

OPERATING AGREEMENT - FOOD SERVICE

This **OPERATING AGREEMENT** (the "Agreement") is made as of _____, 2013 (the "Effective Date") by and between the Lexington-Fayette Urban County Government with offices at 200 East Main Street, Lexington, Kentucky 40380 (the "LFUCG"), and **ARAMARK Correctional Services, LLC**, a Delaware limited liability company, having a place of business at the ARAMARK Tower, 1101 Market Street, Philadelphia, Pennsylvania 19107 ("ARAMARK").

WITNESSETH:

1. **GRANT:** LFUCG hereby grants to ARAMARK the exclusive right to provide food service (excluding vending machine operation and commissary operations) for LFUCG's inmates and staff at LFUCG's Division of Community Corrections located at 600 Old Frankfort Circle Lexington KY 40510 (the "Facility"). ARAMARK hereby agrees to furnish nutritious, wholesome, and palatable food to such inmates and staff 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 Science as prescribed for inmates.
- C. The State of Kentucky.

2. **OPERATIONAL RESPONSIBILITIES:** ARAMARK shall provide food service to LFUCG in accordance with the operational responsibilities set forth in ARAMARK's Technical and Cost Proposals dated July 26, 2013 submitted to LFUCG (the "Proposal") in response to RFP #22-2013 Food & Laundry Services for Community Corrections issued by LFUCG (the "RFP").

A. **Facilities And Equipment:** LFUCG shall, at its expense, provide ARAMARK with adequate preparation kitchen, office and storage facilities at the Facility, completely equipped and ready to operate, together with such heat, refrigeration and utilities services (including local telephone service and internet service if approved by the Division of Computer Services. Vendor is responsible for all long distance charges.) as may be reasonably required for the efficient performance of the Agreement.

LFUCG shall furnish building maintenance services (excluding grease traps) for the Facility. ARAMARK shall perform grease trap maintenance, provide preventive maintenance and equipment repairs for LFUCG-owned equipment and shall furnish and maintain an adequate inventory of service ware, thermal tray and delivery equipment, pots, pans, beverage containers and utensils at the Facility. Notwithstanding the foregoing, all maintenance and repairs of refrigeration and freezer units associated with the walk-in coolers and freezers (including condensing

units and evaporators), except to the extent caused by the negligence of ARAMARK, shall be the responsibility of LFUCG.

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 60 days after the commencement of operations. In the event of a Force Majeure, LFUCG 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 LFUCG. 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: Inmate labor shall transport meals to appropriate areas, and shall return all trays and delivery equipment to ARAMARK at LFUCG 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.

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. LFUCG shall provide janitorial services outside the kitchen facilities provided to ARAMARK. LFUCG shall clean the vents and ductwork leading to the roof from food preparation areas. LFUCG 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 in accordance with its Proposal, and from its regional and headquarters locations, administrative, dietetic, purchasing, equipment consulting and personnel advice and supervision. LFUCG shall provide inmate workers at the Facility kitchen. The number of inmates required shall be determined by LFUCG 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.

LFUCG 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, LFUCG agrees that management and supervisory employees of ARAMARK shall neither be hired by LFUCG for the term of this Agreement and twelve (12) months thereafter, nor shall LFUCG permit management and supervisory employees of ARAMARK to be employed on LFUCG's premises for a period of twelve (12) months subsequent to the termination of this Agreement (unless such employees were formerly employees of LFUCG). 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 LFUCG's premises at any time during the twelve (12) month period immediately preceding termination of this Agreement.

LFUCG 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 LFUCG 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 LFUCG 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 and Indemnification:

ARAMARK shall procure and maintain for the duration of this contract the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by ARAMARK.

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01) limit	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the Aramark's insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the appropriate blanket forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by LFUCG.
- d. The General Liability Policy shall include Product Liability coverage endorsement or proof that the CGL coverage includes Product Liability Coverage.
- e. Notice of cancellation of any insurance policies required herein shall be subject to ACORD 25 Certificate of Liability standards, and will be delivered, as applicable, in accordance with policy provisions.
- f. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

Renewals: After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Indemnification requirements shall be as set forth in the RFP.

Any insurance coverage (additional insured or otherwise) that ARAMARK provides for LFUCG, 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 LFUCG 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 LFUCG 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. LFUCG 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 LFUCG's premises. LFUCG 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 LFUCG 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 LFUCG or a third party retained by LFUCG. 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 LFUCG.

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.

L. Damages: Paragraph intentionally left blank.

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. LFUCG 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. LFUCG 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. LFUCG further agrees to notify ARAMARK promptly in the event of a change in its tax-exempt status. In the event that a determination is made by a government authority that any sales, purchases, payments or use of property made to or by ARAMARK under this Agreement, either in whole or in part, is subject to any sales, use, gross receipts, property or any similar tax which tax was not contemplated by the parties at the commencement of operations hereunder, the full amount of any such tax liability, together with any interest paid by ARAMARK, shall be invoiced by ARAMARK and shall be reimbursed by LFUCG, notwithstanding the fact that this Agreement may have expired or been terminated for any reason by either party prior to the date of such determination.

3. FINANCIAL AND ACCOUNTING ARRANGEMENTS:

A. Meal Service and Prices: ARAMARK shall provide meals to LFUCG's inmates and staff 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. LFUCG shall notify ARAMARK of the actual number of meals ordered each day at a mutually agreed upon time prior to meal service, and LFUCG 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 inmate per meal prices and the staff meal prices stated in this Agreement are firm for the period beginning on the Effective Date and ending on June 30, 2018. Per meal prices for each subsequent 12-month period shall be increased prior to July 1st each year by an amount to be mutually agreed upon and set forth in an amendment to this Agreement; provided, however, that in the event no agreement is reached with respect to such increase, per meal prices shall be increased by the yearly percentage change in the Consumer Price Index, All Urban Consumers, U.S. City Average, Food Away From Home Index ("CPI-FAH"), published by the U.S. Department of Labor. The period for determining CPI-FAH increases shall be April of the immediately preceding year to April of the then-current year (the "Base Period").

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 LFUCG at mutually agreed upon prices for such services.

D. Financial Commitment: ARAMARK shall make a financial commitment to LFUCG in an amount up to \$190,000 (the "Financial Commitment). LFUCG agrees to invest the Financial Commitment for food service equipment (as specified on page 55 of the RFP) for the

Lexington Fayette Community Corrections facility. Any equipment purchased by ARAMARK on Lexington-Fayette Urban County Government's behalf shall be purchased as a "sale-for resale" to the Lexington-Fayette Urban County Government. Lexington-Fayette Urban County Government shall hold title to all such equipment (with the exception of those items which bear the name of ARAMARK, its logo, or any of its logo, service marks or trademarks or any logo, service marks or trademarks of a third party) upon such resale. Lexington-Fayette Urban County Government acknowledges that it is a tax-exempt entity and will provide ARAMARK with a copy of the appropriate tax-exempt certificate. The Financial Commitment shall be amortized on a straight-line basis over a period of eight years, commencing upon the effective date of this Agreement. Upon expiration or termination of this Agreement by either party for any reason whatsoever prior to the complete amortization of the Financial Commitment, Lexington-Fayette Urban County government shall reimburse ARAMARK for the unamortized balance of the Financial Commitment as of the date of expiration or termination. In the event such amounts owing to ARAMARK are not paid to ARAMARK within 60 days of expiration or termination, LFUCG agrees to pay interest on such amounts at the Prime Rate plus two percentage points per annum, compounded monthly from the date of expiration or termination. The right of ARAMARK to charge interest for late payment shall not be construed as a waiver of ARAMARK's right to receive payment of invoices within 30 days of the invoice date. Any portion of the Financial Commitment that is not expended prior to the expiration or earlier termination of the Agreement shall revert to ARAMARK.

E. Billing: ARAMARK shall submit to LFUCG 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 meals
3. Any additional food, beverage or other services, as required

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

F. Manner Of Payment: Payment shall be made by check payable to ARAMARK Correctional Services, LLC within fifteen (15) days after the invoice date. 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 9 hereof.)

G. Purchasing: It is ARAMARK's understanding that it will operate this Agreement as a fixed price contract. LFUCG shall pay ARAMARK based on set prices set forth in Attachment A. ARAMARK takes into account any discounts, rebates and other credits when formulating its price for a fixed price contract. As such, cash discounts and discounts or rebates not exclusively related to ARAMARK's operation at the Facility shall be retained by ARAMARK and shall not be credited to LFUCG's account.

4. 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).

5. TERM OF AGREEMENT: The initial term of this Agreement shall commence on November 1, 2013, and shall continue through June 30, 2021. By mutual agreement, this Agreement may be renewed for one (1) additional two-year renewal periods. Thereafter, LFUCG and ARAMARK may extend this Agreement for additional periods of twelve (12) months each, provided that the services to be provided, and the prices thereof, for the extension period, have been mutually agreed upon by LFUCG and ARAMARK.

6. 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, LFUCG shall pay ARAMARK for all inmate and staff 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. LFUCG's obligation to pay for meals and services provided shall survive the termination or expiration of this Agreement.

7. 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.

8. **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 LFUCG 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.

9. **CONFIDENTIAL INFORMATION:** All operating and personnel materials and information, including, but not limited to, software, technical manuals, recipes, 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. LFUCG 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. LFUCG 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. Notwithstanding anything to the contrary contained herein, this Section 9 is not intended, and shall not be construed, to restrict LFUCG from complying with any applicable requirement of Kentucky Open Records Act, KRS 61.870 to 61.884.

