



FORT HAYS STATE UNIVERSITY

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Addendum

Date: June 16, 2023

Number: 1

Fort Hays State University Purchasing Office

Telephone: 785-628-4251

Fax: 785-628-4046

E-Mail Address: purchasing@fhsu.edu

Web Address: <http://www.fhsu.edu/purchasing/>

Item: Food Services

Agency: Fort Hays State University

Location(s): Hays, KS

Term of Contract: 7/1/2023 - 6/30/2024

Contractor: The Union Catering Company
2401 Ash Street
Hays, KS 67601
Contact Person: Wesley Rathbun
Phone: 785-623-6836
Email: wesrathbun@gmail.com

Conditions:

Contractor name is replaced from Kuhn-Rathbun Enterprises LLC to The Union Catering Company.



FORT HAYS STATE UNIVERSITY

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CONTRACT AWARD

Date of Award: May 19, 2023

Contract Number: 23028

Fort Hays State University Purchasing Office

Telephone: 785-628-4251

E-Mail Address: purchasing@fhsu.edu

Web Address: <http://www.fhsu.edu/purchasing/>

Item: Food Services

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Contractors: Kuhn-Rathbun Enterprises LLC
2401 Ash Street
Hays, KS 67601
Contact Person: Wesley Rathbun
Phone: 785-623-6836
Email: wesrathbun@gmail.com

Guarantee: \$500,000.00 Performance Bond upon execution of Contract

Scope: This Contract shall cover the procurement and provision of food services for board plan students, cash sales, catering, and other sales or services outlined herein to Fort Hays State University during the contract period.

Prices: See Pricing Section below

Payment Terms: Net 30

Political Subdivisions: Pricing **is not** available to the political subdivisions of the State of Kansas.

The above referenced contract award was recently posted to the Fort Hays State University Internet website. The document can be downloaded by going to the following website: <http://www.fhsu.edu/purchasing/>

CONDITIONS

1. **Term of Contract:** This is an emergency procurement of a one-year contract for food services due to FHSU's current food service provider terminating its contract with FHSU, effective 7/1/2023. The parties acknowledge that FHSU is anticipating a formal Request for Proposal (RFP) process to be implemented over the coming year. The term of this Contract is therefore 7/1/2023 through 6/30/2024. The term of this Contract is subject to earlier termination as set forth herein, and subject to any mutual agreement of the parties to renew this one-year contract for one additional year should circumstances warrant.
2. **Conditions of Contract:** The following terms and conditions of award are incorporated by reference and include: DA-45/146a; terms, specifications and conditions of this Contract Award and documents included herein.
3. **Order of Preference:** Any conflict to the provisions of this contract and the documents incorporated by reference shall be determined by the following priority order:
 - a. Contract Provisions Attachment DA-45/146a;
 - b. Written modifications and addenda to the executed contract;
 - c. Written contract signed by the parties and attachments;
 - d. The terms, conditions, and specifications of this Contract Award and documents included herein; and,
 - e. Any supporting manuals/documents that have been incorporated in this Request.
4. **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN WRITING** and addressed as follows:

Fort Hays State University
Purchasing Office
601 Park Street Sheridan Hall Rm 318
Hays, KS 67601
RE: Contract number see page 1

or to any other persons or addresses as may be designated by notice from one party to the other.

5. **Termination for Cause:** The FHSU Purchasing Director may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
 - the Contractor fails to make delivery of goods or services as specified in this contract; or
 - the Contractor provides substandard quality and/or workmanship;
 - the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The FHSU Purchasing Director shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as FHSU may authorize in writing), the FHSU Purchasing Director shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

If it is determined, after notice of termination for cause, that Contractor's failure was due to causes beyond the control of or negligence of the Contractor, the termination shall be a termination for convenience.

6. **Termination for Convenience:** The FHSU Purchasing Director may terminate performance of work under this contract in whole or in part whenever, for any reason, the FHSU Purchasing Director shall determine that the termination is in the best interest of FHSU. In the event that the FHSU Purchasing Director elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

7. **Debarment of University Contractors:** Any vendor who defaults on delivery or does not perform in a satisfactory manner as defined in this contract may be barred for a period up to three (3) years, pursuant to KSA 75-37,103, or have their work evaluated for pre-qualification purposes.

8. **Rights and Remedies:** If this contract is terminated, FHSU, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to FHSU in the manner and to the extent directed, any completed materials. FHSU shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by FHSU subject to any offset by FHSU for actual damages including loss of state or federal matching funds.

The rights and remedies of FHSU provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

9. **Force Majeure:** The respective parties shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the party. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.

10. **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by FHSU shall not constitute a waiver.

11. **Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

12. **Staff Qualifications:** The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the proposal specifications may result in termination of this contract and/or damages.

13. **Subcontractors:** The Contractor shall be the sole source of contact for the contract. FHSU will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

14. **Proof of Insurance:** The vendor shall present Certificates of Insurance to the FHSU Purchasing Office evidencing the following coverage during the performance of the Services:

- (a) Worker's Compensation with statutory limits;
- (b) Employers Liability, with a minimum \$1,000,000 limit of liability per occurrence;
- (c) Commercial General Liability, including Contractual Liability, Liquor, and Products-Completed Operations coverage, with the following minimum limits of liability: \$1,000,000 per occurrence for Bodily Injury and Property Damage, and \$3,000,000 General Aggregate; such coverage to include FHSU as an additional insured upon request;
- (d) Business Automobile Coverage with statutory limits; and,
- (e) Adequate insurance for Contractor's real and/or personal property.

