

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

201911038

Originating Department:	Sheriff's Office
Division/Program: (i.e. Dept. Division and Program)	Corrections/In Custody
Contract or Grant Administrator:	Laurie Reid
Contractor's / Agency Name:	Summit Food Service

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No Yes No
 If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes No If No, include WCC: _____
 Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes No If yes, grantor agency contract number(s): _____ CFDA#: _____

Is this contract grant funded? Yes No If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process? Yes No If yes, RFP and Bid number(s): 19-55 Contract _____ Cost Center: 118150

Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- Professional services agreement for certified/licensed professional.
- Contract work is for less than \$100,000.
- Contract work is for less than 120 days.
- Interlocal Agreement (between Governments).
- Contract for Commercial off the shelf items (COTS).
- Work related subcontract less than \$25,000.
- Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
 \$ 540,750.00
 This Amendment Amount:
 \$ _____
 Total Amended Amount:
 \$ _____

Council approval required for; all property leases, contracts or bid awards **exceeding \$40,000**, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, **except when**:

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies.
4. Equipment is included in Exhibit "B" of the Budget Ordinance.
5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

Summary of Scope:

Summit Food Service was awarded the bid for Jail Food Services. They will provide nutritious, wholesome and palatable food to inmates in accordance with this contract and in compliance with the NCCHC Accreditation for the Jail.

Term of Contract: 1 year | Expiration Date: 12/31/2020

Contract Routing:	1. Prepared by: <u>LR</u>	Date: <u>11/13/19</u>
	2. Attorney signoff: _____	Date: <u>11/20/19</u>
	3. AS Finance reviewed: <u>MDC</u> <u>JG</u>	Date: <u>11/15/19</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____ ✓	Date: <u>11-8-19</u>
	6. Submitted to Exec.: _____ ✓	Date: <u>11-27-19</u>
	7. Council approved (if necessary): _____ ✓	Date: <u>12-3-19</u>
	8. Executive signed: _____ ✓	Date: <u>12-4-19</u>
	9. Original to Council: _____ ✓	Date: <u>12-16-19</u>

WHATCOM COUNTY AND SUMMIT FOOD SERVICE FOOD SERVICE PARTNERSHIP AGREEMENT

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

1. TERM AND INTENT

- 1.1 County grants SUMMIT the exclusive right to provide Food Service, to operate the Food Service Facilities, and to provide to County, employees, guests and other persons at the Premises such Food Service and Products. Food Services will be provided at the Whatcom County Correctional Facility (Jail), Juvenile Detention and the Whatcom County Work Center. This agreement covers all facilities except that the Juvenile Detention Facility will be negotiating an amendment to the agreement that will cover the aspect of food service that are unique to Juvenile Offenders.
- 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 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 Food Service 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 **Food Service.** 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 **Food Service Facilities.** Space for SUMMIT to prepare and perform Food Service at the Premises including, , kitchen, , office and storage areas as they currently exist
- 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, without 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 food service facility (ies) located at 311 Grand Avenue, Bellingham, WA 98225 and 2030 Division St. Bellingham, WA 98226
- 2.10 Products. Food, beverages, goods, merchandise, and supplies.
- 2.11 Proprietary, Confidential and Trade Secret Information. Items used in SUMMIT Food 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 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. County.
- 2.12 Servicewares. Items used in the service of food and beverages including, within budgetary limitations, cups, eating utensils, disposables, trays, and carts.
- 2.13 Smallwares. Items used in the preparation of food including, within budgetary limitations, 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 Food Services at the Premises including, without 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. FOOD SERVICES

- 3.1 Food Service. SUMMIT will oversee Food Services at the Premises which shall include, within agreed upon limitation, preparation and service of food and beverages to County's adult and juvenile offender populations, employees, staff and guests.
- 3.2 Program Specifications. Menu. SUMMIT shall provide a menu cycle as it deems necessary for operations provided the menu's will substantially reflect the sample menus submitted as part of the RFP process and will be reviewed and approved by the Chief Corrections Deputy or her designee. Standard meals will provide an average of 2700 calories a day. With the exception of calorie restricted diets, all specialty diets will reflect the same number of average calories.

A. Food service will meet all current nutritional standards as established by:

- 1) The American Correctional Association
- 2) The National Commission on Correctional Health Care (NCCHC)

B. Specialty diets. Will also be included, including but not limited to:

- 1) Bag Lunches. SUMMIT shall provide Bag Lunches upon request.
- 2) Medical Meals. SUMMIT shall provide Medical Meals upon request.
- 3) Religious Meals. SUMMIT shall provide Religious Meals upon request.
- 4) Holiday Meals. SUMMIT shall provide Holiday Meals upon request.

C. Portions. Portions of all foods placed on the trays will be the sizes/weights reflected on the menus and be consistent across all trays. Portions that appear to be undersized or trays that have obviously different sized portions will be returned to the kitchen and adjusted, or replaced. Replacement tray costs are the responsibility of SUMMIT.

D. Outside Inside. Summit shall host an e-commerce website to permit third parties to purchase hot and cold meals and Products for offenders. Summit shall prepare and deliver e-commerce purchases up to twice a week to offenders, days shall be mutually agreed upon between the parties. County will provide daily inmate roster on an agreed upon schedule but no less than once per day.

E. Locations. SUMMIT shall operate and manage Food Services at the Premises and provide or transport food to the other corrections facilities including the Work Center and Juvenile Detention as the County and SUMMIT mutually agree. SUMMIT will provide and be responsible for the costs associated with the vehicle they use to transport meals to the Work Center.

F. Hours. SUMMIT shall provide necessary Food Services at such hours as the County and SUMMIT mutually agree.

- 3.3 Purchasing. SUMMIT shall purchase those Products and supplies necessary to comply with SUMMIT's obligations as set forth in this Agreement from SUMMIT's approved vendors that meet SUMMIT's guidelines and requirements. This includes routine cleaning supplies for the kitchen and service areas. The rating of foodstuffs shall meet or exceed those included in the SUMMIT's response to the RFP. SUMMIT will be responsible for moving items from the exterior of the jail into the secure delivery sallyport and then, with the assistance of Inmate workers, move the items from the sallyport to their appropriate storage areas.
- 3.4 Inventory. SUMMIT will purchase and own all inventories of food, beverages, and supplies. Upon termination of this Agreement for any reason, at SUMMIT's option, (i) SUMMIT may remove and retain any remaining Product inventory or (ii) County will purchase from SUMMIT, at SUMMIT's invoice cost, any remaining Product inventory that is still within its "use by" date.
- 3.5 Cleaning. SUMMIT and County shall be jointly responsible for housekeeping and sanitation in the food preparation, receiving, storage and service areas of Premises. SUMMIT shall perform routine cleaning and housekeeping in the food preparation, service and storage areas. This will include regular cleaning of the kitchen grease trap. Additionally, SUMMIT will be responsible for the supervision of the Jail Laundry at the Downtown Jail, including assigning and supervising inmate workers to Laundry positions and supervising their work County shall perform janitorial services for the remainder of the Facilities. The County will also be responsible for major cleaning including, fixtures, ceilings, electric light fixtures, duct work, plenum chambers, pest control and roof fans throughout the Food Service Facilities as defined herein. County shall be responsible for removal of refuse from the collection areas and all refuse removal charges. SUMMIT will be responsible

for removal of refuse out of the Kitchen service area to the large waste containers stored in the secure sallyport/drive through area and employ practices and supervise the application of those practices so as to not allow food or debris go down the sink or floor drains.

- 3.6 SUPPLIES. SUMMIT will additionally purchase both laundry supplies and general cleaning supplies for both the Downtown Jail and the Work Center. The current vendor for general cleaning and laundry supplies is ECOLABS, costs of these items, including shipping, tax, and a 15% markup for the handling of this ancillary duty will be paid by the County. Invoices will be submitted using the same system used for the payment of other services.
- 3.7 Inmate Workers. Inmate workers will be provided to SUMMIT to assist with all cleaning, food service, movement of inventory, Laundry, and transporting refuse from the kitchen area to the outside secure trash receptacles.

4. EMPLOYEES

- 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 except in cases of emergencies. The County will define what the emergency is for the SUMMIT employees. 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 of 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 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).
- 4.3 Payroll Taxes. SUMMIT shall be responsible for all withholding and payroll taxes relative to SUMMIT's employees.
- 4.4 Background Checks. SUMMIT shall conduct necessary background checks as required by law. The County reserves the right to run standard criminal background checks on applicants prior to employment on County premises, and to further screen an applicant within applicable Federal, state and local laws and regulations, including but not limited to the Federal Polygraph Protection Act.

- 4.5 Training and Orientation. SUMMIT shall be responsible for training new employees as described in their bid response. Additionally, the County will provide a mandatory orientation during the first seven (7) to ten (10) days covering basic principles of safety and security when working with offenders.
- 4.6 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, Creed, sex, sexual orientation, national origin, protected veteran status or disability.
- 4.7 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. 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

- 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, unless the damage to the premises is caused by SUMMIT employees.
- 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. If County fails to make necessary repairs or replacement to equipment within a reasonable amount of time, SUMMIT shall have the right to effect equipment repairs or replacements at County's expense. Notice to the County of necessary repairs/replacement must be made in writing, which can include email. SUMMIT shall retain title to equipment hereunder and shall be entitled to assert a security interest in any equipment that it

purchases or repairs under this section provided that once the cost of the purchased equipment or equipment repair has been recovered, SUMMIT shall release the security interest and title for any such purchased equipment to County.

- 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 limits. Except in emergencies, the cost of items purchased outside of the County purchasing will be the responsibility of SUMMIT.
- 5.5 Computer Equipment.
 - A. Internet Access. 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 foodservice office, workstations (if any) 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.
 - B. Software. SUMMIT will license products, software and maintenance for use in providing services in accordance with this Agreement. SUMMIT has procured a license to access and use SUMMIT's centralized Nutritional Database ("NDB") for nutritional analysis, menu planning and other operational purposes for County's Premises. County agrees that all software associated with the operation of the Food Service, including without limitation, the NDB, food production systems, and accounting systems, is owned by or licensed to SUMMIT. County's access or use of such software shall not create any right, title, or copyright in such software. Upon termination of this Agreement, County shall have no right to access or retain any SUMMIT software or Confidential Information produced by that software; Provided that the County or their designee maintains its right of access to Summit's financial software and records as it applies to business records between the SUMMIT and the County.

6. LICENSES, PERMITS AND TAXES

6.1 Licenses and Permits. SUMMIT shall procure, maintain and post the food licenses and permits as required by law. In those instances where sales or similar tax is assessed Summit under the terms of this agreement, the County shall reimburse Summit for such tax utilizing the standard invoicing system. County represents and warrants that it has and will maintain all other licenses and permits necessary to operate the Premises and the Food Services. The County agrees to notify SUMMIT immediately upon receiving notice of loss of any such permit or license.

7. FINANCIAL ARRANGEMENTS

7.1 Payment Arrangement.

A. Inmate Meal Rate.

a. For a Scaled Rate. County shall pay SUMMIT the rate per Meals served:

Population	Price Per Meal
Under 270	TBN
271 – 280	\$1.428
281-290	\$1.399
291-300	\$1.371
301-310	\$1.346
311-320	\$1.322
321-330	\$1.300
331-340	\$1.282
341-350	\$1.264
351+	\$1.247

Summit will present the invoice in such a way that it is clear the number of meals served at each mealtime and the price per meal for the specific mealtime. Summit will also break out those meals that are provided to Juvenile Detention and those that are enhanced sack lunches for the Work Crews.

Any other expenses, such as dietary supplements or cleaning/paper supplies will be invoiced separately.

b. Sack Meals. Shall be charged at the rate of \$1.720

c. Juvenile Meals. Shall be charged at the rate of \$2.53

B. Outside Inside. Summit shall be responsible for all costs related to the e-commerce program and shall be entitled to keep all proceeds from such e-commerce program. SUMMIT shall pay to County thirty percent (30%) of all Net Revenue collected for the Outside Inside program. Net Revenue shall be described as Gross Revenue minus applicable tax and reasonable

processing fees. Invoices submitted will include a breakdown of gross revenues and the applicable sales tax and fees.

- C. Investment. SUMMIT agrees to invest in equipment during the term of the Agreement. The investment will be amortized on a straight-line basis over the anticipated five-year term of the Agreement. The items purchased with these dollars will be based on mutual agreement and take into consideration the needs of the facility. In the event this Agreement terminated by either party for any reason, County shall reimburse SUMMIT the unamortized balance of the investment at least fifteen (15) days prior to the effective date of termination. SUMMIT will maintain a security interest in the assets acquired with the investment dollars until such assets are fully amortized or reimbursed. Any proposal for the purchase of any equipment must be submitted prior to any purchases. The proposal must include full costs (equipment, shipping, delivery, installation, maintenance agreements and tax) and be signed off by the County and coordinated with ADS Facilities Management.
- D. Service and Pricing Assumptions. The financial terms set forth in this Agreement, and all other obligations assumed by SUMMIT hereunder, are based on the following assumptions:
 - 1. Commissary Services: The pricing was determined based on SUMMIT also providing Commissary Services for the County.
 - 2. Purchasing: SUMMIT will make purchases on behalf of the County at a level similar to that in place at the Commencement of this Agreement.

To the extent any of the basic assumptions change or if County requests a significant change in Services as provided under this Agreement, the SUMMIT's rates shall be proportionately increased, the amount of that increase to be mutually agreed upon, unless the Parties otherwise mutually agree otherwise.

- 7.2 Payments Due and Late Payment Penalty. SUMMIT shall issue an invoice at the end of each Accounting Period showing the amounts due. County shall pay the full invoice amount within thirty (30) days from the issuance of the invoice.
- 7.3 Changes 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, , 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 Food 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 their intent to request 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 paid.
- 7.4 Future Pricing. Pricing adjustments shall be made on an annual basis and shall be agreed upon by the parties at a rate no less than the greater of: three percent (3%) or the most recently released U.S. Department of Labor Consumer Price Index, All Urban Consumers, National Average Unadjusted, Food Away From Home. Except in no case shall the increase exceed 3% of the

previous year's Consumer Price Index (CPI). Up to ninety (90) days prior to the anniversary of the Commencement Date, SUMMIT shall provide County notification of the adjustment. On the anniversary date, SUMMIT proposed adjustments shall go into effect, unless the Parties have entered into a written agreement with an alternative cost adjustment.

- 7.5 Attorney's Fees and Costs. County shall pay all 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.

- 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) fifteen (15) days in the case of any other breach, or (ii) 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 both parties agree to provide to each other 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 ninety (90) 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

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 cause 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.

3. 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.

4. 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.

5. 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.
6. 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 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.
7. 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.
8. 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.
9. 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.

10. 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.
11. 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.
12. 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 the 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 the 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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.
19. SUMMIT agrees all of SUMMIT's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

10. GENERAL AGREEMENT TERMS

- 10.1 Confidentiality. Neither County, nor County's employees or agents, shall disclose, photocopy, duplicate or use, either during or after the term of this Agreement, any Proprietary, Confidential and Trade Secret Information, without SUMMIT's prior written permission. All Proprietary, Confidential and Trade Secret Information shall remain SUMMIT exclusive property. County's access or use of SUMMIT Proprietary, Confidential and Trade Secret Information or Software shall not create any right, title, interest or copyright in such Information or Software. If County is requested to disclose any of the Confidential Information to any third party for any reason, County shall provide SUMMIT with prompt notice of such request(s). Upon termination of this Agreement, County shall return all SUMMIT Proprietary, Confidential and Trade Secret Information in County's possession relating to SUMMIT's services pursuant to this Agreement. County agrees that upon breaching this provision, SUMMIT shall be entitled to equitable relief, including injunction or specific performance, in addition to all other available remedies. This provision shall survive the termination of the Agreement.
- 10.2 Intellectual Property. Nothing in this Agreement is intended to grant any rights to County under any patent, copyright, trademark, trade name, trade secret or other proprietary right of SUMMIT (whether now owned or hereafter developed or acquired), all of which are reserved to SUMMIT.
- 10.3 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.

10.4 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

10.5 HIPAA Compliance. The parties agree to abide by applicable HIPAA requirements.

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 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.

10.7 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:

Wendy Jones, Chief	SUMMIT
Whatcom County Sheriff's Office	ATTN: CEO
Public Safety Building	500 East 52 nd Street
311 Grand Avenue	Sioux Falls, SD 57104
Bellingham, WA 98225	
360-778-6506	
wjones@co.whatcom.wa.us	

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 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.

10.9 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 SUMMIT's transfer to a parent, sister or successor SUMMIT where SUMMIT provides County 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 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.

- 10.11 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 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.
- 10.13 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 amount of insurance coverage required by Summit in 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. SUMMIT SHALL ONLY BE LIABLE FOR COUNTY'S ACTUAL DAMAGES AND COSTS, INCLUDING ATTORNEY'S FEES, FOR LIABILITY ARISING 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. 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]

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

COUNTY

Signature: [Signature]
Name: Wendy Jones
Title: Chief Corrections Deputy
Date: 11/13/19

SUMMIT

Signature: [Signature]
Name: MARLIN C SEJNOHA, 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: [Signature]
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 14th day of Dec, 20 19 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.

[Signature]
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham, WA My commission expires 05-25-2023
License 128338
NOTARY PUBLIC
Expires 05-25-2023
STATE OF WASHINGTON

**WHATCOM COUNTY
SHERIFF'S OFFICE**

BILL ELFO
SHERIFF



PUBLIC SAFETY BUILDING
311 Grand Avenue
Bellingham, WA 98225-4038
(360) 778-6600

MEMORANDUM

RECEIVED

NOV 27 2019

**JACK LOUWS
COUNTY EXECUTIVE**

TO: Jack Louws, County Executive
FROM: Bill Elfo, Sheriff
RE: Jail Food Services Contract
DATE: November 13, 2019

Enclosed are two (2) originals of a contract for Jail Food Services between Summit Food Service and Whatcom County for your review and signature.

▪ **Background and Purpose**

Summit Food Service will replace Aramark Food Service in 2020 after being awarded the bid via the RFP process. They will furnish nutritious, wholesome and palatable food to inmates in accordance with this contract and in compliance with the NCCHC Accreditation for the Jail.

▪ **Funding Amount and Source**

Meal prices are reflected on page 7 of the contract and will come from the approved 2020 Corrections Bureau budget with a maximum annual amount of \$540,750.00.

▪ **Differences from Previous Contract**

This is a new contract.

Please contact Laurie Reid at extension 6506, if you have any questions or concerns regarding the terms of this agreement.

Encl. (2)