

## CORRECTIONAL FOOD SERVICES MANAGEMENT

### CORRECTIONAL FOOD SERVICES MANAGEMENT AGREEMENT

#### INTRODUCTION

**Summit Food Service, LLC** with its principal place of business located at 500 East 52<sup>nd</sup>, Street North, Sioux Falls, SD 57104 (hereinafter "Vendor") and Santa Barbara County Sheriff's Office, with its principal place of business at 4436 Calle Real, Santa Barbara CA, 93110 (hereinafter "COUNTY") hereby agree to execute this Correctional Food Services Agreement ("Agreement"), effective October 1, 2024 ("Effective Date").

#### 1. AGREEMENT

- 1.1 Pursuant to RFP # 8700002, COUNTY hereby awards this Agreement to Vendor and provides Vendor the right to install and operate all Food Services software systems, procure and manage delivery of provisions, safely store provisions, maintain accurate inventories, prepare inmate and staff meals 3 times a day, 365 days a year in accordance with Federal and state nutritional guidelines and specifications using the equipment at COUNTY's Facilities. Vendor shall portion and serve prepared meals and take responsibility for sanitation before, during and after each meal. **Exhibit A – Correctional Food Services Mandatory Requirements** of the RFP is hereby incorporated into this Agreement and attached hereto as **Exhibit A– Correctional Food Services Mandatory Requirements**. Details surrounding COUNTY's Facilities and required equipment can be found in **Exhibit A, Section I (Facility Specifications)**. Vendor shall, at no cost to COUNTY, be responsible for providing all management, supervision, food services personnel, provision of inventories and equipment required to manage the Food Services at all of COUNTY's Facilities as required and directed by the COUNTY.

#### 2. TERM

- 2.1. This Agreement shall commence upon the Effective Date above and remain in force for an initial term of 3-years with an expiration date of September 30, 2027 ("Initial Term"). This Agreement shall not bind, nor purport to bind, COUNTY for any contractual commitment in excess of the Initial Term. However, the Parties shall have the right to renew this Agreement through mutual agreement for 2 additional 1-year terms. In the event the Parties exercise such right, all terms and conditions, requirements, and specifications of this Agreement, and any Amendments, shall remain the same and apply during the renewal term(s). This Agreement will not automatically renew.

#### 3. VENDOR RESPONSIBILITIES

- 3.1. Vendor shall agree to all terms and conditions set forth in this Agreement, and Vendor shall agree to the specifications, including, but not limited to, the features and functionalities of food services management as referenced in **Exhibit A - Correctional Food Services Mandatory Requirements, Section D (General Conditions)**. If COUNTY designates an agent to act on COUNTY's behalf ("Designated Agent"), Vendor shall follow COUNTY's direction in working with such Designated Agent.

#### NEGOTIATED TERMS

#### 4. SURETY BOND

[Intentionally left blank.]

#### 5. REPAIR/REPLACEMENT ALLOWANCE

- 5.1. Vendor agrees to absorb the initial \$65,000.00 in repair and/or replacement costs for all kitchen equipment at the Facilities. Vendor shall remit payment directly or reimburse COUNTY for any approved and agreed upon repair and/or replacement costs.

## **6. PRICES, INVOICES AND REPORTING**

- 6.1. Pursuant to Vendor's response to RFP #8700002 and the Final Proposal, unless specifically stated otherwise, both parties mutually agree on the cost per meals as listed in **Exhibit B**.
- 6.2. Vendor agrees to provide the weekly and monthly invoices as specified in **Exhibit A, Section D (General Conditions)**.
- 6.3. Vendor agrees to provide the weekly and monthly reporting as specified in **Exhibit A, Section D (General Conditions)**.
- 6.4. In full consideration for Vendor's services, Vendor shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 21 following completion of the increments identified on Exhibit B. Unless otherwise specified on Exhibit B, payment shall be net thirty (30) days from presentation of invoice.

## **7. RECONCILIATION**

- 7.1. COUNTY, or its Designated Agent, shall have the right from the Effective Date of this Agreement and for a period of 2 years after the termination date of this Agreement, upon 10 business days' written notice, to fully reconcile or examine any and all of COUNTY information pertaining to this Agreement. COUNTY retains the right to have another independent Agency of COUNTY's exclusive choice, perform any or all reconciliations and examinations pertaining to this Agreement.
- 7.2. Vendor shall maintain accurate, complete and reconcilable records, in an electronic format, detailing Food Services records for dates, the number of meals served, type of meals served (inmate and Facilities staff) portion sizes, weekly invoices and payments received from COUNTY. Vendor shall also maintain records in the system for purchasing, receiving, inventories, returns, product releases to food production, meals served, portion sizes, product wastes and causes. Vendor shall maintain the data through the term of this Agreement and for no less than 2 years after the term of this Agreement.
- 7.3. In the event the foregoing reconciliation reveals an overcharge to the COUNTY, Vendor shall refund the overcharges and the COUNTY's reasonable cost of reconciliation, within 30 days of the resolution date. If the agreed upon amounts are not paid within 30 days, the amounts due to COUNTY will accrue interest at the rate of 5% per month, or the highest rate permitted by law (whichever is less) until such monies are paid.

## **8. DEBARMENT AND SUSPENSION**

- 8.1. Vendor certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. Vendor certifies that it shall not contract with a subcontractor that is so debarred or suspended.

## **9. ASSIGNMENT AND MERGERS/ACQUISITION**

- 9.1. The services to be performed under this Agreement shall not be assigned, sublet or transferred without 30 days advance written notification to the COUNTY and then only upon Vendor's receipt of the COUNTY's written consent. Such consent shall not be unreasonably withheld.
- 9.2. Upon receipt of the COUNTY's written consent, any such purchaser, assignee, successor, or delegate shall thereupon assume all rights and responsibilities of Vendor. However, the COUNTY may assign any and/or all

of its rights and obligations hereunder without Vendor's written consent but upon the COUNTY's written notice thereof to Vendor:

- 9.2.1. To any affiliate;
  - 9.2.2. Pursuant to any sale or transfer of all or substantially all of its business or assets;
  - 9.2.3. Pursuant to any merger, acquisition or reorganization; or
  - 9.2.4. As part of a bona fide pledge to a third-party lending institution of collateral of the assignor's rights hereunder.
- 9.3. If during the Agreement term and any renewal term(s), Vendor merges or is acquired by another entity, the following documents must be submitted to the COUNTY.
- 9.3.1. Corporate resolutions prepared by Vendor and the new entity ratifying acceptance of all of the Agreement and its terms, conditions and processes;
  - 9.3.2. New Federal Identification Number (FEIN) if applicable; and,
  - 9.3.3. Other documentation requested by COUNTY.
- 9.4. Vendor expressly understands and agrees that it assumes and is solely responsible for all legal and financial responsibilities related to the execution of a subcontract. Vendor agrees that utilization of a subcontractor to provide any of the products/services in this Agreement shall in no way relieve Vendor of the responsibility for providing the products/services as described and set forth herein.

## 10. CONFLICT OF INTEREST

- 10.1. Vendor covenants that COUNTY presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Vendor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by the Vendor. Vendor must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by Vendor if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to Vendor in writing.

## 11. TERMINATION/DEFAULT

- 11.1. In the event either Party fails to perform any terms or conditions of this Agreement, the other Party may consider the defaulting Party in default of the Agreement and supply the defaulting Party written notice of such default. If the breaching Party does not rectify the breach within fifteen (15) days, the non-breaching Party shall have the option to terminate this Agreement at the end of the fifteen (15) day period. Upon termination, the Parties shall adhere to the transition requirements as outlined in **Exhibit A, Section E (General Installation Requirements)**.
- 11.2. Either Party may terminate the Agreement between COUNTY and Vendor upon 30 calendar days written notice from terminating Party to non-terminating Party without penalty. Upon termination, Vendor shall adhere to the transition requirements as outlined in **Exhibit A, Section E (General Installation Requirements)**.
- 11.3. Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.

## **12. NO PUBLICITY OR ENDORSEMENT**

- 12.1. Vendor shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Vendor shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing the Vendor. Vendor shall not in any way contract on behalf of or in the name of COUNTY. The Vendor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

## **13. COUNTY PROPERTY AND INFORMATION**

- 13.1. All of COUNTY's property, documents, and information provided for Vendor's use in connection with the services shall remain COUNTY's property, and Vendor shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. Vendor may use such items only in connection with providing the services. Vendor shall not disseminate any COUNTY's property, documents, or information without COUNTY's prior written consent.
- 13.2. All of Vendor's property, documents, and information provided for COUNTY's use in connection with the services shall remain Vendor's property, and COUNTY shall return any such items whenever requested by Vendor and whenever required according to the Termination section of this Agreement. COUNTY may use such items only in connection with providing the services. COUNTY shall not disseminate any Vendor's property, documents, or information without Vendor's prior written consent.

## **14. RECORDS, AUDIT, AND REVIEW**

- 14.1. Vendor shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Vendor's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during Vendor's regular business hours with reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Vendor shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Vendor shall respond to audits and reviews by COUNTY or the State, at no charge to COUNTY.
- 14.2. If federal, state or county audit exceptions are made relating to this Agreement, Vendor shall reimburse all costs incurred by federal, state, and/or county governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Within 30 days of notification and documentation of discrepancy and audit results from COUNTY, Vendor shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

## **15. INSURANCE**

- 15.1. Vendor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder, and the results of that work by the Vendor, his agents, representatives, employees or subcontractors. Annual renewals for the term of this policy should be submitted prior to the expiration date of any policy.

- 15.2. Vendor shall provide COUNTY a Certificate of Insurance, on an original ACORD certificate, evidencing required coverage described below, within 10 days after receipt of notice of award. Said certificate shall show COUNTY as an additional insured and shall include a waiver of subrogation, as described below.
- 15.3. Vendor agrees to carry and maintain Workers Compensation Insurance. Proof of Workers Compensation Insurance must be provided with the proposal to COUNTY.
- 15.4. **Minimum Scope of Insurance.** The coverage shall be at least as broad as:
  - 15.4.1. **Commercial General Liability ("CGL").** Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
  - 15.4.2. **Automobile Liability.** ISO Form Number CA 00 01 covering any auto (Code 1), or if Vendor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
  - 15.4.3. **Workers' Compensation.** As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
  - 15.4.4. **Professional Liability (Errors and Omissions).** Insurance appropriate to the Vendor's profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
  - 15.4.5. If the Vendor maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Vendor.
- 15.5. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:
  - 15.5.1. **Additional Insured.** COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Vendor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
  - 15.5.2. **Primary Coverage.** For any claims related to this Agreement, the Vendor's insurance coverage shall be the primary insurance as respect to 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 excess of the Vendor's insurance and shall not contribute with it.
  - 15.5.3. **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to COUNTY.
  - 15.5.4. **Waiver of Subrogation Rights.** COUNTY and Vendor waive any and all right of recovery from each other for property damage or loss of use thereof, however occurring, which loss is insured under a valid and collectible insurance policy to the extent of any recovery collectible under such insurance. This waiver shall include, but not be limited to, losses covered by policies of fire,

extended coverage, boiler explosion and sprinkler leakage. This waiver shall not apply to claims for personal death or injury. Vendor shall not be liable to the COUNTY, in any way for damage to the Facilities or Premises caused by reason of fire, or other hazard, however caused, or by the reason of an act of God. In any event, Vendor shall not be held liable for any cause to an extent which would exceed effective coverage and dollar limits prevailing under the policies of insurance described in this Agreement.

- 15.5.5. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions must be declared to COUNTY. COUNTY may require the Vendor provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- 15.5.6. **Acceptability of Insurers.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
- 15.5.7. **Verification of Coverage.** Vendor shall furnish COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Vendor's obligation to provide them. The Vendor shall furnish evidence of renewal of coverage throughout the term of the Agreement. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- 15.5.8. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
- 15.5.9. **Subcontractors.** Vendor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Vendor shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
- 15.5.10. **Claims Made Policies.** If any of the required policies provide coverage on a claims-made basis:
  - 15.5.10.1. The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of Agreement work.
  - 15.5.10.2. Insurance must be maintained and evidence of insurance must be provided for at least 10 days after Agreement execution.
  - 15.5.10.3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, the Vendor must purchase "extended reporting" coverage for a minimum of 5 years after completion of Agreement work.
- 15.5.11. **Special Risks or Circumstances.** COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

