

## Invitation for Bid

**BID NO.** 9-393393046

**TITLE:** MARVIN RIDGE HIGH SCHOOL  
OUTDOOR CLASSROOM

**PROCUREMENT**

**LEAD:** Penny Helms, CLGPO  
UCPS Purchasing Department  
penny.helms@ucps.k12.nc.us

Union County Public Schools seeks quotes for the above referenced project.

### **SCOPE OF WORK**

Scope of work is described on Exhibit 1. Any applicable plans and specifications are referenced therein.

### **INSTRUCTIONS**

Instructions are as follows.

#### **•BID SUBMITTAL**

- Option 1: Sealed bids will be received no later than 3:00 p.m. **April 2, 2019** at the UCPS Facilities Department, 201 Venus Street, Monroe, North Carolina 28112. All bids must be sealed in an opaque envelope marked with the Company Name, Address, License Number, and Bid Number.
- Option 2: Electronic bids will be received no later than 11:59 p.m. on April 2, 2019 via email to penny.helms@ucps.k12.nc.us or facsimile (fax) 704-283-2371.

**Refer to Bidder's Checklist for documents required for bid submittal.**

**If you chose not to quote this project, please submit an email stating such by the quote due date to avoid being taken out of consideration for future projects.**

#### **• PREBID MEETING**

**A Prebid Meeting will be held 2:00 p.m. on March 25, 2019** at Marvin Ridge High School, 2825 Crane Road, Waxhaw, NC 28173. It is the responsibility of the bidders to become familiar with all aspects of the project prior to bid submittal. Failure to meet this requirement will not be grounds for a change order. All visits shall begin in the front office.

- **COMMUNICATIONS**

During the bid process, all communication relating to this bid shall be directed to the Procurement Lead identified above. Failure to meet the requirement may consider your bid non-responsible.

All questions/substitution requests relating to this project shall be directed to the Procurement Lead identified above in the form of an email no later than **March 27, 2019**. Answers will be provided to all bidders.

- **CONTRACT FORM**

The contract shall be UCPS' standard Purchase Order. E-Procurement Fees will not be applied.

Your attention is directed to terms and conditions identified within Exhibit 3 which shall be deemed to be incorporated into any purchase order or contract. Especially note applicable insurance requirements and obligations to comply with all applicable laws and Union County Board of Education policies.

Insurance certificates shall be provided upon request of UCPS Procurement Lead.

- **AWARD**

UCPS reserves the right to award this project in a method considered to be most advantageous. This includes the right to issue single award, multiple awards, or reject all bids. UCPS is not required to award a contract. UCPS reserves the right to waive any informality in bids. If a bidder wants to protest a contract awarded by the Union County Public Schools resulting from this solicitation, then they must submit a written request to the UCPS Purchasing and Contract Division, 201 Venus Street, Monroe NC 28112. This request must be received in the Division of Purchase and Contract within five (5) consecutive calendar days from the date of the contract award. Protest letters must contain specific reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation.

### **BIDDERS CHECKLIST**

Bid Proposal Form

### **RECOMMENDATION OF AWARD**

Certificate of Insurance (meeting the requirements stated within Exhibit 3).

### **INVOICE ATTACHMENTS**

Invoice must include tax breakout.

**SCOPE OF WORK**

**PART 1-GENERAL**

Project is to create an outdoor classroom at Marvin Ridge High School meeting specifications listed below.

Contractor is to provide all labor, equipment, materials, permits, fees, inspections, etc. to provide a turnkey project as indicated on the drawings and specifications (Exhibit 2). Permits and Inspections shall be provided to assigned UCPS Project Coordinator.

Note: Drawings are provided in order to give a general description of the Work. Contractor is to visit the site and field verify all existing conditions that may affect the design and layout of this project prior to preparation of submittals.

Contractor shall comply with all current local, state, and national codes and regulations. This includes, but not limited to, complying with all ADA requirements. In the event of a conflict between the Scope of Work and code regulations, the Contractor shall notify the assigned UCPS Project Coordinator for direction.

Contractors shall be properly licensed within the state of North Carolina to complete work identified within the bid documents, have successfully completed projects of this type and size for a minimum of 5 years, and be able to provide references within 24 hours of request.

**PART 2-SAFETY**

Contractor is solely responsible for safeguarding the project areas through the duration of the project including, but not limited to, barricades, snow fencing. Contractor shall remove project debris daily prior to leaving jobsite.

