

## **FOOD SERVICES AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of May, 2013 by and between Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky created pursuant to KRS Chapter 67A, with its principal office located at 200 East Main Street, Lexington, KY 40507 ("LFUCG"), and Trinity Services I, LLC, a Florida limited liability company with principal offices located at 477 Commerce Boulevard, Oldsmar, FL 34677-3018 ("Trinity").

### **WITNESSETH:**

**WHEREAS**, LFUCG has issued a Request for Proposal # 9-2013 for Food Service for Community Corrections (the "RFP") and Trinity submitted its proposal to provide the necessary services; and

**WHEREAS**, LFUCG desires to avail itself of Trinity's services; and

**WHEREAS**, Trinity desires to perform such services for LFUCG;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree as follows:

### **SECTION 1. LFUCG'S GRANT TO TRINITY**

**1.1.** LFUCG grants to Trinity, as an independent subcontractor, the exclusive right to operate inmate food services at the Division of Community Corrections, 600 Old Frankfort Circle, Lexington, KY 40510 (hereinafter referred to as the "Premises"), and the exclusive right to serve to inmates, staff, and other persons at such Premises food products, non-alcoholic beverages, and other such articles ("Products") as shall be approved by the LFUCG (such food service hereinafter referred to as "Services"). Such Services shall meet or exceed the Kentucky Jail Standards regarding food service and the requirements set forth in the RFP subject to the terms and exceptions stated in Trinity's Response to the RFP, which are attached as Appendices "A" and "B" to this Agreement, and all of which are incorporated herein by this reference. Except to the extent stated otherwise in this Agreement the parties rights and responsibilities are as stated in the RFP subject to the terms and exceptions stated in Trinity's Response to the RFP.

### **SECTION 2. TRINITY'S RESPONSIBILITIES**

**2.1.** Pursuant to the provisions of this Agreement, Trinity will operate and manage its Services hereunder at the Premises and keep its Services adequately serviced and supplied with appropriate merchandise and food products of good quality at prices as agreed upon by the parties and further set forth in Exhibit A, attached hereto.

**2.2.** Trinity agrees to pay all Federal, state, and local taxes which may be assessed against Trinity's equipment or merchandise while in the Premises, as well as all Federal, state, and local taxes assessed in connection with the operation of its Services at the Premises. Except in circumstances in which the LFUCG is exempt from sales tax, Trinity shall bill and LFUCG shall pay for all applicable sales taxes. Trinity also agrees: (i) to comply with PREA standards; (ii) to comply with all Federal, state, and local laws and regulations governing the preparation, handling, and serving of foods; (iii) to procure, post as required by law and keep in effect all necessary licenses, permits, and food handler's cards required by law; (iv) meet all guidelines as prescribed by the American Correctional Association. All costs in connection with

such taxes (excluding LFUCG's real estate and personal property taxes) referred to herein, licenses, permits, and food handler's cards, shall be a Cost of Business and will be charged to the operation of the business.

**2.3.** Trinity shall hire all employees necessary for the performance of this Agreement. Upon being hired, such employees shall be subject to such health examinations as proper local government, state, or Federal authorities may require in connection with their employment in addition to security background screening as permitted by law to include criminal background checks conducted by the LFUCG. All persons employed by Trinity will be the employees of Trinity, and not of the LFUCG, and will be covered by employee dishonesty coverage. The LFUCG may refuse access to any Trinity employee. Trinity shall be solely responsible for all employment withholding, social security, and other taxes on the wages of its employees, and hereby indemnifies LFUCG from any liability for such obligation. Trinity agrees to comply with applicable Federal, state, and local laws and regulations pertaining to wages and hours of employment.

**2.4.** Trinity shall perform all necessary cleaning of the food service equipment, preparation areas, and floors in the storage and food service preparation areas. Trinity agrees to maintain conditions of sanitation and cleanliness in accordance with applicable laws.

**2.5.** All records shall be kept on file by Trinity for a period of three (3) years from the date the record is made and Trinity shall, upon reasonable notice, give the LFUCG or its authorized representative the privilege during normal business hours of inspecting, examining, and auditing such of Trinity's business records which are solely and directly relevant to the financial arrangements set forth in Exhibit A. The cost of such inspection, examination, and audit will be at the sole expense of the LFUCG and such inspection, examination, and audit shall be conducted at the Trinity locations where said records are normally maintained. Such information shall be deemed Confidential Information and shall be subject to the terms of Section 12 herein.

**2.6.** Trinity agrees that Trinity's employees and agents shall comply with, and observe, all applicable rules and regulations concerning conduct on the Premises that LFUCG imposes upon LFUCG's employees and agents.

**2.7.** Trinity agrees to be responsible for the repair and/or replacement of any equipment due to its employees' negligent or willful acts or omissions but not due to the acts or omissions of inmates. This does not include the repair or maintenance for normal equipment wear and tear and other responsibilities of the LFUCG as defined in Section 3.

**2.8.** In connection with Services provided hereunder, Trinity shall purchase inventory, equipment, and services from various sellers and vendors selected by Trinity at its sole discretion (each a "Vendor"). Purchases from Vendors shall be made under such terms Trinity deems in its sole discretion as acceptable ("Vendor Terms"). All Vendor Terms are the exclusive obligation and property of Trinity. LFUCG does not have any liability under, or any right to, any Vendor Terms and no Vendor Terms will operate to reduce or otherwise affect the amount or performance of LFUCG's Obligations.

**2.9** Trinity will fund the purchase of the equipment described in the RFP (the "Investment"). The Investment, together with Interest thereon, shall be amortized over a period of eight (8) years from the Effective Date, calculated at a rate equal to a straight-line depreciation basis. If the Agreement is terminated, regardless whether a permitted termination by either party, prior to the full amortization of the Investment, the LFUCG is liable for and

promises to pay to Trinity within thirty (30) days of the termination notice date, the unamortized portion of the Investment.

### **SECTION 3. LFUCG'S RESPONSIBILITIES**

**3.1.** LFUCG shall, without cost to Trinity, provide Trinity with the necessary space for the operation of its Services, and shall furnish, without cost to Trinity, all utilities and facilities reasonable and necessary for the efficient performance of Trinity's services hereunder, including, but not limited to, the following: heat, hot and cold water, steam, gas, lights and electric current, garbage removal services, exterminator services, sewage disposal services, and office space.

**3.2.** LFUCG shall, at its own cost and expense, provide all food equipment, facilities, and floor space as mutually agreed is necessary for the efficient provision of Trinity's Services hereunder. The LFUCG will maintain, repair, and replace said equipment and facilities at its own expense. Notwithstanding the foregoing, if equipment provided by LFUCG becomes inoperative, hazardous, or inefficient to operate Trinity shall notify LFUCG and have the right to effect repairs or replacements at the expense of the LFUCG, if the LFUCG fails to do so after a reasonable amount of time after notice of said equipment deficiency. Furthermore, during such time period when the equipment is inefficient, hazardous, or fails to operate LFUCG shall, if applicable, pay the cost of all paper products used during such time period. LFUCG shall permit Trinity to have the use of all such equipment and facilities in the performance of its obligations hereunder, subject to the duty to exercise reasonable care in the use thereof. All equipment and items of equipment furnished by LFUCG to Trinity are the sole property of the LFUCG, and Trinity will not change, deface, or remove any symbol or mark of identity from said equipment furnished by the LFUCG.

**3.3.** The LFUCG will be responsible, at no cost to Trinity, for all necessary cleaning of walls, windows, and electric light fixtures and all necessary scrubbing, mopping, and polishing of floors in any and all dayroom and dining areas. All such cleaning shall be accomplished by LFUCG staff or inmate workers and supervised by LFUCG staff and shall be performed on a schedule determined by agreement between the LFUCG and Trinity.

**3.4.** LFUCG shall not, during the term of this Agreement nor for one (1) year thereafter, solicit to hire, hire, or contract with any Trinity Employee, manager, director, or officer. Employee shall collectively mean employees of the party, its parent, and affiliated companies.

**3.5.** LFUCG shall pay all real estate taxes with respect to the Premises, and LFUCG shall pay all personal property taxes and similar taxes with respect to LFUCG's equipment located in the Premises.

### **SECTION 4. FINANCIAL ARRANGEMENTS**

The financial arrangements of this Agreement are set forth in Exhibit A, which is attached hereto incorporated herein and made a part hereof as if fully set forth in this Agreement.

### **SECTION 5. INDEMNIFICATION AND INSURANCE**

**5.1.** Indemnification. The indemnification provisions from the RFP are incorporated herein by reference as if fully stated and as modified by the response of Trinity. .

**5.2. Notification of Claim.** Notification of an event giving rise to an indemnification claim ("Notice") must (a) be received by the LFUCG on or by the earlier of a date thirty (30) days subsequent to the date which such event was or should have been discovered or ninety (90) days subsequent to the effective termination date of this Agreement; and (b) include a brief factual summary of the damage and cause thereof. An indemnification claim is expressly subject to, and conditioned upon, compliance with the Notice provisions hereunder.

**5.3. Trinity Insurance.** Trinity shall obtain and maintain insurance for the risks in such amounts under such policies as the RFP requires. The LFUCG shall be named as an additional insured under the insurance policies required by this provision.

**5.4. LFUCG Insurance.** LFUCG shall obtain and maintain insurance or self insurance for the operation of the Premises, equipment, offices, and utilities against risks covered by standard forms of fire, theft, and extended coverage in such amounts under such policies as appropriate.

**5.5. Certificates of Insurance.** Certificates of Insurance for such coverages shall be provided by Trinity to the LFUCG, naming the LFUCG as an additional insured as respects such coverage prior to the commencement of Services hereunder.

## **SECTION 6. COMMENCEMENT AND TERMINATION**

**6.1.** Unless sooner terminated as provided herein, the term of the Agreement to provide food services shall be for eight (8) years beginning on July 1, 2013 . By mutual agreement the term may be extended for one (1) additional two (2) year period.

**6.2.** Either party may terminate this Agreement, without cause and without penalty, by providing notice of said termination in writing ninety (90) days prior to the proposed termination date.

**6.3.** If either party shall refuse, fail, or be unable to perform or observe any of the terms or conditions of this Agreement for any reason other than Excused Performance reasons stated in Section 8 herein, the party claiming such failure shall give the other party a written notice of such breach. If, within sixty (60) days from such notice the failure has not been corrected, the injured party may cancel the Agreement effective thirty (30) days after the end of said sixty (60) day period.

**6.4.** Upon the termination or expiration of this Agreement, Trinity shall, as soon thereafter as is feasible, vacate all parts of the Premises occupied by Trinity associated with the particular service, and where applicable, remove its property and equipment and return the Premises to LFUCG, together with all the equipment furnished by the LFUCG pursuant to this Agreement, in the same condition as when originally made available to Trinity, excepting reasonable wear and tear and fire and other casualty loss.

## **SECTION 7. INDEPENDENT CONTRACTOR RELATIONSHIP**

Trinity shall be an independent contractor and shall retain control over its employees and agents. The employees of Trinity are not, nor shall they be deemed to be, employees of LFUCG and employees of LFUCG are not, nor shall they be deemed to be, employees of Trinity.

## **SECTION 8. EXCUSED PERFORMANCE**

If the performance of any terms or provisions herein (other than the payment of monies) shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, Acts of God or Nature, 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, and extend the term of this Agreement for the period of such suspension of the performance of duties hereunder.

## **SECTION 9. ASSIGNMENT**

Neither Trinity nor LFUCG may assign or transfer this Agreement, or any part thereof, without the written consent of the other party, except the parties may, without prior approval and without being released from any of their responsibilities hereunder, assign this Agreement to an affiliated company or wholly owned subsidiary.

## **SECTION 10. ENTIRE AGREEMENT AND WAIVER**

This Agreement constitutes the entire Agreement between the parties with respect to the provision of Trinity's Services, and there are no other or further written or oral understandings or agreements with respect thereto. No failure or delay by either party in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege, shall operate as a waiver hereof or thereof. No failure or delay by either party in exercising any right, remedy, power or privilege under or in respect of this contract, shall affect the rights, remedies, powers or privileges of a party hereunder or shall operate as a waiver thereof. This Agreement supersedes all other agreements between the parties for the provision of Trinity's Services on the Premises.

## **SECTION 11. NOTICES**

All notices to be given under this Agreement shall be in writing and shall be served either personally, by facsimile, by deposit with an overnight courier with charges prepaid or by deposit in the United States mail, first-class postage prepaid by registered or certified mail, addressed to the parties at the address or facsimile number stated below or at any other address as designated by one party upon notice to the other party. Any such notices shall be deemed to have been given (a) upon the first business day following facsimile receipt; (b) one (1) business day after deposit with an overnight courier; or (c) three (3) business days after deposit in the United States mail.

If to LFUCG:                      Division of Community Corrections  
600 Old Frankfort Circle  
Lexington, KY 40510

If to Trinity: Trinity Services I, LLC  
Attn: Legal Department  
477 Commerce Boulevard  
Oldsmar, FL 34677-3018  
Fax: 813-855-2330

With copy to: Stephen A. Hould, Esq.  
920 Third Street, Suite D  
Neptune Beach, FL 32266  
Fax: 904-247-0295

## **SECTION 12. CONFIDENTIALITY**

In the course of providing Services hereunder, the parties may be exposed to trade secrets or other confidential or proprietary information and materials of the other party which includes, but is not limited to, menus, recipes, signage, food service surveys and studies, management guidelines, procedures, operating manuals, and software, all of which shall be identified as confidential ("Confidential Information"). The parties agree to hold in confidence and not to disclose any Confidential Information during, and for two (2) years after, the term of this Agreement, except that the parties may use or disclose Confidential Information (a) to its employees and affiliates or others to the extent necessary to render any service hereunder, provided that the other party is first notified of the information that will be provided to any party outside of this Agreement and provided further that such information is disclosed only after such party is required to maintain it in confidence as required hereunder; (b) to the extent expressly authorized by either party; (c) to the extent that at the time of disclosure, such Confidential Information is in the public domain, or after disclosure, enters the public domain other than by breach of the terms of this Agreement; (d) is in the possession of either party at the time of disclosure and is not acquired directly or indirectly from the other party; (e) is subsequently received on a non-confidential basis from a third party having a right to provide such information; (f) as required by order during the course of a judicial or regulatory proceeding or as required by a governmental authority; (g) as required by the Kentucky Open Records Act and laws. The parties agree not to photocopy or otherwise duplicate any Confidential Information without the express written consent of the other party. Each party's Confidential Information shall remain the exclusive property of the party and shall be returned by the party to the other party upon termination or expiration of this Agreement. In the event of any breach of this provision, the parties shall be entitled to equitable relief, in addition to all other remedies otherwise available to them at law. This provision shall survive the termination or expiration of this Agreement.

## **SECTION 14. SIGNATURES**

Agreement to, and acceptance of, this Agreement may be made and evidenced by facsimile signature or in an electronic form evidencing signatures of both parties hereto.

## **SECTION 15. DISPUTE RESOLUTION AND GOVERNING LAW**

This Agreement shall be governed by the laws of the Commonwealth of Kentucky and any dispute, controversy, claim, or disagreement arising out of or relating to this Agreement or the breach, termination, validity, or enforceability of any provision of this Agreement (each a "Dispute") not remedied within thirty (30) days after the parties use their best efforts to resolve and settle such Dispute by consulting and negotiating with each other in good faith and

attempting to reach a just and equitable solution satisfactory to both parties, may be submitted to a court of competent jurisdiction in Fayette County within the Commonwealth of Kentucky.

**SECTION 16. EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

The parties shall comply with all federal, state and local laws as required including, but not limited to, Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Act of 1974, as amended. The parties hereby incorporate the requirements of 41 C.F.R. §60-1.4(a)(7), 60-250.5 and 60-741.5, if applicable.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

**LFUCG**

**Trinity Services I, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A FINANCIAL ARRANGEMENTS**

### **I. PRICE PER MEAL**

LFUCG shall pay Trinity the price per meal as detailed in the scale that is attached hereto as Schedule 1 and incorporated herein by this reference, which scale is based on the number of inmates. To the extent Trinity's receipts are less than Trinity's costs and expenses for providing such meals, Trinity shall bear all losses. To the extent Trinity's receipts exceed its costs and expenses, Trinity shall be entitled to all profits therefrom. Commencing with the sixth (6<sup>th</sup>) year of the Term and continuing annually thereafter including any extended term, Trinity may request price adjustments based on changes in the Consumer Price Index, Food Away from Home, all urban consumers South Region. Annual price adjustments shall be based on the most current data available sixty (60) days prior to the contract anniversary date and shall be communicated to the LFUCG not less than thirty (30) days prior to the effective date of the new prices.

In addition, in the event of material unanticipated cost changes, whether in (i) federal, state or local sales, payroll based or other taxes, labor, employee benefits, merchandise, equipment; (ii) the minimum wage rate or the enactment or application of any "living wage", "prevailing wage" or similar laws by any governmental entity having jurisdiction over the parties, it is agreed that Trinity Services shall have the right to adjust its per meal prices to reflect impact of the cost changes. If other material conditions change due to causes beyond Trinity Services' control, including, but not limited to a change in the scope of services, menu changes requested by the facility, decreases in inmate population or the availability of inmate labor, efforts to organize labor or changes in federal, state or local standards or regulations including any applicable Child Nutrition Program standards or other unforeseen conditions beyond Trinity Services' control, it is agreed that Trinity Services shall have the right to adjust its per meal prices to reflect the impact of the change in circumstances.

### **II. PAYMENT TERMS**

Trinity shall invoice LFUCG each week, in arrears, for the total amount due from LFUCG as the result of the number of meals served in the preceding week. LFUCG shall pay the invoice amount within thirty (30) days of date of the invoice from Trinity. All past due amounts due Trinity will be subject, at the option of Trinity, to a service charge equal to one and one half percent (1.5%) per month of the unpaid balance.

In the event that said amounts set forth in said statements are not paid according to the terms hereof, or in the event that Trinity, in its sole discretion, determines that LFUCG's credit has become impaired, Trinity shall have the option to: (a) either decline to continue provision of Services hereunder, except on a cash in advance basis, until such time as credit has been re-established to Trinity's satisfaction; or (b) terminate this Agreement without liability whatsoever to Trinity, by giving sixty (60) days prior written notice to LFUCG.

All costs of collection of past due amounts, including but not limited to reasonable attorney's fees, shall be chargeable to and paid by the LFUCG.

### **III. BASIS OF FINANCIAL TERMS**

The financial terms of this Agreement have been negotiated between the parties upon the condition that Trinity will operate its Services at the same points of service and remain in



operation under the same operating standards as agreed at the time of execution of this Agreement. If LFUCG desires Trinity to change the operation or scope of its Services, LFUCG and Trinity shall mutually agree on the appropriate financial adjustments for the requested changes.

**SCHEDULE 1  
MEAL PRICE  
SCALE**