15. **Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of FHSU and who are providing services involving this contract or services similar in nature to the scope of this contract to the University. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any FHSU employee who has participated in the making of this contract until at least two years after his/her termination of employment with FHSU.
16. **Confidentiality:** The Contractor may have access to private or confidential data maintained by FHSU to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by FHSU promptly at the request of FHSU in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by FHSU, will destroy or render it unreadable.
17. **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this contract.
18. **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract.
19. **Hold Harmless:** The Contractor shall indemnify FHSU against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

FHSU shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the FHSU's right to recover against third parties for any loss, destruction or damage to State property.
20. **Care of State Property:** The Contractor shall be responsible for the proper care and custody of any state-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor will reimburse FHSU for such property's loss or damage caused by Contractor, normal wear and tear excepted.
21. **Prohibition of Gratuities:** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any FHSU employee at any time.
22. **Retention of Records:** Unless FHSU specifies in writing a different period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of FHSU; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post-contract period. Delivery of and access to the records shall be at no cost to FHSU.

23. **Antitrust:** If the Contractor elects not to proceed, the Contractor assigns to FHSU all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and FHSU relating to the particular products or services purchased or acquired by FHSU pursuant to this contract.
24. **Modification:** This contract shall be modified only by the written agreement of the parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.
25. **Assignment:** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the University.

This contract may terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the University.
26. **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
27. **Captions:** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
28. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
29. **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Hays, Ellis County, Kansas, unless otherwise specified and agreed upon by FHSU.
30. **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Ellis County, unless otherwise specified and agreed upon by FHSU. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the State is a party.
31. **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA-146a) which is attached are incorporated by reference and made a part of this contract.
32. **Integration:** This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties shall be independent of and have no effect on any other contracts of either party.
33. **Criminal Or Civil Offense:** Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.
34. **Injunctions:** Should FHSU be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the University, vendor shall not be entitled to make or assert claim for damage by reason of said delay.
35. **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included

herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

36. **Materials and Workmanship:** The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this solicitation, within the time specified, in accordance with the provisions as specified.

The contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of Fort Hays State University said issue is due to imperfection in material, design, workmanship or contractor fault.

37. **Industry Standards:** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

38. **Federal, State and Local Taxes:** Unless otherwise specified, the contract price shall include all applicable federal, state and local taxes. The successful vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this contract. **FHSU is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the vendor's price quotation.**

The University makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

39. **Accounts Receivable Set-Off Program:** If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the vendor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq., Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

40. **Immigration and Reform Control Act of 1986 (IRCA):** All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The required method of verification is through the Employment Verification (I-9) Form.

With this contract, the contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at FHSU's option, may subject the contract to termination and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce to FHSU any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like under the contract.

41. **Worker Misclassification:** The contractor and all lower tiered subcontractors under the contract shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

42. **HIPPA Confidentiality:** Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), FHSU is or may be a covered entity under the act and therefore Contractor is not permitted to use or

disclose health information in ways that FHSU could not. This protection continues as long as the data is in the hands of the Contractor.

The Contractor shall establish and maintain procedures and controls acceptable to FHSU to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement.

43. **Graphic Identity Standards and Use of University Marks:** Compliance with FHSU Graphic Identity Standards and Use of University Marks Policies is required and may not be waived with equivalents.
44. **Indefinite Quantity Contract:** This Request is for an open-ended contract between a Contractor and FHSU to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.
45. **Off-Shore Sourcing:** Bidders shall disclose in their bid response the location where the contracted services will be performed and whether or not any of the work necessary to provide the contracted services will be performed at a site outside the United States.

If, during the term of the contract, the Contractor or subcontractor moves work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the FHSU Purchasing Office in writing, indicating the new location and the percentage of work relocated.

46. **On-Site Inspection:** Failure to adequately inspect the premises shall not relieve the successful vendor from furnishing without additional cost to FHSU any materials, equipment, supplies or labor that may be required to carry out the intent of this RFP. Submission of a bid shall be construed as evidence that the vendor has made necessary examination, inspection and investigation. Failure to properly inspect the site may result in rejection of the vendor's bid.
47. **Price Adjustments:** Prices shall remain firm for the entire contract period. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to FHSU. Failure to provide available price reductions may result in termination of the contract for cause.

On the yearly anniversary date of this contract, should the parties mutually agree to renew the contract, costs may remain at the existing contract price or a request for adjustment may be made, either upward or downward, keyed to industry changes. Contractor shall furnish documentation at least 60 days prior to expiration date to substantiate any claim for increase. Price increases shall not exceed three percent (3%) of the existing contract. FHSU reserves the right to accept, amend or deny any such price increase. If parties to the contract cannot agree on renewal terms, it is hereby understood that the contract will be rebid.

48. **Method of Payment:** The vendor is required to provide an invoice with a description of the services provided to Fort Hays State University. Payment will be made with one (1) copy of the Contractor's invoice and one copy (1) of the statement to Fort Hays State University Business Office for approval and payment. All correspondence and invoices must show the contract number.
49. **Payment:** Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires Fort Hays State University to pay the full amount due for goods or services on or before the 30th calendar day after the date Fort Hays State University receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the vendor and Fort Hays State University. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in the vendor's response.