The Contractor may setup on site at a location authorized by the assigned UCPS Project Coordinator. Any equipment or supplies left on school property shall be securely locked. UCPS will not be responsible for damages or theft of Contractor's or 3<sup>rd</sup> party (i.e. rental equipment) property.

Contractor shall require all employees to abide by the OSHA safety guidelines. A written safety policy shall be provided to the assigned UCPS Project Coordinator within 24 hours of request.

All representatives of Contractor shall dress appropriate for school environment and perform work in a professional manner and have photo/badge identification at all times. Compliance is at the sole discretion of Union County Public Schools. Any individual not in compliance will be asked to leave Union County Public School property.

There are not to be any drugs, firearms, tobacco, weapons or any apparel advertising or displaying such on school property.

Contractor's Project Manager shall provide daily, to front office of worksite, a list of employees working onsite that day.

### PART 3-WARRANTY

Refer to Draft Contract for Warranty Information (Exhibit 3).

Contractor is responsible for damages to UCPS property as a direct result of this project. Contractor shall repair, replace to the fullest extent as needed to restore the property to the original state at no cost to Union County Public Schools. All contractor representatives will have at least one English speaking individual at all times.

### PART 4-PROJECT SCHEDULE

#### Helpful Information

April 2, 2019	Notice to Proceed (expected to be released)
April 19, 2019	Begins Spring Break
April 26, 2019	Ends Spring Break
May 7, 2019	Holiday
June 6, 2019	Last Day for Students

Contractor shall indicate the number of consecutive calendar days required for completion from notice to proceed. For bidding purposes, daily working hours are 8:30 a.m. through 7:00 p.m.

Contractor and assigned UCPS Project Coordinator shall construct an official project schedule that will best fit the school's needs. All work shall be coordinated with the assigned UCPS Project Coordinator to ensure no disruption to school activities.

Contractor shall appoint a Project Manager to be the sole point of contact through the duration of the project. The Project Manager shall be fluent in the English Language (speaking and writing) and be easily accessible.

### PART 5-ALLOWANCES

Bid Amounts are not to include Allowance Funds.

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## COST PROPOSAL/EXECUTION OF PROPOSAL

Marvin Ridge High School  
Outdoor Classroom  
BID NO. 9-393393046

By submitting this proposal, the potential contractor certifies the proposal is signed by an authorized representative of the firm.

The cost and availability of all equipment, materials, and supplies, including tax, associated with performing the services described herein have been determined and included in the proposed cost. All labor costs, direct and indirect, have been determined and included in the proposed cost. The offeror is aware of prevailing conditions associated with performing these services.

The potential contractor has read and understands the conditions set forth in this bid and agrees to them with no exceptions.

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within **60** days from the date of the opening, to furnish the subject services for a cost not to exceed:

BASE BID: \$ \_\_\_\_\_ ALL INCLUSIVE TOTAL

COMPLETION: \_\_\_\_\_ CONSECUTIVE CALENDAR DAYS FROM NOTICE TO PROCEED

### ADDENDA ACKNOWLEDGEMENT

ADDENDUM 1: \_\_\_\_\_ ADDENDUM 2: \_\_\_\_\_ ADDENDUM 3: \_\_\_\_\_

### EXECUTION

OFFEROR: \_\_\_\_\_ FEDERAL ID NO. \_\_\_\_\_

LICENSE DESCRIPTION: \_\_\_\_\_ LICENSE NO. \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY, STATE, ZIP \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ MOBILE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

BY: \_\_\_\_\_ DATE: \_\_\_\_\_ TITLE: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or printed name)

**GENERAL SITE MAP  
A101 DRAWING**

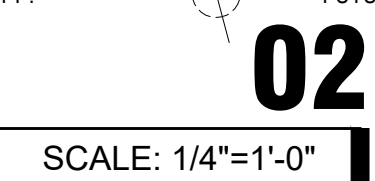
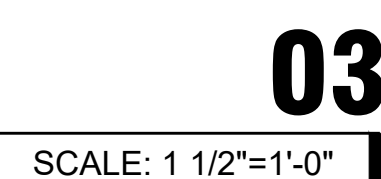
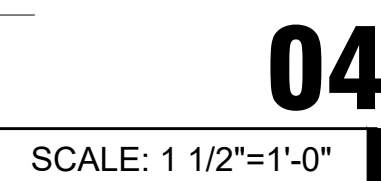
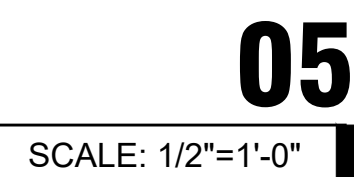


