

OPERATING AGREEMENT - FOOD SERVICE

This **OPERATING AGREEMENT** (the "Agreement") is made as of January 25, 2013 (the "Effective Date") by and between the **County of Winnebago** and the **Winnebago County Sheriff**, with offices at 420 State Street, Rockford, Illinois 61101 (the "County"), and **ARAMARK Correctional Services, LLC**, a Delaware limited liability company, having a principal place of business at the ARAMARK Tower, 1101 Market Street, Philadelphia, Pennsylvania 19107 ("ARAMARK").

WITNESSETH:

1. **GRANT:** The County hereby grants to ARAMARK the exclusive right to provide food service (excluding vending machine operation and commissary operation) for the County's inmates, staff and visitors at the Winnebago County Sheriff's Department, Winnebago County Jail located at 650 West State Street, Rockford, IL and the Winnebago County Juvenile Detention Center located at 5350 Northrock Drive, Rockford, IL (individually, the "Facility" or collectively, the "Facilities"). ARAMARK hereby agrees to furnish nutritious, wholesome, and palatable food for meals to such inmates, staff and visitors in accordance with this Agreement. The food service shall meet all current standards as established by:

- A. The American Correctional Association.
- B. The Food and Nutritional Board of the National Academy of Science as prescribed for inmates.
- C. The State of Illinois.

2. **OPERATIONAL RESPONSIBILITIES:**

A. **Facilities And Equipment:** The County shall, at its expense, provide ARAMARK with adequate preparation kitchen, office and storage facilities at the Facilities, completely equipped and ready to operate, together with such heat, refrigeration and utilities services (including telephone and internet service) as may be reasonably required for the efficient performance of the Agreement.

The County shall furnish building maintenance services for the Facilities and shall provide preventive maintenance and equipment repairs and replacements for the County-owned equipment. The County shall furnish and maintain an adequate inventory of serviceware, thermal tray and delivery equipment, pots, pans, beverage containers and utensils at the Facilities.

B. Emergency Plan: ARAMARK shall submit a contingency emergency plan to provide for meal service in the event of a Force Majeure (hereinafter defined) within sixty (60) days after the commencement of operations. In the event of a Force Majeure, the County shall assist ARAMARK by permitting reasonable variations in ARAMARK's menu cycle and service methods. However, ARAMARK shall not be relieved of its responsibility to provide meal service under the terms of this Agreement. Additional costs, if any, incurred in providing service in the event of a Force Majeure shall be borne by the County. The term "Force Majeure" means any war, riot or other disorder, strike or other work stoppage, act of terrorism, fire, flood, or any other act not within the control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent.

C. Meal Delivery: Facility personnel shall receive meals at the County kitchen, shall transport such meals to appropriate areas, and shall return all trays and delivery equipment to ARAMARK at the County kitchen, in a timely manner.

D. Food Products And Cleaning Supplies: ARAMARK shall purchase and pay for all food products and kitchen cleaning supplies. Products purchased for use in the food service operation shall be the property of ARAMARK. The County shall be responsible for providing maintenance supplies and for maintaining kitchen appliances and equipment at the County's expense.

ARAMARK shall purchase all food products from USDA inspected plants that are approved as strictly complying with food safety standards. All food products purchased have a manufacturer's and distributor's assurance of safe handling. Food products are reviewed and approved by ARAMARK's registered dietitians to ensure that the food products meet inmate acceptability and nutritional standards.

E. Portion Size Requirements: All entrée portions listed on the menu that are purchased fully cooked, within the manufacturer's tolerance specifications, are based on weight measurements prior to reheating. Casserole portions and entrée portions made from scratch are based upon weight measurements after the food has been cooked according to standardized recipes.

F. Menu: The menu served at the Facility may be modified in any way by mutual agreement of the parties.

G. Sanitation: ARAMARK shall be responsible for daily cleaning and housekeeping in the food preparation, service, receiving and storage areas, and shall, on a continuing basis, maintain high standards for sanitation. The County shall provide janitorial services outside the kitchen facilities provided to ARAMARK. The County shall clean the vents and ductwork leading to the roof from food preparation areas. The County shall be responsible for extermination services and the removal of trash and garbage from the designated food service area.

H. Personnel: ARAMARK shall provide on-site management and supervisory personnel, and from its regional and headquarters locations, administrative, dietetic, purchasing, equipment consulting and personnel advice and supervision. The County shall provide inmate workers at the Facility kitchen. The number of inmates required shall be determined by the County liaison and ARAMARK's district manager prior to the commencement of operations. Such inmates shall be assigned duties in the food service operation that may include sanitation, food preparation and production, and storeroom functions.

The County acknowledges that ARAMARK has invested considerable amounts of time and money in training its management and supervisory employees in systems, procedures, methods, forms, reports, formulas, computer programs, recipes, menus, plans, techniques and other valuable information which is proprietary and unique to ARAMARK's manner of conducting its business and that such information is available, on a confidential basis, to ARAMARK's management and supervisory employees. Therefore, the County agrees that management and supervisory employees of ARAMARK shall neither be hired by the County in a similar capacity as they hold with ARAMARK for the term of this Agreement and twelve (12) months thereafter, nor shall the County permit management and supervisory employees of ARAMARK to be employed on the County's premises for a period of twelve (12) months subsequent to the termination of this Agreement (unless such employees were formerly employees of the County). For the purpose of this prohibition, "management and supervisory employees" shall be defined as those persons who have directly or indirectly performed management or professional services on the County's premises at any time during the twelve (12) month period immediately preceding termination of this Agreement.

The County retains the right to thoroughly investigate any current or prospective employees assigned to the Facility, subject to applicable Federal, state and local laws and regulations, including but not limited to, the Federal Polygraph Protection Act, as amended.

I. Equal Employment Opportunity: ARAMARK and the County mutually agree that they shall not discriminate against any employee or applicant for employment or on any matter directly or indirectly related to employment, because of race, color, religion, sex, sexual preference, national origin, physical or mental handicap where not relevant to the job, height, weight, age, marital status, or other criteria made illegal by state or federal law or the County policy. In addition, ARAMARK agrees to take affirmative steps to ensure that applicants are employed, and that employees are treated, during employment, without regard to the criteria listed above.

J. Insurance: ARAMARK shall provide and maintain the following insurance coverage:

Worker's Compensation insurance as required by law.

Comprehensive General (Public) Liability to include (but not be limited to) the following: Premises/operation; independent contractors; bodily injury; products/completed operation; contractual liability with a combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence. ARAMARK may satisfy these requirements through a combination of primary and excess coverage.

The County and ARAMARK waive any and all right of recovery from each other for property damage or loss of use thereof, howsoever occurring. This waiver shall include, but not be limited to, losses covered by policies of fire, extended coverage, boiler explosion and sprinkler leakage. This waiver shall not apply to claims for personal injury or death.

Any insurance coverage (additional insured or otherwise) that ARAMARK provides for the County, its officers, employees, agents and servants shall only cover liability assumed by ARAMARK in this Agreement; such insurance coverage shall not cover liability in connection with or arising out of the wrongful or negligent acts or omissions of the County or its officers, employees, agents and servants.

K. Hazardous Substances; Pre-Existing Conditions: ARAMARK has no duty to investigate, detect, prevent, handle, encapsulate, remove, or dispose of, and will have no responsibility to the County or others for any exposure of persons or property to, asbestos, lead, fuel storage tanks or contents, indoor air pollutants or contaminants, poor air quality, or hazardous, toxic, or regulated waste substances, mold, fungi, mildew, pollutants, or contaminants (collectively, the "Hazardous Substances") at the Facility or the surrounding premises. The County will comply with all applicable federal, state, and local laws and regulations, which have been or will be enacted during the term of this Agreement, regarding such Hazardous Substances on the County's premises. The County will inform ARAMARK of the presence of such Hazardous Substances and acknowledges that ARAMARK employees will not be required to work in any location where they could be exposed to such Hazardous Substances. ARAMARK has advised the County that it does not provide or assume any responsibility to monitor or remediate mold, fungi, mildew, indoor air quality or any similar conditions, and that all determinations and corrective actions regarding mold, fungi, mildew, indoor air quality and any similar conditions shall be made by the County or a third party retained by the County. In no case will any ARAMARK employee act in the capacity of a "Designated Person" (within the meaning of the Asbestos Hazard Emergency Response Act, "AHERA"), which duties remain solely with the County.

ARAMARK will not be responsible for any conditions that existed in, on, or upon the Facility before the commencement date of this Agreement ("Pre-Existing Conditions"), including, without limitation, environmental impairments, and other conditions. The County shall indemnify and hold harmless ARAMARK, its subsidiaries and affiliated companies, and their respective directors, officers and employees, against any liability related to, or arising out of, any defective condition or the presence of Hazardous Substances or Pre-Existing Conditions on or at the Facility or the surrounding premises, or the claimed or actual release or threatened

release or disposal of Hazardous Substances from or at the Facility, to the extent not caused by the willful misconduct or grossly negligent acts or omissions of ARAMARK, its employees or subcontractors, including, without limitation, fines, penalties, clean-up costs, or costs of other environmental remediation measures.

L. Damages: In no event will either party be liable to the other party for any loss of business, business interruption, consequential, special, indirect or punitive damages.

M. Compliance With Laws: Each party hereto shall comply with all statutes, lawful ordinances, regulations and requirements, federal, state, and local applicable to their activities hereunder. The County shall provide reasonable and adequate physical security at all times for ARAMARK employees, suppliers, management and other authorized visitors.

N. License, Fees, Permits, And Taxes: ARAMARK shall secure and pay for all federal, state and local licenses, permits and fees required for the food service operation. The County represents and warrants that it is a tax-exempt entity and, further, agrees to provide evidence of its tax-exempt status to ARAMARK upon request. The County further agrees to notify ARAMARK promptly in the event of a change in its tax-exempt status.

3. FINANCIAL AND ACCOUNTING ARRANGEMENTS:

A. Meal Service and Prices: ARAMARK shall provide meals to the County's inmates at the per meal prices set forth in Attachment A. ARAMARK will provide, at no additional cost, a lacto-ovo vegetarian and/or vegan diet for all religious requests from the administrative or religious authority. Other religious meals requested by the administration or religious authority, such as prepackaged meals, shall be provided at a price to be mutually agreed in advance. The County shall notify ARAMARK of the actual number of meals ordered each day at a mutually agreed upon time prior to meal service, and the County shall make additions or deletions to such order within a mutually agreed upon time prior to meal service. When the initial notice of meals ordered is not given timely, ARAMARK shall prepare and will be paid for the same number of meals as prepared for the previous day.

B. Price Adjustments: The per meal prices set forth on Attachment A apply for the period November 1, 2012 through October 31, 2017.

C. Additional Services: Food, beverage and other services required or desired by the Facility outside the scope of this Agreement shall be provided by ARAMARK upon written authorization by the County and/or Sheriff at mutually agreed upon prices for such services.

D. Billing: ARAMARK shall submit to the County on the first day of every week, for the preceding week an invoice for inmate/staff meals ordered or served, whichever is greater, and other goods or services provided by ARAMARK, if any. The invoice shall reflect the

preceding week's food services detailing the greater of the number of meals served or ordered on a daily basis as follows:

1. Adult inmate meals
2. Staff/visitor meals
3. Any additional food, beverage or other services, as required
4. Juvenile meals

ARAMARK shall provide the County with a comprehensive monthly summary of meals, services and credits. This summary shall be forwarded to the County Administrator or his designee each month.

E. Manner Of Payment: Payment shall be made by check payable to ARAMARK Correctional Services, LLC in accordance with the Illinois Prompt Payment Act. Such payment shall be sent to:

ARAMARK Correctional Services, LLC
P.O. Box 406019
Atlanta, Georgia 30384-6019

(Payments only shall be sent to this address, all other correspondence shall be sent to the address set forth in Section 8 hereof.)

4. **MATERIAL ADVERSE CHANGE:** The financial arrangements in this Agreement are based on conditions existing as of the Effective Date including any representations regarding existing and future conditions made by County in connection with the negotiation and execution of this Agreement. If such conditions change due to causes beyond ARAMARK's control, including, but not limited to, a change in the scope of ARAMARK's services; menu changes; a decrease in the Facility's inmate population or the availability of inmate labor; efforts to organize labor; increases in food, fuel, equipment, utilities and supply costs; Federal, State and local sales, and other taxes and other operation costs; a change in Federal, State and local standards, requirements recommendations, and regulations including any applicable Child Nutrition Programs; or other unforeseen external market conditions outside ARAMARK's control, then ARAMARK shall give County written notice of such increase or change, and within thirty (30) calendar days after such notice, ARAMARK and County shall mutually agree upon modification(s) to offset the impact of the increase or change, which modifications may include any or a combination of the following: an adjustment to ARAMARK's price per meal, modifications to the menu, or modifications to ARAMARK's scope of services. If an agreement cannot be reached, then the County shall have ninety (90) days to re-bid services with prices remaining the same until there is a new award.

5. **ACCESS AND RECORDS:** ARAMARK will maintain accurate books and records in connection with the food service operation and shall retain such records for thirty-six (36) months after the close of the federal fiscal year (October 1 through September 30).

6. **TERM OF AGREEMENT:** The initial term of this Agreement shall commence on November 1, 2012, and shall continue through October 31, 2013. By mutual agreement, this Agreement may be renewed for four (4) additional one year periods.

7. **TERMINATION:**

A. **Termination For Convenience:** Either party may terminate this Agreement for convenience, at any time during the term or any renewal or extension, upon ninety (90) days notice to the other party.

B. **Termination For Default:** Either party may terminate this Agreement upon a breach or default of this Agreement by the other party, which is not cured within thirty (30) days after receipt by the defaulting party of a notice from the non-defaulting party, specifying the nature of such breach or default.

C. **Consequences Of Termination:** If this Agreement is terminated under any circumstances, the County shall pay ARAMARK for all inmate meals, and other services, provided by ARAMARK to and including the date of termination, at the prices and within the payment periods set forth in this Agreement. The County's obligation to pay for meals and services provided shall survive the termination or expiration of this Agreement.

Upon the expiration or any termination of this Agreement, the County may (if requested by ARAMARK), purchase ARAMARK's usable inventory of food and supplies. The purchase price for such inventory shall be ARAMARK's invoice cost.

8. **NOTICE:** All notices or other communication hereunder shall be deemed to be duly given when made in writing and delivered in person or deposited in the United States mail, postage prepaid, certified mail, return receipt requested and addressed to the party at its respective address first set forth above, or such other address as it may designate, by notice given as aforesaid.

9. **CONFLICTS OF INTEREST:** ARAMARK covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with performance of this Agreement and no person having any such interest shall be employed. In addition, no officer, agent or employee of the County and no member of its governing body shall participate in any decision relating to this Agreement which affects his/her personal interest or any corporation, partnership, association which he/she is directly or indirectly interested or has any personal or pecuniary interest.

10. **CONFIDENTIAL INFORMATION:** All financial, statistical, operating and personnel materials and information, including, but not limited to, software, technical manuals, recipes, menus and meal plans, policy and procedure manuals and computer programs relative to or utilized in ARAMARK's business (collectively, the "ARAMARK Proprietary Information") are and shall remain confidential and the sole property of ARAMARK and constitute trade secrets of ARAMARK. The County shall keep all ARAMARK Proprietary Information confidential and shall use the ARAMARK Proprietary Information only for the purpose of fulfilling the terms of this Agreement. The County shall not photocopy or otherwise duplicate any materials containing any ARAMARK Proprietary Information without the prior written consent of ARAMARK. Upon the expiration or any termination of this Agreement, all materials containing any ARAMARK Proprietary Information shall be returned to ARAMARK.

11. **ASSIGNMENT:** ARAMARK may not assign this Agreement without the County's prior written consent which shall not to be unreasonably withheld, conditioned or delayed.

12. **PRESS RELATIONS:** ARAMARK shall coordinate with the County Sheriff or Facility Administrator on any and all press or media releases.

13. **ENTIRE AGREEMENT:** This Agreement represents the entire agreement and understanding between the County and ARAMARK and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the County and ARAMARK. In the event of a conflict between this Agreement, ARAMARK's bid and the Request for Proposal, the order of precedence shall be as follows: 1) any amendments to the Agreement; 2) the Agreement; 3) ARAMARK's bid and 4) the Request for Proposal.

14. **SEVERABILITY:** If any provision hereof or the application thereof to any person or circumstance is held to any extent, to be void, invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.


15. **WAIVER:** The failure of ARAMARK or the County to exercise any right or remedy available under this Agreement upon the other party's breach of the terms, covenants and conditions of this Agreement or the failure to demand the prompt performance of any obligation under this Agreement shall not be deemed a waiver of such right or remedy; or the requirement of punctual performance; or of any subsequent breach or default on the part of the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by

their duly authorized representatives as of the day and year first above written.

ARAMARK Correctional Services, LLC

**The County Board of the County of
Winnebago on behalf of the County of
Winnebago and the Winnebago County Sheriff
State of Illinois**

By:  _____

Name: David Kimmel
Title: Vice President, Finance

By:  _____

Attachment A
Winnebago County, IL
Effective November 1, 2012 through October 31, 2017

<u>Year</u>	<u>Price per Meal</u>
Initial Term (11/1/2012 – 10/31/2013)	\$0.843
Renewal Option 1 (11/1/2013 – 10/31/2014)	\$0.868
Renewal Option 2 (11/1/2014 – 10/31/2015)	\$0.894
Renewal Option 3 (11/1/2015 – 10/31/2016)	\$0.921
Renewal Option 4 (11/1/2016 – 10/31/2017)	\$0.949