

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners
Mark McCauley, Interim County Administrator

FROM: David Fortino

DATE: January 17, 2022

SUBJECT: PROFESSIONAL SERVICES AGREEMENT re: Inmate Food Services;
Jefferson County Sheriff's Office/Jail; Summit Food Services LLC

STATEMENT OF ISSUE:

PROFESSIONAL SERVICES AGREEMENT re: Inmate Food Services; Jefferson County Sheriff's Office/Jail; Summit Food Services LLC

ANALYSIS:

This Professional Services Agreement with Summit Food Services continues Food Services for the inmates of the Jefferson County Jail at the rate of \$121.20 per meal period and \$1 per meal. 24,663 meals were served in 2021 at the cost of \$150,717.90

FISCAL IMPACT:

Based on 24,663 meals served in 2021 the new contract is estimated to cost \$151,923.00 per year at the rate described above.

RECOMMENDATION:

Approve PROFESSIONAL SERVICES AGREEMENT re: Inmate Food Services; Jefferson County Sheriff's Office/Jail; Summit Food Services LLC

REVIEWED BY:


Mark McCauley, Interim County Administrator

1/12/22
Date

FOOD SERVICE PARTNERSHIP AGREEMENT

This Food Service Partnership Agreement is made and entered into by and between **JEFFERSON COUNTY WASHINGTON**, ("County"), and **SUMMIT FOOD SERVICE, LLC**, a New Mexico Limited Liability Summit ("Summit") (collectively "the Parties").

1. TERM, INTENT, AND SCOPE OF SERVICES

- 1.1 County grants Summit the exclusive right to provide Food Service and Products, to operate the Food Service Facilities, such Food Service, and Products per specifications of the RFP.
- 1.2 This Agreement shall commence on January 1, 2022 (the "Commencement Date") or sooner if mutually agreed upon in writing by both Parties. This Agreement will remain in effect for three years, through December 31, 2024. The County shall have the option to renew this Agreement on a yearly basis for two successive one-year renewal terms, not to exceed a total of five years. Each renewal shall be based on a yearly review of the services provided by Summit.
- 1.3 During the term of this Agreement, the Summit shall furnish all the services specified in this RFP, more fully discussed in this Agreement:
 - a. Daily Food Service to include breakfast, lunch, and dinner to inmates at the JCJ.
 - b. Development and implementation of a food service plan with clear objectives, policies, and procedures and with a process of documenting ongoing achievement of contract obligations (annual evaluations of compliance).
 - c. The operation of the Premises, using only properly licensed, certified, and permitted food service professionals.
 - d. Summit shall utilize inmate workers screened by the JCJ as to their suitability to perform services in a food service environment.
 - e. Provide weekly/monthly menus.
 - f. Meet federal and state standards through the most cost-effective menus.

2. DEFINITIONS

- 2.1. ACA. The American Correctional Association.
- 2.2. ACA Standards. ACA standards, including its Manual for Food Service Programs, 1st Edition.
- 2.3. Account Executive. The Summit employee responsible for managing the business relationship between Summit and the County.
- 2.4. Accounting Period. Summit's accounting calendar is based on an accounting cycle consisting of three (3) rotational periods of four (4) weeks, four (4) weeks, five (5) weeks.
- 2.5. Agreement. This Agreement, including Exhibits and Schedules, as may be amended.
- 2.6. Conditions. Conditions in existence on the date Summit commences operations including, without limitation, inmate 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.
- 2.7. County. Jefferson County, Washington, a political subdivision of the State of Washington.
- 2.8. Food Preparation Equipment. Equipment or appliances reasonably necessary for Food Service including, without limitation, stove, oven, sink, refrigerator, microwave, mixer, steamer, slicer, freezer, and fire extinguishing equipment that is in good condition and of a commercial grade.