Marvin Ridge High School

PROJECT AREA

Google Earth

Image Landsat / Copernicus



**DRAFT CONTRACT**

## CONTRACT FOR SERVICES

### MARVIN RIDGE HIGH SCHOOL OUTDOOR CLASSROOM 9-393393046

This Contract is made and entered into this 2nd day of April, 2019 between The Union County Board of Education ("UCBOE") located at 400 North Church Street, Monroe, North Carolina 28112 and \_\_\_\_\_ located at \_\_\_\_\_ ("Contractor").

For and in consideration of the mutual promises set forth in this Contract, the parties do mutually agree as follows:

1. Obligations of Contractor - The Contractor agrees to provide all services as required to fully, timely and properly complete the Marvin Ridge High School Outdoor Classroom as more particularly described in the bid documents and incorporated herein by reference as Exhibit 1 (the "Services").

The Contractor agrees to coordinate its Services with the work of any other separate contractors or with the work of the UCBOE's own forces to avoid delaying or interfering with their work. The Contractor further agrees to inform the UCBOE on a regular basis or at the UCBOE's request of the progress of the Services.

Unless otherwise provided, the Contractor shall secure and pay for all permits, licenses, or inspections necessary for the proper execution and completion of the Services; shall comply with all laws, ordinances, or regulations bearing on the performance of the Services; shall enforce good order and discipline among his employees and subcontractors on the Project; and shall keep the Project reasonably free from waste materials or rubbish resulting from the Contractor's operations.

The Contractor warrants that the Contractor has visited the location of the Project and is familiar with all field conditions bearing upon the Contractor's performance of the Services; that the materials and equipment furnished under the Contract are of good quality and new (unless otherwise permitted); that the Services meets or exceed the standards ordinarily observed in the industry; and that the Services conforms to the requirements of the Contract and to all applicable codes, ordinances, laws, or regulations. The Contractor further warrants and promises that the Services shall be free from defects and nonconformities in materials and workmanship for a period of five years (unless stated otherwise in Exhibit 1) from the later of the Date of Completion or such date as the Contractor actually completes all the Services. During such period the Contractor will remedy at Contractor's expense nonconformities or defects in the Services within a reasonable time after receiving notice thereof from UCBOE.

In addition to the indemnification obligations contained in the attached terms and conditions to this Contract, the Contractor further agrees to defend and indemnify the UCBOE from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees, arising out of the Contractor's failure to pay subcontractors or materials suppliers.

The Contractor agrees that the UCBOE may order changes in the general scope of the Services, including additions, deletions, and similar revisions. The parties agree to adjust the Contract Price and Date of Completion to reflect the effects of such changes, which adjustments shall be authorized only upon execution of a written change order (a "Change

Order"). In case of emergency or extenuating circumstances or if a construction contingency is provided as stated below, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedures.

The UCBOE may issue written Change Orders to the Contractor directing a change in the Services. The amount of any increase or decrease in the Contract Price shall be by mutual acceptance of a total amount supported by sufficient data and information to substantiate the change. If the UCBOE and Contractor do not mutually agree on the amount of the change in the Contract Price, the Contractor will proceed with the Services described in the Change Order and the UCBOE will pay the reasonable costs of any additional work, including a reasonable amount for the Contractor's overhead and profit. Any decrease in Contract Price for a decrease in the Services will be the reasonable costs of the Services deleted, including a reasonable amount for the decrease in the Contractor's overhead.

Asbestos may or may not be present at the project site. In accordance with the Asbestos Hazard Emergency Response Act (AHERA) the UCBOE has had an Asbestos Management Plan (AMP) prepared for this site. A copy of the AMP is available at the UCPS Facilities Department or at the project site. The AMP is designed to document (to the best of the Owner's ability) the asbestos containing building materials (ACBM) or presumed asbestos containing materials (PACM) present at the project site. It is incumbent upon the Contractor to review the AMP to insure his/her staff does not come in contact or otherwise disturb the ACBM/PACM. The Contractor is to notify all their subcontractors and other staff involved with the project of the AMP so they may also avoid being exposed to and /or disturbing any ACBM/PACM during construction. It shall be understood that by executing an agreement between the UCBOE and Contractor that the Contractor has made this review and has notified all staff involved with this project of the availability of the AMP.