10. **ASSIGNMENT:** ARAMARK may not assign this Agreement without LFUCG's prior written consent (not to be unreasonably withheld, conditioned or delayed), except that ARAMARK may assign this Agreement, in its sole discretion, to any of its affiliates without any consent being required. The term "affiliate" means any corporation, limited liability company or any other person controlling, controlled by or under common control with, ARAMARK.

11. **PRESS RELATIONS:** ARAMARK shall coordinate with LFUCG or Facility Administrator on any and all press or media releases.

12. **ENTIRE AGREEMENT:** This Agreement, along with the RFP and Proposal, represent the entire agreement and understanding between LFUCG and ARAMARK and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of an inconsistency or discrepancy between the aforementioned documents, such inconsistency or discrepancy shall be resolved by consulting the above-referenced documents in the following order: first, this Operating Agreement; second, the RFP; and third, the proposal. This Agreement may be amended only by written instrument signed by both LFUCG and ARAMARK.

13. **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.

14. **WAIVER:** The failure of ARAMARK or LFUCG 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.

15. **MBE/WBE:** ARAMARK shall use good faith efforts to satisfy the MBE/WBE participation commitment included in its Proposal. For the avoidance of doubt, in its Proposal, ARAMARK proposed purchasing office supplies estimated at 0.045% of total contract value (approximately \$850.00) from Guy Brown.

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

**Lexington-Fayette Urban County Government
State of Kentucky**

By: _____


Mark R. Adams
Vice President, Finance

By: _____

Jim Gray
Mayor

Attachment A

Lexington-Fayette Urban County Government

Effective 11/1/2013 through 6/30/2018

Year 1 (November 1, 2013 through June 30, 2014):

AVERAGE MEALS SERVED PER DAY	COST PER MEAL
3001-3100	\$1.033
3101-3200	\$1.022
3201-3300	\$1.012
3301-3400	\$1.002
3401-3500	\$0.992
3501-3600	\$0.982
3601-3700	\$0.973
3701-3800	\$0.964
3801-3900	\$0.955
3901-4000	\$0.952
4001-4100	\$0.949
4101-4200	\$0.946
4201-4300	\$0.943

Staff Meals: \$2.50/meal
Staff Salad Bar: \$0.40/ounce

Year 2 (Effective from July 1, 2014 through June 30, 2015):

AVERAGE MEALS SERVED PER DAY	COST PER MEAL
3001-3100	\$ 1.064
3101-3200	\$ 1.052
3201-3300	\$ 1.042
3301-3400	\$ 1.032
3401-3500	\$ 1.022
3501-3600	\$ 1.012
3601-3700	\$ 1.002
3701-3800	\$ 0.993
3801-3900	\$ 0.984
3901-4000	\$ 0.980
4001-4100	\$ 0.977
4101-4200	\$ 0.974
4201-4300	\$ 0.971

Year 3 (Effective From July 1, 2015 through June 30, 2016):

AVERAGE MEALS SERVED PER DAY	COST PER MEAL
3001-3100	\$ 1.096
3101-3200	\$ 1.084
3201-3300	\$ 1.073
3301-3400	\$ 1.063
3401-3500	\$ 1.053
3501-3600	\$ 1.042
3601-3700	\$ 1.032
3701-3800	\$ 1.022
3801-3900	\$ 1.013
3901-4000	\$ 1.010
4001-4100	\$ 1.007
4101-4200	\$ 1.003
4201-4300	\$ 1.001

Year 4 (Effective from July 1, 2016 through June 30, 2017):

AVERAGE MEALS SERVED PER DAY	COST PER MEAL
3001-3100	\$ 1.129
3101-3200	\$ 1.117
3201-3300	\$ 1.105
3301-3400	\$ 1.095
3401-3500	\$ 1.084
3501-3600	\$ 1.073
3601-3700	\$ 1.063
3701-3800	\$ 1.053
3801-3900	\$ 1.044
3901-4000	\$ 1.040
4001-4100	\$ 1.037
4101-4200	\$ 1.034
4201-4300	\$ 1.031

Year 5 (Effective from July 1, 2017 through June 30, 2018):

AVERAGE MEALS SERVED PER DAY	COST PER MEAL
3001-3100	\$ 1.162
3101-3200	\$ 1.150
3201-3300	\$ 1.138
3301-3400	\$ 1.128
3401-3500	\$ 1.117
3501-3600	\$ 1.106
3601-3700	\$ 1.095
3701-3800	\$ 1.085
3801-3900	\$ 1.075
3901-4000	\$ 1.071
4001-4100	\$ 1.068
4101-4200	\$ 1.065
4201-4300	\$ 1.061

* To determine the applicable point on the applicable scale above, the total number of inmate meals served per seven-day week is divided by seven (7) in order to determine the price point on the sliding scale