

**CONTRACT #1**  
**RFS # 345.49-44010**  
**FA # 10-30675**

**Human Services**

**VENDOR:**  
**The ServiceMaster Company**



STATE OF TENNESSEE  
DEPARTMENT OF HUMAN SERVICES

CITIZENS PLAZA BUILDING  
400 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1403

TELEPHONE: 615-313-4700 FAX: 615-741-4165  
TTY: 1-800-270-1349  
[www.state.tn.us/humanserv/](http://www.state.tn.us/humanserv/)

PHIL BREDESEN  
GOVERNOR

VIRGINIA T. LODGE  
COMMISSIONER

RECEIVED

JUN 30 2010

FISCAL REVIEW

June 30, 2010

Mr. James W. White, Executive Director  
Tennessee General Assembly  
Fiscal Review Committee  
320 Sixth Ave., N.  
8<sup>th</sup> Floor Rachel Jackson Building  
Nashville, TN 34243

Dear Mr. White:

Accompanying this correspondence is a *Request: Non-Competitive Amendment* form, which relates to the procurement of services from The ServiceMaster Company for technical assistance related to the management of the Weatherization Assistance Program.

This amendment to the subject competitively-bid contract would have the single effect of permitting an extension of the contract term, in order that said services can be procured through March 31, 2012, which is the date that funding made available through the American Recovery and Reinvestment Act of 2009 expires. It is in the best interest of the State to fully utilize these funds, which will not be exhausted by the current end date of the Contract on September 30, 2010. Because this amendment does not change the original maximum liability and since the Contractor will simply receive future payments for services delivered on a delayed timeline, this will provide no financial gain to the Contractor that was not recognized at the time that the procurement was conducted.

Should you have any questions, please feel free to call Jeff Roberts at 615-313-4705.

Sincerely,

A handwritten signature in cursive script that reads "Virginia T. Lodge".

Virginia T. Lodge  
Commissioner

Attachments

VTL:DTG

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Jeff Roberts	*Contact Phone:	(615) 313-4705
*Original Contract Number:	FA 10-30675	*Original RFS Number:	34549-00710 (bid solicitation)
Edison Contract Number: <i>(if applicable)</i>	18931	Edison RFS Number: <i>(if applicable)</i>	34549-44010 (contract)
*Original Contract Begin Date:	February 3, 2010	*Current End Date:	September 30, 2010
Current Request Amendment Number: <i>(if applicable)</i>	Amendment 1		
Proposed Amendment Effective Date: <i>(if applicable)</i>	October 1, 2010		
*Department Submitting:	Human Services		
*Division:	Adult & Family Services		
*Date Submitted:	July 6, 2010		
*Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>			
*Contract Vendor Name:	The ServiceMaster Company		
*Current Maximum Liability:	\$3,000,000		
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2010	FY: 2011	FY:	FY:
\$ 2,500,000	\$ 500,000	\$	\$
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report)</i>			
FY: 2010	FY:	FY:	FY:
\$ 430,830.83	\$	\$	\$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	Not applicable		
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	Not applicable		
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	Not applicable		

Supplemental Documentation Required for  
Fiscal Review Committee

*Contract Funding Source/Amount:	State:		Federal:	\$3,000,000
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
N/A				
Method of Original Award: <i>(if applicable)</i>		Competitive Bid Solicitation		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$3,000,000		

## Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

**Response: Neither Section A nor C.3 is being changed.**

**Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.**

Deliverable description:	FY:	FY:	FY:	FY:	FY:

**Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.**

Deliverable description:	FY:	FY:	FY:	FY:	FY:

**Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.**

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Unit	Voucher	Invoice	Remit Yr	Name	Gross Amt	Reference	Print Date	Recon Status	Reconciled Date	Warrant Amount	Method
34549	00006226	TN-34549-44010-6110	0000123068	The Service Master Company	216,562.50	0000414179	6/24/2010	UNR		216562.500	EFT
34549	00005631	TN-34549-44010-5110	0000123068	The Service Master Company	161,903.75	0000390042	6/7/2010	UNR		161903.750	EFT
34549	00004678	TN-34549-44010-4110	0000123068	The Service Master Company	52,364.58	0000342483	4/28/2010	UNR		52364.580	EFT

430,830.83

**NON-COMPETITIVE AMENDMENT REQUEST:**

APPROVED

Commissioner of Finance &amp; Administration

1) RFS #	34549-01711 (associated with RFS # 34549-44010 [Contract] and RFS# 34549-00710 [APM])	
2) Procuring Agency :	Department of Human Services	
<b>EXISTING CONTRACT INFORMATION</b>		
3) Service Caption :	Technical Assistance Related to the Management of the Weatherization Assistance Program	
4) Contractor :	The ServiceMaster Company	
5) Contract #	FA 10-30675	
6) Contract Start Date :	February 3, 2010	
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)	September 30, 2010	
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$3,000,000.00	
<b>PROPOSED AMENDMENT INFORMATION</b>		
9) Amendment #	One	
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	October 1, 2010	
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	March 31, 2012	
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$3,000,000.00	
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
14) Description of the Proposed Amendment Effects & Any Additional Service :	<p>The proposed amendment will have the effect of extending the contract term by eighteen months. No additional funding will be added to the contract through this amendment.</p>	
15) Explanation of Need for the Proposed Amendment :	<p>The subject services were procured by means of a competitive bid solicitation, and are funded with monies made available through the American Recovery and Reinvestment Act of 2009. Since the full utilization of these monies is in the best interest of the state, and the contract funds will not have been exhausted by the current end date of the contract, the Department is seeking permission to extend the contract term.</p>	
16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)	<p>The subject company is a publicly traded company. It is located at the following address:</p> <p>The ServiceMaster Company  3839 Forest Hill Irene Rd.  Memphis, TN 38125</p>	

17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)

Documentation is ...  Not Applicable to this Request  Attached to this Request

18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is ...  Not Applicable to this Request  Attached to this Request

19) Department of Human Resources Endorsement : (required for state employees training service)

Documentation is ...  Not Applicable to this Request  Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

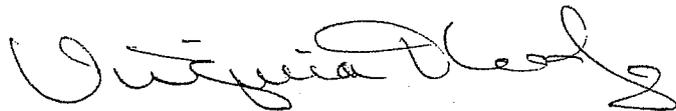
The contracted services were awarded pursuant to a competitive procurement earlier this year. Because of the short timeframe since the cost bids were obtained and the contract awarded, there is no indication to support a conclusion that re-bidding the work at the end of the present contract term would result in any appreciable savings to the state.

21) Justification for the Proposed Non-Competitive Amendment :

See #15 above.

**AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



Virginia T. Lodge, Commissioner

JUN 30 2010

Date

# RULE EXCEPTION REQUEST

APPROVED

COMMISSIONER OF FINANCE &amp; ADMINISTRATION

1	REQUEST RFS #	34549-01511 (associated with 34549-44010; FA 10-30675)
2	CONTRACT #	N/A
3	SERVICE	Technical Assistance Related to the Management of the Weatherization Assistance Program
4	CONTRACTOR	The ServiceMaster Company
5	CONTRACT BEGIN DATE	February 3, 2010
6	CONTRACT END DATE (with ALL options to extend exercised)	September 30, 2010
7	CONTRACT MAXIMUM LIABILITY (with ALL options to extend exercised)	\$3,000,000.00
8	SUBJECT RULE	<input type="checkbox"/> 0620-3-3-.07(5) – prohibiting a contract term greater than five (5) years <input type="checkbox"/> 0620-3-3-.07(8) – prohibiting a contract with a former state employee in within six (6) months of termination <input type="checkbox"/> 0620-3-3-.07(22) – requiring that contractor travel expense reimbursement/compensation shall be subject to the prevailing state Comprehensive Travel Regulations (this request MUST also attach documentation of F&A Budget support of the request) <input type="checkbox"/> 0620-3-3-.05(5) – requiring a contract set forth the prescribed Nondiscrimination provision <input checked="" type="checkbox"/> 0620-3-3-.07(1)(c) – contract term extension not provided for in the base contract must be requested in writing and justified by the procuring agency head <input checked="" type="checkbox"/> 0620-3-3-.05 requiring that the form and content of a service contract must conform with the applicable model policy (language and associated instructions)
9	EXCEPTION REQUESTED	<p>The department seeks permission to extend the term of the subject contract, as permitted by Rule 0620-3-3-.07(1)(c). As an adjunct to the request to permit contract term extension, the department proposes, for the sake of efficiency, that the approved term extension be granted through March 31, 2012, which is the remaining period of time that monies available pursuant to the American Recovery and Reinvestment Act of 2009 may be expended.</p>
10	JUSTIFICATION	<p>The contracted services are funded with monies made available through the American Recovery and Reinvestment Act of 2009. Since the full utilization of these monies is in the best interest of the state, and the contract funds will not have been exhausted by the current end date of the contract, the Department is seeking permission to extend the contract term, and this request and justification shall serve as that required by the rules noted above.</p>

