

## Invitation for Bid

**BID NO.** 1-970000039

**TITLE:** WATER FOUNTAIN RETROFITS

**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**

Bids will be received no later than: **2:00 p.m. December 18, 2020**

Bid shall be submitted in the manner indicated below:

All bids will be received via email to penny.helms@ucps.k12.nc.us

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 not be held. Bidders are encouraged to become familiar with all aspects of this project prior to bid submittal. Failure to meet this requirement will not be cause for a change order.

- **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 and product substitution requests relating to this project shall be directed to the Procurement Lead identified above in the form of an email no later than 4:00 p.m., December 17, 2020. Answers will be provided to all bidders.

- **CONTRACT FORM**

The contract may be UCPS' standard Purchase Order. E-Procurement Fees may apply.

Your attention is directed to Terms and Conditions stated in the draft copy of contract (Exhibit 2) 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**

- Product Information Form
- Executed Cost Proposal Form

**SCOPE OF WORK**

**INTRODUCTION:**

Union County Public Schools is seeking bids for Water Fountain Retrofits.

**MINIMUM REQUIREMENTS:**

Full kit to retrofit units from regular water fountains to bottle filled water fountains for Elkay, Oasis, and Murdock brands.

APPROVED: Oasis PWEBF, Elkay EZH20, Murdock A171.8-UG-BF2. Comparable products may be considered. UCPS will select the product considered to be most advantageous.

**DELIVERY:**

Price shall include shipping costs to UCPS Facilities Warehouse, 226 Bivens Road North, Monroe, NC 28112. A minimum of 24 hour notice is needed prior to delivery. Products must be readily available. Price shall not include tax. UCPS is not tax exempt and the tax shall be itemized on the invoice.

**WARRANTY:**

All Products are to be new with full manufacturer warranty and a minimum of 1 year shelf life. All products shall contain the manufacturer information, labels.

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BID NO. 1-9700039

By submitting this proposal, the potential contractor certifies the following:

This proposal is signed by an authorized representative of the firm.

The cost and availability of all equipment, materials, and supplies 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:

ELKAY	MFG _____	ITEM# _____	PRICE PER UNIT	\$ _____	CCD _____
			PRICE FOR 20 UNITS	\$ _____	CCD _____
OASIS	MFG _____	ITEM# _____	PRICE PER UNIT	\$ _____	CCD _____
			PRICE FOR 20 UNITS	\$ _____	CCD _____
MURDOCK	MFG _____	ITEM# _____	PRICE PER UNIT	\$ _____	CCD _____
			PRICE FOR 20 UNITS	\$ _____	CCD _____

\*CCD is defined as the number of consecutive calendar days required for delivery upon notice to proceed.

**ACKNOWLEDGE RECEIPT**

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

**EXECUTE**

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

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

TELEPHONE NUMBER: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

(Signature)

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

**DRAFT CONTRACT**

**Contract #:**

**CONTRACT FOR SERVICES  
(CONTRACT FOR SERVICES AND/OR GOODS UNDER \$500,000)**

This **Contract for Services** ("Contract") is made and entered into [Date] between **The Union County Board of Education**, with a mailing address of 400 North Church Street, Monroe, North Carolina 28112 ("UCBOE") and [Contractor Name] ("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 the services, goods, materials, equipment, and/or software (the "Services" and/or "Goods," as appropriate) to fully, timely and properly complete [Project Name] as more particularly described in the Scope of Work document attached hereto and incorporated herein by reference as Exhibit 1.

Individual tasks will be assigned in writing on a project by project basis by an authorized representative of UCBOE. Such writing shall be in the form of a standard UCBOE purchase order ("Purchase Order"), such Purchase Order to specify the specific Services and/or Goods desired by UCBOE; the dates, times and locations that the Contractor shall provide the requested Services and/or Goods; and the compensation that the Contractor will be paid for providing the requested Services and/or Goods. The Contractor will be deemed to have accepted a Purchase Order and be obligated to provide the Services and/or Goods outlined in the Purchase Order in accordance with the price and other terms of the Purchase Order, and the terms and conditions hereof, unless within 24 hours after the Contractor's receipt of a Purchase Order, the Contractor notifies the Project Coordinator (as hereinafter defined) in writing that it does not accept the Purchase Order and will not provide the requested Services and/or Goods.]