- 2.9. Food Service. Services to be provided by Summit in accordance with this Agreement related to the preparation, service and sale of food, beverages, goods, merchandise, and other items at the Premises for inmates at the JCJ.
- 2.10. Food Service Manager. Summit's employee at the JCJ responsible for managing the services required for performance of this Agreement.
- 2.11. Governmental Rule. Any statute, law, rule, regulation, ordinance, or code of any governmental entity (whether federal, state, local or otherwise).
- 2.12. Jail Superintendent. The person identified in Section 10.4.
- 2.13. JCJ. The Jefferson County Jail, located at 9 Elkins Road, Port Hadlock, WA 98339.
- 2.14. Legal Authority. Summit employee with the authority to sign this Agreement on behalf of Summit.
- 2.15. Office Equipment. All office items reasonably necessary for Summit 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.
- 2.16. Opening Charges. The Food Service Manager's relocation expenses, travel costs associated with the initial opening, and the charges associated with the initial training, development, and preparation for opening.
- 2.17. Party. Party is one of the Parties.
- 2.18. Parties. The parties to this Agreement.
- 2.19. PCI Standards. All rules, regulations, standards, or guidelines adopted or required by the PCI Security Standards Council relating to privacy, data security and the safeguarding, disclosure, and handling of Payment Instrument Information.
- 2.20. Premises. Space for Summit to prepare and perform Food Service at the JCJ including, without limitation, food preparation and service areas, office and storage areas.
- 2.21. Products. Food, beverages, goods, merchandise, and supplies.
- 2.22. Project. The project described in the RFP.
- 2.23. Project Manager. The person responsible for the performance of the technical staff engaged to implement the Project on behalf of Summit.
- 2.24. Proposal. Summit's proposal to perform the services for the Project in response to the RFP.
- 2.25. Proprietary, Confidential and Trade Secret Information. Items used in Food Service (owned by or licensed to Summit) 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: (a) information generally available to and known by the public or (b) information independently developed or previously known by the County.
- 2.26. Representations. The County's representations regarding existing and future conditions at the JCJ.
- 2.27. RFP. The County's Jail Food Services RFP.
- 2.28. RFP Response. Summit's 2021 response to the RFP.
- 2.29. Servicewares. Items used in the service of food and beverages including, without limitation, chinaware, glassware, silverware, disposables, trays, and carts.
- 2.30. Sheriff. The Jefferson County Sheriff or the Sheriff's designee.

- 2.31. Smallwares. Items used in the preparation of food including, without limitation, pots, pans, and kitchen utensils.
- 2.32. Summit. Summit Food Service, LLC, a New Mexico Limited Liability Company.
- 2.33. Supervisory Employee. Those persons who have directly or indirectly performed management or professional services on behalf of Summit for the County at any time during this Agreement including, without limitation, any corporate employee, manager, assistant manager, chef, lead cook or dietitian.
- 2.34. Termination for Cause. A material breach of the Contract. For the avoidance of doubt, a material breach of the Contract includes but is not limited to: (a) Any violation of the health and safety requirements of the Contract; or, (b) Delay in providing necessary products or services for the project, when they delay has not been resolved to the satisfaction of the Sheriff or designee, within 3 days from receipt of written notice by the Summit.
- 2.35. Termination for Convenience. A termination of this Agreement for any reason.
- 2.36. Utilities and Amenities. All utilities reasonably requested by Summit to provide Food Service 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.

3. FOOD SERVICE

3.1 Food Service.

- a. Summit will oversee Food Service at the Premises which shall include, without limitation, preparation and service of food and beverages to inmates at the JCJ in a cost-effective manner.
- b. Summit shall provide high quality food service in accordance with ACA Standards. Food and food service shall meet all applicable federal, state, and local guidelines, laws, and regulations and shall meet other guidelines as prescribed by ACA.
- c. All meals shall be served at appropriate temperatures and in a manner that makes them palatable (140 degrees if hot, 45 degrees if cold), and visibly pleasing complete with condiments if indicated.
- d. Summit shall operate the food service program using corrections-experienced and/or professionally trained personnel.

3.2 Program Specifications.

- a. Coordination of Food Purchases. Summit shall coordinate purchase of all food supplies as well as any other food with the Sheriff.
- b. Menu. Summit shall provide a 2600 calorie menu and menu cycle for adult inmates of the JCJ. Summit will provide three meals per day, seven days per week to the inmate population of the JCJ, including one (1) cold and two (2) hot meals. A registered dietician shall approve all menus prior to service. All menus and special diets (medical, religious, etc.) shall meet the standards for adult holding and detention facilities as established by the ACA.
- c. Medical Meals. Summit shall provide medical meals as requested by the Sheriff.