AGENCY HEAD SIGNATURE & DATE (procuring agency head or authorized signatory)



JUN 28 2010

VIRGINIA T. LODGE, COMMISSIONER



# GRANT AMENDMENT

Agency Tracking # <b>34549-44010</b>	Edison ID <b>18931</b>	Contract # <b>FA 10-30675</b>	Amendment # <b>01</b>
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Grantee (legal entity name) The ServiceMaster Company	Grantee Federal Employer Identification # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 36-3858106
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Amendment Purpose/Effect  
Extend contract and change funding between years

Grant Begin Date February 3, 2010	Grant End Date March 31, 2012	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA # (s) 81.042
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010	\$0.00	\$680,840.00	\$0.00	\$0.00	\$680,840.00
2011	\$0.00	\$1,325,000.00	\$0.00	\$0.00	\$1,325,000.00
2012	\$0.00	\$994,160.00	\$0.00	\$0.00	\$994,160.00
					\$0.00
					\$0.00
					\$0.00
<b>TOTAL:</b>	<b>\$0.00</b>	<b>\$3,000,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$3,000,000.00</b>

American Recovery and Reinvestment Act (ARRA) Funding -  YES  NO

- COMPLETE FOR AMENDMENTS - Agency Contact & Telephone #  
Rick Brown 615-313-5382

FY	Base Contract & Prior Amendments	This Amendment ONLY	Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
2010	\$2,500,000.00	(\$1,819,160.00)	<b>Jeffrey W. Roberts</b>
2011	\$500,000.00	\$825,000.00	
2012	\$0.00	\$994,160.00	

		Speed Code	Account Code
		HS00001008	71399000
<b>TOTAL:</b>	<b>\$3,000,000.00</b>	<b>\$0.00</b>	

**AMENDMENT ONE  
TO FA 10-30675**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and The ServiceMaster Company, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section B is deleted in its entirety and replaced with the following:

**B. CONTRACT TERM:**

This Contract shall be effective for the period commencing on February 3, 2010 and ending on March 31, 2012. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

The revisions set forth herein shall be effective October 1, 2010. All other terms and conditions not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**THE SERVICEMASTER COMPANY:**

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**MICHAEL M. ISAKSON, PRESIDENT & COO**

**DATE**

**DEPARTMENT OF HUMAN SERVICES:**

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**VIRGINIA T. LODGE, COMMISSIONER**

**DATE**

**ALTERNATIVE PROCUREMENT METHOD REQUEST:**

Cy 09-961

APPROVED  
 Justin P. Wilson / mko  
 12/22/09  
 Comptroller of the Treasury

APPROVED  
 DEC 22 2009  
 M. D. G...  
 Commissioner of Finance & Administration

