

PURCHASING
COPY



Contract # 156260

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following Agency of the State of Utah:

400 - Board of Education Agency Name USDB Division referred to as STATE, and the following

CONTRACTOR COLUMBUS COMMUNITY CENTER

LEGAL STATUS OF CONTRACTOR

Name
3495 S WEST TEMPLE
Address
SALT LAKE CITY UT 84115
City State Zip
ARDEN LUBECK/DEAN HOFFMAN (801) 262-1994
Contact Person Phone Number
876000515 52166F 9883600000
Federal ID# Vendor Number Commodity Code(s)

- Sole Proprietor
- Non-Profit Corporation
- For-Profit Corporation
- Partnership
- Government Agency

2. GENERAL PURPOSE OF CONTRACT:

PROVIDE LANDSCAPING SERVICE FOR THE SCHOOLS FOR THE DEAF AND THE BLIND 2870 CONNER ST., SALT LAKE CITY, UT.

3. PROCUREMENT: This contract is entered into as a result of the procurement process on bid # RF5025, Requisition # 400 51000000001, FY 05, or the attached pre-approved sole source.

4. CONTRACT PERIOD: Effective date 10/04/2004 Termination date 10/01/2007 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any) 3 ONE YEAR RENEWALS

5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of \$10,266.00 for costs authorized by this contract.

6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions.

ATTACHMENT B: Scope of Work.

ATTACHMENT C: _____

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.

b. Utah State Procurement Code, Procurement Rules, and Contractor's response to Bid # RF5025, dated 09/14/2004.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR
Arden Lubeck 12-8-04
Contractor's Signature
COLUMBUS COMMUNITY CENTER
Contractor's Name
Asst Director.
Title

STATE OF UTAH
Rosmary Frenchwood 1-11-05
Agency Signature
Director, Division of Purchasing
Director, Division of Finance

The DOF will enter this contract in FINET prior to final review by Finance and Purchasing. While the review is pending, a copy of this contract form with the contract number will be faxed to your agency.

LEZLIE WHITE Agency Contact (801) 629-4721 Phone Number (801) 629-4890 Fax Number

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable

for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution, and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract:
 1. Nonperformance of contractual requirements;
 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following:
 1. Exercise any remedy provided by law;
 2. Terminate this contract and any related contracts or portions thereof;
 3. Impose liquidated damages, if liquidated damages are listed in the contract;
 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be:
 1. State Standard Terms and Conditions;
 2. State Special Terms and Conditions;
 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

Attachment B

Scope of Work

1.0 Safety & Security

- 1.1 The Contractor shall allow only authorized employees or service providers on the grounds or in the facilities while services are being performed. Visitors, friends, children of employees not employed shall not be allowed on grounds or in the facilities. Exceptions require written permission from the Utah Schools for the Deaf and the Blind (USDB).
- 1.2 If keys are necessary, USDB will provide keys to Contractor and employees. Contractor is required to account for all keys issued to them. Keys are not to be duplicated by Contractor or employees.
- 1.3 If safety is an issue (e.g., removing a tree), Contractor shall provide and use safety barriers, signs, etc., when doing work to properly warn and protect people.
- 1.4 Contractor shall be responsible for the safe operation of all equipment and shall properly train each respective employee in the safe operation of all equipment they will be using prior to allowing them to use it. Upon request, Contractor shall furnish USDB with a list of employees, the type of training given to each employee, and the date given.
- 1.5 The Contractor shall provide all safety apparatus necessary to protect employees so they can operate equipment safely. The Contractor is further obligated to ascertain that all equipment is operated safely and according to Occupational Safety & Health Administration (OSHA) standards.
- 1.6 All containers of chemicals will be properly labeled and stored in secure areas where children and unauthorized individuals cannot access them. All containers of chemicals must have a Materials Safety Data Sheet (MSDS). A list of these chemicals and supplies will be conspicuously posted in the respective area. The Contractor is further obligated to abide by Occupational Safety and Health Agency (OSHA) standards, rules and regulations.
- 1.7 Contractor shall provide proof that all employees working at USDB have passed a criminal background check according to the guidelines adopted by the Institutional Council. Contractor will assume the cost of background checks.

2.0 Employee Conduct

- 2.1 The Contractor shall be liable for damages to USDB owned or leased facilities or equipment at the location specified by this contract due to neglect, improper operation or maintenance of landscape equipment, or

failure to properly carry out the work specified in this contract. If the Contractor fails to replace, repair, or restore the damaged item(s) to its original status within 30 working days or within a later time approved by USDB, then USDB has the option to repair, replace, or restore the damaged item(s). USDB will deduct the cost plus a nuisance fee of \$200 or 20% of the cost, whichever amount is greater, from the Contractor's scheduled payment. The amount shall not exceed the total cost of the contract.