- d. Sack Lunches. Summit shall provide sack lunches for work release or inmate worker programs. Sack lunches shall also be made available for inmates who are out of the facility to Court during the lunch hour.
- e. Religious and Physician-Ordered Meals. Summit shall provide religious and physician-ordered meals as requested by The Sheriff at no additional cost.
- f. Locations. Summit shall operate and manage Food Service at the Premises and locations as the Sheriff and Summit mutually agree.
- g. Hours. Summit shall provide necessary Food Service at such hours as the Sheriff and Summit mutually agree.
- h. Administrative Requirements. Summit shall have the responsibility to provide: (i) A singular designated Food Service Manager with responsibility for assuring the appropriateness and adequacy of food services; (ii) Well-defined operational policies and procedures to include, at a minimum, those required by ACA Standards and, in concert with the Sheriff, procedures for service delivery. The Sheriff shall develop the policies and procedures necessary to specify the role of food services in a jail setting and to provide liaison between the food service and corrections staff.
- i. Staffing Plan. Summit shall provide the Sheriff an organization chart and job descriptions for all employees involved in Food Service, including inmates.
- j. Statistical Reporting. Summit shall track daily, monthly, and annual statistical reports in accordance with ACA standards. These reports shall be available upon request from County. A comprehensive annual statistical report shall be forwarded to the Sheriff, or designee, in accordance with ACA Standards. In addition, monthly and daily statistics shall be required as follows: (i) The Sheriff shall require a review of statistical data reflecting the previous month's activities. The data may include but shall necessarily be limited to: (1) Number of hours worked by inmates; (2) Number of meals served each day, including specialty diets; (3) Types of specialty meals served; and, (4) Other data deemed appropriate by the County.
- k. Monthly Meetings. The Food Services Manager shall attend scheduled monthly meetings with jail staff, medical staff, and corrections staff to evaluate statistics, program needs, problems, and coordination them.
- a. Inmate Labor. The Jail Superintendent shall provide inmate labor as mutually agreed upon between the Parties. Summit shall specify the number of inmate workers per shift for an assumed preparation of 47,500 – 52,000 meals yearly. Inmates shall be used only for the preparation of food, delivery of meals, and general sanitation and cleaning of the kitchen. Inmates are not permitted to supervise other inmates. Summit shall include the inmate training as part of the Summit's overall training program for Summit's employees for the JCJ. Summit agrees to train and supervise inmates only with respect to food service tasks. Summit training and supervision of inmates shall be subject to the overall control of JCJ. JCJ staff shall not be posted in the kitchen but shall make periodic welfare checks.
- b. Open, Collaborative Relationship. Summit shall maintain an open, collaborative relationship with the administration and staff of JCJ.

3.3 Purchasing. Summit shall purchase those Products and supplies necessary to comply with Summit's obligations as set forth in this Agreement from Summit's approved vendors that meet Summit's guidelines and requirements.

- 3.4 Commodities. Summit shall incorporate free federal and/or state commodities when they are available, wholesome, and appropriate to the menu. Summit reserves the right to refuse acceptance of any such commodities that are contaminated or supplied in excessive amounts rendering them unusable within their respective dates of expiration. Summit warrants that commodities received shall be used solely for the benefit of those persons in custody at JCJ. Summit shall properly handle, store, and prepare commodities for consumption.
- 3.5 Inventory. Summit will purchase and own all inventories of food, beverages, and supplies. Upon termination of this Agreement for any reason, at Summit's option, (a) Summit may remove and retain any remaining Product inventory or (b) County will purchase from Summit, at Summit's invoice cost, any remaining Product inventory.
- 3.6 Cleaning. Summit and the Sheriff or designee shall be jointly responsible for housekeeping and sanitation in the food preparation, storage, and service areas of the Premises. Summit shall perform routine cleaning and housekeeping in the food preparation and service areas and of the Food Preparation Equipment to the standards of sanitation required by state or local regulations. The Sheriff 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. The Sheriff shall be responsible for setting up and cleaning the Premises for functions not managed by Summit, in addition to any related charges. The Sheriff shall be responsible for removal of refuse from the collection areas and all refuse removal charges. JCJ shall provide all cleaning supplies for the kitchen areas and equipment.
- 3.7 Inspections by Jefferson County Health Department. Inspections shall be made by the Jefferson County Health Department of the food preparation and service areas and of the Food Preparation Equipment, as deemed necessary, with or without advance notice to Summit, and such inspections shall not interfere with the food service operations. Inspections of the food preparation and service areas or the Food Preparation Equipment by the Jefferson County Health Department must result in no RED violations. If red violations of the food preparation and service areas or the Food Preparation Equipment are noted, Summit shall notify JCJ of areas to be improved and shall remedy the deficiency within 5 days of receipt of such notice.