1	RFS#	34549-00710
2	Service Caption :	Technical Assistance Related to the Management of the Weatherization Assistance Program
3	Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	To be determined based on approval date of APM
4	Contract End Date : (if all options to extend the contract are exercised)	September 30, 2010
5	Maximum Cost : (if all options to extend the contract are exercised)	\$5,000,000
6	Service Description :	The Department of Human Services seeks a contractor to provide technical assistance in the management, implementation, and analysis of the Weatherization Assistance Program (WAP). Said technical assistance may include, but not be limited to, analysis of statewide data related to weatherization projects energy audit practices to determine trends and patterns, development and delivery of training as necessary to achieve consistency with weatherization standards and health and safety considerations, and assistance to local weatherization agencies and/or the state in completing various aspects of the WAP.
7	Justification for the Alternative Procurement Method (instead of an RFP) :	Because the qualifications of an Offeror to provide the services sought via this procurement can be assessed by verifying that certain objective criteria are satisfied, the advantages to the Department to solicit technical proposals from entities regarding this procurement are minimal. Therefore the Alternative Procurement Method is preferable to a Request for Proposals to select an Offeror for contract award.
8	Alternative Contract Award Procedures & Contractor Selection Criteria :	<p>1. SOLICITATION</p> <p>a. Procuring agency staff will compile a list of at least five (5) potential contractors that are reasonably assumed to be potential responsive, responsible contractors of the subject service. Procuring agency staff will:</p> <ol style="list-style-type: none"> <li>1. identify potential contractors through resources such as, current and past contractors, licensure boards, professional associations, the internet, and potential contractors recommended by knowledgeable state employees; and</li> <li>2. include <u>all</u> minority, disadvantaged, and small businesses that are registered with the state and identified as having the ability to deliver the subject service and likely to meet minimum qualifications.</li> </ol> <p>b. Procuring agency staff will directly solicit all vendors on the above-referenced list using the <i>Solicitation</i> document attached hereto as Exhibit 1 and will submit the solicitation document for posting on the F&amp;A RFPs &amp; Other Public Notices web page.</p> <p>c. Before or after the <i>Solicitation</i> is publicly released, procuring agency staff may adjust (without additional approvals) the procurement schedule as may be appropriate.</p> <p>2. COMPETING OFFERS REQUIRED</p> <p>The procuring agency shall require that at least three solicitation responses are received by the solicitation response deadline. If this required number of solicitation responses are not received, the procuring agency will proceed with the evaluation of solicitation responses received, only after obtaining the approval of the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury.</p>

3. EVALUATION

- a. A team of at least three procuring agency employees will review the *Qualifications Evidence* and any supporting documentation submitted with each offer. For an offer to be responsive, responsible, acceptable and eligible for contract award, the evaluators must determine that it documents that the Offeror meets minimum qualifications and requirements specified by the *Solicitation* and is, at least, minimally acceptable as a contractor for the subject services. The procurement coordinator will document, in writing, any evaluator's determination (and the specific reasons therefor) that an offer failed to adequately document Offeror compliance with minimum qualifications and requirements and acceptability for contract award.
- b. The procurement coordinator will review the *Cost Offer* submitted by each Offeror deemed acceptable for contract award to assess whether each complies, without qualification, with *Solicitation* instructions. The procurement coordinator will document, in writing, any determination (and the specific reasons therefor) that a *Cost Offer* is non-compliant with requirements such that the Offeror is non-responsive to the *Solicitation*.
- c. The procurement coordinator will identify the responsive, responsible *Cost Offer* indicating the lowest cost to the state.

4. AWARD

- a. The awarded contract will be drafted in accordance with the *pro forma* contract attached to the *Solicitation* document.
- b. The procuring agency will award the contract to the individual or entity with the *Cost Offer* indicating the lowest cost to the state.

In the event that two or more *Cost Offers* indicate the same cost to the state, the procurement coordinator will request a best and final *Cost Offer* from the tied Offerors. Should a second tie result, the contract award shall be decided by chance.

9 Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)

Documentation is  Not Applicable to this Request  Attached to this Request

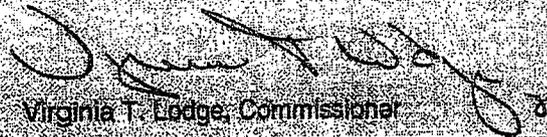
10 Health Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is  Not Applicable to this Request  Attached to this Request

11 Department of Human Resources Endorsement : (required for state employees training service)

Documentation is  Not Applicable to this Request  Attached to this Request

12 AGENCY HEAD SIGNATURE & DATE : (procuring agency head or authorized signatory)

  
Virginia T. Lodge, Commissioner

12/22/09  
Date



**CONTRACT**

(FA-type fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

<b>Agency Tracking #</b> <p style="text-align:center">34549-440-10</p>	<b>Edison ID</b> <p style="text-align:center">18931</p>
<b>Contractor</b> The Service Master Company	<b>Contractor Federal Employer Identification or Social Security #</b> <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 36-3858106