50. **Shipping and F.O.B. Point:** Unless otherwise specified, prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price), which means delivered to FHSU's receiving dock or other designated point as specified in this contract without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.
51. **Deliveries:** All orders shall be shipped FOB destination, prepaid and allowed clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall immediately notify the Fort Hays State University of the revised delivery date or partial delivery date. The order may be cancelled if delivery time is unsatisfactory. The Contractor shall inform the FHSU Purchasing Office of any supply or delivery problems. Continued delivery problems may result in termination of the contract.
- In the event delivery minimums apply, the contractor shall provide information to FHSU.
52. **Charge Back Clause:** If the contractor fails to deliver the product within the delivery time quoted on the contract, FHSU reserves the right to purchase the product from the open market and charge back the difference between contract price and open market price to the contractor.
53. **Performance Bond:** The Contractor shall file with the FHSU Director of Purchases a Performance Bond in an amount equal to \$500,000.00 as security for the faithful performance of this contract and as security for the payment of all persons performing labor and furnishing materials in connection with this contract.
- The guaranty shall be returned to the Contractor upon the completion of this contract subject to total or partial forfeiture for failure to perform adequately the terms of this contract. If damages exceed the amount of the guaranty, Fort Hays State University may seek additional damages.
- Bond form will be furnished by the FHSU Purchasing Office and can be completed by any General Insurance Agent. Bond shall be issued by a Surety Company licensed to do business in the State of Kansas.
54. **Equipment:** All proposed equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the bid.
55. **Warranty and Implied Requirements:** Contractors shall indicate the type and extent of the warranty for all equipment, hardware, software, and services proposed. FHSU requires a "standard" warranty of a specific amount of days, or one (1) year, whichever is greater. This warranty shall be included in the cost of the equipment.
- The Contractor will be the sole point of contact on any problems with the equipment or systems during the warranty period.
- The Contractor shall be responsible for all work performed under these specifications. The Contractor shall make good, repair and replace, at the Contractor's own expense, as may be necessary, any defective work, material acceptance, if in the opinion of the FHSU Purchasing Office said defect is due to imperfection in material, design, or workmanship for the warranty period specified.
- All products and services not specifically mentioned, but which are necessary to provide the functional capabilities described by the specifications, shall be included. Other products required to make the described software functional shall be identified in the vendor's response.
56. **Acceptance:** No contract provision or use of items by FHSU shall constitute acceptance or relieve the vendor of liability in respect to any expressed or implied warranties.
57. **Ownership:** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by FHSU. The Contractor may not release any materials without the written approval of FHSU.
58. **Data:** Any and all data required to be provided at any time during the bid process or contract term shall be made available in a format as requested and/or approved by FHSU.

59. **Submission of the Contract:** Submission of the contract will be considered presumptive evidence that the vendor is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances for all contingencies. Later claims for labor, work, materials, equipment, and tax liability required for any difficulties encountered which could have foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to FHSU.
60. **Certification of Materials Submitted:** The specifications set forth herein and all data submitted by the vendor to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the successful vendor and FHSU. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.
61. **Inspection:** FHSU reserves the right to reject, on arrival at destination, any items which do not conform with specification of this contract.
62. **New Materials, Supplies or Equipment:** Unless otherwise specified, all materials, supplies or equipment offered by a vendor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.
63. **Vendor Contracts:** State of Kansas Fort Hays State University DA-146a form remains a mandatory requirement in all contracts.
64. **Transition Assistance:** In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to FHSU to allow for a functional transition to another vendor.
65. **Definitions:** Definitions pertaining to this contract are as follows:

"State" The State of Kansas, acting by and through the Department of Administration and its authorized and designated representative(s).

"University" Fort Hays State University (a state, tax-assisted liberal and applied arts university established and maintained in Hays, Kansas, by the state of Kansas), acting by and through its authorized and designated representative(s).

"Contractor" That firm, corporation, or person with whom the University contracts to carry out the dining service operations of the University as prescribed in these specifications, any ensuing contract and any addenda thereto.

"Services, Food Service, or Food Service Program" - The providing and management of dining and food service operations by the Contractor for the University, including but not necessarily limited to procurement and provision of food services for board plan students, cash and/or retail sales, catering, and other or related sales or services outlined herein. Without limiting the foregoing, Services include the provision of all staffing, labor, inventory, supplies, equipment (not owned by University), products, overhead, services, and expenses necessary to carry out the Services, and also include all management, staffing, labor, inventory, supplies, equipment (not owned by University), products, overhead, services, and expenses necessary to carry out any subcontract, sublicense, coordination, and/or other or related services or work concerning any franchise or license held by the University for purposes of the Food Service Program, including but not limited to Starbucks and Pizza Hut.

"Dining Area" The area in a dining service facility where tables and chairs are placed for the use of patrons of the service.

"Facilities" - The physical space used for preparation and service of dining operations including but not limited to kitchen, dining areas, and storage areas.

"Kitchen" That area of a dining service facility containing the equipment for the preparation, storage, and preservation of food stuffs and the cleansing of utensils and dishes.

"Serving Counters" Those installations and fixtures in a dining service facility consisting of serving lines, salad bars, beverage bars, desert bars and other fixtures and facilities required to display and to dispense food.

"Monotony Breakers" An eating event, for the time span of one meal or longer, designated to substantially alter the general routine of a residence hall dining service in such a manner as to delight and please the regular patrons. A "festive meal" is often focused around a central theme, (e.g., Christmas, St. Patrick's Day, elections, "Finals Midnight Breakfast") and as many facets of the dining service as possible are altered as part of the event (e.g., menu, decorations, garb of employees, lighting, music, entertainment).

"Chef" A management position requiring formal culinary training, including experience and/or training in menu development, preparation and display.

"University Food Service Contract Oversight Committee" A committee designated by the University to be its representative(s) with the Contractor in administering certain facets of the Contract.

"Surety" Any firm, person, or corporation that has executed (as surety) the Contractor's performance, statutory, or bid bonds in connection with this bid and contract.

