

AGREEMENT FOR FOOD SERVICES IN THE LAKE COUNTY DETENTION FACILITY

This Agreement is made and entered into by and between the County of Lake, hereinafter referred to as "County", and Summit Food Services, LLC, hereinafter referred to as "Contractor", collectively referred to as the "parties".

1. **SERVICES.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to County the services described in the Scope of Services attached hereto and incorporated herein as Exhibit A/B at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A – Definitions, Exhibit B – Scope of Services, Exhibit C – Fiscal Provisions, and Exhibit D – Compliance Provisions, the Agreement shall prevail.

2. **TERM.** This Agreement shall commence on October 1, 2022 and shall remain in effect through September 30, 2025. The agreement may be renewed for two (2) one (1) year periods upon written approval of both parties, unless earlier terminated as hereinafter provided. In the event County desires to temporarily continue services after the expiration of this Agreement, such continuation shall be deemed on a month-to-month basis, subject to the same terms, covenants, and conditions contained herein.

3. **COMPENSATION.** Contractor has been selected by County to provide the services described hereunder in Exhibit "B" (Scope of Services), attached hereto. Compensation to Contractor is based on current approved price per meal and total costs fluctuate based on Daily Inmate Population.

The County shall compensate Contractor for services rendered, in accordance with the provisions set forth in Exhibit "C" (Fiscal Provisions), attached hereto, provided that Contractor is not in default under any provisions of this agreement. Compensation to Contractor is contingent upon appropriation of federal, state and county funds.

4. **TERMINATION.** This Agreement may be terminated by mutual consent of the parties or by County upon 30 days written notice to Contractor.

In the event of non-appropriation of funds for the services provided under this Agreement, County may terminate this Agreement, without termination charge or other liability.

Termination for Non-Performance. If either party refuses, fails or is unable to perform or observe any of the terms or conditions of this Agreement for any reason other than for Excused Performance as set forth in this Agreement, the party claiming such deficiency shall provide the breaching party written notice of any such breach. If the breaching party remedies such breach within (i) three (3) days in the case of failure to make payment when due, (ii) fifteen (15) days in the case of any other breach, or (iii) a reasonable time where cure is not possible within fifteen (15) days (collectively the "Notice Period"), the notice shall be null and void. If the breaching party fails to remedy the breach within the Notice Period, the party giving notice may cancel the Agreement after the end of the Notice Period.

Termination for Financial Insecurity. If either Party makes an unauthorized assignment for the benefit of creditors, files a petition under the bankruptcy or insolvency laws of any jurisdiction, has or suffers a receiver or trustee to be appointed for its business or property, or is adjudicated a bankrupt or an insolvent, the other party may terminate the Agreement

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with three (3) days' notice. Provided, however, that County agrees to provide Contractor thirty (30) days' notice before filing a petition for bankruptcy.

Voluntary Termination. Either Party may terminate this Agreement with or without cause by written notice to the other party given not less than sixty (60) days prior to the effective date of termination.

Steps Upon Termination. Upon the termination or expiration of this Agreement, Contractor shall vacate the Premises occupied by Contractor and shall remove its own equipment and return equipment furnished by County pursuant to this Agreement. Upon termination of this Agreement, Contractor shall surrender the then-current Food Preparation Equipment to County in the condition as it was delivered on the Commencement Date (or, if later, in the condition in which such Food Preparation Equipment was placed into service), excepting ordinary wear and tear, damage resulting from County's failure to maintain the Food Preparation Equipment and other damage (including damage caused by force majeure) for which Contractor is not responsible hereunder.

Continuing Obligations. The termination of this Agreement shall not affect the rights, privileges, or liabilities of the Parties as they exist as of the effective date of termination. All outstanding amounts owed to Contractor shall become due and payable immediately upon termination. If, at County's request, Contractor enters into agreements with one or more third parties in connection with its management of County's Food Service operations (collectively, "Third Party Agreements"), County agrees, at County's sole cost and expense, to: (i) assume and undertake (or cause to be assumed and undertaken by the Food Service provider succeeding Contractor) all responsibilities of Contractor under all Third Party Agreements from and after the date this Agreement expires or is earlier terminated; (ii) release Contractor from all liability associated with such Third Party Agreements from and after the date this Agreement expires or is earlier terminated; and (iii) bear all liability and responsibility with respect to any costs, fees and other charges associated with termination of such Third Party Agreements. This Paragraph shall survive the termination or expiration of this Agreement.

Upon termination, Contractor shall be paid a prorated amount for the services provided up to the date of termination.

5. **MODIFICATION.** This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning scope of services which do not affect the compensation may be modified by mutual written consent of Contractor and County executed by the Sheriff/Coroner or his/her designee.

6. **NOTICES.** Any notice required under this Agreement shall be deemed to have been sufficiently provided when delivered by hand, or three days after being sent by certified or registered mail return receipt requested, or by overnight delivery service with receipt of delivery, provided such delivery is to the parties at the following addresses:

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County of Lake
Lake County Sheriff's Department
1220 Martin Street
Lakeport, CA 95453

Contractor
Summit Food Services, LLC
500 East 52nd Street
Sioux Falls, SD 57104

Attn: Mary Beth Strong

Attn: _____

7. **EXHIBITS.** The Agreement Exhibits, as listed below, are incorporated herein by reference:

Exhibit A – Definitions – (*if applicable*)
Exhibit B – Scope of Services
Exhibit C – Fiscal Provisions
Exhibit D – Compliance Provisions
Exhibit E - Proposal

8. **TERMS AND CONDITIONS.** Contractor warrants that it will comply with all terms and conditions of this Agreement and Exhibits, and all other applicable federal, state and local laws, regulations and policies.

9. **INTEGRATION.** This Agreement, including attachments, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior Agreements, related proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties.

10. **Excused Performance.** If performance of any terms or provisions hereof (other than the payment of monies) shall be delayed or prevented because of compliance with any law, regulation, decree or order by any federal, state, or local court, governmental agency or governmental authority, or because of riot, war, public disturbance, strike, lockout, differences with workmen, fire, flood, Act of God, pandemic, epidemic, or any other reason whatsoever, which is not within the control of the party whose performance is interfered with, and which, by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option, suspend, without liability, the performance of its obligations hereunder (other than the payment of monies) during the period such cause continues.

Assignment or Transfer. Neither party may assign or transfer this Agreement, or any part thereof, without written consent of the other party. Such consent shall not be unreasonably withheld provided, however, that this shall not apply to Contractor's transfer to a parent, sister or successor Contractor where Contractor provides County at least thirty (30) days written notice.

Entire Agreement; Waiver. This Agreement, including any Exhibits hereto, constitutes the entire Agreement between the Parties with respect to the provisions of Contractor's services, and there are no other or further written or oral understandings or agreements with respect thereto except as otherwise set forth herein. No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of Contractor and County. This Agreement supersedes all other agreements between the Parties or their predecessors for the provision of Contractor Food Services.

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11. Counterparts; Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This Agreement may be transmitted by fax or by electronic mail in portable document format ("PDF") and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures.

12. **State Guidelines.** County hereby agrees that the validity and construction of this Agreement shall be governed by California law. Should a lawsuit be necessary to enforce this Agreement, County hereby waives any objection to venue or personal jurisdiction and agrees to be subject to the jurisdiction of the courts located in California. A facsimile copy or photocopy of this Agreement shall be valid as an original thereof. EACH PARTY HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF AND BROUGHT BY ANY OTHER PARTY

13. Limitation of Liability. Contractor's entire liability and County's exclusive remedy for damages arising out of or related to this Agreement or the Food Services shall not exceed the total amount paid by County to Contractor for the current term of this Agreement. CONTRACTOR SHALL NOT BE LIABLE FOR LOSS OF BUSINESS, BUSINESS INTERRUPTION, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR FOR LOSS OF REVENUE OR PROFIT IN CONNECTION WITH THE PERFORMANCE OR FAILURE TO PERFORM THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY.

Severability. Any term or provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation.

14. **Authority.** Contractor and County represent that the individual executing this Agreement has been duly and validly authorized to execute this Agreement on each party's respective behalf with the full power and authority under all applicable laws and respective articles of incorporation, bylaws or other governing instrument to enter into this Agreement and to perform their obligations hereunder.

Executed at Lakeport, California on September 20, 2022

COUNTY OF LAKE

Eddie Crandall (5/27/21, 2022 11:15 PDT)

CHAIR, Board of Supervisors

ATTEST:
SUSAN PARKER
Clerk to the Board of Supervisors



CONTRACTOR
Summit Food Services, LLC

DocuSigned by:
Brittany Mayer-Schuler

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel

By Johanna DeLong
Johanna DeLong Sep 21, 2022 10:24 PM

By: Libby Grant
and/or grant (Sep 27, 2012 09:06:50)