The term of this Contract: Work to be performed under this Agreement shall be commenced upon receipt of purchase order issued by UCBOE and shall be completed by time indicated within Exhibit 1. Contractor shall endeavor to accomplish its 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. Failure to do so may cause the contract to be terminated at no fault of the Owner.

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

The Contractor shall begin work immediately upon issuance of a written notice to proceed. The Contractor agrees to perform the Services and supply the Goods or in a timely, complete, and professional manner and in accordance with the terms and conditions of this Contract. Furthermore, the Contractor represents and warrants that (i) it is duly qualified and, if required by law, licensed to provide the Services and/or Goods; (ii) it will provide the Services and/or Goods in a manner consistent with the level of care and skill ordinarily exercised by contractors providing similar Services and/or Goods under similar conditions; (iii) it possesses sufficient experience, personnel, and resources to provide the Services and/or Goods; (iv) it shall provide the Services and/or Goods 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 hereby agrees to pay to the Contractor for the faithful performance of this Contract, and the Contractor hereby agrees to provide all of the Services and/or Goods, for the sum not to exceed [Contract Price] ("Contract Price") subject to adjustments as provided for in the Contract Documents:

Total Not to Exceed        \$ \_\_\_\_\_

The parties acknowledge that UCBOE operates on a July 1-June 30 fiscal year and that operating funds are made available to UCBOE on a year to year basis. Accordingly, see Section 27 of Article I of the Standard Terms and Conditions.

A separate Purchase Order shall be issued for each assignment and the total amount due to the Contractor for a particular work assignment shall not exceed the amount shown in the Purchase Order for that assignment.

3. Project Coordinator. **[Primary Contact for UCBOE]** is designated as the Project Coordinator for UCBOE. The Project Coordinator shall be UCBOE's representative in connection with the Contractor's performance under this Contract. UCBOE has complete discretion in replacing the Project Coordinator with another person of its choosing.
4. Contractor Supervisor. **[Primary Contact for Contractor]** 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.
5. Terms and Methods of Payment. UCBOE will make payment after invoices are approved on a net 30-day basis. UCBOE will not pay for services or materials in advance without the prior approval of the Finance Officer. Contractor to submit invoices on the following schedule monthly.
6. Standard Terms and Conditions: 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.

**[THE REST OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]  
[SIGNATURES ON NEXT PAGE]**

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

[CONTRACTOR NAME]

Contractor Name

Signature of Authorized Representative

Date

Contractor's Federal Identification #

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

**THE UNION COUNTY BOARD OF EDUCATION**

Authorized Representative

Date

Procurement Director

Date

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

Finance Officer

Date

## Attachment A

### Standard Terms and Conditions

#### I. Standard Terms and Conditions for All Contracts

1. Acceptance. Contractor's execution of this Contract and/or acknowledgment of the terms of any applicable purchase order ("Purchase Order"), without timely express written objection, or Contractor's shipment or performance of any part of a Purchase Order, constitutes an agreement to (i) all terms and conditions set forth or referenced herein and on the face of a Purchase Order, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to hereto (including without limitation any request for proposals or invitation for bids or Contractor's response thereto), and (iv) any other terms and conditions of a written agreement signed by Contractor and UCBOE that deals with the same subject matter (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 Services and/or Goods (the "Goods" and/or "Services," as appropriate) provided or work performed 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. A Purchase Order constitutes an offer by UCBOE and expressly limits acceptance to the terms and conditions stated therein. 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. Prices. If Contractor's price or the regular market price of any of the Goods covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods, Contractor agrees to give UCBOE the benefit of such lower price on any such Goods. 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.
4. 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 UCBOE Project Coordinator.
5. Freight on Board. All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents.
6. Taxes. Taxes are included in the Contract Price. Applicable taxes shall be invoiced as a separate item for UCBOE's records.
7. Payment Terms. Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods, 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 shall be received subject to UCBOE's inspection. Goods 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 Services and, if Contractor fails to do so, UCBOE may contract with a third party to replace such Goods Services and charge Contractor the additional cost.
12. Warranties. Contractor warrants that all Goods 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 shall run to UCBOE and any user of the Goods. 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.
13. 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. The right of Contractor to proceed may be terminated immediately by written notice if UCBOE determines that Contractor, its agent or another representative, has violated any provision of law.
14. Use of Federal Funds. If the source of funds for this Contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324).
15. Registered Sex Offenders; Jessica Lunsford Act. Under North Carolina law, certain sex offenders are prohibited from coming onto school campuses. Contractor agrees to conduct an annual check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all of its employees whose job involves direct interaction with students as part of the job. UCBOE prohibits any personnel listed on such registries from being on any property owned or operated by UCBOE and from having any direct interaction with students. As a term of the Agreement, said checks must be performed by the Contractor and reported to UCBOE's Superintendent or designee, if Contractor's employees will be working directly with students. Under provisions set forth in the Jessica Lunsford Act under North Carolina law, the signature below certifies that neither Contractor nor any employee or agent of Contractor is listed as a sex offender on the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program, and/or the National Sex Offender Registry.
16. Nondiscrimination. During the performance of the Contract, 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.
17. FERPA Electronically Stored Data Compliance: Contractor is expressly prohibited from selling or trading any education records or personally identifiable information acquired under the Agreement. Furthermore, Contractor agrees not to attempt to re-identify students from aggregated data. Further, Contractor will not use any personally identifiable information or education records to advertise or market to students of UCBOE or their parents. Any personally identifiable information and education records held by Contractor pursuant to the Agreement will be made available to UCBOE upon request. Contractor will store and process all data using appropriate administrative, physical, and technical safeguards to secure personally identifiable information and education records from unauthorized access, disclosure, and use. Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Contractor will also have a written incident response plan, to include prompt notification to UCBOE in the event of a security or privacy incident, as well as procedures for responding to a breach of data. Contractor agrees to share its incident response plan upon request. Contractor shall, for all personally identifiable data and education records in its possession and in the possession of any subcontractors, or agents to which it has transferred data as permitted herein, destroy or de-identify such data when such data is no longer needed to

perform the Agreement. Contractor hereby agrees to abide by all Board of Education policies and procedures governing the confidentiality of student records and the responsible use of technology and internet safety. If Contractor experiences a security breach concerning any information covered by the Agreement, and such breach is covered by N.C.G.S. §75.61(14), then Contractor will (a) fully comply with Contractor's obligations under the N.C. Identity Theft Protection Act, (b) immediately notify UCBOE with the information listed in N.C.G.S. §75-65(d)(1-4), and (c) fully cooperate with UCBOE in carrying out its obligations under said Identity Theft Protection Act. Contractor will indemnify UCBOE for any breach of confidentiality or failure of its responsibilities to protect confidential information, and for cost of notification of affected persons as a result of its accidental or negligent release of personally identifiable information or education records provided to Contractor pursuant to the Agreement.

18. North Carolina Public Records Law: Contractor acknowledges that UCBOE is subject to the requirements of North Carolina's Public Records Law ("NCPRL"), N.C.G.S. § 132-1, et. seq. The Agreement and any related documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received by UCBOE in connection with the transaction of the Agreement may be considered a "public record," subject to disclosure under the NCPRL. UCBOE is under no obligation to notify Contractor prior to its compliance of its duties under NCPRL.
19. Conflict of Interest. Contractor represents and warrants that no member of UCBOE or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. Contractor also represents and warrants that, if the Contract is funded by any amount of federal funds, no violation of 2 C.F.R. § 200.318(c) or any other applicable federal conflict of interest law has occurred or will occur. Contractor shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.
20. Gratuities. Contractor represents and warrants that no member of UCBOE or any of its employees has been or will be offered or given a gratuity to an official or employee of UCBOE in violation of applicable law or policy.
21. Kickbacks to Contractor. 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 Contractor has grounds to believe that a violation of this clause may have occurred, Contractor shall promptly report to UCBOE in writing the possible violation.
22. Iran Divestment Act. Contractor certifies that, as of the date listed below, it is not on the Final Divestment List, as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4, in violation of the Iran Divestment Act. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran) and should be updated every 180 days.
23. Divestment from Companies that Boycott Israel. The Contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81. It is the responsibility of each vendor or contractor to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.
24. E-Verification. Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes
25. 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 Services and/or Goods 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 Services and/or Goods 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.
26. Insurance. Unless such insurance requirements are waived or modified by UCBOE or 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.
  27. Termination for Convenience. In addition to all of the other rights which UCBOE may have to cancel this Contract or an applicable Purchase Order, UCBOE shall have the further right, without assigning any reason therefore, to terminate the Contract (or applicable Purchase Order), in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from UCBOE to Contractor. If the Contract is terminated by UCBOE in accordance with this paragraph, Contractor will be paid in an amount which bears the same ratio to the total compensation as does the Services and/or Goods actually delivered or performed to the total originally contemplated in the Contract. UCBOE will not be liable to Contractor for any costs for completed Goods, Goods in process or materials acquired or contracted for if such costs were incurred prior to the date of this Contract or an applicable Purchase Order.
  28. Termination for Default. UCBOE may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Contractor. In addition to any other remedies available to UCBOE law or equity, UCBOE may procure upon such terms as UCBOE shall deem appropriate, Services and/or Goods substantially similar to those so terminated, in which case Contractor shall be liable to UCBOE for any excess costs for such similar goods, supplies, or services and any expenses incurred in connection therewith.
  29. Contract Funding. It is understood and agreed between Contractor and UCBOE that UCBOE's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of UCBOE for any payment may arise until funds are made available to UCBOE's Finance Officer and until Contractor receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. UCBOE shall not be liable to Contractor for damages of any kind (general, special, consequential or exemplary) as a result of such termination.
  30. Accounting Procedures. Contractor shall comply with any accounting and fiscal management procedures prescribed by UCBOE to apply to the Contract and shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.
  31. Improper Payments. Contractor shall assume all risks attendant to any improper expenditure of funds under the Contract. Contractor shall refund to UCBOE any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Contractor shall make such refunds within thirty (30) days after UCBOE notifies Contractor in writing that a payment has been determined to be improper.

32. Contract Transfer. Contractor shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of UCBOE.
33. Contract Personnel. Contractor agrees that it has, or will secure at its own expense, all personnel required to provide the Services and/or Goods set forth in the Contract.
34. Key Personnel. Contractor shall not substitute for key personnel (defined as those individuals identified by name or title in the Contract Documents or in written communication from Contractor) assigned to the performance of the Contract without prior written approval from UCBOE Project Coordinator (the individual at UCBOE responsible for administering the Contract).
35. Contract Modifications. The Contract may be amended only by written amendment duly executed by both UCBOE and Contractor.
36. Relationship of Parties. Contractor is an independent contractor and not an employee of UCBOE. The conduct and control of the work will lie solely with Contractor. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Contractor and UCBOE. Employees of Contractor shall remain subject to the exclusive control and supervision of Contractor, which is solely responsible for their compensation.
37. Advertisement. The Contract will not be used in connection with any advertising by Contractor without prior written approval by UCBOE.
38. Monitoring and Evaluation. Contractor shall cooperate with UCBOE, or with any other person or agency as directed by UCBOE, in monitoring, inspecting, auditing or investigating activities related to the Contract. Contractor shall permit UCBOE to evaluate all activities conducted under the Contract. UCBOE has the right at its sole discretion to require that Contractor remove any employee of Contractor from UCBOE Property and from providing Services and/or Goods under the Contract following provision of notice to Contractor of the reasons for UCBOE's dissatisfaction with the Services and/or Goods of Contractor's employee.
39. Financial Responsibility. Contractor is financially solvent and able to perform under the Contract. If requested by UCBOE, Contractor agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by UCBOE's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Contractor, the inability of Contractor to meet its debts as they become due or in the event of the appointment, with or without Contractor's consent, of an assignee for the benefit of creditors or of a receiver, then UCBOE shall be entitled, at its sole option, to cancel any unfilled part of the Contract without any liability whatsoever.
40. Governmental Restrictions. In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. UCBOE reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
41. Inspection at Contractor's Site. UCBOE reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for UCBOE determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.
42. Confidential Information. All information about UCBOE provided to the Contractor or its officers, employees, agents, representatives and advisors (the "Contractor Representatives"), and all copies or other full or partial reproductions thereof and notes, memoranda or other writings related thereto created by Contractor or any Contractor Representative, regardless of whether provided before or after the date of the Contract and regardless of the manner or medium in which it is furnished, is referred to as "Confidential Information". Confidential Information does not include any information that (a) is or becomes generally available to the public other than as a result of an impermissible disclosure by Contractor, (b) was known by or available on a nonconfidential basis to Contractor before it was disclosed by UCBOE or (c) becomes available to Contractor on a nonconfidential basis from a third party whom Contractor does not know to be bound by a confidentiality agreement with, or have an obligation of secrecy to, UCBOE. Except as and to the extent required by law or order or demand of any governmental or regulatory authority, Contractor and Contractor Representatives will (x) keep all Confidential Information confidential and (y) will only disclose or reveal any Confidential Information to Contractor Representatives who must have the information to fulfill Contractor's obligations