"Subject to the Approval of the FHSU Director of Purchasing" This phrase means that the FHSU Director of Purchasing as a representative of the University and by extension the State of Kansas has the final authority to make decisions on questions that arise resultant from this bid and contract.

"Three General Divisions of the University Year" These divisions are from the beginning of the Fall term to the beginning of the Spring term, from the beginning of the Spring term to the beginning of the Summer term, and from the beginning of the Summer term to the beginning of the Fall term.

"Gross Sales" All cash sales, including programs that are a part of a board plan i.e. sales within the Memorial Union, cash sales within the McMindes Hall operation, sales resulting from service of food to campers, summer residents not on a board plan, catering operations, and any other sale where cash is the source of payment. Gross Sales shall be calculated at each location and defined by group.

"Net Sales" The gross sales as defined in the above paragraph less sales tax.

"Dining Dollars" - Funds included with a meal plan that may be used for purchases in retail areas on-campus operated by the Contractor.

"Flexi-Cash" A declining balance of funds that may be purchased and reloaded by students, faculty, or staff to their campus ID card for retail purchases in on-campus dining areas operated by the Contractor.

SPECIFICATIONS

TERM: 7/1/2023 - 6/30/2024

UNIVERSITY (CLIENT) RESPONSIBILITIES

- a. Client shall, without cost to Kuhn-Rathbun Enterprises LLC, provide Kuhn-Rathbun Enterprises LLC with the necessary space for the operation of the Services and shall furnish, without cost to Kuhn-Rathbun Enterprises LLC, all utilities and Facilities reasonable and necessary for the efficient performance of this Agreement by Kuhn-Rathbun Enterprises LLC including, but not limited to, heat, hot and cold water, steam, gas, lights and electric, garbage removal services, exterminator services, sewage disposal services, duct and vent cleaning, and office space, and internet service.
- b. Client shall, at its cost and expense, provide the Facilities, equipment owned by Client, and floor space necessary for the efficient provision of Kuhn-Rathbun Enterprises LLC Services hereunder. The Client shall maintain, repair and replace said equipment and Facilities at its own expense. The Client shall keep such equipment and Facilities maintained in a safe operating condition such that no Kuhn-Rathbun Enterprises LLC employee is exposed to or subjected to any unsafe situation which would violate the Occupational Safety and Health Act including, but not limited to, the general duty and the specific duty clauses thereof or any other similar federal, state or local law or regulation. However, if equipment provided by Client becomes inoperative, hazardous or inefficient to operate, Kuhn-Rathbun Enterprises LLC shall have the right to undertake repairs or replacements at the expense of the Client if the Client fails to do so after having been given a reasonable amount of time to correct the equipment deficiency. Client shall permit Kuhn-Rathbun Enterprises LLC to have the use of all such equipment and Facilities in the performance of its obligations hereunder, subject to the duty to exercise reasonable care in the use thereof. Kuhn-Rathbun Enterprises LLC agrees that all equipment and items of equipment now or hereafter furnished by the Client to Kuhn-Rathbun Enterprises LLC are the sole property of the Client and Kuhn-Rathbun Enterprises LLC agrees not to change, deface, or remove any symbol or mark of identity upon said equipment or items of equipment furnished by the Client. Kuhn-Rathbun Enterprises LLC will notify the Client promptly of any equipment that, to Kuhn-Rathbun Enterprises LLC knowledge, is not in a safe operating condition.
- c. The Client shall be responsible for all necessary cleaning of walls, windows and electric light fixtures and all necessary scrubbing, mopping and polishing of floors in the dining room areas, as well as any areas adjacent to stands or carts used for Kuhn-Rathbun Enterprises LLC Services, at no cost to Kuhn-Rathbun Enterprises LLC.
- d. Client shall provide Kuhn-Rathbun Enterprises LLC with access to board plan enrollment data to enable Kuhn-Rathbun Enterprises LLC reconcile student meal plan enrollment. Client shall notify Kuhn-Rathbun Enterprises LLC in writing or via electronic interface of changes to meal plans.
- e. Officials of Client shall have full right of access to all portions of the food service and dining facilities at reasonable times not to interfere with the food service operation.
- f. Subject to the terms of this contract and any related franchise or license agreements entered into by Client, Client grants to Kuhn-Rathbun Enterprises LLC, as an independent contractor, the exclusive right to provide and manage the Client's food service program in all residential life facilities and the Memorial Union (the "Premises"). Kuhn-Rathbun Enterprises LLC shall render the Services within the facilities of the Premises, including but not limited to, the food preparation, serving, dining and storage areas ("Facilities") designated for the Food Service Program. Kuhn-Rathbun Enterprises LLC has first right of refusal for catering services offered within the Premises and in the Fischli-Wills Center for Student Success.
- g. Hours of operation will be reviewed over the Winter Break period, and any changes to hours will be mutually agreed upon by both parties.

KUHN – RATHBUN ENTERPRISES LLC RESPONSIBILITIES

- a. Kuhn-Rathbun Enterprises LLC shall be responsible for providing all Services in accordance with the terms, conditions, specifications, and pricing of this Contract, and shall operate, manage, and maintain its Services with appropriate merchandise, products, and services of good quality at reasonable prices.
- b. Kuhn-Rathbun Enterprises LLC shall comply with all federal, state, and local laws and regulations governing the preparation, handling and serving of foods. Kuhn-Rathbun Enterprises LLC shall procure and keep in effect all licenses and permits required by law and shall post such permits as required by law. Kuhn-Rathbun Enterprises LLC shall comply with applicable federal, state, and local laws and regulations pertaining to wages and hours of employment.
- c. Kuhn-Rathbun Enterprises LLC shall hire all employees necessary for the performance of this Agreement. Upon being hired, such employees shall be subject to such health examination as proper federal, state, and local authority may require in collection with their employment. All persons employed by Kuhn-Rathbun Enterprises LLC will be employees of Kuhn-Rathbun Enterprises LLC. In performing work required by this Agreement, Kuhn-Rathbun Enterprises LLC shall not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, sexual orientation, or age, in violation of federal, state or local law.
- d. Kuhn-Rathbun Enterprises LLC shall perform all necessary mopping of the floors in the storage and food service, preparation, and gated areas. Kuhn-Rathbun Enterprises LLC shall maintain conditions of sanitation and cleanliness. Kuhn-Rathbun Enterprises LLC shall wipe down all tables and take out trash in dining service areas during and after all meal periods. The Facilities, Services and food prepared by Kuhn-Rathbun Enterprises LLC will at all times be subject to inspection by an authorized, capable person or persons designated by the Client.
- e. All records pertaining to work performed in accordance with this Agreement shall be kept on file by Kuhn-Rathbun Enterprises LLC for a period of five (5) years from the date the record is made. Kuhn-Rathbun Enterprises LLC shall, upon reasonable notice, give the Client or its authorized representative the opportunity at a reasonable time during normal business hours to inspect, examine, audit, and copy Kuhn-Rathbun Enterprises LLC business records which are directly relevant to this agreement. The cost of such inspection, examination and audit will be at the sole expense of the Client and such inspection, examination and audit shall be conducted at the Kuhn-Rathbun Enterprises LLC locations where said records are normally maintained.
- f. Kuhn-Rathbun Enterprises LLC agrees that its employees and agents shall comply with and observe all applicable rules, policies, and regulations concerning conduct on the Premises, or otherwise in performing Services hereunder, that Client imposes upon Client's employees and agents.
- g. Kuhn-Rathbun Enterprises LLC will conduct a complete review of all equipment and smallware's on Client's campus to ascertain working condition and advise Client of items that require replacement or repair, it being understood that Client shall be responsible for all necessary replacements of equipment, and Kuhn-Rathbun Enterprises LLC shall be responsible for replacements of smallware's, and maintain inventory no shortages develop to inconvenience patrons.
- h. Any modification to existing electrical services, computing network services, or telecommunication services at the Memorial Union or residential facilities required by Kuhn-Rathbun Enterprises LLC will be at Kuhn-Rathbun Enterprises LLC expense, unless otherwise mutually agreed upon with Client and must be approved by Client.
- i. Acquisition of all food, operating supplies, and laundry costs.
- j. Provide financial information and reports on a regular basis and as required by the Client.
- k. Provide the University Food Service Contract Oversight Committee a complete and detailed monthly revenue and expense statement, broken down by concept and location. This statement will include operations related to board, retail, and catering.

- l. Attend bi-weekly meetings with the Director of the Memorial Union, the Director of Residential Life, and the Assistant Vice President of Auxiliary Services.
- m. Attend monthly meetings with the University Food Service Contract Oversight Committee.
- n. Employees must wear a name tag or ID badge at all times while on duty.
- o. Provide an initial inventory list not later than 7/31/2023 and a final inventory list upon completion of contract.
- p. Any renovations must be approved by the Client, and costs associated with renovations are the responsibility of Kuhn – Rathbun Enterprises LLC unless otherwise agreed upon by the Client.
- q. Kuhn - Rathbun Enterprises LLC will submit a proposal upon request to Tiger Tots for food service.
- r. Kuhn – Rathbun Enterprises LLC shall operate all dining and food services operations in accordance with the schedule and terms below, and all other provisions of this contract.

1. Residential Life:

- In accordance with the current academic calendar, Residential Life will have dining options available throughout the academic semester.
 - Meal Services will begin with Dinner on the Wednesday prior to the start of classes for the fall semester.
 - Meal service will end after lunch on Friday, for Fall Break and will be open for Dinner on the Sunday prior to classes.
 - Meal service will end after Breakfast on Friday, for Winter Break with services starting again for Dinner on the Sunday before classes resume.
 - Meal service will end after Lunch on Friday prior to the start of Spring Break and will be open for Dinner on the Sunday following Spring Break.
 - Meal service will end after Breakfast of closing for the academic year.
- McMIndes Hall Café Hours
 - Monday – Thursday: 7:00 am – 7:30pm
 - Friday: 7:00 am – 6:30pm
 - Saturday - Sunday: 11:00 am – 6:30 pm
- Victor E. Village Dining Option
 - Sunday – Saturday: 7:30pm – 11:00pm
- Kuhn-Rathbun Enterprises LLC will work with Client to appropriately accommodate students on meal plans whose official co-curricular activities prevent access to the McMIndes dining facility during service hours.
- Kuhn – Rathbun Enterprises LLC will offer students with a take-out dining option from the McMIndes café.
- Kuhn – Rathbun Enterprises LLC will provide special dining events.
 - Move-in day dinner picnic on the Custer Hall Lawn (meal plan required).
 - Provide 2 monotony breakers per month during the academic year.
- Furnishings. All furnishings provided in the Residential Life dining areas or food areas shall be reviewed with Residential Life staff prior to purchase.
- All renovation plans must be reviewed and approved by Client, with possible need for submission to the State of Kansas for review and approval.

2. Retail:

- Academic Year Hours of Operation
 - Food Court
 - Monday – Friday: 7:30 am – 9:30 am (Breakfast option)
 - Monday – Friday: 11:00 am – 2:00 pm
 - Lower level food concept
 - Monday - Friday: 11:00 am – 8:00 pm
 - Saturday: 11:00am – 6:00pm
 - Starbucks and Convenience Store (matches building hours)
 - Monday-Thursday: 7:00 am – 10:00 pm
 - Friday: 7:00 am – 8:00 pm
 - Saturday: 8:00 am – 6:00 pm
 - Sunday: 1:00 pm – 10:00 pm
- Break and Summer Hours of Operation
 - Food Court
 - Closed
 - Lower level food concept
 - Monday - Friday: 11:00 am – 2:00 pm (fall, winter, and spring break)
 - Monday – Thursday: 11:00 am – 2:00 pm (summer)
 - Starbucks and Convenience Store (matches building hours)
 - Monday-Friday: 7:00 am – 5:00 pm (fall, winter, and spring break)
 - Monday – Thursday: 7:00 am – 5:00 pm (summer)
 - Friday: 7:00 am – 11:30 am (summer)
- Additional hours may be requested in advance for special events like orientations, specific camps, and recruitment events.

3. Catering:

- a. Both Kuhn-Rathbun Enterprises LLC and the University agree that catering is of great importance to the mission of the University. The Contractor agrees to work with the University to provide a high-quality catering program.
- b. Kuhn-Rathbun Enterprises LLC shall provide catering services to Client on and off Premises as requested. Financial arrangements shall be negotiated by the Parties on an event-by-event basis, at prices that do not exceed rates competitive to those offered to off campus locations. Kuhn-Rathbun Enterprises LLC shall invoice Client for the catering services and Client shall pay said invoice within thirty (30) days of receipt.
- c. Kuhn-Rathbun Enterprises LLC will accept and service all FHSU-related events before contracting non-FHSU related events.
- d. Kuhn-Rathbun Enterprises LLC shall provide, during regular business hours, a knowledgeable, trained, staff member to be readily available to assist customers with menu selections, price quotations, and other details pertinent to event planning. This service should be available by phone, in person, or electronically.
- e. Kuhn-Rathbun Enterprises LLC will, at its own expense, have available an extensive list of menus, complete with current prices, which can be utilized by customers. All menu and price changes will be reviewed by the University Food Service Oversight Committee.
- f. Kuhn-Rathbun Enterprises LLC agrees to obtain and maintain all licenses and permits related to the serving of alcoholic and cereal malt beverages, ensure the responsible service of alcohol, and indemnify, defend, and hold harmless the Client for any related claims or losses concerning its service of alcohol. Catering licenses are needed with Alcohol Beverage Control and the city of Hays. Further, the Contractor agrees to limit serving to those functions requested and approved by the University and to conform to the University and Board of Regents policies and procedures relating to the service of alcohol.

- g. Unless otherwise approved by the Memorial Union Director or designee, all dishes, trash, and dirty linen needs to be removed by Kuhn-Rathbun Enterprises LLC immediately following any catering event.
- h. Catering billing will be itemized to include food, supplies, decorations, linens, and any other fees. No charge will be made for regularly scheduled labor associated with the University kitchen facilities.
- i. Kuhn-Rathbun Enterprises LLC agrees to, at the termination or expiration of the contract, return to the University any of Kuhn-Rathbun Enterprises LLC records related to pricing, menus and staffing of annually catered events.
- j. No extra charge is to be made for on-campus delivery of meals or refreshment products. Equipment used for catering out of the Memorial Union should be returned to the Union directly following the event.
- k. Kuhn-Rathbun Enterprises LLC needs to provide a vehicle for campus use that portrays a professional image of the campus dining service provider. When necessary, the company should rent or lease an appropriate vehicle at the Contractor's expense. Some Memorial Union equipment, such as tables, chairs, and other dining service equipment, can be made available to the Contractor for off campus use.
- l. The Client reserves the right to require Kuhn-Rathbun Enterprises LLC to pay appropriate rental fees to the university when using equipment and facilities provided by the university to deliver catering services off campus to other than university clients. In such case, rental fees will be determined based on applicable industry standards to be defined during contract negotiations.
- m. Any equipment owned by Client that is damaged from use beyond reasonable expectations will be repaired at the expense of Kuhn – Rathbun Enterprises LLC.
- n. Rooms for all functions involving dining service in the Memorial Union must first be scheduled through the Memorial Union office.
- o. Kuhn-Rathbun Enterprises LLC agrees to, at its own expense, provide additional management, chefs, or other administrative personnel to successfully carry out such events as the President's Gala, and any other function which requires extra and specialized personnel.
- p. The Client will be responsible for set up and will prepare the rooms for the Contractor by arranging the tables, chairs, and other equipment in advance so the Contractor has sufficient time to complete banquet preparations prior to the designated serving hours.

OTHER PROVISIONS

- a. Beverage Services. Kuhn-Rathbun Enterprises LLC understands that The Pepsi Bottling Group has contracted to be the exclusive provider of beverages, including but not limited to juices and bottled water, for Client. Kuhn-Rathbun Enterprises LLC agrees to honor this contract: <https://www.fhsu.edu/purchasing/contracts/18019-exclusive-beverage-contract-pepsi.pdf>, FHSU Beverage Contract and shall comply with the requirements of The Pepsi Bottling Group contract in connection with the dispensing, sale, advertising and promotion of Pepsi Bottling Group at FHSU. In addition, the parties agree that the retail selling prices for all Pepsi products shall be mutually agreed upon by the parties.
- b. Board Rate. The University is not anticipating renegotiating the board rate during this contract period.
- c. Inventory Specifications. Kuhn-Rathbun Enterprises LLC is responsible to purchase inventory items as replacement equipment, china, silver and glassware at its own expense; Client shall provide the specifications for these items, provided that such specifications are identical to, or substantially the same as the items currently in inventory.
- d. Utilities. In the event of planned or unplanned interruption of service at the Memorial Union or residential facilities, Client shall take reasonable steps to restore service promptly, but shall not be responsible for any

loss or delay sustained by Kuhn-Rathbun Enterprises LLC unless such interruption of service is due to Client's negligence. In the event that any utility service must be interrupted for planned repair or modification, Client shall provide Kuhn-Rathbun Enterprises LLC with as much advance notice as possible. Any modification to existing electrical services, computing network services, or telecommunication services at the Memorial Union or residential facilities required by Kuhn-Rathbun Enterprises LLC will be at Kuhn-Rathbun Enterprises LLC expense, unless otherwise mutually agreed upon with Client and must be approved by Client.

- e. Client Access to Facilities. Officials of Client shall have full right of access to all portions of the food service and dining facilities at reasonable times not to interfere with the food service operation.
- f. Tobacco and Concealed Carry Policy. Kuhn-Rathbun Enterprises LLC will comply with the Client's tobacco and concealed carry policies.
- g. Technology. Kuhn-Rathbun Enterprises LLC will provide, at its cost and expense, all point of sale and catering systems and other technology related to the Services, including but not limited to for use of Flexi Cash (declining balance) and Dining Dollars (part of board plan) at all events at facilities other than and including the Residence Halls and the Memorial Union. Kuhn-Rathbun Enterprises LLC shall be responsible for all non-Client systems, and shall take all necessary security, privacy, legal, regulatory, and compliance measures as are required or are otherwise reasonable under the circumstances relating to such systems or related data or information. Kuhn – Rathbun Enterprises LLC upon request will provide detailed reporting on meal plan usage, dining dollar and flexi cash balances, and any other data or information related to the services being provided to Client.
- h. Sales Tax. Sales Tax on catering is charged by Kuhn-Rathbun Enterprises LLC to off campus groups who do not have a tax-exempt ID number. Tax exempt groups and FHSU groups are not charged sales tax.
- i. Personnel Approval. Upon Request Kuhn-Rathbun Enterprises LLC will confer with Client on staffing. If issues arise with Kuhn-Rathbun Enterprises LLC employees Client retains the right to require Kuhn-Rathbun Enterprises to assign a substitute employee to serve in an on-campus employment capacity.
- j. In-Kind Contributions.
 - 1. Kuhn-Rathbun Enterprises LLC will provide an annual contribution of \$50,000 in catering services to the Office of the President.
 - 2. Kuhn-Rathbun Enterprises LLC will provide Open Access meal plans for up to 45 Community Assistants, four (4) Community Directors, the Director, and two (2) Assistant Directors of Residential Life.
 - 3. Kuhn-Rathbun Enterprises LLC will provide \$1,500 in flexi cash to each of the following individuals, the Vice President of Student Affairs, and three (3) Associate/Assistant Vice President of Student Affairs.
 - 4. Kuhn-Rathbun Enterprises LLC agrees to provide food and services for the event Feeding Frenzies twice a year at no additional cost.
- k. Performance Benchmarks. In addition to the other performance obligations set forth in this contract, Kuhn-Rathbun Enterprises LLC shall be responsible for the following Performance Benchmarks. The Performance Benchmarks shall be reviewed annually at the end of the spring semester. Each missed benchmark shall have a liquidated damages total of \$500 per item.
 - 1. Kuhn – Rathbun Enterprises LLC shall pass all food safety inspections performed by the Kansas Department of Agriculture.
 - 2. All Tables in the dining areas shall be cleaned and trash taken out during and after all meal periods.
 - 3. Develop a customer feedback form to given to students, catering clients, and retail clients, and share results with the University Food Service Oversight Committee.
 - 4. Operate all food service options during open times listed within contract.

PRICING

A. Meal Plans, Casual Meal Rates, and Conference Rates

1. Client shall pay KUHN – RATHBUN ENTERPRISES LLC the following daily reimbursement rate for each meal plan participant.

Board Scale Fort Hays		
Range		2023-2024
1380	Above	\$11.58
1365	1379	\$11.64
1350	1364	\$11.71
1335	1349	\$11.77
1320	1334	\$11.87
1308	1319	\$11.94
1290	1307	\$12.01
1275	1289	\$12.08
1260	1274	\$12.15
1245	1259	\$12.23
1230	1244	\$12.33
1215	1229	\$12.41
1200	1214	\$12.49
1185	1199	\$12.57
1170	1184	\$12.68
1155	1169	\$12.76
1140	1154	\$12.88
1125	1139	\$12.95
1110	1124	\$13.06
1095	1109	\$13.16
1080	1094	\$13.28
1065	1079	\$13.38
1050	1064	\$13.48
1035	1049	\$13.59
1020	1034	\$13.69
1005	1019	\$13.80
990	1004	\$13.89
975	989	\$14.01
960	974	\$14.11
945	959	\$14.21

2. Client shall pay KUHN – RATHBUN ENTERPRISES LLC the following reimbursement rate for casual meal sales.

Casual Meal Rates 2023-2024	
Breakfast	\$8.23
Lunch	\$11.55
Dinner	\$12.29

3. The daily summer camp rate shall be set at \$24.00 per person per day.

B. Service Commissions

1. Kuhn – Rathbun Enterprises LLC shall pay Client on a monthly basis a commission of 15% service commission based on gross sales including, retail, catering, and cash sales. Kuhn – Rathbun Enterprises LLC shall guarantee a commission of at least \$210,000 for the contract period.
2. Gross Sales shall mean all moneys received for sales or Services rendered at or from the Premises, excluding: (1) receipts from sales of meals to employees of Kuhn – Rathbun Enterprises LLC; (2) any service charge made, collected and turned over to employees; (3) the proceeds of the sale of any fixtures or equipment; (4) proceeds from the sale or liquidation of any inventory which is not sold at retail; (5) any commission or processing fee paid in connection with sales by credit or bank cards; and (6) sales, gross receipts and other taxes collected by Kuhn – Rathbun Enterprises LLC or any other vendor as required by governmental authorities.