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EXHIBIT "A" – DEFINITIONS

- 1.1. Accounting Period. Contractor's accounting calendar is based on an accounting cycle consisting of four (4) rotational periods of four (4) weeks, four (4) weeks, five (5) weeks.
- 1.2. Agreement. In order of precedence: (i) this Food Service Partnership Agreement, Exhibits and Schedules, as amended and, where specifically included by reference, (ii) the Contractor's Proposal and (iii) the Solicitation.
- 1.3. Food Preparation Equipment. County will provide the following commercial grade food preparation equipment; one (1) table top 48" griddle, one (1) heavy duty slicer, one (1) braiser, one (1) bread slicer, one (1) table top mixer, One (1) standing Hobart mixer, one (1) dishwasher, one (1) 60 gallon kettle, three (3) double deck ovens, one (1) four burner range, one (1) microwave and one (1) buffalo chopper.
- 1.4. Food Service. Operations and Products to be provided by Contractor in accordance with this Agreement related to the preparation, service and sale of food, beverages, goods, merchandise and other items at the Premises.
- 1.5. Food Service Facilities. Space for Contractor to prepare and perform Food Service at the Premises including, without limitation, kitchen, dining, service, office and storage areas.
- 1.6. Governmental Rule. Any statute, law, rule, regulation, ordinance or code of any governmental entity (whether federal, state, local or otherwise).
- 1.7. Office Equipment. All office items reasonably necessary for Contractor staff to perform office- related functions at the Premises including, without limitation, furniture (e.g. desk, chair, file cabinet), equipment (e.g. computer, phone, data/high speed internet lines), parking spaces and locker/break room facilities.
- 1.8. PCI Standards. All rules, regulations, standards or guidelines adopted or required by the Payment Card Industry Security Standards Council relating to privacy, data security and the safeguarding, disclosure and handling of Payment Instrument Information.
- 1.9. Premises. The County's food service facility located at 4913 Helbush Drive, Lakeport, CA 95453.
- 1.10. Products. Food, beverages, goods, merchandise, and supplies.
- 1.11. Proprietary, Confidential and Trade Secret Information. Items used in Contractor Food Services (owned by or licensed to Contractor) including, without limitation, menus, signage, surveys, Software (i.e. menu systems, food production systems, accounting systems), recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, provided, however that the following items are specifically excluded: (i) information generally available to and known by the public or (ii) information independently developed or previously known by the County.
- 1.12. Servicewares. Items used in the service of food and beverages including, without limitation, chinaware, glassware, silverware, disposables, trays, and carts.
- 1.13. Smallwares. Items used in the preparation of food including, without limitation, pots, pans and kitchen utensils.
- 1.14. Supervisory Employee. Those persons who have directly or indirectly performed management or professional services on behalf of Contractor for the County at any time during this Agreement including, without limitation, any corporate employee, manager, assistant manager, chef, lead cook or dietitian.

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- 1.15. Utilities and Amenities. All utilities reasonably requested by Contractor to provide Food Services at the Premises including, without limitation, heat, hot and cold water, gas, refrigeration, lights, electric current, ventilation, air conditioning, recycling, cooking waste removal, hazardous waste removal, garbage removal services, exterminator services, telephone services, internet access, and sewage disposal services.

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EXHIBIT "B" – SCOPE OF SERVICES

1. CONTRACTOR RESPONSIBILITIES.

- 1.1 Food Service. Contractor will oversee Food Services at the Premises which shall include, without limitation, preparation and service of food and beverages to County's employees, staff and guests.
- 1.2 Program Specifications.
 - A. Menu. Contractor shall provide a hot breakfast, cold lunch and hot dinner. Meals will consist of 2,500 to 2,600 calories.
 - B. Inmate Labor. County shall provide 5-8 inmate workers per meal period.
 - C. Staff Meals. Contractor shall provide Staff Meals upon request.
 - D. Bag Lunches. Contractor shall provide Bag Lunches upon request.
 - E. Medical Meals. Contractor shall provide Medical Meals upon request.
 - F. Religious Meals. Contractor shall provide Religious Meals upon request.
 - G. Holiday Meals. Contractor shall provide Holiday Meals upon request.
 - H. Outside Inside. Contractor shall host an e-commerce website to permit third parties to purchase hot and cold meals and Products for offenders. Contractor shall prepare and deliver e-commerce purchases up to twice a week to offenders. County will provide daily inmate roster on an agreed upon schedule but no less than once per day. County agrees that Offender shall have one (1) hour from time of receipt to consume the meal or the meal will be confiscated as contraband.
 - I. Good Eats. Contractor shall provide specialty meals in addition to regular meal service that offenders will be able to purchase using their personal funds.
 - J. Special Functions/Catering. Contractor shall provide Food Service for special occasions, including County's conferences, dinners, meetings, parties and other functions, as well as catering services to employees, guests and outside groups in connection with this Agreement. Fees for these services shall be governed by the menu, manner and time of service, and shall be established by mutual agreement of Contractor and County or the party sponsoring the Special Function.
 - K. Locations. Contractor shall operate and manage Food Services at the Premises and locations as the County and Contractor mutually agree.
 - L. Hours. Contractor shall provide necessary Food Services at such hours as the County and Contractor mutually agree.
 - M. This contract references the Proposal for Food Service Management in its entirety.
 - N. All menus must be approved by a Medical Doctor, a Dietician approved by the Lake County Sheriff's Office and the Jail Commander
- 1.3 Purchasing. Contractor shall purchase those Products and supplies necessary to comply with Contractor's obligations as set forth in this Agreement from Contractor's approved vendors that meet Contractor's guidelines and requirements.
- 1.4 Inventory. Contractor will purchase and own all inventories of food, beverages, and supplies. Upon termination of this Agreement for any reason, at Contractor's option, (i) Contractor may remove and retain any remaining Product inventory or (ii) County will purchase from Contractor, at Contractor's invoice cost, any remaining Product inventory.