under the Contract and who agree to observe the terms of this Section. Contractor and Contractor Representatives will not use the Confidential Information for any purpose other than fulfilling Contractor's obligations under the Contract. By way of example and not limitation, Contractor shall not sell, market, or commercialize Confidential Information, create derivative products or applications based on Confidential Information. If Contractor is requested or required, pursuant to applicable law or regulation or by legal process, to disclose any Confidential Information, Contractor will provide UCBOE with prompt and timely notice of the requests or requirements so that UCBOE can seek an appropriate protective order or other remedy and will not be prejudiced by delay. If UCBOE does not obtain a protective order or other remedy, Contractor will only disclose that portion of the Confidential Information which Contractor's legal counsel determines Contractor is required to disclose. Upon termination of the Contract or otherwise upon UCBOE's request, Contractor will promptly deliver to UCBOE all Confidential Information in the possession of Contractor or the Contractor Representatives.

**Student Information:** If, during the course of Contractor's performance of the Contract, Contractor should obtain any information pertaining to students or students' official records, Contractor agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. The Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of students' records. Additionally, pursuant to N.C.G.S. 115C-401.1, it is unlawful for a person who enters into a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the Contract.

**Employee Personnel Information:** If, during the course of Contractor's performance of the Contract, Contractor should obtain any information pertaining to employees of UCBOE's personnel records, Contractor agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. This section will survive the termination of this Contract.

43. **Intellectual Property.** Contractor agrees, at its own expense, to indemnify, defend and save UCBOE harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that UCBOE's use, possession or sale of the Services and/or Goods infringes any copyright, patent or trademark or is a misappropriation of any trade secret.
44. **No Pre-Judgment or Post-Judgment Interest.** In the event of any action by Contractor for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Contractor specifically waives any claim for interest.
45. **Background Checks.** At the request of UCBOE's Project Coordinator, Contractor (if an individual) or any individual employees of Contractor shall submit to UCBOE criminal background check and drug testing procedures.
46. **Mediation.** If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.
47. **No Third-Party Benefits.** The Contract shall not be considered by Contractor to create any benefits on behalf of any third party. Contractor shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.
48. **Force Majeure.** Neither party shall be responsible to the other for any losses resulting from the failure to perform any terms or provisions of the Agreement if the party's failure to perform is attributable to war, riot or other disorder, strike or other work stoppage; fire; flood; storm; illness; pandemic, communicable disease, or any other act not within the control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent. However, UCBOE will be entitled to a refund for fees paid on account of services not rendered by Contractor including any and all deposits.
49. **Ownership of Documents; Work Product.** All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by UCBOE. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Contractor pursuant to the Contract shall, at the request of UCBOE, be turned over to UCBOE. Any technical knowledge or information of Contractor which Contractor shall have disclosed or may hereafter disclose to UCBOE shall not, unless otherwise specifically agreed upon in writing by UCBOE, be deemed to be confidential or proprietary

information and shall be acquired by UCBOE free from any restrictions as part of the consideration of the Contract.

50. Strict Compliance. UCBOE may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
51. General Provisions. UCBOE's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by Contractor hereunder, UCBOE shall be entitled to recover costs and reasonable attorney's fees. Contractor may not assign, pledge, or in any manner encumber Contractor's rights under this Contract or applicable Purchase Order or delegate the performance of any of its obligations hereunder, without UCBOE's prior, express written consent.
52. Contract Situs. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Union County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.
53. Severability. Any provision of this Contract that is determined by any court of competent jurisdiction to be invalid or unenforceable will not affect the validity or enforceability of any other provision. Any provision of the Contract held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

## **II. Additional Standard Terms and Conditions for Construction Contracts**

1. Supervision and Provision for Labor and Supplies. The Contractor will supervise and direct the construction work (the "Work") and shall furnish, provide, and pay for all labor, materials, equipment, machinery, utilities, and services reasonably necessary for the execution and completion of the Work.
2. Coordination of Work and Notification of Progress. The Contractor agrees to coordinate its Work with the work of any other separate contractors or with the work of UCBOE's own forces to avoid delaying or interfering with their work. Contractor shall enforce good order and discipline among his employees and subcontractors on the Project. The Contractor further agrees to inform UCBOE on a regular basis or at UCBOE's request of the progress of the Work.
3. Provision for all Permits, Licenses, and Inspections. Unless otherwise provided, the Contractor shall secure and pay for all permits, licenses, and inspections necessary for the proper execution and completion of the Work.
4. Cleanliness. Contractor shall keep the Project reasonably free from waste materials or rubbish resulting from the Contractor's operations.
5. Additional Warranties. 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 Work; that the materials and equipment furnished under the Contract are of good quality and new (unless otherwise permitted); that the Work is non-negligent and meets or exceeds the standards ordinarily observed in the industry; and that the Work conforms to the requirements of the Contract and to all applicable codes, ordinances, laws, or regulations. The Contractor further warrants and promises that the Work shall be free from defects and nonconformities in materials and workmanship for a period of one year from the later of the Date of Completion, which is the date UCBOE accepts the Work or such date as the Contractor actually completes all the Work (the "Date of Completion"). During such period, the Contractor will remedy at Contractor's expense nonconformities or defects in the Work within a reasonable time after receiving notice thereof from UCBOE.
6. Indemnity for Subcontractor Payment. In addition to the indemnification obligations contained in the attached terms and conditions to this Contract, the Contractor further agrees to defend and indemnify 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.
7. Change Orders. The Contractor agrees that UCBOE may order changes in the general scope of the Work, 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 UCBOE Project Coordinator and promptly thereafter substantiated in writing as outlined under normal procedures. 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. Any decrease in Contract Price for a decrease in the Work will be the reasonable costs of the Work deleted, including a reasonable amount for the decrease in the Contractor's overhead.

8. Performance/Payment Bond. If required by law and/or the bidding documentation, the Contractor agrees to provide a Performance Bond and Labor and Material Payment Bond for its faithful performance in a form reasonably satisfying to UCBOE.
9. Payments Withheld. The UCBOE may withhold payment for the following reasons to the extent permitted under N.C. Gen. Stat. § 143-134.1(e): (1) defective Work not remedied; (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to UCBOE is provided by the Contractor; (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment; (4) reasonable evidence that the Work will not be completed with the time specified, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; (5) failure to carry out the Work in accordance with the Contract Documents; (6) failure to provide sales tax documentation in accordance with subparagraph 9.3.5; (7) failure or refusal of the Contractor to submit the required information on minority business enterprises; and (8) failure of the Contractor to comply with (a) the provisions of the Sedimentation and Pollution Control Act (N.C. Gen. Stat. § 113A-50 *et seq.*), and/or (b) any Notice of Violation issued by the North Carolina Department of Natural Resources.
10. Retainage. For public construction contracts costing an amount equal to or greater than \$100,000, the UCBOE will retain five percent of the amount of each progress payment on the project for as long as is authorized by N.C. Gen. Stat. § 143-134.1. At all times during the Project, the UCBOE may retain the maximum funds allowed by N.C. Gen. Stat. § 143-134.1. The UCBOE specifically reserves the right to withhold additional funds as authorized by this Contract and N.C. Gen. Stat. § 143-134.1. The Contractor may pay each subcontractor no later than seven days after receipt of payment from the UCBOE and in accordance with N.C. Gen. Stat. § 143-134.1 the amount to which the subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner and in accordance with N.C. Gen. Stat. § 143-134.1.