The UCBOE and Contractor recognize that time is of the essence to this Agreement and that the UCBOE will suffer financial loss if the work is not completed within the times specified within Exhibit 1. Both parties also recognize the delays, difficulties and expense involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the UCBOE if the Work is not completed on time. Accordingly, in lieu of requiring such proof, the UCBOE and Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay to the UCBOE for each day in excess of the term allowed for completion of the Work, the Contractor shall pay to the UCBOE the sum of \$100.00 as liquidated damages.

The Contractor shall indemnify and hold harmless UCBOE, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of the Contractor's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of the Contractor's performance or lack of performance of the terms and conditions of this Contract.

The Contractor certifies that it currently has and agrees to purchase and maintain during its performance under this Contract the following insurance from one or more insurance companies acceptable to UCBOE and authorized to do business in the State of North Carolina:

Automobile

The Contractor shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. If the Contractor is not an individual, the policy limits of such insurance shall not be less than \$1,000,000 combined

single limit each person/each occurrence. If the Contractor is an individual, the policy limits of such insurance shall not be less than a combined single limit of \$100,000 each person/\$300,000 each accident – bodily injury/\$50,000 each accident – property damage.

#### Commercial General Liability

The Contractor shall maintain commercial general liability insurance that shall protect the Contractor from claims of bodily injury or property damage which arise from performance under this Contract. This insurance shall include coverage for contractual liability. If the Contractor is not an individual, the policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate. If the Contractor is an individual, the policy limits of such insurance shall not be less than \$300,000 combined single limit each occurrence/annual aggregate.

#### Worker's Compensation and Employers' Liability Insurance

If applicable to the Contractor, the Contractor shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance.

**Failure to furnish insurance certificates or to maintain such insurance shall be a default under this Contract and shall be grounds for immediate termination of this Contract.**

Before commencing any Work, the Contractor shall forward to the UCBOE two copies of a Certificate of Insurance issued by the Insurance Carrier, not the local agent or representative, indicating that all required insurance is in force. The Certificate shall state the policy number, date of expiration, and limits of liability, and contain a provision that the insurance will not be cancelled, changed, or allowed to lapse prior to ten days after written notice to such cancellation or intention to allow lapse has been forwarded by Registered Mail to the UCBOE. The Contractor shall list the Union County Board of Education as additional insured. The Contractor must certify that he has obtain similar certificates or evidence of insurance from each of his subcontractors before work commences. Each Subcontractor must be covered by insurance of the same type and in the same amounts as the Contractor unless the Contractor and the UCBOE agree that a reduced coverage is adequate because of the nature of the particular subcontract work. The Certificate of Insurance must be received within 48 hours of request by UCBOE.

This contract does not grant the Contractor the right or the exclusive right to provide specified services to UCBOE. Similar services may be obtained from sources other than the Contractor (or not at all) at the discretion of the UCBOE.

The term of this Contract: Contractor shall begin work immediately upon receipt of purchase order and in accordance with instructions from UCBOE (Refer to Project Schedule identified within the bid documents-Exhibit 1). The date of substantial completion of the work or designated portion thereof shall be that date when the Work is sufficiently complete that the UCBOE can utilize the work or any designated portion thereof for the use for which it is intended. The guarantee and warranty period shall begin on the date of final acceptance by the UCBOE (the "Date of Completion"). The Contractor agrees to perform the Services in a timely, complete, and professional manner and in accordance with the terms and conditions of this contract.

The Contractor represents and warrants that (i) it is duly qualified and licensed to provide the Services, (ii) it will provide the Services in a manner consistent with the level of care and skill ordinarily exercised by contractors providing similar services under similar conditions, (iii) it possesses sufficient experience, personnel, and resources to complete the Services, (iv) it shall perform the Services in compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations, and (v) its reports, if any, shall be complete, accurate, and unambiguous.

