

**INVITATION TO BID (ITB) - ELECTONIC**

1. FILE NUMBER: ITB 25-010
2. DUE DATE – NO LATER THAN: Friday, September 6, 2024 by 4:30 p.m. (Central Time).
3. FOR THE PURCHASE OF: Intramural & Athletics Field Maintenance
4. FOR DELIVERY TO: Austin Peay State University, Clarksville, Tennessee
5. I (We) propose to furnish the goods and/or services specified herein, at the price(s) quoted opposite each item listed in this Intent to Bid.
6. It is understood and agreed that this quotation shall constitute an offer to sell which when accepted in writing by Austin Peay State University's Procurement and Contract Services, and subject to the terms and conditions of such acceptance, will constitute a valid and binding contract between the undersigned and APSU.
7. Institution is exempt from state, federal, and local taxes; do not include taxes in quotation. Quote F.O.B., Austin Peay, Clarksville, Tennessee. Minimum terms: Net 30 days. Prepayment not allowed.
8. **IMPORTANT:** This quotation must be manually signed by Seller's person with proper signature authority. Failure to sign and submit **signature** on this document will result in **REJECTION** of your quotation. **Acceptable signatures: Digitally verified & wet (scanned). Not acceptable: Computer generated (Word etc.) Quotation must be received in the Procurement Services by the designated time or bid will be REJECTED. Electronic bids will be accepted and are encouraged.**
9. These prices  will be extended  will not be extended to other state institutions of higher education.
10. If accepted within 30 days of bid opening (above), the undersigned offers and agrees to honor this quotation.

(Name of Corporation, Firm or Person)	(Number of Days to Make Delivery)
(Mailing Address – PO Box or Street)	(Email)
(City, State, ZIP Code)	(Telephone/Fax Numbers)
(Authorized Signature for the Bidder)	(Date Signed)
(Typed or Printed Name and Title of Person Signing)	(F.O.B. Point) Austin Peay State University, Clarksville, TN

**QUOTATION CERTIFICATION FORM**  
**THIS FORM MUST BE RETURNED WITH THE INTENT TO BID**

I certify that this quotation is not made in connection with any other bidder submitting a quotation for the same commodity(s) and this quotation is in all other respects fair and without collusion, raid or conflict of interest.

I additionally certify, by signature below and submission of this quotation, that neither my principals nor I are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

The (Proposer/Bidder/Vendor) certifies, by signature below and submission of this (proposal/bid) that neither I nor my principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal department or agency.

Pursuant to TCA Code 12-4-120, all solicitations for goods and services must require contractors to be registered with the Department of Revenue for the collection of Tennessee sales and use tax.

Concerning the certification above, if you are unable to certify to any of the statements in that certifications, an explanation must be attached to your quotation.

I further certify that I received, as part of this bid document, Austin Peay's Minimum Bid Terms and Conditions

\_\_\_\_\_  
Authorized Signature for Bidder

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

TYPE OF BUSINESS: (Check Only One)

- Agriculture, Forestry or Fishing
- Mining
- Construction Services
- Wholesale Trade
- Retail Trade
- Service Industry
- Manufacturing

ANNUAL SALES: (Check Only One)

- Less than \$499,999
- \$500,000 through \$999,999
- \$1,000,000 through \$1,499,999
- \$1,500,000 or More

BUSINESS OWNERSHIP: (Check Only One)

- Non-Minority
- Government
- Non-Profit
- Disabled
- Service Disable-Veteran
- Minority\*
- Woman
- Small
- Other

OWNERSHIP ETHNICITY (Check Only One)

- African American
- Asian American
- Native American
- Hispanic American
- Caucasian
- Other

\*MINORITY OWNERSHIP CLARIFICATION: "Minority-owned business" means a business which is solely owned, or at least 51% of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of: a) Past practices of discrimination based on race, religion ethnic background or sex; )b A disability defined as a physical impairment that, in the written opinion of a person's licensed physician, substantially limits one or more than five years, (as herein, "major life activities" means caring for oneself, and performing manual task – which includes writing, walking, seeing, hearing, speaking and breathing, (T.C.A. 4-26-102); or c) Past parities or racial discrimination against African Americans (T.C.A. 12-3.802).

