



CHILD NUTRITION PROGRAM PIZZA

RFP22-016 - Child Nutrition Program Fresh Pizza

Project Dates: School Year 2023

**Bids must be received by 10:00 a. m. MST on May 31, 2022
via UP3 Utah Public Procurement Place (SciQuest)**

Prepared by:
Ken Crawford, Director of Support Services

GENERAL INFORMATION

Objective

The Ogden City School District is looking for a Vendor to provide freshly made, baked and ready to serve pizza for the 2023 school year as per the attached specifications.

This Request for Proposal (RFP) will be an all inclusive RFP for High Schools in the Ogden City School District (the District). The RFP may also include service to Junior High Schools and the Summer Lunch Program that runs from June to July and, on occasion, delivery to Elementary Schools. Amounts of pizza are estimates only and will be adjusted according to school participation.

The High School Lunch Managers will order pizzas each day of the week including pepperoni, and other allowable varieties. A shared spreadsheet will be used for ordering or managers will call or email in final counts no later than the day before delivery. The Vendor should note the attached schedule of days and approximate amounts and may be responsible for up to three deliveries per order, per site, for multiple lunch periods. Deliveries must be made at the assigned time and cannot be late.

Pizza will be made fresh, not frozen; sliced into eight (8) equal slices; and delivered when requested by the District. Each batch of pizzas cooked must have the temperature and the time the temperature was taken recorded on the pizza box prior to delivery as per Health Department regulations. Pizzas are to be delivered hot (above 140° F) and in boxes with a company logo on them. If applicable, pizzas for the Summer Lunch Program must be delivered in hot holding bags for the District to transport hot pizzas to the parks. The Vendor will be responsible for picking up the used hot bags at the end of the serving time, around 1:00 p.m. the same day.

This RFP is designed to provide interested parties with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Respondents are at liberty and are encouraged to expand upon the specifications to evidence service capabilities under any agreement.

District Background

The Ogden City School District has a student enrollment of approximately 10,500 students. The District currently operates eleven (11) elementary schools, three (3) junior high schools, two (2) high schools, and one (1) alternative high school. The District's office is located at 1950 Monroe Boulevard, Ogden, Utah.

SPECIFICATIONS

I. RFP Acceptance or Rejection

A. Acceptance by the Ogden City School District

- i. The Ogden City School District reserves the right to accept any proposal, to reject any or all proposals, to waive any irregularities or informalities in proposals received where such acceptance, rejection or waiver is considered to be in the District's best interest.
- ii. All proposals must be submitted in accordance with the specifications, rules and procedures stipulated by this RFP. The submission of a proposal on the RFP form certifies that the product meets any and all specifications, except as noted on such form.
- iii. Relative to this RFP, please submit all questions in writing through U3P Utah Public Procurement Place (SciQuest).
- iv. Excessive errors may result in the rejection of the respondent's proposal.
- v. Proposals received after the scheduled due date will be rejected. No proposals can be corrected or altered or signed after being submitted. The Ogden City School District will not be responsible for document errors or omissions by the Vendor.
- vi. Proposals will not be accepted without required nutritional information and nutritional analysis.

B. Performance

- i. The Ogden City School District reserved the right to determine the ability of each Vendor to perform the work prescribed. Upon request, the Vendor will provide to the District any information related to the Vendor's ability to perform.
- ii. THIS CONTRACT MAY BE IMMEDIATELY CANCELED FOR REASON OF NON PERFORMANCE.

C. Awarding RFP

The RFP will be awarded to the Vendor after considering preparation time, costs, nutritional requirements, performance or ability of the Vendor, and taste. There will be a future date assigned to taste test the pizza being considered.

