

**MEMORANDUM OF AGREEMENT
BETWEEN THE
DISTRICT OF COLUMBIA PUBLIC SCHOOLS
AND
UNITED STATES ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT**

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the United States Army Corps of Engineers, Baltimore District ("Baltimore District") and District of Columbia Public Schools ("DCPS") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision, by the Baltimore District, of engineering, procurement, and technical services related to and in support of the Baltimore District's overall responsibility, as specified in Support Agreements ("SA(s)"), for project management of the assessment, renovation, restoration, operation and maintenance of public schools in the District of Columbia. This MOA is entered into pursuant to 31 USC 6505.

ARTICLE II - SCOPE

Services which the Baltimore District will provide under this MOA include facilities assessment, engineering services, contract solicitation and source evaluation management, contract administration, construction quality assurance, facility management, environmental compliance services and such other services as may be necessary in support of the assessment, renovation, restoration, operation and maintenance of the public schools in the District of Columbia.

The responsibilities and duties of the DCPS and the Baltimore District with respect to acquisition of design, construction, and related services shall be more specifically elaborated in individual Support Agreements ("SA(s)") executed by DCPS as necessary to respond to Baltimore District recommendations on specific projects required to achieve the necessary facility remediation.

The currently anticipated value of the goods and services the Baltimore District will provide to the DCPS pursuant to this MOA is \$2,500,000 for Fiscal Year 1998. This value may be increased or decreased at the mutual agreement of the parties by the execution of SAs.

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Baltimore District and the DCPS, each party shall appoint a Principal Representative(s) to serve as its central point of contact on matters relating to this MOA. Additional representatives may be appointed to serve as points of contact on SAs.

ARTICLE IV - SUPPORT AGREEMENTS

In response to Baltimore District recommendations for facility remediation under this MOA, the Baltimore District and the DCPS shall execute mutually agreed upon written SAs, which shall include the following:

- a detailed scope of work statement detailing the specific responsibilities of each party;
- schedules;
- the amount of funds required to accomplish the scope of work as stated above;
- identification of individual project manager(s) for each party;
- identification of the Baltimore District's recommended acquisition strategy and types of contracts to be used, if known;
- identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance and contract audits;
- identification of each party's responsibilities regarding rights-to-data, software, and intellectual property;
- identification of responsibilities and procedures for coordination with other agencies as may be required; and
- such other particulars as a necessary to describe clearly the obligations of the parties with respect to the requested services.

Services, including incidental acquisitions necessary to carry out the requested services, shall be provided under this MOA only after an appropriate SA has been signed by a representative of each party authorized to execute that SA. The representative for the DCPS will be the Director of the Office of Acquisitions and Contracts Management or, if the Director of the Office of Acquisitions and Contracts Management is not available, the Chief, Capital Improvement Program Unit, Office of Acquisitions and Contracts Management. The representative for the Baltimore District is the Deputy District Engineer for Program Management or, if the Deputy District Engineer is unavailable, the Program Manager. Upon signature by each party's representative, an SA shall be complete.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the USACE

The Baltimore District shall provide the DCPS with support and services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in the SAs.

The Baltimore District shall insure that only authorized Baltimore District representatives sign SAs and identify individual project manager(s) under the SA.

The Baltimore District shall use its best efforts to determine the most effective strategy for providing services under the provisions of this MOA. The Baltimore District shall be responsible for complete development of procurement and acquisition instruments for goods and services required to execute its overall project management responsibilities, as specified in SAs, and shall provide contracts developed for these purposes to DCPS for award. To assure that appropriate business opportunities are afforded to contractors certified as District of Columbia local, small, and disadvantaged business enterprises, the Baltimore District shall follow a process directed by DCPS procurement officials.

The Baltimore District shall provide detailed periodic progress, schedule, financial and other status reports to the DCPS as agreed to in the SA(s). Financial reports shall include information on all funds received, obligated, and expended, as well as forecasted obligations and expenditures.

B. Responsibilities of the DCPS

The DCPS shall pay all costs associated with the Baltimore District's provisions of goods or services under this MOA and shall provide funds in advance in accordance with Article VI.

The DCPS shall insure that only the authorized District representatives sign SAs.

The DCPS shall develop draft SAs to include scope of work statements.

The DCPS shall obtain for the Baltimore District all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from Federal, state and local agencies, as necessary during the execution of each SA.

The DCPS shall retain responsibility for requirements imposed by other Federal, State, and local agencies.

The DCPS shall retain responsibility for compliance of the project with the provisions of the National Environmental Policy Act ("NEPA") and other applicable environmental statutes or

regulations.

ARTICLE VI - FUNDING

The DCPS shall pay all costs associated with the Baltimore District's provision of goods or services under this MOA. The DCPS shall formally transfer all of the funds necessary to accomplish the work specified in each SA in the form of a check made payable to Finance and Accounting Officer, Baltimore District, prior to the Baltimore District incurring costs or obligation against any SA. The DCPS shall also provide the date upon which the transferred funds expire for obligation, if applicable. The parties to this MOA agree that the Baltimore District does not have any funds that could be used to perform work on behalf of DCPS in advance of receipt of funds and that funds must be received before any work can be performed.

