



Nolan M. Fields IV

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Tulsa County District Attorney's Office
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TO: Board of County Commissioners
Karen Keith, Chairman
Stan Sallee
Ron Peters

DATE: January 24, 2019

REFERENCE: Food Service Partnership Agreement with Summit Food Service, LLC
providing food service and operations at the
David L. Moss Criminal Justice Center

Please place this item on the agenda for the next meeting of the Board of County Commissioners. It will not be necessary to review this matter in executive session. The Company has already executed this Agreement and it is being presented for your review and approval. Please let me know if you have any questions.

Respectfully,

A handwritten signature in blue ink that reads 'Nolan M. Fields IV'.

Nolan M. Fields IV
Assistant District Attorney

CC:
David Parker, Jail Administrator

FOOD SERVICE PARTNERSHIP AGREEMENT

This Food Service Partnership Agreement is made and entered into by and between Board of Commissioners on behalf of the Tulsa County Sheriff's Office ("Client"), and Summit Food Service, LLC, a New Mexico Limited Liability Company ("Company") (collectively "the Parties").

1. TERM AND INTENT

- 1.1 Client grants Company the exclusive right to provide Food Service, to operate the Food Service Facilities, and to provide to Client, employees, guests and other persons at the Premises such Food Service and Products.
- 1.2 This Agreement shall commence on February 1, 2019 (the "Commencement Date") or sooner if mutually agreed upon in writing by both of the Parties. The Agreement will remain in effect through January 31, 2020. The Agreement may be renewed for four (4) additional one (1) year periods, unless either party provides written notice of termination to the other party at least sixty (60) days prior to the expiration date or unless this Agreement is otherwise terminated as set forth herein.

2. DEFINITIONS

- 2.1. Accounting Period. Company'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.
- 2.2. Agreement. In order of precedence: (i) this Food Service Partnership Agreement, Exhibits and Schedules, as amended and, where specifically included by reference, (ii) the Company's Proposal and (iii) the Solicitation.
- 2.3. 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.
- 2.4. Food Service. Operations and Products to be provided by Company in accordance with this Agreement related to the preparation, service and sale of food, beverages, goods, merchandise and other items at the Premises.
- 2.5. Food Service Facilities. Space for Company to prepare and perform Food Service at the Premises including, without limitation, kitchen, dining, service, office and storage areas.
- 2.6. Governmental Rule. Any statute, law, rule, regulation, ordinance or code of any governmental entity (whether federal, state, local or otherwise).
- 2.7. Office Equipment. All office items reasonably necessary for Company 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.
- 2.8. PCI Standards. All rules, regulations, standards or guidelines adopted or required by the Payment Card Industry Security Standards Council relating to privacy, data security and the safeguarding, disclosure and handling of Payment Instrument Information.
- 2.9. Premises. The Client's food service facility (ies) located at 300 North Denver Ave., Tulsa, OK 74103.
- 2.10. Products. Food, beverages, goods, merchandise, and supplies.

- 2.11. Proprietary, Confidential and Trade Secret Information. Items used in Company Food Services (owned by or licensed to Company) including, without limitation, menus, signage, surveys, Software (i.e. menu systems, food production systems, accounting systems), recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, provided, however that the following items are specifically excluded: (i) information generally available to and known by the public or (ii) information independently developed or previously known by the Client.
- 2.12. Servicewares. Items used in the service of food and beverages including, without limitation, chinaware, glassware, silverware, disposables, trays, and carts.
- 2.13. Smallwares. Items used in the preparation of food including, without limitation, pots, pans and kitchen utensils.
- 2.14. Supervisory Employee. Those persons who have directly or indirectly performed management or professional services on behalf of Company for the Client at any time during this Agreement including, without limitation, any corporate employee, manager, assistant manager, chef, lead cook or dietitian.
- 2.15. Utilities and Amenities. All utilities reasonably requested by Company to provide Food Services at the Premises including, without limitation, heat, hot and cold water, gas, refrigeration, lights, electric current, ventilation, air conditioning, recycling, cooking waste removal, hazardous waste removal, garbage removal services, exterminator services, telephone services, internet access, and sewage disposal services.

3. FOOD SERVICES

- 3.1 Food Service. Company will oversee Food Services at the Premises which shall include, without limitation, preparation and service of food and beverages to Client's employees, staff and guests.
- 3.2 Program Specifications.
 - A. Menu. Will provide at minimum, an average of 2,500 calories per day as approved by a certified dietitian.
 - B. Inmate Labor. Client shall provide twenty (20) inmates per shift as labor at the food service facility. Client will provide the required number of inmates to assist, but it requires at least twenty-four (24) hour notice to replace any inmates terminated by Company.
 - C. Staff Meals. To be provided.
 - D. Medical Meals. To be provided.
 - E. Religious Meals. To be provided.
 - F. Holiday Meals. To be provided.
 - G. Special Functions/Catering. Company may provide Food Service for special occasions, including Client's conferences, dinners, meetings, parties and other functions, as well as catering services to employees, guests and outside groups in connection with this Agreement. Fees for these services shall be governed by the menu, manner and time of service, and shall be established by mutual agreement of Company and Client or the party sponsoring the Special Function.
 - H. Locations. Company shall operate and manage Food Services at the Premises and locations as the Client and Company mutually agree.

- I. Hours. Company shall provide necessary Food Services as agreed upon by Client and Company, meeting all American Correctional Association ("ACA") standards and TCSO Policies.
- 3.3 Purchasing. Company shall purchase those Products and supplies necessary to comply with Company's obligations as set forth in this Agreement from Company's approved vendors that meet Company's guidelines and requirements.
- 3.4 Inventory. The Client shall provide the Company with the initial inventory of smallwares (i.e., hand utensils, trays, pans, pots, dishes, glasses, silverware, etc.) and all capital equipment at the start of the contract. Client shall supply and replenish chemicals (i.e., dish machine chemical, laundry chemicals, and chemicals that are within the County's chemical contract) and capital equipment. Any product not provided by the Client's chemical contract will be purchased by Company at its own expense.
- 3.5 Cleaning. Company shall be responsible for housekeeping and sanitation in the food preparation, storage and service areas of Premises. Company shall perform routine cleaning and housekeeping in the food preparation and service areas. Client shall perform stripping and waxing of floors, electric light fixtures, grease traps, duct work, plenum chambers, pest control and roof fans throughout the Food Service Facilities. Client shall be responsible for removal of refuse from the collection areas and all refuse removal charges. Company will be responsible for repairs caused by the negligence of its employees.

4. EMPLOYEES

- 4.1. Employees. Company shall hire employees necessary for its performance of this Agreement. Persons employed by Company will be the employees of Company and not of Client. Company's employees and agents shall comply with applicable rules and regulations concerning conduct on the Client's premises which the Client imposes upon its employees and agents provided such rules and/or regulations are not in violation of any federal, state, and/or local laws. Client agrees to provide Company notice of any proposed changes in rules prior to implementation.
- 4.2. Existing Employees; Employment Terms; Employee Pension and Benefit Plans. Company in its sole discretion may elect to hire any managers or employees of Client or Client's incumbent foodservice provider (collectively, "Existing Employees") who are qualified, available and willing to provide Food Service at the Premises. Company shall have the authority to establish the terms of employment for all current Company managers and employees (including Existing Employees that Company may elect to hire in connection with this Agreement). Client represents that such Existing Employees are not represented by a union and are not entitled to be paid a living or prevailing wage under any Governmental Rule or agreement.
- 4.3. Wages and Hours. Company shall comply with all applicable federal, state and local laws and regulations pertaining to the wages and hours of employment for Company's employees. Client shall comply with all applicable federal, state and local laws and regulations pertaining to the wages and hours of employment for Client's employees.
- 4.4. Payroll Taxes. Company shall be responsible for all withholding and payroll taxes relative to Company's employees.
- 4.5. Background Checks. Client shall conduct necessary background checks as required by law on Company's employees to ensure TCSO standards are met.

- 4.6. Equal Opportunity and Affirmative Action Employer. Company 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. Company employs and promotes individuals without regard to age, race, color, religion, sex, national origin, protected veteran status or disability.
- 4.7. Non-Hire. Client acknowledges that Company has invested considerable amounts of time and money in training its Supervisory Employees. Therefore, the Client agrees that during the Supervisory Employee's employment with Company and for a period of twelve (12) months thereafter no Supervisory Employees of Company will be hired by Client nor any facility affiliated with Client, nor will Client permit employment of Company Supervisory Employees on Client's Premises or the Premises of any facility affiliated with Client. Client agrees that if it violates this provision, Client shall pay to Company and Company 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 Client in violation of the terms of this Agreement. Company shall be entitled to pursue all other remedies available under federal, state, or local law. This provision shall survive the termination of this Agreement.
- Company agrees to hold Client harmless and indemnify Client against all claims growing out of the lawful demands of Company's employees or any subcontractors it hires or contract with, including any workers compensation claims.

5. PREMISES, FACILITIES, UTILITIES AND EQUIPMENT

- 5.1 Premises. The Premises shall be in good condition and maintained by the Client to ensure compliance with applicable Governmental Rules and to enable Company to perform its obligations hereunder. Client shall be responsible for any modifications or alterations to the workplace or the Premises necessary to comply with any applicable Governmental Rules. Company shall have no obligation to maintain or repair the Premises.
- 5.2 Equipment. Without limiting the foregoing, Client shall permit Company to use all of the Client's Food Preparation Equipment in the performance of Food Service. The Food Preparation Equipment provided by Client shall be commercial grade, in good condition and shall be maintained, repaired and replaced by Client to permit the performance of the Food Service and to ensure compliance with applicable Governmental Rules. Company and Client shall inventory Client's current Equipment within thirty (30) days after the Commencement Date. Company shall take reasonable care of all Food Preparation Equipment under its custody and control, provided that the foregoing shall not limit Client's obligation to maintain, repair and replace (as necessary) the Food Preparation Equipment. If Client fails to make necessary repairs or replacement to equipment within a reasonable amount of time, Company shall have the right to terminate the Agreement after providing thirty (30) days written notice to client.
- 5.3 Facilities, Utilities. At its own expense, Client shall maintain, repair, replace, and keep in safe operating condition said Facilities and Utilities, to permit the performance of the Food Service and to ensure compliance with Governmental Rules.

- 5.4 Smallwares and Servicewares. At its own expense, Client shall furnish Company with the appliances, wares and equipment reasonably requested by Company including all Cooking Equipment, Smallwares and Servicewares.
- 5.5 Computer Equipment.
- A. Internet Access. If Company is to implement a point-of-sale system, Client shall allow Company and the internet provider physical access to the area where a high-speed internet connection will be installed, and shall permit Contractor's installation of a router and dedicated high-speed internet circuit with full administrative control to establish a connection between the foodservice office, workstations (if any) and Company's network.
 - B. Software. Company will license products, software and maintenance for use in providing services in accordance with this Agreement. Company has procured a license to access and use Company's centralized Nutritional Database ("NDB") for nutritional analysis, menu planning and other operational purposes for Client's Premises. Client agrees that all software associated with the operation of the Food Service, including without limitation, the NDB, food production systems, and accounting systems, is owned by or licensed to Company. Client's access or use of such software shall not create any right, title, or copyright in such software. Upon termination of this Agreement, Client shall have no right to access or retain any Company software or Confidential Information produced by that software. However, Company agrees to provide all historical data on meal counts so Client can satisfy all ACA required standards and respond to potential litigation.
 - C. Credit Card Processing. If requested by Client, Company will accept and process credit card payments for sales of food, beverage, goods, merchandise and services in the Food Service operation. If Company processes credit card transactions using equipment solely provided by Company, then Company will be responsible for compliance of its equipment in accordance with PCI Standards.

6. LICENSES, PERMITS AND TAXES

- 6.1 Licenses and Permits. Company shall procure, maintain and post the food licenses and permits as required by law. Client represents and warrants that it has and will maintain all other licenses and permits necessary to operate the Premises and the Food Services. The Client agrees to notify Company immediately upon receiving notice of loss of any such permit or license. All Company employees will possess a food handlers license prior to performing any tasks under this Agreement.
- 6.2 Taxes. Company shall be responsible for collecting and remitting sales tax on applicable sales collected by Company. Unless Client provides documentation of Client's federal and state tax-exempt status, Client shall reimburse Company for state and local sales tax on the full amount of charges and fees billed to the Client. Client shall secure and pay all federal, state and local property, excise and income and other taxes and fees required for the Premises and resulting from the Food Services provided for hereunder. Client 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. Client shall notify Company promptly should its sales tax status be changed.

7. FINANCIAL ARRANGEMENTS

7.1 Payment Arrangement.

A. Inmate Meal Rate.

Inmate Population		New Price
1000	1099	\$ 1.215
1100	1199	\$ 1.154
1200	1299	\$ 1.104
1300	1399	\$ 1.062
1400	1499	\$ 1.027
1500	1599	\$ 0.995
1600	1699	\$ 0.967
1700	1799	\$ 0.943
1800	1899	\$ 0.922
1900	2000	\$ 0.903
2001	+	\$ 0.884
Name Brand Nutritional Supplements		\$ 1.500

- a. Medical Meals. Will be billed at the same rate as an inmate meal.
- b. Religious Meals. Will be billed at the same rate as an inmate meal.
- c. Staff Meals. Staff may individually purchase an inmate meal at the inmate meal price, with any officer dining room meals being the responsibility of the officers or employees being served.

7.2 Payments Due and Late Payment Penalty. Company shall issue an invoice at the end of each week showing the amounts due. Invoices shall be mailed directly to TCSO Accounts Payable, 303 W. 1st St., Tulsa, OK 74103. Invoices shall show (1) Name and Address of Company; (2) Detailed breakdown of all charges for the services delivered stating any applicable period of time to include number of snack meals, number of food trays, number of staff meals and total inmate count by meal. Company will submit to Client on the first day of each week, covering the proceeding week, an invoice for meals serviced. A week shall consist of Sunday through Saturday. Any increase above a 2% variance when compared to the inmate count at meal time must be measurably justified. Promptly after receipt of product and /or service, and each proper invoice or voucher and statement of costs, Client shall, except as otherwise provided in this Agreement make payment thereof as proved by the County. At any time prior to final payment under this contract, Client may have the invoices or vouchers and statement of cost audited. Any payment thereafter may be reduced for prior overpayment or increased for prior underpayment, based on preceding invoices or vouchers and statement of cost.

7.3 Right to Offset. In the event that Client is more than thirty (30) days past due on any obligations to Company, Company shall have the right to offset, from any other sums owed by Company to Client, all or any portion of such outstanding receivables. Additionally, Company shall have the right, at

Company's option, at any time that Client is over thirty (30) days past due on any obligations require that Client pay, on a prebilling basis, at least one week in advance of each Accounting Period, the estimated amount due Company for that Accounting Period. The estimated amount shall be adjusted and reconciled to the actual amount in the next prebilling invoice, or if Client is no longer past due on its obligations to Company, with the next invoice due hereunder.

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

7.5 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, Company shall provide Client notification of the adjustment. On the anniversary date, any price adjustments mutually agreed upon by the parties in writing 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 Non-Performance.** If either party refuses, fails or is unable to perform or observe any of the terms or conditions of this Agreement for any reason other than for Excused Performance as set forth in this Agreement, the party claiming such deficiency shall provide the breaching party written notice of any such breach. If the breaching party remedies such breach within (i) three (3) days in the case of failure to make payment when due, (ii) fifteen (15) days in the case of any other breach (including, but not limited to non-compliance with Health Department standards, non-compliance with ACA standards, non-compliance with Fire Marshal standards, and non-compliance with Tulsa County Policy, 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.
- 8.2 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 Client agrees to provide Company thirty (30) days' notice before filing a petition for bankruptcy.

- 8.3 Voluntary Termination. At any time after ninety (90) days of service, either Party may terminate this Agreement with or without cause by written notice to the other party given not less than sixty (60) days prior to the effective date of termination.
- 8.4 Steps Upon Termination. Upon the termination or expiration of this Agreement, Company shall vacate the Premises occupied by Company and shall remove its own equipment and return equipment furnished by Client pursuant to this Agreement. Upon termination of this Agreement, Company shall surrender the then-current Food Preparation Equipment to Client 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 Client's failure to maintain the Food Preparation Equipment and other damage (including damage caused by force majeure) for which Company is not responsible hereunder.
- 8.5 Continuing Obligations. The termination of this Agreement shall not affect the rights, privileges, duties, or liabilities of the Parties as they exist as of the effective date of termination. All outstanding amounts owed to Company and information owed to Client shall become due and payable immediately upon termination.

9. INDEMNIFICATION; INSURANCE

- 9.1 Insurance. Both Client and Company 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 or a letter signifying a Party's self-insurance status.
- A. Client Insurance. Client shall procure and maintain 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) or elect to self-insure.
- B. Company Insurance. Company shall procure and maintain the following insurance:
1. Worker's Compensation Insurance as prescribed by the laws of the state where the Premises are located; and
 2. Comprehensive General Liability Insurance, with limits of one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) annual aggregate to cover any and all claims that arise during the course of this Agreement.
- C. Subrogation. Client and Company 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. Company shall not be liable to the Client, in any way for damage to the Facilities or Premises caused by reason of fire, or other hazard caused by Client's own negligence, or by the reason of an act of God. In any event, Company 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.
- 9.2 Indemnification.
- A. Company agrees that it will defend, indemnify and hold harmless Client, 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 Company'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. Client is subject to any potential liability pursuant to the Oklahoma Governmental Tort Claims Act, 51 O.S. 151 et. seq. which may arise due to any act or omission of a Company Party made in compliance with a Client's rules or requirements.

- B. Notice of Indemnification. Company shall only be required to indemnify pursuant to the Agreement, where it receives a written request to indemnify within twenty (20) days after the initial receipt of notice of any such lawsuit or claim by Client requesting indemnification. Failure to notify Company of such claim or lawsuit within the stated period of time shall relieve that party of any and all responsibility and liability under this Agreement to defend, indemnify and hold harmless for that claim or lawsuit.

10. GENERAL AGREEMENT TERMS

- 10.1 Confidentiality. Neither Client, nor Client'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 Company's prior written permission. All Proprietary, Confidential and Trade Secret Information shall remain Company exclusive property. Client's access or use of Company Proprietary, Confidential and Trade Secret Information or Software shall not create any right, title, interest or copyright in such Information or Software. If Client is requested to disclose any of the Confidential Information to any third party for any reason, Client shall provide Company with prompt notice of such request(s). Upon termination of this Agreement, Client shall return all Company Proprietary, Confidential and Trade Secret Information in Client's possession relating to Company's services pursuant to this Agreement. Client agrees that upon breaching this provision, Company 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.
- 10.2 Intellectual Property. Nothing in this Agreement is intended to grant any rights to Client under any patent, copyright, trademark, trade name, trade secret or other proprietary right of Company (whether now owned or hereafter developed or acquired), all of which are reserved to Company.
- 10.3 HIPAA Compliance. The parties agree to abide by applicable HIPAA requirements as set forth in Exhibit A.
- 10.4 P.R.E.A. The Parties agree to abide by the Prison Rape Elimination Act.
- 10.5 ACA. The Parties agree to abide by all standards set forth by the American Correctional Association. Company agrees to provide required documentation quarterly to verify compliance to all standards.
- 10.6 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 Company are not, nor shall they be deemed to be,

employees of Client. Employees of Client are not, nor shall they be deemed to be, employees of Company.

- 10.7 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:
- | | |
|-----------------------------------|----------------------------------|
| Board of County Commissioners | Summit |
| c/o Tulsa County Sheriff's Office | 500 East 52 nd St. N. |
| 300 North Denver Ave. | Sioux Falls, SD 57104 |
| Tulsa, OK 74103 | |
- 10.8 Excused Performance. If performance of any terms or provisions hereof (other than the payment of monies) shall be delayed or prevented because of compliance with any law, regulation, decree or order by any federal, state, or local court, governmental agency or governmental authority, or because of riot, war, public disturbance, strike, lockout, differences with workmen, fire, flood, Act of God 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.
- 10.9 Assignment or Transfer. Neither party may assign or transfer this Agreement, or any part thereof, without written consent of the other party. Such consent shall not be unreasonably withheld. Provided, however, that this shall not apply to Company's transfer to a parent, sister or successor company where Company provides Client at least thirty (30) days written notice.
- 10.10 Entire Agreement; Waiver. This Agreement, including any Exhibits hereto, constitutes the entire Agreement between the Parties with respect to the provisions of Company'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 Company and Client. This Agreement supersedes all other agreements between the Parties or their predecessors for the provision of Company Food Services.
- 10.11 Counterparts; Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This Agreement may be transmitted by fax or by electronic mail in portable document format ("PDF") and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures.
- 10.12 State Guidelines. Client hereby agrees that the validity and construction of this Agreement shall be governed by Oklahoma law. Should a lawsuit be necessary to enforce this Agreement, Client hereby waives any objection to venue or personal jurisdiction and agrees to be subject to the jurisdiction of the courts located in Oklahoma. A facsimile copy or photocopy of this Agreement shall be valid as an original thereof.
- 10.13 Limitation of Liability. Company's entire liability and Client's exclusive remedy for damages arising out of or related to this Agreement or the Food Services shall not exceed the total amount paid by Client to Company for the current term of this Agreement. COMPANY 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.

10.14 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.


10.15 Authority. Company and Client 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.

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

CLIENT

Signature: _____
Name: _____
Title: _____
Date: _____

COMPANY

Signature: 
Name: Marlin C. Sejnoba, Jr.
Title: President and CEO
Date: 1/24/2019

Approved as to form:

Nolan M. Fields IV

Asst. Dist. Atty.