2. Obligations of UCBOE. UCBOE agrees to pay the Contractor for services as follows:

(i)	Description	\$ _____
(ii)	Description	\$ _____
(iii)	Contract Total	\$ _____

3. Project Coordinator. Don Ogram is designated as the Project Coordinator for the UCBOE. The Project Coordinator shall be the UCBOE's representative in connection with the Contractor's performance under this Contract. The UCBOE has complete discretion in replacing the Project Coordinator with another person of its choosing.
4. Contractor Supervisor. \_\_\_\_\_ is designated as the Contractor Supervisor for the Contractor. The Contractor Supervisor is fully authorized to act on behalf of the Contractor in connection with this Contract. Substitution of Contract Supervisor must be presented to Project Coordinator with a minimum of 24 hour notice and shall include contact information of the newly selected Contractor Supervisor.
5. Terms and Methods of Payment. UCBOE will make payment after invoices are approved on a net 30 day basis. Failure to submit all required documents will delay payment. UCBOE will not pay for services or materials in advance without the prior approval of the Finance Officer. Contractor shall submit pay applications for payment by the twenty fifth (25) day of the month. The application for payment shall be in the amount of ninety-five (95%) percent of the value of work installed by Contractor and approved by the UCBOE until project is fifty (50%) percent complete. Waivers of Lien from material suppliers shall be submitted commencing with the second request for payment. No requests for payment (after the first request) will be processed without an appropriate Waiver of Lien attached to the payment request. All pay requests must be signed, contain the MBE Documentation for Contract Payments, Subcontractor Information for Contract Payments and Sales Tax Certification Form. Request for final payment must be accompanied by the warranty letter from the Contractor stating that all punch list items have been completed, lien waivers from the Contractor and material suppliers.
6. Additional Provisions. Contractor agrees to the Standard Terms and Conditions set forth as Attachment A attached hereto and incorporated herein by reference.
7. Counterpart Execution. This Contract may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each party shall be entitled to rely upon executed copies of this Contract transmitted by facsimile or electronic "PDF" to the same and full extent as the originals.

**IN WITNESS WHEREOF**, UCBOE and Contractor have executed this Contract on the day and year first written above.

Contractor Name

Signature of Authorized Representative

Date \_\_\_\_\_

Printed Name

Title

Contractor's Federal Identification #

[if Contract is with Organization or Social Security Number if individual]

**THE UNION COUNTY BOARD OF EDUCATION**

Superintendent

Date

Board Chairperson (if applicable)

Date \_\_\_\_\_

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

Finance Officer

Date

APPROVED AS TO FORM:

School Board Attorney

Date \_\_\_\_\_

REVIEWED BY:

Division of Insurance and Risk Management

Exhibit List:

Attachment A: UCBOE Standard Terms and Conditions

Exhibit 1: Proposal Document /Scope of Services

**Attachment A**  
**STANDARD TERMS AND CONDITIONS**

1. Contract Documents. Contractor's acknowledgment of the terms hereof or Contractor's shipment or performance, constitutes an agreement to (i) all terms and conditions set forth or referenced herein, (ii) any attachments hereto, (iii) any applicable solicitation documentation (including without limitation any request for proposals or invitation for bids or Contractor's response thereto) that deal with the same subject matter as this contract, and (iv) any other terms and conditions of a written agreement signed by Contractor and The Union County Board of Education ("UCBOE") that deals with the same subject matter as this Order (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Contractor and UCBOE with respect to the purchase by UCBOE of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to UCBOE shall control. This Order constitutes an offer by UCBOE and expressly limits acceptance to the terms and conditions stated herein. No additional or supplemental provision or provisions in variance herewith that may appear in Contractor's quotation, acknowledgment, invoice, or in any other communication from Contractor to UCBOE shall be deemed accepted by or binding on UCBOE. UCBOE hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until UCBOE's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by UCBOE are subject to correction.
2. Quantities. Shipments must equal exact amounts ordered unless otherwise agreed in writing by UCBOE. The award of a term contract neither implies nor guarantees any minimum or maximum purchases.
3. Safety Data Sheets. Safety Data Sheets must be provided with shipment of all chemicals.
4. Prices. If Contractor's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or Services, Contractor agrees to give UCBOE the benefit of such lower price on any such Goods or Services. In no event shall Contractor's price be higher than the price last quoted or last charged to UCBOE unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.
5. Invoices. It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to UCBOE's accounts payable department with a copy to the UCBOE Project Coordinator.
6. Freight on Board. All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents.
7. Payment Terms. Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.
8. Condition and Packaging. Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

