



**IFB Number: 742-19-153 Landscaping Services
for the University of Texas at Permian Basin**

Return Bid to:

Reynolds_d@utpb.edu

Date of Issuance: Wednesday, July 3, 2019

**Deadline: Thursday, July 25, 2019
12:00 p.m. Central Time**

Under Section 231.006, Family Code, the Vendor certifies that the individual or business entity named in this contract, offer, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

Texas Vendor ID or FEI No.

COMPANY NAME

ADDRESS

CITY STATE ZIP

PHONE NUMBER EMAIL ADDRESS

AUTHORIZED SIGNATURE DATE

TYPE OR PRINT NAME OF SIGNER

E-MAIL ADDRESS

QUOTE F.O.B. DESTINATION PREPAID & ALLOWED

DELIVERY TIME ____ DAYS

TERMS OF PAYMENT: NET ____ DAYS

FREIGHT CHARGES: _____

If quoting other than F.O.B. Destination Prepaid and Allowed, indicate all freight charges.

TOTAL AMOUNT OF BID:

\$ _____

If the paragraph above is applicable, provide names and social security number of each person with at least 25% ownership. Vendors that pre-registered this information on the Texas Procurement and Support Services Centralized Master Bidders List have satisfied This Vendor agrees to comply with all conditions shown on this form.

**FAILURE TO MANUALLY SIGN WILL
DISQUALIFY BID**

- Check below if preference is claimed under Rule 1 TAC 113.8
- Produced in Texas and/or Texas bidder
 - Texas agricultural products
 - USA produced supplies, materials or Equipment
 - Historically Underutilized Business Certified by the TX Procurement and Support Services
 - Products of persons with mental or physical Disabilities
 - Products made of recycled materials
 - Energy efficient products



IFB742-19-153

The University of Texas Permian Basin (**UTPB**) desires to enter into a contract awarded to the company(s) offering the most advantageous proposition to the institution. Bids will be accepted through email and must be plainly marked on the subject line as **IFB 742-19-153**.

CONTRACT TERM

The contract is anticipated to be effective upon issuance of one or more purchase orders beginning September 1, 2019 and continue for an initial term of one (1) year from the date of commencement of services. After the expiration of the Initial Term, the contract term may be extended twice with each extension not exceeding one (1) year, provided both parties agree in writing to do so, prior to the expiration date. Any extensions shall be at the same terms and conditions, plus any approved changes. The University of Texas Permian Basin reserves the right to negotiate modification of terms and schedules as necessary.

BID DELIVERY

Through email only: reynolds_d@utpb.edu

EQUAL OPPORTUNITY

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

PUBLIC INFORMATION

The University considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and/or non-proprietary nature, and therefore shall be subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after a contract is awarded. Respondents are hereby notified that the University strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of IFB information.

WAIVER OF INCONSISTENCIES:

The University reserves the right to waive any and all minor technical inconsistencies in evaluating the proposal responses.

INCURRED EXPENSES

Any and all expenses incurred in response to this proposal are entirely the responsibility of the contractor. Neither the University, nor the State of Texas, is liable in any manner.

INQUIRIES

All inquiries regarding this Invitation for Bid must be submitted via email by **Friday, July 12, 2019 by 12:00 p.m. Central Time**. The University will not accept questions after this date. All inquiries may result in written responses posted to the University website at <https://www.utpb.edu/services/business-affairs/purchasing/bid-opportunities>. Questions must be emailed to Debbie Reynolds at reynolds_d@utpb.edu.

It is the bidder's responsibility to periodically check the University Website up until the offer opening time for any changes, modifications or addenda to this offer. Receipt of all addenda to this IFB should be acknowledged by returning a signed copy of each addendum with the submitted Bid. Failure to do so could result in an offer submission that cannot be considered.

REFERENCES

Vendors responding to this bid must be prepared, if asked pre-award, to submit a list of at least three references your company has successfully provided products for projects of this type and magnitude. The list must include the client's name, address, telephone number, a contact person, and a brief description of the particular type of project completed. The University shall not be confined to this list if it deems further reference investigation necessary.

HUB Requirements: In accordance with the State of Texas policy of encouraging the use of Historically Underutilized Business (HUB) Vendors in state procurement, the University shall make a good faith effort to utilize HUB Vendors in Contracts for commodities and services. The University will achieve the annual program goals by contracting directly with HUB Vendors or indirectly through subcontracting opportunities. Therefore, any business that contracts with the University shall be required to make a good faith effort to award subcontracts to HUB Vendors.

HUB Subcontracting Plan (HSP)

In accordance with Gov't Code §2161.252, The University of Texas Permian Basin (UTPB) has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), are responsible for completion/submission of a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response. **Failure to include the required HSP will result in non-consideration of your response.**

AWARD

UTPB intends to award in such a way as to gain the greatest benefit to the end result of this project and therefore the University. UTPB will be the sole judge of what constitutes the most advantageous proposition to the University.

CRITERIA FOR AWARD

The evaluation of the bid will include the overall response to the bid, and will include, but is not limited to the "Best Value Standard for Purchase of Goods or Services" and any other factor UTPB deems relevant. The University must be confident that their needs can be met. The University will evaluate and make the award on the offer that is determined to be the best value to the University based on the criteria listed below. All bids must be complete and convey all of the information requested to be considered responsive.

Considerations for award of this contract will include the factors in accordance with Government Code 2155.074. Best Value Standard for Purchase of Goods or Services are as follows:

(a) For a purchase of goods and services under this chapter, each state agency, including UTPB shall purchase goods and services that provide the best value for the state.

(b) In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the Texas Procurement and Support Services or other state agency may, subject to Subsection (c) and Section 2155.075, consider other relevant factors, including:

- (1) Proposed costs
- (2) Stability and success of contractor's business
- (3) Quality and reliability of the goods and services
- (4) Delivery terms and proposed transition plan
- (5) Indicators of probable contractor performance under the contract such as past contractor performance, the contractor's financial resources and ability to perform, the contractor's experience or demonstrated capability and responsibility, and the contractor's ability to provide reliable maintenance agreements and support
- (6) Other factors relevant to determining the best value for the state in the context of a particular purchase

Added by Acts 1997, 75th Leg., ch. 1206, § 6, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 1422, § 14.16, eff. Sept. 1, 2001.