## MINIMUM GENERAL BID CONDITIONS

### 1. PREPARATION AND SUBMISSION OF BID.

- a. Failure to examine any drawings, specifications, or instructions will be at the bidder's risk.
  - b. **BID SUBMITTAL / SIGNATURE:** Bid shall give the full name and business address of the bidder. If the bidder is a corporation, the name shall be stated as it is in the corporate charter. Bids must be signed in ink, if submitting by hard copy, by the bidder's authorized agent. If submitted electronically, signature must be from a verified electronic signature software such as AdobeSign, by the bidder's authorized agent, or the bids will be rejected. Bids are to be sealed and the outside of the envelope is to reference the bid number. The person signing the bid must show his title, and if requested by the institution, must furnish satisfactory proof of his or her authority to bind his or her company in contract. Bidder understands that by submitting a bid with an authorized signature, it shall constitute an offer to the institution. Bids must be typewritten or in ink; otherwise they may not be considered. Purchase orders will be issued to the firm name appearing on the bid.
  - c. Bids are to be received in the location designated on the bid no later than the specified date and time. Late bids will NOT be opened or considered.
  - d. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to error and must be initialed in ink by person signing bid.
  - e. Discounts other than "Time" or "Cash" offered should be deducted from the unit price.
  - f. **Specifications:** Reference to available specifications shall be sufficient to make the terms of the specifications binding on the bidder. The use of the name of a manufacturer, or any special brand or make in describing an item does not restrict the bidder to that manufacturer or specific article, unless specifically stated. Comparable products of other manufacturers will be considered if proof of compatibility is contained in the bid. Bidders are required to notify the Institution's ITB Coordinator whenever specifications/procedures are not perceived to be fair and open. All suggestions or objections shall be made in writing and received by the ITB Coordinator at least three (3) working days prior to the bid opening. The articles on which the bids are submitted must be equal or superior to that specified. **Informative and Descriptive Literature:** The bidder must show brand or trade names of the articles bid, when applicable. It shall be the responsibility of the vendor, including vendors whose product is referenced; to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of bid.
  - g. **Samples:** Samples of items when called for, must be furnished free of expense, and if not destroyed will, upon vendor's request within ten (10) days of bid opening, be returned at the bidder's expense. Each sample must be labeled with the bidder's name, manufacturer's brand name and number, bid number and item reference.
  - h. **Time of Performance:** The number of calendar days in which delivery is to be made after receipt of order shall be stated in the bid and may be a factor in making an award, price notwithstanding. If no delivery time is stated in the bid, bidder agrees that delivery is to be made within two weeks (10 business days) of order.
  - i. Transportation and delivery charges should be included in the price and be fully prepaid by the vendor to the destination specified in the bid. Bid prices shall include delivery of all items F.O.B. destination.
  - j. New materials and supplies must be delivered unless otherwise specifically stated in the bid.
  - k. Alternate/multiple bids will not be considered unless specifically called for in the bid.
  - l. **Bond requirements.** The institution reserves the right to require that the selected vendor post a performance and/or payment bond in such amount as deemed reasonable by the institution. Any bond requirement should be included in the bid, itemized separately.
  - m. Only bids submitted on bid forms furnished by the Institution will be considered, except that the Institution reserves the right to consider telephone, faxed or electronically submitted bids for purchases totaling less than \$50,000 if received by the deadline and confirmed in writing within five (5) days on Institution forms.
  - n. By signing this bid where indicated, the bidder agrees to strictly abide by all state and federal statutes and regulations. The bidder further certifies that this bid is made without collusion or fraud.
  - o. **Failure to Bid/Error in Bid.** Failure to bid without advising the Institution that future invitations for bids are desirable may result in removal from Institution's bidders' list covering this category of items. In case of error in the extension of prices in the bid, the unit price will govern. Late bids will NOT be opened or considered. Bidders are cautioned to verify their bids before submission, as amendments received after the bid deadline will not be considered. No bid shall be altered, amended or withdrawn after opening. After bid opening, a bidder may withdraw a bid only when there is obvious clerical error such as a misplaced decimal point, or when enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Bid withdrawals will be considered only upon written request of the bidder.
- 2. INSPECTION.** All bids are subject to public inspection after the award. If a public bid opening, bidders may be present at bid opening.

3. **ACCEPTANCE AND AWARD.** The Institution reserves the right to reject any and all bids and to waive any informality in bids and, unless otherwise specified by the bidder to accept any item in the bid. Action to reject all bids shall be taken for unreasonably high prices, errors in the bid documents, cessation of need, unavailability of funds, or any other reason approved by the Tennessee Board of Regents.
  - a. Contracts and purchases will be made with the lowest, responsible, qualified bidder. The quality of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the Institution, cash discount offered and the delivery terms will be taken into consideration.
  - b. The Institution reserves the right to order up to 10% more or less than the quantity listed in the bid.
  - c. If a bidder fails to state a time within which a bid must be accepted, it is understood and agreed that the Institution shall have sixty (60) days to accept.
  - d. A written purchase order mailed or otherwise furnished, to the successful bidder within the time period specified in the bid results in a binding contract without further action by either party. The contract may not be assigned without written Institution consent.
  - e. If the appropriate space is marked on the bid, other state institutions of higher education may purchase off the contract during the same period as the Institution.
  - f. **Multiple Awards.** The Institution may award multiple separate contracts to the lowest responsible and responsive Respondents who meet all requirements and criteria as set forth in the Invitation to Bid per category.
4. **DISCOUNT PERIOD.** Time in connection with discount offered will be computed from the date of delivery at destination, or from the date correct invoices are received, whichever is later.
5. **DEFAULT OF SELECTED VENDOR.** In case of vendor default, the Institution may procure the articles or services from other sources and hold the defaulting vendor responsible for any resulting cost.
6. **INSPECTION OF PURCHASES.** Articles received which are not equivalent will not be accepted and will be picked up by the vendor or returned to vendor, shipping charges collect. Institution shall have a reasonable period in which to inspect and accept or reject materials without liability. If necessity requires Institution to use nonconforming materials, an appropriate reduction in payment may be made.
7. **TAXES.** Institution is tax exempt; do not include taxes in quotation. Vendors making improvements or additions to, or performing repair work on real property for Institution are liable for any applicable sales or use tax on tangible personal property used in connection with the contract or furnished to vendors by the state for use under the contract.
8. **NONDISCRIMINATION.** The Institution and bidder agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, veteran status or national origin.
9. **PROHIBITIONS/NO VENDOR CONTRACT FORM/TENNESSEE LAW/AUDIT.** Acceptance of gifts from vendors is prohibited. TCA §12-3-106. Bidding by state employees is prohibited. TCA §12-4-103. The bidder warrants that no part of the total contract amount shall be paid directly or indirectly to any officer or employee of the State of Tennessee. The contract documents for purchase under this bid request shall consist of the successful bidder's bid and the Institution's purchase order. **Bidders may not require any other written contract terms or conditions, nor may any other terms and conditions be imposed by means of subsequent documents, such as invoices, warranty agreements, license agreements, etc. Should the bidder request exceptions to terms and conditions and/or those proposed by the bidder vary from the bid and Institution Policies and Guidelines, Institution may render the bid unresponsive and subject the bid to rejection. The contract shall be governed by Tennessee law.** For all awards other than for a firm, fixed price, vendor shall maintain books and records for a period of three (3) years from final payment, and these records shall be subject to audit by the State.
10. **PURCHASING POLICIES/BID PROTESTS.** This bid request and any award made hereunder are subject to the policies and guidelines of Institution (available upon request). Bid protest procedures are available at: [www.apsu.edu/procurement](http://www.apsu.edu/procurement).
11. **ILLEGAL IMMIGRANTS.** By acceptance of this Contract, Contractor is attesting that it will not knowingly utilize the services of illegal immigrants and will not knowingly utilize the services of any subcontractor that does so in delivery of the goods/services under this order. If Contractor is discovered to have breached this attestation, it shall be prohibited from supplying goods/services or submitting a bid to any LGI institution or other state entity for a period of one (1) year