C. Retail Pricing

1. Kuhn-Rathbun Enterprises LLC shall price retail items at a rate competitive to off-campus locations.

Fort Hays State University
DA-45/146a (Rev 12-19)

Contract No.: 23028
Date: May 19, 2023


CONTRACT

This contract is being established on the 1st day of July, 2023 by and between Fort Hays State University and Kuhn-Rathbun Enterprises, LLC (Contractor).

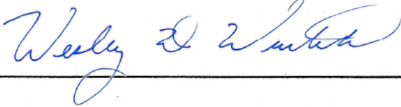
The parties agree as follows:

1. Subject to the terms and conditions of this contract and companion Contract Award document, Fort Hays State University hereby accepts the offer of Contractor as expressed by Contractor's pricing reflected herein.
2. It is understood and agreed by the parties that Contractor agrees to provide the Services from 7/1/2023 through 6/30/2024 in accordance with the terms herein. Fort Hays State University agrees to pay on delivery of the item(s) the amount(s) billed by Contractor in accordance with the pricing offered as shown on delivery invoice(s) of the Contractor to Fort Hays State University. Payment will be made as soon after receipt of the invoice(s) as possible in accordance with state law.
3. Failure of Contractor to furnish the item(s) in accordance with the contract specifications incorporated into this contract by reference, or failure of Contractor to deliver the item(s) in accordance with any time schedules prescribed in this contract or any documents incorporated by reference into this contract shall result in forfeiture of any performance bond of Contractor and/or in termination of this contract at the option of Fort Hays State University.
4. It is understood and agreed that the provisions set out in the Fort Hays State University documents for this contract are incorporated and made a part of this contract by reference as though fully set forth herein. Contractor agrees and understands that these documents are controlling over any Contractor's bid, invoice, Fort Hays State University order forms or any other documents of the Contractor.
5. The provisions found in Contractual Provisions Attachment (DA-146a), shown on the reverse side of this Contract, is incorporated and made a part of this contract by reference.
6. The prospective contractor signature below certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any transaction by any Federal, State, or Local Department or Agency.
7. In the event of any disputes regarding the terms and conditions of this Contract or payments alleged to be due and owing, Contractor's sole remedy shall be with Fort Hays State University.

Kuhn-Rathbun Enterprises, LLC

By: 
Printed Name: Wesley Rathbun
Title: owner
Date: 05/19/23

Fort Hays State University

By: 
Printed Name: Wesley D. Wintch
Title: Vice President for Administration & Finance
Date: 05/22/2023

Approved as to Form
Fort Hays State University
General Counsel



CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 12/19), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof.

1. **Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require Fort Hays State University or any of its affiliates ("University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, the University may terminate this agreement at the end of its current fiscal year. The University agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided under the contract for which it has not been paid. The University will pay contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement under this provision, title to any such equipment shall revert to contractor at the end of the University's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Kansas Law and Venue:** All matters arising out of or related to this agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit arising out of or related to this agreement shall reside only in courts located in the State of Kansas.
5. **Required Non-Discrimination Provision:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. Contractor specifically agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University. The provisions of this paragraph (except the provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the University cumulatively total \$5,000 or less during the fiscal year.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance individuals in employment without regard to race, color, religion, sex, national origin, protected veteran status or disability.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the University has agreed to binding arbitration, or the payment of damages or penalties. Further, the University does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages or rights of action available to the University at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The University shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The University shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require the University to establish a "self-insurance" fund to protect against any such loss or damage.
11. **Information/Confidentiality:** As a state agency, the University's contracts are generally public records. Accordingly, no provision of this contract shall restrict the University's ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 et seq.). Moreover, no provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and need not be reserved, but the University here reiterates that nothing in or related to this contract shall be deemed a waiver of the Eleventh Amendment.
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.
14. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g) and agrees to handle any student education records it receives pursuant to this Agreement in a manner that enables the University to be compliant with FERPA and its regulations. Contractor agrees to protect the privacy of student data and educational records in a commercially reasonable manner and shall not transmit, share, or disclose any data about a student without the student's written consent, except to other University officials who seek the information within the context of his/her professionally assigned responsibilities and used within the context of official University business. Contractor shall promptly report to the University any disclosure of University's student educational records.
15. **Boycotts of Israel Prohibited:** Kansas 2018 HB 2482 generally prohibits the University from entering into a contract with a company to acquire or dispose of services, supplies, information technology or construction, unless such company submits a written certification that such company is not currently engaged in a boycott of Israel. For the purposes of this Section, "company" means an organization, association, corporation, partnership, venture or other entity, its subsidiary or affiliate, that exists for profitmaking purposes or to otherwise secure economic advantage. Accordingly, by executing this contract, Contractor hereby certifies that it is not currently engaged in a boycott of Israel.
16. **Harassment Policy:** Fort Hays State University prohibits sexual harassment, discrimination, and retaliation. The University's applicable policies on sexual harassment, discrimination, and retaliation are available at <https://fhsu.edu/policies/documents/harassment-policy/index.pdf> and include the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint. Contractor and its employees, officials, agents, or subcontractors shall at all times comply with the University's policies on sexual harassment, discrimination, and retaliation.