4. EMPLOYEE AND SUBCONTRACTING REQUIREMENTS

- 4.1. Employees. Summit shall hire employees necessary for its performance of this Agreement. Persons employed by Summit will be the employees of Summit and not of County or the Sheriff. Summit's employees and agents shall comply with applicable rules and regulations concerning conduct on the Premises, which 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. The Sheriff agrees to provide Summit notice of any proposed changes in applicable rules and regulations, at least thirty (30) days prior to implementation. Summit will consider the Sheriff's written requests to remove Food Service employees, provided such requests are non-discriminatory and comply with all laws and regulations governing employment.
- 4.2. Employment Terms; Employee Pension and Benefit Plans. Summit in its sole discretion may elect to hire any persons who are qualified, available, and willing to provide Food Service at the Premises. Summit shall have the authority to establish the terms of employment for all current Summit

managers and employees (including Existing Employees that Summit may elect to hire relating to this Agreement).

4.3. Employee Screening and Licensing.

- a. Summit's employees and the employees of any of Summit's approved subcontractor shall submit to a Washington State Patrol fingerprint identity and criminal history check before they are authorized to perform services for the Project at the JCJ. The County agrees to bear all reasonable costs incurred in the performance of these criminal history/background checks.
- b. Summit shall conduct necessary background checks as required by law.
- c. Prior to JCJ's approval for employment, an applicant screening shall be conducted.
- d. Summit shall provide a completed background packet on each employee applicant prior to employment and admission to the jail.
- e. The Food Services Manager must receive all applicable licenses or certificates for all professional staff prior to employment.

4.4. Prohibition or Removal of Summit's Employees. The Sheriff may prohibit entry to the JCJ, or remove therefrom, any employee of Summit who does not perform services in a professional manner, or who violates JCJ's security rules and procedures. Any personnel that are suspected of violating security policies for JCJ shall immediately be terminated from employment at JCJ by Summit. The Sheriff or his designee reserves the right to search any person, property, or article entering the JCJ.

4.5. Wages and Hours. Summit shall comply with all applicable federal, state, and local laws and regulations pertaining to the wages and hours of employment for Summit'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.

4.6. Payroll Taxes. Summit shall be responsible for all withholding and payroll taxes relative to Summit's employees. County shall be responsible for all withholding and payroll taxes relative to County's employees.

4.7. Equal Opportunity and Affirmative Action Employer. Summit 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. Summit employs and promotes individuals without regard to age, race, color, religion, sex, national origin, protected veteran status or disability.

4.8. Safety Considerations. Summit shall be responsible for compliance with all relevant state and federal workplace safety requirements to include compliance with JCJ's safety directives and policies. Summit shall be responsible for ensuring that its employees are trained in the safety procedures appropriate to assigned work.

- 4.9. Drug Use Policy. The use of illegal drugs, alcohol, or controlled substances on the County property or premises is strictly prohibited. Summit's employees shall not perform services for the Food Service while under the influence of drugs or alcohol is strictly prohibited, and if discovered, may be reported to the appropriate law enforcement agency.
- 4.10. Tobacco Policy. The use of tobacco of any kind on property or premises of the County shall be in compliance with the County policies.
- 4.11. Harassment, Discrimination, Fraternization. Any form of harassment, discrimination, or improper fraternization with JCI inmates or employees is strictly prohibited.
- 4.12. Collective Bargaining. Summit shall specify if any of Summit's employees who shall be performing services on JCI premises are covered by any labor unions involved in collective bargaining agreements. If so, Summit shall identify the date the current labor agreement expires. Summit shall also disclose if it is currently involved in any labor relation litigation, mediation, or negotiation that may affect its ability to perform its obligations under the Contract.
- 4.13. Non-Hire. County acknowledges that Summit 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 Summit and for a period of twelve (12) months thereafter no Supervisory Employees of Summit will be hired by County nor any facility affiliated with County, nor will County permit employment of Summit 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 Summit, and Summit 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. Summit shall be entitled to pursue all other remedies available under federal, state, or local law. This provision shall survive the termination of this Agreement.
- 4.14. Subcontracting Requirements.
- a. Summit Owns Contract Performance: Summit is responsible for meeting all terms and conditions of the Contract including standards of service, quality of materials and workmanship, costs, and schedules. Failure of a subcontractor to perform is no defense to the Contract. Summit assumes responsibility for and all liability for the actions and quality of services performed by any subcontractor.
 - b. Subcontractor Approval: Every subcontractor must agree in writing to follow every term of the Contract. Summit must provide every subcontractor's written agreement to follow every term of the Contract before the subcontractor can perform any services under the Contract. The Sheriff or designee must approve any proposed subcontractors in writing.
 - c. Subcontractor Disputes: Any dispute arising between Summit and any subcontractors or between subcontractors must be resolved without involvement of any kind on the part of the County and without detrimental impact on the delivery of contracted goods and services.