from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, 0620.

- 12. SALES AND USE TAX.** Before the Purchase Order/Contract resulting from this RFP is signed, the apparent successful bidder must be registered or exempted from registration with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not approve a contract unless the Proposer provides proof of such registration or exemption. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation.
- 13. IRAN DIVESTMENT.** By submission of this Bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Seller is not on the list created pursuant to § Tenn. Code Ann. § 12-12-106

**SCHEDULE OF EVENTS**

1. SCHEDULE: The following Schedule of Events represents the Institution's best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:30 p.m., (CST).

<p><b>NOTICE: The Institution reserves the right, at its sole discretion, to adjust this schedule, as it deems necessary. The Institution will communicate any adjustment to the Schedule of Events to the potential Bidders.</b></p>		
EVENTS FOR ITB 25-010 INTRAMURAL & ATHLETIC FIELD MAINTENANCE	TIME	DATE ( <u>all</u> dates are Institution business days)
1. APSU Issues ITB 25-010		<b>Friday, October 4, 2024</b>
2. Written Questions/Comments Deadline	<b>4:30 p.m.</b>	<b>Friday, October 11, 2024</b>
3. Institution Responds to Written Questions/Comments. Questions and Answers	<b>4:30 p.m.</b>	<b>Friday, October 18, 2024</b>
<p>4. Bid Deadline</p> <p>If hard copy, delivered to:</p> <p>505 York Street          Clarksville, TN 37040</p> <p>with “<b>ITB 25-010 Intramural &amp; Athletic Field Maintenance</b>” on the outside of the package.</p> <p>If electronic to: <a href="mailto:waltonp@apsu.edu">waltonp@apsu.edu</a></p> <p>with “<b>ITB 25-010 Intramural &amp; Athletic Field Maintenance</b>” in the subject line.</p> <p><b><i>There will be no public bid opening.</i></b></p>	<b>4:30 p.m.</b>	<b>Thursday, October 31, 2024</b>
5. Contract Start Date		<b>TBD</b>

## **2. INTRODUCTION**

### **2.1 Scope of Service, Agreement Period, and Required Terms and Conditions**

Successful vendor shall furnish Painting Services to Austin Peay State University.

### **2.2 ITB Communications**

2.2.1 Unauthorized contact regarding this ITB with employees or officials of the Institution other than the ITB Coordinator named below may result in disqualification from this procurement process.

2.2.2 Interested Parties must direct all communications regarding this ITB to the following who is the Institutions only official point of contact for this ITB.

Patricia Walton  
Austin Peay State University  
505 York Street  
(931) 221-7573  
[waltonp@apsu.edu](mailto:waltonp@apsu.edu)

2.2.3 The Institution has assigned the following ITB identification number that must be referenced in all communications regarding the ITB 25-010.

2.2.4 Any oral communications shall be considered unofficial and non-binding with regard to this ITB.

### **2.3 Notice of Intent to Propose**

Each potential Proposer should submit a Notice of Intent to Propose to the ITB Coordinator by the deadline in Section 1., Schedule of Events. The notice should include:

- Proposer's name
- name and title of a contact person
- address, telephone number, facsimile number, and email address of the contact person

NOTICE: A Notice of Intent to Propose creates no obligation and is not a prerequisite for making a proposal, however, it is necessary to ensure receipt of ITB amendments and other communications regarding the ITB

### **2.4 Written Questions/Answer Period**

A question and answer period deadline is in the ITB Section 1, Schedule of Events. The purpose of the written question/answer period is to allow Bidders to submit any questions they may have in regard to the scope of services requested. To ensure accurate, consistent responses to all known potential Bidders, the official response to questions will be issued by the Institution on the date in the ITB Section 1, Schedule of Events.

## **3 GENERAL REQUIREMENTS**

3.1 The Institution reserves the right, at its sole discretion, to waive a Quotation's variances from full compliance with this ITB. If the Institution waives minor variances in a Quotation, such waiver shall not modify the ITB requirements or excuse the Proposer from full compliance with the ITB.

### **3.2 Assignment and Subcontracting**

3.2.1 The Bidder awarded a Contract pursuant to this ITB may not subcontract, transfer, or assign any portion of the Contract without the Institution's prior, written approval.

3.2.2 A subcontractor may only be substituted for a proposed subcontractor at the discretion of the Institution and with the Institution's prior, written approval.

3.2.3 At its sole discretion, the Institution reserves the right to refuse approval of any subcontract, transfer, or assignment.