If the Baltimore District forecasts its actual costs under a SA to exceed the amount of funds available under that SA, it shall promptly notify the DCPS of the amount of additional funds necessary to complete work under that SA. The DCPS shall either provide the additional funds to the Baltimore District, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that SA.

Within 90 days of completing the work under a SA, the Baltimore District shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the Baltimore District shall return to the DCPS any funds advanced in excess of the actual costs as then known, or the DCPS shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the DCPS's duty in accordance with Article X to pay for any costs which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This MOA shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contracts awarded by the DCPS utilizing the services of the Baltimore District shall be governed by the FAR. Unless otherwise provided by law, services provided in support of contracts awarded by DCPS shall be in accordance with applicable DCPS regulations and policies.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

The Baltimore District shall provide assistance to the DCPS in its defense of claims and disputes by prime contractors of DCPS-awarded contracts to which the Baltimore District provided support and services.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the DCPS and the Baltimore District shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event that such measures fail to resolve the dispute, they shall refer it for resolution to an impartial third party to be determined later.

ARTICLE X - LIABILITY

If liability of any kind is imposed on the United States relating to the Baltimore District's provision of goods or services under this MOA, the Baltimore District will accept accountability for its actions, but the DCPS shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This provision shall not be construed to limit the liability of the United States pursuant to the Federal Torts Claims Act as a result of the goods or services provided by the Baltimore District under this MOA.

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the DCPS's programs before Congress, the District of Columbia Financial Responsibility and Management Assistance Authority and other instrumentalities of the federal and District of Columbia governments shall be the responsibility of the DCPS. The Baltimore District may provide, upon request, any assistance necessary to support the DCPS's justification or explanations of the DCPS's programs conducted under this MOA. In general, the DCPS is responsible for all public information. The Baltimore District may make public announcements and respond to all inquiries relating to any assistance provided to or requested by the DCPS under this MOA. The DCPS and the Baltimore District shall make their best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to SAs under this MOA. The Baltimore District shall consult with the DCPS before making any public statement regarding any procurement action undertaken by DCPS.

ARTICLE XII - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the DCPS and the Baltimore District.

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

D. Manifests and Related Documents

Baltimore District personnel are authorized to execute all manifests and related documents, Federal and State, on behalf of the DCPS that pertain to work performed under this MOA by the Baltimore District. Baltimore District personnel shall annotate the manifests and related documents with the phrase "On behalf of DCPS." If any applicable regulations do not permit the Baltimore District to sign such documents on behalf of DCPS, the Baltimore District shall contact the DCPS representative for specific guidance. Upon fiscal completion of work under a SA, the Baltimore District shall forward manifests and related documents to the DCPS.

E. Limitations on Contracting

The parties to this MOA understand that the Baltimore District does not, as of the date of the execution of this MOA, have the authority to issue contracts on behalf of the DCPS and that its support hereunder shall be limited to those services that can be provided by in-house resources.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

Either party may request, verbally or in writing, modification or amendment of this MOA. The modification or amendment shall be effective only by written, mutual agreement of the parties.

Either party may request, verbally or in writing, modification or amendment of an SA. The modification or amendment shall be effective only by written, mutual agreement of the parties.

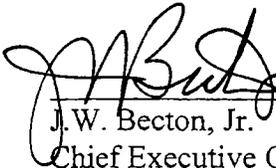
Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective on the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the DCPS shall continue to be responsible for all costs incurred by the Baltimore District under this MOA and its SAs.

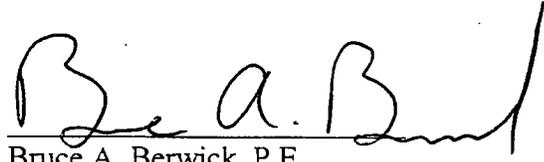
ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by both the DCPS and the Baltimore District and approved by the Executive Director of the D.C. Financial Responsibility and Management Assistance Authority and the Chief Procurement Officer for the District of Columbia.

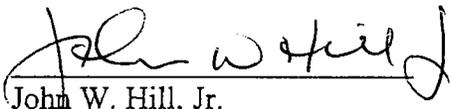
For DCPS

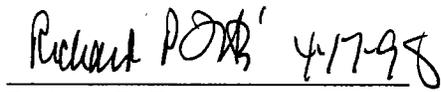
For Baltimore District

 17 Apr 98
J.W. Becton, Jr.
Chief Executive Officer
District of Columbia Public Schools

 17 April 98
Bruce A. Berwick, P.E.
Colonel, Corps of Engineers
District Engineer

Approved by:

 17 April 1998
John W. Hill, Jr.
Executive Director
District of Columbia Financial Responsibility
and Management Assistance Authority

 4/17/98
Richard P. Fite
Chief Procurement Officer
District of Columbia