5. PREMISES, FACILITIES, UTILITIES, AND EQUIPMENT

- 5.1 Premises. The Premises shall be in good condition and maintained by the County to ensure compliance with applicable Governmental Rules and to enable Summit 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. Summit shall have no obligation to maintain or repair the Premises.

- 5.2 Food Preparation Equipment. County shall permit Summit to use all 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. Summit and County shall inventory County's current Equipment within thirty (30) days after the Commencement Date. Summit 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, Summit shall have the right to effect equipment repairs or replacements at County's expense. Summit shall retain title to replacement equipment it obtains 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, Summit shall release the security interest and title for any such purchased equipment to County.
- 5.3 Premises and Utilities. At its own expense, County shall maintain, repair, replace, and keep in safe operating condition the Premises and utilities sufficient to permit the performance of the Food Service and to ensure compliance with Governmental Rules.
- 5.4 Smallwares and Servicewares. At its own expense, County shall furnish Summit with the Smallwares, Servicewares and Food Preparation Equipment requested by Summit that are reasonably necessary to perform the Food Service.

6. COMPLIANCE WITH LAW, LICENSES & PERMITS, AND TAXES

- 6.1 Compliance with Applicable Law. While performing services at the JCJ, Summit, subcontractors, and their employees are required to comply with all applicable local, state, and federal laws, codes, ordinances, and regulations, including but not limited to:
- a. Applicable Regulations of the Washington Department of Labor and Industries, including WA-DOSH Safety Regulations;
 - b. Washington and Jefferson County public health rules and regulations; and,
 - c. State and Federal Anti-Discrimination Laws.
- 6.2 Licenses and Permits.
- a. Summit warrants it is licensed or legally entitled to do business in the State of Washington.
 - b. Summit shall procure, maintain, and post the food licenses and permits as required by law.
 - c. County represents and warrants that it has and will maintain all other licenses and permits necessary to operate the Premises and the Food Service. County agrees to notify Summit immediately upon receiving notice of loss of any such permit or license.
- 6.3 Taxes. Summit shall be responsible for collecting and remitting sales tax on applicable sales collected by Summit. Unless County provides documentation of County's federal and state tax-exempt status to the Summit's sole satisfaction, County shall reimburse Summit 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 Service 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 Summit promptly should its sales tax status be changed.

7. FINANCIAL ARRANGEMENTS

7.1 Payment Arrangement.

- a. Inmate Flat Base Price. County shall pay Summit the amount of One Hundred Twenty-One Dollars and twenty cents (\$121.20) per Meal Period (breakfast, lunch, and dinner), plus \$1.00 per meal served based on inmate count. The rate shall not include charges for supplements, cleaning supplies, equipment purchases or repairs. The prices per meal shall be guaranteed for a period of one year unless there is a change in the scope of services, at which time the parties shall negotiate mutually agreeable financial terms.
- b. Opening Charges. Opening Charges shall be due in lump sum upon receipt of invoice. In the event this Agreement is terminated prior to full payment of Opening Charges, then the County agrees to pay Summit immediately the amount of any outstanding balance due pursuant to this Section.
- c. Service and Pricing Assumptions. The financial terms set forth in this Agreement, and all other obligations assumed by Summit under this Agreement, are based on the following assumptions:
 1. Inmate Population: Summit will assume 47,500 – 52,000 meals shall be served at JCJ in 2022. The base price shall include the furnishing of all labor, materials, equipment, insurances, licenses, and applicable taxes necessary or proper for the completion of the services required for the Project. The number is provided as a guideline for meals to be served and shall not be construed to mean that Summit shall serve that exact corresponding number of meals on a yearly basis.
 2. Purchasing: Summit 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 Summit's base rate shall be proportionately increased, unless the Parties mutually agree otherwise. However, Summit agrees the rates shall be good and not revocable by Summit for an evaluation period of 90 days from the date of the opening, unless otherwise agreed by the Parties. Further, the Inmate Base Price is subject to review no more often than once each year at the anniversary date of this Agreement.
- d. Payments Due and Late Payment Penalty. On the first day of each week, Summit shall submit to the County an invoice for meals ordered or prepared, whichever is greater, for the previous week. Mail or deliver invoices to:

Jail Superintendent
Jefferson County Jail
81 Elkins Road

or any other address so designated by the County in writing. The invoice shall contain the description of service including quantity if any. County shall pay the full invoice amount within forty-five (45) days from the issuance of the invoice. In the event payment is not made within forty-five (45) days of the due date, the invoice will be subject to a finance charge of eighteen percent (18%) per annum or, if less, the maximum amount permitted under applicable law. The right of Summit to charge the finance charge shall not be construed as a waiver of Summit's normal entitlement to receive timely payment as set forth herein.

- e. Right to Offset. If County is more than forty-five (45) days past due on any obligations to Summit, Summit shall have the right to offset, from any other sums owed by Summit to County, all or any portion of such outstanding receivables. Additionally, Summit shall have the right, at Summit's option, at any time that County is over forty-five (45) days past due on any obligations require that County pay, on a prebilling basis, at least one week in advance of each Accounting Period, the estimated amount due Summit for that Accounting Period. The estimated amount shall be adjusted and reconciled to the actual amount in the next prebilling invoice, or if County is no longer past due on its obligations to Summit, with the next invoice due hereunder. Further, Summit shall have the right to immediately adjust hours, prices, labor, and menu offerings to further off-set any losses.
- f. Change in Conditions. The financial terms set forth in this Agreement, and all other obligations assumed by Summit in this Agreement, are based on Conditions and the Representations. In the event of change in the Conditions, inaccuracy of the Representations, or if County requests any significant change in the Food Service as provided under this Agreement, the financial terms and other obligations assumed by Summit shall be renegotiated to reflect a proportionate increase in Summit's charges to the County. Summit will provide a thirty (30) day notice of any proposal to increase charges.
- g. 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, Summit shall provide County notification of the adjustment. On the anniversary date, Summit proposed adjustments shall go into effect, unless the Parties have entered into a written agreement with an alternative cost adjustment.

8. TERMINATION OF THE AGREEMENT.

- 8.1 Termination for Cause. This Agreement may be terminated for cause immediately, if any shutdown of the food service is required by an outside agency such as OSHA or the Washington Department of Health and upon ten-days written notice, if not for a health or a safety problem.
- 8.2 Termination for Convenience. 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) ninety (90) 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.

- 8.3 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 with three (3) days' notice. Provided, however, that County agrees to provide Summit thirty (30) days' notice before filing a petition for bankruptcy.
- 8.4 Voluntary Termination. At any time after one year of service and in any renewal term of this Agreement, either Party may terminate this Agreement with or without cause by written notice to the other party given not less than ninety (90) days prior to the effective date of termination.
- 8.5 Steps Upon Termination. Upon the termination or expiration of this Agreement, Summit shall vacate the Premises occupied by Summit and shall remove its own equipment and return equipment furnished by County pursuant to this Agreement. Upon termination of this Agreement, Summit 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 Summit is not responsible hereunder.
- 8.6 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 Summit shall become due and payable immediately upon termination. If, at County's request, Summit 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 Summit) all responsibilities of Summit under all Third Party Agreements from and after the date this Agreement expires or is earlier terminated; (ii) release Summit 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.

9. INDEMNIFICATION; INSURANCE

- 9.1 Insurance. Both County and Summit shall maintain their own insurance on their respective real property, equipment, and contents. Upon request, evidence of such insurance shall be provided in the form of a certificate of insurance.
- a. County Insurance. County shall procure and maintain property insurance for the Premises, the Food Preparation Equipment and any Smallwares, Servicewares and food and beverage inventory against all loss or damage as insured against under a commercial property causes of loss – special form policy (or any successor policy form).

