

BOARD OF REGENTS
for
KENTUCKY STATE UNIVERSITY



Special Called Meeting of the Board of Regents

Wednesday, December 28, 2022
11:00 a.m. EST

Julian M. Carroll Academic Services Building, 2nd Floor
400 East Main Street
Frankfort, Kentucky 40601

**KENTUCKY STATE UNIVERSITY BOARD OF REGENTS
SPECIAL CALLED MEETING**

***** Meeting Will be Conducted in Person and by Teleconference *****

Wednesday, December 28, 2022

11:00 a.m. EST

**Board of Regents Room
Julian M. Carroll Academic Services Building, 2nd Floor
Frankfort, Kentucky 40601**

Zoom Link: <https://ksu.zoom.us/j/93975328372>

Webinar ID: 939 7532 8372

One Tap Mobile: +13092053325,,93975328372# or +13126266799,,93975328372#

AGENDA

- | | |
|---|---|
| 1. Call to Order | Dr. Gerald Patton
Board Chair |
| 2. Roll Call | Mr. Zachary Atwell
Board Secretary |
| 3. Approval of Agenda | Chair Patton |
| 4. Action Item — Approval of Sodexo Contract | Dr. Daarel Burnette
Chief of Staff and
Interim Executive VP,
Finance & Business Affairs |
| | Mr. Darryl Thompson
Director of Government Relations |
| 5. Closing Remarks | Chair Patton |
| 6. Adjournment | Chair Patton |
-



KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

ACTION ITEM 4A

ACTION ITEM:

Approval of Sodexo Personal Service Contract (PSC) and Management Agreement

FACTS:

On October 12, 2022, Kentucky State University's Board of Regents, pursuant to KRS 45A.380, approved a declaration of emergency relating to campus facilities, transportation, maintenance, and custodial services.

As indicated by that declaration, Kentucky State University (KSU) urgently requires onsite expertise in facility management to improve the use and maintenance of its assets, boost performance, and increase student and employee satisfaction—all while supporting the University's focus on controlling costs, providing quality service, and mitigating the risk of safety and environmental hazards.

Sodexo possesses the proven professional capabilities needed to elevate the delivery standards of the University's grounds, maintenance, transportation, and custodial services.

Sodexo's Personal Service Contract (PSC) includes:

- onsite leadership management
- training and oversight of KSU staff
- deferred maintenance plan
- locksmith access control system
- energy consumption management
- project management
- campus landscape management
- waste management/recycling
- HVAC systems management
- commercial cleaning
- facilities usage program
- pest control program management

In its PSC, Sodexo has agreed to raise the conditions of Kentucky State University's campus and facilities to an APPA Level 3 rating. This would be a huge improvement over their current conditions, which are below the APPA Level 5 standard—the lowest level quantified by APPA (The Association of Higher Education Facilities Officers, previously known as the Association of Physical Plant Administrators). The APPA Level 5 designation evidences a crisis and indicates that facilities services appear chaotic and without direction. Symptoms of campuses and facilities with an APPA Level 5 rating include:

- Equipment and building components breaking down routinely, requiring unscheduled repairs that disrupt classes and other university activities.
- An ineffective services and maintenance call system; no system for prioritization, and response times are an issue in most cases.
- Normal usage and deterioration continuing unabated, rendering buildings and equipment inadequate for usage needs.
- Health and safety systems are not professionally managed.
- Budgetary and cost controls are not responsibly managed.



KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

BUDGETARY IMPLICATIONS:

Kentucky State University has annually budgeted \$5.5 million for campus facilities, maintenance, and custodial services; however, the University has consistently overrun the budget, with actual expenses exceeding \$7 million, as evidenced by historic data trends.

The Sodexo Personal Service Contract and Management Agreement are for the period from January 2023 to December 2023, which straddles the second half of FY 2023 and the first half of FY 2024. The costs incurred by the University during the contract period will depend on the actual services performed by Sodexo (professional leadership, work order tracking system, labor, technology, and in-house staff training). However, per the PSC and Management Agreement, the total cost for first-year services shall not exceed \$3,200,000. Sodexo has projected a first-year total cost of \$3,068,784.46.

- Second-half of FY 2023 (January 2023 – June 2023) projected cost is \$1,573,097.49.
- First-half of FY 2024 (July 2023 – December 2023) projected cost is \$1,495,686.97.

The trend toward budget overrun—along with the additional expense of the Sodexo services and the unbudgeted expenditure of \$676,507.23 for payment of an energy savings performance contract—requires KSU to seek additional financial resources to support its facilities. As such, Dr. Aaron Thompson, the President of the Council on Postsecondary Education (CPE), has agreed to seek the Council’s approval to provide the University with Management Improvement Plan funding of \$1,200,000 in FY 23 to support its facilities and infrastructure expenditures. He will request the Council’s approval at its January 27, 2023, meeting. Dr. Johnson will use funds from the \$23.0 million loan to finance Sodexo’s remaining FY 23 balance of \$373,097.40.

University staff members, in partnership with CPE and Your Part-Time Controller consultants, are working to create a revised FY 23 budget to present to the Board based on up-to-date reconciled expenditures, spring semester tuition revenue projections, and projected expenditures needed to complete the current fiscal year. This will also provide a firm basis for a balanced FY 24 budget presentation to the Board in June. During the remainder of this fiscal year and the first half of the next, KSU will further refine its Facilities and Infrastructure budget and approach to managing those functions to ensure they align with the recurring budgetary framework, and without reliance on outside resources.

Any facilities, maintenance, transportation, and custodial services required beyond the proposed Sodexo contract period will follow the University’s standard procurement policies, procedures, and practices. Such services will be acquired through the issuance of an RFP, which must be approved by the Board of Regents.

RECOMMENDATION:

Interim President Ronald A. Johnson recommends that the Board of Regents approves the Sodexo Personal Service Contract and Management Agreement.

MOTION:

Approve the Sodexo Personal Service Contract and Management Agreement.



Proposed Facilities Management Program



Agenda

1. Assessment
2. Program
3. Staffing
4. Budget

Assessment

Status

- Site Safety Assessment Completed
- Service Level Assessment CPT
- Assumptions Review CPT
- Program Components CPT
- Reference Site Benchmark CPT
- Program Budget CPT
- State of Emergency Declared

APPA Grading Scale

Best

Worst

	APPA 1 Orderly Spotlessness	APPA 2 Orderly Tidiness	APPA 3 Casual Inattention	APPA 4 Moderate Dinginess	APPA 5 Unkempt Neglect
Floors	Bright/Shiny	Minimal Dust	Few Stains	Dull/Dingy Stained	Dirty/Dingy, Scarred
Surfaces	Freshly Cleaned	Clean w/ Few Marks	Obvious Dust, Dirt, Smudges	Conspicuous Dirt, Dust	Major Dust, Dirt
Restrooms	Freshly Cleaned	Clean w/ All Supplies	Obvious Dust, Dirt, Stains	Conspicuous Dirt, Stains	Major Dirt, Mold
Waste Receptacles	Daily Waste, Odor Free	Daily Waste, Odor Free	Daily Waste, Odor Free	Old Waste, Malodorous	Overflowing, Malodorous
Light Fixtures	Freshly Cleaned	Clean	Clean	Dirty	Dirty Flies, Dust Balls

Site Assessment

Service

Custodial (Worse than APPA 5)

- Most of this service is subcontracted
- No chemical dispensers found
- Minimal equipment found
- Minimal policing
- No technology systems

Grounds (Worse than APPA 5)

- This service is subcontracted
- Weeds in beds with minimal mulch
- No technology systems

Maintenance (Worse than APPA 5)

- Significant deferred maintenance
- Floors compromised
- Roofs compromised
- Manual Work Order System
- Minimal building automation
- No energy/sustainability program

KSU



APPA 5



Summary

- Extensive deferred maintenance
- Daily scheduling is a paper system
- No method to measure productivity
- No work order completion tracking method
- No facilities training program
- A culture change is required of the existing staff
- A state of emergency was declared

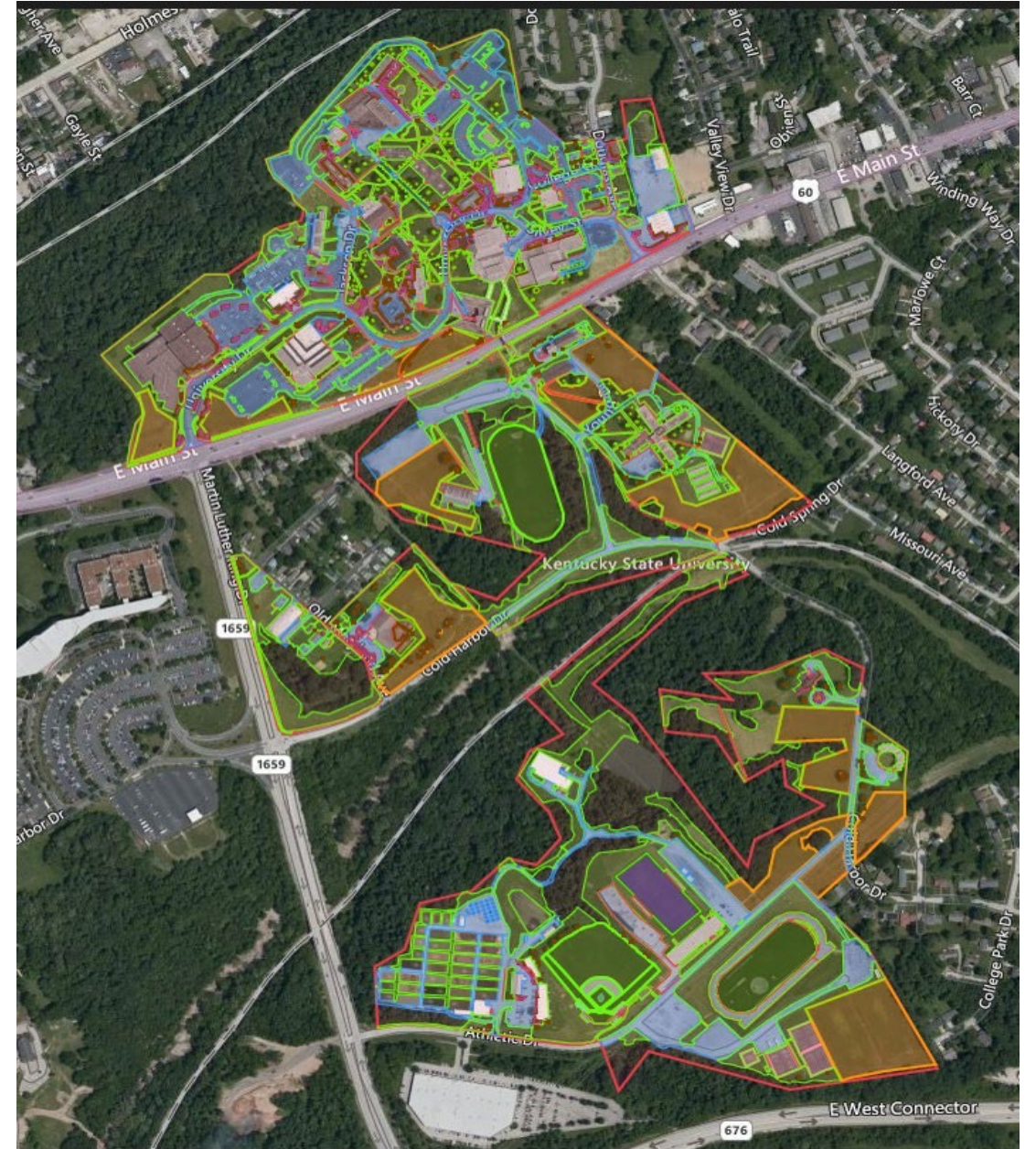
KSU Proposed Program



James L. McCullin Hall

Physical Plant Service Area

1. KSU Goal = APPA Level 3
 2. Approximate Total Gross SF = 1,085,433
 3. Approximate Maintainable SF = 1,062,406
 4. Approximate Cleanable SF = 803,329
 5. Approximate Maintainable Acres = 170
- This does not include the land-grant buildings (approximately an additional 200,000 SF)



KSU Physical Plant footprint

KSU Goal: APPA Level 3 by Fall 2023

Maintenance – Front and Back of House



Grounds



Custodial



APPA Reference Pictures

KSU Program Components

- Provide a facilities leadership team
- Improve custodial service level to APPA 3
- Improve grounds service level to APPA 3
- Implement a preventive maintenance program
- Implement a capital budgeting system
- Implement a deferred maintenance management system
- Implement a facilities performance management system
- Implement a safety program
- Implement an energy/sustainability program
- Train the staff using Sodexo Subject Matter Experts
- Cross-train the staff



William Exum Center

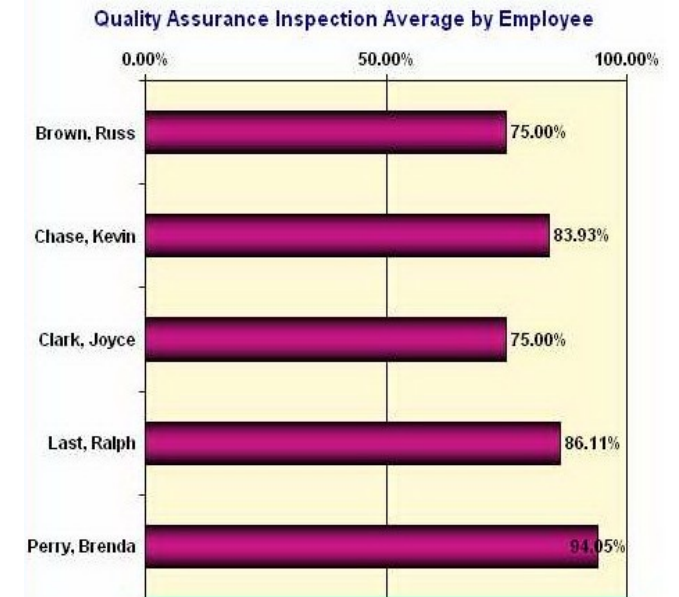
SMS Capabilities

Site Management System provides the following capabilities:

- Labor Management
- Training Tracker
- Room Inspections
- Condition Assessments
- Safety Audits



Stores all inspections and provides grading to the employee and task level



Maximo Capabilities

A computerized maintenance management system (CMMS) that provides :

- Tracking of location, function, work, and maintenance history of each asset
- Current operating state of an asset
- Work history, lifecycle tracking, labor, and material costs
- Planned (preventative) and unplanned (reactive) maintenance scheduling
- Purchasing: ensure the right materials and assets are ordered at the right time
- Contract management: Subcontractors, warranties, leases, etc.
- Subcontractors management
- Inventory management: track materials, parts, and usage; inventory optimization and planning
- Integrated dashboard & reporting



Transition to APPA 3

Milestones	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG
Signed contract	█							
Leadership team arrives	█							
Building priorities approved	█							
Subject matter experts arrive	█							
Transition from contractors to onsite services		█	█	█	█			
APPA 3 frequencies implemented			█					
Project work completed						█	█	
APPA 3 program in place							█	
Campus opening fall 2023								█

First 6 months
\$1,573,097.49

Staffing



Hume Hall

Onsite Team

Facilities Director

Subject Matter
Experts

CMMS Program Coordinator

Safety Program Coordinator

Project Program Coordinator

Energy Program Coordinator

Unit Controller

Operations
Manager

Electricians (2)

Locksmiths (2)

Carpenters (2)

Painter

Plumber

HVAC Techs (3)

Boiler Plant (3)

Warehouse (2)

Transportation (6)

Custodial
Managers (2)

Custodians (7)

Custodians (27)

Grounds
Manager

Grounds Techs (2)

Grounds Techs (4)

Sodexo

KSU

Service Delivery Budget

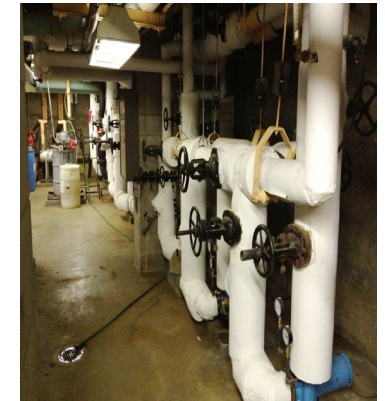


Carl M. Hill Student Center

First-Year Service Delivery Budget: \$3.06M

Category	Amount	Notes
Labor Cost	\$2,489,344.78	Payroll, payroll expenses, and taxes for Sodexo employees
Start-Up Costs	\$208,626.05	Site tagging, staff training, and SME account opening support for the first year
Fixed Annual Costs	\$326,298.14	Insurance, software fees
Other Costs	\$44,515.49	PPE, uniforms, background/drug testing, handhelds and cell phones
Maximum First-Year Costs (Including Management Fee): \$3,068,784.46		

*The costs will be based on the actual services provided that are preapproved by KSU.



Goal: APPA
Level 3 Service



Thank You



Dr. Daarel Burnette
Vice President and Chief Financial Officer
Kentucky State University
400 East Main St.
Frankfort, KY 40601

RE: Proposal for Facilities Management at Kentucky State University (KSU)

Dr. Burnette:

Thank you for the opportunity to share this proposal for Facilities Management at KSU. The program is customizable based on your review and comments.

Assessment

From our site visit and discussions, we found the following challenges in your current program. These are documented with the benchmark summary and pictures in Exhibit 1.

- **Existing State of Emergency:** We found several current and pending safety violations on the campus. Our policies and procedures will correct these issues and reduce your liability on campus. The Asset Management Program will allow us to bring predictability to your budget forecasts and move the team from reactive to preventive maintenance services.
- **Low Productivity:** Our understanding is that a considerable amount of the facilities team has left, and a cultural change must occur with those remaining. The Sodexo program will allow us to manage state employees and Sodexo employees seamlessly using the proper human resources procedures. Our training, system and processes will let the employees know we are committed to their individual success. This boost in morale will translate to an increase in productivity for the team.
- **Heavy subcontracting:** We found that most of the custodial and grounds services are contracted with offsite local companies. This negatively impacts productivity as the subcontractors will challenge scope if based on vague contracts. Also, a tremendous strain is placed on the leadership team to manage quality of service and challenge out of scope supplemental billing. Our onsite solution ensures the employees are dedicated to KSU and cross trained to assist with each service. We can also train the dining employees to offer year-round work for them on campus.

Reference Account

The program was built on the same approach to facilities management Sodexo currently provides at Western Kentucky University (WKU) using a personal services contract. We can schedule a tour and meeting with our WKU client at your convenience.

Program

The four tenets we based this program on are:

1. **Quality:** APPA has standardized the facilities quality service levels, which is recognized as the industry standard. In Exhibit 1, we provide a visual representation of the current service level at KSU, which is below any APPA standard. Our program will raise the service level to APPA 3 and deliver this service level efficiently.
2. **Flexibility:** We convert the desired APPA level into specific task and frequencies. In Exhibit 2, we share the APPA 3 scope and frequencies for the campus, which can be changed by building throughout the term of the agreement.
3. **Predictability:** As an onsite team, we can self-perform 90% of the services on campus. This provides financial predictability, as we end the out-of-scope and supplemental billings when the services are subcontracted to offsite companies.
4. **Prevention:** The asset management program will record the current condition and estimate the remaining life of each asset on campus. This will lead to a capital plan that addresses deferred maintenance and allows you to plan for future equipment replacement. The results are moving KSU from an emergency state into a preventive maintenance state with minimal emergencies.

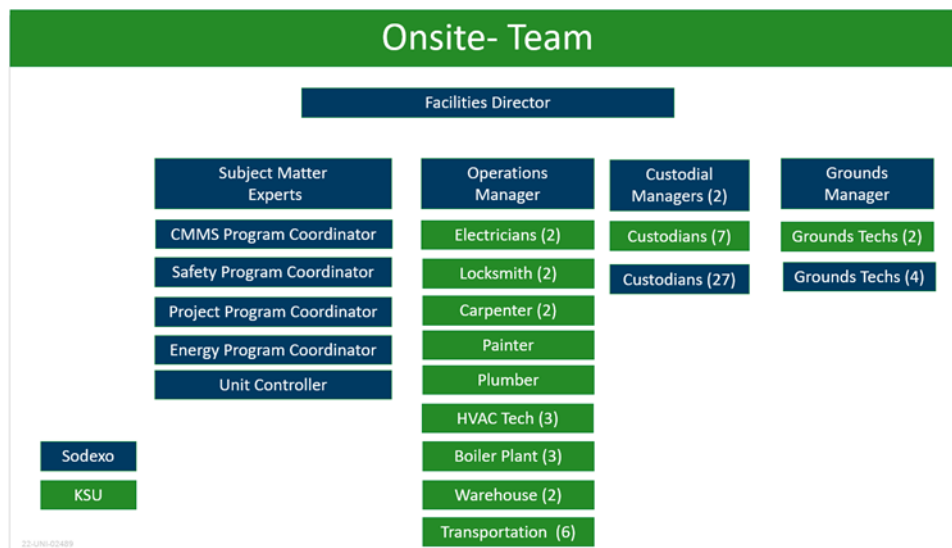
Assumptions

We look forward to your comments on the assumptions and can change them appropriately from your review and our discussion of the program. The services are further defined in Exhibit 2 Management Agreement.

- **Service Level:** APPA 3 is a baseline standard, our surveys show, for all schools that are experiencing an increase in recruitment and retention.
- **Campus Size:** The following SF/ACRES represent the KSU campus:
Maintainable Square Footage = 1,062,406
Cleanable Square Footage = 803,329
Grounds Acreage = 170
- **Systems:** This program includes the Maximo Work Order System, VFA Capital Budgeting System, FM DnA Key Performance Measurement System, Utility Expense Management System, Kronos Time Management System and the Site Management System for Grounds and Custodial Services.
- **Leadership:** Provide a leadership team to drive a culture change by implementing systems, policies, and procedures to improve productivity with the staff and implement a deferred maintenance/energy strategy for the campus.
- **Safety:** Implement a safety program for the campus and correct current documented safety violations
- **Training:** Annual onsite training by Sodexo Subject Matter Experts and cross training the employees, to include Sodexo dining employees, to assist with all events and facilities services.

Staffing

We have developed the staffing level based on Sodexo's productivity standards. Sodexo's systems, training and management consistently provide a 10% to 15% productivity improvement to the recommended APPA staffing levels. KSU will have access to Sodexo's systems, training, policies, and procedures through the Sodexo employees. Sodexo will manage existing KSU employees using the state HR system. Sodexo's employees will have a 40-hour work week, drug testing, and background checks compared to the 37.5-hour work week for the KSU employees with no drug testing or background checks.



Leadership/ Subject Matter Expert Team

The Sodexo facilities leadership team will work to implement the following cost saving opportunities.

- Significant energy savings with continued implementation of lighting and control projects
- Reduce operating costs by transitioning from a reactive maintenance state to preventive maintenance state by implementing an asset management system
- Eliminate out of scope billing from subcontractors due to poorly written contracts
- Increase the return on investment for wage increases by improving employee productivity with implementation of an employee performance management system
- Cross training of dining staff to reduce temporary worker labor for summer and winter projects
- Minimizing of overtime pay with implementation of scheduling and inspection systems
- Leveraging of corporate resources for subject matter expertise in providing quality service
- Safety compliance and risk mitigation to reduce school liability
- Grounds strategy to improve return on investment such as leverage perennial plants instead of annuals for campus color
- Provide financial predictability by using data to support operational and capital decisions

Budget

The annual contracted budget below is a not to exceed number for the scope of work identified in Exhibit 2 Management Agreement.

Maximum First-Year Costs (Including Management Fee)

Category	Amount	Notes
Labor Cost	\$ 2,489,344.78	Payroll, payroll expenses, and taxes for Sodexo employees
Start-Up Costs	\$ 208,626.05	Site tagging, staff training, and SME account opening support for the first-year
Fixed Annual Costs	\$ 326,298.14	Insurance, Software Fees
Other Costs	\$ 44,515.49	PPE, Uniforms, Background/Drug Testing, Handhelds and Cell Phones
Maximum First-Year Costs: \$ 3,068,784.46*		

Outsourcing Benefits

We believe an outsourced onsite solution is best for Kentucky State University. The benefits of this approach are:

- An onsite provider increases productivity by eliminating 90% of the current subcontracted services.
- Minimizing subcontracts eliminates out of scope discussions and supplemental billing
- Sodexo's systems, processes and training can be implemented immediately by Sodexo's subject matter experts
- Cross training employees provides an opportunity for Sodexo dining employees to augment the facilities staff in the summer. This helps to minimize overtime and temporary workers.
- The ability to measure employee performance translates to a rapid culture change, leading to productivity improvements, and finally implementation of cost saving strategies.

Conclusion

We appreciate the opportunity to present this vision of your Facilities Services program. We look forward to reviewing with you and refining this proposal based on your goals and expectations for the program.

Sincerely,

James Etchechury
James Etchechury

Technical New Business Executive

Mb: 239 227 9809

james.etcchury@sodexo.com

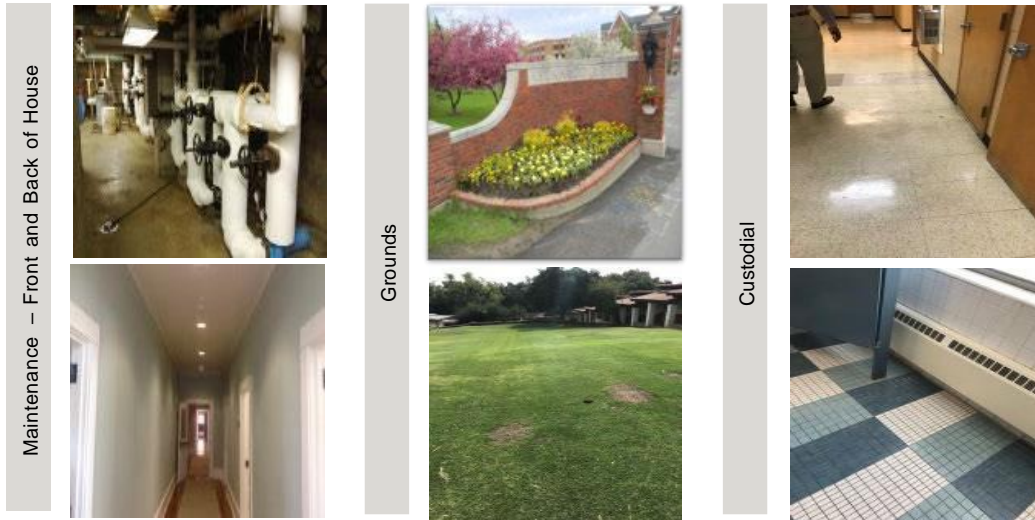
Sodexo

World leader in Quality of Daily Life Solutions: www.sodexoUSA.com Join in the fight against hunger: www.helpSTOPhunger.org