### **III. Additional Standard Term and Condition for Designer Contracts (which include Architectural, Engineering, Surveying, and Technical Services)**

**Additional Insurance.** In addition to the insurance required pursuant to Section 22 of the Standard Terms and Conditions for All Contracts, the 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: Professional liability insurance in commercially reasonable amounts as reasonably determined by UCBOE.

### **IV. Additional Standard Terms and Conditions for Information Technology Contracts**

1. Definitions.
  - "Hardware" means the hardware the Contractor utilizes in the Hosted Environment for delivery and maintenance of the Hosted Software Services.
  - "Hosted Environment" means the Hardware, system software, hosting support software, network connectivity, and facility used by Contractor to support the Hosted Software Services.
  - "Hosted Software Services" means the application, including the Hosted Software and any applicable Third-Party Software, as run on the Hosted Environment.
  - "Hosted Software" means the software owned and controlled by Contractor or Contractor's third-party contractor that supports the Hosted Software Services.

“Support Services” means application and technical support required to maintain the performance, uptime and connectivity of the Hosted Software Services for UCBOE access and use, including without limitation, telephone support, error correction, maintenance, and installation of Updates and Upgrades to the Hosted Software.

“Updates” means (i) modifications to or releases of the Hosted Software that (a) add new features, functionality, and/or improved performance, (b) operate on new or other databases, operating systems, or server platforms or (c) extend the Hosted Software functionality to take advantage of advances in coding language, hardware, network or wireless infrastructures; and (ii) deviation corrections, bug or error fixes, patches, workarounds, and maintenance releases.

“Upgrades” means any new version or new release of the Hosted Software typically provided on an annual or bi-annual basis by the Contractor that includes new features, functions, support or service that were not in place with the immediately prior version.

2. Grant of License. Contractor grants to UCBOE for the term of this Contract a non-exclusive, non-transferable license to access and use over the internet the Hosted Software (the “License”).
3. Updates and Upgrades. Contractor will make certain limited and applicable Hosted Software Updates and Upgrades available to UCBOE at no additional cost. All such Updates and Upgrades shall automatically become subject to the benefits and terms of this Contract and shall automatically be considered part of the License granted under this Contract.
4. Security. Contractor’s Hosted Environment shall maintain security measures in place to help protect against the loss, misuse, and alteration of the Hosted Software Services, and specifically the Confidential Information provided to Contractor by UCBOE.
5. Warranties. Contractor warrants the following: (a) Contractor has the full authority to grant the License; (b) the Hosted Software is free from material defects or viruses; (c) the Hosted Software contains no disabling devices; and (d) the Hosted Software conforms to all material specifications set forth in the documentation and any other written material provided to UCBOE for any purpose. Without limiting any other remedies available to UCBOE under this Contract, at law or in equity, in the event that any Hosted Software does not conform to the warranties set forth for the Hosted Software herein, Contractor shall, at UCBOE’s option, promptly correct or replace such Hosted Software and, in either case, Contractor shall perform any Support Services or other work required to restore the Hosted Software to the state that existed prior to any such breach, all at Contractor’s expense. UCBOE reserves the right to reject the Hosted Software and to hold Contractor responsible for any loss, direct or indirect, caused by any such breach of warranty. In the event Contractor is or becomes aware of a problem with any item of Hosted Software, Contractor shall notify UCBOE upon such determination. Acceptance or use of the Hosted Software shall not constitute a waiver of any claim under any warranty.
6. Effect of Termination and Orderly Transition. Upon termination or expiration of this Contract for any reason, Contractor will cooperate in good faith with UCBOE to provide for an orderly transfer of the Goods and Services and Confidential Information to UCBOE or UCBOE’s successor vendor (“Orderly Transition”) and according to the terms of this section.
  - a. Scope of Work for Orderly Transition. Within thirty (30) days of notification by UCBOE that it will transfer Goods and Services to itself or a successor vendor, the parties will create and execute a scope of work document detailing tasks, the responsible parties for individual tasks, and timeframes for completion of tasks necessary to complete an Orderly Transition. The final, executed Orderly Transition scope of work shall be incorporated into this Contract and become subject to its terms. Contractor’s failure to (a) cooperate in developing the Orderly Transition scope of work, (b) execute an Orderly Transition scope of work, or (c) abide by the executed Orderly Transition scope of work shall be deemed a material breach of this Contract.
  - b. Time Frame. Unless otherwise mutually agreed in an executed Orderly Transition scope of work, Contractor shall continue to provide Goods and Services while UCBOE migrates its Confidential Information from Contractor’s Hosted Software Services in the Orderly Transition process. Contractor agrees that, as part of the Orderly Transition process and within the specified time frame, it will transfer to UCBOE all of the Confidential Information provided to Contractor by UCBOE pursuant to this Contract. Contractor will provide the Confidential Information in commercially reasonable electronic format as agreed in the Orderly Transition scope of work at no additional cost.

