



THE TEXAS A&M UNIVERSITY SYSTEM

CUSTODIAL SERVICES AGREEMENT

This Agreement is entered into between The Texas A&M University System, Texas A&M University (collectively, "Texas A&M") and Southeast Service Corporation, a Tennessee corporation, d/b/a SSC Service Solutions ("SSC") (individually, the "Party", and collectively, the "Parties"), and is effective August 3, 2012 ("Effective Date"). SSC and Texas A&M agree as follows:

1. SERVICES

1.1 **Scope.** SSC shall provide all management, personnel, materials, supplies and equipment needed to manage, operate, and provide custodial services to Texas A&M ("Services"), all as more particularly described in this Agreement and the other documents listed below ("Contract Documents"), listed in order of precedence and incorporated herein:

- a. This Custodial Services Agreement
- b. RFP01 OGC-12-009 *Operation and Management of Custodial Services*, including all addenda and responses to written questions
- c. SSC's Proposal submitted in response to RFP01 OGC-12-009, including all subsequently submitted addenda, clarifications, revised offers and responses to questions.

Until SSC's Services work plan has been approved by Texas A&M, SSC shall provide the Services consistent with the current operating practices utilized by Texas A&M.

1.2 **Premises.** SSC shall perform the Services on Texas A&M's premises in Brazos County, Texas, including but not limited to the Texas A&M University campus and facilities operated by member agencies of The Texas A&M University System, as further described in Exhibit A (to be provided within thirty (30) days of the Effective Date, as mutually agreed to by the Parties) ("Premises").

1.3 **Standard of Performance.** SSC shall use its best efforts, skill, diligence, judgment and abilities to perform the Services in accordance with the standards specified in this Agreement, all applicable laws, the highest recognized industry standards, and adopted "APPA Levels" (as defined by the Association of Higher Education Facilities Officers (APPA) in *Custodial Staffing Guidelines for Education Facilities*, 2nd Edition, 1998 and updates) as the standard for performance of the Services. SSC shall perform the Services without interfering with the activities of Texas A&M's employees, agents, students, or visitors to the greatest extent possible.

1.4 **Work Plan.** Upon the Effective Date, SSC shall begin, in collaboration with Texas A&M, a comprehensive assessment of the janitorial program on the Premises. SSC shall devote the staff and information technology resources necessary to complete this assessment prior to the

expiration of nine (9) months from the Effective Date. SSC shall deliver to Texas A&M for approval a detailed work plan prior to the expiration of nine (9) months from the Effective Date that (a) analyzes the scope and nature of Texas A&M's janitorial program and recommends a plan for addressing any deficiencies; and (b) provides a recommended schedule, procedures and frequency for Texas A&M's janitorial needs (the "Work Plan"). Such Work Plan must address the specific janitorial needs of each building type on the Premises, taking into account the particular purpose and nature of each facility type. In the period between the Effective Date and the implementation of the Texas A&M-approved Work Plan, SSC shall provide the Services consistent with the current operating practices utilized by Texas A&M.

1.5 Supervision; Coordination.

- a. SSC shall provide, at all times, adequate and expert supervisory staff ("Supervisory Staff") assigned exclusively to Texas A&M to manage SSC's employees in providing the Services. Supervisory Staff shall be at the Premises at all times while SSC is providing the Services and may not leave the Premises until all Services and related security matters have been completed each night. Neither Texas A&M nor any representative of Texas A&M shall supervise SSC's employees, personnel, or agents performing the Services.
- b. SSC shall provide the following executive positions: a vice president of operations and a custodial services group manager ("SSC Executive Staff"). The SSC Executive Staff shall coordinate all activities connected with the provision of the Services and shall meet with Texas A&M's representative periodically, no less often than monthly, on agreed dates and times, to coordinate the enforcement of Texas A&M's policies, the implementation of Texas A&M's suggestions and requests, and the prompt resolution of complaints.
- c. SSC shall advise Texas A&M's representative of the mobile telephone numbers of the SSC Executive Staff and shall arrange for at least one of the SSC Executive Staff to be available at all times (24 hours a day, seven days a week, 365/366 days a year) by telephone.
- d. The Supervisory Staff shall become familiar with Texas A&M's emergency, fire, and disaster plans for the Premises.
- e. Texas A&M shall appoint a contract administrator (the "University Contract Administrator") who will be Texas A&M's initial contact person for purposes of the day to day administration of this Agreement. All matters affecting the terms of this Agreement or the administration thereof shall be referred to the University Contract Administrator. The University Contract Administrator shall be contacted for changes or amendments to this Agreement, including but not limited to, changes in the scope of work (including any additional work described in Section 1.10, below), period of performance, cost, and report requirements. Only the University Contract Administrator may notify SSC of any such approval by Texas A&M and SSC proceeds at its own risk if it fails to receive such notification from the University Contract Administrator. The initial University Contract Administrator shall be Ms. B.J. Crain, Vice President and Chief Financial Officer. If in the future the University Contract Administrator changes, Texas A&M will provide notice of such change in University Contract Administrator to SSC in writing.

- 1.6 Customer Service.** As soon as reasonably practicable, the Parties shall mutually agree on an automated work order system that SSC shall utilize, supported by a staffed help desk operation through which customers may request services and track the status of their requests. SSC shall utilize an automated customer complaint tracking and resolution process. All SSC employees

shall be granted access to Texas A&M's intranet and automated work order systems provided they follow Texas A&M access procedures.

1.7 **Quality Assurance**

- a. SSC shall, consistent with the requirements of the Contract Documents and in consultation with Texas A&M, develop, implement, and execute a mutually agreed upon quality assurance program to include agreed-upon benchmarks for satisfaction, tools and metrics to measure quality levels of service, including real-time tracking mechanisms, and action plans to correct any deficiencies (collectively, "Performance Measures"). The parties will use the performance measurement evaluation tool attached and incorporated as Exhibit B to rate SSC's adherence to the Performance Measures and to determine the amount, if any, of incentive and/or reductions to be made to the amounts payable to SSC by Texas A&M hereunder. The parties will review the performance measurement tool and make any mutually agreed revisions within ninety (90) days of the Effective Date. Thereafter, the performance measurement program may be modified on an annual basis by mutual written agreement.
- b. Texas A&M may inspect SSC's operations, performance of the Services, and completed or in-progress work projects at any time to determine that the standards of quality and cleanliness are being met. In addition, a representative of Texas A&M shall perform a monthly inspection of the Premises to ensure compliance with this Agreement.
- c. SSC shall submit weekly inspection reports, prepared and signed by SSC's Director of Plant Operations and Maintenance, to Texas A&M's designee. At Texas A&M's request, SSC shall provide additional reports on inspections, schedules, equipment, staffing, emergencies, security problems, or any related matters in connection with the Services.

1.8 **References.** SSC shall identify Texas A&M as a customer in all proposals to prospective customers for services similar to the Services. SSC authorizes Texas A&M to provide information and opinions to SSC's prospective customers as to SSC and the Services, whether favorable or unfavorable. SSC permanently and irrevocably waives any claims, damages, and liabilities of any kind that may result from the disclosure or release of such information and opinions by Texas A&M and its regents, officers, employers, agents, and students.

1.9 **Licenses, Permits, and Taxes.** SSC shall secure in its name and at its expense all federal, state, and local licenses and permits required for provision of the Services. SSC shall also pay all taxes which may be levied or incurred in connection with the performance of the Services and other operations under this Agreement, including taxes levied or incurred against SSC's inventory, personal property, fixtures, sales, licenses, income, and any other such taxes.

1.10 **Additional Services.** SSC shall provide additional services outside the scope of the Services at hourly rates described in Exhibit C, which is attached and incorporated by reference. Hourly rates not described in Exhibit C shall be agreed upon by the Parties. All hourly rates described in Exhibit C are fully loaded (i.e., inclusive of salary/wage, fringe benefits, and overhead). Man hours included in the Fee for special events include, for the Service provided by SSC, 550 man hours for Rec Sports, 5576 man hours for Main Campus, 2800 man hours for the Rudder Theatre Complex, 1100 man hours for Tailgate Events and 4196 man hours for athletic events,

any additional hours for special events will be outside the scope of the Services and provided at the hourly rates described in Exhibit C.

- 1.11 **Sustainability.** SSC shall develop a plan, to be approved by Texas A&M, for providing the Services in compliance with Texas A&M's policies on sustainability, environmental stewardship, and the responsible use of resources.

2. TERM OF THE AGREEMENT

- 2.1 **Term.** This Agreement shall commence on the Effective Date and shall terminate on the expiration of ten (10) years from the Effective Date (referred to herein as the "Initial Term"), unless terminated earlier as provided in this Article 2. Texas A&M may renew this Agreement for an additional two (2) year period ("Renewal Term") with written notice to SSC not less than 180 days before the end of the Initial Term or the Renewal Term. The Initial Term and the Renewal Term are referred to collectively as the "Term."

3. COMPENSATION

3.1 One-Time Bonus

SSC shall make a one-time bonus payment to Texas A&M of \$5,350,000 (the "Signing Bonus") on October 2, 2012.

3.2 Fee; Adjustments

- a. **Fee.** Texas A&M shall pay SSC the firm fixed price of \$18,348,273 per year ("Fee") for the first year of the Services, to be disbursed in equal monthly payments. At the end of each year of this Agreement, the Fees shall be adjusted by the percentage change in the Consumer Price Index for All Urban Consumers: For the Area of Houston-Galveston-Brazoria, Texas, All Items, for the most recently published 12 month period by the United States Department of Labor, Bureau of Labor Statistics, but such annual adjustment shall not exceed 2.25% in any year. Notice of such adjustments must be provided to Texas A&M in writing at least 30 days prior to the effective date of the new Fee.
- b. **Adjustment for Change in Services.** Should Texas A&M request a change in Services for reason of a change in janitorial tasks or frequencies to be performed or a significant change in the use of the Premises, or any other similar change in Services, and should such change in Services result in an increase or decrease in costs to SSC, the Fee shall be adjusted as negotiated by Parties, such adjustment taking effect from the date of the change in Services. If there is a change in the size of the Premises, the Fee shall be adjusted using the rates specified in Exhibit D, such adjustment taking effect from the date of the change in Services.
- c. **Adjustment for Material Changes in Costs.** If, as a direct result of a change in applicable laws or regulations affecting the underlying financial assumptions of this Agreement (such as tax rates, labor laws, or health care) SSC can demonstrate an annual increase in SSC's direct costs to perform the Services of three percent (3%) or greater, the parties shall negotiate an equitable adjustment to the Fees to be paid under this Agreement.

- 3.3 **Invoicing.** At the beginning of each calendar month, SSC shall submit to Texas A&M an invoice covering the Services to be performed during the prior calendar month. Any additional services (as described in Section 1.10, above, that were approved in advance in writing by Texas A&M), performed during that calendar month, will be included in the next invoice, which will be accompanied by documentation that Texas A&M may reasonably request to support the invoice amount.
- 3.4 **Payment.** Texas A&M shall pay each invoice in accordance with the Texas Prompt Payment Act (Sec. 2251.021(a), *Texas Government Code*).

4. PERSONNEL

- 4.1 **Staffing Plan.** SSC shall develop a staffing plan, to be approved by Texas A&M, for the provision of the Services. At a minimum, the plan shall require SSC to:
- a. Maintain a staff of properly trained and experienced personnel to ensure consistent, efficient and satisfactory performance under this Agreement;
 - b. Assign an adequate number of personnel to ensure consistent, efficient and satisfactory performance under this Agreement; and
 - c. Provide sufficient back-up personnel in times of staff shortages due to extended illness, emergencies, and inclement weather, to ensure consistent, efficient and satisfactory performance under this Agreement.
- 4.2 **Employee Transition**
- a. SSC shall offer, immediately prior to the Effective Date, each Texas A&M custodial services employee as of the Effective Date (“Transition Employee”) a position at not less than his or her current salary, (“Current Salary”), employment status (full or part-time), and seniority based on initial terms and conditions of employment that are established by SSC; provided that such Transition Employee files for employment with SSC by the Effective Date. SSC’s hiring of the Transition Employees will be contingent on the employees passing all applicable SSC background checks, verification of work authorization, and drug testing (as may be required by U.S. Department of Transportation), which will be performed within fourteen (14) days of the Effective Date such that all Transition Employees shall transition to SSC immediately. SSC shall retain each Transition Employee in that position (subject to any promotions) throughout the Term (including any renewals or extensions) as long as the Transition Employee wishes to remain employed; provided that such Transition Employee has performed the responsibilities of his/her position at a level that merits continuation in his/her position, complies with SSC personnel/human resource policies and procedures; and is not required by Texas A&M to be dismissed or reassigned under Section 4.5(c) of this Agreement. Nothing in this section is intended to grant any rights to any party other than SSC and Texas A&M.
 - b. Texas A&M shall assume all liability for all claims, costs, or other liabilities, including workers compensation claims or grievances arising from incidents occurring prior to the Effective Date and all accrued benefits such as vacation time, sick time over 80 hours,

- personal time, and any other paid time off, severance, and pension benefits associated with each Transition Employee arising prior to the Effective Date.
- c. SSC will make its standard benefits package available at its standard benefits costs to all Transition Employees hired by SSC, provided that SSC will provide Bridging Credits as defined in subsection d below to Transition Employees.. Subject to Sections 4.2(d) and (e) below, SSC will provide a benefits credit to the Transition Employees to help defray some or all of the additional out-of-pocket premium costs, if any, the employee will incur by receiving medical benefits, dental benefits and vision benefits through SSC. This benefits credit will not account for any other out-of-pocket costs incurred by the employee, including, but not limited to, deductibles or out of pocket costs for prescription drugs.
 - d. A Transition Employee will only be entitled to receive a benefits Bridging Credit for a medical plan, dental plan or vision plan that is comparable to the medical plan, dental plan or vision plan, respectively, the employee had prior to the Effective Date (“Bridging Credit”). For the purpose of calculating benefits credits, the term “comparable” shall mean benefits that are comparable in terms of the number of individuals covered by those benefits. By way of example, and not limitation: an eligible employee receiving “employee only” benefits from Texas A&M would be entitled to a benefits credit for additional out of pocket premium costs the employee would incur by electing an “employee only” plan option; an employee receiving “employee + 1” benefits from Texas A&M would be entitled to a benefits credit for additional out of pocket premium costs the employee would incur by electing to receive an “employee + 1” plan options; and an employee receiving “employee + 2 or more” benefits from Texas A&M would be entitled to a benefits credit for additional out of pocket premium costs the employee would incur by electing to receive an “employee + 2 or more” plan option.
 - e. The benefits Bridging Credit from SSC will only apply to individuals hired by SSC who were (1) employed by Texas A&M in the custodial services departments immediately prior to the Effective Date; (2) who received medical insurance, dental insurance and/or vision insurance through Texas A&M’s benefits program; and (3) who elect to receive medical insurance, dental insurance and/or vision insurance from SSC. Employees whose out of pocket premium costs would be lower through their election of insurance plan(s) than their previous out of pocket medical insurance premiums with Texas A&M will not be entitled to any benefits Bridging Credits. Benefit Bridging Credits apply based on the type of benefits selected (e.g., an employee who previously had medical insurance, dental insurance and/or vision insurance from Texas A&M but does not choose medical, dental, or vision coverage through SSC will not be entitled to any respective benefits credit for medical, dental and/or vision coverage).
 - f. All Transition Employees will be entitled to receive medical benefit, dental benefit and vision benefit from their first day of employment with SSC. SSC will recognize the Transition Employees’ hire date by Texas A&M for the purpose of determining each employee’s eligibility for benefits and retirement vesting from SSC.
 - g. SSC shall provide each Transition Employee with an immediate one-time 4% increase to their Current Salary with an option to invest that increase in the SSC retirement program.
 - h. SSC shall credit each Transition Employee with an amount of sick leave equal to his or her Texas A&M sick leave balance as of the Effective Date, up to 80 hours. Such credited sick leave shall not be due upon such employee’s departure from SSC, but shall lapse upon such departure. SSC shall then grant each Transition Employee sick and vacation leave accrual amounts according to the schedule in effect for Texas A&M’s own employees on the

Effective Date. SSC agrees to provide 20,000 hours in a sick leave pool for up to 24 months for all Transition Employees. SSC and Texas A&M will develop an appropriate process and approval methodology to allow the Transition Employees to request sick leave for catastrophic sick leave needs. SSC will then bill Texas A&M for the salary and associated benefits of the Transition Employees granted sick leave from the sick leave pool, for the period of the sick leave pool absence.