3.2.4 Notwithstanding Institution approval of each subcontractor, the Bidder, if awarded a contract pursuant to this ITB, shall be the prime contractor and shall be responsible for all work performed.

### 3.3 **Right to Refuse Personnel**

At its sole discretion, the Institution reserves the right to refuse any personnel, of the prime contractor or a subcontractor, for use in the performance of a contract pursuant to this ITB.

### 3.4 **Insurance**

Successful Proposer must provide and maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Proposer shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law, with Employer's Liability Limits of \$100,000. The Proposer shall deliver to the Institution a certificate of insurance no later than the effective date of the Order. If any policy providing insurance required by the Order is cancelled prior to the policy expiration date, the Proposer, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the Order or in this document of the kinds and amounts of liability insurance shall not abridge, diminish or affect the contractor's legal responsibilities for the consequences of accidents arising out of or resulting from the services of the successful bidder under this contract.

Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the Institution shall be in form and substance acceptable to the Institution.

### 3.5 **Financial Stability**

The successful Bidder will be required to provide information to the Institution to demonstrate financial stability and capability prior to award of contract.

### 3.6 **Policy and Guideline Compliance** This ITB request and any award made hereunder are subject to the policies and guidelines of the Institution (available upon request).

## 4.0 **PROJECT NARRATIVE AND DOCUMENTATION**

4.1 Austin Peay State University is seeking quotations to furnish Painting Services per bid specifications.

### 4.2 **Terms and Conditions**

4.2.1 Austin Peay's terms and conditions apply to this bid and can be found at [www.apsu.edu/procurement](http://www.apsu.edu/procurement) under terms and conditions.

4.2.2 The contractor is responsible for compliance with all federal, state, city, and local code requirements while working on campus.

4.2.3 Sales and Use Tax: The Contractor shall be registered or have received an exemption from the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract. The Contractor shall comply, and shall require any subcontractor to comply, with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by the Contractor, or the Contractor's subcontractor.

### 4.3 **Agreement**

4.3.1 The form of the contract shall be a standard University contract referencing these specifications and intent to bid (25-010).

4.3.2 The Institution intends to enter into a contract with an expected effective period for commencing on a fully executed contract and ending one year later.

4.3.3 The Contractor's deliverables and services provided pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, by a duly appointed representative(s). The Contractor shall submit brief, periodic, progress reports to the Institution as requested.



- 4.3.4 The contractor, being an independent contractor and not an employee of the University, agrees to protect and hold harmless the University from any and all liability arising out of all aspects of performance of this contract.
- 4.3.5 Entering into this agreement, APSU does not agree or imply that there will be any specific amount of Painting Services will be purchased.
- 4.3.6 The Proposer awarded a contract pursuant to this ITB may not subcontract, transfer, or assign any portion of the Contract without the Institution's prior, written approval.

#### **4.4 Cost**

- 4.4.1 The University reserves the right to receive proof of contractor's cost, when desired, for auditing purposes.
- 4.4.2 The contractor agrees to furnish billing statement itemized, priced, and extended in such a manner that they are easy to follow in terms of this agreement.
- 4.4.3 In all cases, APSU will only be liable for the services requested. In the case where the end customer requests additional services, those services will only be paid for if approved in advance

#### **4.5. Evaluation Factors**

To determine the low bid for purposes of awarding the contract only, per specifications the identified hypothetical annual conditions will be used.

### **5.0 CONTRACT APPROVAL AND CONTRACT PAYMENTS**

**The *Pro Forma* Contract, ATTACHMENT D, substantially represents the contract document that the Proposer selected by the Institution MUST agree to and sign. A response that limits or changes any of the terms or conditions contained in the Pro Forma Contract may be considered non-responsive.**

- 5.1 This ITB and its contractor selection processes do not obligate the Institution and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best- evaluated response or any other Respondent. Institution obligations pursuant to a contract award shall commence only after the Contract is signed by the Institution and the Contractor and after the Contract is approved by all other Institution officials as required by applicable laws and regulations.
- 5.2 No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.
- 5.3 The Institution shall not be liable for payment of any type associated with the Contract resulting from this ITB (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.
- 5.4 All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this ITB.
- 5.5 If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the Institution will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the Institution shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

#### **5.6 Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this ITB (including attachments) as may be amended. All

goods or services are subject to inspection and evaluation by the Institution. The Institution will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

#### **5.7 Contract Amendment**

After Contract award, the Institution may request the Contractor to deliver additional goods or perform additional services within the general scope of the Contract and this ITB, but beyond the specified Scope, and for which the Contractor may be compensated. In such instances, the Institution will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the Institution with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this ITB. If the Institution and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the Institution and the Contractor and must be approved by other Institution officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the Institution has issued a written contract amendment with all required approvals.

#### **5.8 Severability**

If any provision of this ITB is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining ITB terms and provisions, and the rights and obligations of the Institution and Respondents will be construed and enforced as if the ITB did not contain the particular provision held to be invalid.

#### **5.9 Next Ranked Respondent**

The Institution reserves the right to initiate negotiations with the next ranked Respondent should the Institution cease doing business with any Respondent selected via this ITB process.

#### **5.10 Contract Term**

The Institution intends to enter into a contract with an expected effective period of a fully executed agreement for THREE (3) Years. The Institution reserves the right to renew the contract on an annual basis for up to TWO (2) additional one-year terms at its option but not to exceed at total contract term of FIVE (5) years. The Institution reserves the right to cancel the contract if sufficient funding for its continuance is not appropriated by the General Assembly of the State of Tennessee.