- c. Time and Material Costs Only. UCBOE will be obligated to pay for time and materials at a reasonable hourly rate of no more than \$75/hour for the Orderly Transition. No other fees will be assessed for the Orderly Transition. Fees shall be agreed upon in advance as part of developing the scope of work referenced in subsection (a) above.
  - d. Destruction of Confidential Information after Orderly Transition. Unless otherwise mutually agreed in an executed Orderly Transition scope of work, Contractor agrees that after returning all Confidential Information to UCBOE pursuant to subsection (b) above it will destroy all remaining copies of Confidential Information and back-up Confidential Information in its possession, contained in or on any medium (such as a storage area network or "SAN") or as may be stored offsite, within thirty (30) days of completion of Orderly Transition. Contractor shall provide UCBOE with a detailed summary of the destruction process and standards to be utilized by Contractor with respect to the Confidential Information, and UCBOE shall approve such process and standards prior to Contractor commencing such destruction.
7. Intellectual Property Warranty. In addition to the warranties set forth elsewhere in this Contract with respect to the Goods and Services, Contractor expressly represents, warrants and covenants that neither the furnishing of Hosted Services to UCBOE hereunder, nor does the Hosted Software, violate, in whole or in part, any provision of any law, common law or regulation concerning copyrights, trade secrets, trademarks, tradenames, service marks, patents or other provisions regulating or concerning intellectual property rights.
8. Additional Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless UCBOE, its and directors, officers, managers, employees and agents, from all suits, claims, costs, damages and other liabilities, including reasonable attorneys' fees as incurred by counsel of UCBOE's choice, relating to or arising from (a) Contractor's failure to maintain the security and integrity of Confidential Information, the Hosted Software Services and the Hosted Environment; (b) any claim for infringement of any copyright, trade secret, trademark, tradename, service mark, patent, or other law or regulation concerning intellectual and/or proprietary property rights; and (c) any claims by third party interests in the Hosted Software.
9. Data Use. Notwithstanding the foregoing, Contractor acknowledges and agrees that all Confidential Information is proprietary to and owned exclusively by UCBOE, whether provided in tangible or electronic form and whether entered into any software or Hosted Software Services owned or licensed by Contractor (including without limitation the Hosted Software and Hosted Software Services) or otherwise provided in connection with any products provided and services performed by Contractor (including without limitation the Goods and Services) and whether to, by or through a Contractor-affiliated ASP or other Hosted Software Services. Furthermore, Contractor shall not sell, market, or commercialize Confidential Information, create derivative products or applications based on Confidential Information or otherwise use Confidential Information in any manner unrelated to the performance of Contractor's obligations under the Contract. Contractor shall not share Confidential Information with any parent or subsidiary company of Contractor or any other Contractor-affiliated entity without the express prior written consent of UCBOE detailing the scope of allowable disclosure. Contractor agrees that if it breaches this section, UCBOE may, at its option, pursue any or all of the following remedies: (a) immediately terminate this Contract without liability to Contractor; (b) seek an injunction without posting a bond; and (c) pursue whatever other remedies may be available to it at law, in equity or pursuant to this Contract.