

OPERATING AGREEMENT - FOOD SERVICE

This OPERATING AGREEMENT (the "Agreement") is made as of January 1, 2024 (the "Effective Date") by and between the County of Clay, with offices at 215 W. Gilbert Street, Henrietta, TX, 76365 (the "County"), and Aramark Correctional Services, LLC, a Delaware limited liability company, having a place of business at 2400 Market Street, Philadelphia, Pennsylvania 19103 ("Aramark").

WITNESSETH:

1. **GRANT:** The County hereby grants to Aramark the exclusive right to provide food service (excluding vending machine operation) for the County's inmates at the Clay County Jail located at 215 W Gilbert Street, Henrietta, TX 76365. (the "Facility"). Aramark hereby agrees to furnish nutritious, wholesome, and palatable food to such inmates 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 Sciences as prescribed for inmates.
- C. The State of Texas.

2. **OPERATIONAL RESPONSIBILITIES:**

A. **Meal Preparation and Delivery:** Aramark currently has a Contract to provide food services for Wichita County, TX ("Wichita County") at the Wichita County Detention Center (the "Wichita Facility"). Wichita County has agreed to allow Aramark to prepare meals at its Wichita Facility for a fee (the "Delivery Fee"), as set forth in Attachment A. Those meals will then be delivered to the County at a location to be mutually agreed upon by Aramark and the County. The menu that is served at Wichita County shall be the only menu served at the County.

B. **Emergency Plan:** Aramark shall submit a contingency emergency plan to provide for food 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, the County shall assist Aramark by permitting reasonable variations in Aramark's menu cycle, Product offerings 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, terrorism, warlike action (whether actual, impending or expected, and whether de jure or de facto), or other disorder, strike or other work stoppage, fire, explosion, earthquake, severe weather, landslides, sinkholes, lightning, hurricanes, storms, floods, washouts, earthquake, tornado, flood, acts of God or other natural disaster, or other casualty, or

other restraint of government (civil or military), blockades, insurrections, acts of terrorists or vandals, epidemics, pandemics, civil commotion, any material interruption of the Facility utility systems, confiscation or seizure by any government or public authority, laws, rules and regulations of governmental authorities, or nuclear reaction or radiation, radioactive contamination, or other similar condition not within the reasonable control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent.

C. 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.

D. Indemnification: Aramark agrees to defend, indemnify, and hold harmless the County, its officers, employees, agents, and servants for all third-party personal injuries caused by the sole negligence or a wrongful act of Aramark in its performance of the services defined in this Agreement, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto. However, it is expressly understood that Aramark shall not be responsible for damages, injuries, losses, or claims caused by inmates or the County, its officers, employees, agents, servants, or other independent contractors. Neither any of the County's officers, employees, agents, servants, or contractors, nor any inmates, are or will be deemed to be agents or employees of Aramark and no liability is or will be incurred by Aramark to such persons, except for bodily injury to such persons caused by Aramark's sole negligence. The County agrees to defend, indemnify, and hold Aramark harmless from any liability claim by or through such persons against Aramark. Each party shall promptly notify the other of any claim for which indemnity is sought and shall cooperate with the other party in the defense of such claim. The indemnifying party shall have the sole discretion to defend and settle such claim.

E. Taxes: In the event a sales or similar tax is assessed against Aramark under the terms of this Agreement, the County shall reimburse Aramark for such tax.

F. Damages: Aramark's liability hereunder shall not under any circumstances exceed the greater of (a) two (2) percent of the net revenue received by Aramark pursuant to this

Agreement during the twelve (12) months prior to the applicable claim or (b) the actual proceeds of insurance (not to exceed the maximum limits of insurance required by Section 2.C.), less any applicable deductible. 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.

G. 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.

3. FINANCIAL AND ACCOUNTING ARRANGEMENTS:

A. Meal Service and Prices: Aramark shall provide meals to the County's offenders at the per meal price set forth in Attachment A. In addition to the per meal price, the County shall also pay the Delivery Fee of Fifteen Cents (\$0.15) per meal that Aramark will pass through to Wichita County for the use of its Wichita Facility for preparation of meals served to the County. 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 stated in this Agreement are firm for the period beginning on the Effective Date and ending on December 31, 2024. Per meal prices for each subsequent 12-month period shall be increased on each anniversary of the Effective Date by an amount to be mutually agreed upon and set forth in an amendment to this Agreement in the form attached hereto as Attachment B; provided, however, that in the event no agreement is reached with respect to such increase, per meal prices shall be increased as set forth in Aramark's Agreement with Wichita County and as further set forth below by the greater of the (a) 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 and (b) the yearly percentage change in the Market Basket of Products (as defined below) which approximate the products served at the facilities covered by this Agreement (the "Client Menu"). The period for determining CPI-FAH and Market Basket of Products increases shall be October of the immediately preceding year to October of the then-current year (the "Base Period").

