laws: The terms and conditions of this Agreement shall be construed in accordance with the laws of Polk County, Iowa. Wherever differences exist between Federal and State statutes or regulations affecting this Agreement, interpretation shall be in the direction of that which is most beneficial to the interests of the District.

B. Severability: If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The District and the Provider agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

C. Non Waiver: Any failure by the District to enforce strict performance of any provision of the Agreement will not constitute a waiver of the District's right to subsequently enforce such provision or any other provision of the Agreement.

D. District Marks: The Provider will not use any trade name, trademark, service mark, or logo of the District in any advertising, promotions, or otherwise, without the Districts express prior written consent.

E. No Assignments: Neither the Agreement nor any rights of obligations of the Provider arising under the Agreement may be assigned without the Districts prior written consent.

F. Notices: All notices and other communications under the Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address set below.

G. Legal Fees: In any lawsuit between the parties with respect to the matters covered by the Agreement, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in the lawsuit, in addition to any relief may be awarded.

H. Counterparts: The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together shall be deemed to be the same document.

13. SCOPE OF WORK

A. Scope

The provider and the District agree on the following terms for the Provider to deliver services described in the scope of work detailed in Section Four (IV) of Request for Proposal RFP7605 HVAC Services.

B. Application of Award

This Request for Proposal RFP7605 HVAC Services has two awardees. Innovative Mechanical Services (IMS) is the primary awardee and Central Iowa Mechanical (CIM) is the secondary awardee. The primary awardee retains the right of first refusal. Before work begins the District will solicit a quote from the primary awardee, who must determine if they are be able to complete the project by the specified deadline. If the due date can be met the provider must quote the number of hours needed to complete the project. If the primary awardee is unable to complete the project by due date the District reserves right to utilize the secondary awardee in which the project must be completed by the specified deadline. At which time the secondary awardee will quote the number of hours needed to complete the project. The District will hold whomever is awarded the project to complete the assigned work by the date specified. Failure to complete the work assigned by the specified date will result in a negative grade for the awardee and may be grounds for the District to reassign the provider's award status.

C. Contract Term

The service will begin on July 1, 2017 and end on the last day of the fiscal school year, June 30, 2018.
The contract period shall be for one (1) year and may be renewable for four additional one-year periods at the end of each fiscal year at the discretion of the District. The renewal's pricing structure will be negotiated prior to the termination of the previous contract period. A resulting contract may be terminated at any time without penalty by the District upon a thirty (30) day written notice.

D. Bonding / Performance Requirements

Surety bonds (performance bonds) for labor and materials are not required for project costing less than $25,000.00 dollars. However if a project is estimated at or above $25,000.00 then the awardee must be able to provide a 100% Performance bond, cashiers or certified check in the full amount of the project. Failure to secure appropriate bonding may result in the immediate termination of any resulting contract from this agreement. A valid bond must be provided to the Facility Management Director, Jamie Wilkerson prior to commencement of work.

14. CONFLICTING CONTRACT TERMS

In the event there is conflicting information the ranking level of precedence will be the 1.) Professional Service Contact, 2.) The original Request for Proposal RFP7605 HVAC Services, 3.) The response from the provider to RFP7605 HVAC Services.

15. EXTENT OF AGREEMENT / MODIFICATION

This Agreement, together with the attachment below and other written addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

PROVIDER	DISTRICT
By: Innovative Mechanical Services	By: Thomas Harper
Printed Name: Rodney Wheston	Printed Name: Thomas Harper
Title: President	Title: CFO
Effective Date Signed: 6/8/2017	Effective Date Signed: 6/19/17
Address: 613 Magazine Road	Address: 2323 Grand Ave
City: Ankeny State: IA	City: DM State: IA
Zip: 50023	Zip: 50312

Attachments:
RFP7605 HVAC Services
Response to RFP7608 HVAC Services
Board Agenda