**Service**  
 Technical Assistance Related to the Management of the Weatherization Assistance Program

<b>Contract Begin Date</b> 02/03/2010		<b>Contract End Date</b> 09/30/2010		<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		<b>CFDA # (s)</b> 81.042
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>	
2010	\$0.00	\$2,500,000.00	\$0.00	\$0.00	\$2,500,000.00	
2011		\$500,000.00			\$500,000.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
<b>TOTAL:</b>	\$0.00	\$3,000,000.00	\$0.00	\$0.00	\$3,000,000.00	

**American Recovery and Reinvestment Act (ARRA) Funding -**  YES  NO

**OCR USE FA**  **Agency Contact & Telephone #**  
 Rick Brown 615-313-5382

**Agency Budget Officer Approval** (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)  
*Jeffrey W. Roberts*

**#** FA1030675 **Speed Code** 4S00001008 **Account Code** 71399000

**Contractor Ownership/Control**

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other

**Contractor Selection Method**

<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input checked="" type="checkbox"/> Alternative Competitive Method *
<input type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Other *	

**\* Procurement Process Summary**  
 This contract was awarded pursuant to Solicitation Number 34549-0710 that was pre-approved via an Alternative Method Request.

*M. Roberts*  
**F&A Secured Document**  
**# FA1030675**

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF HUMAN SERVICES  
AND  
THE SERVICEMASTER COMPANY**

This Contract, by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and The ServiceMaster Company, hereinafter referred to as the "Contractor," is for the provision of services to assist in the management, delivery, and analysis of the weatherization assistance program, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.

Contractor Federal Employer Identification or Social Security Number: 36-3858106

Contractor Place of Incorporation or Organization: Delaware

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall provide technical assistance in the management of weatherization services to include all processes subsequent to the point of application approval to post-audit.
- A.3. The Contractor shall provide technical assistance in the management of weatherization services in accordance with all applicable U.S. Department of Energy regulations; all applicable Office of Management and Budget (OMB) circulars; and all applicable Department of Human Services' program or fiscal policy memorandums issued before the contract end date.
- A.4. The Contractor shall provide technical assistance in the proper methodology for conducting a pre- and post-energy audit in order to satisfy U.S. Department of Energy requirements.
- A.5. The Contractor shall provide technical assistance in the usage of the National Energy Audit Tool (NEAT) or the Manufactured Home Energy Audit (MHEA) in the performance of pre- and post-audits.
- A.6. The Contractor shall provide technical assistance in the proper methodology to award contracts to private vendors through a competitive bidding process, as approved by the State.
- A.7. The Contractor shall provide technical assistance in identifying and implementing appropriate measures to resolve weatherization installer performance deficits that fail to adhere to sound building science.
- A.8. The Contractor shall provide technical assistance in order to help local weatherization agencies meet their production benchmarks. Said assistance shall include identification of a sufficient pool of energy auditors and/or weatherization installers, and if necessary, outreach to potential clients.
- A.9. The Contractor shall provide technical assistance to aid local weatherization agencies in the submission of financial and client services reports, including wage information and invoices in a form and frequency prescribed by the State.
- A.10. The Contractor shall, at the request of the State, assist agencies identified by the State for corrective action measures in the development and execution of a corrective action plan in order to enable the agency to become compliant with their grant contract.