As set forth on the sample client statement attached as Attachment C, a copy of which shall be provided prior to implementing any price adjustments pursuant to this section, the "Market Basket of Products" represents categories or types of products that are generally used in

the Client Menu. Such products are classified into the following six categories of food items (each, a "Menu Category"): beverage (composed of juice and non-alcoholic drinks other than milk); baked goods; produce (composed of fruits and vegetables); dairy; meat; and grocery items (composed of the food items in the menu that are not otherwise included in one of the preceding categories). Each Menu Category will be ascribed a percentage (the "Category Weighting") representing the proportion of the Client Menu that such Menu Category approximately represents based on purchasing levels during the Base Period. Each Category Weighting will then be multiplied by the percentage change in the corresponding Bureau of Labor Statistics ("BLS") category compiled by the U.S. Department of Labor and published at www.bls.gov for the Base Period, and the results of each such calculation will be added together to arrive at the overall percentage change which will represent the Market Basket of Products. For the avoidance of doubt, the BLS categories to be multiplied by the Category Weightings are (1) Beverage, All Urban Consumers, U.S. City Average; (2) Baked Goods, All Urban Consumers, U.S. City Average; (3) Produce, All Urban Consumers, U.S. City Average; (4) Dairy, All Urban Consumers, U.S. City Average; (5) Meat, All Urban Consumers, U.S. City Average; and (6) Food, All Urban Consumers, U.S. City Average. In the event that there are any changes in the method in which the BLS reports its annual statistics, including any changes or modifications to any of the applicable BLS categories, the parties agree to negotiate a mutually agreeable modification to the appropriate Market Basket of Products category or categories, or the methodology described above. If the parties do not agree on such a modification, Aramark shall have the right to terminate the Agreement upon 90 days' prior written notice. The Market Basket of Products is designed to approximate price adjustments with product cost increases at the County or facilities covered by this Agreement. The Market Basket of Products is an estimate of food costs only and actual costs may vary. While the Menu Categories attempt to approximate the products served at the County or facilities covered by this Agreement, they may not precisely parallel actual usage or the BLS categories listed above.

Please refer to Attachment C for an example of the Market Basket of Products calculation.

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.

E. Billing: Aramark shall submit to the County on the first day of every week, for the preceding week an invoice for offender/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 exact number of meals served on a daily basis as follows:

1. Actual number of adult offender meals
2. Actual number of staff/visitor meals
3. Any additional food, beverage, or other services, as required

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 appointed designee each month.

D. Manner Of Payment: Payment shall be made by check payable to Aramark Correctional Services, LLC within fifteen (15) days after the invoice date. All payments shall be made to the address listed on the invoice.

If any invoices are not paid within twenty-five (25) days of the invoice date, interest shall be charged on each invoice at the Prime Interest Rate plus two percentage points per annum on the unpaid balance (or in the event local law prohibits the charging of such rate, interest shall be charged at the maximum legal rate permitted), computed from the invoice date until the date paid. The term "**Prime Interest Rate**" shall mean the interest rate published in The Wall Street Journal as the base rate on corporate loans posted by at least Seventy-Five Percent (75%) of the thirty (30) largest U.S. commercial banks, such rate to be adjusted on the last day of each Aramark accounting period.

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 fifteen (15) days of the invoice date. In the event that Aramark incurs legal expense in enforcing its right to receive timely payment of invoices, the County agrees to pay reasonable attorney's fees and other costs.

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 the 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 offender population or the availability of inmate labor at the Clay Facility; efforts to organize labor; increases in food, fuel, equipment, utilities, supply, and labor 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; changes in phone service providers or a change in the way phone service is sold to offenders; or other unforeseen external market conditions outside Aramark's control, then Aramark shall give the County written notice of such increase or change, and within thirty (30) calendar days after such notice, Aramark and the 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 or commission, modifications to the menu or Product offerings, changes to Product pricing or modifications to Aramark's scope of services. The foregoing shall be in addition to, and without limitation, of the parties' rights and obligations set forth herein in Section 2.B. with respect to continuation of services (and compensation for the same) in the event of a Force Majeure event, if applicable.

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 January 1, 2024, and shall continue through December 31, 2028. Thereafter, the County and Aramark may extend this Agreement for additional periods of twelve (12) months each by mutual agreement, provided that the services to be provided, and the prices thereof, for the extension period, have been mutually agreed upon by the County and Aramark.

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. **Wichita Termination:** If Aramark's Agreement with Wichita County is terminated for any reason (including, but not limited to, the uncured default of a party) prior to the expiration of the Term, this Agreement shall also terminate, effective the termination date of Aramark's Agreement with Wichita County.

D. **Consequences Of Termination:** If this Agreement is terminated under any circumstances, the County 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. 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 agrees, if requested by Aramark, to 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 (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.

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

13. **PUBLICITY RIGHTS:** Neither Aramark nor County shall disclose the terms of this Agreement to any other person or entity outside its organization other than as required by law. Neither County nor Aramark and its Affiliates shall, without the other Party's consent, use the other Party's name, logo, trademark or otherwise refer to or identify the other Party in any publicity matters relating to the Services. Notwithstanding the foregoing, both Parties and their respective Affiliates may, without prior consent of the other Party, use that Party's name or logo and the existence of this Agreement in connection with earnings calls or similar matters with their respective investors or analysts as well as communications to prospective clients (if applicable) and for use in such Party's marketing materials.

14. **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.

15. **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.

16. **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

**County of Clay
State of Texas**

By: _____
Stephen Yarsinsky
Vice President, Finance

By:  _____

Attachment A
Clay County, TX
Effective January 1, 2024, through 01-30-2024

Price Per Meal	\$4.79
Per Meal Delivery Fee payable to Clay County	\$0.15

Attachment B

FORM OF AMENDMENT FOR IMPLEMENTING MARKET BASKET INCREASES

Amendment No. _____ to Operating Agreement

THIS AMENDMENT NO. _____ (the "Amendment"), is entered into this _____ day of _____, 20____ by and between _____, with offices at _____ ("_____"), and Aramark Correctional Services, LLC, a Delaware limited liability company, having its principal place of business located at the Aramark Tower, 2400 Market Street, Philadelphia PA 19103 ("Aramark").

WHEREAS, _____ and Aramark entered into an _____ dated _____ for the management of the food service operation at _____ (as amended, the "Agreement");

WHEREAS, the parties acknowledge the need to address volatility in the cost of food commodities; and

WHEREAS, the parties desire to amend the provisions of the Agreement as follows, effective _____.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below. Capitalized terms used but not defined in this Amendment have the meanings ascribed to such terms in the Agreement.

1. **Price Adjustment:** In accordance with [Paragraph ___ of Amendment No. ___ to the Agreement][Paragraph ___ of the Agreement], the parties agree that the price per meal charged to _____ by Aramark shall be changed as set forth on [Schedule 1] hereto as a result of [changes in the Consumer Price Index][changes in the Market Basket of Products][mutual agreement of the parties]. This price shall be effective from _____, 20__ through _____, 20__, and shall supersede in all respects the price per meal set forth in [Paragraph ___] of the Agreement][and Attachment A of the Agreement] or in any other prior agreements between the parties.

2. **Release:** The methodology used to determine the price increase described above has been reviewed and accepted by the parties. By their execution of this Amendment, each party hereby waives and releases any and all claims it may have based upon or arising out of any such methodology (including the elements thereof) used to calculate the price per meal as set forth in this Amendment, and further agrees not to bring any action, suit or proceeding challenging such methodology or calculation.

3. **Ratification:** Except as specifically set forth herein, all other terms and provisions of the Agreement shall remain unaffected by this Amendment and continue in full force and effect

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. ___ to be signed by their duly authorized representatives the day and year first written above.

Aramark Correctional Services, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SCHEUDLE 1

[attach updated price schedule for Amendment]

<u> </u> County, <u> </u> Effective <u> </u> through <u> </u>
--

<u>Inmate Population*</u> (Average Daily Population for applicable period)		<u>Price Per Meal (\$)</u>
<u>Low</u>	<u>High</u>	<u>Rate</u>
0		**TBD
	above	

*The total number of inmate meals served per week is divided by 21 in order to determine the price point on the sliding scale.

**In the event that the average daily inmate population for the applicable period drops below ten (10), the County and Aramark shall promptly negotiate in good faith to determine an equitable adjustment in the inmate meal rates to compensate Aramark for the effect of such decline, which shall be evidenced in a written amendment to this Agreement.

The parties acknowledge that the foregoing meal rate pricing scale assumes the availability of sufficient inmate labor to Aramark for use in the operations as contemplated in the Agreement, and accordingly, to the extent that such inmate labor is not made available to Aramark (as may be determined by County for any reason in its sole discretion), the County and Aramark shall promptly negotiate in good faith an equitable adjustment in the inmate price per meal rates to compensate Aramark for such decline in the availability of inmate labor, which shall be evidenced in a written amendment to this Agreement.

Attachment C

Sample Client Statement - Market Basket of Products Calculation

[INSERT CLIENT NAME] Exhibit

Sample Market Basket Price Redetermination Statement

Period Ended October 31, 2022

(All)			
Market Basket Price Redetermination Statement			
Period Ended October 31			
CATEGORY	Menu Weighting	October Category CPI %	Weighted CPI %
Baked Goods	9.37%	15.50%	1.45%
Beverage	6.22%	12.70%	0.79%
Dairy	10.96%	14.53%	1.59%
Grocery	38.42%	10.95%	4.21%
Produce	14.12%	7.36%	1.04%
Protein	20.92%	2.90%	0.61%
TOTAL	100.00%		9.69%
October FY 2023 CPI Food Away from Home Index			8.59%
Greater of Market Basket to October CPI - Food Away from Home			9.69%

Notes

- * This category includes all menu items that are not otherwise included in another Menu Category. ARAMARK applies the BLS CPI Food index to the "Grocery" Menu Category for the calculation. The "Food" index encompasses the items in all Menu Categories in addition to food items not used at the facility or facilities covered by this Agreement.