9. Delays in Shipment. Time and date of delivery are of the essence, except when delay is due to causes beyond Contractor's reasonable control and without Contractor's fault or negligence.
10. Risk of Loss. Contractor shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by UCBOE or its nominee.
11. Rejection. All Goods and Services shall be received subject to UCBOE's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Contractor's expense or may be accepted at a reduced price. UCBOE may require Contractor to promptly replace or correct any rejected Goods or Services and, if Contractor fails to do so, UCBOE may contract with a third party to replace such Goods and Services and charge Contractor the additional cost.
12. Compliance with All Laws. Contractor warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders.
13. Compliance with UCBOE Policies. During the term of this Contract, Contractor agrees to comply with all UCBOE imposed policies, rules and regulations while on UCBOE property and guarantees strict compliance by all of its employees, agents and subcontractors with such policies, rules and regulations. UCBOE will make available to Contractor copies of other applicable UCBOE policies, rules and regulations upon Contractor's request. Upon request by UCBOE, Contractor and its applicable employees and agents will execute UCBOE's standard documents reflecting the obligation to comply with applicable policies, rules and regulations. The requirements of this Section shall apply continuously during the term of this Contract and shall not be limited to normal working hours. Without limiting the generality of the foregoing, Contractor shall be responsible for its acts or omissions in connection with the safety of all persons and property where any Goods and Services or other work are being performed and during performance of such Goods and Services or work. No act, service, drawing review or construction review by UCBOE or its representatives is intended to include review of the adequacy of Contractor's safety measures in, on or near UCBOE's premises.
14. Warranties. Contractor warrants that all Goods and Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by UCBOE of the Goods and Services and shall run to UCBOE and any user of the Goods or Services. This express warranty is in addition to Contractor's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, UCBOE shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.
15. Termination for Convenience. UCBOE may terminate this Contract at any time at its complete discretion by five (5) calendar day notice in writing from the UCBOE to the Contractor. If the Contract is terminated by the UCBOE in accordance with this paragraph, the Contractor will be paid in an amount which bears the same ratio to the total compensation as does the service actually performed to the total service originally contemplated in this Contract.
16. Termination for Default.  
If Contractor fails to perform its obligations timely and in conformance with the requirements of this contract, UCBOE shall give Contractor written notice of the default and intent to terminate if the default is not cured within ten (10) calendar days to the satisfaction of UCBOE.

All finished or unfinished deliverable items under this contract prepared by the Contractor shall become the property of UCBOE, and the Contractor shall be entitled to receive payment for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to UCBOE for damages sustained by UCBOE by virtue of any breach of the agreement, and UCBOE may withhold any payment due the Contractor for the purpose of setoff until such time as the breach is cured or the exact amount of damages due UCBOE from such breach can be determined.

In case of default by the Contractor, UCBOE may procure the services from other sources and hold the Contractor responsible for any excess cost incurred.

Upon the entering of a judgment of bankruptcy of insolvency by or against the Contractor, UCBOE may terminate this contract for cause.

17. Contract Funding. It is understood and agreed between the Contractor and the UCBOE that the UCBOE's obligation under this Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. The execution of this contract by UCBOE is assurance that sufficient funds have been appropriated for the current fiscal year budget. Should such funds not be appropriated or allocated, this Contract may be immediately terminated by either party. UCBOE shall give prompt written notice to the Contractor if funds are not available. The UCBOE shall not be liable to the Contractor for damages of any kind (general, special, or exemplary) as a result of such termination.
18. Indemnification. Contractor shall indemnify and hold harmless UCBOE, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Contractor's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Contractor's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Contractor shall indemnify and save harmless UCBOE, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Contractor, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of UCBOE in the performance of the Contract Documents, Contractor agrees that it will indemnify and hold harmless UCBOE, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.
19. Insurance. Unless such insurance requirements are waived or modified by UCBOE or UCBOE's Department of Insurance and Risk Management ("DIRM"), Contractor certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to UCBOE and authorized to do business in the State of North Carolina: Automobile - Contractor shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence. Commercial General Liability - Contractor shall maintain commercial general liability insurance that shall protect Contractor from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to Contractor, Contractor shall meet the statutory requirements

of the State of North Carolina for worker's compensation coverage and employers' liability insurance. Contractor shall also provide any other insurance or bonding specifically recommended in writing by the DIRM or required by applicable law. Certificates of such insurance shall be furnished by Contractor to UCBOE and shall contain the provision that UCBOE be given 30 days' written notice of any intent to amend or terminate by either Contractor or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