2.2 USDB has the option of requiring the Contractor to replace employees who display the following conduct and/or performance:

- Verbal or physical abuse of any person on USDB premises.
- Use of, or displaying the effect of alcohol or drugs during work time
- Failure to follow security instructions
- Deliberate or habitual failure to follow safety instructions
- Failure to abide with the provisions of the Utah Clear Air Act. No smoking is permitted on USDB premises.

2.3 Contractor shall not use state vehicles or equipment unless permission is given in writing by USDB.

2.4 Contractor and employees shall park in designated parking areas.

3.0 Location of Required Work

3.1 Contractor is responsible for complete landscape maintenance for 2000 square feet at the USDB Conner Street Campus at 2870 Conner St., Salt Lake City, UT 84109.

4.0 Work Schedule

4.1 The Contractor shall provide the services as needed in accordance with the specifications outlined.

5.0 Supervision and Staffing

5.1 The Contractor will coordinate work with the USDB Facilities Coordinator. If that person is absent, the following USDB contacts shall be made in the following order: Assistant Superintendent, Superintendent, Finance Director or the Human Resources Director.

5.2 The Contractor shall provide competent supervisory personnel, and place in charge a qualified on-site supervisor who will be capable of providing all reports required by USDB, and will have authority to immediately execute

orders given by USDB. Supervisor must be capable of communicating expressively and receptively, orally and in writing, so as to be clearly understood by all USDB staff and its employees. If necessary, the supervisor should have a willingness to learn basic sign language. Training may be offered by USDB.

In addition to the supervision of landscape services, the supervisory staff will be responsible for the following:

- 5.2.1 Immediately reporting all accidents, thefts, and damages to the USDB administration.
- 5.2.2 Availability at the request of USDB during school business hours to answer any complaints related to landscaping and/or snow removal.
- 5.2.3 Responsibility for checking with the Facilities Coordinator or administration regarding special requests, omissions or complaints.
- 5.3 Contractor shall ensure that USDB administration always knows who the supervisor is and how to get an immediate response (i.e., phone, etc.). Advance notice will be given for temporary supervisory changes. USDB shall be notified in writing of permanent changes 24 hours before the new supervisor commences work at USDB.
- 5.4 Contractor shall have a person available to supervise the servicing and repair of the sprinkler systems. Contractor shall ensure that repairs and service to these systems are completed by someone who is knowledgeable of USDB leased or owned systems.
- 5.5 Contractor shall employ on the premises only persons skilled in the work assigned to them. Contractor shall promptly furnish qualified substitute persons for any employees that, in the opinion of USDB, are unsatisfactory as per Section 2.0, or to replace those who are absent.
- 5.6 The Contractor shall provide sufficient personnel to carry out the work outlined in these specifications.
- 5.7 During the months specified for landscape work, the Contractor will provide telephone numbers, other than an answering service, where personnel can be reached to authorize and dispatch work crews in the event of an emergency such as water gushing from a broken sprinkler head/pipe. Contractor shall update these telephone numbers during the term of the contract.

6.0 Types of Work Required

Contractor shall:

- 6.1 Operate, maintain, and make repairs or replacements to the sprinkler systems at the designated locations as needed to assure appropriate lawn watering.
- 6.2 Mow lawns at the designated locations to a 3" height.
- 6.3 With approval from USDB, remove trees and/or trim branches. USDB will reimburse Contractor for reasonable pre-approved cost of work.
- 6.4 Fertilize lawn, hedges, and shrubs using appropriate and high grade fertilizer appropriate for the lawn, hedges, shrubs, or trees.
- 6.5 Treat the lawn to abate weeds and shall remove weeds in, on, and around hedges, shrubs, fences, buildings, curbs, driveways, parking lots, and sidewalks, and flower beds.
- 6.6 Remove cut grass and other debris from parking lots, driveways, curbs and gutters, fences, sidewalks, around the periphery of buildings and near doorways so as to present a neat and clean appearance.
- 6.7 Furnish all equipment necessary to maintain the landscape and keep it neat, clean and in operation.
- 6.8 Maintain a regular schedule of watering for the lawn.
- 6.9 Operate, maintain, and repair the automatic sprinkler system and any devices (e.g., heads and time valves) to ensure adequate and regular watering of the lawn.
- 6.10 Maintain lawns and grounds so as to present a well-groomed, green and clean appearance free of debris.
- 6.11 Spot water lawn as necessary to alleviate brown spots due to lack of water and/or particularly adverse weather conditions.
- 6.12 Trim the lawn around or along trees, hedges, shrubs, flower beds, sidewalks, signs, and buildings or around other items that are on the grounds. Complete trimming of all grounds areas shall be done (e.g., front and back of property) weekly.
- 6.13 Clean leaves and/or debris from in front of doorways of buildings and from the lawn weekly especially in the fall.