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- 1.5 Cleaning. Contractor and County shall be jointly responsible for housekeeping and sanitation in the food preparation, storage and service areas of Premises. Contractor shall perform routine cleaning and housekeeping in the food preparation and service areas. County shall perform major cleaning including, without limitation, stripping and waxing floors, cleaning walls, windows, fixtures, ceilings, electric light fixtures, grease traps, hoods and vents, duct work, plenum chambers, pest control and roof fans throughout the Food Service Facilities as defined herein. County shall be responsible for setting up and cleaning the Premises for functions not managed by Contractor. County shall be responsible for removal of refuse from the collection areas and all refuse removal charges.

2. EMPLOYEES

- 2.1. Employees. Contractor shall hire employees necessary for its performance of this Agreement. Persons employed by Contractor will be the employees of Contractor and not of County. Contractor's employees and agents shall comply with applicable rules and regulations concerning conduct on the County's premises which the County imposes upon its employees and agents provided such rules and/or regulations are not in violation of any federal, state, and/or local laws. County agrees to provide Contractor notice of any proposed changes in rules, at least thirty (30) days prior to implementation. Contractor will consider County's written requests to remove Food Service employees, provided such requests are non-discriminatory and comply with all laws and regulations governing employment.
- 2.2. Existing Employees; Employment Terms; Employee Pension and Benefit Plans. Contractor in its sole discretion may elect to hire any managers or employees of County or County's incumbent foodservice provider (collectively, "Existing Employees") who are qualified, available and willing to provide Food Service at the Premises. Contractor shall have the authority to establish the terms of employment for all current Contractor managers and employees (including Existing Employees that Contractor may elect to hire in connection with this Agreement).
- 2.3. Wages and Hours. Contractor shall comply with all applicable federal, state and local laws and regulations pertaining to the wages and hours of employment for Contractor's employees. County shall comply with all applicable federal, state and local laws and regulations pertaining to the wages and hours of employment for County's employees.
- 2.4. Payroll Taxes. Contractor shall be responsible for all withholding and payroll taxes relative to Contractor's employees. County shall be responsible for all withholding and payroll taxes relative to County's employees.
- 2.5. Equal Opportunity and Affirmative Action Employer. Contractor abides 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 age, race, color, religion, sex, sexual orientation or national origin. Contractor employs and promotes individuals without regard to age, race, color, religion, sex, national origin, protected veteran status or disability.

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- 2.6. Non-Hire. County acknowledges that Contractor has invested considerable amounts of time and money in training its Supervisory Employees. Therefore, the County agrees that during the Supervisory Employee's employment with Contractor and for a period of twelve (12) months thereafter no Supervisory Employees of Contractor will be hired by County nor any facility affiliated with County, nor will County permit employment of Contractor Supervisory Employees on County's Premises or the Premises of any facility affiliated with County. County agrees that if it violates this provision, County shall pay to Contractor and Contractor shall accept as liquidated damages and not as a penalty, an amount equal to one time the annual salary) of the Supervisory Employee(s) hired by or allowed to work with County in violation of the terms of this Agreement. Contractor shall be entitled to pursue all other remedies available under federal, state, or local law. This provision shall survive the termination of this Agreement.

3. PREMISES, FACILITIES, UTILITIES AND EQUIPMENT

- 3.1 Premises. The Premises shall be in good condition and maintained by the County to ensure compliance with applicable Governmental Rules and to enable Contractor to perform its obligations hereunder. County shall be responsible for any modifications or alterations to the workplace or the Premises necessary to comply with any applicable Governmental Rules. Contractor shall have no obligation to maintain or repair the Premises.
- 3.2 Equipment. Without limiting the foregoing, County shall permit Contractor to use all of the County's Food Preparation Equipment in the performance of Food Service. The Food Preparation Equipment provided by County shall be commercial grade, in good condition and shall be maintained, repaired and replaced by County to permit the performance of the Food Service and to ensure compliance with applicable Governmental Rules. Contractor and County shall inventory County's current Equipment within thirty (30) days after the Commencement Date. Contractor shall take reasonable care of all Food Preparation Equipment under its custody and control, provided that the foregoing shall not limit County's obligation to maintain, repair and replace (as necessary) the Food Preparation Equipment. If County fails to make necessary repairs or replacement to equipment within a reasonable amount of time, Contractor shall have the right to effect equipment repairs or replacements at County's expense. Contractor shall retain title to equipment hereunder and shall be entitled to assert a security interest in any equipment that it purchases or repairs under this section provided that once the cost of the purchased equipment or equipment repair has been recovered, Contractor shall release the security interest and title for any such purchased equipment to County.
- 3.3 Facilities, Utilities. At its own expense, County shall maintain, repair, replace, and keep in safe operating condition said Facilities and Utilities, to permit the performance of the Food Service and to ensure compliance with Governmental Rules.
- 3.4 Smallwares and Servicewares. At its own expense, County shall furnish Contractor with the appliances, wares and equipment reasonably requested by Contractor including all Cooking Equipment, Smallwares and Servicewares.
- 3.5 Equipment to be purchased by Contractor. Contractor will purchase new trays at approximately \$2,500 investment. County shall be obligated to repay Contractor for the amount of any investments Contractor provides County during the Term of the Agreement (such amount, the "Investment Amount"); provided, that so long as County has not breached