- A.11. The Contractor acknowledges and understands that the timeframe for supplying a project manager to provide technical assistance is situation dependent and that the State will prescribe a timeframe commensurate with a given situation at the time a request for technical assistance is made. After the receipt of such request, the Contractor shall respond to the State with a plan to provide technical assistance within five (5) business days. Such plan is subject to written approval of the State.
- A.12. The Contractor shall present to the State in advance of their assignment, the resumes of all individuals to be assigned as a project manager. Said individuals shall demonstrate actual experience, knowledge, and skills in weatherization measures, including the use of MHEA and NEAT tools. The State, at its sole discretion, reserves the right to refuse any personnel for use in the performance of this contract.
- A.13. The Contractor shall have sufficient skilled resources and infrastructure to operationalize and provide technical assistance on a statewide basis to up to eighteen (18) local weatherization agencies, as requested by the State. The Contractor shall not assume that this contract will result in the State requesting their technical assistance at any local weatherization agency.
- A.14. The Contractor shall report to the State on the effectiveness of technical assistance to improve weatherization operations in a local agency in a manner and according to a timeframe prescribed by the State.
- A.15. The Contractor shall perform an analysis of statewide weatherization audit data to ensure quality and consistency in the determination of weatherization needs for individual dwellings. In addition, the Contractor shall evaluate the current energy audit practices of each local agency involved in the State's weatherization program to help maximize the potential energy savings benefit for each home weatherized.
- A.16. The Contractor shall provide a written report to the State within one hundred twenty (120) days of the contract start date. Said report shall include analysis of homes weatherized from July 1, 2009 to the point that the report is prepared. It shall present conclusions regarding energy audits and make commensurate recommendations to the State for improvements in the energy audit process to ensure quality and maximize energy saving potential for weatherized homes. Said report shall also include recommendations for training necessary to improve quality and maximize energy savings.
- A.17. The Contractor shall, at the request of the State, develop and offer training necessary to address the recommendations made in Section A.16. and/or for the purpose of addressing any deficits or inconsistencies identified in energy pre-audits and addressing issues identified while providing technical assistance or training to local weatherization agencies. Said training shall:
- a. Provide the opportunity for hands-on experience where appropriate;
  - b. Employ a curriculum based on training recipient needs;
  - c. Tailor each class to the experience and needs of the students; and
  - d. As appropriate, use technology to enhance the learning experience, especially as related to audit education principles.
- A.18. The Contractor shall collaborate with the State to enhance the existing the weatherization program to identify and disseminate best practices and to ensure the existence of core competencies.
- A.19. The State will work with the Contractor regarding locating, planning, and implementation of training sessions, if training for multiple sites is required.

MMT  
02-03-10  
WJH/KRS  
02-03-10

- A.11. The Contractor acknowledges and understands that the timeframe for supplying a project manager to provide technical assistance is situation dependent and that the State will prescribe a timeframe commensurate with a given situation at the time a request for technical assistance is made. After the receipt of such request, the Contractor shall respond to the State with a plan to provide technical assistance within five (5) business days. Such plan is subject to written approval of the State.
- A.12. The Contractor shall present to the State in advance of their assignment, the resumes of all individuals to be assigned as a project manager. Said individuals shall demonstrate actual experience, knowledge, and skills in weatherization measures, including the use of MHEA and NEAT tools. The State, at its sole discretion, reserves the right to refuse any personnel for use in the performance of this contract.
- A.13. The Contractor shall have sufficient skilled resources and infrastructure to operationalize and provide technical assistance on a statewide basis to up to eighteen (18) local weatherization agencies, as requested by the State. The Contractor shall not assume that this contract will result in the State requesting their technical assistance at any local weatherization agency.
- A.14. The Contractor shall report to the State on the effectiveness of technical assistance to improve weatherization operations in a local agency in a manner and according to a timeframe prescribed by the State.
- A.15. The Contractor shall perform an analysis of statewide weatherization audit data to ensure quality and consistency in the determination of weatherization needs for individual dwellings. In addition, the Contractor shall evaluate the current energy audit practices of each local agency involved in the State's weatherization program to help maximize the potential energy savings benefit for each home weatherized.
- A.16. The Contractor shall provide a written report to the State within one hundred twenty (120) days of the contract start date. Said report shall present conclusions regarding energy audits and make commensurate recommendations to the State for improvements in the energy audit process to ensure quality and maximize energy saving potential for weatherized homes. Said report shall also include recommendations for training necessary to improve quality and maximize energy savings.
- A.17. The Contractor shall, at the request of the State, develop and offer training necessary to address the recommendations made in Section A.16. and/or for the purpose of addressing any deficits or inconsistencies identified in energy pre-audits and addressing issues identified while providing technical assistance or training to local weatherization agencies. Said training shall:
- a. Provide the opportunity for hands-on experience where appropriate;
  - b. Employ a curriculum based on training recipient needs;
  - c. Tailor each class to the experience and needs of the students; and
  - d. As appropriate, use technology to enhance the learning experience, especially as related to audit education principles.
- A.18. The Contractor shall collaborate with the State to enhance the existing the weatherization program to identify and disseminate best practices and to ensure the existence of core competencies.
- A.19. The State will work with the Contractor regarding locating, planning, and implementation of training sessions, if training for multiple sites is required.
- A.20. The State will identify and refer to the Contractor entities requiring technical assistance.