- 6.14 Complete all aspects of lawn care to include mowing, trimming, and cleaning.
- 6.15 Insect Control and disease (spraying) related to trees and shrubs, hedges, and lawn (if necessary).
- 6.16 Trim and remove debris from all shrubs, bushes, hedges, etc., to present a neat and well-groomed appearance. Trimming shall be done at least monthly unless a different schedule of maintenance is approved by USDB.
- 6.17 Coordinate with USDB Facilities Coordinators so as to perform all work under the contract without disrupting regular or special functions that have been scheduled.

7.0 Supplies

- 7.1 All supplies such as fertilizers, weed killers, and insecticides shall be provided by USDB. The Contractor shall use the provided supplies unless otherwise approved by USDB in writing.
- 7.2 All sprinkler system supplies/parts shall be provided by USDB. The Contractor shall use and install these supplies/parts unless approved in writing by USDB.
- 7.3 The Contractor shall maintain an accurate perpetual inventory of all materials turned over to him and shall keep records of the rate of usage of these materials. The Contractor shall notify USDB when the replenishment of supplies/parts is necessary.

8.0 Subcontracts

- 8.1 Any work subcontracted must be pre-approved in writing by the USDB administration. Subcontractors must also abide by the terms of the contract.
- 8.2 Contractor shall supervise and direct the activities of any subcontractor(s).
- 8.3 Contractor is responsible for inspecting completed subcontract work and correcting any deficiencies/problems.

9.0 Quality of Work

- 9.1 The intent of these specifications is that the Contractor will provide customary landscape maintenance. These minimum specifications should be referred to as a guide for, rather than a limitation to, the services required to maintain well groomed and clean grounds.

- 9.2 In the event work is not done or is unsatisfactory, USDB will give the Contractor two working days notice of intent to hire another provider to do it. Contractor has two days to satisfactorily complete the work. After that, USDB has the option of hiring another provider and deducting the cost plus 20% or a nuisance charge of \$200 whichever is greater from the Contractor's scheduled payment. USDB has the option of granting an extension of time for the completion of the work. Such extension shall be given in writing. This provision does not apply to emergency work.

10.0 Equipment

- 10.1 All equipment used shall be supplied by the Contractor. Equipment shall be kept in good repair. Equipment in a state of deterioration which could potentially damage either the structure or anything herein shall not be used or allowed on the premises (e.g., defective or missing safety shields, housing covers, etc.)

11. Schedule of Work

- 11.1 Landscape crews should be available weekly starting in April and continuing to November if there is no snow fall.
- 11.2 Lawns should be mowed once a week or when the grass exceeds three inches in length. If the lawn is not mowed on time, USDB has the option of securing another provider and deducting the cost plus a nuisance fee of \$200 from the Contractor's scheduled payment. USDB may extend the time for mowing if necessary.
- 11.3 Sprinkler system and devices should be checked weekly to ensure that there is adequate watering of all areas. USDB may require the Contractor to immediately repair or replace sprinkler devices that are found to be working poorly or not at all.

12.0 Training for Employees

- 12.1 At the beginning of each fiscal year the Contractor shall provide USDB with a written description of how each employee will be trained for their job. The nature of training, length, place and time of it shall be made known in advance so that a USDB representative may attend if he/she wishes.
- 12.2 If the Contractor's work does not meet acceptable standards, USDB will first discuss the specific problem with the Contractor. USDB will have the option of establishing a training program for the Contractor's employees in order to help remedy the problem. Contractor's employees shall participate and the Contractor shall pay the cost of training not to exceed \$1000 plus any pay that is necessary for the employees.

13.0 Contract Period

13.1 Performance under this agreement shall commence on the 4th day of October, 2004, and will expire on the 1st day of October, 2007. Renewal options for three (1) year renewals.

14.0 Contract Price

14.1 USDB agrees to pay Columbus Community Center, as full and complete compensation, therefore, a maximum of Ten Thousand Two Hundred Sixty-Six Dollars (\$10,266.00), for services indicated above.

14.2 Payment of services will be based on the following schedule:
2004/2005-\$ 2,922.00 - \$487.00/month x 6 months(mid April-mid October)
2005/2006-\$ 2,922.00 - \$487.00/month x 6 months(mid April-mid October)
2006/2007-\$ 2,922.00 - \$487.00/month x 6 months(mid April-mid October)
2007/2008-\$ 2,922.00 - First renewal year
2008/2009-\$ 2,922.00 - Second renewal year
2009/2010-\$ 2,922.00 - Third renewal year

Additional/emergency repairs and labor will be charged at \$22.50/hour for repairs and \$11.60/hour for labor.

Payment of services will be made monthly upon receipt of an itemized invoice/receipt submitted by Columbus Community Center.

15.0 Assignment

15.1 Assign Ligia Munoz, Facilities Coordinator, with authority to monitor both the services to be provided and the results to be obtained in accordance with the provisions of this agreement and any attachment thereto.