- 15.6. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to the Agreement. Vendor agrees to execute any such amendment within 30 days of receipt.
- 15.7. Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.
- 15.8. COUNTY agrees to provide Vendor with reasonable and timely notice on any claim, demand or cause of action made by or brought against COUNTY arising out of the service provided by Vendor. Vendor shall have the right to defend any such claim at its sole cost and expense and with its exclusive discretion.
- 15.9. For any person or Vendor with whom Vendor enters into a contract to provide the services defined in this Agreement, Vendor must:
  - 15.9.1. Provide a certificate of coverage, for all persons providing the services defined in this Agreement and prior to those persons beginning work on any project, showing coverage is being provided for the duration of the Agreement. Coverage shall be based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of California Labor Code.
  - 15.9.2. Provide a new certificate, prior to the end of the coverage period, of coverage showing extension of coverage if the coverage period shown on Vendor's current certificate of coverage ends during the duration of the project.
  - 15.9.3. Retain all required certificates of coverage for the duration of the project and for 2 years thereafter;
  - 15.9.4. Notify COUNTY in writing, within 10 days after Vendor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- 15.10. Any subcontracts for the products/services described herein shall include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by Vendor and COUNTY and to ensure that COUNTY is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontractor in those matters described in the Agreement.

## 16. INDEMNIFICATION

- 16.1. To the fullest extent allowable under applicable law, each Party agrees to provide the following indemnification: Each party agrees that it will defend, indemnify and hold harmless the other party, its officers, directors, parent corporation, affiliates, employees and agents ("Indemnified Parties") against any and all liabilities, losses, damages, injuries, deaths, reasonable litigation expenses (including, without limitation, reasonable attorneys' fees), costs and costs of court (collectively, "Damages") which Indemnified Parties may hereafter sustain, incur or be required to pay arising out of the other party's negligent acts, omissions or failure to perform obligations pursuant to this Agreement. Provided, however, neither party shall be required to defend, indemnify and hold harmless the other party for any intentional or criminal actions of the other party or its employees, visitors or invitees. COUNTY agrees to defend, indemnify and hold harmless Vendor Indemnified Parties from all Damages which may arise due to any act or omission of a Vendor Party made in compliance with a COUNTY's rules or requirements.
- 16.2. COUNTY agrees to provide Vendor with reasonable and timely notice of any claim, demand, or cause of action made or brought against COUNTY arising out of or related to the services rendered by Vendor and Vendor

shall have the right to defend any such claim at its sole cost and expense and with its exclusive discretion. VENDOR shall defend with counsel reasonably approved by County and VENDOR may not settle any claim without the County's consent which will not be unreasonably withheld.

- 16.3. In the event any infringement claim is made or threatened against COUNTY, or injunctive relief is granted to a claimant, Vendor shall at its sole cost and expense (i) obtain the right for COUNTY to continue use of the services; (ii) substitute other services of like capability, or (iii) replace or modify the services to render them non-infringing while retaining like capability. In the event Vendor is unable to perform any of the above, COUNTY may terminate this Agreement upon providing 90 days written notice to Vendor and Vendor shall be responsible for all of COUNTY's costs and expenses of whatever nature or kind in connection therewith.
- 16.4. Other than any obligation to indemnify, Vendor'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 three times the total amount paid by COUNTY to Vendor for the current term of this Agreement (not to exceed three (3) years). Vendor 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.
- 16.5. These indemnities and remedies shall survive the expiration or other termination of the Agreement.

## **17. NONEXCLUSIVE AGREEMENT**

- 17.1. Vendor understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Vendors as the COUNTY desires.

## **18. DISCREPANCY**

- 18.1. Should a discrepancy or conflict among the specific provisions of this Agreement and its amendments, RFP # 8700002 and its attachments and amendments, the Best and Final Offer (BAFO) and the Vendor's RFP response, the discrepancy or conflict shall be resolved as follows.
  - 18.1.1. The specific provisions of the Agreement Terms (and its attachments and amendments) will prevail over the RFP, its attachments and amendments and the Final Proposal
  - 18.1.2. The RFP, its attachments and amendments and Final Proposal will prevail over the Vendor's RFP response.
- 18.2. Exceptions or objections to specific RFP provisions in the Vendor's RFP response that have not been explicitly accepted by the COUNTY in writing shall not be included in this Agreement and shall be given no weight or consideration.

## **19. SUBCONTRACTS**

- 19.1. Any subcontracts for the products/services described herein shall include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by Vendor and the COUNTY and to ensure that the COUNTY is indemnified, saved and held harmless from and against any and all claims of damage, loss and cost (including attorney fees) of any kind related to a subcontractor in those matters described in this Agreement.
- 19.2. In the event of unsatisfactory performance, as determined by COUNTY, COUNTY may request to substitution of a subcontractor utilized by Vendor to fulfill the obligations under this Agreement.

## **20. FORCE MAJEURE**



- 20.1. Neither party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, or unusual weather conditions.

## 21. NOTICE

- 21.1. Any notice required by this Agreement shall be supplied in writing in electronic format and/or delivered in person or by registered or certified mail addressed to the party's address listed below. Notice shall be presumed to have been received 5 business days after it is deposited in a U.S. Postal Service depository.

### FOR COUNTY:

Santa Barbara County Sheriff's Office  
Attn: Lt. Selim Celmeta  
4434 Calle Real  
Santa Barbara, CA 93110

### FOR VENDOR:

Summit Food Service, LLC  
Attn: Brittany Mayer-Scheler  
500 East 52<sup>nd</sup>, Street North  
Sioux Falls, SD 57104

## 22. ADDITIONAL REQUIREMENTS AND SPECIFICATIONS

- 22.1. Vendor shall provide any and all notices as may be required under the Drug-Free Workplace Act of 1998, 28 CFR Part 67, Subpart F, and any applicable California laws, to the employees and all subcontractors to ensure the COUNTY's Facilities maintain a drug free workplace. COUNTY reserves the right to review drug-testing results of Vendor's personnel assigned to work at the Facilities. COUNTY may require, at Vendor's expense, drug testing of Vendor's personnel if no drug testing records exist or if such test results are older than 6-months.
- 22.2. Vendor does not, and shall not during the performance of this Agreement knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
- 22.3. Vendor shall recruit, select, train, promote, transfer, and release its staff without regard to race, color, religion, national origin, handicap, age, or gender (except where age or gender is a bona fide occupational qualification). Further, Vendor shall administer its other staff policies such as compensation, benefits, layoffs, return from layoffs, work sponsored training, education, and tuition assistance in compliance with the American's with Disability Act (ADA) and all state and federal laws relating to non-discrimination in employment.

## 23. TIME IS OF THE ESSENCE

- 23.1. Time is of the essence in this Agreement and each covenant and term is a condition herein.

## 24. NO WAIVER OF DEFAULT

- 24.1. No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

## 25. MISCELLANEOUS TERMS

### 25.1. **Independent Vendor**

Nothing in this RFP is intended nor shall be construed to create an employer/employee relationship, a joint venture relationship or any other relationship allowing COUNTY to exercise control over the manner or method by which Vendor or its subcontractor perform under the Agreement.

### 25.2. **Interpretation**

This Agreement shall be interpreted under, and governed by, the laws of the State of California. The parties hereto agree that any action relating to this Agreement shall be instituted in a Federal Court in Santa Barbara County, California.

### 25.3. **Severability**

If any part of this Agreement is contrary to any Federal, State or Local law, it is not applicable and such invalidity shall not affect the other provisions or applications of this Agreement, which can be given effect without the invalid provision, or applications. To that end, the provisions of this Agreement are declared to be severable. If any provision hereof is held invalid by a Court of competent jurisdiction that provision shall be automatically deleted and all remaining provisions shall remain in full force and effect.

### 25.4. **Entirety, Waiver, and Modification**

This Agreement, together with any Exhibits or Attachments, represents the entire understanding between COUNTY and Vendor (collectively "Parties") with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. Only a written instrument executed by the Party waiving compliance may waive or modify the terms of this Agreement. The failure of either Party at any time to require performance of any provision hereof shall in no manner affect the right at a later date to enforce the same. No waiver by either Party of any term of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be a further or continuing waiver of such term or of any other term of this Agreement.

### 25.5. **Confidentiality**

- 25.5.1. The Parties hereto shall keep confidential any and all information which either Party states to be confidential or proprietary and so advises the other Party or labels the information as such ("Confidential Information"). Such information shall remain the property of the Party owning such information and, when in tangible form shall be returned to the respective party or otherwise disposed of as directed by the appropriate Party. Any violation of this provision by either Party shall be actionable. However, notwithstanding the foregoing, neither Party shall be under any obligation to maintain in confidence any portion of the information it has received which:
- 25.5.1.1. Is now, or which becomes hereafter through no act or failure to act on the part of the receiving Party, generally known or available to the public;
  - 25.5.1.2. Is already known by the receiving Party at the time of the disclosure of such information and was not under any obligations of confidence;
  - 25.5.1.3. Is hereafter furnished to the receiving Party by a source other than the owner, provided such source is not known by the receiving Party to be prohibited from disclosing such information by a contractual, legal or fiduciary obligation;
  - 25.5.1.4. Has been independently developed by the receiving Party without benefit of the confidential or proprietary information of the other; or, is required to be disclosed by any applicable law or regulation or by order of any governing body or court of competent jurisdiction; provided however, that the Party being required to disclose the confidential or proprietary information of the other must promptly notify the owner of same of the demand for such disclosure and such disclosure to a

government entity pursuant to law, order or regulation shall not provide a basis for any additional disclosure of such information by either Party.

- 25.5.2. Each Party including its agents and representatives shall:
- 25.5.2.1. Follow reasonable procedures to protect and maintain the confidentiality of the Confidential Information;
  - 25.5.2.2. Not disclose, or allow to be disclosed, the Confidential Information to any party other than to its employees, contractors, officers, or directors who have a need to know in order to perform the services contemplated under this Agreement, and are under the same binding obligation of confidentiality provided herein with respect to any such information;
  - 25.5.2.3. Not use the Confidential Information for any purpose other than to perform under this Agreement; and
  - 25.5.2.4. Treat all Confidential Information of the other Party with the same degree of care to avoid disclosure to third parties as it uses with respect to the recipient Party's own Confidential Information, but not less than a reasonable degree of care.

**25.6. Dispute Resolution**

- 25.6.1. The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between senior executives of the parties who have authority to settle the same. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. Disputes or controversies related to this Agreement not resolved through negotiation within a period of 60-days shall be governed by and interpreted in accordance with the laws of California without regard to its conflicts of law provisions. In the event of litigation relating to this Agreement, the parties agree to submit said dispute to the jurisdiction of California courts.

**25.7. Vendor Costs and Taxes and Fees on Services**

- 25.7.1. It is expressly understood that COUNTY is not responsible in any way, manner or form for any of Vendor's costs, including but not limited to, taxes (including sales tax), shipping charges, network charges, insurance, interest, penalties, attorney fees, liquidated damages, licenses, fees, tariffs or other costs related to any and all Vendor's services. COUNTY shall notify Vendor should the COUNTY's tax exemption status change at any time during the term of this Agreement.

**26. SUCCESSORS AND ASSIGNS**

- 26.1. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**27. COMPLIANCE WITH LAW**

- 27.1. Vendor shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Vendor in any action or proceeding against Vendor, whether COUNTY is a party thereto or not, that Vendor has violated any such ordinance or statute, shall be conclusive of that fact as between Vendor and COUNTY.

**28. CALIFORNIA LAW AND JURISDICTION**

28.1. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

**29. SURVIVAL**

29.1 All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

**30. REMEDIES NOT EXCLUSIVE**

30.1 No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**31. LIQUIDATED DAMAGES**

31.1. Vendor’s failure to meet contract requirements both correctly and on time may result in substantial injury to the COUNTY; the amount of damages resulting from such failure may not always be quantified with certainty. In the event of any breach described in the table below, the COUNTY may assess liquidated damages unless noncompliance is the result of: (1) circumstances beyond Vendor’s reasonable control as set forth under section 20.1; (2) actions by the COUNTY and its employees that directly contributes to the breach; or (3) actions of a third party that are not employed or contracted by Vendor and that directly contribute to the breach. Liquidated damages will be invoiced by the COUNTY to the Vendor. Payments due the COUNTY for the invoiced amount(s) shall be due within thirty 30 days of Vendor’s receipt of the invoice.