**B. CONTRACT TERM:**

This Contract shall be effective for the period commencing on February 3, 2010 and ending on September 30, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Million Dollars and No Cents (\$3,000,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
  - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Analysis and Report of Statewide Weatherization Audit Data (Reference Items A.15.& A.16.)	\$497,212.00
Technical Assistance/Training	\$ 275.00 per HOUR

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Lisa Elam, Director of Adult and Family Services Contracts  
 Tennessee Department of Human Services  
 Citizens Plaza Building, 12th Floor  
 400 Deaderick St.  
 Nashville, TN 37243-1403

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Human Services, Division of Adult and Family Services;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
  - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
  - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
  - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
  - iv. Amount Due by Service; and
  - v. Total Amount Due for the invoice period.

- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall

neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed

representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Lisa Elam, Director of Adult and Family Services Contracts  
Tennessee Department of Human Services  
Citizens Plaza Building, 12th Floor  
400 Deaderick St.  
Nashville, TN 37243-1403  
[Lisa.Elam@tn.gov](mailto:Lisa.Elam@tn.gov)  
Telephone #: 615-313-5786  
FAX #: 615-742-4459

The Contractor:

Brent Armstrong, Vice President and General Manager  
The ServiceMaster Company  
3839 Forest Hill Irene Rd.  
Memphis, TN 38125  
[barmstrong@smclean.com](mailto:barmstrong@smclean.com)  
Telephone #: 901-597-7207  
FAX #: 901-597-7207

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the

period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

- a. The Contractor shall maintain, at minimum, the following insurance coverage:
  - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
  - (2) Comprehensive Commercial General Liability with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State

or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

**E.8. Incorporation of Additional Documents.** Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Solicitation Response
- c. The Solicitation and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Solicitation Response

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

**E.9. Prohibited Advertising.** The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

**E.10. Lobbying.** The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- E.11. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.12. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.
- E.13. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be

deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.14. Federal Economic Stimulus Funding. This Contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

The Contractor (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at [www.whitehouse.gov/omb/recovery\\_default/](http://www.whitehouse.gov/omb/recovery_default/), as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at [www.whitehouse.gov/omb/financial\\_offm\\_circulars/](http://www.whitehouse.gov/omb/financial_offm_circulars/).
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at [www.tnrecovery.gov](http://www.tnrecovery.gov)).
- d. The Recovery Act, including but not limited to the following sections of that Act:
  - (1) Section 1604 – Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
  - (2) Section 1512 – Reporting and Registration Requirements. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
  - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
    - i. gross mismanagement,
    - ii. gross waste,
    - iii. substantial and specific danger to public health or safety,
    - iv. abuse of authority, or
    - v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall

be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at [www.recovery.gov](http://www.recovery.gov), for specific requirements of this section and prescribed language for the notices.)

- (4) Section 902 – Access Of Government Accountability Office. The Contractor shall provide that the Comptroller General and his representatives are authorized:
- i. to examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and
  - ii. to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.
- (5) Section 1514 – Inspector General Reviews. Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- (6) Section 1515 – Access of Offices of Inspector General to Certain Records and Employers. With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
- i. to examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
  - ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.
- (7) Section 1606 – Wage Rate Requirements. All laborers and mechanics employed by pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.

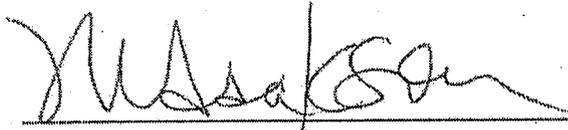
- (8) Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of

the iron, steel, and manufactured goods used in the project are produced in the United States.

- e. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
- f. If the Contractor enters into one or more subcontracts for any of the services performed under this Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E.14., "Federal Economic Stimulus Funding."

IN WITNESS WHEREOF,

THE SERVICEMASTER COMPANY:



MICHAEL M. ISAKSON, PRESIDENT & COO

01/29/2010

DATE

DEPARTMENT OF HUMAN SERVICES:



VIRGINIA T. LODGE, COMMISSIONER

2.1.10

DATE

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**