CONFIDENTIAL DRAFT

Exhibit 1 Benchmark Analysis

Visual representation of the APPA 3 Service Level



22-UN-40489

Benchmark Assessment

Service	KSU	APPA 5
<p>Custodial (Worse than APPA 5)</p> <ul style="list-style-type: none"> • Most of services are subcontracted • No chemical dispensers found • Minimal equipment found • Minimal policing • No technology systems 		
<p>Grounds (Worse than APPA 5)</p> <ul style="list-style-type: none"> • This service is subcontracted • Weeds in beds with minimal mulch • No technology systems 		
<p>Maintenance (Worse than APPA 5)</p> <ul style="list-style-type: none"> • Significant deferred maintenance • Floors compromised • Roofs compromised • Manual Work Order System • Minimal building automation • No energy/sustainability program 		

22-UN-40489

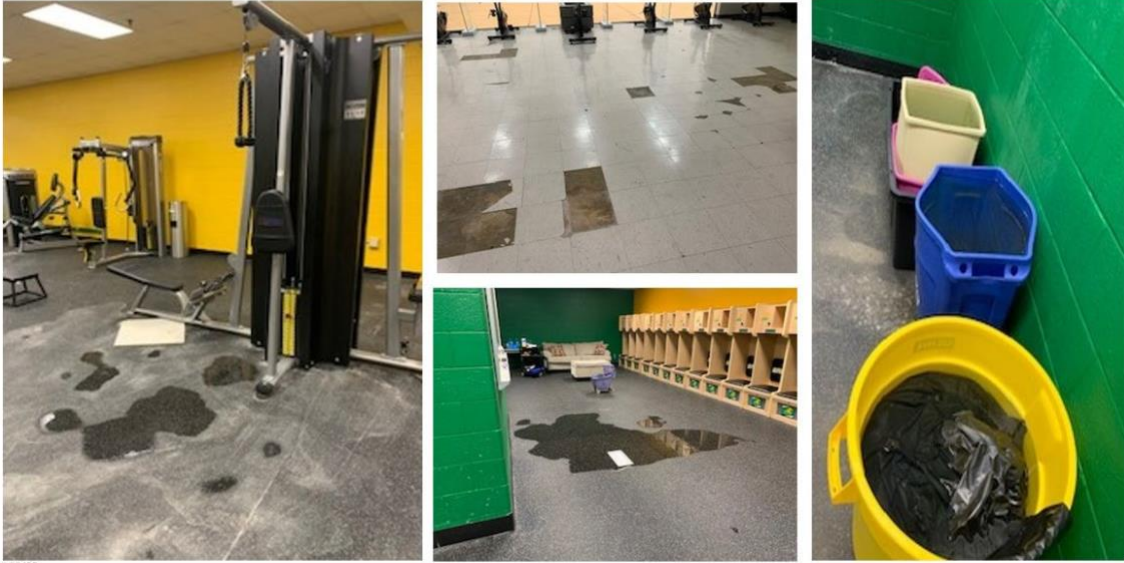
Safety Violations



President's Office

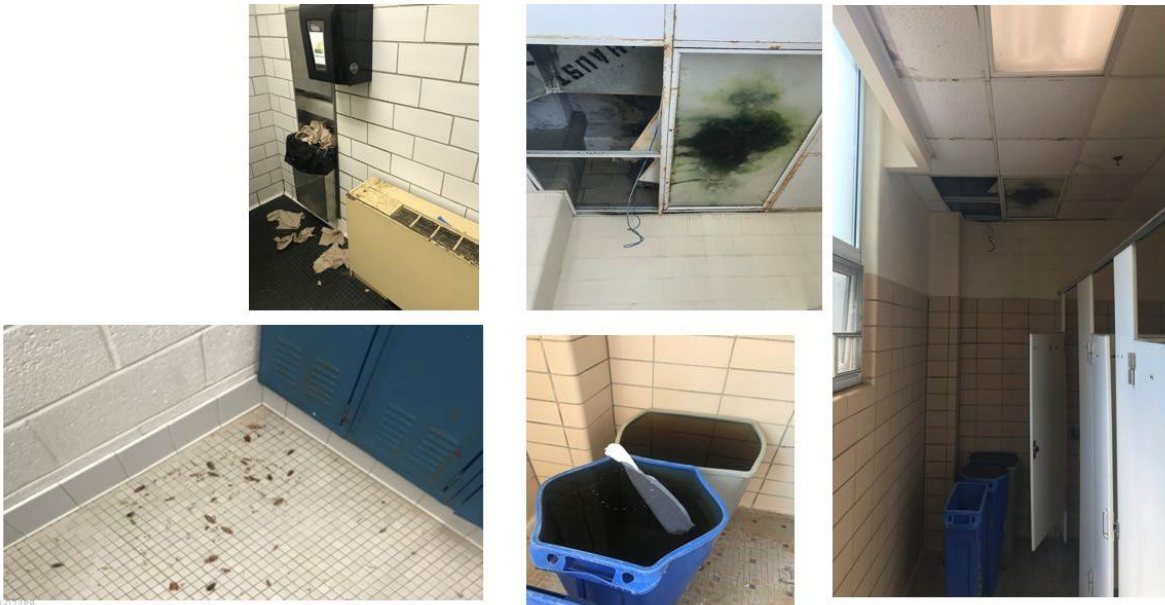


Athletics



22-UNI-02489

Restrooms



22-UNI-02489

Student Common Areas



75 1101 05400

FIAT

Mechanical Rooms



MANAGEMENT AGREEMENT

This Management Agreement (“Agreement”) is between KENTUCKY STATE UNIVERSITY, a non-profit educational institution (“Client”), and SODEXO OPERATIONS, LLC, a Delaware limited liability company (“Sodexo”). Sodexo and Client shall be known individually as a “Party” and collectively as the “Parties”. The Parties agree as follows:

ARTICLE I PURPOSE OF THIS AGREEMENT

1.1 Purpose of Agreement. Sodexo is a provider of professional Integrated Facilities and Energy Services (the “Services”). This Agreement sets forth the terms and conditions upon which Client provides Sodexo the exclusive right to manage and operate the Services for Client at the Premises.

1.2 Independent Contractor. Sodexo shall be an independent contractor and shall retain control over its employees and agents. Nothing in this Agreement shall be deemed to create a partnership, agency, joint venture, or landlord-tenant relationship between the Parties.

ARTICLE II DEFINITIONS

2.1 Accounting Period. A period of one (1) calendar month, twelve (12) of which shall constitute an accounting year.

2.2 Integrated Facilities and Energy Services. All preventive maintenance, corrective maintenance, general maintenance, grounds maintenance, repairs, and custodial and other services provided by Sodexo and managed within the operating budget for the current contract year as specified in the Schedules attached hereto and incorporated into this Agreement.

2.3 Charge. A fee established by Sodexo for services provided by Sodexo.

2.4 Opening Expenses. All costs, Charges, and expenses incurred prior or subsequent to the commencement of the Services that relate to the opening of the Services. These include—but are not limited to—meals, lodging, and transportation expenses for Sodexo's implementation team and relocation expenses for Sodexo's management and supervision teams assigned to the Services at the Premises.

2.5 Operating Expenses. As defined in Section 7.3.

2.6 Premises. Client's facilities are located at 400 East Main Street, Frankfort, Kentucky 40601 and as further detailed in Schedule I, attached hereto.

2.7 Productive Labor. Sodexo's non-management employees engaged in the operation of the Services.

2.8 Small Equipment. Mops, brooms, buckets, pails, brushes, hand tools, etc. used in the Services.

2.9 Supervised Employees. Client's non-management employees assigned to work in the Services.

ARTICLE III TERM AND TERMINATION

3.1 Term. The term of this Agreement is from the date of the Agreement's full approval until December 31, 2023. The Agreement may be renewed in one-year terms.

3.2 Transition Meeting. Client and Sodexo shall participate in a transition meeting in accordance with Exhibit A, attached, at least seven (7) days prior to commencement of Services. If the transition meeting is not held by such time, the commencement of the Services shall be postponed accordingly. Additionally, Client and Sodexo agree to participate in Expectations Sessions throughout the term of this Agreement, with a minimum of one (1) per month.

3.3 Termination for Cause.

A. If either Party breaches a material provision hereof ("Cause"), the non-breaching Party shall give the other Party written notice of such Cause. If the Cause is remedied within ten (10) days in the case of failure to make payment when due, or thirty (30) days in the case of any other Cause, the notice shall be null and void. If such Cause is not remedied within the specified period, the Party giving notice shall have the right to terminate this Agreement upon expiration of such remedy period. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights or remedies available to either Party at law or in equity.

B. In addition to all other rights set forth herein, either Party may terminate this Agreement, without prior notice, should any of the following events occur:

1. The filing of a petition pursuant to which an adjudication of bankruptcy is entered by either Party or the parent corporation of either Party; or the entry of an order, judgment, or decree by a court of competent jurisdiction—on the application of a creditor—adjudicating either Party or the parent corporation of either Party as insolvent, or approving a petition seeking reorganization, or appointing a receiver or an assignee for benefit of any creditor, trustee or liquidator; or

2. The consent to an involuntary petition in bankruptcy or the failure to vacate, within sixty (60) days from the date of entry thereof, any order approving an involuntary petition by either Party or the parent corporation of either Party.

3.4 Termination without Cause. Either Party may terminate this Agreement, in whole or in part, at any time, without Cause, upon no fewer than thirty (30) days' prior written notice to the other Party.

3.5 Effect of Termination. Commencing upon the date notice of termination is issued by either Party, and continuing through Sodexo's final day of operations, all outstanding amounts shall become due and payable within thirty (30) days following such notice.

3.6 Funding Out Provision. Client may terminate this Agreement if funds are not

appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the Agreement. Client shall provide Sodexo sixty (60) calendar days' written notice of termination of this Agreement due to a lack of available funding

ARTICLE IV SERVICES

4.1 Service and Locations. Sodexo shall manage and operate the Services at the Premises for Client as specified in this Agreement and in accordance with the terms set forth in the following Schedules, attached hereto and incorporated herein:

Schedule I: Areas to be Serviced

Schedule II: Scope of Work

4.2 Computerized Maintenance Management System.

A. Sodexo shall implement its Computerized Maintenance Management System software program ("CMMS") at the Premises. The CMMS enhances Sodexo's ability to manage, at a minimum: (i) effective employee job performance, (ii) planned preventive maintenance requirements, (iii) corrective/demand repairs and maintenance, (iv) the database of Client's maintenance/asset information, and (v) the collection and reporting of data to enable Client to make informed decisions regarding maintenance activity at the Premises.

B. Sodexo shall be responsible for the maintenance and upgrades of the CMMS and, upon termination or expiration of this Agreement, shall remove the software program from Client's Premises.

C. Sodexo grants Client a non-exclusive, non-transferable, non-sublicensable right, during the term of this Agreement, to authorize Client's employees to access and use Sodexo's CMMS software and the functionality made available through it, solely in connection with Client's receipt of the CMMS software and support provided by Sodexo. Such right to access and use Sodexo's CMMS does not permit Client to access and use any individual software application that provides the underlying functionality of Sodexo's CMMS, or to otherwise access and use such functionality other than through Sodexo's CMMS. The right to access and use Sodexo's CMMS provided hereunder may not be resold, assigned, or transferred to any other entity. Passwords shall be assigned to Client's employees authorized to access Sodexo's CMMS software. Client shall use reasonable care to prevent unauthorized use and disclosure of such passwords.

D. IN NO EVENT SHALL SODEXO OR ITS SOFTWARE LICENSOR(S) BE LIABLE TO CLIENT FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF, OR THE INABILITY TO USE, THE SOFTWARE, EVEN IF SODEXO OR ITS LICENSOR(S) HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. Client hereby consents to audits of the use of the software at the Premises during normal business hours by Sodexo's licensor or its agents.

E. Upon the expiration or earlier termination of this Agreement, the CMMS (the "Software") and equipment, including all handheld personal digital assistants (PDAs) and all

personal computers (PCs) and/or servers, shall be removed from the Premises by Sodexo. At such time, Client shall have the option of entering into a written agreement directly with the owner of the Software to obtain a license to use the Software in the Premises. Client acknowledges that Sodexo is providing the Software for use by Sodexo in the Premises in accordance with, and subject to, Sodexo's licensed rights to use the Software. In the event this license is terminated for any reason whatsoever, Sodexo shall have the right to immediately cease using the Software in, and to remove all copies of the Software from, the Premises. Client acknowledges and agrees that, by virtue of the implementation and Sodexo's use of the Software in the Premises, Client will not acquire any right, license, title, or interest in the Software, including any proprietary or customized configurations to the Software and/or reports commissioned by Sodexo, any marks associated with the Software, or in any confidential or proprietary information related thereto. Client acknowledges that the Software and its trademarks are proprietary to the Software's licensor. Client hereby agrees to indemnify Sodexo, to the extent permitted by Kentucky law, for any violation of the terms of this provision by any employee or agent of the Client. This provision shall survive termination of this Agreement.

ARTICLE V EMPLOYEES

5.1 Sodexo Employees. Sodexo shall recruit, hire, train, supervise, direct, and, if necessary, discipline, transfer, and discharge management employees and Productive Labor working in the Services. All personnel employed by Sodexo shall at all times and for all purposes be solely in the employment of Sodexo. Sodexo shall provide sufficient and qualified managers to supervise the Services.

5.2 Sodexo Non-management Employees. All non-management Services employees (Productive Labor) shall be Sodexo employees—except for Client's non-management employees described in Section 5.3 below—and shall be compensated directly by Sodexo.

5.3 Client Non-management Employees. Thirty-one (31) non-management Services employees (the Supervised Employees) shall continue to be employees of Client and shall be compensated directly by Client. The names of Client's Supervised Employees are incorporated in Exhibit B, attached. As Client's Supervised Employees retire or terminate their employment with the Client, such employees may be replaced with Sodexo non-management employees (Productive Labor) in accordance with Section 5.2 above with a corresponding adjustment to the total price detailed in Section 7.2.

Client agrees that some of its Supervised Employees will be managed by Sodexo and will be performing work necessary for Sodexo to fulfill the contractual responsibilities and obligations owed to the Client. Sodexo retains the power to direct, supervise, and manage these employees, including, but not limited to, determining their precise tasks and assignments. Sodexo also retains the right to remove Supervised Employees managed by Sodexo from their positions for legitimate business reasons. Sodexo agrees to seek approval from the Client prior to the removal of the Client's Supervised Employees. Client agrees to not unreasonably withhold its approval. Client has the right to continue to employ and manage the employees in positions other than those positions necessary for Sodexo to meet its contractual obligations.

5.4 Personnel Obligations. Each Party shall withhold all applicable federal, state, and local employment taxes and payroll insurance with respect to its employees, insurance

premiums, contributions to benefit and deferred compensation plans, licensing fees, and workers' compensation costs, and shall file all required documents and forms. Each Party shall indemnify and hold the other harmless from and against any claims, liabilities, and expenses related to, or arising out of, the indemnifying Party's failure to satisfy the responsibilities set forth in this paragraph. Client's obligation to indemnify Sodexo shall be to the extent permitted by Kentucky law.

5.5 Agreement Not To Hire. Client acknowledges that Sodexo's salaried employees are essential to Sodexo's core business of providing management services and are familiar with Sodexo's operating procedures and other information proprietary to Sodexo. Therefore, Client shall not, without Sodexo's prior written consent, solicit for employment, hire, make any agreement with, or permit the employment of—in any facility owned or controlled by Client—any person who is or has been a Sodexo salaried employee assigned to the Services at the Premises, within the earlier of six (6) months after such employee terminates employment with Sodexo or within six (6) months after termination of this Agreement. If Client hires, makes any agreement with, or permits the employment of any such employee in any Client operation providing facilities management services within the restricted period, it is agreed by Client that Sodexo shall suffer damages, and Client shall pay Sodexo as liquidated damages—and not as a penalty—an amount equal to six (6) months of the then-current annual salary of each Sodexo salaried employee hired by Client. This sum has been determined to be reasonable by both Parties after due consideration of all relevant circumstances. This provision shall survive termination of this Agreement.

5.6 Equal Opportunity and Affirmative Action Employer. Neither Party shall discriminate because of race, color, religion, sex, age, national origin, disability, sexual orientation, genetic information, veteran status, or any other basis protected by applicable law, in the recruitment, selection, training, utilization, promotion, termination, or other employment-related activities concerning the Services employees. Each Party affirms that it is an equal opportunity employer. The staffing, promotion, placement, or assignment of employees who work on this account must be done without any preference or limitation based on race, color, religion, sex, age, national origin, disability, sexual orientation, ancestry, citizenship, pregnancy, marital status and gender identity, genetic information, veteran status, or any other basis protected by applicable law. This obligation applies to the recruitment, selection, training, utilization, promotion, termination, or other employment-related activities concerning Sodexo's employees. Under no circumstances shall Sodexo permit a request or suggestion by a client to place a particular employee in an account to override Sodexo's non-discrimination policy.

In addition, Sodexo affirms that it is an affirmative action employer. With respect to this Section 5.6, Sodexo shall comply with all applicable federal, state, and local laws and regulations, including, but not limited to, Executive Order 11246; Rehabilitation Act of 1973; Vietnam Era Veterans Readjustment Assistance Act of 1974; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans With Disabilities Act; and any additions or amendments thereto.

5.7 Training Programs. Sodexo shall provide and maintain training equipment, films, slides, literature, daily work and project schedules, software, standard operational procedures, and training manuals to be used in training the Services employees. These materials shall at all times remain under Sodexo's exclusive control and shall be deemed the property of Sodexo.

5.8 Criminal Background Checks. Sodexo shall conduct pre-employment background

checks and drug screenings on its new employees prior to assigning them to provide Services at Client's Premises, as permitted by applicable federal and state law and in accordance with Sodexo's personnel policies.

ARTICLE VI
PREMISES, EQUIPMENT, MAINTENANCE, AND INVENTORIES

6.1 Condition of Premises and Equipment. Any modifications or alterations to the workplace or the Premises (whether structural or non-structural) necessary to comply with any statute or governmental regulation shall be the responsibility of Client and shall be at Client's expense. Client agrees to indemnify Sodexo, to the extent permitted by Kentucky law, against any liability or assessment, including related interest and penalties, arising from Client's breach of the aforementioned obligations, and Client shall pay reasonable collection expenses, attorneys' fees, and court costs incurred in connection with the enforcement of such indemnity.

Client shall, at its sole cost and expense, promptly take all actions required by any governmental or regulatory agency or which are reasonably necessary to mitigate any unsafe environmental condition arising from a microbial event.

To the best of Client's knowledge, the Premises do not contain any hazardous levels of asbestos or asbestos-containing materials. To help protect the health and safety of Sodexo's employees and Client's students, faculty, staff, and employees, if Client becomes aware of, or receives notice or other communication concerning the presence of, hazardous levels of asbestos or asbestos-containing materials in the Premises, Client shall deliver to Sodexo, within fifteen (15) days of receipt of such notice, a copy of any such notice or communication. In addition, Client shall, at its sole cost and expense, promptly take all actions required by any governmental agency or which are reasonably necessary to mitigate any unsafe environmental condition caused by the presence of asbestos or asbestos-containing materials.

Client hereby agrees to indemnify Sodexo, to the extent permitted by Kentucky Law, against any and all liabilities, losses, or claims resulting from the presence of asbestos or asbestos-containing materials in the Premises. This obligation shall include, as limited by the laws of Kentucky, the burden and expense of defending all claims, suits, and administrative proceedings (even if such claims, suits, or administrative proceedings are groundless, false, or fraudulent) resulting from the presence of asbestos or asbestos-containing materials in the Premises. Such obligation shall not be affected by any investigation by or on behalf of Sodexo or by any information which Sodexo may have received or obtained with respect to the matter indemnified by Client hereunder.

The foregoing provisions shall survive termination of this Agreement.

6.2 Equipment. Client shall provide all equipment for the services and own all such equipment. In the event Client requests Sodexo to purchase equipment on Client's behalf for Client's facilities, any equipment purchases made pursuant to this Section shall be billed to Client at the price quoted to Sodexo and paid by Client according to the financial arrangement detailed under Article VII as an Operating Expense.

6.3 Maintenance. Client shall, at Client's expense, provide maintenance personnel and outside maintenance services, parts, and supplies required to properly maintain the Premises and equipment, except to the extent Sodexo is required to provide maintenance

hereunder.

6.4 Inventories of Cleaning Supplies and Paper Supplies for Custodial Services. Client shall purchase all cleaning and paper supplies for custodial services and shall own the inventory. Client and Sodexo shall jointly inventory all Expendable Equipment, if any, owned by Client and shall agree as to required inventory levels. Any inventories below agreed-upon levels shall be brought up to such levels at Client's expense. If at any time Sodexo is to provide additional Service(s), Client shall be responsible to increase, at Client's expense, inventories required for the additional Service(s). Client, at Client's expense, shall maintain the required inventory levels, providing replacements as needed.

6.5 Inventory of Small Equipment. Client shall provide and own initial inventory of Small Equipment. If at any time Sodexo is to provide additional Services, Client shall be responsible for increasing, without charge to Sodexo, inventories required for the additional Services. Client, at Client's expense, shall maintain required inventory levels, providing replacements as needed. Client shall own the inventories.

6.6 Vehicle. Client shall provide vehicle(s) for use in the Services. Client shall be responsible for the vehicle's gas, oil, maintenance, repair, and automobile liability insurance. Client agrees to indemnify Sodexo, to the extent permitted by Kentucky law, against all claims, liability, loss, and expenses which results from Sodexo's use of Client's vehicle(s). This provision shall survive termination of this Agreement.

ARTICLE VII FINANCIAL ARRANGEMENTS

7.1 Opening Expenses. Sodexo shall invoice Client for Sodexo's Opening Expenses, as incurred. Payment shall be due within thirty (30) day following the date of invoice. Client shall pay interest on any amount not paid when due at the rate of one percent (1%) per month, which is the highest interest rate allowed under Kentucky law. The Management Fee described under Section 7.3(C) shall not apply to any Opening Expenses.

7.2 Contract Price Structure. The Services provided under this Agreement shall be paid for by the Client under a "Cost Plus Percentage of Cost" arrangement, with Client reimbursing Operating Expenses incurred for the Services and paying a Management Fee. However, the total price of this Agreement for the first year shall not exceed Three Million Two Hundred Thousand Dollars (\$3,200,000.00) unless otherwise adjusted pursuant to Section 5.3 and 8.1.

7.3 Management Fee Arrangement. The following financial arrangements shall be in effect from the date of the Agreement's full approval:

- A. Sodexo shall pay Operating Expenses in connection with the Services.
- B. Operating Expenses shall be defined as all costs, Charges, and expenses incurred in connection with the Services, including, but not limited to, the following:
 1. The invoiced amounts to Sodexo for any goods and services and other contracted services;

2. Sodexo's labor, including salaries (and bonuses, if any), wages, taxes, health benefits, relocation expenses, payroll processing, retirement plans, and the cost of administering such plans and services; and

3. Other costs, Charges, and expenses, including, but not limited to, depreciation of equipment, Charges for workers' compensation and general liability insurance based on the average manual rates for such insurance in the geographic area of the Premises, other insurance related to the Services provided herein, costs of licenses, permits and certifications, information systems, software and software maintenance, third-party recruitment and placement fees, marketing and promotional or proprietary materials, uniforms, décor, signage, overnight delivery, if necessary, minor equipment, repair and maintenance of Sodexo-supplied equipment, sales, use and other taxes related to the Services, training expenses (including travel) for employees assigned to the Services, criminal background investigations and drug screenings for Sodexo's employees assigned to the Services at the Premises, Facilities Condition Assessment, and other items and contracted services purchased on behalf of the Services;

C. Client shall pay Sodexo a "Management Fee" equal to ten percent (10%) of the Operating Expenses defined in Subsections 1, 2 and 3 above.

D. Many of Sodexo's manufacturers, suppliers and distributors provide rebates, allowances, and other payments to Sodexo based on Sodexo's purchasing commitments, aggregate growth incentives and other factors. Prompt payment discounts and all rebates, allowances and other payments obtained from manufacturers, suppliers and distributors, shall be retained by Sodexo.

7.4 Invoicing Procedures.

A. **Billing.** No later than fifteen (15) days after the end of each Accounting Period, Sodexo shall submit to Client an invoice for Operating Expenses and Management Fee. Payment shall be due in accordance with Section IV, Pricing, under the Personal Service Contract.

B. All payments shall be made by electronic funds transfer into a bank account designated by Sodexo or as otherwise directed by Sodexo. Client shall pay interest on any unpaid amount not paid when due at the rate of one percent (1%) per month, the highest interest rate permitted by Kentucky law. Upon termination of this Agreement, all outstanding amounts (prorated amounts for work completed), including all accrued and unpaid interest, shall become due and payable within thirty (30) days following the date of invoice, and Sodexo recognizes that Client's payments system is net 30 by default.

7.5 Client's Obligations. In addition to the Operating Expenses and Management Fee, Client, at its expense, shall also provide the following for the Services at the Premises:

A. Wages and Salaries, including regular hourly pay, vacation pay, sick pay, bereavement pay, and legal holiday pay for Supervised Employees.

B. Social Security taxes, state and federal unemployment insurance, general liability and umbrella insurance, workers' compensation, medical and hospitalization insurance payable on behalf of the Supervised Employees.

C. Any physicals or vaccinations and criminal background investigations

required by Client or by law for the Supervised Employees engaged in providing the Services.

- D. Trash removal from compactors and dumpsters
- E. Maintenance and repair of Client furniture, desks, cabinets, fixtures, drapes, blinds, chalkboards, trash cans, and other building effects.
- F. Pest and rodent control.
- G. All necessary vehicles for use in providing Services by Sodexo and the maintenance thereof.
- H. Walk-off mats at entrances.
- I. Laundering and treating of mop heads.
- J. Exterior and interior skylight and window washing.
- K. All utilities, including electricity, gas, water, sewage, telephone, etc.
- L. Uniforms for the Supervised Employees
- M. Suitable office space for use by Sodexo, and central supplies and equipment storage space.
- N. Pool service.
- O. Motor pool supplies.
- P. Gym equipment maintenance.
- Q. Alarm and fire suppression systems maintenance.
- R. Kitchen hoods and ventilation systems maintenance.
- S. Maintenance of equipment used in the maintenance, grounds care, and custodial services.
- T. Materials, supplies, and purchased services consistent with the definitions of Integrated Facilities and Energy Services.
- U. Grounds care maintenance supplies, mulch, weed control, plant and pest control, fertilizers, seeds, and annual color.
- V. Custodial equipment.
- W. Equipment and Small Equipment.
- X. Custodial supplies, paper towels, toilet paper, hand soap, plastic liners for trash containers, and plastic bags for trash removal.

Y. Internet protocol and port connections necessary to operate time and attendance applications.

7.6 Services Outside of Scope

A. In the event Client requests Sodexo to perform additional work—as permitted by Kentucky law and regulations—that is outside the scope identified in the Parties' existing Service Contract for Facilities Management Agreement, Sodexo shall provide Client with an invoice for that work's Operating Expenses, plus the ten percent (10%) Management Fee and such amounts shall not be subject to the total price stated in Section 7.2.

B. Sodexo shall submit invoices to the Client for the out-of-scope work upon completion of such work. Payment shall be due within thirty (30) days after date of invoice, and Sodexo recognizes that Client's payments system is net 30 by default. Payment shall be made by electronic funds transfer into a bank account designated by Sodexo, or as otherwise directed by Sodexo. Client shall pay interest on any unpaid amount not paid when due at the rate of one percent (1%) per month, the highest interest rate allowed by Kentucky law. Upon termination of this Agreement, all outstanding amounts, including all accrued and unpaid interest, shall become due within thirty (30) days following the date of termination.

7.7 Right of Offset. At any time when Client is past due on any payment obligations to Sodexo, Sodexo shall have the right to offset all or any portion of such outstanding receivables, or any other sums due to Sodexo by Client, from any amounts owed by Sodexo to Client.

7.8 Audits. Sodexo shall make available for viewing its records relating to this Agreement to the Client within thirty (30) days of such request and/or upon expiration or termination of this Agreement. The Parties acknowledge and agree that the scope of any such audit shall be limited to those books, records, and documents pertaining solely to this Agreement entered into by the Parties, and solely for the purpose of validating the invoices submitted by Sodexo to Client. Client agrees not to disclose any confidential or Trade Secrets and Proprietary Materials, as defined under Section 9.6, to the extent allowable under Kentucky law, which it obtains during any such audit. Any audit shall be at the sole expense of the Client.

7.9 Statements and Records. Sodexo shall submit operating statements to Client for each Accounting Period and shall maintain books and records in accordance with generally accepted accounting principles. Client, at Client's expense, shall have the right to audit all operating statements.

ARTICLE VIII
FINANCIAL ADJUSTMENTS

8.1 Change in Conditions and/or Service Requirements.

A. Conditions. The financial terms set forth in this Agreement and other obligations assumed by Sodexo hereunder are based on conditions in existence on the date Sodexo commences operations, including, by way of example, utilization of Sodexo's procurement program; Client's student population; labor; supply costs and Charges; applicable taxes; applicable laws; the scope of Services; Client's policies and practices; and terms of Sodexo's collective bargaining agreement(s), if any. In addition, Sodexo has relied on

representations regarding existing and future conditions made by Client in connection with the negotiation of this Agreement. In the event of a change in the conditions or the inaccuracy of any representation made by Client, the financial terms and other obligations assumed by Sodexo hereunder shall be renegotiated on a mutually agreeable basis to reflect such change or inaccuracy.

B. Service Requirements. If Client (i) requires an expansion of, or reduction in, the scope of Services, (ii) changes the use of Sodexo's procurement program, (iii) transitions the obligation of Client providing non-management employees to Sodexo, as further detailed in Section 5.3, due to employee retirement, termination or other determination made by Client and/or (iv) requests additional management/resource personnel to conduct a specific function unrelated to the Services, and such change or request results in an increase or decrease in costs, Charges, or expenses to Sodexo, Sodexo's compensation shall be adjusted according to the Operating Expenses actually incurred including an adjustment to the total price stated in Section 7.2.

8.2 Adjustments.

A. The financial arrangement set forth in this Agreement shall be adjusted to reflect additional costs incurred by Sodexo (i) in connection with the implementation of any local, state, or federal legislation or other legal requirements, including, but not limited to, the requirements found in the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010; or (ii) increases in benefit costs paid by Sodexo on behalf of covered employees, including, but not limited to, certain paid leave as mandated by applicable federal, state, or local laws. The adjustment to the financial arrangement shall be effective from the date the events of (i) and/or (ii) occur or take effect.

ARTICLE IX GENERAL TERMS AND CONDITIONS

9.1 Taxes.

A. Sodexo shall bill and collect sales taxes, if applicable, on Services provided at each site. Sodexo shall bill and collect sales and use taxes, if applicable, on purchases or fees billed to Client.

B. If additional sales or use or any other transaction-related taxes are assessed against the Services operation, Client shall reimburse Sodexo for such assessment—and any interest and penalties related to such assessment—upon receipt of an invoice from Sodexo; except that Client shall not be responsible for any assessment attributable to Sodexo's negligent failure to timely submit any known tax filing or report. Sodexo shall be responsible for its city, state, or federal income taxes, including any tax burdens or benefits arising from its operations hereunder. This provision shall survive termination of this Agreement.

9.2 Compliance with Law.

A. Each Party shall comply with all applicable laws, ordinances, rules, and regulations relating to the Services operation and, as applicable to a Party, obtain and maintain required licenses and permits as necessary. Each Party shall cooperate with the other to accomplish the foregoing.

B. Sodexo shall respond to all regulatory agencies relating to the Services and shall provide its employees with Safety Data Sheets on all products in use in the Services.

9.3 Insurance. The Parties shall maintain insurance as follows:

A. Workers' Compensation Insurance. Each Party shall maintain workers' compensation coverage as required by state law and Employers' Liability in the amount of One Million Dollars (\$1,000,000.00) for each accident and covering all its respective employees.

Client's workers' compensation policy shall include an "alternate employer" endorsement in favor of Sodexo that provides coverage for all Client employees managed by Sodexo. Client's coverage shall be primary to any insurance maintained by Sodexo. Client will provide Sodexo with a copy of its policy and the endorsement upon the execution of the Agreement.

B. Commercial General Liability Insurance. Sodexo shall maintain, during the term of this Agreement, Commercial General Liability Insurance with a limit of not less than Five Million Dollars (\$5,000,000.00) for each occurrence, including, but not limited to, Personal Injury Liability, Blanket Contractual Liability and Products Liability, covering only the operations and activities of Sodexo under this Agreement and, upon request, shall provide Client with a certificate evidencing such policies. The insurance policies shall contain a provision whereby the insurer(s) shall provide notice of cancellation in accordance with the provisions of the policy. Client shall be named as an additional insured under Sodexo's policies of insurance defined in this Section 9.3.B to the extent Client is indemnified pursuant to Section 9.4. Such additional insured status may be granted by blanket additional insured provision.

C. Property Insurance. Client shall maintain, or cause to be maintained, a system of coverage (either through purchased insurance, self-insurance, or a combination thereof) to keep the buildings, including the Premises, all property contained therein, and Client's other property insured against loss or damage by fire, explosion, or other cause normally covered by special causes of loss form and builders' risk property insurance policies.

D. Cyber Liability Insurance. Each Party shall maintain Cyber Liability Insurance in the amount of One Million Dollars (\$1,000,000.00) per each occurrence OR Three Million Dollars (\$3,000,000.00) policy-wide aggregate limit.

9.4 Liability and Indemnity.

A. Employment Claims. Each Party hereto shall be solely responsible for all claims asserted by or on behalf of the employees on its respective payroll, including employment and personnel actions (such as wrongful termination, discrimination, etc.) and claims arising out of injuries occurring on the job.

B. Property Damage Claims. With respect to claims for damage to the property of the Parties, for which the Parties maintain a system of coverage on their respective property, and based on the representations contained in Section 9.3 above, each Party hereto waives its rights, and the rights of its subsidiaries and affiliates, to recover from the other Party hereto, and its subsidiaries and affiliates, for loss or damage to such Party's building, equipment, improvements, and other property of every kind and description resulting from fire, explosion, or other cause normally covered in special causes of loss form and builders' risk

property insurance policies.

C. Consequential Damages. In no event shall either Party be liable to the other for consequential, indirect, or incidental damages (including punitive damages and lost profits), even if such Party has been advised of the possibility of such damages in advance.

D. Other Claims for Personal Injury or Property Damage. With respect to claims for personal injury not covered by Subsection A, and claims for damage to property not covered by Subsection B, Sodexo and Client shall, to the extent permitted by Kentucky law, defend, indemnify, and hold each other harmless from and against all claims, liabilities, losses, and expenses, including reasonable costs, collection expenses, attorneys' fees, and court costs that may arise because of the sole negligence or willful misconduct of the indemnifying Party, its agents, or employees in the performance of its obligations under this Agreement.

E. This Section 9.4 shall survive termination of this Agreement.

9.5 Purchasing/Non-Sodexo Approved Vendors. Client acknowledges that Sodexo shall utilize its own supplier network for the provision of goods, supplies, and services in the performance of its obligations hereunder. Client understands that Sodexo has entered into agreements with many vendors and suppliers of products and services which (i) give Sodexo the right to inspect such vendors' and suppliers' plants and/or storage facilities and (ii) require such vendors and suppliers to adhere to standards to ensure the quality of the products and/or services purchased by Sodexo for or on behalf of Client. Client shall not require Sodexo to use products and/or services from non-Sodexo approved vendors.

9.6 Sodexo Trade Secrets and Proprietary Rights.

A. During the term of this Agreement, Sodexo may grant to Client a non-exclusive right to access certain proprietary materials of Sodexo, including Services survey forms, software (both owned by and licensed to Sodexo), and similar items regularly used in Sodexo's business operations ("Proprietary Materials"). In addition, Client may have access to certain non-public information of Sodexo, including, but not limited to, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, surveys and studies, and similar compilations regularly used in Sodexo's business operations ("Trade Secrets"). Trade Secrets shall not include (i) any information which at the time of disclosure or discovery or thereafter is generally available to and known by the public or the relevant industry (other than as a result of a disclosure directly or indirectly by Client), or (ii) any information which was available to Client on a non-confidential basis from a source other than Sodexo, provided that such source was not bound by an agreement prohibiting the transmission of such information, or (iii) any information independently developed or previously known without reference to any information provided by Sodexo.

B. To the extent allowable under Kentucky law, Client shall not disseminate any Proprietary Materials or disclose any of Sodexo's Trade Secrets, directly or indirectly, during or after the term of this Agreement. Client shall not photocopy or otherwise duplicate any such material without the prior written consent of Sodexo. All Trade Secrets and Proprietary Materials, including signage, service marks and trademarks, shall remain the exclusive property of Sodexo and shall be returned to Sodexo immediately upon termination or expiration of this Agreement.

C. Without limiting the foregoing, Client specifically agrees that all software associated with the operation of the Services, including without limitation, accounting systems, CMMS, and other software, is owned by or licensed to Sodexo and not Client. Furthermore, Client's access or use of such software shall not create any right, title, interest, or copyright in such software, and Client shall not retain such software beyond the termination of this Agreement. Data processed by the software shall remain the property of Sodexo; however, at Client's request, upon termination or expiration of this Agreement Sodexo, shall provide Client with a copy of the data processed by such software in a format to be mutually agreed upon by the Parties.

D. The provisions set forth in this Section 9.6 shall survive termination or expiration of this Agreement. In the event of any breach of the provisions set forth herein, Sodexo shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available.

9.7 Assignment. This Agreement may not be assigned by either Party without the written consent of the other Party, except that either Party may, without prior approval and without being released from any of its responsibilities hereunder, assign this Agreement to any affiliate or wholly-owned subsidiary of such Party.

9.8 Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and served personally, delivered by courier or a nationally recognized overnight delivery service, or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other Party as follows:

To Client: Kentucky State University
Attention: Dr. Ronald A. Johnson,
Interim President
400 East Main Street
Frankfort, Kentucky 40601

To Sodexo: Sodexo Operations, LLC
Attention: Mark Watkins
COO, Universities North America, East
4126 Lilac Vista Drive
Louisville, Kentucky 40241

and: Sodexo Operations, LLC
Attention: Law Department
9801 Washingtonian Boulevard
Gaithersburg, Maryland 20878

and/or to such other persons or places as either of the Parties may hereafter designate in writing. All such notices shall be effective when received or refused except in the case of overnight delivery by a nationally recognized delivery service, in which case notice shall be effective the day after deposit with the delivery service.

Any request issued by Sodexo to change the Sodexo U.S. mailing address for check payments or to change the Sodexo bank account for U.S. electronic wire or ACH payments will only be communicated in writing by a Sodexo Authorized Officer (Treasurer or Assistant Treasurer). If Client receives such a request during the Term of this Agreement, Client

shall, prior to taking any action, verify the validity of such request by contacting the Sodexo Accounts Receivable Department directly via one of the methods below:

Email: AccountsReceivable.NorAm@Sodexo.com
Phone: 1-866-372-3160
Fax: 716-568-8408
Website: <https://us.sodexo.com/contact.html>

9.9 Catastrophe. Neither Sodexo nor Client shall be liable for failure to perform its respective obligations under this Agreement when such failure is caused by fire, explosion, water, an act of God, civil disorder or disturbance, strike, vandalism, war, riot, sabotage, pandemic, weather and energy-related closing, governmental rules or regulations, failure of third parties to perform their obligations with respect to the Services, or similar causes beyond the reasonable control of either Party, or for real or personal property destroyed or damaged due to such causes.

Notwithstanding the foregoing, Sodexo shall continue to provide the Services during a catastrophe as described above, as such Services may be modified by mutual agreement of the Parties based on existing conditions or the nature of the catastrophe, and to the extent that the safety and welfare of Sodexo's employees are not jeopardized. Client shall reimburse Sodexo for any Client-approved additional costs, Charges, and expenses incurred by Sodexo in providing the Services, or modified Services, for the duration of the catastrophe, in accordance with the terms of this Agreement.

9.10 Construction and Effect. The article and section headings used herein are used solely for convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation.

9.11 Recovery Fees. In the event that any action is taken by either Party to enforce any term, covenant, or condition of this Agreement, the prevailing Party (or in the case of failure to make payment when due, the initiating Party) shall be entitled to recover reasonable attorneys' fees, collection service expenses, court costs, and related expenses to the extent permitted under Kentucky law.

9.12 Amendments to Agreement. All provisions of this Agreement shall remain in effect throughout the term hereof unless the Parties agree, in a written document signed by an authorized signatory of both Parties, to amend, add, or delete any provision. Email correspondence shall not qualify as a written document signed by an authorized signatory.

9.13 Waivers and Approvals. The waiver or approval by either Party of or under any term or condition of this Agreement, at any time, shall not be deemed a waiver or approval unless provided in writing by an authorized representative of the waiving or approving Party.

9.14 Severability. The determination by any court of competent jurisdiction that any provision of this Agreement or the application of any provision of this Agreement is invalid, illegal, or unenforceable to any extent shall not affect the validity, legality, and enforceability of the remaining provisions of this Agreement so long as the removal or unenforceability of such provision does not materially affect the economic or legal rights, interest, or intentions, of the Parties. If such removal or unenforceability does materially affect the economic or legal rights, interests, or intentions of the Parties, then the Parties shall negotiate in good faith to amend this

Agreement so as to maintain the original intent of the Parties as closely as possible. If the Parties are unable to reach agreement within sixty (60) days after the issue is first raised by either Party, then the affected Party (or either Party, if both Parties are affected) may terminate this Agreement upon written notice to the other Party.

9.15 Authority. Each individual executing this Agreement on behalf of, or as a representative of, a Party represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party and that this Agreement is binding upon Client and Sodexo in accordance with its terms.

9.16 Regulations and Access. Client may make reasonable regulations for use and occupancy of the Premises and shall give Sodexo written notice thereof. Client's authorized representatives shall have access to the Premises at all times. Client grants Sodexo approval to use, in performance of its Services on the Premises, all promotional, informational, or marketing activities or materials—including the names, trademarks, logos, and symbols of Sodexo—in order to provide the customer the complete Sodexo Experience.

9.17 Dispute Resolution. If a dispute should arise between the Parties with respect to their obligations hereunder or the interpretation of this Agreement, the Parties shall, prior to the commencement of any legal action, agree to meet and confer in good faith on all matters of common interest on all controversies, claims, or disputes ("Dispute") which materially affect the performance of either Party under this Agreement. As soon as a Dispute is recognized by either Party, such Party shall communicate the substance of the Dispute to each Party's primary contact. Once a Dispute has been raised, the primary contacts shall make all reasonable efforts to reach a resolution within two (2) weeks after the Dispute has been identified. If the Dispute cannot be resolved between the Parties' respective primary contacts, then the Parties shall submit such matters to their respective executive management, who shall make all reasonable efforts to reach a resolution within thirty (30) days after the Dispute has been referred to them. The foregoing, however, shall not prevent or limit either Party's right to apply to a court of competent jurisdiction for a temporary restraining order, preliminary or permanent injunction, or other similar equitable relief.

9.18 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky, without regard for that state's choice of law principles.

9.19 Confidentiality. The terms and conditions of this Agreement are confidential. Client and Sodexo represent and warrant to each other that each Party shall maintain the confidentiality of the terms and conditions of this Agreement to the extent allowable under Kentucky law; however, such restriction shall not prohibit either Party from disclosing the existence of the relationship, term of this Agreement, or the projected sales volume related to the terms of this Agreement.

9.20 Electronic Signatures. The Parties agree that this Agreement and subsequent Amendments may be executed using electronic contracting technology, using symbols or other data in digital form, and agree that any such electronic signatures are the legal equivalent of manual signatures binding the Parties to the terms and conditions stated herein.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the date indicated in the first paragraph or the first day of the Term, whichever is sooner.

KENTUCKY STATE UNIVERSITY

By: _____
Dr. Ronald A. Johnson
Interim President

SODEXO OPERATIONS, LLC

By: _____
Tiffany Williams
Vice President, Operations
University Facilities, East

DRAFT

Exhibit A
TRANSITION MEETING & EXPECTATIONS SESSIONS

TRANSITION MEETING

A Transition Meeting is always held **prior** to opening a new account or starting a new service at an existing account.

Objectives:

1. Transform individual client(s) expectations into one set of prioritized institutional expectations,
2. Start up the new service in accordance with Client's expectations,
3. Provide for a solid foundation upon which to build long-lasting and mutually beneficial relationships; and
4. Articulate and gain consensus of Sodexo's objectives/expectations from the business relationship.

Participants:

Client: Client liaison(s) and at least one of the following executives: Chief Executive Officer, Chief Operating Officer, Chief Financial Officer.

Sodexo: Sales Director, District Manager responsible for the contract, and (if identified) the General Manager ultimately responsible for Sodexo's performance. Vice Presidents and other company executives should attend as determined by the Parties.

Expectations Sessions

Expectations Sessions are **monthly** meetings requiring the attendance of all key stakeholders who have an interest in the Services under this Agreement. Expectation Sessions shall be held regularly throughout the contract term with at least one (1) per month.

Objectives:

1. Sodexo shall share customer/Client satisfaction results, financial performance, successes, and challenges from the previous year.
2. Client expectations from the previous session shall be reviewed and expectations moving forward shall be established.
3. Once Sodexo has identified the current Client expectations, Sodexo shall develop a proposed plan of initiatives, strategies, and innovations for the upcoming month. This plan ensures that Sodexo is aligning its service delivery with the expectations of Client.
4. Client shall approve Sodexo's scope of work and budget for the upcoming month.

Participants:

The Parties shall mutually agree upon the participants for each Expectations Session.

EXHIBIT B
CLIENT's SUPERVISED EMPLOYEES

NAME	JOB TITLE
Boggs, Harold A	100565-Electrician II Electrical Services
Davis, Ellsworth E	110341-Electrician
Anderson, Gregory Thomas	100808-Locksmith I
Daniels, John	100742-Carpenter
Manley, Robert	100750-Locksmith II O&M Residence Life
West, Dakota	100742-Carpenter
Woolums, Eric B	100748-Painter Facilities Service
Brown, Stephen M	100819-HVAC Mechanic II Mechanical Services
Renfroe, Brigitte J	100604-Sr Plumber
Blackburn, Billy Joe	100818-Trades Manager Facilities Service
Yett, Issac R	100585-Grounds/Housekeeping Manager
Washington, John A	100602-Boiler Plant Supervisor Boiler Plant
Fallis, Paul	100699-Mechanical Services Manager
Pulliam, Darrell W	100598-Stationary Fireman II Boiler Plant
Stallard, Clarence Edward	100599-Stationary Fireman II Boiler Plant
Sharp, Billy W	100563-Stock Clerk Warehouse
Washington, Lowell Whitney	100583-Stock Clerk Warehouse
Blankenship, Dana	100571-Custodian Housekeeping
Jones, Ramonia A	100804-Custodian-Team Lead
Moore, Monikha M	100812-Custodian
Nicholson, Melvin D	100580-Custodian I
Williams, Lee F	100586-Team Leader Housekeeping
Robertson, Robert Earl	100590-Groundskeeper I
Moore, Jordan	100802-Custodian Housekeeping
Grimes, Greg	100590-Groundskeeper I
Cockrell, George	100578-Driver/Facilities Specialist
Davis III, James	100578-Driver/Facilities Specialist
Hall, Jennifer L	100810-Driver/Facilities Specialist
Porter, Cheryl	100809-Bus Driver
Segar, Philip	100816-Driver/Facilities Specialist Facilities Ser
Washington, Dion	100578-Driver/Facilities Specialist

Schedule 1 Buildings List and Scope of Work

Buildings

BLDG	Gross Square Feet
William Exum Center	124,270
Academic Service Bldg.	98,271
Hathaway Hall	71,366
Hill Student Center	66,934
Bradford Hall	63,888
Blazer Hall	62,200
Young Hall	61,400
Alumni Stadium	53,283
Kentucky Hall	45,851
Carver Hall	45,748
Whitney Young JR Hall	44,592
Cafeteria Bldg.	35,356
Bell Health Building	34,466
McCullin Hall	32,480
Chandler Hall	28,208
Combs Hall	25,592
Shauntee Hall	18,616
Alumni Stadium Dressing Room	17,664
Paul Sawyer Library	16,737
Hume Hall	15,344
Warehouse	12,000
Jackson Hall	11,225
KSU Motor Pool	10,809
Jordan Maintenance Bldg.	10,570
Betty White Health Center	10,400
Rosenwald Bldg.	9,362
President Home	7,050
Chill Water Plant	6,800
Jordan Shop	4,814
Community Education	3,640
Business Office Annex	3,000
Jones Field House	2,976
Alumni House	2,905
RESTROOM/STGE BLDG	1,043
PRESS BLDG-BASBL FLD	672
Academic Annex Metal Building	1,000
Cross Walk Tunnel	600
Metal Carport	360
Storage Bldg. at Pavilion	280
W DUGOUT-BASEBL FLD	257
E DUGOUT-BASEBL FLD	257
Storage Bldg. at Mach	120
Total Gross Square Footage	1,062,406

Schedule II: APPA 3 Scope of Work

Cleaning Services		
Service Days: 5x/week		
All items below will be completed once every service day, unless otherwise noted		
<u>Building Areas</u>		
<i>Entrances, Lobbies, Corridors, Stairwells, Elevators</i>		
		Empty trash daily; clean, damp-wipe waste receptacles 1x/week
		Remove waste, paper, and trash to dumpsters/compactors
		Full vacuum of all carpeted floors 1x/week; spot vacuum 4x/week
		Full sweep and mop of all hard-surface flooring 1x/week; spot sweep/mop 4x/week
		Misc. duties, incl. but not limited to:
		Dust furniture and fixtures 1x/week
		Spot-clean walls, carpet, rugs, doors, entrance glass and partitions
<i>Restrooms</i>		
		Mop floors with disinfectant cleaner
		Disinfect mirrors, fixtures & enameled surfaces
		Disinfect basins, urinals, and bowls
		Empty & sanitize waste receptacles
		Remove waste, paper, and trash to dumpsters/compactors
		Misc. duties, incl. but not limited to:
		Disinfect partitions, tile walls and outside surfaces of dispensers
		Restock tissue, soap, and towel dispensers
<i>Academic Areas</i> <i>Classrooms, Labs, Libraries, Theaters, Auditoriums, Gathering Areas</i>		
		Empty trash daily; clean, damp-wipe waste receptacles 1x/week
		Remove waste, paper, and trash to dumpsters/compactors
		Clean whiteboards/blackboards
		Full vacuum of all carpeted floors 1x/week; spot vacuum 4x/week
		Full sweep and mop of all hard-surface flooring 1x/week; spot sweep/mop 4x/week
		Misc. duties, incl. but not limited to:
		Dust furniture and fixtures, windowsills, and HVAC vents 1x/week
		Spot-clean walls, rugs, doors, entrance glass and partitions
<i>Administrative Areas</i> <i>Offices, Conference Rooms, Workrooms, Kitchenettes</i>		
		Empty trash daily; clean, damp-wipe waste receptacles 1x/week
		Remove waste, paper, and trash to dumpsters/compactors
		Full vacuum of all carpeted floors 1x/week; spot vacuum 4x/week
		Full sweep and mop of all hard-surface flooring 1x/week; spot sweep/mop 4x/week
		Misc. duties, incl. but not limited to:
		Dust furniture and fixtures, windowsills 1x/week
		Spot-clean walls, rugs, doors, entrance glass and partitions

	<i>Support Areas</i>	<i>Storage Closets, Loading Docks,</i>
		Empty trash daily; clean, damp-wipe waste receptacles 1x/week
		Remove waste, paper, and trash to dumpsters/compactors
		Full vacuum of all carpeted floors 1x/week; spot vacuum 4x/week
		Full sweep and mop of all hard-surface flooring 1x/week; spot sweep/mop 4x/week
	<i>Project Work</i>	<i>As needed to maintain APPA 3 appearance</i>
		Clean carpets, strip, scrub and refinish hard-surface floors
		Polish hard-surface floors
		Misc. duties, incl. but not limited to:
		Washing interior windows within reach without a ladder 1x annually
	<i>Trash Removal</i>	
		Remove trash from building, place into dumpsters
	<i>Weekend Service</i>	
		Additional service, upon request

DRAFT

Grounds Services	
Service Days: Weekly service provided by subcontractor initially, managed by Sodexo	
Inspect and maintain all lawns, plantings and paved areas/related features at APPA 3 appearance and care levels. Police for debris, trash	
Sub-contracted work will be managed within the scope of the contractual budgets provided.	
Mowing	
	Manage third-party provider to maintain turf at appropriate heights for season, type of grass, level of irrigation. Service provided approximately every 5-7 days in growing season.
	Prevent rutting of turf/avoid turf scalping
	Avoid tree and shrub damage
	Blown down paved areas after mowing
Trimming	Where mowing not possible, manage third-party provider, to the same frequency as mowing
Edging	Manage third-party provider. Service provided monthly during growing season.
Weed Control	Manage third-party provider, 1 pre-emergent application annually in Spring, weeds less than 30% of turf.
Fertilization	Manage third-party provider, to apply appropriate fertilizers 2x annually.
Mulch	
	Manage third-party provider, to apply mulch to tree rings and plantings 1x annually
Annuals/Perennials	Manage plantings to provide appropriate seasonal color, 2 changes annually
Insecticide	Manage third-party provider, to apply appropriate insecticide 1x annually
Tree, Shrub & Ground Cover Maintenance	
	See "Mulch" above
	Manage third-party provider, to prune trees and shrubs per species demand
Irrigation	Manage third-party provider, to maintain all irrigation systems weekly
Pressure Washing	Manage third-party provider, to pressure wash hardscapes 1x annually
Roads and Lots	
	Manage third-party provider, to maintain parking area with sweeping/blowing to remove leaves, gravel, and debris. Service frequency determined by rate of soil/debris collection.

Maintenance Services ¹
Service Days: 5x/week
- Sub-contracted work will be managed within the scope of the contractual budgets provided.
Work Requests
Emergency Work – started within 1 hour of notification during normal Maintenance working hours, and within 4 hours at all other days/times [on-call]
Urgent Work - started within 4 hours of notification during normal Maintenance working hours, and within 48 hours at all other days/times [on-call]
Routine Work - started within 4 days of notification, completed within 25 days
Project Work - scheduled time permitting, around routine and preventive work, no greater than 3% of technician’s weekly schedule [in aggregate, with setups and moves allocation]
Preventive Work - scheduled periodically as per manufacturer's specifications and industry/ standards
Exterior Building – Maintenance
Conduct visual inspections; document and correct deficiencies through work orders and preventive maintenance
Major projects ² will be contracted to third-party subcontractors. Sodexo will act as Owner's Representative on all major projects.
Interior Building – Maintenance
Conduct visual inspections; document and correct deficiencies through work orders and preventive maintenance
Equipment and Systems Operations
Sodexo will operate and maintain systems, and correct problems in a timely manner
Monitor systems with alarms, indicators, and gauges
Maintenance on fire protection systems is limited to quarterly visual inspections for corrosion and rust ONLY. Systems inspections provided by certified fire protection Vendors.
Heating and Air Conditioning
Sodexo to provide services within the skill level of their on-site team, including filter changes and PM. Work beyond this scope will be sub-contracted.
Plumbing
Sodexo to provide services within the skill level of their on-site team, including unclogging drains/toilets and repairing/replacing certain fixtures and valves. Work beyond this scope will be sub-contracted.
Electrical Systems
Sodexo to provide services within the skill level of their on-site team, including checking panels, breakers, and other minor electrical tasks. Work beyond this scope will be sub-contracted.
Preventive Maintenance
Prepare and execute PM schedules, per manufacturer's guidelines, utilizing Maximo CMMS

¹ As generally applied to all subheadings related to “Maintenance Services,” including, but not limited to, “Exterior Building – Maintenance” and “Internal Building – Maintenance,” prior assessment by the Division of Engineering and Contract Administration will be initiated before the commencement of any work, as applicable under the laws of the Commonwealth of Kentucky.

² Any projects with the projected amount of greater than \$10,000.

Miscellaneous Services
Event setups, holiday display setups, not to exceed 3% of weekly hours [in aggregate, with projects and moves allocation]
Minor moving services, not to exceed 3% of weekly hours [in aggregate, with setups and projects allocation]
Systems
Monitor all building systems as necessary. Services for alarms/systems will be sub-contracted, scheduled/managed by Sodexo
Communication Systems
Sodexo will provide and maintain all necessary communications devices for use in the services
Environmental Health and Safety
Follow Sodexo's safety requirements as well as regulatory agencies OSHA, NFPA
Definitions
"Routine Maintenance Work" – Work within the skills of the on-site team
"Special Projects" – Work outside of scope of "Routine Maintenance Work"

DRAFT

PERSONAL SERVICE CONTRACT

BETWEEN

KENTUCKY STATE UNIVERSITY

AND

SODEXO OPERATIONS, LLC

PSC 23-014

This Personal Service Contract (PSC) is entered into by and between Kentucky State University and SODEXO OPERATIONS, LLC (the "Contractor") to establish a Contract for Integrated Facilities and Energy services to be utilized to support the University. The initial PSC is effective upon approval by the Kentucky State University Board of Regents AND the Government Contract Review Committee through December 31, 2023.

Kentucky State University and the Contractor agree to the following:

I. Scope of Contract

Contractor

The Contractor shall:

Contract management services for the department of Facilities Management at Kentucky State University. The Contractor's Scope of Work is detailed in the Personal Services Proposal for Facilities Management and the Management Agreement. Thus, the aforementioned documents are herein incorporated to the PSC by reference.

Kentucky State University

It shall be the responsibility of Kentucky State University to provide appropriate guidance to the Contractor for the purpose of facilitating the successful completion of the projected work and work product development.

Kentucky State University shall also:

- Provide maintenance supplies and material parts to repair/replace asset failures and maintain equipment, furniture, and other building effects on the campus
- Provide custodial chemicals, equipment, soap, plastic liners, paper products, etc., for services, including the maintenance/repair/replacement of custodial equipment
- Provide grounds chemicals, materials, supplies, and products for services, including repair/replacement/maintenance of grounds equipment
- Provide vehicles, including their maintenance/repair/replacement, fuel, and insurance, to support the facilities operations
- Provide all equipment, supplies, and products, including walk-off mats, mops, brooms, buckets, hand tools, etc., used in the services.
- Provide purchased services such as waste removal and life/safety maintenance contracts
- Provide pest and rodent control, as well as all utilities, including electricity, gas, water, sewage, telephone, etc.
- Provide suitable office and storage space

- Provide phone, internet, and WiFi service
- Provide and pay compensation, health benefits, University benefits, payroll taxes, insurance, uniforms, and background checks for all University non-management employees working in the services
- Provide alarm and fire suppression systems maintenance
- Provide and maintain internet protocol and port connections necessary to operate time and attendance applications

II. **Contract Components and Order of Precedence**

Kentucky State University's acceptance of the Contractor's offer—indicated by the issuance of a Personal Service Contract Award—shall create a valid Contract between the Parties consisting of the following:

This Personal Service Contract, the Contractor's Scope of Work, as detailed in the Personal Services Proposal for Facilities Management and the Management Agreement attached hereto. In the event of a conflict among the aforementioned documents, the following order of precedence shall apply: 1) Management Agreement, 2) Contractor's Scope of Work, as detailed in the Personal Services Proposal for Facilities Management; and 3) Personal Service Contract.

III. **Negotiated Items**

N/A

IV. **Pricing**

The costs for the services described above are as follows:

The complete program price—which includes labor, technology systems, training costs, and the Management Fee—is NOT TO EXCEED Three Million Two Hundred Thousand Dollars (\$3,200,000.00) for the first term.

a. **Invoicing**

Pursuant to KRS 45A.695, no payment shall be made on any invoice unless the individual, firm, partnership, or corporation awarded the Personal Service Contract submits the invoice for payment on the Personal Service Contract Invoice Form established by the Legislative Research Commission, Government Contract Review Committee.

The Contractor shall submit invoices to the Purchasing Department of Kentucky State University via email to purchasing@kysu.edu. The Purchasing Department will then review the invoices with the appropriate managing offices for approval. Upon approval, the invoices shall be forwarded to the Accounts Payable Department via email to accounts.payable@kysu.edu.

Payment for services will be made upon receipt of an approved invoice using the Personal Service Contract (PSC) Invoice Form. Payment terms are net thirty (30) days.

Invoices for services must include an original signature, as well as the following: the Contract number, the dates of service, the total number of hours worked, a description of services provided, and the total amount due.

The Invoice Form is available on the Legislative Research Commission, Government Contract Review Committee website, <https://apps.legislature.ky.gov/moreinfo/contracts/homepage.html>.

Travel:
N/A

b. Terms and Conditions

Contract Effective Date

This Personal Service Contract shall be deemed effective on the date of approval by the Kentucky State University Board of Regents AND the Government Contract Review Committee.

Contract

This Personal Service Contract shall represent the entire agreement between the Parties. Prior negotiations, representations, or agreements, either written or oral, between the Parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

Contract Term and Renewal Option

The initial term of the Contract shall be from the date of approval by the Kentucky State University Board of Regents AND the Government Contract Review Committee through December 31, 2023.

Renewal options are as described below:

At the expiration of its initial term, this Contract may, at the option of the Parties hereto, be extended upon the same terms and conditions as set forth herein for further periods not to exceed twelve (12) months each, subject to advance approval by Kentucky State University.

Notwithstanding the foregoing, in the event this Contract expires and Contractor continues to provide the Intergrated Facilities and Energy services, this Contract shall continue thereafter in accordance with the existing terms and conditions in effect as of the expiration date until amended by mutual written agreement of the parties or until terminated by either Party upon no less than sixty (60) days' prior written notice.

Changes and Modifications to the Contract

No modification or change to any provision of the Contract shall be made, or be construed to have been made, unless such modification is mutually agreed to in writing by Kentucky State University and the Contractor and incorporated as a written amendment by Kentucky State University prior to the proposed effective date of such modification or change. Modification shall be subject to prior approval from the University's Purchasing Department, the University's General Counsel, and the Legislative Research Commission, Government Contract Review Committee. Memoranda of understanding, written clarifications, and other correspondences shall not be construed as amendments to the Contract.

Notices

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Contract shall be in writing. After the award of the Contract, all communications of a contractual or legal nature shall be directed to the University's General Counsel.

V. Personal Service Contract (PSC) Standard Terms and Conditions

Whereas, the First Party, Kentucky State University, has concluded that University personnel are not available to perform said functions or it would not be feasible to utilize University personnel to perform said functions; and

Whereas, the Second Party, the Contractor, is available and qualified to perform such functions; and

Whereas, for the aforementioned reasons, the University desires to avail itself of the services of the second part.

NOW THEREFORE, the following terms and conditions are applicable to this Contract:

Choice of Law and Forum

This Contract shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky. Any action brought against the University on the Contract, including, but not limited to, actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky, in accordance with KRS 45A.245.

Cancellation

Cancellation for Convenience — Kentucky State University reserves the right to terminate this PSC without cause through thirty (30) days' written notice. Upon the Contractor's receipt of a "notice of termination," the Contractor shall discontinue all services with respect to the applicable Contract. The cost of any agreed upon services provided by the Contractor prior to cancellation will be calculated at the mutually agreed rate prior to the "notice of termination."

Cancellation for Non-Performance, Default — Kentucky State University may terminate the PSC for non-performance, as determined by the University, for causes such as:

- Failure to provide satisfactory quality of service, including: (1) failure to maintain adequate personnel (whether arising from labor disputes or otherwise); (2) any substantial change in ownership or proprietorship of the Contractor which, in the opinion of the University, is not in its best interest; or (3) failure to comply with the terms of this Contract.
- Failure to keep or perform (within the time period set forth herein), or violation of, any of the covenants, conditions, provisions, or agreements contained herein.
- Adjudication as a voluntarily bankrupt, making a transfer in fraud of its creditors, filing a petition under any section from time to time—or under any similar law or statute of the United States or any state thereof—or if an order for relief shall be entered against the Contractor in any proceeding filed by or against the Contractor thereunder. In the event of any such involuntary bankruptcy proceeding being instituted against the Contractor, the filing of such involuntary petition shall not be considered an event of default until sixty (60) days after the

filing of said petition so that the Contractor might have, during that sixty-day period, the opportunity to seek dismissal of the involuntary petition or otherwise cure said potential default.

- Making a general assignment for the benefit of its creditors, or taking the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the Contractor.

The University will provide ten (10) calendar days' written notice of default. Unless arrangements are made to correct the non-performance issues to the University's satisfaction within those ten (10) calendar days, the Director of Purchasing may terminate the Contract immediately.

Permits, Licenses, and Commonwealth Registration

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments in which work under this Contract is performed.

The Contractor must furnish certification of the authority to conduct business in the Commonwealth of Kentucky as a condition of the Contract Award. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

The Contractor shall pay all sales, use, personal property, and any other taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be the responsibility of the Contractor.

The Contractor will be required to accept liability for payment of all payroll taxes or deductions required by local and federal law, including, but not limited to, old age pension, Social Security, or annuities.

Attorneys' Fees

If either Party deems it necessary to take legal action to enforce any provision of the Contract, and if the University prevails, the Contractor agrees to pay all expenses of such action, including the attorneys' fees and costs at all stages of litigation.

Indemnification

The Contractor agrees to indemnify, hold harmless, and defend the Commonwealth of Kentucky, Kentucky State University, its Board of Regents, and its officers, employees, and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs, and expenses, which may arise or may be alleged to have arisen or have resulted or alleged to have resulted from activities of any kind and nature whatsoever of the Contractor or its officers, employees, agents, and contractors in connection with this Contract. Nothing herein is intended to imply that the Contractor shall indemnify Kentucky State University for any damages caused by Kentucky State University's negligence.

Notwithstanding the foregoing, each party agrees to waive any right, as well as the rights of its subsidiaries and affiliates, of recovery for loss or damage to each respective party's buildings, equipment, improvements, or other property whatsoever because of fire, explosion, or any other cause normally covered in standard-form fire insurance policies with extended coverage

endorsements. Kentucky State University will keep its premises, University-owned contents, and other property insured against any loss or damage by fire, explosion, and similar casualties.

Kentucky State University premises and equipment provided by Kentucky State University for use in the facilities management services operations shall be in good condition and maintained by Kentucky State University, except to the extent the same is to be maintained by the Contractor under this Contract, to ensure compliance with applicable laws concerning building conditions, sanitation, safety, and health (including without limitation, OSHA regulations). Kentucky State University agrees that any modifications or alterations to the workplace or the premises (whether structural or non-structural) necessary to comply with any statute or governmental regulation, or at Kentucky State University's request, shall be the responsibility of Kentucky State University and shall be at Kentucky State University's expense. Kentucky State University represents and warrants that the premises do not contain any hazardous levels of airborne asbestos fiber or asbestos-containing materials in a friable condition. If Kentucky State University becomes aware of, or receives notice or other communication concerning, the presence of hazardous levels of airborne asbestos fibers or asbestos-containing materials in a friable condition on the premises, Kentucky State University shall alert the Contractor's senior onsite management immediately and deliver to the Contractor, within fifteen (15) days of receipt of such a notice, a copy of any such notice or communication.

The Contractor shall agree to abide by and uphold all procedures and policies set forth in Kentucky State University's Asbestos Operations and Maintenance Plan (O&M Plan), written and implemented by Kentucky State University. This includes, but is not limited to, the following: Kentucky State University's Environmental Health and Safety Department (EH&S) has been assigned responsibility for administrative decisions, as mandated by the Commonwealth of Kentucky Department for Environmental Protections Division for Air Quality, regarding asbestos controls and abatement on Kentucky State University premises. All activities regarding asbestos require proper approval from EH&S. The Contractor shall not be prohibited from conducting routine surveys. The Contractor shall agree that EH&S will conduct all investigations involving asbestos in Kentucky State University-owned buildings. EH&S shall provide consultative and technical assistance to the Contractor when involved in activities related to asbestos. EH&S shall provide quality control/quality assurance for the asbestos control program through the monitoring of the different program elements. EH&S shall serve as the University liaison with regulatory agencies and serve as the clearing house for the dissemination of regulatory and University requirements and new information to groups involved in asbestos-related activities. EH&S shall maintain a list of all asbestos projects and associated records, which will be delivered to the Contractor if such need arises.

Funding Out Provision

Kentucky State University may terminate this Contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the Contract. The University shall provide the Contractor thirty (30) calendar days' written notice of termination of the Contract due to a lack of available funding.

Reduction in Contract Workers' Hours

N/A

Authorized to do Business in Kentucky

Businesses can register with the Secretary of State at <http://www.sos.ky.gov/pages/default.aspx>

The Contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

If a foreign entity, the Contractor shall maintain a certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State pursuant to the process outlined below.

Registration with the Secretary of State by a Foreign Entity

Pursuant to KRS 45A.480 (1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010 to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070.

For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive, or the awarded contract shall be cancelled.

Invoices for Fees

The Contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government. The invoices must conform to the method described in this Contract.

As aforementioned, pursuant to KRS 45A.695, no payment shall be made on any invoice unless the individual, firm, partnership, or corporation awarded the personal service contract submits the invoice for payment on the Personal Service Contract Invoice Form established by the Legislative Research Commission, Government Contract Review Committee.

The Invoice Form is available on the Legislative Research Commission, Government Contract Review Committee website: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

Travel Expenses, if Authorized

The Contractor shall be paid for no travel expenses, unless and except as specifically authorized by the specifications of this Contract or authorized in advance and in writing by the University. Either original or certified copies of receipts must be submitted for airline tickets, hotel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

Other Expenses, if Authorized Herein

The Contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of this Contract, or authorized in advance and in writing by Kentucky State University.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the Contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish copies of same in support of requests for payment submitted to Kentucky State University.

Purchasing and Specifications

The Contractor certifies that it will not attempt in any manner to influence any specifications to be restrictive in any way or respect, nor will it attempt in any way to influence any purchasing of services, commodities, or equipment by Kentucky State University. For the purpose of this paragraph and the following paragraph that pertains to conflict-of-interest laws and principles, "it" is construed to mean "he" or "she" if only one person is involved. If a firm, partnership, corporation, or other organization is involved, then "it" is construed to mean any person with an interest therein.

Conflict-of-Interest Laws and Principles

The Contractor certifies that it is legally entitled to enter into this Contract with Kentucky State University, and by holding and performing this Contract, it will not be violating any conflict-of-interest statute (KRS 45A.330-45A.340, 45A.990, 164.390) or the University's Ethical Principles and Code of Conduct.

Access to Records

The Contractor, as defined in KRS 45A.030(8) and (10), agrees that the contracting agency, Kentucky State University, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this Contract for the purpose of a financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the Contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

Protest

Pursuant to KRS 45A.285, Kentucky State University's General Counsel shall have authority to determine protests and other controversies of actual or prospective vendors in connection with the solicitation or selection for award of a contract.

Any actual or prospective vendor, who is aggrieved in connection with the solicitation or selection for award of a contract, may file protest with the University General Counsel. A protest or notice of other controversy must be filed promptly and, in any event, within two (2) calendar weeks after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

Kentucky State University
General Counsel
Academic Services Building, Room 541
400 East Main Street

Frankfort, KY 40601

A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by Kentucky State University shall be final and conclusive.

Social Security (check one)

The Parties are cognizant that, pursuant to 42 U.S. Code, section 418, the state is not liable for Social Security contributions relative to the compensation of the Second Party for this Contract.

The Parties are cognizant that, pursuant to 42 U.S. Code, section 418, the state is liable for Social Security contributions relative to the compensation of the Second Party for this Contract.

Violation of Tax and Employment Laws

KRS 45A.485 requires the Contractor and all subcontractors performing work under the Contract to reveal to the Commonwealth, prior to the award of the Contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers' compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the Contract shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the Contract shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination, as described above, or failure to comply with the above statutes for the duration of the Contract, shall be grounds Kentucky State University's cancellation of the contract and their disqualification from eligibility for future state contracts for a period of two (2) years.

Discrimination

This section applies only to contracts disbursing federal funds, in whole or part, when the terms and conditions for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this Contract, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity.

The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

VI. Approvals

This Contract is subject to the terms and conditions stated herein. By affixing signatures below, the Parties verify that they are authorized to enter into this Contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the Parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single Contract.

1st Party – Kentucky State University

2nd Party – Contractor

Signature _____

Signature _____

Printed Name _____

Printed Name _____

Title _____

Title _____

Date _____

Date _____

Approved as to form and legality

Signature _____

Printed Name _____

Date _____

General Counsel, Kentucky State University

Kentucky State University's Responses to CPE's Concerns

CPE's Concern	KSU's Response																
<p>HB 250 mandates CPE to approve all KSU expenditures over \$5,000 and create a management improvement plan to assist with the institution's financial and organizational stability. Given this substantial responsibility, it goes without saying that any expenditure of the magnitude of the proposed Sodexo agreement (\$3.3 million, or roughly 10% of the KSU operating budget) should garner great attention from CPE...</p>	<p>Kentucky State University understands the provisions set forth in HB 250 (2022) and the protocols and norms established because of the legislation.</p> <p>The first-year costs incurred by the University will depend on the actual services performed by Sodexo (professional leadership, work order tracking system response/maintenance, labor, technology services, and in-house staff training); however, per the Management Agreement and PSC, the total first-year cost shall not exceed \$3,200,000.</p> <p>Sodexo projects that the total first-year cost (including the management fee) will not exceed \$3,068,784.46. The cost can be broken down as follows:</p> <p>FY 2023 H2 projected impact: \$1,573,097.49</p> <p>FY 2024 H1 projected impact: \$1,495,686.97</p>																
<p>First, according to the meeting materials, \$3,305,964 is allocated for the new Sodexo services, \$996,632 is allocated for the cost of 18 employees (note, the contract identifies 31 Supervised KSU employees), and \$1,439,172 for "operating expenses" (i.e., electric, gas, water, contract services, etc.), which total the \$5.7 million projected FY 23 operating expenditures for KSU Facilities and Infrastructure. This is approximately the same amount currently budgeted for said expenditures, \$5.5 million.</p> <p>I am concerned this does not comprise the entirety of the budgeted Facilities and Infrastructure expenditures. For example, Frankfort Plant Board (FPB) monthly invoices approved by CPE, which cover water and electric, usually total around \$142,000 to \$145,000 per month, which alone total roughly \$1.7 million annually. A recent standing purchase order for annual campus natural gas payments totaled \$150,000. In addition, all supplies and equipment for the services provided by Sodexo and existing KSU employees must still be purchased by KSU. These costs will inevitably go up as more services are provided. There may be other costs budgeted for Facilities and Infrastructure as well that we have not been made aware of.</p>	<p>The total one-year costs for KSU's current staff and operation services (i.e., utilities, contracts, etc.) are detailed below and, based on current year-to-date expenditures, are projected to cause an overrun of the annual budget in the amount of \$3.5 million.</p> <table border="1" data-bbox="824 1241 1534 1367"> <thead> <tr> <th></th> <th>5 Months</th> <th>7 Months</th> <th>Annual</th> </tr> </thead> <tbody> <tr> <td>Labor</td> <td>\$870,301.22</td> <td>\$1,218,421.71</td> <td>\$2,088,722.93</td> </tr> <tr> <td>Services</td> <td>\$2,861,122.06</td> <td>\$4,005,570.88</td> <td>\$6,866,692.94</td> </tr> <tr> <td>Total</td> <td>\$3,731,423.28</td> <td>\$5,223,992.59</td> <td>\$8,955,415.87</td> </tr> </tbody> </table> <p>The current year-to-date Facilities Budget (110001) includes expenditures for utilities, which is budgeted as E&G (85%) and Land Grant (15%) and paid monthly.</p>		5 Months	7 Months	Annual	Labor	\$870,301.22	\$1,218,421.71	\$2,088,722.93	Services	\$2,861,122.06	\$4,005,570.88	\$6,866,692.94	Total	\$3,731,423.28	\$5,223,992.59	\$8,955,415.87
	5 Months	7 Months	Annual														
Labor	\$870,301.22	\$1,218,421.71	\$2,088,722.93														
Services	\$2,861,122.06	\$4,005,570.88	\$6,866,692.94														
Total	\$3,731,423.28	\$5,223,992.59	\$8,955,415.87														

<p>...[T]he annual budget, actual expenditures for Facilities and Infrastructure totaled \$5,237,225.00 as of April 30, 2022. The \$3.3 million for Sodexo is by and large for new services, and it is unclear where the savings have been gained from last fiscal year. We are not aware of any significant changes in expenses for Facilities and Infrastructure. There will be some savings from contracts canceled for services currently provided in these areas, but certainly not to this magnitude.</p>	<p>The Sodexo contract is necessary to address the Declaration of Emergency recognized by the KSU Board of Regents and the deplorable conditions that our students and staff continue to work and study through.</p> <p>This contract allows us to gain the institutional controls necessary to manage costs and leverage resources caused by a deferred maintenance plan.</p>
<p>Leaving this issue aside, there is a fair amount of budget uncertainty in general to give pause on such a large expenditure. On June 3, 2022, the Board approved a \$36,821,600 annual budget for FY 22/23, including \$5,500,000 projected Facilities and Infrastructure expenditures, as noted above. The agenda items stated that the unit alignment is only a recommendation based on current year operations. The budget includes a \$7 million reduction. Final alignment will be based off the President’s final review and decision for each department. To date, we have not seen this reconciliation, nor have we seen a revised budget based on actual student and mandatory fee collections, which make up 40.74% of the approved budget.</p>	<p>To our knowledge, the 2023 budget is \$41 million. This is what Dr. Shields shared with the Board and legislative committees on numerous occasions.</p>
<p>We are extremely pleased that the Board approved the contract for outside accounting assistance. As you know, CPE is providing incentive funding in the amount of \$500,000 for this purpose. As part of the justification for the services, KSU staff states that the University “lacks the competencies to prepare monthly bank reconciliations and forecasts on cash flows, budget executions, and key performance indices.” While we fully expect the contractor to quickly provide Dr. Burnette with the assistance he so desperately needs, with the current deficit in capacity, ANY new significant expenditure is questionable.</p>	<p>The poor conditions of KSU’s custodial, grounds, and maintenance operations reflect the need for an overhaul of the management processes, procedures, and practices so that they can align with the purposes and objectives of the management improvement plan. Moreover, they reflect the need for financing support to normalize expenses to the budget over the current and following fiscal years.</p>
<p>As for the negotiated agreement, Sodexo is proposing to bring in a significant number of staff, with 11 leadership positions that include a full-time HR manager for their 42 employees and a “Unit Controller,” who will ensure compliance with financial policies and procedures. More justification should be provided for this need. In addition, the presentation materials and agenda items state that the costs will be based on actual services provided that are preapproved by KSU and that the exact first-year cost will depend on the services actually rendered by Sodexo. However,</p>	<p>This issue has been addressed in the Sodexo PSC and Management Agreement.</p>

<p>the actual contract appears to be based on a fixed price billed at a daily rate (total contract price divided by 365) that cannot be adjusted until January 1, 2024. Assuming that the contract is correct, this would cause KSU to forgo any opportunity of receiving savings if projected services needed are less than projected.</p>	
<p>And finally, please be advised that this contract will go before the Government Contracts Review Committee of the General Assembly for approval. Recently, the Committee has given significant scrutiny to any no-bid contracts, regardless of the nature of the circumstances that required forgoing the standard bid process. That, coupled with the significant amount of this agreement, will undoubtedly catch the members' attention, and inevitably require public testimony from the institution concerning the arrangement.</p>	<p>It is essential that any case made in support of this endeavor includes a discussion of the conditions that led to the Board's Declaration of Emergency.</p>
<p>I would have much preferred to continue these conversations with President Johnson and Dr. Burnette and allow them to correct any incorrect assumptions made here and provide the additional rationale requested, but with the item being placed for Board action tomorrow (December 9, 2022), there was simply no time. With CPE policy requiring KSU Board approval for any contracts resulting in expenditures over \$5,000, CPE's overall responsibility for fiscal oversight of the institution, and my personal commitment to the success of the institution, I felt it was imperative that I bring these issues to your attention before a decision is made. Please understand that CPE is not opposed to an outsourced facilities management approach if we can be assured that KSU has sufficient resources to support it and that the institution receives the best deal possible.</p>	<p>This matter has been clarified.</p>