



## WHATCOM COUNTY AND SUMMIT FOOD SERVICES COMMISSARY PARTNERSHIP AGREEMENT

This Commissary Agreement is made and entered into by and between Whatcom County, on behalf of the Whatcom County Sheriff's Office ("County") and Summit Food Service a New Mexico Limited Liability Company ("SUMMIT" aka "Contractor") (collectively "the Parties").

### 1. TERM AND INTENT

- 1.1 County grants SUMMIT the exclusive right to provide Commissary Services at the Premises.
- 1.2 This Agreement shall commence on January 1, 2020 (the "Commencement Date") or sooner if mutually agreed upon in writing by both of the Parties. The Agreement will remain in effect through December 31, 2020. The Agreement shall renew annually for four additional years, unless either party provides written notice of termination to the other party at least ninety (90) days prior to the expiration date or unless this Agreement is otherwise terminated as set forth herein.

### 2. DEFINITIONS

- 2.1. 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.
- 2.2. Agreement. In order of precedence: (i) this Commissary Food Service Partnership Agreement, Exhibits and Schedules, as amended and, where specifically included by reference, (ii) the SUMMIT's Proposal and (iii) the Solicitation.
- 2.3. Food Preparation Equipment. Equipment or appliances reasonably necessary for a Commissary Food Program including, within budgetary limitations, 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. Commissary Food Program. Operations and Products 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.
- 2.5. Commissary Food Program Facilities. Space for SUMMIT to prepare and perform Food at the Premises including, within budgetary limitations, kitchen, 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 SUMMIT staff to perform office-related functions at the Premises including, within budget limitation, furniture (e.g. desk, chair, file cabinet), equipment (e.g., phone, data/high speed internet lines).
- 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 County's facilities located at 311 Grand Avenue, Bellingham, WA 98225 and 2030 Division Street Bellingham WA 98226
- 2.10. Products. Food, beverages, goods, merchandise, and supplies.
- 2.11. Proprietary, Confidential and Trade Secret Information. Items used in SUMMIT Commissary services (owned by or licensed to SUMMIT) including, , menus, signage, surveys, Software (i.e. menu systems, food production systems, accounting systems), recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, provided, however that the following items are specifically excluded: (i) information generally available to and known by the public or (ii) information independently developed or previously known by the County. Provided any information covered under Washington State Public Disclosure Act will be subject to the requirement of that act (see section 10.3 Public Records Act.) and; provided, that the following items are specifically excluded: (i) information generally available to and known by the public or (ii) information independently developed or previously known by the County. Also provided that the County and the State have access to any and all financial records pertaining to this agreement for purposes of auditing.
- 2.12. Servicewares. Items used in the service of food and beverages including, within budget limitation, eating utensils, disposables, trays, and carts.
- 2.13. Smallwares. Items used in the preparation of food including, within budgetary 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 SUMMIT for the County at any time during this Agreement including, without limitation, any corporate employee, manager, assistant manager, chef, lead cook or dietitian.
- 2.15. Utilities and Amenities. All utilities reasonably requested by SUMMIT to provide commissary Food Services at the Premises including, within t reasonable 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. COMMISSARY SERVICES

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- 3.1 Summit Responsibilities. Summit agrees to perform the following responsibilities:
- A. Summit shall operate and manage Commissary services hereunder in a professional manner and supply with merchandise of good quality.
  - B. Summit employees will be responsible for accepting delivery of, sorting, transporting, and delivering commissary items to both Corrections Facilities. Short and long term storage for commissary items will be primarily at the Work Center, but Summit may elect to use dry storage areas currently used for Jail Food Service.
  - C. Summit will also provide their "outside-inside" connection program and will use the County kitchen to prepare any fresh food items.
  - D. Summit commissary employees will follow the process outlined in their bid to obtain signatures of the correct offender on all commissary receipts and forward the signed receipts to the County Finance Department. Summit will verify the Offenders identity by checking the

offender's wristband prior to delivery of the items.

- E. Summit will provide indigent items for offenders. They will be listed individually so that offenders can order only what they need. Proof of the offender receiving the items will also be forwarded to County Finance so that costs can be posted to the offender's account. The manner in which that information is memorialized will be mutually agreed upon. The County will pay for indigent items delivered and signed for.
- F. Summit may use offender labor for commissary services. The offender's will remain under Summit's direct observation and supervision while working.
- G. Under no conditions will tobacco or vaping products or items containing Ethanol be included on the commissary lists.
- H. Summit agrees to comply with all local, state and federal laws and regulations governing the operation of the commissary.
- I. All persons employed by Summit will be the employees of Summit and not of County. Summit, in performing work required by this Agreement, shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin or age, in violation of local, state or federal laws. Summit will comply with applicable local, state and federal laws and regulations pertaining to the wages and hours of employment.
- J. Summit agrees to supply the County at no cost a commissary system as required to perform the tasks required, provided the commissary system will remain Summit property after Termination of the Agreement. As part of the commissary system, Summit shall provide two (2) lobby kiosks for visitors to deposit money directly into inmate accounts. One (1) kiosk will be at the Downtown jail and one (1) at the Work Center. Summit will also provide software updates as they become available. Any training required by the installation of software enhancements will be provided by Summit at no cost.
- K. Summit shall work with County to maintain conditions of sanitation and cleanliness. An objective evaluation of the condition of the kitchen/food prep and storage areas will be the passing of Routine Health Department Environment Health Inspections.

3.2 County's Responsibilities. County agrees to perform the following responsibilities:

- A. County shall, without cost to Summit, provide Summit with the necessary space for the operation of Services, and shall furnish, without cost to Summit, all utilities, facilities, equipment and security for Summit personnel for the efficient performance of this Agreement including, but not limited to, the following: lights, electric current, heat, refrigeration, garbage removal services, exterminator services, telephone services, internet access and facsimile services. Summit shall be responsible for long distance telephone service. County shall be responsible for providing access to existing internet and electrical hookups and access to software systems or local area networks used in the operation of the Commissary program or its connection to County's accounting system.
- B. Internet Access. If Summit is to implement a point-of-sale system, County will allow Summit to use County's existing internal network cabling to designated locations throughout both facilities. To the extent Summit installs and maintains its



own POS System, County shall provide access to existing electrical outlets. County shall allow Summit and the internet provider physical access to the area where a high-speed internet connection will be installed, and shall permit Summit's installation of a router and dedicated high-speed internet circuit with full administrative control to establish a connection between the Commissary workstations and Summit's network. The County assumes no costs and will not provide cabling in the event Summit does not wish to use the established wired network cables.

1. Installation of any of the aforementioned equipment as well as any software updates that may affect county infrastructure will be coordinated with the County IT department.
  2. Summit will immediately notify the County if they discover any evidence of a system breach of their programs so that the County IT can take security precautions to minimize the possibility of the breach to the County systems. Conversely, the County will immediately notify Summit if they become aware of any cyber risk to Summit's software programs.
- C. At its own expense, County will maintain, repair, replace, and keep in safe operating condition said utilities, facilities and equipment, such that no Summit employee is exposed to or subjected to any unsafe situation that would violate the Occupational Safety and Health Act ("OSHA") or any other similar federal, state or local law or regulation. Summit shall have the right to effect equipment repairs or replacements at County's expense if, within a reasonable amount of time after receiving notice, County fails to make necessary repairs or replacement to essential equipment that becomes inoperative, hazardous or inefficient to operate or interferes with Summit's ability to provide Services in a safe and sanitary manner. Summit shall be entitled to assert a security interest in any equipment that it purchases or repairs under this section and shall retain title to equipment purchased hereunder. Provided: SUMMIT will utilize the County Jail purchasing system and submit written requests for additional or replacement items and/or the County's work order system for the repair/replacement of equipment. Replacement or additional supplies are subject to the County's approved budget restrictions. Failure to utilize these systems prior to SUMMIT purchasing or arranging for repairs to the item(s) will void the obligation of the County to reimburse SUMMIT for costs associated with purchase or repair.
- D. Any change or addition requested by the County to modify the commissary software that is specific to this location shall be paid for by the County. After the initial training period, any costs incurred by Summit for travel for training for the County specific modifications shall be paid for by the County. All County instigated changes must be approved by the Chief Corrections Deputy or her designee prior to implementing the change(s). When necessary, SUMMIT will provide alternative ordering processes for offenders who are on phone restrictions. This will include providing hard copy menus of the commissary items at SUMMIT's expense and handing out, collecting and transferring the order to the warehouse by SUMMIT personnel.
- E. The County represents and warrants that it has and will maintain all required licenses and permits, necessary to operate the Premises. The County represents and warrants that the Premises is in compliance and will remain in compliance with local, state, and

federal laws and regulations as it relates to these commissary services. The County agrees to notify Summit immediately upon receiving notice of loss of any such permit or license.

- F. For the purpose of this Section 3, "Supervisory Employees" shall be defined as those persons who have directly or indirectly performed management or professional services on behalf of Summit on behalf of County at any time during this Agreement. County acknowledges that Summit has invested considerable amounts of time and money in training its Supervisory Employees, in the systems, procedures, methods, forms, reports, formulas, computer programs, recipes, menus, plans, techniques and other valuable information, all of which is proprietary and unique to Summit. 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, whether as an individual or as owner, partner, majority stockholder, director, officer or employee of a food service provider. County agrees that if it violates this contract provision, County shall pay to Summit, and Summit shall accept as liquidated damages and not as a penalty, an amount equal to the annual salary (including costs of all benefits) 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.
- G. County shall pay all real estate taxes with respect to the Premises, and County shall pay all personal property taxes and similar taxes with respect to County's equipment located on the premises.

#### 4. EMPLOYEES

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- 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. SUMMIT's employees and agents shall comply with applicable rules and regulations concerning conduct on the County's premises which the County imposes upon its employees and agents provided such rules and/or regulations are not in violation of any federal, state, and/or local laws. County agrees to provide SUMMIT notice of any proposed changes in rules, at least thirty (30) days prior to implementation. SUMMIT will consider County's written requests to remove Food Service employees, provided such requests are non-discriminatory and comply with all laws and regulations governing employment. The County retains the rights to require all new employees be approved for jail access in advance of their first day or work; provided that every effort will be made on the County's part to expedite such approval. The County also retains the right to pull access for any new or current Summit Employee if, in the judgement of the County, allowing the employee access to the facilities would constitute a danger to the safety, health and/or security of the facility. In the event that facilities access was denied or recalled, this shall not constitute a personnel action on the part of the County against the Summit employee.
- 4.2. The County Sheriff's Office is a drug free work site and any Summit employee suspected of being under the influence of illegal drugs of any kind will be ordered off the premises.



- 4.3. Existing Employees; Employment Terms; Employee Pension and Benefit Plans With the exception of the current Food Service Manager, SUMMIT in its sole discretion may elect to hire any managers or employees of County or County's incumbent foodservice provider (collectively, "Existing Employees") who are qualified, available and willing to provide Food Service at the Premises. 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 in connection with this Agreement).
- 4.4. 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.
- 4.5. Payroll Taxes. SUMMIT shall be responsible for all withholding and payroll taxes relative to SUMMIT's employees.
- 4.6. Background Checks. SUMMIT shall conduct necessary background checks as required by law.
- 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. 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.

## **5. PREMISES, FACILITIES, UTILITIES AND EQUIPMENT**

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- 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 Equipment. Without limiting the foregoing, County shall permit SUMMIT to use all of the County's Food Preparation Equipment in the performance of Food Service. The Food Preparation Equipment provided by County shall be commercial grade, in good condition and shall be maintained, repaired and replaced by County to permit the performance of the Food Service and to ensure compliance with applicable Governmental Rules. 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.

- 5.3 Facilities, Utilities. At its own expense, County shall maintain, repair, replace, and keep in safe operating condition said Facilities and Utilities, to permit the performance of the Food Service and to ensure compliance with Governmental Rules.
- 5.4 Smallwares and Servicewares. At its own expense, County shall furnish SUMMIT with the appliances, wares and equipment reasonably requested by SUMMIT including all Cooking Equipment, Smallwares and Servicewares. SUMMIT will utilize the County Jail purchasing system and submit written requests for additional or replacement items. Replacement or additional supplies are subject to the County's approved budget restrictions.

## 6. TAXES

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- 6.1 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 Services provided for hereunder. County shall immediately pay for any tax assessments including interest, penalties, costs and expenses, which are assessed against the Food Service operation and were not in effect as of the Commencement Date or were owed but unpaid as of the Commencement Date. County shall notify SUMMIT promptly should its sales tax status be changed.

## 7. FINANCIAL ARRANGEMENTS

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- 7.1 Payment Arrangement.
  - A. SUMMIT shall be entitled to retain amounts paid in conjunction with services provided to the Commissary. In exchange, Summit will pay County a monthly commission equivalent to forty percent (40%) of Net Sales at the Premises. Net Sales shall be defined as Gross Sales minus Sales Tax minus postage sales.
  - B. SUMMIT will pay a commission of 30% on all gift bags and 30% on the Hot Food Program.
  - C. SUMMIT shall provide the County monthly an operating statement which shall detail the revenue based on the operation of the commissary.
  - D. SUMMIT and County shall review the costs for service on no less than an annual basis to determine adjustments in operating costs. Summit reserves the right to adjust the retail prices on the commissary price list to reflect any increase in cost, and to ensure the financial objectives of this Agreement. Provided that commissary prices will reflect the requirement of the RFP that prices will be comparable to prices in local convenience stores.
- 7.2 Payments Due and Late Payment Penalty. SUMMIT shall issue an invoice at the end of each Week showing the amounts due. County shall pay the full invoice amount within thirty (30) days from the issuance of the invoice.



- 7.3 Change in Conditions. The financial terms set forth in this Agreement, and all other obligations assumed by SUMMIT hereunder, are based on conditions in existence on the date SUMMIT commences operations including, without limitation, population; labor costs; applicable Governmental Rules; food and supply costs; provision of equipment and utilities; state of the Premises; and federal, state and local sales, use and excise taxes (the "Conditions"). Further, County acknowledges that in connection with the negotiation and execution of this Agreement, SUMMIT has relied upon County's representations regarding existing and future conditions (the "Representations"). In the event of change in the Conditions, inaccuracy of the Representations, or if County requests any significant change in the commissary services 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 such increased charges. Any changes must be with the mutual agreement of both the County and Summit and be filed as an amendment to this agreement prior to the increases taking place. Increased charges unilaterally billed will not be honored.
- 7.4 Attorney's Fees and Costs. County shall pay all uncontested costs of collecting any amount due SUMMIT, including attorney's fees and all costs and other expenses incurred by SUMMIT in collecting an indebtedness of County. This provision shall survive the termination of the Agreement.

## **8. TERMINATION OF THE AGREEMENT**

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- 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. The breaching party will have fifteen (15) days in the case of a breach, or 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, or within another time frame that is mutually acceptable, 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 both parties agree to provide the other entity thirty (30) days' notice before filing a petition for bankruptcy.
- 8.3 Voluntary Termination. At any time after one year 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, 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.

- 8.5 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 as soon as is practicable under current County Payment cycles.

## 9. INDEMNIFICATION; INSURANCE

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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 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. The SUMMIT shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by SUMMIT, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by SUMMIT without regard to this Contract, whichever are greater:

1. Worker's Compensation Insurance as prescribed by the laws of the state where the Premises are located; and

2. **Commercial General Liability**

a. Property Damage \$1,000,000.00, per occurrence

b. General Liability & bodily injury \$2,000,000.00, per occurrence

\$2,000,000 - Minimum, Annual Aggregate

Coverage shall include personal injury, bodily injury and property damage for Premises/Operations Liability, Products/Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

C. **Business Automobile Liability**

\$1, 000,000.00 Minimum, per occurrence



\$2,000,000.00 Minimum, Annual Aggregate

SUMMIT shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If SUMMIT owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

- D. **Professional Liability** - \$1,000,000 per occurrence:  
Obtain professional liability insurance covering the negligent acts, errors, or omissions of professional in connection with the performance of services to the County. If the professional liability insurance is a claims made policy, it will require a minimum of three years tail coverage, or, should SUMMIT discontinue coverage either during the term of this contract or within three years of completion, SUMMIT agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.
- E. All insurance policies shall provide coverage on an occurrence basis. Claims made policies will not be accepted. If it is a Professional Liability policy and is a "claims-made" policy, it will require a minimum of three years tail coverage. All insurance requirements shall apply equally to SUMMIT's subcontractors.
- F. **Additional Insureds.** The County, its departments, elected and appointed officials, employees, agents and volunteers shall be named as additional insureds on SUMMIT's and SUMMIT's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the SUMMIT and subcontractor, whichever is greater, and all coverage shall be primary and non-contributory. A statement of additional insured status on a Certificate of Insurance shall not satisfy these requirements; endorsements must be included with the Certificate.
- G. **Primary, and Non-contributory Insurance.** SUMMIT shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention, or insurance pooling maintained or participated in by the County shall be excess and not contributory to such insurance policies. SUMMIT's insurance must be endorsed to show primary and non-contributory coverage.
- H. **Waiver of Subrogation.** SUMMIT hereby agrees to a waive subrogation with respect to each insurance policy required under this Contract. When required by an insurer, or if a policy condition does not permit SUMMIT to enter into a pre-loss agreement to waive subrogation without an endorsement, then SUMMIT agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the SUMMIT enter into such a waiver of subrogation on a pre-loss basis.
- I. **Certificates and Endorsements:** A Certificate of insurance, that identifies the County, its employees, officials, agents and volunteers as additional insureds, is attached hereto as Exhibit "C". This insurance shall be considered primary and shall waive all rights of

subrogation. The County insurance shall be noncontributory. The Certificate alone is insufficient proof of insurance requirements. Endorsements must be attached with the Certificate. The Contractor must submit the Certificate and endorsement as described under this Insurance provision to the County prior to the commencement of any work on this project. The County does not waive any Insurance requirements by the Contractor even in the event the Insurance Certificate and endorsements provided by the Contractor are insufficient or inadequate proof of coverage but not objected to by the County. The Insurance policy shall provide coverage on an occurrence basis.

- J. The County must be notified immediately of any cancellation of the policy, expiration or change in insurer carrier. SUMMIT shall immediately provide to the County copies of the Certificate and endorsements when there is a change in insurance carrier or when the policy is renewed so that the County maintains a current copy of the Certificate and endorsements throughout the duration of the contract.
- K. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirement under this Contract.
- L. Indemnification by SUMMIT. To the fullest extent permitted by law, SUMMIT agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of SUMMIT, its employees, agents or volunteers or SUMMIT's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon SUMMIT's or its subcontractors' use of, presence upon, or proximity to the property of County. This indemnification obligation of SUMMIT shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.
- M. In the event of concurrent negligence of SUMMIT, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of SUMMIT shall be valid and enforceable only to the extent of the negligence of SUMMIT, its subcontractors, employees, and agents. This indemnification obligation of SUMMIT shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and SUMMIT hereby expressly waives any immunity afforded by such acts.
- N. The foregoing indemnification obligations of SUMMIT are a material inducement to County to enter into this Agreement, are reflected in SUMMIT's compensation, and the parties further acknowledge that they have mutually negotiated this waiver.
- O. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this Contract is for the benefit of the parties only and this Contract shall create no rights in any third party.



- P. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of SUMMIT's indemnity obligations under this Agreement.
- Q. In the event SUMMIT enters into subcontracts to the extent allowed under this Contract, SUMMIT's subcontractors shall indemnify the County on a basis equal to or exceeding SUMMIT's indemnity obligations to the County.
- R. SUMMIT shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.
- S. SUMMIT agrees all SUMMIT's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

## **10. GENERAL AGREEMENT TERMS**

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- 10.1 Public Records Act. This Contract and all public records associated with this Contract shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.
- 10.2 The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records
- 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:

Wendy Jones, Chief  
Whatcom County Sheriff's Office  
Public Safety Building  
311 Grand Avenue  
Bellingham, WA 98225  
360-778-6505  
wjones@co.whatcom.wa.us

SUMMIT  
ATTN: CEO  
500 East 52<sup>nd</sup> Street  
Sioux Falls, SD 57104

- 10.5 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. Except that Summit is obligated, under the specific terms of their bid response, to be prepared to respond, in a reasonable manner to all emergency situations including man made or natural disasters. It is anticipated that the County and Summit will work in cooperation should such an event occur.
- 10.6 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 SUMMIT's transfer to a parent, sister or successor SUMMIT where SUMMIT provides County at least thirty (30) days written notice.
- 10.7 Entire Agreement; Waiver. This Agreement, including any Exhibits hereto, 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 SUMMIT Food Services.
- 10.8 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.
- 10.9 Disputes: Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and



consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

- 10.9 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 Services shall not exceed the amount of insurance coverage required by Summit in 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 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. SUMMIT SHALL ONLY BE LIABLE FOR COUNTY'S ACTUAL DAMAGES FOR LAIBILITY AND COSTS, INCLUDING ATTORNEY'S FEES, ARISING FROM BREACH OF CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY.
- 10.10 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.
- 10.11 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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Signature: [Signature]  
Name: Wendy Jones  
Title: Chief Corrections Deputy  
Date: 11.13.19

Signature: [Signature]  
Name: Martino C Sejnoba Jr  
Title: President and CEO  
Date: 11/8/2019

**WHATCOM COUNTY:**

Recommended for Approval:  
[Signature] 11/14/19  
Bill Elfo, Sheriff Date

Approved as to form:  
[Signature] 11/20/19  
Prosecuting Attorney Date

**Approved:**  
Accepted for Whatcom County:

By: \_\_\_\_\_  
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.



Exhibit "C"



**CERTIFICATE OF LIABILITY INSURANCE**

9/1/2020

DATE (MM/DD/YYYY)

11/20/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Lockton Companies 3280 Peachtree Road NE, Suite #250 Atlanta GA 30305 (404) 460-3600	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No. Ext):</b> _____	<b>FAX (A/C, No):</b> _____
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A : Gemini Insurance Company</b>		10833
<b>INSURER B : Sentry Insurance a Mutual Company</b>		24988
<b>INSURER C : Sentry Casualty Company</b>		28460
<b>INSURER D : Landmark American Insurance Company</b>		33138
<b>INSURER E : XL Insurance America, Inc.</b>		24554
<b>INSURER F :</b> _____		

**COVERAGES**                      **CERTIFICATE NUMBER:** 16422869                      **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____	Y	N	90-18840-06	9/1/2019	9/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Drive Other	N	N	90-18840-04 (AOS) 90-18840-05 (MA)  GVE100207902(1X1)	9/1/2019 9/1/2019	9/1/2020 9/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX Excess Limit \$ 1,000,000
E	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$ 0	N	N	US00086357L119A	9/1/2019	9/1/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	90-18840-01 90-18840-02 (Retro)	9/1/2019 9/1/2019	9/1/2020 9/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Liquor Liability	N	N	90-18840-06	9/1/2019	9/1/2020	\$1,000,000/\$2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Certificate holder is included as an Additional Insured as respect General Liability Coverage as required by written contract subject to policy terms, conditions and exclusions. Certificate holder is included as an Additional Insured as required by written contract subject to policy terms, conditions and exclusions.

<b>CERTIFICATE HOLDER</b> 16422869 Whatcom County Sheriff's Office 311 GRAND AVE STE B2 BELLINGHAM WA 98225-4038	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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