- i. At Texas A&M's request, SSC shall permit any Transition Employee who is two years or less from being eligible for Teacher Retirement System ("TRS") retirement as of the Effective Date ("Retained Employee") to remain an employee of Texas A&M rather than SSC. Until the Retained Employee achieves TRS retirement criteria, Texas A&M shall assign Retained Employees to SSC for the provision of the Services and SSC shall reduce the Fee for SSC budgeted costs for the position that will be retained on Texas A&M's payroll (with respect to TRS retirement contributions, Compass Group's aggregate reimbursement to Texas A&M under this Agreement, and separate agreements for building maintenance services under RFP01 OGC-12-010, landscaping services under RFP01 OGC-12-008, and dining services under RFP01 OGC-12-007 shall not exceed \$80,000 per year, and such reimbursement obligation shall expire on the second anniversary of the Effective Date) by such Retained Employees. SSC shall offer each Retained Employee a position immediately upon the Retained Employee's departure from employment with Texas A&M; provided that such Retained Employee has performed the responsibilities of his/her position at a level that merits continuation in his/her position and that such Retained Employee passes all required SSC background checks, verification of work authorization, and drug testing; and, *provided however*, such Retained Employees shall not retain their service credits nor receive bridging of their medical benefits upon hire by SSC. Such departure would correspond to the Retained Employee achieving TRS retirement criteria. Once a Retained Employee departs from employment with Texas A&M the Fee shall be adjusted or the payment by Texas A&M increased in order to reflect such departure of the Retained Employee.
- j. Texas A&M shall be solely responsible and shall timely report and pay all liabilities and amounts due to the Texas Retirement System for the employment after retirement pension surcharge for employment of working retirees under the Texas Administrative Code and regulations thereunder (see 34 Texas Administrative Code Rule 31.41).

4.3 Roster

- a. Each individual who is assigned to perform the Services under this Agreement will be either an employee of SSC (including Transition Employees), a Retained Employee, or an employee of a permitted subcontractor engaged by SSC. SSC is responsible for the performance of all individuals performing the Services under this Agreement. Within fourteen (14) days after commencing the Services, SSC shall: (1) provide Texas A&M with a roster of every individual who may be assigned to perform the Services ("Roster"), and (2) perform appropriate criminal background and sex offender screenings on all those individuals (excluding Retained Employees).
- b. SSC shall determine on a case-by-case basis whether each individual assigned to perform the Services meets the screening requirements and restrictions of SSC. SSC may not knowingly or negligently assign any individual to provide the Services who has a history of criminal conduct unacceptable for a Texas A&M campus, including violent or sexual

offenses. The foregoing must be applied in accordance with federal, state and local laws and the U.S. Equal Employment Opportunity Commission Guidelines.

- c. SSC shall provide to Texas A&M an electronic report that identifies newly terminated or hired employees at the end of each work day on which employees are hired or terminated (“Daily Report”). SSC shall also provide an updated Quarterly Roster (“Quarterly Roster”) which reflects all employee changes from the previous quarter. The Quarterly Roster shall include an indicator identifying all working retirees of the Texas Retirement System. Prior to commencing performance of the Services, SSC shall provide Texas A&M a letter signed by an authorized representative of SSC certifying compliance with this Section 4.3(c). SSC shall provide Texas A&M an updated certification letter with each Quarterly Roster.

4.4 **Training.** As more particularly described in the Contract Documents, SSC shall present to Texas A&M, for Texas A&M’s approval regarding the content, timing, and frequency of same, a current, relevant, and applicable training program for SSC’s employees, supervisors, managers, and other personnel (including but not limited to Retained Employees) as may be necessary in conjunction with the provision of the Services and the development of such individuals’ skills, knowledge and career opportunities. At a minimum, such training program shall consist of:

- a. A custodial services training program that, at a minimum, will address safety training; technical training; and management training.
- b. Providing opportunities to its custodial services personnel to participate in university and industry supported certification programs.
- c. A career ladder along with the development programs and other training for any SSC employees, supervisors, managers, and other personnel as may be necessary to achieve advancement in accordance with the career ladder.

4.5 **Texas A&M Discretion over Assigned Employees**

- a. SSC shall obtain Texas A&M’s advance approval of SSC Executive Staff, such approval not to be unreasonably withheld.
- b. SSC shall obtain Texas A&M’s approval before transferring or reassigning any SSC Executive Staff to another customer, such approval not to be unreasonably withheld.
- c. Texas A&M may require, SSC to dismiss or reassign any SSC employee who, in Texas A&M’s sole discretion, is not adding appropriate value to the Services or who hinders the effective delivery of the Services, except as prohibited by applicable law.

4.6 **Labor Relations.** SSC shall take immediate and reasonable steps to continue its provision of the Services in the event of any labor dispute or other action involving its employees.

4.7 **Equal Opportunity.** SSC represents and warrants that it is an equal opportunity employer and does not discriminate on the basis of race, color, religion, national origin, age, mental or physical disability, sex, genetic information, or veteran status.

4.8 **Special Programs**

- a. SSC shall provide not less than \$5,000 per year to Texas A&M in book scholarships at Texas A&M University for dependents of SSC’s employees who provide the Services.

- b. SSC shall implement an educational release time program similar to that in Texas A&M System Regulation 31.05.02, *External Employment*.
- c. SSC shall provide work study, internship, and management training opportunities to Texas A&M University students to include convenient working locations and flexible work hours.
- d. SSC shall implement programs to provide employment opportunities for the disabled and shall continue Texas A&M's programs with Junction 505, Texas Industries for the Blind and Handicapped, and the Bryan ISD L.I.F.E. program.
- e. SSC employees shall be eligible to purchase Texas A&M Student Recreation Center memberships at the faculty/staff discount rate at no cost to SSC.

4.9 **Employee Dishonesty.** SSC shall provide evidence that SSC has in place a method by which SSC shall indemnify Texas A&M and its employees, students, faculty, and guests from any pecuniary loss that may be sustained as a result of any act of fraud, dishonesty, forgery, theft, embezzlement, or misappropriation on the part of SSC or any of its employees or subcontractors or agents with whom SSC has a direct contractual relationship ("Direct Subcontractors").

5. THE PREMISES

5.1 **Rules and Regulations.** SSC shall ensure that all of its employees and Direct Subcontractors whose duties bring them to the Premises obey Texas A&M's rules and regulations and comply with reasonable directions from Texas A&M's representatives.

5.2 **Damage to the Premises.** SSC is responsible for acts of its employees and Direct Subcontractors while on the Premises, including any damage to persons or property. Accordingly, SSC shall take all necessary measures to prevent injury and loss to persons and property located on the Premises. SSC shall promptly repair, in accordance with the specifications of Texas A&M, any damage to the extent caused by its employees or Direct Subcontractors to the Premises or Texas A&M's equipment. On SSC's failure to do so, Texas A&M may repair the damage and SSC shall reimburse Texas A&M promptly for any and all reasonable expenses incurred in connection with the repair. At its option, Texas A&M may offset against all amounts due to SSC any and all reasonable expenses incurred in connection with the repair.

5.3 Security

- a. Texas A&M retains authority over all security matters. SSC shall comply with all Texas A&M rules and procedures related to key control and control all keys, access cards and codes, and combinations entrusted to SSC by Texas A&M and the security of those areas when used by SSC. Texas A&M shall furnish instructions and train SSC's managers in procedures for security of areas and access to areas within and outside of normal building operating hours. SSC shall determine that all equipment has been turned off, windows are closed, lights and fans are turned off, and doors locked. SSC shall immediately report to the Texas A&M University Police or other appropriate security personnel and to Texas A&M's designee all facts relating to losses incurred as a result of break-ins to areas on the Premises. Security measures implemented by SSC shall be consistent with Texas A&M's then current policies, regulations, rules and procedures with respect to security.

- b. SSC shall replace lost keys and bear the cost of rekeying and replacing lock cylinders and changing safe combinations required as a result of its negligence and/or loss of keys. SSC shall immediately report lost keys to Texas A&M.
 - c. Texas A&M shall provide SSC with campus protection and security services currently available to custodial services personnel, such as night patrol, door checks, security consulting, call response, etc. This service does not include armored car service. SSC shall coordinate any additional security through Texas A&M for which SSC will pay prevailing charges.
- 5.4 **Control of the Premises.** Texas A&M may: (a) require identification from any person on the Premises, (b) refuse entry to persons having no legitimate business on the Premises, and (c) eject any undesirable person refusing to leave peaceably on request. SSC shall cooperate with all authorized Texas A&M representatives in the exercise of Texas A&M's rights.
- 5.5 **Identification Badges.** Each employee and agent of SSC assigned to duty on the Premises shall prominently display on his or her person at all times while on Texas A&M's premises a Texas A&M identification badge including a picture of the employee or agent. SSC shall collect identification badges from SSC employees prior to separation and turn the badges in to Texas A&M.
- 5.6 **Uniforms.** All SSC's "non-management" personnel assigned to duty on the Premises shall wear a uniform while performing their duties, the design and color scheme for which SSC shall coordinate with Texas A&M. Any Texas A&M trademarks which may be used on the uniforms remain the property of Texas A&M. All uniforms shall be neat, clean, well-pressed and in good condition.
- 5.7 **Safety Standards**
- a. SSC shall provide an aggressive program of accident prevention and safety education, and shall use its best efforts to protect the safety of SSC's employees and Texas A&M's employees, students, faculty, and visitors. SSC shall provide ongoing instruction for the use of equipment in the promotion of a safe and accident free environment.
 - b. SSC shall immediately report fires, unsafe conditions, thefts, and security hazards to Texas A&M or other appropriate officials.
 - c. SSC shall immediately fix and report to Texas A&M any citations or other notice of unsafe or unlawful conditions issued by Texas A&M or by any local, state, or federal agencies.
 - d. SSC shall submit two complete sets of all Material Safety Data Sheets to Texas A&M's designee in advance for all materials being used by SSC in the Premises.
- 5.8 **Administrative Space.** Texas A&M shall furnish SSC with appropriate management office space at locations agreed upon by the Parties as necessary for SSC's limited onsite office needs. Texas A&M shall furnish the office space with suitable desks, chairs, and filing cabinets.
- 5.9 **Storage Space.** Texas A&M shall provide SSC with sufficient secure supply storage, secure equipment storage, and work closets for equipment and supplies.

5.10 **Telecommunications Services.** SSC shall be responsible for and shall pay all expenses for telecommunications services, both voice and data, including without limitation, all equipment, equipment installation, cellular phones, radios, local service, long distance service, taxes, monthly charges, and other telecommunications expenses incurred by Texas A&M on behalf of SSC. SSC may not attempt to connect with any Texas A&M computer network or information system without the advance approval of Texas A&M.

5.11 **Vehicles**

- a. SSC shall provide all vehicles necessary for the purpose of providing the Services, whether such vehicles are owned by SSC; leased from or provided by Texas A&M; or otherwise provided by SSC. SSC shall provide properly insured and legally qualified staff to operate vehicles. SSC shall be liable for any and all damages or injuries caused by the negligent operation of the vehicles by SSC and its employees,. Texas A&M shall provide SSC with access to appropriate campus service paths, by automobile or other suitable means of transportation, when necessary and appropriate for the delivery of supplies and products in connection with the Services. Despite the foregoing, SSC shall not drive any truck, automobile, or other mechanized vehicle upon any campus service path, sidewalk, or other non-designated roadway without the advance written consent of Texas A&M.
- b. Within 90 days after the Effective Date, the Parties shall agree as to which Texas A&M vehicles shall be purchased or leased by SSC, and/or supplemented with additional SSC-provided vehicles, at the fair market value of all such Texas A&M vehicles to be purchased by SSC (such leased vehicles "Leased Vehicles"). In the period between the Effective Date and such agreement, SSC shall lease any such Texas A&M vehicles to be used by SSC at Texas A&M's then-current rates. SSC shall insure all vehicles leased from Texas A&M as specified in Section 7.2..
- c. SSC may purchase fuel from Texas A&M for vehicles used in the Services at Texas A&M's then-current rates. SSC may obtain maintenance and repair services from Texas A&M for vehicles used in the Services at Texas A&M's then-current rates.
- d. All SSC employees desiring to obtain parking permits shall purchase such permits directly from Texas A&M.

6. **EQUIPMENT**

6.1 **Texas A&M Equipment Servicing and Maintenance.** SSC shall provide normal operator cleaning, maintenance, service, and repair, as necessary for all SSC equipment and for all Texas A&M-owned equipment used in the Services ("Texas A&M Equipment"). Before the commencement of the Services, and on an annual basis thereafter, SSC and Texas A&M shall conduct an inventory of the Texas A&M Equipment and agree upon an inventory confirmation document. SSC may use Texas A&M Equipment only in connection with the Services and for no other purpose, unless expressly authorized in writing by Texas A&M. As it relates to custodial equipment retained by Texas A&M, SSC shall develop a work plan for the care and maintenance of such Texas A&M Equipment and submit such plan to Texas A&M for approval. At the expiration or termination of this Agreement, SSC shall return to Texas A&M all Texas A&M Equipment in the condition received, ordinary wear and tear excepted.

- 6.2 **Responsibility for Equipment and Other Personal Property.** Texas A&M has no responsibility for the loss, theft, disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of SSC or its agents, employees or subcontractors, which may be located or stored on the Premises.
- 6.3 **Capital Investment.** During the term of this Agreement, SSC shall make a capital investment of \$1,409,749 (“Capital Investment”) in equipment and other items to enhance the delivery of the Services. SSC shall obtain the approval of Texas A&M before making such investment.
- 6.4 **Purchase of Texas A&M Equipment.**
- a. Upon written notice from Texas A&M of its election to sell, SSC shall purchase \$783,194 of the Texas A&M Equipment at Texas A&M’s book value as of the Effective Date, which includes capital equipment and Leased Vehicles, in the first year of the Term (“Initial Equipment”); *provided however*, SSC shall only purchase such equipment that is operable and usable in performing the Services. If Texas A&M does not elect to sell the Texas A&M Equipment to SSC, SSC and Texas A&M shall develop a prioritized list of all Texas A&M Equipment that needs to be replaced.
 - b. The remainder of the Capital Investment after the purchase of the Initial Equipment (\$626,555) may be spent as mutually agreed by the Parties starting in the sixth year of the Term (“Capital Investment Remainder”). Any balance of the Capital Investment remaining at the expiration of the Initial Term of this Agreement shall be paid to Texas A&M before September 3, 2022.
- 6.5 **SSC Vendors.** SSC may receive volume, trade or cash discounts or rebates for items or services purchased as part of providing Services under this Agreement and that those discounts/rebates will accrue to SSC and will not be credited back to Texas A&M. In connection with Services provided hereunder, SSC shall purchase any inventory, equipment, and services it is responsible for providing hereunder from various sellers and vendors selected by SSC at its sole discretion.

7. INSURANCE

- 7.1 **Coverage.** SSC shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. All coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas and currently rated A- or better by A.M. Best Company or otherwise acceptable to Texas A&M. By requiring such minimum insurance, Texas A&M shall not be deemed or construed to have assessed the risk that may be applicable to SSC under this Agreement. SSC shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. SSC is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. Required insurance shall not be cancelable without prior written notice to Texas A&M.

7.2 **Policy Limits.** Insurance must be carried to at least the following minimum amounts, it being understood that minimum policy limits may be provided through a combination of primary and excess insurance and that the excess or umbrella insurance shall follow the form of the primary insurance:

| <u>Coverages</u> | <u>Limit</u> |
|--|----------------------------------|
| A. Worker's Compensation | |
| Statutory Benefits (Coverage A) | Statutory |
| Employer's Liability (Coverage B) | \$2,000,000 Each Accident |
| | \$2,000,000 Disease/Employee |
| | \$2,000,000 Disease/Policy Limit |
| B. Automobile Liability | |
| Owned Vehicles | \$5,000,000 |
| Non-owned Vehicles | \$5,000,000 |
| Hired Vehicles | \$5,000,000 |
| C. Commercial General Liability | |
| Aggregate Limit | \$10,000,000 |
| Each Occurrence Limit | \$1,000,000 |
| Products /Operations | \$1,000,000 |
| Personal /Advertising Injury | \$1,000,000 |
| Damage to Premises | \$1,000,000 |
| D. Commercial Crime Insurance | |
| Employee Dishonesty | \$500,000 |
| E. Umbrella Liability | \$10,000,000 |

Additional Endorsements

Auto and Commercial General Liability Policies shall list the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insured. SSC certifies that it is self-insured for property damage to vehicles leased from Texas A&M.

7.3 **Subrogation.** Both Parties shall waive their insurers' rights of subrogation against the other Party. All policies of insurance shall be endorsed to be primary.

7.4 **Certificates of Insurance.** SSC will provide certificates indicating such insurance is in force and effect within 10 working days after full execution of this Agreement. Should any of the above described policies be canceled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

7.5 **Texas A&M Self Insurance.** SSC acknowledges that, because Texas A&M is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of Texas A&M or

for injuries caused by conditions of tangible state property may be governed by the provisions of the Texas Tort Claims Act (Texas Civil Practice and Remedies Code, Chapters 101 and 104), and that Workers' Compensation Insurance coverage for employees of Texas A&M is provided by Texas A&M as mandated by the provisions of Chapter 502, Texas Labor Code. Texas A&M shall have the right, at its option, to (a) obtain liability insurance protecting Texas A&M and its employees and property insurance protecting Texas A&M's buildings and contents, to the extent authorized by Section 51.966, Texas Education Code, or other law, or (b) self-insure against any risk that may be incurred by Texas A&M as a result of its operations under this Agreement.

8. INDEMNIFICATION

NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT STATING THAT TEXAS A&M WILL INDEMNIFY OR HOLD HARMLESS CHARTWELLS OR ANY OTHER PARTY, TEXAS A&M SHALL BE OBLIGATED TO INDEMNIFY AND HOLD HARMLESS ONLY TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS. Each Party shall indemnify, defend and hold the other harmless from any and all losses, damages or expenses, including reasonable attorneys' fees, arising out of or resulting from claims or actions for bodily injury, death, sickness, property damage or other injury or damage caused by any negligent act or omission, willful misconduct, or breach of this Agreement by such Party. The right of a Party (the "Indemnifying Party") to indemnification under this Agreement shall be conditioned upon the following: prompt written notice to the Party obligated to provide indemnification (the "Indemnifying Party") of any claim, action or demand for which indemnity is claimed; control of the investigation, preparation, defense and settlement thereof by the Indemnifying Party; and such reasonable cooperation by the Indemnified Party, at the Indemnifying Party's request and expense, in the defense of the claim. The Indemnified Party shall have the right to participate in the defense of a claim with counsel of the Indemnified Party's choice and at its expense. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party (which shall not be unreasonably withheld), settle, compromise or consent to the entry of a judgment that imposes any liability upon the Indemnified Party.

9. HISTORICALLY UNDERUTILIZED BUSINESS

- 9.1 It is the policy of the State of Texas and Texas A&M to encourage the use of Historically Underutilized Business (HUBs) in our prime contracts, subcontractors, and purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in Texas A&M contracting and purchasing.
- 9.2 SSC agrees to allocate work to subcontractors as listed (or indicated) in its HUB Subcontracting Plan, in accordance with the Texas A&M policy on Historically Underutilized Businesses. No changes to the HUB Subcontracting Plan may be made unless approved in writing by Texas A&M. While this Agreement is in effect and until the expiration of one year after completion, the Texas A&M may require information from SSC, and may conduct audits, to assure that the HUB Subcontracting Plan is followed.

- 9.3 Each Accounting Period an HSP – Prime Contractor Progress Assessment Report form must be submitted by SSC as agreed to in the Contract Documents. Submission of such progress assessment reports will be addressed in the performance measurement tool described in Section 1.7(a) above.

10. TERMINATION

- 10.1 **Termination.** This Agreement may be terminated before the expiration of the Initial Term or any subsequent term upon the occurrence of any of the following:

a. **Termination for Default.** In the event of Substantial Failure by either Party to perform in accordance with the terms of this Agreement, the other Party may terminate this Agreement upon ninety (90) days written notice of termination setting forth the nature of the failure, provided that the failure is through no fault of the other Party and is not due to Force Majeure conditions. The termination shall not be effective if (i) the other Party fully cures the failure within thirty (30) calendar days of receipt of the written notice; or (ii) such failure is of a nature that it cannot be cured within thirty (30) calendar days, and the Party in default shall have promptly commenced curing such default within such thirty (30) calendar day period and shall thereafter proceed to cure such default with reasonable diligence in good faith without interruption except for causes reasonably beyond its control. For purposes of this Section 10.1, the term “Substantial Failure” shall mean material non-compliance with the requirements of this Agreement which:

- (1) is material and continues over a protracted period of time;
- (2) is repeated at least three (3) times in a twelve (12) month period or is systematic and is not corrected or adequately responded to once identified;
- (3) results in material non-compliance with applicable laws or regulations resulting in substantial harm to Texas A&M;
- (4) materially interferes with or impedes the other Party’s ability to perform its responsibilities under this Agreement; or
- (5) materially deprives the other party of the benefits it reasonably anticipated under this Agreement.

b. **Termination for Convenience.** Either Party may, at its sole discretion, without cause and at its convenience, terminate this Agreement at any time upon giving one hundred and eighty (180) days advance notice to the other Party. Upon termination pursuant to this Section 2.2(b), Texas A&M shall compensate SSC for the Services satisfactorily performed from the time of the last payment date to the termination date in accordance with then applicable rates under this Agreement. Except as otherwise provided for herein, neither Party shall be required to reimburse or pay the other Party for any services performed or expenses or liabilities incurred after the effective date of termination.

c. **Termination for Non-Payment.** In the event that twice in a six (6) month period, Texas A&M does not make its monthly payments of the Fee on or before the dates due under this Agreement, SSC may, at its option, terminate the Agreement at any time after giving fifteen

(15) days' prior written notice to Texas A&M unless all overdue amounts are paid before the end of the notice period. In addition, Texas A&M agrees to pay any damages suffered by SSC in connection with the collection of amounts due and/or termination of this Agreement, including but not limited to reasonable attorney fees and costs and any liability under the Worker Adjustment and Retraining Notification Act or similar state or local law.

10.2 Damages Restriction. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT STATING THAT TEXAS A&M WILL AGREE TO LIMIT THE LIABILITY OF SSC OR ANY OTHER PARTY, TEXAS A&M SHALL BE OBLIGATED TO INDEMNIFY AND HOLD HARMLESS ONLY TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS. If this Agreement is terminated for any reason, neither Party shall be liable to the other Party for any damages (indirect, consequential, or special), claims, losses, or any other amounts arising from or related to any such termination except for liabilities and obligations specifically provided in this Agreement or under applicable law.

10.3 Termination Reimbursements.

- a. Signing bonus. The Signing Bonus shall be amortized on a straight-line basis for a period of twelve (12) years commencing on the Effective Date. If this Agreement expires or is terminated by Texas A&M for convenience or SSC for default as per Section 10.1, above, prior to the end of the Term, Texas A&M shall pay any unamortized balance remaining for the Signing Bonus on or before the date of termination of the Agreement.
- b. The Initial Equipment shall be amortized on a straight line basis over a twelve (12) year period commencing on the Effective Date. If this Agreement expires or is terminated by Texas A&M for convenience or SSC for default as per Section 10.1, above, Texas A&M shall pay, or cause to be paid to SSC any unamortized balance remaining for the cost of the equipment purchased under Section 6.4, above, as follows: (a) in the event Texas A&M engages another building maintenance contractor and such contractor agrees to make payment to SSC, such payment shall be due to SSC within ninety (90) days after the date of termination or expiration; or (b) in the event Texas A&M does not engage another building maintenance contractor or the new contractor does not agree to make payment to SSC, such payment shall be due to SSC within one hundred eighty (180) days after the date of expiration or termination. Following such payment, the equipment and title thereto shall be transferred to Texas A&M.
- c. Equipment purchased using the Capital Investment Remainder shall be amortized as per the process in subsection (b) above over seven (7) years commencing in the sixth year of the Term; *provided however*, the Parties agree that if any additional capital investments are agreed upon through an amendment to this Agreement, mutually acceptable to the Parties, shall be entered into to establish the applicable buyback language for such capital investment.

11. GENERAL PROVISIONS

- 11.1 **Venue.** This Agreement is performable in Brazos County, Texas. To the extent required by Section 85.18, *Texas Education Code*, venue for any suit filed against Texas A&M shall be in the county in which the primary office of the chief executive officer of Texas A&M is located.
- 11.2 **Governing Law.** The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates.
- 11.3 **Severability.** Each provision of this Agreement is severable. If any provision is rendered invalid or unenforceable by statute or regulations or declared null and void by any court of competent jurisdiction, the remaining provisions will remain in full force and effect if the essential terms of this Agreement remain valid, legal, and enforceable.
- 11.4 **Compliance with the Law.** . The Parties shall fully comply with their respective obligations under all applicable, federal, state and local laws, regulations, codes, ordinances and orders. In addition, each Party shall implement programs, policies and procedures necessary to promote compliance with applicable laws, regulations, codes, ordinances and orders. In the event of a felony criminal charge or conviction of any officer or director of either Party, such Party shall notify the other Party within five (5) days of such criminal charge or conviction.
- 11.5 **Ethics.** The Parties shall implement programs, policies and procedures necessary to promote compliance with their respective Codes of Ethics or ethics policies, regulations rules or procedures. The Parties shall also provide each other copies of their internal Codes of Ethics within ten (10) days of final execution of this Agreement. Further, the Parties shall provide each other copies of any revisions to such codes, policies, regulations and rules within thirty (30) days of the effective date of the revision. In the event of a breach by a Party's employees of the requirements of its respective Code of Ethics relating specifically to Texas A&M, such Party will notify the other Party of such breach within five (5) days of discovery thereof.
- 11.6 **Entire Agreement.** This Agreement is the entire agreement between Texas A&M and SSC. This Agreement supersedes all oral or written previous and contemporary understandings or agreements relating to matters contained herein. This Agreement may not be amended or otherwise altered except by agreement in writing signed by Texas A&M and SSC.
- 11.7 **Assignment.** This Agreement is not assignable without express written agreement of Texas A&M and SSC.
- 11.8 **Force Majeure.** Neither Party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such Party and which by due diligence it is unable to prevent or overcome.
- 11.9 **Dispute Resolution.** The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Texas A&M and SSC to attempt to resolve any claim for breach of contract made by SSC that cannot be resolved in the ordinary course of business. SSC shall

submit written notice of a claim of breach of contract under this Chapter to Texas A&M's Contract Administrator, who shall examine SSC's claim and any counterclaim and negotiate with SSC in an effort to resolve the claim.

- 11.10 **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery or facsimile transmission. The Parties may give notices of operational or day-to-day matters via email. Texas A&M and SSC may change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

Texas A&M:

Texas A&M University
Attention: B.J. Crain, Vice President for Finance and CFO
1181 TAMU
College Station, TX 77843-1181
(979) 862-7778
E-mail: bjcrain@tamu.edu

SSC:

SSC Service Solutions
1845 Midpark Rd
Knoxville, TN 37921
Attention: Don Williams
(865) 673-4310 - Phone
(865) 523-5560 - Fax
E-mail: don@sscserv.com

With a copy to:
SSC Service Solutions
955 Chesterbrook Blvd., Suite 300
Wayne, PA 19087
Attn: General Counsel

- 11.11 **Independent Contractor.** SSC is engaged as an independent contractor and acknowledges that Texas A&M has no responsibility to provide transportation, insurance, vacation or other fringe benefits normally associated with employee status. SSC, in accordance with its status as an independent contractor, shall conduct itself consistent with that status, shall neither hold itself out as, nor claim to be an officer, partner, employee or agent of Texas A&M, and shall not make any claim, demand or application to or for any right or privilege applicable to an officer, representative, employee or agent of Texas A&M, including unemployment insurance benefits, social security coverage or retirement benefits. SSC shall make its own arrangements for any fringe benefits as it may desire and is responsible for all income taxes required by applicable

law. All of SSC's employees providing the Services to Texas A&M shall be employees solely of SSC and shall not be employees or agents of, acting for or on behalf of Texas A&M. No acts performed or representations, whether oral or written, made by SSC with respect to third parties will be binding upon Texas A&M.

11.12 **Non-Solicitation.** In the event of termination or expiration of this Agreement, Texas A&M may offer employment to non-managerial SSC employees engaged in providing the Services, and SSC shall assist Texas A&M in the transfer of any such non-managerial employees electing to accept employment with Texas A&M, and/or any successor contractor selected by Texas A&M. Texas A&M shall not during the Term of this Agreement or for two (2) years thereafter solicit to hire, hire or contract with SSC's employees who manage any Services or who manage any employee or any other highly compensated employees, or any persons who were so employed by SSC, whether at the Premises or at any other facility operated by the other Party ("Managerial Employees"), nor will Texas A&M permit Managerial Employees of SSC to be employed on the Texas A&M's Premises, for a period of two (2) years subsequent to the termination or expiration of this Agreement (unless such employees were formerly employees of Texas A&M) whether as an individual or as owner, partner, majority stockholder, director, officer or employee of a janitorial service provider ("Two-year Non-solicitation"). In the event of any breach of such Two-year Non-solicitation, the breaching Party shall pay and the injured Party shall accept an amount equal to twice the annual base salary of the relevant employee as liquidated damages. The foregoing shall not apply where any such employee is responding to a publicly and generally advertised position by the other party that is not related to the services and responsibilities performed by such employee under this Agreement and provided that such Managerial Employee has not been directly approached or solicited by Texas A&M.

11.13 **Multiple Counterparts.** This Agreement may be executed by each of the parties in separate counterparts; each counterpart when so executed shall be deemed an original. When executed by all parties, such counterparts shall, together, constitute and be one and the same Agreement.

12. STATE CONTRACTING REQUIREMENTS

12.1 **Child Support.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an Agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

12.2 **Debts or Delinquencies.** Pursuant to Section 2252.903, *Texas Government Code*, any payments owing to SSC under this Agreement may be applied directly toward certain debts or

delinquencies that SSC owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

- 12.3 **Franchise Tax Certification.** If SSC is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then SSC certifies that it is not currently delinquent in the payment of any franchise taxes or that SSC is exempt from the payment of franchise taxes.
- 12.4 **Compensation for Preparing Bid Specifications.** A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: “Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”
- 12.5 **Buy Texas.** With respect to all goods purchased pursuant to this Agreement, SSC represents and warrants that goods produced in Texas will be given preference if the cost and quality are equal to the goods produced outside of Texas.
- 12.6 **Public Information Act.** SSC acknowledges that Texas A&M is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement.
- 12.7 **Loss of Funding.** Performance by Texas A&M under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds then Texas A&M will issue written notice to SSC and Texas A&M may terminate this Agreement without further duty or obligation hereunder, except that upon such termination Texas A&M shall remain liable for and shall pay to SSC all amounts due for Services provided through the date of such termination, together with the unamortized balance of the Signing Bonus, Multiple Contract Bonus (as defined in the Multiple Contract Bonus Agreement between the Parties effective August 3, 2012), and Capital Investment. SSC acknowledges that appropriation of funds is beyond the control of Texas A&M.
- 12.8 **Audit.** SSC understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. SSC agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. In addition and independently, the Texas A&M Internal Audit Department shall be similarly authorized to conduct an annual audit or investigation of SSC’s documents, papers, and records involving transactions related to this Agreement.

- 12.9 **Non-Waiver.** SSC acknowledges Texas A&M is an agency of the State of Texas and nothing in this Agreement waives or relinquishes Texas A&M's right to claim such exemptions, privileges, and immunities as may be provided by law.
- 12.10 **Best Value Procurement.** As permitted by Texas Education Code 51.9335, other institutions of higher education may utilize this Agreement as a best value method to procure the services provided herein, subject to SSC express written agreement, upon financial and other terms to be agreed upon by SSC and such other institutions.

13. CONFIDENTIALITY

- 13.1 In the course of providing Services hereunder, the Parties may be exposed to trade secrets or other confidential or proprietary information and materials of the other Party which includes, but is not limited to, best practices, policies and procedures, management guidelines, procedures, operating manuals and software, all of which shall be identified as confidential ("Confidential Information"). The Parties agree to hold in confidence and not to disclose any Confidential Information during the Term of this Agreement and for two (2) years afterward, except that the Parties may use or disclose Confidential Information:
- (a) to its employees and affiliates or others to the extent necessary to render any service hereunder, provided that the other Party is first notified of the information that will be provided to any party outside of this Agreement and provided further that such information is disclosed only after such party is required to maintain it in confidence as required hereunder;
 - (b) to the extent expressly authorized by either Party;
 - (c) to the extent that at the time of disclosure, such Confidential Information is in the public domain, or after disclosure, enters the public domain other than by breach of the terms of this Agreement;
 - (d) that is in the possession of either Party at the time of disclosure and is not acquired directly or indirectly from the other Party;
 - (e) that is subsequently received on a non-confidential basis from a third party having a right to provide such information; or
 - (f) subject to Section 13.4 below, as required by Texas law;
 - (g) subject to Section 13.4 below, order of a court or administrative body with jurisdiction;
 - (h) subject to Section 13.4 below, as required by an order during the course of a judicial or regulatory proceeding or as required by a government authority.
- 13.2 The Parties agree not to photocopy or otherwise duplicate any Confidential Information without the express written consent of the other Party. Each Party's Confidential Information shall remain the exclusive property of the Party and shall be returned to the other Party upon termination or expiration of this Agreement. In the event of any breach of this provision, the Parties shall be entitled to equitable relief, in addition to all other remedies otherwise available to it at law. This provision shall survive the termination or expiration of this Agreement.

- 13.3 Texas Public Information Act Requirements. Notwithstanding the foregoing subsection, and subject to Section 13.4 below, SSC acknowledges that Texas A&M is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement.
- 13.4 In the event Texas A&M receives a request or notice to produce information provided by SSC and marked by SSC as confidential, proprietary, or trade secret, Texas A&M shall (i) assert the confidential nature of the information to be disclosed, (ii) use reasonable efforts to obtain confidential treatment for any information so disclosed, including without limitation cooperating with SSC in asserting grounds to seek such confidential treatment, (iii) immediately notify SSC in writing of the requirement, order, or request to disclose in advance of such disclosure in order to afford SSC the opportunity to determine whether the requested information is protected from disclosure and to assist in Texas A&M's efforts to obtain confidential treatment of such Confidential Information and to enable SSC to contest disclosure if allowable, (iv) absent a non-appealable final order, decree or judgment of any court or governmental body having competent jurisdiction to the contrary, refrain from releasing SSC's information until at least seven (7) business days after Texas A&M shall have provided SSC with advance written notice of such requirement, order, or request to disclose, so that SSC may take reasonable steps to preclude such disclosure, it being specifically understood that such notice must be provided not only upon Texas A&M's receipt of a requirement, order, or request to disclose, but also upon the receipt of any appealable order, decree or judgment of any court or governmental body having competent jurisdiction directing the release of such information.

The Parties have executed this Agreement on the date(s) indicated below.

TEXAS A&M UNIVERSITY SYSTEM

By: 
John S. Sharp
Chancellor

Date: 10 August 2012

SOUTHEAST SERVICE CORPORATION

By: 
Don R. Williams
President

Date: August 9, 2012

EXHIBIT A

PREMISES

[To be provided within thirty (30) days of the Effective Date]

EXHIBIT B- CUSTODIAL SERVICES AGREEMENT
Performance Measurement Evaluation Tool

Contract Performance Custodial : Methodology for Evaluation

Table 1

1. The methodology for evaluation for KPI contract performance shall cover three major operational functions including Custodial, Building Maintenance, and Landscaping. This Section is devoted to the Custodial function.
2. Evaluation criteria shall be based on a 5.0 scale. (Table 1)
3. Specific criteria shall be weighted in order of importance. (Table 2)
4. Specific evaluation criteria is as follows:
 - **Custodial Criteria**
 - ✓ Texas A&M Satisfaction measured through Texas A&M surveys.
 - ✓ Quality Control measured through Quality Inspections.
 - ✓ Training measured through database tracking and reporting.
5. Performance results shall be evaluated and include incentive for sustained superior performance and/or penalty assessments for performance failure. Specific dollar values shall be accorded pertaining to performance results with an overall total not to exceed 1% of the annual base contract billing.
6. No incentive or penalty shall be invoked for results that equal acceptable performance.
7. SSC shall be provided a 120 day period to correct failures.
8. SSC shall be required to submit an action plan for measured results between 2.5 and 2.99. Action plan results shall be reported monthly until action item is resolved.
9. An incentive shall be invoked equal to 25% of the potential overall dollar value outlined in line 5 above for sustained superior performance during any consecutive three month period. Equally, a penalty assessment shall be invoked equal to 25% of the potential overall dollar value outlined in line 5 above for continued performance failure during any consecutive three month period.
10. At the end of the performance year, average scores shall invoke either an incentive and/or a penalty in accordance with measured results and allocate the remainder of the overall dollar value accordingly.
11. It is recognized that it is possible for some quarters to incur a penalty and others an offsetting bonus.

| Evaluation Conversion Scale | |
|-----------------------------|--------------------------------------|
| 5.0 | |
| 4.9 | Sustained |
| 4.8 | Superior |
| 4.7 | Performance |
| 4.6 | |
| 4.5 | |
| 4.4 | Sustained |
| 4.3 | Superior |
| 4.2 | Performance |
| 4.1 | |
| 4.0 | = or > 4.00 |
| 3.9 | |
| 3.8 | Acceptable |
| 3.7 | Performance |
| 3.6 | |
| 3.5 | |
| 3.4 | Acceptable |
| 3.3 | Performance |
| 3.2 | |
| 3.1 | |
| 3.0 | = or > 3.00 to 3.99 |
| 2.9 | |
| 2.8 | |
| 2.7 | Immediate Action Plan for Correction |
| 2.6 | |
| 2.5 | = to > 2.5 to 2.99 |
| 2.4 | = or < 2.49 |
| 2.3 | Performance Failure |
| 2.2 | |

Table 2: Custodial KPI's

| No | Performance Elements | Wgt | Method of Evaluation |
|----|-----------------------------------|-----|-------------------------------------|
| A | University Texas A&M Satisfaction | 35% | Texas A&M Surveys |
| | 1 Completion of Work | | |
| | 2 Timeliness | | |
| | 3 Quality | | |
| | 4 Follow-up | | |
| B | Quality Inspection Results | 35% | Quality Control Inspection |
| C | Training | 30% | Certification and Dates of Training |

Evaluation Process

1. Evaluation of SSC's performance is conducted monthly by University Texas A&Ms including senior contract management and primary customer contacts to which services are delivered.
2. There are four (4) levels of performance defined by **Table 2** in connection with the 5.0 scale. These include the following:
 - **Sustained Superior Performance** represented by scores equal to or greater than 90% or 4.0.

- **Acceptable Performance** represented by scores greater than or equal to 80% or 3.0.
 - **Performance/Failure / Correction Required** represented by scores equal to or less than 79.9% or 2.99 and greater than or equal to 75.0% or 2.5.
 - **Failure** represented by scores less than or equal to 74.9% or 2.49.
3. Monthly Scoring throughout a given performance year serve as the factors leading to determinations concerning performance incentives or penalties.

Incentives / Penalties

1. Incentives and penalties are equal in dollar value.
2. Determined by weighted percentages for each of the performance elements.
3. The maximum dollar value for both incentives and penalties combined is 1% of the SSCs Annual Contract Billing.
4. If SSC's billing is \$100K dollars, 1% of fee is \$1K dollars for a fiscal year.
5. At \$100K dollars, the maximum dollar value for each performance element is:
 - Texas A&M Satisfaction weight is 35% of the overall maximum or 350.00.
 - Quality Control weight is 35% of the overall maximum or \$350.00.
 - Training weight is 30% of the overall maximum or \$300.00.

Performance Incentives

1. Bonuses paid to the SSC for sustained superior performance.
2. Bonuses are invoked when the SSC delivers "Sustained Superior Performance" identified by a score at the end of the performance year or during any consecutive three month period.

Performance Penalties

1. Penalties paid to Texas A&M for performance failure.
2. Penalties are invoked for SSC fails to deliver service scores above failure level of 2.49 or 74.9% at the end of the performance year or during any consecutive three month period.
3. It is possible during a fiscal year to have both an incentive payment and a penalty payment depending upon the performance scoring for each of the four performance elements.
4. The details of the processes for both incentives and penalties are explained in the illustrative examples outlined below.

Incentives / Penalties Illustrative Examples

Sustained Superior Performance

| Sustained Superior Performance | | | | | | | | | | | | | |
|--------------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Overall Average Year 1 | | | | | | | | | | | | | |
| Performance Year | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Avg |
| Average | 4.33 | 3.90 | 3.93 | 3.89 | 3.65 | 3.80 | 4.45 | 3.66 | 4.23 | 3.71 | 4.04 | 4.73 | 4.03 |

| Sustained Superior Performance | | | | | | | | | | | | | |
|--------------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Overall Average Year 1 | | | | | | | | | | | | | |
| Performance Year | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Avg |
| Average | 4.33 | 3.90 | 3.93 | 4.12 | 4.03 | 4.15 | 4.45 | 3.66 | 4.23 | 3.71 | 4.04 | 4.73 | 4.11 |

Tables indicate two possible bonus scenarios:

- A bonus at performance year end exceeding 4.0 on the performance scale.
- A bonus incentive for sustained superior performance during any three consecutive months.

| Performance Failure | | | | | | | | | | | | | |
|------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Overall Average Year 1 | | | | | | | | | | | | | |
| Performance Year | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Avg |
| Average | 2.60 | 2.70 | 2.50 | 2.35 | 2.12 | 2.32 | 2.50 | 2.12 | 2.50 | 2.60 | 2.50 | 2.50 | 2.44 |

| Performance Failure | | | | | | | | | | | | | |
|------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Overall Average Year 1 | | | | | | | | | | | | | |
| Performance Year | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Avg |
| Average | 4.33 | 3.90 | 3.93 | 2.35 | 2.12 | 2.32 | 4.45 | 3.66 | 4.23 | 3.71 | 4.04 | 4.73 | 3.65 |

Tables indicate two possible penalty scenarios:

- A penalty at performance year end for a failure score average.
- A penalty for performance failure for a consecutive 1 three month period.

| Acceptable Performance | | | | | | | | | | | | | |
|------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Overall Average Year 1 | | | | | | | | | | | | | |
| Performance Year | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Avg |
| Average | 3.00 | 3.78 | 3.93 | 3.89 | 3.65 | 3.80 | 4.45 | 3.66 | 4.23 | 3.71 | 4.04 | 4.73 | 3.91 |

Table indicates that score at the end of the performance year is within the Acceptable performance range and that there are no three month consecutive scoring providing either a bonus or a penalty.

| Sustained Superior Performance Quality Assurance | | | | | | | | | | | | | |
|--|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Overall Average Year 1 | | | | | | | | | | | | | |
| Performance Year | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Avg |
| Average | 4.33 | 3.90 | 3.93 | 3.90 | 3.93 | 3.90 | 3.93 | 3.66 | 4.23 | 3.71 | 4.04 | 4.73 | 4.02 |

| Performance Failure Safety Compliance | | | | | | | | | | | | | |
|---------------------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Overall Average Year 1 | | | | | | | | | | | | | |
| Performance Year | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Avg |
| Average | 2.60 | 2.70 | 2.50 | 2.50 | 2.12 | 2.32 | 2.50 | 2.12 | 2.50 | 2.60 | 2.50 | 2.50 | 2.46 |

Tables Indicate a possibility in which both a bonus and a penalty is assessed during a given performance year.

Custodial Survey Form

| | | | | | | | | | |
|--|--|--|-----------|------------------|------|------------------|--|------------------|--------------|
| | | Total Points Divided by Available Points = % Score | | | | | | | |
| Inspected By _____ | | Date _____ | | | | | | | |
| | | 5 | 4 | 3 | 2 | 1 | | | |
| Performance Key | | Excellent | Very Good | Good | Fair | Poor | | | |
| No | | | | | | | | | |
| | | Work Order # | | Work Order # | | Work Order # | | Work Order # | |
| | | Points Available | | Points Available | | Points Available | | Points Available | Total Points |
| 1 | Was the work finished properly and completely? | 5 | | 5 | | 5 | | 5 | |
| 2 | Was the work completed in a timely manner? | 5 | | 5 | | 5 | | 5 | |
| 3 | Was the work order form Blackberry entered properly? | 5 | | 5 | | 5 | | 5 | |
| 4 | Was the area left clean after work was completed? | 5 | | 5 | | 5 | | 5 | |
| 5 | Was the work performed safely? | 5 | | 5 | | 5 | | 5 | |
| 6 | Was the requestor or manager notified upon completion? | 5 | | 5 | | 5 | | 5 | |
| Notes: Attach inspected work order to this form. | | | | | | | | | |

Quality Control

1. Inspections performed using palmtop technology.
2. Inspections focus on area types with specific criteria for evaluation.
3. Example: Restrooms Table 4

Table 4

| Example of Area Type Inspection | | | | | |
|---|-----|----|-----|-------|------|
| Daily Cleaning: Restrooms | 5 | 4 | 3 | 2 | 1 |
| Chrome: Light Film | X | | | | |
| Chrome: Heavy Film | | X | | | |
| Dispensers: Not Filled Completely | | X | | | |
| Dispensers: Poor Cleaning or Polish | | X | | | |
| Dispensers: Empty | | | X | | |
| Doors: Spots or Dust | | | X | | |
| Doors: Damage from Cart | | | X | | |
| Floors: Not Swept Before Mopping | | X | | | |
| Floors: Soap Film or Mop Strands | | X | | | |
| Floors: Not Mopped | | X | | | |
| Floors: Not Swept or Mopped | | X | | | |
| Graffiti: If Capable of Being Removed | X | | | | |
| Mirrors: Streak, Film, / Missed Areas | X | | | | |
| Odor: | X | | | | |
| Partitions or Fixtures: Light Dust | X | | | | |
| Partitions or Fixtures: Heavy Dust | X | | | | |
| Sinks: Light Film, Streaking, Soil | X | | | | |
| Sinks: Heavy Film, Streaking, Soil | | X | | | |
| Toilet Seats: Light Soil | | X | | | |
| Toilet Seats: Missed or Heavy Soil | | X | | | |
| Toilets: Light Film, Streaking, Soil | | | X | | |
| Toilets: Heavy Film, Streaking, Soil | | X | | | |
| Trash: Missed | X | | | | |
| Urinals: Light Film, Streaking, or Soil | X | | | | |
| Urinals: Heavy Film, Streaking, or Soil | X | | | | |
| Wall and Partitions: Soil or Splatter | | X | | | |
| Shower Wall | | X | | | |
| Shower Floors | | X | | | |
| Shower Curtains | | X | | | |
| | 10 | 15 | 4 | 0 | 0 |
| | 145 | 29 | 0.8 | Score | 3.00 |

| Factor Evaluation Criteria Used to Assess SSC's Performance | | | | |
|---|--|--|---|---|
| Level 5 Excellent 5 pts | Level 4 Very Good 4 pts | Level 3 Good 3 pts | Level 2 Partially Satisfactory 2 points | Level 1 Poor / Failure 1 pts |
| Services delivered are perceived as exceptional in nature on a regular and recurring basis; are rated as exemplary in terms of timeliness, efficiency, and only include very minor (if any) deficiencies with no adverse effect on overall performance. | Services delivered are perceived as very effective. Contract requirements are accomplished in a timely manner, are efficient, and economical for the most part. Only minor deficiencies exist from time to time and are not regular and recurring. | Services delivered are perceived as effective in terms of performance, and, are viewed as fully responsive to Contract requirements. Reportable deficiencies exist but with little identifiable effect on overall performance. | Services delivered are perceived as just meeting or in some cases slightly exceeding minimum acceptable standards. Reportable deficiencies are legitimate and identifiable but are not substantial and do have moderate impacts on overall performance. | Services delivered are perceived as not meeting minimum acceptable standards and expectations in one or more areas. Remedial action is required in one or more areas as well. Deficiencies in one or more areas exist and adversely affect overall performance. |

EXHIBIT C

Additional Services Hourly Rates

| | Straight Time | Overtime |
|-------------------------------------|----------------------|-----------------|
| Foreman | \$ 33.65 | \$ 50.48 |
| Painter | \$ 20.84 | \$ 31.26 |
| Electrician | \$ 27.64 | \$ 41.46 |
| HVAC | \$ 27.24 | \$ 40.86 |
| Carpenter | \$ 24.04 | \$ 36.06 |
| General Maintenance I | \$ 20.84 | \$ 31.26 |
| General Maintenance II | \$ 25.65 | \$ 38.48 |
| Locksmith | \$ 24.04 | \$ 36.06 |
| Roofer | \$ 22.44 | \$ 33.66 |
| Licensed Trades | \$ 37.51 | \$ 56.27 |
| Plumber | \$ 24.04 | \$ 36.06 |
| Custodian | \$ 17.50 | \$ 26.25 |
| Road Repair General Labor* | \$ 25.93 | \$ 38.90 |
| Road Repair Supervisor* | \$ 31.12 | \$ 46.68 |
| Irrigation | \$ 28.35 | \$ 42.53 |
| Warehouse Markup | \$ 19.23 | \$ 28.85 |
| Landscape Supervisor * | \$ 27.07 | \$ 40.61 |
| Landscape * | \$ 22.76 | \$ 34.14 |
| Commercial Pesticide Applicators ** | \$ 28.35 | \$ 42.53 |
| Graphics | price per job | price per job |

*** Plus equipment, if needed**

Hand-held power equipment: \$3.61 per hour

Self-propelled turf/ lawn type equipment: \$6.82 per hour

Construction type equipment: \$18.76 per hour

**This will include product for routine type applications

If a request is made to treat an entire building, billing will be labor cost plus material (with a 12% markup on material)

EXHIBIT D

Premises Addition/Deletion Rates

| Premises Type | Adjustment per square foot |
|----------------------|-----------------------------------|
| Academic | \$0.95 |
| Research | \$1.18 |
| Athletic | \$0.97 |
| Warehouse | \$0.45 |
| Administrative | \$0.95 |
| Residence life | \$0.95 |