#### **5.11 Contract Payments**

All payments shall be made in accordance with the Contract's Payment Terms and Conditions provisions. No payment shall be made until the Contract is approved as required by state laws and regulations. Under no circumstances shall the Institution be liable for payment of any type associated with the Contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before contract approval by Institution officials as required by applicable statutes and rules of the State of Tennessee or before the Contract start date or after the Contract end date specified by the Contract. Payments to the Contractor will be made in accordance with the Tennessee Prompt Pay Act (T.C.A. Section 12-4-701 et. seq.).

#### **5.12 Monitoring**

The Contractor's deliverables and services provided pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, by a duly appointed representative(s). The Contractor shall submit brief, periodic, progress reports to the Institution as requested.

**ATTACHMENT A**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>CONTRACT NUMBER:</b>	ITB- 25-010
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

**SIGNATURE & DATE:**

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NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

**ATTACHMENT B**

**AUSTIN PEAY STATE UNIVERSITY  
ITB – 25-010  
INTRAMURAL & ATHLETIC FIELD MAINTENANCE  
BID SPECS**

The Contractor is required to have a Certified Spots Turf Manager (CSFM) on staff.

**Intramural Field Maintenance Specifications**

September

- Mow at a height of 1" with a reel mower 3 times a week. Weed eat the perimeter of the field and valve boxes once a week.
- Aerovate with solid tines 4" deep two directions crossing each other.
- Seed 1,500 lb of Perennial Ryegrass.
- Topdress with 50-75 tons of sand
- Liquid Fertilize with 6.8 oz of Biodiversity and ¼ lb. of Nitrogen.

October

- Mow at a height of 1" with a reel mower 2 times a week. Weed eat the perimeter of the field and valve boxes once a week.
- Liquid Fertilize with 6.8 oz of Biodiversity and ¼ lb. of Nitrogen.

November

- Mow at a height of 1" with a reel mower 1 time a week. Weed eat the perimeter fence and valve boxes once a week.
- Collect Soil samples and submit to testing lab inquiring of deficiencies.

February

- Mow at a height of 1" with a reel mower 1 time a week. Weed eat the perimeter of the field and valve boxes once a week.
- Apply ½ rate of pre-emergent and a Broadleaf Herbicide.

March

- Mow at a height of 1" with a reel mower twice a week. Weed eat the perimeter fence and valve boxes once a week.
- Apply fertility corrections per soil test results from November Samples.

April

- Mow at a height of 1" with a reel mower three times a week. Weed eat the perimeter fence and valve boxes once a week.
- Aerovate with solid tine 4-5" deep.
- Apply ½ rate of Pre-emergent, Broadleaf herbicide, Biodiversity and ¼ lb./M of Nitrogen.

May

- Mow at a height of 1" with a reel mower three times a week. Weed eat the perimeter fence and valve boxes once a week.
- Apply fertility corrections per soil test results from November Samples.
- Spray Post-emergent to remove Ryegrass with Products such as Negate, or Monument, Manor, Tranxit, etc.

June

- Mow at a height of 1" with a reel mower three times a week. Weed eat the perimeter fence and valve boxes once a week.
- Core Aerify 4" deep.

- Topdress with 92 tons of sand that has less than 20% retained USGA .15mm or less mm size particles and less than 2% 1.0mm and 2.0 mm size particles.
- Liquid Fertilize with 6.8 oz of Biodiversity and ¼ lb/M of Nitrogen and PGR.
- Apply 1.5 lb.N/M of 30-0-10 XRT or 25-0-10 with 100% Mesa.

July

- Mow at a height of 1” with a reel mower 3 times a week. Weed eat the perimeter of the field and valve boxes once a week.
- Core aerify or VertiQuake 4” deep.
- Topdress with 75 tons of sand.
- Liquid Fertilize with 6.8 oz of Biodiversity and ¼ lb/M of Nitrogen and PGR.

August

- Mow at a height of 1” with a reel mower 3 times a week. Weed eat the perimeter of the field and valve boxes once a week.
- Aerovate with solid tines 4-5 “ deep.
- Liquid Fertilize with 6.8 oz of Biodiversity and ¼ lb/M of Nitrogen and PGR.

## Soccer/Lacrosse Field Maintenance Specifications

### February

- ½ Rate of Pre-emergent + Broadleaf weed control
- Mow, weed eat, and edge the field
- Line field for Soccer or Lacrosse when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed

### Provide fertilizing, aerification, maintenance as needed March

- Apply fertility corrections per soil test results from November Samples (If Needed)
- Mow, weed eat, and edge the field
- Line field for Soccer or Lacrosse when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

### April

- Aerovate with solid tine 4" deep.
- Apply ½ rate of Pre-emergent, Broadleaf herbicide, Biodiversity and ¼ lb./M of Nitrogen.
- Mow, weed eat, and edge the field
- Line field for Soccer or Lacrosse when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

### May

- Apply fertility corrections per soil test results from November Samples (If Needed)
- Spray Post-emergent to remove Ryegrass with Negate and ¼ lb/M of Nitrogen
- Mow, weed eat, and edge the field
- Line field for Soccer or Lacrosse when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

### June

- Aerovate
- Spray PGR, Biodiversity and Nitrogen \$300
- Spot Spray
- Mow, weed eat, and edge the field
- Line field for Soccer or Lacrosse when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

### July

- Vertiquake
- Topdress 75-92 tons sand
- Spray PGR, Biodiversity and Nitrogen
- Mow, weed eat, and edge the field

- Line field for Soccer or Lacrosse when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

August

- Spray PGR or Nutsedge control and Nitrogen
- Mow, weed eat, and edge the field
- Line field for Soccer or Lacrosse when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

September

- Overseed
- Biodiversity & Nitrogen
- Mow, weed eat, and edge the field
- Line field for Soccer or Lacrosse when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

October

- Biodiversity & Nitrogen Mow, weed eat, and edge the field
- Line field for Soccer or Lacrosse when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

## Baseball Field Maintenance Specifications

February

- ½ Rate of Pre-emergent + Broadleaf weed control

March

- Apply fertility corrections per soil test results from November Samples (If Needed)
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Baseball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

April

- Aerovate with solid tine 4" deep.
- Apply ½ rate of Pre-emergent, Broadleaf herbicide, Biodiversity and ¼ lb./M of Nitrogen.
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Baseball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

May

- Apply fertility corrections per soil test results from November Samples (If Needed).
- Spray Post-emergent to remove Ryegrass with Negate and ¼ lb./M of Nitrogen
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Baseball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

June

- Aerovate
- Spray PGR, Biodiversity and Nitrogen
- Spot Spray
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Baseball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

July

- Topdress 75-92 tons sand
- Vertiquake
- Spray PGR, Biodiversity and Nitrogen
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Baseball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed



August

- Spray PGR or Nutsedge control and Nitrogen
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Baseball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

September

- Overseed
- Biodiversity & Nitrogen
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Baseball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

October

- Biodiversity & Nitrogen
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Baseball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

### Austin Peay Softball Field Maintenance Recommendations

#### February

- ½ Rate of Pre-emergent + Broadleaf weed control
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Softball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

#### March

- Apply fertility corrections per soil test results from November Samples (If Needed)
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Softball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

#### April

- Aerovate with solid tine 4" deep.
- Apply ½ rate of Pre-emergent, Broadleaf herbicide, Biodiversity and ¼ lb./M of Nitrogen.
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Softball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

#### May

- Apply fertility corrections per soil test results from November Samples (If Needed).
- Spray Post-emergent to remove Ryegrass with Negate and ¼ lb./M of Nitrogen
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Softball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

#### June

- Aerovate
- Spray PGR, Biodiversity and Nitrogen
- Spot Spray
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Softball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

#### July

- Topdress 25-50 tons sand Vertiquake Spray PGR, Biodiversity and Nitrogen Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Softball when ask by coaching staff

- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

August

- Spray PGR or Nutsedge control and Nitrogen
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Softball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

September

- Overseed
- Biodiversity & Nitrogen
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Softball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

October

- Biodiversity & Nitrogen
- Mow, weed eat, and edge the field to include edging of infield and warning track
- Line field (entire field to include grass) for Softball when ask by coaching staff
- Provide your own equipment to do all work on field
- Paint logos on field when ask.
- Provide irrigation support and maintenance as needed
- Provide fertilizing, aerification, maintenance as needed

**ATTACHMENT C**

**COST QUOTE**

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Total</b>
Intramural Field Maintenance						
Soccer/Lacrosse Field Maintenance						
Baseball Field Maintenance						
Softball Field Maintenance						
<b>Additional Services as needed</b>						
Intramural Field Mowing (One Time)						
Soccer/Lacrosse Field Mowing (One Time)						
Dun Bowl Mowing (One Time)						
Baseball Field Mowing (One Time)						
Softball Field Mowing (One Time)						
Post Emergent Herbicide Treatment (One Time)						
Fertilization (One Time)						
Topdressing (Four (4) 24 ton loads)						
Hourly Labor Cost						
Cost plus mark-up on irrigation and field lining						

**ATTACHMENT D**

**CONTRACT  
BY AND BETWEEN  
AUSTIN PEAY STATE UNIVERSITY  
AND  
CONTRACTOR**

This Contract is entered into this day \_\_\_\_\_ by and between Austin Peay State University (hereinafter referred to as the "Institution") and **CONTRACTOR**, (hereinafter referred to as the "Contractor"), is for the purpose of providing Intermural & Athletic Field Maintenance.

The Contractor is a **[AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY]** with its principal location being:

**ADDRESS**

The Contractor's place of incorporation or organization is **STATE**.

A. SCOPE OF SERVICES:

- A.1. Intermural & Athletic Field Maintenance as further defined in **Attachment \_\_\_\_**.
- A.2. **Extension of the Award:** Any organization (third-party entity) may purchase under this agreement, including other universities, local government agencies, and state-government agencies (located in any state within the United States). The third-party entity may negotiate its own terms with the supplier. **ADD IF CONTRACTOR AGREED IN BID TO OPEN PRICING UP TO OTHER STATE ENTITIES.**

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on a November 1, 2024 and ending October 31, 2027. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The Institution reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than Five (5) years, provided that the Institution notifies the Contractor in writing of its intention to do so at least Sixty (60) days prior to the Contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Institution under this Contract exceed **WRITTEN DOLLAR (NUMERIC)**. The Service Rates in Section C.3 include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Institution requests work and the Contractor performs the work.
- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the Institution under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless this Contract is amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the Institution in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones listed in Attachment B.

The Contractor shall submit monthly invoices, in form and substance acceptable to the Institution with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of an invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

To ensure payment is made in a timely manner, the Contractor shall submit ALL invoices electronically to [accountspayable@apsu.edu](mailto:accountspayable@apsu.edu). Contractor agrees that no payment shall be made until the Contractor is officially registered through the Institution's Vendor Portal and provide all registration information requirements.

- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Institution, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The Institution reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the Institution any amounts which are or shall become due and payable to the Institution by the Contractor.
- C.8. Retention of Final Payment. Intentionally deleted.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials in accordance with applicable Tennessee state laws and regulations.
- D.3. Ethnicity. This Contract shall not be executed until the Contractor has completed the Minority/Ethnicity Form.
- D.4. Termination for Convenience. The Institution may terminate this Contract, in whole or in part, without cause for any reason. Termination under this Section D. 4 shall not be deemed a Breach of Contract by the

Institution. The Institution shall give the Contractor at least sixty (60) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Institution be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount based upon such termination.

- D.5. Termination for Cause. If the Contractor fails to perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any term of this Contract, the Institution shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services; provided, however, Institution shall have the option to give Contractor written notice and a specified period of time in which to cure. Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.6. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination". Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.7. Conflicts of Interest. The Contractor warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.8. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or State constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Records. The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Institution, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the Institution as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that the parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner

or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the Institution, agrees to carry adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. Institution Liability. The Institution shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations, including Institution policies and guidelines in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the Institution or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.18. Severability. If any terms or conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. ADDITIONAL TERMS AND CONDITIONS:

E.1. Communications and Contacts.

The Institution:

Austin Peay State University  
Jasin Wills, Associate Director, Foy Fitness & Recreation Center  
PO Box 4398  
Clarksville, TN 37044  
Voice: 931-221-6978  
email: [willse@apsu.edu](mailto:willse@apsu.edu)

The Contractor:

[NAME AND TITLE OF CONTRACTOR CONTACT PERSON]  
[CONTRACTOR NAME]  
[ADDRESS]  
[TELEPHONE NUMBER]  
[EMAIL]

All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on



the same date as the facsimile transmission. All communications which relate to any changes to the Contract shall not be considered effective until agreed to, in writing, by both parties.

- E.2. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Institution reserves the right to terminate the Contract upon written notice to the Contractor. Termination under this Section E.2 shall not be deemed a breach of Contract by the Institution. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.3. Breach. A party shall be deemed to have breached the Contract if any of the following occurs (However, this list is not exclusive: failure to perform in accordance with any term or provision of the Contract; partial performance of any term or provision of the Contract; any act prohibited or restricted by the Contract; or, violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— Institution shall notify Contractor in writing of a Breach.
- (1) In event of a Breach by Contractor, the Institution shall have available the remedy of actual damages and any other remedy available at law or equity.
  - (2) Partial Default— In the event of a Breach, the Institution may declare a Partial Default. In which case, the Institution shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may revise the time periods contained in the notice written to the Contractor.
- In the event the Institution declares a Partial Default, the Institution may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the Institution of providing the defaulted service, whether said service is provided by the Institution or a third party. To determine the amount the Contractor is being paid for any particular service, the Institution shall be entitled to receive within five (5) days of any request, pertinent material from Contractor. The Institution shall make the final and binding determination of the amount.
- Upon Partial Default, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the Institution in the event a Partial Default is declared.
- b. Institution Breach— In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing within 30 days of any Breach of contract by the Institution. The notice shall contain a description of the Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy available in the Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and opportunity to cure as described herein operates as a waiver of the Institution's Breach. Failure by the Contractor to file a claim before the Claims Commission within one (1) year of the written notice of Breach shall operate as a waiver of the claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.4. Copyrights and Patents/Institution Ownership of Work Products. Contractor grants Institution a world-wide, perpetual, non-exclusive, irrevocable, fully paid up license to use any proprietary software products delivered under this Contract. The Institution shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, as well as share in any financial benefits derived from the commercial exploitation of all work products created, designed, developed, or derived from the services provided under this Contract. The Institution shall have the right to copy, distribute, modify and use any training materials delivered under this Contract for internal purposes only.

The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any third party's intellectual property rights, including but not limited to, any alleged patent or copyright violations. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof. In any such action brought against the Institution, the Contractor shall take all reasonable steps to secure a license for Institution to continue to use the alleged infringing product or, in the alternative, shall find or develop a reasonable, non-infringing alternative to satisfy the requirements of this Contract.

The Contractor further agrees that it shall be liable for the reasonable fees of attorneys for the Institution in the event such service is necessitated to enforce the obligations of the Contractor to the Institution.

- E.5. Insurance. The Contractor shall maintain a commercial general liability policy. The commercial general liability policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Contractor shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law. The Contractor shall deliver to the Institution both certificates of insurance no later than the effective date of the Contract. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the Contract of the kinds and amounts of liability insurance shall not abridge, diminish or affect the Contractor's legal responsibilities arising out of or resulting from the services under this Contract.

- E.6. Performance Bond. Not applicable
- E.7. Competitive Procurements. If this Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services, such procurements shall be made on a competitive basis, when practical.
- E.8. Inventory/Equipment Control. No equipment shall be purchased under this Contract.
- E.9. Institution Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.
- E.10. Contract Documents. Included in this Contract by reference are the following documents:
- a. This Contract document and its attachments
  - b. The Request for Proposal and its associated amendments ITB 25-016
  - c. The Contractor's Proposal dated \_\_\_\_\_.

In the event of a discrepancy or ambiguity regarding the interpretation of this Contract, these documents shall govern in order of precedence as listed above.

- E.11. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.12. Hold Harmless. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person (including Institution), firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution.

In the event of any such suit or claim, the Institution shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof and shall provide all assistance required by the Institution in the Institution's defense. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Institution in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.13. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.
- E.14. Prohibition on Hiring Illegal Immigrants. T.C.A. § 12-3-309 prohibits State entities from contracting to acquire goods or services from any person who knowingly utilize the service of illegal immigrants in the performance of a contract or who knowingly utilize the services of any subcontractor, if permitted under the contract, who will utilize the services of illegal immigrants in the performance of the contract. By signing this Contract, the Contactor attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of illegal immigrants in the performance of the Contract and will not knowingly utilize the services of any subcontractor, if permitted under the Contract, who will utilize the services of illegal immigrants in the performance of the Contract.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

- E.15. Red Flags and Identity Theft. Intentionally deleted.
- E.16. Sales and Use Tax. The Contractor attests that it has registered with, or have received an exemption from, the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract. The Contractor shall comply, and shall require any subcontractor

to comply, with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by the Contractor, or the Contractor's subcontractor.

