

CUSTODIAL SERVICES AGREEMENT

THIS CUSTODIAL SERVICES AGREEMENT is made this ___ day of March, 2019, by and between the City of Lawrence, Kansas, a municipal corporation, and Service Systems, Inc., a Kansas Corporation.

RECITALS

- A.** The City of Lawrence, Kansas ("City"), a municipal corporation is in need of custodial services for a number of its municipal facilities.
- B.** The City caused to be published in a manner, and as required by law, an advertisement for bids to perform the custodial services work described in Bid No. B1903. Service Systems, Inc. ("Contractor"), in response to such advertisement, submitted to the City, in the manner and at the time specified, a sealed bid in accordance with the terms of such advertisement.
- C.** The City wishes to engage Contractor, as an independent contractor, to perform the needed services, which are described in detail in Exhibit A which is incorporated herein by reference as if set forth in full.
- D.** The Contractor is willing and able to provide the services for which the City wishes to engage it and agrees to perform those services in accordance with the terms and conditions of this Custodial Services Agreement, as set forth below.

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

TERMS

SECTION 1. Engagement. The City hereby engages Contractor as an independent contractor to perform the services hereinafter described and Contractor hereby accepts that engagement.

SECTION 2. Services.

- (a) Scope of Services.** Contractor shall perform those services ("Contract Services") specifically described in Exhibit A for the duration of the contract. Further, it is mutually agreed, that for and in consideration of the sum to be paid to Contractor by City as set forth in the Section 3 of this Agreement, the Contractor shall furnish all labor, equipment, goods, services, accessories, materials, and supplies (except that the City shall provide the following paper products as referenced in Bid No. 1903: paper towels, toilet

paper, feminine hygiene trash bags) requested by City as set forth in City's Request For Bid, Bid No. B1903, set forth in Exhibit B and incorporated herein by reference, and as provided in Contractor's response to Bid No. B1903 attached hereto as Exhibit C and incorporated herein by reference. The parties may agree at any time to expand or modify the scope of the Contract Services. Such agreement shall be in writing and shall be attached to this Custodial Services Agreement as an Addendum.

- (b) **Subcontracting Services.** Contractor may not, without first obtaining written consent of the City, subcontract any of the Contract Services.
- (c) **Time of Performance.** Time is an important element of this Agreement.
- (d) **Qualified Personnel.** Contractor shall provide sufficient qualified personnel to perform the Contract Services. Additionally, Contractor agrees to provide qualified personnel to prepare reports and to perform other duties hereunder, as may reasonably be requested by the City.

SECTION 3. Compensation and Reimbursement of Expenses.

- (a) **Compensation.** Compensation due to the Contractor in the first one-year term of the Agreement, and provided the Agreement is automatically renewed in accordance with Section 4 of this Agreement, in the second and third one-year terms, shall be in a not to exceed amount of \$14,736 per month as provided in the Contractor's response to Bid No. B1903, and as awarded by the City's Governing Body on March 5, 2019. All taxes applicable to the proceeds received by the Contractor hereunder shall be the liability of the Contractor. The City shall not hold nor pay amounts for federal, state income tax, social security, employment taxes or worker's compensation. The City is exempt from state sales and uses taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Contractor's invoices.

If the Agreement is automatically renewed in accordance with Section 4 of this Agreement, for a fourth and/or fifth one-year term in accordance with Section 4 of this Agreement, then a market increase in the compensation to the Contractor shall not exceed 3.5% in any one year.

- (b) **Maximum Compensation and Reimbursement.** Unless otherwise agreed upon by the parties in writing, the maximum total amount payable to Contractor (i) as compensation for Contract Services for the twelve month period shall not exceed the sum of **ONE HUNDRED SEVENTY-SEVEN THOUSAND ONE HUNDRED AND NINETY-TWO DOLLARS AND NO CENTS** (\$177,192.00) in the first, second, and third one-year

term(s). The maximum total amount payable to Contractor as compensation for Contract services in the fourth and fifth one-year term(s) shall be in accordance with Section 3(a) of this Agreement.

- (b) **Payment Terms.** Contractor shall send invoices to the City at P.O. Box 708, Lawrence, KS 66044, ATTN: Accounts Payable, not more frequently than once per month, setting forth the name of each City Facility receiving Contractor's services, and the amount due for each City Facility for the month. The City agrees to make such payment within thirty days of receipt of the invoice (provided there is no dispute concerning the amount).

The City shall notify Contractor of any disputed amount within fifteen (15) days from the date of the invoice, give reasons for the objection, and timely pay any undisputed amount. The City also agrees to accept electronic invoices for services and scanned copies of receipts and other documentation. Contractor agrees to provide the City with originals before the City is obligated to pay the invoice. Contractor is expected to pay all sub-Contractors, if any, for satisfactory work performance of their contracts within 10 days upon receipt of payment by the City.

Client shall have the right, upon reasonable notice to Contractor, to audit, at any time, up to one year after payment of the final invoice, Contractor's records relating to the fees and expenses incurred in connection with Contract Services. Contractor shall keep copies of all invoices, records or any written or electronic materials related to this Agreement for a period of two years after the termination of the Agreement.

SECTION 4. Term and Termination of Custodial Services Agreement.

- (a) This Agreement shall commence at 12:00 o'clock a.m. on April 1, 2019 and terminate at 11:59 o'clock p.m. on March 31, 2020 unless otherwise earlier terminated pursuant to the terms of this Agreement. The Agreement will automatically renew for an additional term of one year, up to a total of five one-year terms, unless either party provides the other party with written notice of its intent not to renew at least sixty (60) days prior to the end of the then current Term.
- (b) The parties may terminate this Custodial Services Agreement at any time, for convenience or for cause, upon 14 days' written Notice to the other party. Termination "for cause" will include but shall not be limited to the Contractor failing to substantially perform, in the City's determination, in accordance with the terms and conditions of this Agreement. In the event that the City terminates the Agreement, then the City shall pay Contractor for Contract Services satisfactorily performed by the Contractor prior to the

date of termination. Under no circumstance, in the event of termination of this Custodial Services Agreement, will the Contractor be entitled to recover anticipated profits or consequential damages. The provisions regarding indemnity and insurance shall survive the termination of this Custodial Services Agreement.

SECTION 5. Compliance with Laws

- (a)** Contractor shall be cognizant of all federal, state, and local laws and regulations which in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, including but not limited to all applicable labor and employment laws and shall at all times observe and comply with all such existing laws, ordinances, regulations. Contractor shall defend, protect, and indemnify the City against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by itself, its agents, employees, or subcontractors.
- (b)** If Contractor stores any chemical supplies on City property, SDS sheets shall be stored on site and in the same location as the chemicals in an appropriately marked binder.
- (c)** Contractor agrees that it shall comply with all provisions of the Kansas Acts Against Discrimination of 1953 ("KAAD"), codified as amended at K.S.A. 44-1001 *et seq.*, and the Kansas Age Discrimination in Employment Act of 1983 ("KADEA"), codified as amended at K.S.A. 44-1111 *et seq.* and shall not discriminate against any person, in the course of performing under this Custodial Services Agreement, because of that person's race, religion, sex, disability, national origin, ancestry, sexual orientation, familial status, or age.
- (d)** In all solicitations or advertisements for employees, Contractor shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("KHRC").
- (e)** If Contractor fails to comply with the manner in which Contractor reports to the KHRC in accordance with the provisions of K.S.A. 44-1031 and any amendment thereto, Contractor shall be deemed to have breached the present Custodial Services Agreement and the City shall, in accordance with Section 5, have the right to cancel, terminate, or suspend the terms of this Custodial Services Agreement, either in whole or in part.
- (f)** If Contractor is found guilty or liable for any violation of the KAAD or the KADEA by way of a final decision or order of the KHRC, then Contractor

shall be deemed to have breached the present Custodial Services Agreement and the City shall, in accordance with Section 5, have the right to cancel, terminate, or suspend the terms of this Custodial Services Agreement, either in whole or in part.

- (g) In any subcontract, to which the City consents in accordance with Section 2(b) of this Custodial Services Agreement, Contractor agrees to include the language of Sections 6(a) through 6(d) and agrees to make such language applicable to any subcontractor hereunder.
- (h) Contractor also agrees to comply with the American with Disabilities Act of 1990 ("ADA"), codified as amended at 42 U.S.C. § 12101 *et seq.*, as well as all other federal, state, and local laws, ordinances, rules, and regulations applicable to this project and to furnish any and all certification that may be required by federal, state, or local governmental agencies in connection therewith.

SECTION 7. Insurance.

- (a) **General.** Contractor shall secure and maintain, throughout the duration of this Custodial Services Agreement, Insurance (on an occurrence basis unless otherwise agreed in writing) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms approved by the City. The City shall be notified by receipt of written notice from the insurer at least thirty days prior to cancellation of any policy listed on the certificate.
- (b) **Notice of Claim.** Contractor, upon receiving notice of any claim in connection with its performance of Contract Services under this Custodial Services Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.
- (c) **Reduction of Policy Limits.** Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by this Custodial Services Agreement) if the Contractor's limits of protection have been impaired or reduced to such extent that the limits fall below the minimum amounts required hereunder. In that event, Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.
- (d) **Insurance Required.** Contractor agrees to secure and maintain the following insurance:

(i) **General Liability:**

The Contractor shall maintain insurance, protecting against any and all claims and demands arising from injury to person or persons, not in the employ of the Contractor, and against any and all claims and demands resulting from damage to any property due to any act or omission of the Contractor, its agents or employees, including contractual liability, in the operation of the work or in the execution of any contract. Such insurance shall remain in effect on portions of the work which have been completed and which may or may not be occupied or utilized by the City prior to the completion and acceptance of all the work included in the contract.

Minimum limits for Commercial General Liability insurance required are as follows:

Commercial General Liability:

(A) Each Occurrence \$500,000

(B) General Aggregate Combined single limit \$1,000,000

(C) Additionally, the policy must include the following:

(1) Broad Form Contractual\Contractually Assumed Liability;

(2) Independent Contractors

(3) Name the City as an additional insured.

(ii) **Automobile Liability:**

The Policy shall protect Contractor against claims for bodily injury and\or property damage arising out of the ownership or use of all owned, hired, or non-owned vehicles and must include protection for either (A) any automobile or (B) all owned automobiles, if any, and all hired and non-owned automobiles. (C) The Policy must also name the City of Lawrence, Kansas, as an additional insured.

Limits:

Each Accident, Combined Single Limits

Bodily Injury and Property Damage: \$500,000.00

(iii) **Workers' Compensation (Statutory Limits/Employer's Liability Limits:**

In accordance with the requirements of Kansas law.

(e) **Insurance Ratings.** For the purposes of this Custodial Services, Agreement, the City will only accept coverage from an insurance carrier that offers proof:

- (i) (A) that it is licensed to do business in the State of Kansas;
(B) that it carries a Best's policyholder rating of A- or better; and
(C) that it carries at least a Class VIII financial rating. **OR**
- (ii) that it is a company mutually agreed upon by the City and Contractor.

- (f) **Certificate of Insurance Forms**. The parties agree that certification of insurance coverage under this Custodial Services Agreement shall be on forms acceptable to the City.

SECTION 8. Indemnification. Contractor agrees to defend, indemnify, and otherwise hold harmless the City, its commissioners, officers, employees, and agents from claims, actions, damages, costs, liabilities, settlements, judgments, expenses, or lawsuits, including reasonable attorneys' fees, but only to the extent that such are caused by Contractor's willful misconduct, negligent or intentional non-performance under this Custodial Services Agreement or by Contractor's negligence in performing any action necessary for the performance under this Custodial Services Agreement. (For the purposes of this Section, Contractor means Contractor or any person acting in behalf of Contractor or for whom Contractor is responsible). Neither party shall be liable to the other party for incidental, indirect, special, or consequential damages.

SECTION 9. Quality Assurance. Contractor agrees that it shall perform its work and services under this Custodial Services Agreement in a careful, diligent and professional manner and in accordance with recognized standards prevalent in the field of commercial custodial services.

SECTION 10. Entire Agreement.

- (a) This Custodial Services Agreement, including Exhibits A, B, and C, represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. This Custodial Services Agreement may be amended only by a written instrument signed by both the City and the Contractor. Written and signed amendments shall automatically become a part of this Custodial Services Agreement and shall supersede any inconsistent provision herein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.
- (b) No oral orders, objections, claims, or notices by any party to the other shall affect or modify any of the terms or obligations set forth in this Custodial Services Agreement; and none of its provisions shall be deemed waived or modified by reason of any act whatsoever, other than by a definitely agreed

waiver, modification, or amendment made in writing and signed by both parties. No evidence of notice, waiver modification, or amendment, other than evidence of such in writing, shall be introduced as evidence at any proceeding, either legal or administrative.

SECTION 11. Assignment. This Custodial Services Agreement is non-assignable by the Contractor or by any subcontractor of Contractor approved by the City in accordance with Section 2(b).

SECTION 12. Notices. All notices, demands, or other communications, which may be or are required to be given by any party to any other party under this Custodial Services Agreement, shall be in writing and shall be hand-delivered, mailed by first class mail, registered or certified mail, return receipt requested, postage prepaid, or sent by overnight express mail, postage prepaid, return receipt requested, to the following addresses:

(a) If to Contractor:

Service Systems, Inc.
10551 Barkley
Overland Park, KS 66212
Attn: Ron Frazier, Vice President

(b) If to the City:

City of Lawrence, Kansas
6 East 6th Street
P. O. Box 708
Lawrence, Kansas 66044
Attn: Municipal Services and Operations Department Director

SECTION 13. Authorizations. Each person executing this Custodial Services Agreement in behalf of the City and Contractor hereby represents and warrants that he or she has the authority to bind his or her respective party hereto and that all acts requisite to confer authorization to enter into this Custodial Services Agreement have been taken and completed.

SECTION 14. Independent Contractor. In no event, while performing under this Custodial Services Agreement, shall Contractor be deemed to be acting as an employee of the City; rather, Contractor shall be deemed to be an independent contractor. Nothing expressed herein or implied herein shall be construed as creating between Contractor and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.

SECTION 15. Kansas Cash-Basis Law. This Custodial Services Agreement must comply with the applicable provisions of the Kansas Cash-Basis Law of 1933, codified as amended at K.S.A. 10-1101 *et seq.* The City is obligated only to make payments under this Custodial Services Agreement as may be lawfully made from funds budgeted and appropriated for the purposes set forth in this Custodial Services Agreement during the City's current budget year. In the event that the City does not so budget and appropriate funds, the parties acknowledge and agree that they shall be relieved of all obligations under this Custodial Services Agreement without penalty. To the extent that the City does so budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.

SECTION 16. Conflict of Interest. Contractor is currently unaware of any conflict of interest with any party affected by this Custodial Services Agreement and agrees that, if any conflict or potential conflict of interest should arise in the future, it will give notice to the City immediately.

SECTION 17. Legal Action. The parties agree that the appropriate venues for any legal actions arising out of this Custodial Services Agreement are the District Court of Douglas County, Kansas, or, if federal jurisdiction exists, the United States District Court for the District of Kansas.

SECTION 18. Force Majeure. Neither party shall be deemed to be at default under this Custodial Services Agreement to the extent that any delay in performance results from any cause beyond its reasonable control and without its intentional act or negligence.

SECTION 19. Captions. The Captions of this Custodial Services Agreement are for convenience only and are not meant by the parties to define, limit, or enlarge the scope of this Custodial Services Agreement or its terms.

SECTION 20. Recitals. The recitals set forth at the beginning of this Custodial Services Agreement are adopted and incorporated herein by reference as if set forth in full and shall be effective as if repeated *verbatim*.

SECTION 21. Governing Law. This Custodial Services Agreement, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

SECTION 22. Severability. In the event that any provision of this Custodial Services Agreement shall be held invalid and unenforceable, the remaining portions of this contract shall remain valid and binding upon the parties.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

CONTRACTOR:

SERVICE SYSTEMS, INC.

Mel Quillen CEO
{NAME}
{Title}

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
THE COUNTY OF JOHNSON) ss:

BE IT REMEMBERED, that on this 28th day of February, 2019, before me the undersigned, a notary public in and for the County and State aforesaid, came Mel Quillen, as Mel Quillen of Service Systems, Inc., a Kansas corporation, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

[Signature]
Notary Public

My Appointment Expires:

