

COUNTY OF TULARE
SERVICES AGREEMENT
CANTEEN OF FRESNO, INC.

THIS AGREEMENT (“Agreement”) is entered into as of July 1, 2019, between the **COUNTY OF TULARE**, a political subdivision of the State of California (“**COUNTY**”), and **CANTEEN OF FRESNO, INC.**, a California corporation (“**CONTRACTOR**”). **COUNTY** and **CONTRACTOR** are each a “Party” and together are the “Parties” to this Agreement, which is made with reference to the following:

- A.** **COUNTY** has need for services of an independent contractor to provide certain commissary services at Tulare County detention facilities, as provided in the agreement.
- B.** **CONTRACTOR** has represented that it is ready, willing and able to provide such services.

THE PARTIES AGREE AS FOLLOWS:

- 1. TERM:** This Agreement becomes effective as of July 1, 2019 and shall expire at 11:59 PM on June 30, 2022 unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this Agreement.
- 2. SERVICES:** See attached **Exhibit A**.
- 3. PAYMENT FOR SERVICES:** See attached **Exhibit B**.
- 4. INSURANCE:** Prior to approval of this Agreement by the **COUNTY**, **CONTRACTOR** shall file with the Clerk of the Board of Supervisors, evidence of insurance as set forth in **Exhibit C** attached, which outlines the minimum scope, specifications and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit C** shall not be used to reduce limits available to **COUNTY** as an additional insured from the **CONTRACTOR'S** full policy limits. Insurance policies shall not be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). Failure to maintain or renew coverage, or to provide evidence of renewal, may be considered a material breach of this Agreement.
- 5. GENERAL AGREEMENT TERMS AND CONDITIONS:** **COUNTY'S** “General Agreement Terms and Conditions” are hereby incorporated by reference and made a part of this Agreement as if fully set forth herein. **COUNTY'S** “General Agreement Terms and Conditions” can be viewed at <http://tularecountycounsel.org/default/index.cfm/public-information/>

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6. EXHIBITS AND RECITALS: The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

7. NOTICES:

(a) Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Tulare County Sheriff's Office
Attn: Captain of Detentions Division
833 South Akers Street
Visalia, CA 93277

Phone No.: (559) 802-9440
Fax No.: (559) 737-4408

WITH A COPY TO:

County Administrative Officer
2800 West Burrel Avenue
Visalia, CA 93291

Phone No.: (559) 636-5005
Fax No.: (559) 733-6318

CONTRACTOR:

Canteen of Fresno, Inc.
527 L Street
Fresno, CA 93721

Phone No.: (559) 485-8800
Fax No.: (559) 485-5277

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice under this section.

8. AUTHORITY: CONTRACTOR represents and warrants to COUNTY that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind CONTRACTOR to its terms. CONTRACTOR acknowledges that COUNTY has relied upon this representation and warranty in entering into this Agreement.

9. COUNTERPARTS: The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

CANTEEN OF FRESNO, INC.

Date: 5-13-19

By [Signature]

Print Name HUGH M WILSON III

Title PRESIDENT

Date: 5-13-19

By [Signature]

Print Name Sam Brashnick

Title GENERAL MANAGER

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: _____

By _____

Kuyler Crocker, Chairman
Tulare County Board of Supervisors

ATTEST: Jason T. Britt
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

Approved as to Form
County Counsel

By [Signature] 5/2/2019
Deputy

Print Name Rachel Madden

Matter # 2019755

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**EXHIBIT A
SERVICES**

1. SERVICES: CONTRACTOR shall provide commissary services for the COUNTY at the South County Detention Facility, Main Jail, Bob Wiley Detention Facility, Pre-Trial Facility and the Men's Correctional Facility as more specifically described in this Agreement.

The COUNTY reserves the right to modify or eliminate such commissary services at existing facilities or to add commissary services under this Agreement for any correctional facility which is put into operation during the term of this Agreement, at the time place and amount designated by the COUNTY.

2. COUNTY RESPONSIBILITIES:

(a) The Jail Division Commander, or such other person as the County shall designate in writing, or an assignee of the County designee, shall be the liaison between CONTRACTOR and the COUNTY with respect to all communications, billing and invoicing necessary for the execution and performance of this contract.

(b) COUNTY shall make necessary background checks on all personnel which the CONTRACTOR assigns to work in Tulare County detention facilities. Background checks must be completed on all CONTRACTOR personnel before placement into a county detention facility. The Sheriff reserves the right to refuse admittance to any CONTRACTOR personnel at his sole discretion. The Sheriff reserves the right to require background checks of all personnel the CONTRACTOR assigns to service this agreement, regardless of whether the personnel normally access the detention facilities or not.

(c) The COUNTY shall immediately notify the CONTRACTOR of a decision to refuse admittance to any CONTRACTOR employee assigned to the detention facilities. CONTRACTOR will immediately remove the employee from the facility.

(d) COUNTY will provide direction to CONTRACTOR employees in the event of any disturbances or security related incidents while such employees are inside the detention facilities. CONTRACTOR employees will immediately follow the directions of correctional staff in such circumstances.

(e) COUNTY designated watch commander will resolve immediate disputes involving jail staff and the CONTRACTOR in matters such as work location and security measures.

(f) COUNTY will provide ingress/egress, subject to security requirements, for the CONTRACTOR employees at all county detention facilities within the scope of this agreement.

(g) COUNTY will not provide the CONTRACTOR use of capital equipment necessary for commissary service and related activities.

3. CONTRACTOR RESPONSIBILITIES:

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(a) CONTRACTOR'S Commissary Service Manager shall be the liaison between COUNTY and CONTRACTOR with respect to all notice, communications, and invoices necessary for execution and performance of this contract.

(b) CONTRACTOR shall hire, administer, supervise, and train all appropriate personnel to accomplish the requirements of this contract.

(c) CONTRACTOR shall insure that all CONTRACTOR employees wear appropriate contractor provided uniforms and jail issued I.D. while on duty and present in or around any of the jail facilities.

(d) No CONTRACTOR employee shall report for duty in or around any detention facility while under the influence of alcohol or drugs. The odor of alcohol or observable physical symptoms shall be presumptive of being under the influence.

(e) No CONTRACTOR employee shall bring into or cause to be brought into the facilities any alcohol, tobacco, drugs, or any other contraband as determined by the COUNTY.

(f) CONTRACTOR shall ensure that all employees and agents of the CONTRACTOR are informed about and observe all applicable rules, regulations, policies and procedures pertaining to all Tulare County detention facilities. All applicable rules regulations, policies and procedures will be provided to CONTRACTOR by COUNTY.

(g) The CONTRACTOR shall provide to the COUNTY background information and a resume for the individual who will be designated as the CONTRACTOR'S commissary service manager. An interview with the Division Commander or the assignee of the Commander with any proposed commissary manager will be required prior to his/her placement into the facility. If there is any change in the commissary manager during the term of this Agreement, the same procedures will be followed. The COUNTY reserves the right to reject any commissary manager without cause.

4. COMMISSARY ITEMS:

(a) CONTRACTOR shall develop a list of items to be offered to inmates. The contractor shall provide a variety of items including ethnic variety, reflective of the inmate population. CONTRACTOR will use its best efforts to provide any items requested to be provided by the COUNTY. Commissary items must be approved by the Jail Division Commander.

(b) CONTRACTOR shall submit in writing to the Detentions Division Commander any proposed item additions or deletions at least one month in advance of their offering.

(c) CONTRACTOR'S items sold shall comply with the provisions of California Code of Regulations, Title 15, Article II, and any other Federal, State, and local laws and regulations applicable to the commissary services.

(d) Commissary lists must accurately document actual items for purchase along with cost. If any item sold varies from the approved list, the change must be noticed to the COUNTY'S contract administrator.

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(e) CONTRACTOR shall provide COUNTY approved therapeutic items for sale as directed.

(f) CONTRACTOR shall pay all Federal, State, and local taxes associated with the operation of the commissary concession.

(g) CONTRACTOR will provide and distribute a sufficient number of admission kits, as defined by the COUNTY, to be issued to each inmate at the time of booking. CONTRACTOR

shall provide and distribute an indigent welfare kit, as defined by the COUNTY, to all eligible indigent inmates on a weekly basis. All admission and indigent welfare kits shall be provided at CONTRACTOR'S expense. Indigent inmate is defined as any inmate who has less than \$2.00 on their books at the time the order is processed.

5. COMMISSARY OPERATION:

(a) CONTRACTOR shall allow each inmate in the facilities covered by this Agreement the opportunity to purchase commissary items a minimum of one time per week.

(b) CONTRACTOR shall provide commissary order forms and will be responsible to update them as changes are made in the items. The CONTRACTOR shall be responsible for the delivery and pick up of the order forms from a pre-determined location at each facility.

(c) CONTRACTOR agrees to meet on a regular basis with designated jail representatives for purposes of resolving all commissary service issues. CONTRACTOR may be required to maintain a written record of meetings and supply a copy of these records to the jail representative. CONTRACTOR shall be responsible for responding to all inmate grievances concerning commissary service issues within 24 hours of receiving said grievance from correctional staff.

(d) CONTRACTOR will withhold commissary purchases and deny new commissary purchases to those inmates identified by the Sheriff's staff to be in a disciplinary status or when they may have lost their commissary privileges.

(e) The CONTRACTOR must begin and complete delivery of commissary at the times determined by the COUNTY. CONTRACTOR shall deliver commissary to the delivery points designated by the COUNTY. CONTRACTOR is responsible for removing all equipment used to transport commissary items and any resulting waste from the various delivery points. It shall be the CONTRACTOR'S responsibility to deliver all commissary items directly to the housing units of all inmates housed at the following facilities:

Tulare County Main Jail
2404 West Burrel Avenue
Visalia, CA 93291
(559) 636-4655

Pre-Trial Facility
36650 Road 112
Visalia, CA 93291
(559) 735-1750

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Bob Wiley Detention Facility

36712 Road 112
Visalia, CA 93291
(559) 735-1700

Men's Correctional Facility

36168 Road 112
Visalia, CA 93291
(559) 636-4625

South County Detention Facility

1960 W. Scranton Avenue
Porterville, CA 93257

(f) CONTRACTOR shall add commissary services under this Agreement for any detention facility which is put into operation during the term of this Agreement.

(g) CONTRACTOR will provide a method of handling back orders and restocking for items that have been ordered and not delivered to the inmate because they may have been released. After the initial start-up period (90 days), CONTRACTOR shall maintain a 98% or greater order completion (no back orders) percentage.

(h) CONTRACTOR shall provide the Tulare County Sheriff's Office a detailed weekly invoice for products sold to inmates.

(i) The COUNTY shall make inmate account records accessible to the CONTRACTOR.

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**EXHIBIT B
PAYMENT FOR SERVICES**

1. COST OF SERVICES: In consideration of the Agreement of the COUNTY to permit access to the CONTRACTOR to its detention facilities to provide such commissary services, the CONTRACTOR agrees to pay to the COUNTY thirty percent (30%) of any and all net sales generated by such commissary services.

“Net sales” shall mean gross receipts received by the CONTRACTOR from the sale of any and all commissary items (merchandise, products, services, postage sales, phone card sales) less any refunds, allowances or adjustments for returns, defective or unsatisfactory merchandise, product or service, and applicable sales tax. All food sales are non-taxable, all other applicable sales are fully taxable at the current sales tax rate applicable at the location of sale. County inmates purchase commissary items of approximately \$1,700,000 annually. The average commissary profit to be received on an annual basis will be approximately \$520,000.

The pricing for commissary items, including any changes to such pricing, shall be determined by mutual consent of the parties, except that the COUNTY reserves the right to finally determine such retail prices in the event the parties are unable to reach such agreement. Purchases by inmates shall be limited to a maximum of one hundred fifty dollars (\$150.00) per inmate per week.

2. METHOD OF PAYMENT: Contractor shall invoice the Fiscal Unit Business Office of the Tulare County Sheriff's Office on a weekly basis for the prior week's commissary deliveries. County shall remit 70% of net weekly sales, plus all sales tax to the Contractor within 3 business days after County receives invoices from contractor for that week's commissary deliveries.

3. PAYMENT FOR CURRENT COMMISSARY STOCK: CONTRACTOR shall reimburse COUNTY the fair market value for all commissary items owned by the COUNTY at the time this Agreement becomes effective. The fair market value of commissary items shall be determined by the COUNTY and shall be substantiated by the COUNTY'S invoice.

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**EXHIBIT C
NON-PROFESSIONAL SERVICES
INSURANCE REQUIREMENTS**

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. MINIMUM SCOPE & LIMITS OF INSURANCE:

1. Commercial General Liability coverage of \$1,000,000 on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury (occurrence Form CG 00 01). If a general aggregate applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of no less than \$1,000,000 per accident for bodily injury and property damage. If an annual aggregate applies it must be no less than 2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

B. SPECIFIC PROVISIONS OF THE CERTIFICATE:

1. If any of the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:
 - (a) The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operation.

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(b) For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance at least as broad as ISO CG 20 01 01 13 as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

(c) Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except with written notice to the COUNTY.

(d) CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS:

Deductibles and self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be forwarded to the COUNTY Risk Manager for approval.

D. ACCEPTABILITY OF INSURANCE:

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-VII and a Standard & Poor's rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. VERIFICATION OF COVERAGE:

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by