E.17. Data Privacy and Security.

**Data Privacy.** "Personal Information" means information provided to Contractor by or at the direction of Institution, or to which access was provided to Contractor by or at the direction of Institution, in the course of Contractor's performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers).

Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information complies with all applicable international, federal and state privacy and data protection laws, including without limitation, the Gramm-Leach-Bliley Act ("GLBA"); the Health Information Portability and Accountability Act ("HIPAA"); the Family Educational Rights and Privacy Act ("FERPA") of 1974 (20 U.S.C.1232g), the FTC's Red Flag Rules, as amended, together with regulations promulgated thereunder .

Contractor agrees that any Personal Information of students provided to the Contractor under this Contract shall only be used for the specific purposes outlined in this Contract. The Contractor shall not sell, share, or disclose any such personal information of students to any other individual, organization, or entity. The Contractor shall implement and maintain appropriate technical, administrative, and physical safeguards to protect the confidentiality and security of all personal information received under this Agreement. Upon the termination or expiration of the Contract, the Contractor shall securely destroy or return all copies of personal information, as directed by APSU.

Some Personal Information provided by Institution to Contractor is subject to FERPA. Contractor acknowledges that its improper disclosure or re-disclosure of Personal Information covered by FERPA may, under certain circumstances, result in Contractor's exclusion from eligibility to contract with Customer for at least five (5) years and agrees to become a "school official" as defined in the applicable Federal Regulations for the purposes of this Contract.

With respect to any processing of personal data of persons located in, or personal data obtained from within, the European Union (EU), Contractor certifies that it will comply with all applicable laws or regulations related to acceptance, transmission, and/or storage of such personal data as defined by and in accordance with the EU's General Data Protection Regulations ("GDPR"). Contractor will only act on the written instruction of the Institution and will assist the Institution in compliance with GDPR in relation to the security of processing, the notification of personal data breaches, data protection impact assessments, answering data subjects' requests, and allowing data subjects to exercise their rights under the GDPR. Contractor consents to audits and inspections as necessary to ensure compliance with these provisions.

**Data Security.** Contractor represents and warrants that Contractor will maintain compliance with the SSAE 16 standard, and shall undertake any audits and risk assessments Contractor deems necessary to maintain compliance with SSAE16.

**Incident Response.** "Security Incident" means any reasonably suspected breach of information security, unauthorized access to any System, server or database, or any other unauthorized access, use, or disclosure of Personal Information or Highly-Sensitive Personal Information occurring on Systems under Contractor's control. Contractor shall: (i) provide Institution with the name and contact information for an employee of Contractor who shall serve as Customer's primary security contact and shall be available to assist Customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Incident; (ii) notify Institution of a Security Incident as soon as practicable, but no later than twenty four (24) hours after Contractor becomes aware of it, except where disclosure is prohibited by law; and (iii)

notify Institution of any such Security Incident by email to [apitsecurity@apsu.edu](mailto:apitsecurity@apsu.edu) with a copy by e-mail to Contractor's primary business contact at the Institution.

Contractor shall use best efforts to immediately mitigate or resolve any Security Incident, at Contractor's expense and in accordance with applicable privacy rights, laws, regulations and standards. Contractor shall reimburse Institution for actual costs incurred by Institution in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation incurred under all applicable laws as a result of the Security Incident.

Return of Personal Information. At any time during the term of this Contract, at the Institution's written request or upon the termination or expiration of this Contract, Contractor shall return to the Institution all copies, whether in written, electronic or other form or media, of Confidential, Highly-Sensitive, or Personal Information in its possession, or at Customer's direction, securely dispose of all such copies.

The Contractor shall provide and retain timely, accurate, and comprehensive information such as records and reports that allow Institution to monitor risks. The inventory of reports should include SOC 1, SOC 2, and reports for data breaches.

- E.18. Contractor Reporting. The Contractor shall assist with the Institution's state and federal reporting requirements by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the Institution in form and substance as required by the Institution.
- E.19. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- E.20. Boycott of Israel. The Contractor certifies that is not currently engaged in and will not for the duration of the contract engage in, a boycott of Israel as defined by Tenn. Code Ann. § 12-4-119. This provision shall not apply to contracts with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.
- E.21. Service and Software Accessibility Standards. Intentionally deleted.
- E.22. Click-Wrap Agreements. Intentionally deleted.
- E.23. Binding Contract. The Contractor fully understands that this Contract is not binding except and until all appropriate State officials' approvals and signatures have been obtained, and the fully executed document returned to the Contractor.

CONTRACTOR:	AUSTIN PEAY STATE UNIVERSITY:
_____ Signature	_____ Signature
_____ Name	_____ Name

<hr/> <p>Title</p> <hr/>	<hr/> <p>Title</p> <hr/>
<hr/> <p>Date</p> <hr/>	<hr/> <p>Date</p> <hr/>

**ATTACHMENT A**

**SCOPE OF SERVICES  
CONTRACTOR RESPONSIBILITY  
ADDED AFTER THE BID AWARD**

**ATTACHMENT B**

**COST RATES**  
**ADDED AFTER THE BID AWARD**