PUBLICITY

Contractor agrees that it shall not publicize this Contract or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of the University's employees or use the University's name in connection with any sales promotion or publicity event without the prior express written approval of the University.

SEVERABILITY

In case any provision hereof, or of any resulting agreement or purchase order, shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

GOVERNING LAW

This Contract, including, without limitation, this IFB and any resulting agreement or purchase order, shall be construed and governed by the laws of the State of Texas.

FIRM PRICING

Prices contracted for are to be guaranteed firm pricing for ninety (90) days.

TERMINATION FOR FAILURE TO MEET SPECIFIED DELIVERY

Should the contractor consistently fail to meet the specified delivery, UTPB reserves the right to cancel upon 10 days written notice. UTPB specifically reserves the right to purchase these items elsewhere when delivery cannot be met and UTPB deems it necessary to override the contractual agreement.

FIXED ESCALATION CLAUSE

Bidders must certify a fixed, maximum percentage of escalation for both the initial and any subsequent terms of the contract as specified. This percentage will be employed in the evaluation and award of any contract resultant of the bid. The maximum annual percentage of escalation is _____%. **If this field is not filled in, an escalation of 0% will be assumed.**

RIGHT TO TERMINATE

The University reserves the right to terminate this contract or any portion thereof on thirty (30) days written notice. Grounds for cancellation shall include, but are not limited to the following:

- 1) Failure to provide timely prompt service, and
- 2) Failure to provide quality products.

The University shall be the sole judge of acceptable service as indicated above.

TERMINATION

For termination which is not based upon cause, thirty (30) day written notice shall be given to the contractor.

AMENDMENTS

This Contract may be amended only upon written agreement between UTPB and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void.

PROTECTION OF PROPERTY

Vendors shall at all times guard against damage or loss to the University property or of other vendors, suppliers or contractors, and shall be responsible for replacing or repairing, or for the cost of repairs or replacement of any such loss or damage. The University may require payment or require such additions and/or adjustments to the Vendor's assessment to ensure reimbursement or replacement for such loss or damage to property incurred by the Vendor or its agents

INDEMNIFICATION

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND UT PERMIAN BASIN ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TEXAS SOUTHERN UNIVERSITY.

THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR UT PERMIAN BASIN FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF UT PERMIAN BASIN OR ITS EMPLOYEES.

***Please return this document with your response.

Pricing

Respondent/Company Name: _____

Pricing for Services Offered: Having carefully examined all specifications and requirements of this IFB and any attachment thereto, the undersigned proposed to furnish the grounds and landscape maintenance services required pursuant to this IFB.

Annual Cost for CEED, NOEL, &
Engineering Building

\$ _____

Annual Cost for President Bush House

\$ _____



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*******Please return this document with your response.**

VENDOR CERTIFICATION / ACCEPTANCE

The undersigned hereby certifies that he/she has read, understands, and agrees that acceptance by UTPB of the bidder's offer by issuance of a purchase order will create a binding legal contract. Further he/she agrees to fully comply with documentary forms herewith made a part of this specific procurement

NAME OF COMPANY:

AUTHORIZED SIGNATURE:

TYPED NAME & TITLE:

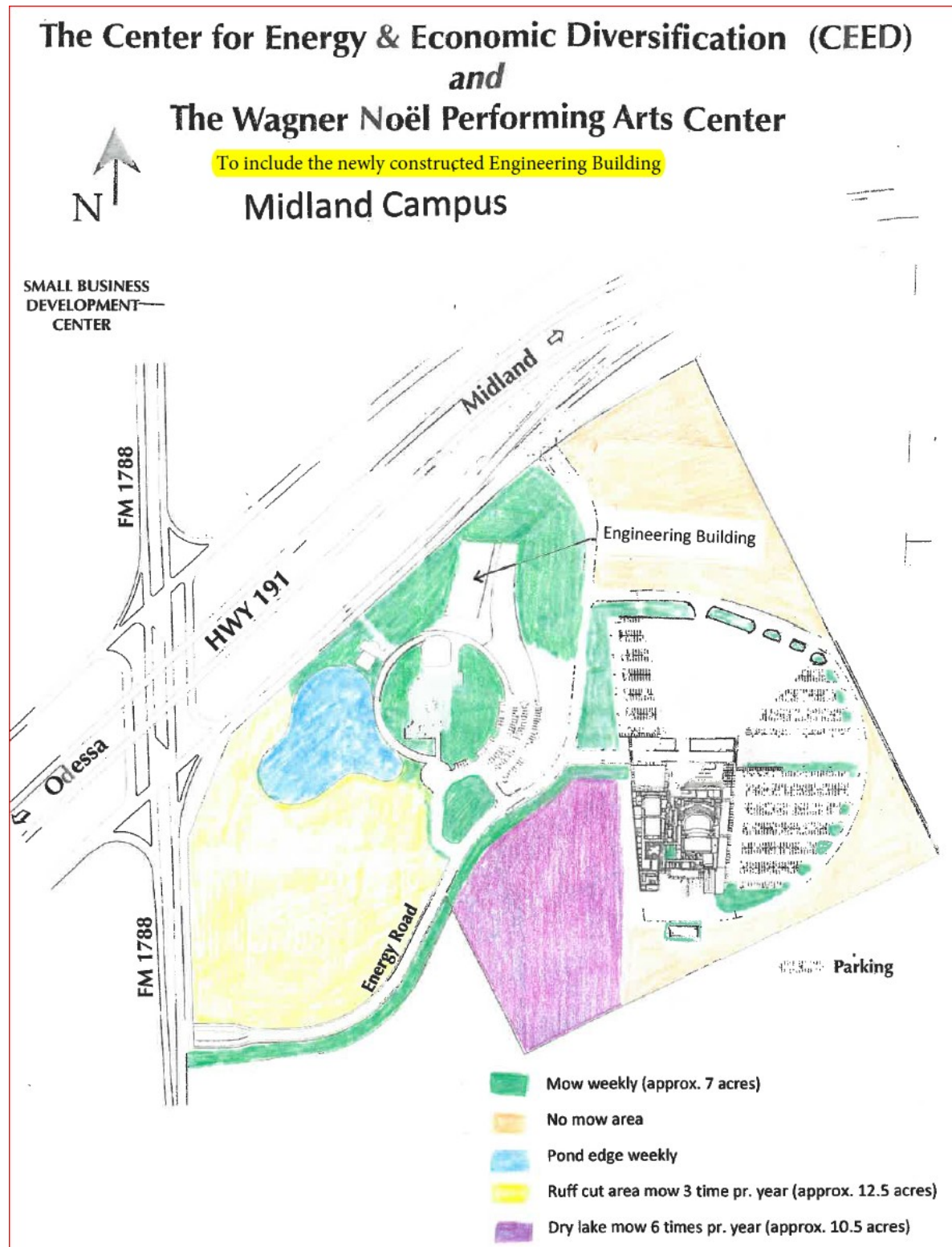
The following attachments are to be considered as part of this bid:

- 1) The University of Texas Permian Basin "Purchase Order Terms and Conditions"
- 2) Attachment A – Annual Task Chart
- 3) Attachment B – Maintenance Checklist

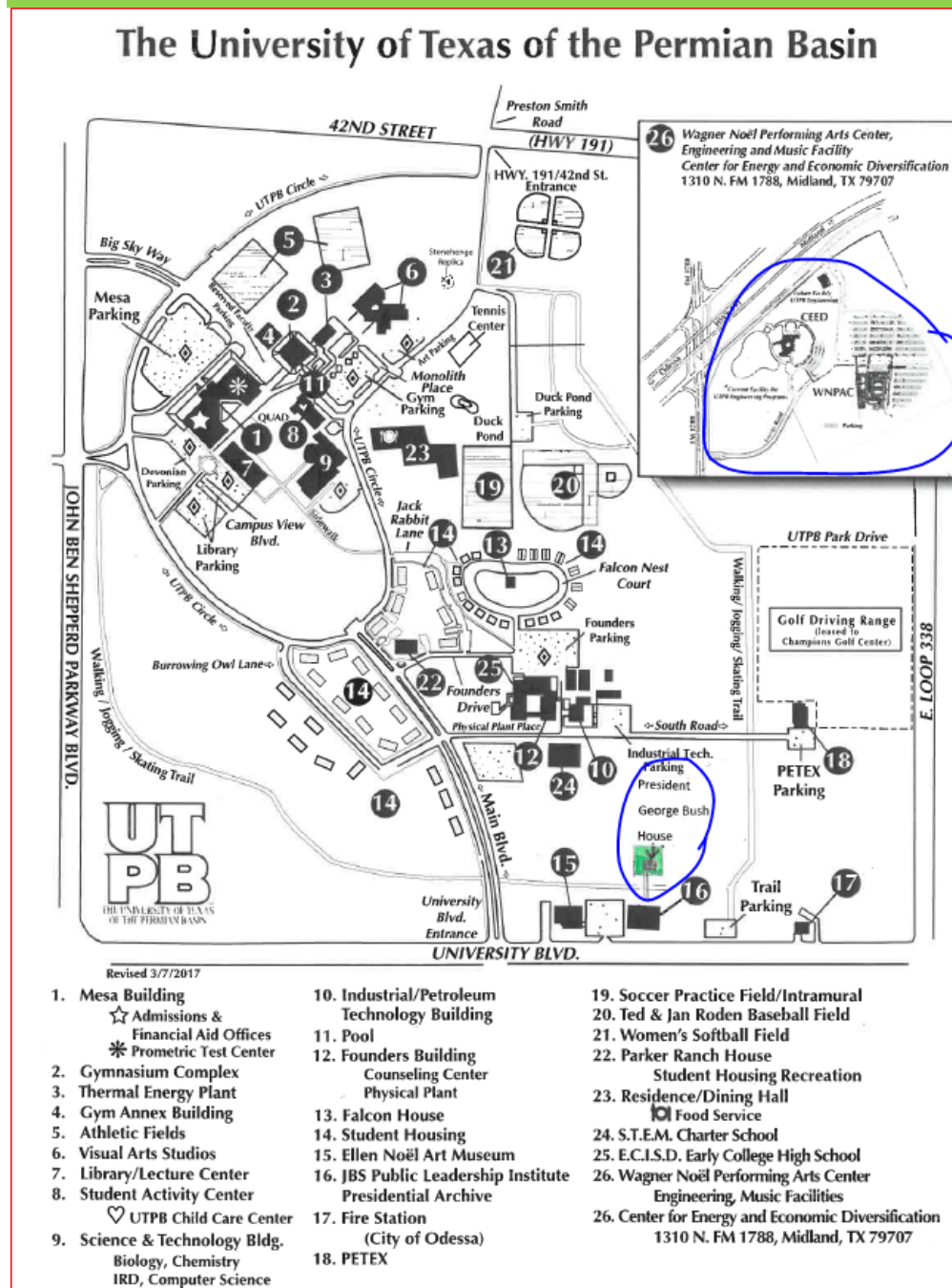
SPECIFICATIONS

Statement of Work

The University is soliciting bids for landscaping services for the University based on the attached map. Department is issuing this bid per the terms, conditions, and specifications as described below.



Only the areas circled in blue are included in this bid. President George Bush house area is approximately ¼ acre and is on the main campus grounds. The Center for Energy & Economic Development (CEED), Wagner Noel Performing Arts Center, the Engineering Building, etc. are covered in the previous map.