- b. Summit Insurance. Summit shall procure and maintain the following insurance:
- i. **Worker's Compensation Insurance (Industrial Insurance):** Summit shall maintain workers' compensation insurance at its own expense, as required by Title 51 RCW, for the life of the Contract and shall provide evidence of coverage to Jefferson County Risk Management, upon request. Worker's Compensation Insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws. This coverage shall extend to any subcontractor that does not have their own Worker's Compensation and Employer's Liability Insurance. Summit expressly waives by mutual negotiation all immunity and limitations on liability, with respect to the County, under any industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim, If the County incurs any costs to enforce the provisions of this subsection, all cost and fees shall be recoverable from Summit.
 - ii. **Comprehensive General Liability Insurance:** Summit shall maintain Commercial General Liability coverage for bodily injury, personal injury, and property damage, in an amount not less than a single limit of one million dollars (\$1,000,000) per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$2,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the Contract. The insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:
 1. Broad Form Property Damage, with no employee exclusion;
 2. Personal Injury Liability, including extended bodily injury;
 3. Broad Form Contractual/Commercial Liability – including completed operations;
 4. Premises – Operations Liability (M&C);
 5. Independent Contractors and subcontractors;
 6. Blanket Contractual Liability.
 7. The County and its elected officials, officers and employees shall be named as an additional insured party under this policy.Summit's Commercial General Liability shall include Employer's Liability Coverage with a limit of not less than \$500,000.00.
 - iii. **Automobile Liability:** Summit shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000.00 each accident combined Bodily Injury and Property Damages. Coverage shall include owned, hired, and non-owned automobiles.
 - iv. Such insurance coverage shall be evidenced by one of the following methods:
 1. Certificate of insurance; or,
 2. Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.
 - v. Certificates of insurance as required by this section shall be delivered to the County within fifteen (15) days of execution of the Contract.
 - vi. Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of the Contract by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention, or Summit

- shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- vii. Summit's liability insurance provisions shall be primary and noncontributory with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees, and agents.
 - viii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or agents.
 - ix. Summit's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - x. Summit shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all the requirements stated herein.
 - xi. Failure of Summit to take out and/or maintain any required insurance shall not relieve Summit from any liability under the Contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.
 - xii. The insurance limits mandated for any insurance coverage required by the Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
 - xiii. Summit shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced.
 - xiv. Summit shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.
- c. Certificates of Insurance. Summit shall furnish the County with properly executed certificates of insurance that, at a minimum, shall include:
- i. Limits of liability coverage;
 - ii. Project name and contract number to which it applies;
 - iii. Certificate Holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Risk Management, Jefferson County, P.O. Box 1220, Port Townsend, WA 98368; and,
 - iv. A statement that the underlying insurance contract shall not be canceled or allowed to expire except on thirty (30) days prior written notice to the County.
 - v. Summit shall provide a copy of all insurance policies specified in the Contract.
- b. Written Notice of Cancellation of Change. Written notice of cancellation or change shall reference the project name and contract number and shall be mailed to the County at the following address: Risk Management, Jefferson County, P.O. Box 1220, Port Townsend, WA 98368.
- a. Subrogation. It is agreed by the parties that insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both

parties and be primary coverage for all losses covered by the above described insurance. It is further agreed by the parties that insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy. It is further agreed by the parties that all deductibles in the above described insurance policies shall be assumed by and be at the sole risk of Summit.

- b. It is agreed by the parties that judgments for which the County may be liable, more than insured amounts provided herein, or any portion thereof, may be withheld from payment due, or to become due, to Summit until Summit shall furnish additional security covering such judgment as may be determined by the County.
- c. Any coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any policy of insurance Summit shall provide to comply with the Contract.
- d. If the proof of insurance or certificate indicating the County is an "additional insured" to a policy obtained by Summit refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of Summit to obtain the full text of that endorsement and forward that full text to the County.
- e. The County may, upon Summit's failure to comply with all provisions of the Contract relating to insurance, withhold payment or compensation that would otherwise be due to Summit.

9.2 Indemnification. In addition to the requirements to obtain and maintain a policy of liability insurance pursuant to which the County and all its elected officials, officers and employees shall be named as either additional insured or the named insured, Summit agrees to indemnify, defend and hold the County and all of its elected officials, officers and employees harmless from and against all claims, suits, actions, damages or causes of action for any personal injury, loss of life, damage to property or any action as a result of the performance of the Food Service and from and against any orders, judgments, or decrees, which may be entered thereto, and from and against all costs, attorney's fees, expenses and liabilities incurred in or by reason of the defense of any such claim, suit, or action, and the investigation thereof.

