

CONTRACT FOR SALE OF UTILITIES AND RELATED SERVICES

This form only applies to the sale of utilities and related services by the Army to non-Federal customers.

For use of this form, see AR 420-41; the proponent agency is the Office of the Chief of Engineers.

Contract No. _____
Estimated Annual
Cost to Customer \$ _____

THIS CONTRACT, entered into this _____ day of _____, 20 _____ by and between the UNITED STATES OF AMERICA (*hereinafter called the "Government"*), represented by the Installation Contracting Officer executing this contract and _____ (*Hereinafter called the "Customer"*)

WITNESSETH THAT:

WHEREAS, the Government has established an _____ near _____ known as _____, and owns, maintains, and operates facilities for the furnishing of _____ services; and WHEREAS, the Customer desires to obtain

_____ services from the Government, as required for _____, and which cannot be readily obtained from any other source; and

WHEREAS, construction of facilities in connection with the sale of such services to the Customer will not hinder the construction of public or private utility services facilities of a like nature;

WHEREAS, PURSUANT TO 10 U.S.C. 2686 10 U.S.C. 2872a 10 U.S.C. 2916 the Government is authorized to sell utilities and related services required by the Customer;

WHEREAS, PURSUANT TO AR 420-41, paragraph 4-2 *a* and *b* the sale meets the preconditions for consideration of sales, and in the case of sale off post, the sale satisfactorily considers the considerations requirements for off-post sale to non-Federal customers;

NOW, THEREFORE, in consideration of the premises and the mutual agreement herein contained, to be performed by the parties hereto respectively, it is agreed as follows:

GENERAL PROVISIONS

1. SERVICES TO BE RENDERED. From and after the effective date of this contract, the Government will furnish, subject to the limitations hereinafter provided, and the Customer will receive and pay for such utilities and related services as described in Special Provisions _____ attached hereto and made a part hereof.
2. PAYMENTS. For and in consideration of the performance of the stipulations of this contract, the Customer shall pay the Government for services herein contracted for, at the rates and under the terms and conditions set forth in attached Special Provisions.
3. USE OF SERVICE. The Government, by reason of this contract, is not obligated to permanently supply the Customer with utilities and related services. The services described herein are temporarily supplied as an accommodation to Customer as the Government services are presently available, services are not otherwise readily obtainable by the Customer from local suppliers or distribution companies, and the furnishing of such services under the existing conditions is deemed to be in the public interest. Customer's use of such services is limited to such time as services can be supplied by the Government as surplus to its own needs, the Government has facilities and personnel available to supply the services and the services are not readily available to the Customer from another source. Customer shall use the services provided herein in such manner as not to in any way disrupt or interfere with the requirements of the Government or any other Customer that may be served by the Government. Such services shall be for use by Customer and shall not be purchased for resale.
4. RATES AND CHARGES. The rates for services to be charged the Customer shall be –
 - a. *Non-Federal Organization – General - See AR 420-41 paragraph 4-8c(1).*
 (1) - *Non-Federal Organization - General.* The fair market value (also known as local prevailing rates (LPR)), if any, for similar services, provided that the rates shall at all times produce a revenue which is not less than the cost to the Government of supplying the services, including utilities commodities acquisition, operation and maintenance costs, losses, capital and administrative overhead charges.
 - b. *Residential Communities Initiative and Privatization of Army Lodging Partnerships - See AR 420-41 paragraph 4-8a(4) –*
 (1) - *Residential Communities Initiative and Privatization of Army Lodging Partnerships.* Purchased utility commodity cost; losses in transmission (gains in the case of sewage); direct incremental utility operations, maintenance, and system sustainment costs as a direct result of providing utilities services to either RCI or PAL projects; and capital costs of utility capital projects initiated solely to meet an RCI or PAL utilities services requirements.