CONTRACTOR RESPONSIBILITIES

- 1 **Irrigation System:** The Contractor's maintenance of the irrigation system shall consist of monitoring, adjustment of heads for coverage and elevation, and notification of issues/damage to the system other than accidental contractor damage which contractor is responsible for.
 - 1.1.1 Notify Owner of the need to repair leaks in both mains and lateral lines and all other work required (blown off heads, etc.) to maintain a complete working irrigation system. Contractor to propose a cost to repair estimate to Owner as soon as practical for approval of repairs. Owner has the final responsibility of determining repair action upon notification by Contractor.
 - 1.1.2 Trees: The Contractor's maintenance of trees shall consist of watering with irrigation system and maintaining of ground/grass/mulch beds under the tree, and minor limb pruning to remove low growing small twigs/limbs under one (1) in size.
 - 1.1.2.1 Notify Owner of limbs over one (1) in size that need to be pruned and Owner will do that work
 - 1.1.3 Lawns: The Contractor's maintenance of lawns shall be per Section 7.11 and per frequency as shown in Annual Task Chart.
 - 1.1.4 Landscape Beds & Shrubs: Prune/Shape shrubs and groundcovers to established horticultural standards, thereby keeping neat and orderly. Keep beds weed free.
 - 1.1.5 Bed Prep (if noted on Annual Task Chart) to be provided. Work will include bed prep, mulch two (2) times per year, plus keeping weeds out of the color beds & planters.
- 2 **Products:** Materials to meet normal horticultural standards.
- 3 **WEEDING**

Contractor shall provide two (2) applications of pre-emergent herbicide per year and minimum three (3) post emergent applications. Hand pull weeds as needed.
- 4 **ANT CONTROL**

Apply Ortho Fire Ant control, or organic mound treatments or equal approved product.
- 5 **MISCELLANEOUS:**
 - A. Pruning tools shall be maintained in safe, working condition. Cutting edges shall be sharp at all times. If pruning diseased plants, sterilize pruners between each cut.
 - B. Sterilize any equipment used off site before using onsite.
 - C. Granular material spreaders shall be the cyclone type.
 - D. The Contractor shall be responsible for any grade, plant material (trees, shrubs, etc.), or hardscape amenity damage caused by the spreader, and the application process. Spreaders shall be in a safe working condition at all times.
 - E. Pesticide sprayers for application products shall be of the hand-held or backpack type. The Contractor shall be responsible for any grade, plant material (trees, shrubs, etc.), or hardscape amenity damage caused by the sprayer and the application process.
 - F. Sprayers shall be in a safe working condition at all times.

EXECUTION

1 WATERING

- i. Maintenance procedures should assure the proper operation of the irrigation system.
- ii. Provide University's Physical Plant Director or designee with any suggested schedule changes and concerns about plant material. Should conditions arise where plant health is being compromised due to neglect, the plant(s) shall be replaced with the same plant of equal size and form at the cost of the Contractor.
- iii. Promptly repair any damage to the irrigation system caused by the Maintenance Operations at no expense to Owner.
- iv. For damage caused by vandalism, excavation by others resulting in broken heads, risers, pipe or other similar damage, please provide cost estimate using same type part and manufacturer for the repair to University, for University to consider approving the repair.
- v. Avoid over- and under-watering and notify the owner immediately if drainage problems appear.

2 FERTILIZATION: (all planting areas and turfgrass)

March/October –fertilizer materials shall be provided by the contractor and approved by UT Permian Basin Physical Plant Department.

- i. Fertilize all shrubs, groundcover, flower beds and turfgrass with fertilizer per label rates of approved fertilizer provided by UT Permian Basin Physical Plant Department.

3 TREES

- i. Any fire ant mounds around or on top of a tree root zone shall be treated immediately with products as specified. Do not allow the mound to build on the tree trunk as this can cover the tree root flare and possibly cause injury or death.
- ii. Trees: Trees shall be maintained in a healthy, vigorous growing condition, free from disease and large concentrations of pests.
- iii. Only prune limbs less than 1" that are a safety issue. Notify Owner of limbs over one (1) inch in size that need to be pruned and Owner will do that work
- iv. Remove basal sucker growth as needed.
- v. Sterilize pruning tools between individual plants by dipping them in a solution of 1 part bleach and 9 parts water or heavily spray them with a disinfectant spray. After dipping or spraying, wait 20 seconds before using again.
- vi. Pruning of this type is a minor, non-reimbursable, cost to be included as part of the regular maintenance.
 - vii. Any tree found to be dead or missing shall be replaced with plant material of identical species at the Contractor's expense, unless the loss was due to excluded damage. If the loss resulted from excluded damage, replacement will be paid for as additional work. Contractor shall submit a quote for replacement within one week of the loss. Replacement trees shall equal in size to the trees at the time of the loss.

4 SHRUBS

- i. Shrubs shall be maintained in a healthy, vigorous growing condition, free from disease and large concentrations of pests.
 1. Shrubs shall be pruned to remove dead wood when necessary. Remove branches that are dead, broken, extending beyond the face of curbs or sidewalks.
 2. Formal hedges shall be regularly pruned to maintain a uniform height and width.
- ii. Shrubs uniformly planted in rows, where it is clear the intent was to create a hedge, shall be pruned so as to encourage a hedge. Shrubs in hedges shall be encouraged through pruning to form a dense, continuous, hedge, branching fully to the ground. All other shrubs shall be pruned only as required for safety, visibility, and plant health, and allowed to develop into the natural shapes expected of the plant variety.

- iii. **In no case should any shrub be sheared.** Shrubs shall be selectively pruned.
- iv. All water sprout and sucker type growth shall be pruned and trimmed continuously. Pruning and trimming of any shrub shall be done so in a manner as to retain the natural character and habit of the plant. All shrubs shall be pruned to create a uniformly dense plant. Selectively thin and tip back annually, or as needed. Do not change the natural shape of the shrub by pruning unless so directed by the Owner.
- v. Any shrub found to be dead or missing shall be replaced with a plant material of identical species at the Contractor's expense, unless the loss was due to excluded damage. If the loss resulted from excluded damage, replacement will be paid for as additional work. Submit a quote for replacement within two weeks of the loss. Replacement shrubs shall be planted at the size originally planted.
- vi. All shrubs will be continuously inspected for signs of pests and diseases. Identify pests and diseases, then propose treatment and cost to Owner. Refer Annual Task Chart for specific maintenance schedule.
- vii. The cutting blades on pruning shears, clippers, blades, saws, etc. shall be sterilized frequently to minimize the possibility of spreading disease. When pruning shrubs known or suspected to be diseased, the cutting blades shall be sterilized after each cut. Sterilize blades by dipping them in a solution of 1 part bleach and 9 parts water or heavily spray them with a disinfectant spray.
- viii. All pruning debris shall be removed completely and immediately from site when generated.

5 GROUNDCOVER

- i. Groundcover shall be maintained in a healthy, dynamic growing condition.
- ii. Any groundcover found to be dead or missing shall be replaced with plant material of identical species at the Contractor's expense, unless the loss was due to excluded damage. If the loss resulted from excluded damage, replacement will be paid for as additional work. Submit a quote for replacement within one week of the loss.
- iii. All groundcover beds shall be sheared only as necessary to remove old growth or woody growth. This shall be done in the early spring, prior to the growing season. Groundcover beds bordering on paved surfaces must be edged as needed to retain a neat edge. Do not trim vertically so as to expose the stems.

6 MOWING

- i. Contractor shall note that irrigation heads are located in all areas.
- ii. Mowing frequency is shown the Annual Task Chart.
- iii. Trim around signs, valve boxes, utility poles, fire hydrants, etc.
- iv. All blades are to be kept sharp and level at all times.
- v. Proper equipment selection is to be done to avoid scalping of the turf. Mowing heights are to be adjusted on a seasonal basis in such a fashion that the mowing height is at its shortest in the spring and progressively higher as summer approaches. Mowing height is a function of the grass variety and in no case shall exceed the recommended mowing height of the variety shown by the most recent research from the Texas A&M Turfgrass Research Program.
- vi. Prior to mowing operations, the entire area is to be walked a litter picked up in order that the litter is not shredded. This is a requirement to be completed prior to every mow.
- vii. Grass clippings shall not be blown or disposed of in landscape beds, on sidewalks, into the street, or in the storm sewer system. If an unsightly amount of clippings are generated from the mow cycle, it will be the responsibility of the Contractor to clean up or disperse the clippings at no cost to the University.
- viii. If the project site(s) are too wet to allow acceptable mowing, (tracking or rutting of the site is not acceptable) no mowing operations will take place. If mowing operations are undertaken with slightly

wet conditions, care should be taken so as not to track clippings and/or mud onto hard surfaces. If tracking occurs, extra cleanup will be required of the Contractor at no added cost to the University.

- ix. In the event that mowing operations will not take place due to improper conditions or weather related causes, the Contractor shall notify the Physical Plant Director within 24 hours of a reschedule date. If a reschedule does not occur, the Contractor shall credit the University on the monthly invoice to properly reflect the missed service date.

7 PEST AND DISEASE CONTROL:

- i. Assess level of damage caused by insects and diseases regularly. Minor, visually unimportant damage does not need to be treatment proposed, as long as the long-term health of the planting is not affected.
- ii. Carefully identify any pest that begins to cause significant damage. Notify owner of any issues. Do not attempt control until the pest organism has been identified and a treatment plan has been proposed and accepted by the Physical Plant Director.
- iii. After identification and treatment plan is accepted, choose the least toxic control measure possible. Read and observe all label precautions. If the least toxic control measure is not effective, use the next least hazardous biological or pest-specific control measures. In pest outbreaks, review cultural practices to determine the underlying cause, and correct. Propose control applications in written form and do so **as required** for safe control of the particular diseases or insects discovered. Notice should be given to Owner well before the economic damage threshold is met.

8 MULCHING

- i. Hardwood mulch shall be cared for as needed to create and maintain an even and uniform appearance over the visible soil surface of each bed area.
- ii. Maintain minimum three (3) inch layer of coarsely shredded hardwood bark mulch in planter beds and at base of trees twice a year. Hold mulch six (6) inches back from root flare of plant or tree. Remove any mulch, compost, leaf debris and ant piles at the root flare base of the tree to keep the flare fully exposed. No Volcano mulching allowed on site. Decomposition of organic mulch is considered normal wear and tear and replacement of decomposed mulch shall be made by the Contractor as part of this contract. All mulch will be provided by the UT Permian Basin Physical Plant Department. Contractor must notify Physical Plant Director or designee when mulch supply is diminished.
- iii. Replacement of large amounts of mulch and gravel rock (over one cubic yard) which has been stolen, vandalized, or washed away by a single storm will be paid as additional work. Contractor shall submit a quote for the work for approval by University prior to replacement.
- iv. Any mulch or gravel found outside bed areas or gravel at building shall be returned to the area on a routine basis.

9 WEED REMOVAL

- i. Remove weeds weekly during inspection of site and as required for safe control and elimination of the weeds, and to prevent reseeding and spreading of noxious and aggressive weeds. Contractor shall familiarize himself with the plants that are to be maintained.
- ii. Pre and post emergent herbicides to be applied per Annual Task Chart, chemical label and standard horticultural practice
- iii. Weeds in shrub beds, groundcover beds, ornamental grass and grass – hand pull any weeds on a regular basis that appear between chemical applications.
- iv. Weeds in paving – apply non-selective herbicide on regular basis.
- v. Dispose of weeds off-site.
- vi. The cost of all weed control work shall be included in the contract price.

10 LITTER REMOVAL

- i. Maintain all grass, groundcover, shrub, perennial, ornamental grass, mulch, and paved areas as required to be free of litter and debris. The frequency is shown on the Annual Task Chart and to be performed weekly on all portions of areas involved in this contract. Pick up all litter and debris and deposit in onsite dumpsters.
- ii. Contractor is not responsible for trash receptacles located on site.
- iii. Contractor is responsible for collecting any debris found in bed areas or debris created by maintenance of plants. All litter shall be removed from bed areas, regardless of the size of the litter.
- iv. Do not sweep or blow trash, leaves, or landscape debris into bed areas or onto adjacent pavement or property. Collect all debris swept or blown from landscape areas and remove from the site, including corners of parking lots. All litter shall be removed from sidewalks, gutters, and all planted areas each week. In no case shall trash, litter or leaves be blown or swept onto the property of others. All trash, litter, leaves, etc. shall be collected, hauled away, and disposed of legally.

11 HAZARD REMOVAL

- i. Pick up and remove all broken glass from planters and lawn areas as necessary, but at least twice per week. Any hazardous conditions shall be reported to the Physical Plant Director or designee immediately upon discovery. Hazardous conditions will be defined as any natural or man-made feature within the physical boundaries of the contracted property (plant, structure, item of equipment, site furniture, or any real property) which is in such a condition that it may not be utilized as its original or designated capacity and efficiency.

12 CHEMICALS, HERBICIDES, AND PESTICIDES

- i. All chemicals shall be used in accordance with label directions and the manufacturer's recommended handling methods. All chemicals shall be handled in accordance with applicable regulations. Registered chemicals shall be used by a qualified contractor who is required to have all applicable licenses in the State of Texas to dispense, use, or broadcast any chemicals.
- ii. Pesticides shall be applied at times when student/employee presence is minimal. All treatments will require approval from the Physical Plant Director prior to execution.
- iii. The Contractor shall take precautions to keep persons away from pesticide and herbicide treated areas until the applied material is fully dry and the treated area is safe for entry. Follow the recommendations of the pesticide manufacturer and all applicable governmental and industry regulations.

13 UT Permian Basin reserves the right to alter maintenance schedule and/or suspend service and payment due to extreme weather conditions such as drought, extreme rainfall, or snow.

14 MAINTENANCE SCHEDULE –

Refer to Annual Task Chart, Attachment A, for summary of maintenance activities.

15 RELATED WORK

Due to the nature and use of the campus, communication between the University's Physical Plant Director and Contractor is crucial. Some operations such as mowing and chemical/pesticide applications may need to be shifted to accommodate the timing of "Special Public Events."

16 PRE-WORK MEETING

Prior to beginning maintenance, a mandatory pre-work meeting will be held between the Contractor and Owner to reach agreements relating to responsibilities and procedures of each interested party to see that the project is maintained according to the approved maintenance schedule and specifications and the conditions under which disbursements for maintenance costs are authorized and will be paid. This meeting will be arranged by the Purchasing Manager after the contract award & Notice to Proceed is issued.

17 COMMUNICATIONS AND REPORTS

- i. Regular communication between Contractor and the Physical Plant Director is required to ensure a satisfactory result in work performed.
- ii. The Contractor is encouraged to ask questions, rather than make assumptions, about what is required of a specific task.
- iii. The Contractor shall turn in a copy of the Maintenance Checklist to the Physical Plant Department prior to departing from campus after each visit. The checklist copy shall have a check mark by all items completed at the site during the visit by the contractor. Any items completed that are not on the checklist shall be noted on the checklist or attached as needed.

The checklist shall be dated and contain the name and signature of the contractor's representative for the work at this site. See Attachment B for the Maintenance Checklist.



IFB742-19-153

HUB SUBCONTRACTING PLAN

<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>

ATTACHMENT B – Landscaping Maintenance Checklist
(See Landscape Annual Task Chart for details)

Place a check mark by each item completed during the past week.

- ___ 1. Maintain bed edge. See detail in maintenance specifications.
- ___ 2. Prune back any shrubs overhanging curbs or sidewalks. Selectively groom plants if needed.
- ___ 3. Prune back any groundcover overhanging curbs or sidewalks. Selectively groom plants if needed.
- ___ 4. Remove litter and leaves from plants, beds, and parking lots and properly dispose.
- ___ 5. Remove any broken or fallen branches from trees. Remove sucker growth from tree trunks.
- ___ 6. Remove all weeds from bed areas. Weeds 2 inches or larger must be removed by hand.
- ___ 7. Inspect and replace mulch if needed which has been knocked or washed out of planters. Smooth mulch layer if it has been disturbed. Note on checklist quantity of mulch added to maintain levels.
- ___ 8. Inspect and replace gravel if needed which has been knocked or washed out of planters. Smooth gravel surface if it has been disturbed. Note on checklist quantity of gravel added to maintain levels.
- ___ 9. Monitor and check plants for signs of stress, disease or pest infestation. Replace any plants that meet conditions for replacement at the Contractor's expense. Request authorization to replace other dead or missing plants. Note: You must request authorization to make replacements within one week of the damage becoming evident.
- ___ 10. Sweep or blow all walkways, curbs, and gutters.
- ___ 11. Complete any items required on the Annual Task Chart. Note items completed.
- ___ 12. Monitor irrigation system. Notify Physical Plant Director of areas not adequately watered or if any adjustments are needed.

Checked By: _____ (Printed Name)

Signature: _____ Date: _____ Received By:
_____ (Physical Plant Representative)

**The University of Texas at Permian Basin
Purchase Order Terms and Conditions**

1. **DELIVERY; SUBSTITUTIONS; INVOICES:** Contractor will keep University advised at all times of the status of delivery or performance under this Purchase Order. If delay is foreseen, Contractor will give prompt written notice to University. Upon notice, University may extend the delivery date in its sole discretion. Contractor will only tender for acceptance those goods and services that conform to the requirements of this Purchase Order. Substitutions, cancellations and price changes will require prior written consent of University. Default in promised delivery or failure to conform to the requirements of this Purchase Order authorizes University to purchase goods or services elsewhere and charge to Contractor any excess cost of such repurchase. Contractor will show this Purchase Order number on all packages, shipments, and invoices.
2. **TITLE AND RISK OF LOSS:** Title to and risk of loss to any goods to be delivered under this Purchase Order will not pass to University until University actually receives and takes possession of such goods at the point of delivery.
3. **PAYMENTS; SALES TAX; ELECTRONIC FUNDS TRANSFER:**
 - (a) So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing, University will pay Contractor for goods and services in accordance with [Chapter 2251, Texas Government Code](#). University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, *Texas Tax Code*, and Title [34 Texas Administrative Code \("TAC"\) §3.322](#).
 - (b) [Section 51.012, Texas Education Code](#), authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Purchase Order, University will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to University in writing at least thirty (30) days in advance of the effective date of the change.
4. **WARRANTIES:** In addition to all warranties established by law, Contractor hereby represents, covenants, certifies, warrants and agrees that:
 - (a) Contractor will comply with all requirements of this Purchase Order.
 - (b) If Contractor is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, it is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized and in good standing to conduct business in the State of Texas.
 - (c) If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#) ("**Chapter 171**"), Contractor is not currently delinquent in the payment of any taxes due under Chapter 171, or Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
 - (d) Pursuant to §§[2107.008](#) and [2252.903](#), *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Purchase Order may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
 - (e) In accordance with [§231.006, Texas Family Code](#), the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.
 - (f) All goods and services covered by this Purchase Order will conform to the specifications, drawings, samples or other descriptions furnished or adopted by University (collectively "**specifications**"), and will be new, merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. University will have the rights of inspection and approval and may reject and return goods or require reperformance of services at Contractor's expense if defective or not in compliance with University's specifications. Defects will not be deemed waived by University's failure to notify Contractor upon receipt of goods or completion of services or by payment of invoice.
 - (g) No disclosure, description, or other communication of any sort will be made by Contractor to any third person of the fact of University's purchase of goods or services under this Purchase Order, or of the details and characteristics of the goods or services, without University's prior written consent. Anything furnished to Contractor by University pursuant to this Purchase Order including samples, drawings, patterns, and materials will remain the property of University, will be held at Contractor's risk, and will be returned to University upon University's request, and no disclosure or reproduction thereof in any form will be made without University's prior written consent.
 - (h) Contractor is familiar with and is in full compliance with its obligations, if any, under all applicable federal, state and local, laws, regulations, and ordinances (collectively, "**Applicable Laws**").
 - (i) All goods delivered or services provided pursuant to this Purchase Order will conform to standards established for such goods and services by all Applicable Laws, including those standards promulgated by the federal Occupational Safety and Health Administration (OSHA) and the Texas Hazard Communication Act, [Chapter 502, Texas Health and Safety Code](#) ("**Texas hazard Communication Act**").
 - (j) Contractor is familiar with and in full compliance with the Texas Hazard Communication Act and will provide either (1) a Material Safety Data Sheet ("**MSDS**") for each product Contractor, its employees, agents or subcontractors brings on University's premises, or (2) a statement of exemption if the product is not covered by the Texas Hazard Communication Act.
 - (k) Use or sale of any goods delivered under this Purchase Order, except (with respect to patents) goods produced to University's detailed design, will not infringe any adverse valid patent, copyright, trademark or other intellectual property right.
 - (l) The price to be paid by University will be that contained in Contractor's bid or proposal, which Contractor warrants to be no higher than Contractor's current prices on orders by others for goods or services of the kind covered by this Purchase Order for similar quantities to similar customers under similar conditions. In the event Contractor breaches its warranty, the prices will be reduced to Contractor's current prices on orders by others or, in the alternative, University may cancel this Purchase Order without liability to Contractor.
 - (m) Contractor will make records of Contractor's costs, reimbursable expenses and payments pertaining to this Purchase Order available to University or its authorized representative during business hours and retain those records for four (4) years after final payment or abandonment of the project, unless University otherwise instructs Contractor in writing.
 - (n) If this Purchase Order requires Contractor's presence on University's premises or in University's facilities, Contractor will cause its employees, representatives, agents, and subcontractors to become aware of, fully informed about, and in full compliance with all applicable University rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

- (o) Contractor has not given or offered to give, nor does Contractor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Purchase Order.
- (p) The foregoing representations, covenants, certifications, warranties and agreements will survive acceptance of goods as well as performance of services under this Purchase Order.

5. **ACCESS BY INDIVIDUALS WITH DISABILITIES.** Contractor represents and warrants (the “**EIR Accessibility Warranty**”) that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Purchase Order (collectively, the “**EIRs**”) comply with the applicable requirements set forth in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (as authorized by [Subchapter M, Chapter 2054, Texas Government Code](#).) To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, then University may terminate this Purchase Order and Contractor will refund to University all amounts University has paid under this Purchase Order within thirty (30) days after the termination date.
6. **ANTITRUST LAWS; CLAIMS FOR OVERCHARGES:** Contractor warrants and represents that neither Contractor nor any party acting on behalf of Contractor has violated the antitrust laws of the United States or of the State of Texas. Contractor hereby assigns to University any and all claims for overcharges associated with this Purchase Order which arise under the antitrust laws of the United States, [15 U.S.C.A. §1](#), et seq., or of the State of Texas, [Tex. Bus. & Comm. Code Sec. 15.01](#), et seq.
7. **INDEPENDENT CONTRACTOR:** In performing any services under this Purchase Order, Contractor is, and undertakes performance thereof as, an independent contractor, with sole responsibility for all persons employed in connection therewith, including exclusive liability for the payment of all federal, state, and local unemployment and disability insurance premiums and fees and all social security and other taxes and contributions payable in respect of such persons, from and against which liability Contractor agrees to indemnify, exonerate and hold harmless University.
8. **INDEMNITY:** CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS UNIVERSITY, THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM (“**BOARD**”) AND THE STATE OF TEXAS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE “**INDEMNIFIED PARTIES**”) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS’ FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY “**CLAIMS**”) BY ANY PERSON OR ENTITY, ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER, TO THE EXTENT CAUSED BY THE ACTS, OMISSIONS OR WILLFUL MISCONDUCT OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS. IN ADDITION, CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER.
9. **INSURANCE:** If Contractor’s employees, agents, suppliers or subcontractors will be present on University’s property, Contractor will maintain and cause its agents, suppliers and subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

| <u>Coverages</u> | <u>Limits</u> |
|---|---------------------------------------|
| Workers’ Compensation | Statutory Limits |
| Employer’s Liability | \$1,000,000 per accident and employee |
| Commercial General Liability (including contractual liability) | \$1,000,000 per occurrence |
| Personal & Advertising Injury | \$1,000,000 per occurrence |
| Product/Completed Ops | \$1,000,000 aggregate |
| Business Auto Liability | \$1,000,000 combined single limit |
| General Aggregate | \$2,000,000 per policy limit |