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this Agreement the Investment Amount shall be reduced on a monthly basis on the first day of each month by an amount determined based on a monthly amortization of the Investment Amount for the period equal to the Term of this Agreement remaining after provision of the Investment. The County shall repay Contractor for such obligations (after giving effect to any credit contemplated by the preceding sentence) at the earlier to occur of (i) if the County has breached this Agreement, Contractor's demand therefore and (ii) fifteen (15) days prior to the effective date of termination of this Agreement. Pursuant to a security agreement executed in connection herewith, County has granted Contractor a security interest in the personal property acquired with the Investment to secure County's obligations arising under this Agreement.

3.6 Computer Equipment.

6.1 Internet Access. If Contractor is to implement a point-of-sale system, County shall either allow Contractor to use County's point-of-sale system ("POS System") and required internet access or, in the alternative, shall provide and maintain the system requirements necessary for Contractor to install and maintain its own POS System. To the extent Contractor installs and maintains its own POS System, County shall provide electrical outlets and wireless IP network connectivity terminating in necessary cabling connection between the cash registers, the time-clocks, the foodservice office and Contractor's router. County shall allow Contractor and the internet provider physical access to the area where a high-speed internet connection will be installed, and shall permit Contractor's installation of a router and dedicated high-speed internet circuit with full administrative control to establish a connection between the foodservice office, workstations (if any) and Contractor's network.

6.1 Software. Contractor will license products, software and maintenance for use in providing services in accordance with this Agreement. Contractor has procured a license to access and use Contractor's centralized Nutritional Database ("NDB") for nutritional analysis, menu planning and other operational purposes for County's Premises. County agrees that all software associated with the operation of the Food Service, including without limitation, the NDB, food production systems, and accounting systems, is owned by or licensed to Contractor. County's access or use of such software shall not create any right, title, or copyright in such software. Upon termination of this Agreement, County shall have no right to access or retain any Contractor software or Confidential Information produced by that software.

6.1 Credit Card Processing. If requested by County, Contractor will accept and process credit card payments for sales of food, beverage, goods, merchandise and services in the Food Service operation. If Contractor processes credit card transactions using equipment solely provided by Contractor, then Contractor will be responsible for compliance of its equipment in accordance with PCI Standards. If Contractor uses computers, software, network equipment ("Systems") or other property of County to process credit card transactions, then County will be required to provide Systems that fully support PCI standards and requirements or reimburse the Contractor for the acquisition of Systems that sufficiently meet the requirements of current PCI Data Security Standards. In that case, if Contractor is considered the "merchant of record", County will provide Contractor with a certificate of compliance if requested by Contractor.

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4. LICENSES, PERMITS AND TAXES

- 4.1 Licenses and Permits. Contractor shall procure, maintain and post the food licenses and permits as required by law. County represents and warrants that it has and will maintain all other licenses and permits necessary to operate the Premises and the Food Services. The County agrees to notify Contractor immediately upon receiving notice of loss of any such permit or license.
- 4.2 Taxes. Contractor shall be responsible for collecting and remitting sales tax on applicable sales collected by Contractor. Unless County provides documentation of County's federal and state tax-exempt status to the Contractor's sole satisfaction, County shall reimburse Contractor for state and local sales tax on the full amount of charges and fees billed to the County. County shall secure and pay all federal, state and local property, excise and income and other taxes and fees required for the Premises and resulting from the Food Services provided for hereunder. County shall immediately pay for any tax assessments including interest, penalties, costs and expenses, which are assessed against the Food Service operation and were not in effect as of the Commencement Date or were owed but unpaid as of the Commencement Date. County shall notify Contractor promptly should its sales tax status be changed.

5. **RECORDS RETENTION.** Contractor shall prepare, maintain and/or make available to County upon request, all records and documentation pertaining to this Agreement, including financial, statistical, property, recipient and service records and supporting documentation for a period of five (5) years from the date of final payment of this Agreement. If at the end of the retention period, there is ongoing litigation or an outstanding audit involving the records, Contractor shall retain the records until resolution of litigation or audit. After the retention period has expired, Contractor assures that confidential records shall be shredded and disposed of appropriately.

6. COUNTY RESPONSIBILITIES.

- 6.1 Premises. The Premises shall be in good condition and maintained by the County to ensure compliance with applicable Governmental Rules and to enable Contractor to perform its obligations hereunder. County shall be responsible for any modifications or alterations to the workplace or the Premises necessary to comply with any applicable Governmental Rules. Contractor shall have no obligation to maintain or repair the Premises.
- 6.2 Equipment. Without limiting the foregoing, County shall permit Contractor to use all of the County's Food Preparation Equipment in the performance of Food Service. The Food Preparation Equipment provided by County shall be commercial grade, in good condition and shall be maintained, repaired and replaced by County to permit the performance of the Food Service and to ensure compliance with applicable Governmental Rules. Contractor and County shall inventory County's current Equipment within thirty (30) days after the Commencement Date. Contractor shall take reasonable care of all Food Preparation Equipment under its custody and control, provided that the foregoing shall not limit County's obligation to maintain, repair and replace (as necessary) the Food Preparation Equipment. If County fails to make necessary repairs or replacement to equipment within a reasonable

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amount of time, Contractor shall have the right to effect equipment repairs or replacements at County's expense. Contractor shall retain title to equipment hereunder and shall be entitled to assert a security interest in any equipment that it purchases or repairs under this section provided that once the cost of the purchased equipment or equipment repair has been recovered, Contractor shall release the security interest and title for any such purchased equipment to County.

- 6.3 Facilities, Utilities. At its own expense, County shall maintain, repair, replace, and keep in safe operating condition said Facilities and Utilities, to permit the performance of the Food Service and to ensure compliance with Governmental Rules.
- 6.4 Smallwares and Servicewares. At its own expense, County shall furnish Contractor with the appliances, wares and equipment reasonably requested by Contractor including all Cooking Equipment, Smallwares and Servicewares.
- 6.5 Contractor employees: County shall conduct a background check on all Contractor employees entering the jail. County reserves the right to withdraw the security clearance for Contractor employees for any violation of law, policy and procedure or PREA standards.

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EXHIBIT "C" – FISCAL PROVISIONS

1. **CONTRACTOR'S FINANCIAL RECORDS.** Contractor shall keep financial records for funds received hereunder, separate from any other funds administered by Contractor, and maintained in accordance with Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget's Cost Principles.

Payment Arrangement.

A. **Inmate Meal Rate.**

a. **Scaled Rate.** County shall pay Contractor the rate per meals served:

MEAL PRICE MATRIX	
Inmate Population	Price per Meal
< 130	TBN
130 - 150	\$3.571
151 - 171	\$3.230
172 - 192	\$2.972
193 - 213	\$2.770
214 - 234	\$2.639
235 - 255	\$2.534
256 - 276	\$2.449
277 - 297	\$2.380
298 - 318	\$2.324
319 - 339	\$2.279
340 - 360	\$2.244

The rate shall not include charges for supplements, cleaning supplies, equipment purchases or repairs.

- b. **Medical Meals.** Medical meals will be charged at the same rate as the inmate meal.
- c. **Religious Meals.** Religious meals will be charged at the same rate as the inmate meal so long as the "common fare" menu is utilized. Prepackaged religious meals will be charged at a higher rate.

- B. **Staff Meal Base Rate.** Contractor shall charge Six Dollars and Fifty Cents (\$6.50) per staff member. Contractor shall also set up a Micromarket in the staff dining space and charge a fair market rate for products carried in the market.
- C. **Opening Charges.** Opening Charges include, but are not limited to, manager's relocation expenses, travel costs associated with the initial opening, and the charges associated with the initial training, development and preparation for opening. Opening Charges shall be due in lump sum upon receipt of invoice. In the event this Agreement is terminated prior to full payment of Contractor's Opening Charges, then the County agrees to pay Contractor immediately the amount of any outstanding balance due pursuant to this Section.

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D. Service and Pricing Assumptions. The financial terms set forth in this Agreement, and all other obligations assumed by Contractor hereunder, are based on the following assumptions:

1. Population: 193
2. Average Sales: \$620,000+ annually
3. Purchasing: Contractor will make purchases on behalf of the County at a level similar to that in place at the Commencement of this Agreement.

To the extent any of the basic assumptions change or if County requests a significant change in Services as provided under this Agreement, the Contractor's base rate shall be proportionately increased, unless the Parties otherwise mutually agree otherwise.

2. INVOICES.

2.1 Contractor's invoices shall be submitted in arrears on a weekly basis, (which shall run Sunday through Saturday) or such other time that is mutually agreed upon in writing, and shall be itemized and formatted to the satisfaction of the County.

2.2 County shall make payment, by check, within 20 business days of an undisputed invoice for the compensation stipulated herein for supplies delivered and accepted or services rendered and accepted, less potential deductions, if any, as herein provided. Payment on partial deliverables may be made whenever amounts due so warrant or when requested by the Contractor and approved by the Assistant Purchasing Agent.

2.3 Change in Conditions. The financial terms set forth in this Agreement, and all other obligations assumed by Contractor hereunder, are based on conditions in existence on the date Contractor commences operations including, without limitation, population; labor costs; applicable Governmental Rules; food and supply costs; provision of equipment and utilities; state of the Premises; and federal, state and local sales, use and excise taxes (the "Conditions"). Further, County acknowledges that in connection with the negotiation and execution of this Agreement, Contractor has relied upon County's representations regarding existing and future conditions (the "Representations"). In the event of change in the Conditions, inaccuracy of the Representations, or if County requests any significant change in the Food Services as provided under this Agreement, the financial terms and other obligations assumed by Contractor shall be renegotiated to reflect a proportionate increase in Contractor's charges to the County. Contractor will provide a thirty (30) day notice of such increased charges.

2.4 Future Pricing. Pricing adjustments shall be made on an annual basis and shall be agreed upon by the parties at a rate no less than the greater of: three percent (3%) or the most recently released U.S. Department of Labor Consumer Price Index, All Urban Consumers, National Average Unadjusted, Food Away From Home. Up to ninety (90) days prior to the anniversary of the Commencement Date, Contractor shall provide County notification of the adjustment. On the anniversary date, Contractor proposed adjustments shall go into effect, unless the Parties have entered into a written agreement with an alternative cost adjustment.

2.5 Attorney's Fees and Costs. County shall pay all costs of collecting any amount

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due Contractor, including attorney's fees and all costs and other expenses incurred by Contractor in collecting an indebtedness of County. This provision shall survive the termination of the Agreement.

3. AUDIT REQUIREMENTS AND AUDIT EXCEPTIONS

3.1 Contractor warrants that it shall comply with all audit requirements established by County and will provide a copy of Contractor's Annual Independent Audit Report, if applicable.

3.2 County may conduct periodic audits of Contractor's financial records, notifying Contractor no less than 48 hours prior to scheduled audit. Said notice shall include a detailed listing of the records required for review. Contractor shall allow County, or other appropriate entities designated by County, access to all financial records pertinent to this Agreement.

3.3 Contractor shall reimburse County for audit exceptions within 30 days of written demand or shall make other repayment arrangements subject to the approval of County.

4. **BUDGET.** The Contractor shall submit, in advance, a detailed budget, in the format provided by County for review and approval by the County. Contractor shall be compensated only for expenses included in the approved budget. Modification to the budget must be approved in advance by the County.

5. EXPENDITURE OF FUNDS.

5.1 Funds payable through this agreement shall be approved prior to any purchases by Contractor.

5.2 County reserves the right to refuse payment to Contractor or disallow costs for any expenditure determined to be unreasonable, out of compliance, or inappropriate to the services provided hereunder.

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EXHIBIT "D" – COMPLIANCE PROVISIONS

1. **INFORMATION INTEGRITY AND SECURITY.** Contractor shall immediately notify County of any known or suspected breach of personal, sensitive and confidential information related to Contractor's work under this Agreement.

2. **NON-DISCRIMINATION.** Contractor shall not unlawfully discriminate against any qualified worker or recipient of services because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status or age.

3. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

3.1 The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors:

A. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

B. Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the preceding paragraph; and

D. Have not, within a three-year period preceding this Agreement, had one or more public transactions terminated for cause or default.

3.2 Contractor shall report immediately to County, in writing, any incidents of alleged fraud and/or abuse by either Contractor or Contractor's subcontractor. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by County.

4. **AGREEMENTS IN EXCESS OF \$100,000.** Contractor shall comply with all applicable orders or requirements issued under the following laws:

4.1 Clean Air Act, as amended (42 USC 1857).

4.2 Clean Water Act, as amended (33 USC 1368).

4.3 Federal Water Pollution Control Act, as amended (33 USC 1251, et seq.)

4.4 Environmental Protection Agency Regulations (40 CFR, Part 15 and Executive Order 11738).

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5. INDEMNIFICATION AND HOLD HARMLESS. [Select one of the three following options]

[1] Contractor shall indemnify and defend County and its officers, employees, and agents against and hold them harmless from any and all claims, losses, damages, and liability for damages, including attorney's fees and other costs of defense incurred by County, whether for damage to or loss of property, or injury to or death of person, including properties of County and injury to or death of County officials, employees or agents, arising out of, or connected with Contractor's operations hereunder or the performance of the work described herein, unless such damages, loss, injury or death is caused solely by the negligence of County. **OR**

[2] Each party shall indemnify and hold the other harmless against all actions, claims, demands, and liabilities and against all losses, damage, cost, expenses, and attorney's fees, arising directly or indirectly out of an actual or alleged injury to a person or property in the same proportion that its own acts and/or omissions are attributed to said claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees. This provision shall not extend to any claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either party.

Contractor's obligations under this Section shall survive the termination of the Agreement.

6. STANDARD OF CARE. Contractor represents that it is specially trained, licensed, experienced and competent to perform all the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Contractor or designated subcontractors, in a manner according to generally accepted practices.

7. INTEREST OF CONTRACTOR. Contractor assures that neither it nor its employees has any interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder.

8. DUE PERFORMANCE – DEFAULT. Each party agrees to fully perform all aspects of this agreement. If a default to this agreement occurs then the party in default shall be given written notice of said default by the other party. If the party in default does not fully correct (cure) the default within ____ days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time period for corrective action of the party in default may be extended in writing executed by both parties, which must include the reason(s) for the extension and the date the extension expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

9. INSURANCE.

AGREEMENT FOR FOOD SERVICES IN THE LAKE COUNTY DETENTION FACILITY

9.1 Contractor shall procure and maintain Workers' Compensation Insurance for all of its employees.

9.2 Contractor shall procure and maintain Comprehensive Public Liability Insurance, both bodily injury and property damage, in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverage: personal injury, premises-operations, products and completed operations, blanket contractual, and independent contractor's liability.

9.3 Contractor shall procure and maintain Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased and non-owned vehicles used in connection with Contractor's business in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence.

9.4 Contractor shall procure and maintain Professional Liability Insurance for the protection against claims arising out of the performance of services under this Agreement caused by errors, omissions or other acts for which Contractor is liable. Said insurance shall be written with limits of not less than one million dollars (\$1,000,000).

9.5 Contractor shall not commence work under this Agreement until it has obtained all the insurance required hereinabove and submitted to County certificates of insurance naming the County of Lake as additional insured. Contractor agrees to provide to County, at least 30 days prior to expiration date, a new certificate of insurance.

9.6 In case of any subcontract, Contractor shall require each subcontractor to provide all of the same coverage as detailed hereinabove. Subcontractors shall provide certificates of insurance naming the County of Lake as additional insured and shall submit new certificates of insurance at least 30 days prior to expiration date. Contractor shall not allow any subcontractor to commence work until the required insurances have been obtained.

9.7 For any claims related to the work performed under this Agreement, the Contractor's insurance coverage shall be primary insurance as to the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, agents or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

9.8 The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The County, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds and shall be added in the form of an endorsement to Contractor's insurance on Form CG 20 10 11 85. Contractor shall not commence work under this Agreement until Contractor has had delivered to County the Additional Insured Endorsements required herein.

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Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

9.9 Insurance coverage required of Contractor under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A: VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude County from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of County to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

9.10 Any failure of Contractor to maintain the insurance required by this section, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Agreement.

10. **ATTORNEY'S FEES AND COSTS.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

11. **ASSIGNMENT.** Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of County except that claims for money due or to become due Contractor from County under this Agreement may be assigned by Contractor to a bank, trust Contractor, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to County. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

12. **PAYROLL TAXES AND DEDUCTIONS.** Contractor shall promptly forward payroll taxes, insurances, and contributions to designated governmental agencies.

13. **INDEPENDENT CONTRACTOR.** It is specifically understood and agreed that, in the making and performance of this Agreement, Contractor is an independent contractor and is not an employee, agent or servant of County. Contractor is not entitled to any employee benefits. County agrees that Contractor shall have the right to control the manner and means of accomplishing the result contracted for herein.

Contractor is solely responsible for the payment of all federal, state and local taxes, charges, fees, or contributions required with respect to Contractor and Contractor's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security and payroll tax withholding.)

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14. **OWNERSHIP OF DOCUMENTS.** All non-proprietary reports, drawings, renderings, or other documents or materials prepared by Contractor hereunder are the property of County.
15. **SEVERABILITY.** If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.
16. **ADHERENCE TO APPLICABLE DISABILITY LAW.** Contractor shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.
17. **HIPAA COMPLIANCE.** Contractor will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.
18. **SAFETY RESPONSIBILITIES.** Contractor will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. Contractor agrees that in the performance of work under this Agreement, Contractor will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.
19. **JURISDICTION AND VENUE.** This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. Contractor waives any right of removal it might have under California Code of Civil Procedure Section 394.
20. **RESIDENCY.** All independent contractors providing services to County for compensation must file a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.
21. **NO THIRD-PARTY BENEFICIARIES.** Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.
22. **PUBLIC RECORDS ACT.** Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that s/he considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.
23. **CONFIDENTIALITY.** Neither County, nor County's employees or agents, shall disclose, photocopy, duplicate or use, either during or after the term of this Agreement, any Proprietary,

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Confidential and Trade Secret Information, without Contractor's prior written permission, unless otherwise required by law. All Proprietary, Confidential and Trade Secret Information shall remain Contractor exclusive property. County's access or use of Contractor Proprietary, Confidential and Trade Secret Information or Software shall not create any right, title, interest or copyright in such Information or Software. If County is requested to disclose any of the Confidential Information to any third party for any reason, County shall provide Contractor with prompt notice of such request(s). Upon termination of this Agreement, County shall return all Contractor Proprietary, Confidential and Trade Secret Information in County's possession relating to Contractor's services pursuant to this Agreement.

24. INTELLECTUAL PROPERTY Nothing in this Agreement is intended to grant any rights to County under any patent, copyright, trademark, trade name, trade secret or other proprietary right of Contractor (whether now owned or hereafter developed or acquired), all of which are reserved to Contractor.

25. INDEPENDENT CONTRACTOR RELATIONSHIP It is mutually understood and agreed, and it is the intent of the Parties, that an independent contractor relationship is hereby established under the terms and conditions of this Agreement. Employees of Contractor are not, nor shall they be deemed to be, employees of County. Employees of County are not, nor shall they be deemed to be, employees of Contractor.

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EXHIBIT "E" - PROPOSAL