| LIQUIDATED DAMAGES  |  |
|---|--|
| Description   | Amount   |
| Implementation timeline not executed as per requirements of this RFP. This includes initial and ongoing installations.  | \$500 per day for each day after the agreed-upon date until the installation is complete.  |
| Weekly/monthly invoicing or reporting or invoices/reports not containing the required or accurate information and/or received after the date specified in this RFP.   | \$100.00 per day for any weekly reports or invoices not submitted by Vendor or where the invoices/reports do not contain all the required information identified in <b>Exhibit A, Section D (General Conditions)</b> . |
| Vendor shall adhere to the COUNTY’s performance process when upgrading software, equipment, or performing any changes to the food service management software/hardware, which affects the scope of services under this Agreement. Any deviation from the process may result in liquidated damages incurred by Vendor. | \$500.00 per occurrence.   |

|   |  |
|---|--|
| <p>In the event of a discrepancy with the weekly invoice provided by Vendor to COUNTY which does not allow COUNTY to issue accurate payment, Vendor is responsible for conducting a timely reconciliation and (without limitation) issuing any adjustments due to COUNTY in the following weekly invoice.</p> | <p>\$75.00 per day until the adjustment has been issued to the COUNTY and an accurate invoice is provided to COUNTY for payment.</p> |
|---|--|

| LIQUIDATED DAMAGES (Continued)  |  |
|---|--|
| Vendor shall responsible for following all menu specification requirements as listed in <b>Exhibit A, Section G (Meal Requirements)</b> . Any deviation from the specifications may result in liquidated damages incurred by the Vendor.                                    | \$50.00 per occurrence.  |
| Any changes to the delivery schedule, item/meal substitution process, meal pricing, or addition of unapproved fees charged without COUNTY's approval prior to are subject to liquidated damages.  | \$200.00 per day from the day the unauthorized change was implemented through the date Vendor discontinues the unapproved change.                        |
| Any addition, deletion, and/or changes made to the required daily caloric intake without the express written consent of COUNTY shall make the Vendor liable for liquidated damages.   | \$500.00 per day from the day the addition/deletion/change was first added through the date Vendor resolves the change.                                  |
| COUNTY requires that a registered dietitian certify all meals listed in the Vendor's menu. Failure to meet certification may result in Vendor incurring liquidated damages.   | \$500.00 per occurrence.   |
| Vendor shall be responsible for fulfilling therapeutic/medically restricted diet orders, religious meal and/or vegetarian orders within 48-hours of receiving the order.  | \$75.00 for each meal not meeting COUNTY's specifications for medical, therapeutic, vegetarian, allergy-based, and religious based diets.                |
| In the event Vendor serves a meal(s) containing ingredients specific to a known allergy to an inmate, the instance may result in Vendor incurring liquidated damages.   | \$200.00 per occurrence.   |
| Vendor is responsible for receiving a 100% score on the State Board of Health Inspections. Anything lower than 90% may result in liquidated damages incurred by Vendor.   | \$500.00 per occurrence.   |
| Vendor shall be responsible for resolving any reported repairs or service issues within 10 days if Vendor is financially responsible for the repair and the issue/problem is impacting meal or sanitation services in any way. Vendor may be liable for liquidated damages. | \$500.00 for each day for each reported service issue that the Vendor fails to resolve, until each reported repair or replacement is resolved by Vendor. |
| Vendor is responsible for providing a response to COUNTY of all inmate and/or staff grievances within a 72-hour period of receiving the grievance.  | \$25.00 per day once the 48-hour period has passed without resolution.   |
| Vendor is responsible for filling any staff vacancy within 72-hours of the position being vacated. Positions unable to be filled due to background/security check delays as a result of the Sheriff's Office will not be subject to liquidated damages.                     | \$100.00 per day beginning 72-hours (3-days) after the position becomes vacant until the position is filled.   |

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**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

By: Shirley LaBarrera  
Deputy Clerk

**County Of Santa Barbara:**

Steve Lavagnino  
Board of Supervisors

By: [Signature]  
Chair, Board of Supervisors

Date: 10-8-24

**RECOMMENDED FOR APPROVAL:**

Santa Barbara County Sheriff's Office

By: Bill Brown  
Sheriff-Coroner

**VENDOR:**

Summit Food Services, LLC

By: Brittany Mayer-Scheler, CEO  
Authorized Representative

Name: Brittany Mayer-Scheler  
Title: President

**APPROVED AS TO FORM:**

Rachel Van Mullem  
County Counsel

By: Paul Lee  
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

Betsy M Schaffer, CPA  
Auditor-Controller

By: Shawna Jorgensen  
Deputy

**APPROVED AS TO FORM:**

Risk Management

By: Greg Milligan  
Risk Management

## EXHIBIT B

### PAYMENT ARRANGEMENTS

#### Compensation upon Completion (with attached Schedule of Fees)

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$7,126,062.99 for the period of October 1, 2024, to September 30, 2027.
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **EXHIBIT B1** (Schedule of Fees). Invoices submitted for payment that are based upon **EXHIBIT B1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.
- C. Upon completion of the work detailed in **EXHIBIT A** and/or delivery to COUNTY of item(s) specified therein, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed. This invoice or certified claim must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and/or the item(s) delivered and if found to be satisfactory and within the cost basis of **EXHIBIT B1** shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- D. CONTRACTOR shall provide COUNTY with a repair/replacement allowance of up to \$66,000.00 for the initial contract term (October 1, 2024 through September 30, 2027) for the repair or replacement of food services equipment, including, but not limited to: food serving equipment, food preparation appliances and miscellaneous equipment utilized to provide meals to staff or incarcerate persons. COUNTY may in its sole discretion offset any outstanding repair/replacement allowance from the final monthly invoice owed to the CONTRACTOR.
- E. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.



**EXHIBIT B1 (Schedule of Fees)**

The below table lists the cost per meal provided based on the average daily population of the jail facilities combined for the specified week. The base rate column includes one full-time food services manager employed by the contractor. The other two options include pricing if the contractor provides two or four additional full-time employees for the invoice period.

Weekly invoice amounts for inmate meals will be calculated as follows:

- Base Rate: The daily base rate per inmate (noted in the “Base – Manager Price Per Meal” column below) multiplied by the total number of inmates served during the week.
- Contractor Utilization: For days when contractor employees are utilized beyond the full-time food services manager, the additional corresponding rate (noted in the “Manager + 2 Employees Price per Meal” or “Manager + 4 Employees Price per Meal” column below) per inmate per meal will be applied.

The final weekly invoice will be the sum of the base rate and the contractor utilization charges. For example, if the daily population is 700 and 5 of those days do not include the use of contractor employees and 2 of those days include the use of two contract employees, then the invoice for that week will be \$21,798 (\$2.076 x 3 meals per day x 5 days x 700 inmates) plus \$10,017 (\$2.385 x 3 meals per day x 2 days x 700 inmates) for a total amount of \$31,815.00.

| MEAL PRICE MATRIX |                               |                                      |                                      |
|-------------------|-------------------------------|--------------------------------------|--------------------------------------|
| Inmate Population | Base - Manager Price per Meal | Manager + 2 Employees Price per Meal | Manager + 4 Employees Price per Meal |
| < 601             | TBN                           | TBN                                  | TBN                                  |
| 601 - 650         | \$2.125                       | \$2.459                              | \$2.778                              |
| 651 - 700         | \$2.076                       | \$2.385                              | \$2.679                              |
| 701 - 750         | \$2.035                       | \$2.321                              | \$2.594                              |
| 751 - 800         | \$1.998                       | \$2.266                              | \$2.521                              |
| 801 - 850         | \$1.967                       | \$2.218                              | \$2.457                              |
| 851 - 900         | \$1.939                       | \$2.175                              | \$2.400                              |
| 901 - 950         | \$1.928                       | \$2.151                              | \$2.364                              |
| 951 - 1000        | \$1.919                       | \$2.131                              | \$2.331                              |
| 1001 - 1050       | \$1.913                       | \$2.114                              | \$2.304                              |
| 1051 - 1100       | \$1.908                       | \$2.101                              | \$2.281                              |
| 1101 - 1150       | \$1.905                       | \$2.089                              | \$2.261                              |
| 1151 - 1200       | \$1.904                       | \$2.079                              | \$2.244                              |
| 1201 +            | \$1.906                       | \$2.074                              | \$2.230                              |
| Enhanced Trustee  | \$3.500                       | \$3.500                              | \$3.500                              |
| Staff             | \$5.000                       | \$5.000                              | \$5.000                              |