All policies (except Workers’ Compensation) will name University, the Board, and their officers and employees as Additional Insured. A Waiver of Subrogation in favor of University and the Board and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to University prior to commencement of any services under this Purchase Order. Contractor will endorse all policies to require insurance carriers to notify University of cancellation, termination, material change, or non-renewal of any policy.

10. **VENUE; GOVERNING LAW:** ECTOR County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and

obligations of its parties, and all claims arising out of or relating to the Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

11. **ASSIGNMENT AND DELEGATION:** Contractor may not assign any of its rights or delegate any of its obligations under this Purchase Order without University’s prior written consent. Any assignment or delegation attempted by Contractor in violation of this clause will be void and ineffective for all purposes.

12. **ENTIRE AGREEMENT; MODIFICATIONS:** This Purchase Order supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Purchase Order and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except in writing.
13. **BREACH OF CONTRACT CLAIMS:** To the extent that [Chapter 2260, Texas Government Code](#), is applicable to this Purchase Order and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to [Chapter 2260](#), will be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of University will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of this Purchase Order by University nor any other conduct, action or inaction of any representative of University relating to this Purchase Order constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.
14. **SUBCONTRACTING:** Contractor will use good faith efforts to subcontract the goods or services performed under this Purchase Order in accordance with the Contractor's Historically Underutilized Business Subcontracting Plan ("HSP") submitted in connection with this Purchase Order, if any. Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Purchase Order, in whole or in part. This Purchase Order is subject to [34 TAC §20.285](#). Contractor will comply with all of its duties and obligations under [34 TAC §20.285](#). In addition to other rights and remedies, University may exercise all rights and remedies authorized by [34 TAC §20.285](#).
15. **LOSS OF FUNDING:** Performance by University under this Purchase Order may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Purchase Order without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
16. **STATE AUDITOR'S OFFICE:** Contractor understands that acceptance of funds under this Purchase Order constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to §§[51.9335\(c\)](#), [73.115\(c\)](#) and [74.008\(c\)](#), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with subcontractors.
17. **LIMITATIONS:** THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THIS PURCHASE ORDER, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
18. **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy at <http://www.utpb.edu/services/business-affairs/human-resources/conflicts-of>, University's Standards of Conduct Guide at <http://www.utpb.edu/services/business-affairs/compliance/standards-of-conduct>, and applicable state ethics laws and rules at <http://utsystem.edu/offices/general-counsel/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Further, Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html.

19. **NOTICES:** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Purchase Order will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University: The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762

Attention: The Director of Purchasing



with copy to: The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762
Attention: VP of Business Affairs

If to Contractor: _____

Attention: _____

or other person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Purchase Order, if Contractor intends to deliver written notice to University pursuant to §2251.054, Texas Government Code, then Contractor will send that notice to University as follows:

The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762
Fax: (432)552-2795
Email: purchasing@utpb.edu
Attention: The Director of Purchasing

with copy to: The University of Texas of the Permian Basin
4901 E. University Blvd.
Odessa, Texas 79762
Fax: (432)552-2109
Email: businessaffairs@utpb.edu
Attention: VP of Business Affairs

or other person or address as may be given in writing by University to Contractor in accordance with this Section.

- 20. UNDOCUMENTED WORKERS: The Immigration and Nationality Act (8 United States Code 1324a) ("Immigration Act") makes it unlawful for an employer to hire or continue employment of undocumented workers.
21. STATE OF TEXAS COMPUTER EQUIPMENT RECYCLING PROGRAM CERTIFICATION: Pursuant to §361.965, Texas Health and Safety Code, Contractor certifies that it is full compliance with the State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Subchapter Y, Chapter 361, Texas Health and Safety Code, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in 30 TAC Chapter 328.
22. RESPONSIBILITY FOR INDIVIDUALS PERFORMING WORK; CRIMINAL BACKGROUND CHECKS: Each individual who is assigned to perform services under this Purchase Order will be an employee of Contractor or an employee of a subcontractor engaged by Contractor.
23. FORCE MAJEURE: Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("force majeure occurrence").

24. **TERMINATION:**
- (a) Upon written notice to Contractor, University may terminate this Purchase Order, in whole or in part, without cause. If University terminates without cause, University will pay Contractor all reasonable costs incurred up to the date of termination. Under no circumstance will University pay Contractor for anticipatory or lost profits.
 - (b) In the event of a material failure by Contractor to perform in accordance with the terms of this Purchase Order ("**default**"), University may terminate this Purchase Order upon ten (10) days' written notice of termination setting forth the nature of the default; provided that, the default is through no fault of University. Termination will not be effective if the default is fully cured by Contractor prior to the end of the ten-day period.
26. **EXTERNAL TERMS:** This Purchase Order completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Purchase Order ("**External Terms**"). The External Terms are null and void and will have no effect under this Purchase Order, regardless of whether University or its employees, contractors, or agents express assent or agreement to the External Terms. The External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.
27. **PUBLIC INFORMATION:** University strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* ("**TPIA**"), [Chapter 552, Texas Government Code](#). In accordance with [§552.002](#) of TPIA and [§2252.907](#), *Texas Government Code*, and **at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Purchase Order (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.**
28. **Contractor Certification regarding Boycotting Israel:** Pursuant to Chapter 2270, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
29. **Contractor Certification regarding Business with Certain Countries and Organizations:** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Contractor certifies Contractor (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.