II. Product Specifications

A. Specifications

- i. Fresh, not frozen, hot Pepperoni, Cheese, plus Other Allowable Varieties of pizza cut into eight (8) equal pieces and delivered hot and ready to serve, daily to each school specified by the District. Maintaining uniform cuts throughout the term of the contract period is essential. Failure to comply could result in termination of the contract.
- ii. The Vendor shall provide professional marketing banners and "Point of Sale" materials to each serving site.
- iii. For each product that is proposed, the Vendor must furnish with their proposal, official documentation which clearly states the product's nutritional ingredient information and USDA guidance for the National School Lunch Program stating the following Nutritional Information Per Slice:
 - a) 2 ounce equivalent grain
 - b) 2 ounce equivalent meat or meal alternate

- c) Less than 800 mg of sodium
- d) Whole grain rich as defined by USDA with proper documentation
- e) 0 grams trans fat
- f) Less than 5 grams saturated fat

B. Product Evaluation

- i. As part of the evaluation, fresh not frozen pizzas will be cut and served in a blind cutting. Two pepperoni pizzas and two cheese pizzas (that Vendor is proposing) will need to be supplied for a cutting against those being proposed (date, place and time will be announced). These pizzas will be evaluated and rated in the following areas; cost, nutritional requirements, past performance working with OSD or ability of the Vendor to work with OSD, and taste weighted equally in selection of the successful Vendor.
- ii. Proposed items will be disqualified that do not meet or exceed all specifications as of the time and date of the RFP opening. If a product is purchased and it is later established that said product fails to comply with these specifications and conditions, the item will be rejected and returned to the Vendor at the Vendor's expense. No item shall be considered satisfactory that does not conform to our usual accepted methods, use application, storage, handling and delivery. The decision concerning the satisfactory use and performance of any item on this RFP shall be that of the Ogden City School District's School Nutrition Department.

III. Distribution of Goods

A. Schedule of Delivery

- i. Delivery will be scheduled and performed in a manner that is efficient, prompt, and accurate. The Vendor will inform the District's School Nutrition Department before any inconveniences that may distract from the required performance of this service.
- ii. Delivery of fresh, not frozen, hot pizzas will be made daily as needed by individual secondary schools throughout the entire contract period.
- iii. Delivery will be made to each specified location as scheduled by individual school lunch managers without regard to load size or delivery costs.
Deliveries are expected at the scheduled time and cannot be late.
- iv. No scheduled delivery will be made during the school lunch serving time.

B. Destination of Delivery

- i. The Vendor is required to deliver goods to the appropriate serving areas.
- ii. All items ordered must be delivered to each location specified on the following scheduled delivery dates.
- iii. Delivery of fresh, hot pizza will be made to the following two (2) schools daily: *Ogden High and Ben Lomond High.*
- iv. Delivery of fresh, hot pizza will be served to *Washington High School* weekly (Fridays). Junior High schools will also be delivered weekly (Fridays), if applicable. The Junior High schools include *Highland Jr. High, Mound Fort Jr. High, and Mount Ogden Jr. High.*
- v. On occasion, delivery of fresh, hot pizza may be made to Elementary Schools located within the District.
- vi. The Vendor is not expected to place items on the shelves. An authorized District employee must sign and date all delivery receipts and invoices.

C. Returned Merchandise

- i. Ogden City School District reserves the right to reject and return at the risk and expense of the Vendor any item which is defective or fails to comply with the specification of the RFP, such as damaged containers, overdue delivery, unacceptable substitution of product, and spoiled or unusable merchandise.
- ii. Upon request of the District, any item which is justly rejected and returned to the Vendor must be replaced immediately.

D. Backorders

- i. NO BACKORDERS WILL BE ACCEPTED.
- ii. If the Vendor cannot deliver the item on the date needed, the District's School Nutrition Department may authorize a substitute product, cancel the item from the order, or purchase the item from another vendor, whichever is advantageous to the Ogden City School District.
- iii. Excessive returned merchandise and substitution of products, as seen to be created due to the poor management of the Vendor, will be considered grounds for breach of contract.

IV. Usage Quantity of RFP Items

A. Estimated Usage

- i. The estimated usage for the contract period, school year 2023, is approximately 210 whole pizzas per week for 39 weeks less holidays for the High Schools and approximately 100 whole pizzas per week for 39 weeks less holidays for Junior High schools if applicable. These estimates take into consideration past year purchases and long-term expectations.
- ii. The estimated usage figures will be used in the bid tabulation.

B. Actual Usage

The actual usage of items may be more or less than that which is estimated.

V. Services Offered by Vendor

A. Maintenance of Inventory

It is the responsibility of the Vendor to adequately purchase, stock, and maintain the inventories of the ingredients necessary to assure production quantities needed by the District. The Vendor must effectively communicate with the District's School Nutrition Department regularly to see that inventories are properly maintained so that the individual school needs are met.

B. Distribution of Goods

It is the responsibility of the Vendor to effectively distribute the merchandise to all locations as specified in the RFP document.

C. Open Window

An alternate means of providing emergency deliveries must be provided at no additional fees to the District.

D. Orders

Orders for deliveries of Pizzas to each school will be placed by telephone (via toll free number or local number), email, text message, or shared spreadsheet for the next day's order. Whenever feasible, schools will contact Vendor five (5) days ahead of delivery.

E. Usage Reports

- i. The Vendor will account for and maintain an adequate record of items

purchased by the Ogden City School District throughout the specified contract period. This usage report is to include item descriptions, total units purchased per item, and total cost per item.

- ii. The District may obtain a usage report upon request at any time during the contract period.

F. Item Promotions

It is the Vendor's responsibility to inform the District's Purchasing Department of any additional known discounts or promotions available to the District during the contract period, and to assist the District in obtaining them.

VI. Proposal Response

A. Technical Response

The technical response shall include the following:

- i. Complete Schedules A, B and C
- ii. Health Department Food Safety Manager Certificate
- iii. Health Department Food Establishment Permit
- iv. Most recent Health Department inspection
- v. Sample of Vendor's Invoice, Credit Memo, and Statement

B. Cost Proposal - The cost proposal must be submitted separately from, and not included within, the technical proposal.

- i. The Unit Price is a fixed price. The Unit Price includes all profit and all related operating expenses incurred by the Vendor for the procurement, storage, handling and delivery of the RFP items. The Unit Price quoted by the Vendor must be firm for the entire contract period specified in the opening request for the proposal.
- ii. If during the contract period, the District determines that the Vendor charged the District more than the Unit Cost, the contract may be immediately canceled and the Vendor labeled as "**Unfavorable to the District**" which may result in future RFP disqualification.
- iii. Prices may be carried out to two decimal places.

VII. Evaluation Rubric

The proposals will be evaluated, scored, and ranked on the following criteria:

A. 25 Points - Responsiveness to RFP *(Including Schedules A, B, and C)*

- i. Completeness and conformity of the proposal to the RFP requirements.
- ii. Perception of the respondent's ability to accomplish the scope of services.
- iii. Respondent's indication of its understanding of the purpose and scope of the proposed services as evidenced by the quality of the proposal submitted.

B. 35 Points - Product Demonstration

- i. Appearance
- ii. Taste
- iii. Meets specifications

C. 40 Points - Cost proposal *(Must be submitted separate from, and not included within, the Technical Response)*

- i. Overall and complete costs
- ii. Cost to be considered as all-inclusive

Award shall be made to the respondent deemed most capable of accomplishing the scope of services required, taking into consideration the proposals and evaluation factors here outlined.

VIII. Terms of Agreement

The contract resulting from this RFP shall be for the 2022-2023 school year, which starts on July 1, 2022. The District reserves the right to extend the contract annually for four (4) additional one (1) year contract periods subject to annual cost negotiations and budget approval by the District. Annual renewal is contingent upon the District's satisfaction with the services provided and overall performance of the vendor. The contract may be canceled after one written warning if the vendor fails to perform or follow the contract terms and conditions. There is no guarantee to make any purchase quantity under the awarded contract. Tentative date for formal approval by the Board is June 16, 2022.

IX. Submitting Proposals

- A. Request for Proposals shall be posted on the District's Purchasing website and online at SciQuest
<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah>
- B. An electronic copy must be submitted through this same website on SciQuest and must be received by 10:00 a.m. MST on May 31, 2022. Proposals must be submitted in two separate parts. Part one (1) is the technical proposal and part two (2) is the cost proposal. The cost proposal must be submitted as a separate attachment, and cannot be part of the technical proposal. If the cost proposal is not submitted separately, then the submission will be deemed non-responsive and will not be scored.
- C. All information requested must be completed including a detailed scope of work, claim of business confidentiality (if applicable), standard terms and conditions, and must be submitted electronically by the date mentioned above. Proposals received after that will be deemed non-responsive.

X. Tentative Timeline (subject to modification)

- A. Request for Proposal posted: May 23, 2022
- B. Deadline for questions: May 27, 2022
- C. RFP response deadline: May 31, 2022
- D. Product evaluation: June 3, 2022 (time and place to be determined)
- E. School Board action: June 16, 2022
- F. Contract effective date: July 1, 2022

XI. Questions and Inquiries

- A. All questions should be directed to Ken Crawford and be received before 12:00 p.m. on May 27, 2022. Questions must be submitted electronically via SciQuest.
<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah>
- B. Contact with any other District employee or School Board Member during the RFP period may be grounds for disqualification.

XII. Written Agreement Required

The selected respondent must be willing to enter into a written agreement with the

District and agree to all the terms set forth in the Sample Standard Contract Terms and Conditions attached to this RFP as Attachment C. If you wish to alter any of the terms of the Standard Contract Terms and Conditions and/or the RFP including exhibits, the terms must be specifically identified in your proposal with reasonable alternatives presented. Respondents are advised that the District is not bound by the terms of the RFP until a written agreement is fully executed. Any activity taken by respondent prior to a written agreement being fully executed is done at the respondent's sole risk.

XIII. Laws and Regulations

The person or entity contracting with the District under this RFP and any and all supplies and services furnished under this RFP will comply fully with all applicable Federal, State and Local laws, codes, rules, regulations, ordinances, including applicable licensure and certification requirements, and District policies and procedures.

XIV. Statement of Non-Discrimination

- A. In accordance with Federal law and U. S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, disability, and reprisal or retaliation for prior civil rights activity. (Not all prohibited bases apply to all programs.)
- B. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the State of Local Agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information is available in languages other than English.
- C. To file a complaint alleging discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

Mail to:

U. S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, DC 20250-9410

Fax to: (202) 690-7442; or

Email to: program.intake@usda.gov

- D. This institution is an equal opportunity provider.

Schedule A

PEPPERONI PIZZA SPECIFICATIONS

Please fill in all information in the appropriate boxes.

Item and Specifications:

- Pepperoni Pizza
 - a. Pepperoni pizza
 - b. Equal slices per pizza
 - c. 2 ounce equivalents grain per slice
 - d. 2 ounce equivalents meat or meat alternate per slice
 - e. Less than 800 mg sodium per slice
 - f. Whole grain rich as defined by USDA with proper documentation
 - g. 0 grams trans fat per slice
 - h. Less than 5 grams saturated fat per slice

Unit	Pizza Diameter	Servings Per Unit	Brand	Packaging	Do you meet all specifications (Items a-h)? If not, indicate differences.
One Pizza					

Schedule B

CHEESE PIZZA SPECIFICATIONS

Please fill in all information in the appropriate boxes.

Item and Specifications:

- Cheese Pizza
 - a. Cheese pizza
 - b. Equal slices per pizza
 - c. 2 ounce equivalents grain per slice
 - d. 2 ounce equivalents meat or meat alternate per slice
 - e. Less than 800 mg sodium per slice
 - f. Whole grain rich as defined by USDA with proper documentation
 - g. 0 grams trans fat per slice
 - h. Less than 5 grams saturated fat per slice

Unit	Pizza Diameter	Servings Per Unit	Brand	Packaging	Do you meet all specifications (Items a-h)? If not, indicate differences.
One Pizza					

Schedule C

STANDARD CONTRACT TERMS AND CONDITIONS

This Standard Contract Terms and Conditions (“contract”) is entered into this 17th day of June 2022, by and between the Ogden City School District (“DISTRICT”) and _____ (“CONTRACTOR”). For the purposes of this contract DISTRICT and CONTRACTOR may be referred to collectively by the term “parties”.

The CONTRACTOR agrees to perform services and/or provide materials set forth in RFP22-013 Child Nutrition Program Pizza. CONTRACTOR shall not commence with the performance of services until such time as DISTRICT notifies CONTRACTOR to proceed.

This contract shall have a term of one (1) year beginning on July 1, 2022, and concluding on June 30, 2023, with the option to extend an additional four (4) years.

Fees for services and/or materials will be based on the cost proposal submitted by CONTRACTOR as part of the bid process for RFP22-013. A copy of the cost proposal shall be attached to and become a part of this contract.

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- 1. AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in Utah Code § 63G - 6a Utah Procurement Code; as amended, Utah Administrative Code R33, Administrative Services, Purchasing and General Services, and/or Ogden City School District’s Purchasing and Procurement Policy; and related statutes which govern DISTRICT’S purchase of good and services.
 - 2. CONTRACT JURISDICTION, CHOICE OF LAW, & VENUE:** Provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this contract or breach thereof. Venue shall be in Ogden City, in the Judicial Court for Weber County.
 - 3. LAWS AND REGULATIONS:** CONTRACTOR and any and all supplies, services and equipment furnished under this contract will comply fully with all applicable Federal and State laws and regulations, including licensure and certification requirements.
 - 4. RECORDS ADMINISTRATION:** CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for payments made to CONTRACTOR for costs authorized by this contract. These records shall be retained by CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. CONTRACTOR agrees to allow DISTRICT, State, and Federal auditors and DISTRICT staff, access to all records to this contract for audit, inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
 - 5. CERTIFY REGISTRATION AND USE OF EMPLOYMENT “STATUS VERIFICATION SYSTEM”:** The Status Verification System, also referred to as “E-Verify”, only applies to

contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation for Bids or to the Multiple State Bids.

5.1. Status Verification System

- 5.1.1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named CONTRACTOR has registered and is participating in the Status Verification System to verify the work eligibility status of the CONTRACTOR'S new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA § 63G-12-302.
- 5.1.2. CONTRACTOR shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including UCA § 63G-12-302 and to comply with all applicable employee status verification laws. Such an affidavit must be provided before the notice to proceed for the subcontractor to perform the work."
- 5.1.3. DISTRICT will not consider a proposal for award, nor make any award where there has not been compliance with this section.
- 5.1.4. Manually or electronically signing the Proposal is deemed CONTRACTOR'S certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA § 63G-12-302.

5.2. Indemnity Clause for Status Verification System

- 5.2.1. CONTRACTOR (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, DISTRICT and its officers, employees, agents, representatives and any one the DISTRICT may be liable to, against any claim, damages or liability arising out of or resulting from violations of Section 5 of this Contract whether violated by employees, agents, or contractors of the following; (a) CONTRACTOR; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the CONTRACTOR or Subcontractor may be liable.
- 5.2.2. Notwithstanding Section 5.2.1 above, Design Professionals or Designers under direct contract with DISTRICT shall only be required to indemnify DISTRICT for a liability claim that arises out of the Design Professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the Design Professional shall be required to indemnify the DISTRICT in regard to subcontractors or sub consultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

6. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the DISTRICT, unless disclosure has been made in accordance with U. C. A. § 67-18.
7. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind DISTRICT to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for DISTRICT, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to CONTRACTOR by DISTRICT. CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from DISTRICT for these contract services. Persons employed by DISTRICT and acting under the direction of the DISTRICT shall not be deemed to be employees or agents of CONTRACTOR.
8. **INDEMNITY CLAUSE:** CONTRACTOR agrees to indemnify, save harmless, and release DISTRICT, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the acts or negligence of CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from DISTRICT'S sole negligence. The parties agree that if there are any Limitations of CONTRACTOR'S Liability, including a limitation of liability for anyone for whom CONTRACTOR is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.
9. **EMPLOYMENT PRACTICES CLAUSE:** CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, CONTRACTOR agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place.
10. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
11. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.
12. **DEBARMENT:** CONTRACTOR certifies that neither it nor its principals are presently nor have ever been debarred, suspended, proposed for debarment, declared ineligible, or

voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If CONTRACTOR cannot certify this statement, attach a written explanation for review by the DISTRICT. CONTRACTOR must notify the District Director of Purchasing within 30 days if debarred by any governmental entity during the contract period.

- 13. TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, for cause by either party, by the specified termination date, upon written notice being given the other party. The party in violation will be given ten (10) working days after notification to correct and stop the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to the date of termination.
- 14. NON-APPROPRIATION OF FUNDS:** CONTRACTOR acknowledges that the DISTRICT cannot contract for the payment of funds not yet appropriated by the Utah State Legislature, Utah State Board of Education or District Board of Education (BOARD). If the DISTRICT becomes subjected to a legislative change, revocation of statutory authority, lack of appropriated funds or availability of funds which would render CONTRACTOR'S delivery or performance under the contract impossible, or unnecessary, this contract will be terminated, either in whole or in part. If funding to DISTRICT is reduced due to an order by the Legislature or Governor, or is required by State Law, or if federal funding (when applicable) is not provided, or required any return or "give-back" of funds required for DISTRICT to continue payments, or if the BOARD mandates any cuts or holdbacks in spending, DISTRICT may terminate this contract or proportionately reduce the services and purchases of obligations and the amount due from the DISTRICT upon 30 days written notice. Where funding is controlled entirely by DISTRICT, before discontinuing funding, DISTRICT, at its discretion, will make efforts to; a) identify other goods/services that perform substantially the same functions; b) identify if any funding is available through a reallocation or reprogramming of other appropriated or non-appropriated funds, and c) make its best efforts to request and secure such funds from the appropriate entities (collectively, a "Non-Appropriation"). If a Non-Appropriation occurs, DISTRICT shall remit all amounts due to CONTRACTOR through the date of termination. DISTRICT shall not be in default under this contract for nonpayment and will not be liable for any future commitments, penalties, or liquidated damages.
- 15. SALES TAX EXEMPTION:** DISTRICT's sales and use tax exemption number is 12057251-002-STC. The tangible personal property or services being purchased are being paid from DISTRICT funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of DISTRICT, unless otherwise stated in the contract.
- 16. WARRANTY (This paragraph is NOT applicable to architect, engineering, and construction service providers.)** CONTRACTOR agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to DISTRICT under this contract for a period of one (1) year,

unless otherwise specified and mutually agreed upon elsewhere in this contract. CONTRACTOR acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, CONTRACTOR warrants that: 1) the product will do what the salesperson said it would do; 2) the product will live up to all specific claims that the manufacturer makes in their advertisements; 3) the product will be suitable for the ordinary purposes for which such product is used; 4) the product will be suitable for any special purposes that DISTRICT has relied on CONTRACTOR'S skill or judgment to consider when it advised DISTRICT about the product; 5) the product has been properly designed and manufactured; and 6) the product is free of significant defects or unusual problems about which DISTRICT has not been warned. Remedies available to DISTRICT include the following: CONTRACTOR will repair or replace (at no charge to DISTRICT) the product whose nonconformance is discovered and made known to CONTRACTOR in writing. If the repair and/or replaced product proves to be inadequate, or fails of its essential purpose, CONTRACTOR will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies DISTRICT may otherwise have under this contract.

17. **INSURANCE:** CONTRACTOR must carry insurance with policy limits no less than \$1,000,000 per incident and \$3,000,000 in aggregate. CONTRACTOR must provide proof of insurance to DISTRICT and must add DISTRICT as an additional insurance with notice of cancellation.
18. **PUBLIC INFORMATION:** CONTRACTOR agrees that the contract and related Sales Orders and Invoices will be public documents, and may be available for distribution. CONTRACTOR gives DISTRICT express permission to make copies of the contract, related Sales Orders and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except as for sections identified in writing and expressly approved by DISTRICT'S Purchasing Department, CONTRACTOR also agrees that CONTRACTOR'S response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. Permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information or similar notation.
19. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F. O. B. destination with all transportation and handling charges paid by CONTRACTOR. Responsibility and liability for loss or damage will remain with CONTRACTOR until final inspection and acceptance when responsibility will pass to DISTRICT except as to latent defects, fraud and CONTRACTOR'S warranty obligations.
20. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. CONTRACTOR will promptly submit invoices (within 30 days of shipment or delivery of services) to DISTRICT. DISTRICT contract number and/or release number shall be listed on all invoices, freight tickets, and correspondence relating to the contract orders. Prices paid by DISTRICT will be those prices listed in the contract.

DISTRICT has the right to adjust or return any invoices reflecting incorrect pricing or upon which DISTRICT contract number and/or release number is not listed.

- 21. PROMPT PAYMENT DISCOUNT:** Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. CONTRACTOR shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with DISTRICT Purchasing or Travel Card (major credit card); and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.
- 22. PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received whichever is later. After 60 days from the date the appropriate DISTRICT official receives a correct invoice, CONTRACTOR may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus 2%, computed similarly as the requirements of U.C.A. § 15-6-3. The IRS rate is adjusted quarterly, and is applied on a per annual basis, on the invoice amount that is overdue. All payments to CONTRACTOR will be remitted by mail, electronic funds transfer, or DISTRICT Purchasing Card (major credit card).
- 23. PATENTS, COPYRIGHTS, ETC.:** CONTRACTOR will release indemnity and hold DISTRICT, its officers, agents and employees harmless from liability of any kind or nature, including CONTRACTOR'S use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention or appliance furnished or used in the performance of this contract.
- 24. ASSIGNMENT/SUBCONTRACT:** CONTRACTOR will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of DISTRICT.
- 25. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for DISTRICT to declare CONTRACTOR in default of this contract: 1) nonperformance of contractual requirements; 2) material breach of any term or condition of this contract. DISTRICT will issue a written notice of default providing a ten (10) day period in which CONTRACTOR will have an opportunity to cure. Time allowed for cure will not lessen or eliminate CONTRACTOR'S liability for damages. If the default remains, after CONTRACTOR has been provided the opportunity to cure, DISTRICT may do one or more of the following: 1) exercise any remedy provided by law; 2) terminate this contract and any related contracts or portions thereof; 3) impose liquidated damages, if liquidated damages are listed in the contract; 4) suspend CONTRACTOR from receiving future solicitations.
- 26. FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. DISTRICT may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

- 27. **PROCUREMENT ETHICS:** CONTRACTOR understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the DISTRICT is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the DISTRICT, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization. (U.C.A. § 63G-6a-2304.5).

- 28. **CONFLICT OF TERMS:** CONTRACTOR Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on CONTRACTOR'S website, terms listed in a CONTRACTOR quotation/sales order, etc. In the event of any conflict in the contract Terms and Conditions, the order of precedence shall be: 1) Attachment a: District Standard Contract Terms and Conditions; 2) District Contract Signature page(s); 3) District Special Terms and Conditions; 4) Contractor Terms and Conditions.

- 29. **ENTIRE AGREEMENT:** This agreement, including all Attachments and documents incorporated hereunder, and the related DISTRICT solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on CONTRACTOR'S work plans, cost estimate forms, receiving tickets, or any other related standard forms or documents that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initiated by a representative of DISTRICT. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

By signing below, you agree to the above listed terms and conditions.

Signature of Vendor Representative

Date

Title

Signature of Ogden City School District Representative

Date

Title

Revision Date: March 17, 2021