20. Accounting Procedures. The Contractor shall comply with accounting and fiscal management procedures prescribed by the UCBOE to apply to this Contract. The Contractor shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds. The Contractor shall assure that all funds received by it pursuant to this Contract will be used only to support the cost of those activities described in this Contract.
21. Improper Payments. The Contractor shall assume all risks attendant to any improper expenditure of funds under this Contract. The Contractor shall refund to the UCBOE any payment made pursuant to this Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. The Contractor shall make such refunds within 30 days after the UCBOE notifies the Contractor in writing that a payment has been determined to be improper.
22. Contract Transfer. The Contractor shall not assign, subcontract or otherwise transfer any interest in this Contract without the prior written approval of the UCBOE. In the event UCBOE approves the Contractor to assign, subcontract or other methods of transferring the interest of this Contract, the Contractor shall warrant all work to be performed in accordance to the contract documents by an individual or company that is qualified and properly licensed in the state of North Carolina to perform such work.
23. Contract Personnel. The Contractor agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in this Contract.
24. Key Personnel. The Contractor shall not substitute for key personnel assigned to the performance of this Contract without prior written approval from the UCBOE Project Coordinator. "Key personnel" are defined as those individuals identified by name or title in this Contract or in written communication from the Contractor.
25. Contract Modifications: This contract may be amended only by written amendment duly executed by both the UCBOE and the Contractor.
26. Relationship of Parties. The Contractor is an independent contractor and not an employee of the UCBOE. The conduct and control of the work will lie solely with the Contractor. This Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between the Contractor and the UCBOE. Employees of the Contractor shall remain subject to the exclusive control and supervision of the Contractor, which is solely responsible for their compensation.
27. Advertisement. The Contract will not be used in connection with any advertising by the Contractor without prior written approval by the UCBOE.
28. Nondiscrimination. During the performance of this Contract, the Contractor shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.

29. Conflict of Interest. The Contractor represents and warrants that no member of the UCBOE or any of its employees or officers has a personal or financial interest or will benefit from the performance of this Contract or has any interest in any Contract, subcontract or other agreement related to this Contract. Contractor shall not permit any member of the UCBOE or any of its employees or officers to obtain a personal or financial interest or benefit from the performance of this Contract or to have any interest in any Contract, subcontract or other agreement related to this Contract, during the term of this Contract. The Contractor shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to this Contract.
30. Gratuities to UCBOE. The right of the Contractor to proceed may be terminated by written notice if the UCBOE determines that the Contractor, its agent or another representative offered or gave a gratuity to an official or employee of the UCBOE in violation of policies of the UCBOE.
31. Kickbacks to Contractor. The Contractor shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a UCBOE Contract or in connection with a subcontract relating to a UCBOE Contract. When the Contractor has grounds to believe that a violation of this clause may have occurred, the Contractor shall promptly report to the UCBOE in writing the possible violation.
32. Monitoring and Evaluation. The Contractor shall cooperate with the UCBOE, or with any other person or agency as directed by the UCBOE, in monitoring, inspecting, auditing or investigating activities related to this Contract. The Contractor shall permit the UCBOE to evaluate all activities conducted under this Contract. UCBOE has the right at its sole discretion to require that Contractor remove any employee of Contractor from UCBOE property and from performing services under this Contract following provision of notice to Contractor of the reasons for UCBOE's dissatisfaction with the services of Contractor's employee.
33. Financial Responsibility. The Contractor is financially solvent and able to perform under this Contract. If requested by the UCBOE, the Contractor agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by the UCBOE's Finance Officer.
34. Dispute Resolution. At the option of the parties, disputes may be resolved by any method of ADR to which the parties agree in writing, including, but not limited to:
- a. Mediation, pursuant to NCGS 7A-38.1 or the American Arbitration Association Mediation, or by written agreement of the parties.
  - b. Arbitration: pursuant to The Uniform Arbitration Act (NCGS 1-567.1 et seq.)

The award rendered by the arbitrator or arbitrators shall be final unless a party thereto gives written notice of its objection to the final award by arbitration within twenty (20) days from receipt of said decision. Upon giving of said notice the party objecting thereto may file suit concerning the dispute as if arbitration had never occurred. Unless legally required to do otherwise, the parties agree not to refer to the arbitration in the filing of any lawsuit or during its subsequent litigation, or to submit to the court any record of information concerning the arbitration.

35. No Third Party Benefits. This Contract shall not be considered by the Contractor to create any benefits on behalf of any third party. The Contractor shall include in all contracts, subcontracts or other agreements relating to this Contract an acknowledgment by the contracting parties that this Contract creates no third party benefits.