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- c. *MWR or AAFES Contractor/Concessionaire Contractor - See AR 420-41 paragraph 4-8a(2) and table 4-4 –*
- (1) - *MWR or AAFES Contractor/Concessionaire Contractor when APF are available and authorized. No charge.*
 - (2) - *MWR or AAFES Contractor/Concessionaire Contractor when APF are certified not available or not authorized. Utility commodity acquisition, losses in transmission, and incremental direct costs associated with the operation of the garrison utility system. Unit cost rates charged will not include incremental or prorated share of overhead, maintenance, and repair to utility systems, or capital investments.*
- d. *Private Organizations (American Red Cross (ARC) United Service Organizations (USO) Armed Services Youth Men's Christian Association (YMCA)) - See AR 420-41 paragraphs 4-8c(2), (3), and (4), respectively –*
- (1) - *CONUS Private Organizations - Through outgrant commensurating with the level of services the private organization intends to provide at the installation. No charge.*
 - (2) - *OCONUS Private Organizations when combatant commander and host nation concur with the furnishing of utilities and related services. No charge.*
 - (3) - *Private Organization – Excessive consumption or free utilities and related services jeopardize garrison mission.*
The fair market value (also known as local prevailing rates (LPR)), if any, for similar services, provided that the rates shall at all times produce a revenue which is not less than the cost to the Government of supplying the services, including utilities commodities acquisition, operation and maintenance costs, losses, capital and administrative overhead charges.
- e. *United States Scouting Organizations at U.S. Army Controlled Installations Located Overseas - See AR 420-41 paragraph 4-6c(6) –*
- (1) *When appropriated funds support is available. No charge.*
 - (2) *When appropriated funds support is not available. The fair market value (also known as local prevailing rates (LPR)), if any, for similar services, provided that the rates shall at all times produce a revenue which is not less than the cost to the Government of supplying the services, including utilities commodities acquisition, operation and maintenance costs, losses, capital and administrative overhead charges.*
- f. *Public or Private Utility Companies - See AR 420-41 paragraph 4-8c(6)*
- (1) - *Public or Private Utility Companies. The fair market value (also known as local prevailing rates (LPR)), if any, for similar services, provided that the rates shall at all times produce a revenue which is not less than the cost to the Government of supplying the services, including utilities commodities acquisition, operation and maintenance costs, losses, capital and administrative overhead charges.*
- g. *Financial Institutions - See AR 420-41 paragraph 4-8d.*
- (1) - *Domestic Banks. The fair market value (also known as local prevailing rates (LPR)), if any, for similar services, provided that the rates shall at all times produce a revenue which is not less than the cost to the Government of supplying the services, including utilities commodities acquisition, operation and maintenance costs, losses, capital and administrative overhead charges.*
 - (2) - *Overseas Military Banking Facilities (MBF) operated under contract.*
 - (a) *When appropriated funds support is available. No charge.*
 - (b) *When appropriated funds support is not available. The fair market value (also known as local prevailing rates (LPR)), if any, for similar services, provided that the rates shall at all times produce a revenue which is not less than the cost to the Government of supplying the services, including utilities commodities acquisition, operation and maintenance costs, losses, capital and administrative overhead charges.*
 - (3) - *Other Overseas Banking Offices. The fair market value (also known as local prevailing rates (LPR)), if any, for similar services, provided that the rates shall at all times produce a revenue which is not less than the cost to the Government of supplying the services, including utilities commodities acquisition, operation and maintenance costs, losses, capital and administrative overhead charges.*
 - (4) - *Domestic Credit Union meeting 95% military or Federal membership requirement. No charge.*
 - (5) - *Domestic Credit Union not meeting 95% military or Federal membership requirement. The fair market value (also known as local prevailing rates (LPR)), if any, for similar services, provided that the rates shall at all times produce a revenue which is not less than the cost to the Government of supplying the services, including utilities commodities acquisition, operation and maintenance costs, losses, capital and administrative overhead charges.*
 - (6) - *Overseas Credit Union. No charge.*
5. **CHANGE OF RATES.** If during the life of this contract there should be an appreciable change in the cost to the Government or in the applicable LPRs, the contract rates set forth herein will be adjusted as required to conform therewith and the Government agrees to furnish, subject to the conditions set forth herein, and the Customer agrees to take and pay for, such services at the adjusted rates from and after the date when such adjusted rates are made effective. The rates and charges applicable to the service or services contemplated herein will be reviewed at least annually (more often if necessary) in compliance with the above requirements.
6. **LIABILITY.** The Customer shall hold and save the Government, its officers, agents and employees, harmless from liability of any kind, for or on account of any claim or action that may be asserted in connection with the services furnished under this contract. The Government will not be held liable for failure to provide continuous service and will not guarantee quality or quantity of service to be supplied nor will the Government be made liable for termination of services.
7. **TERMINATION.** Services under this contract may be terminated by either party by written notice not less than _____ days (*usually 30 days or as otherwise negotiated*) in advance of the effective date of termination, provided that in the event of a national emergency proclaimed by the President, the Government may terminate this contract immediately without such advance notice. It is further mutually agreed that this contract will be terminated at such time as:
- a. The services contemplated herein become readily available from another source, or
 - b. The installation furnishing said services becomes inactive, or
 - c. The Government no longer has facilities and/or personnel available to supply the services, or
 - d. The Government can no longer supply such services as surplus to its own needs.
 - e. Any off-post services contemplated herein begin to adversely affect one or more Government programs.
 - f. In the case of sale off-post, a maximum term of five years.

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8. RECAPTURE. In the event this contract is terminated in accordance with the terms hereof, the Government shall have the right to recapture immediately any utility facility it may have furnished in connection with the sale of any utility service to the Customer.
9. FACILITIES TO BE PROVIDED. The Government shall not be obligated in any way for the cost of making connections for Customer's services. Customer shall, at Customer's expense, install, maintain and operate all new facilities required for obtaining services and service connections to Government's utility systems. Plans for all such facilities shall be subject to the approval of the Garrison Utilities Services Officer and the installation of such facilities shall be subject to his/her supervision.
10. LICENSE FOR FACILITIES. The Government hereby grants to the Customer a license to enter upon and use a site or sites to be agreed upon between the parties hereto upon which the Customer shall install, operate and maintain the Customer's new facilities to be located on Government property for obtaining services; and such license shall continue in effect until termination of this contract. Facilities installed by the Customer on a Government installation will be removed promptly at the expense of the Customer upon termination of the services contemplated herein. Government land and facilities will be restored to their original condition at the expense of the Customer. If the Customer fails to so remove such facilities within 90 days, they will be deemed to be abandoned and become Government property.
11. ENERGY CONSERVATION. The Government strives to conserve energy and water resources, protect these resources, and reduce the emission of greenhouse gasses.
 - a. Customers will commit to conserve energy and water resources, safeguard these resources, and promote the reduction of greenhouse gas emissions throughout activities and processes under his or her control.
 - b. Executive Order 13423, Strengthening Federal Environmental Energy and Transportation Management, requires—
 - (1) Contractors performing operation of government-owned facilities or vehicles to comply with the provisions of the Executive Order with respect to such facilities or vehicles to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.
 - (2) Legally-binding obligations, such as this utilities sale contract, to the extent the head of the agency determines appropriate, that the customer (tenant or concessionaire) take actions relating to matters within the scope of the contract that facilitate the agency's compliance with the Executive Order.
12. OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.
13. COVENANT AGAINST CONTINGENT FEES. The Customer warrants that no person or buying agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to add to the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

"Bona fide agency," as used in this clause, means an established commercial or buying agency, maintained by a customer for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person employed by a customer and subject to the customer's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract. "Improper influence," as used in this clause, means any influences or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

14. DISPUTES.
 - a. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. Chapter 71).
 - b. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
 - c. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment (reimbursement) of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Customer seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
 - d.
 - (1) A claim by the Customer shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Customer shall be subject to a written decision by the Contracting Officer.
 - (2)
 - (a) The Customer shall provide the certification specified in paragraph (d)(2)(c) of this clause when submitting any claim exceeding \$100,000.
 - (b) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
 - (c) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract reimbursement adjustment for which the Customer believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Customer."
 - (3) The certification may be executed by any person duly authorized to bind the Customer with respect to the claim.
 - e. For Customer claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Customer, render a decision within 60 days of the request. For Customer-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Customer of the date by which the decision will be made.

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- f. The Contracting Officer's decision shall be final unless the Customer appeals or files a suit as provided in the Act.
- g. If the claim by the Customer is submitted to the Contracting Officer or a claim by the Government is presented to the Customer, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Customer refuses an offer for ADR, the Customer shall inform the Contracting Officer, in writing, of the Customer's specific reasons for rejecting the offer.
- h. The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- i. The Customer shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

15. DEFINITIONS. As used throughout this contract, the following terms shall have the meanings set forth below:

- a. The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department and the head of the Federal agency; and the term "his or her duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.
- b. The term "Installation Contracting Officer" means the person executing this contract on behalf of the Government at the installation, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his/her authority.

16. This contract is subject to the written approval of the Army Power Procurement Officer or his or her duly authorized representative (approval authority as per paragraph 4-7 of AR 420-41) and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.
(Your name, address, and signature are required to execute this contract. Names, addresses, and signatures will only be provided to those within the Army who need the information in performance of their official duties. Signing this form is voluntary, but if you do not sign it, we will be unable to provide you with utilities and related services.)

CUSTOMER		THE UNITED STATES OF AMERICA	
NAME OF CUSTOMER'S OFFICIAL		NAME OF INSTALLATION CONTRACTING OFFICER	
CUSTOMER'S OFFICIAL TITLE		OFFICER'S TITLE	
CUSTOMER'S ADDRESS		OFFICER'S ADDRESS	
BY <i>(Signature of Customer's Official)</i>	DATE (YYYYMMDD)	BY <i>(Signature of Installation Contracting Officer)</i>	DATE (YYYYMMDD)
WITNESS			
WITNESS NAME		WITNESS ADDRESS	
WITNESS AS TO SIGNATURE OF CUSTOMER	DATE (YYYYMMDD)		
ADMINISTRATIVE APPROVAL		TECHNICAL APPROVAL	
<input type="checkbox"/> AS IS <input type="checkbox"/> CONTINGENTLY		<input type="checkbox"/> AS IS <input type="checkbox"/> CONTINGENTLY	
NAME OF ADMINISTRATIVE APPROVAL OFFICIAL		NAME OF TECHNICAL APPROVAL OFFICIAL	
ADMINISTRATIVE APPROVAL OFFICIAL TITLE		TECHNICAL APPROVAL TITLE	
SIGNATURE OF ADMINISTRATIVE APPROVAL OFFICIAL	DATE (YYYYMMDD)	SIGNATURE OF TECHNICAL APPROVAL OFFICIAL	DATE (YYYYMMDD)