10. GENERAL AGREEMENT TERMS

10.1 Confidentiality.

- a. 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, Confidential and Trade Secret Information, without Summit's prior written permission. All Proprietary, Confidential and Trade Secret Information shall remain Summit exclusive property. County's access or use of Summit 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 Summit with prompt notice of such request(s). Upon termination of this Agreement, County shall return all Summit Proprietary, Confidential and Trade Secret Information in County's possession relating to Summit's services pursuant to this Agreement. County agrees that upon breaching this provision, Summit shall be entitled

to equitable relief, including injunction or specific performance, in addition to all other available remedies. This provision shall survive the termination of the Agreement.

- b. Summit shall maintain strict privacy of all JCJ records, data, files (regardless of media), including any copyrighted material received from JCJ.

10.2 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 Summit (whether now owned or hereafter developed or acquired), all of which are reserved to Summit.

10.3 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 Summit 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 Summit.

10.4 Notice. 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:

County

Jail Superintendent
Jefferson County Washington
79 Elkins Road

Port Hadlock, WA 98339

srichmond@co.jefferson.wa.us

Summit

Summit Food Service, LLC
1751 County Road B West, Suite 300
Roseville, MN 55113

10.5 Non-Performance. In the event of non-performance on the part of Summit (i.e., failure and/or inability to meet agreed upon deadlines or specifications as outlined herein), consequential damages shall be due to the County. The County may terminate the Contract and be relieved of the payment of any consideration to Summit if Summit fails to perform as required by this Agreement. In the event of such termination the County may proceed with the services in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due Summit under the Contract.

10.6 Excused Performance. If performance of any terms or provisions of this Agreement (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 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.

10.7 Assignment or Transfer. Summit shall give full attention to the faithful execution of this Agreement, shall keep the all the services required for the Food Service under its control, and shall not by the power of attorney or otherwise assign this Agreement to any other person without prior approval of the Sheriff. Such consent shall not apply to Summit's transfer to a parent, sister, or successor where Summit provides County at least thirty (30) days written notice and the County fails to object during the notice period.

- 10.8 Entire Agreement; No Waiver. This Agreement, including any Exhibits and Schedules to this Agreement, constitutes the entire Agreement between the Parties with respect to the provisions of Summit'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 Summit and County. This Agreement supersedes all other agreements between the Parties or their predecessors for the provision of Food Service.
- 10.9 Disputes About the Meaning of this Agreement. Any disputes about the meaning of this Agreement shall be resolved, in order of precedence, by reference to: (a) the language in this Agreement, including Exhibits and Schedules, as amended; and, (b) where specifically included by reference, (ii) the RFP and (iii) the Proposal.
- 10.10 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 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.
- 10.11 Washington Law Applies. The Parties agree that Washington law shall govern the validity and construction of this Agreement. Should a lawsuit be necessary to enforce this Agreement, the Parties hereby waive any objection to venue or personal jurisdiction and agrees to be subject to the jurisdiction of the courts located in Washington. 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.
- 10.12 Limitation of Liability. Summit's entire liability and County's exclusive remedy for damages arising out of or related to this Agreement or the Food Service shall not exceed the total amount paid by County to Summit for the current term of this Agreement. SUMMIT SHALL NOT BE LIABLE FOR LOSS OF BUSINESS, BUSINESS INTERRUPTION, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR FOR LOSS OF REVENUE OR PROFIT REGARDING 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.
- 10.13 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.
- 10.14 Authority. Summit 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.
- 10.15 Attorney's Fees and Costs. Should either party bring any legal action, each party in such action shall bear the cost of its own attorney's fees and costs.

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IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused their appointed and duly assigned officers to execute this Agreement.

JEFFERSON COUNTY WASHINGTON

SUMMIT FOOD SERVICE, LLC

Board of County Commissioners
Jefferson County, Washington

By: _____
Heidi Eisenhour, Chair Date

By: _____
Signature

By: _____
Kate Dean, Commissioner Date

Name: _____

Title: _____

By: _____
Greg Brotherton, Commissioner Date

Date: _____

SEAL:

ATTEST:

Carolyn Avery Date
Deputy Clerk of the Board

Approved as to form only:



January 6, 2021

Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney