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COMMISSARY CONTRACT BETWEEN WOODBURY DETENTION CENTER AND CBM MANAGED SERVICES

This contract is made and entered into this 13th day of July, 2015, by, and between the Woodbury Detention Center (hereinafter referred to as "County") located at 407 7th St., Sioux City, IA 51101 and Catering By Marlin's Inc., d/b/a CBM Managed Services (hereinafter referred as "Contractor") business address: 500 East 52nd Street North, Sioux Falls, South Dakota 57104.

WHEREAS, County operates and maintains the Woodbury Detention Center and desires to contract with Contractor to provide the Inmate Commissary goods and services at County's facility.

NOW THEREFORE, County and Contractor agree to the following:

1. **GRANT:** The County hereby grants Contractor exclusive rights to provide commissary goods and services for the County's adult inmates of the Woodbury Detention Center.

2. **OPERATIONAL RESPONSIBILITIES:**

   A. Grant: Contractor shall provide a selection of food products, snacks, candy and gum, clothing, personal hygiene items, health and drug items, and general merchandise (collectively, the "Products"), all of which shall be subject to the approval of the Sheriff.

   Contractor will provide a seamless interface with County's current phone provider, Securus in order to offer inmate debit calling at a cost to the inmate of $.80 per transaction. This transaction fee will be charged to the inmate's commissary account and will be credited to CBM.

   Contractor will also offer secure inmate email at a cost to the inmate of $.50 per transaction. This transaction fee will be charged to the inmate's commissary account and will be credited to CBM.

   Upon inmate's release, any monies remaining on an inmate's debit calling card will be credited to the inmate's commissary account, then a debit card will be issued to the inmate for the balance remaining on their commissary account.

   B. Distribution: The Contractor's employees shall deliver commissary items at least once per week to adult inmates at the County. At the request of County jail officials the number of commissary delivers per week may be increased upon the mutual consent of both parties. All orders will be picked and packed off-site at Contractor's warehouse and shipped directly to County's facility.

   No items shall be distributed that have exceeded their "use by," sell by or similar expiration date. It is the parties' intent that items be fresh and wholesome.

   C. Delivery: Inmate orders will be shipped to County by Contractor in individual clear bags or clear containers with a receipt to include a list of items and the inmate funds charged. This receipt is to be signed by the inmate with a copy given to the inmate and a copy retained by

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the Contractor (to be produced upon request of the Sheriff.) All such deliveries are to be coordinated with and supervised by Contractor's employees.

D. Ordering: Inmate orders will be placed via phone or inmate pod kiosk.

E. Personnel: Contractor shall provide a regional district manager, and from Contractor's headquarters location, will provide expert administrative and purchasing advice related to the commissary operations.

F. Fill Rate: Contractor will maintain sufficient supplies and quality control of its delivery system so that at least 95% of the items are delivered consistently and correctly on the first attempt. This percentage is based upon the overall item count and not on the number of inmate orders. Contractor's employees will correct any error or missed item and deliver the same within one business day.

G. Facilities and Equipment: There will not be on-site storage or warehousing. All orders will be shipped from Contractor's warehouse.

Contractor will install one (1) lobby ATM kiosk, one (1) inmate booking station, fourteen (14) inmate pod kiosk, one (1) credit card swipe in the booking area, and two (2) check writing printers (collectively the "Computer Hardware") in the booking area as needed, with the final equipment needed to be determined upon mutual consent between Contractor and County.

All equipment and products shall at all times remain the property of the Contractor. Contractor shall remove equipment and software promptly upon expiration or termination of the Contract. The data from the software is the property of the Client and will be returned to Client once removed from the hardware.

H. Repair and Replacement: Contractor shall be responsible for repairs that arise due to normal wear and tear of equipment. Client shall also be responsible for any loss or damage to equipment resulting from vandalism, theft or abuse.

I. Fund Transfer and Technology: Contractor shall install such Computer Hardware and related equipment and software (collectively "Computer Equipment"), including but not limited to Contractor's Software Commissary Management Information Systems (the "Software System") as necessary to support Contractor's commissary operations. Contractor shall remove all Computer Equipment upon expiration or termination of this Contract. The Computer Equipment and Software System is and shall at all times be owned by Contractor, which shall hold all rights relative thereto except as may be expressly granted hereunder and then only to the extent of such express grant. All use of the Software System at the Facility shall immediately cease upon the expiration or termination of this Contract. Contractor shall be responsible to support and maintain all Computer Equipment during the term of this Contract, but any and all such obligations shall cease upon the termination of this Contract.

Contractor will cause the Software System to integrate (this may be accomplished by periodic data transfer) with the Sheriff's Office jail records management system and will debit an inmate's fund for purchases and maintain real time records. Items not actually received by the

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inmate will be promptly credited to his/her account with in three business days of the first delivery date.

3. **BILLING AND PRICES:** Contractor shall determine the prices at which products shall be sold, however, the prices shall not exceed the general prices at which similar products are sold in the convenience stores (the "Comparable Retail Values") in the surrounding local community. If Contractor sustains in its costs, including but not limited to, increases in its products or sales tax, Contractor may, with Sheriff's approval, increase prices to recover such increased costs immediately. Additionally, Contractor may, on an annual basis perform a price audit to compare the prices at which it sells the products contemplated by this Contract with the Comparable Retail Values at which similar products are being sold in the surrounding local community. In the event that any of Contractor's prices are below the Comparable Retail Values, the parties shall agree to increase such prices under this Contract to reflect the Comparable Retail Values. Contractor may make approved additions to the available products, but suggested additions should not be offered more than once every four (4) months.

   The Sheriff may place dollar limitations on inmates' purchases, which the Sheriff may periodically adjust.

   Contractor will electronically provide monthly statements to the Sheriff's Office to include:
   a. Items purchased and prices, listed by item
   b. Inmate purchases (items and prices), listed alphabetically by inmate
   c. Total price of items sold and commission

   Contractor shall furnish the above reports no later than the 15th of the following month.

   Contractor will pay the County for commissions after Contractor has received payment from the County for the applicable invoices.

   Contractor will bill County weekly for all products delivered to inmates. All invoices will be due to Contractor no later than the 15th of the following month.

4. **TAXES:** Contractor will be responsible for the collection and remittance of all applicable sales tax to the State of Iowa.

5. **SPECIAL TERMS AND CONDITIONS:**

   5.1 Excused Performances
   If, because of riots, war, public emergency or calamity, fire, flood, earthquake, act of God, government restriction, or labor disturbance or strike, business operations at the County are interrupted or stopped, performance of the contract, with the exception of monies already due and owing, shall be suspended and excused to the extent commensurate with such interfering occurrence. The expiration date of the contract may be extended for a period of time equal to the time that such default in performance is excused.

   5.2 Confidential Information
   All financial, operating and personnel materials and information, including, but not

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limited to, software, technical manuals, recipes, policy and procedure manuals and computer programs relative to or utilized in Contractor's business (collectively, the "Contractor Proprietary Information") are and shall remain confidential and sole property of Contractor and constitute trade secrets of Contractor. The County shall keep all Contractor Proprietary Information confidential and shall use the Contractor Proprietary Information only for the purpose of fulfilling the terms of this Contract. The County shall not photocopy or otherwise duplicate any materials containing Contractor Proprietary Information without the prior written consent of Contractor. Upon expiration or any termination of this Contract, all materials containing any Contractor Proprietary Information shall be returned to Contractor.

5.3 Insurance

The Contractor assumes responsibility arising from the administration or delivery of commissary services. The Contractor will handle all lawsuits and pay all associated legal costs and settlements, if any, related to the administration or delivery of commissary services. The Contractor will provide the necessary liability coverage for the commissary service while the County and Contractor will provide their respective employee's workers comp and employer's liability coverage

5.3.1 Coverage and Minimum Limits

Coverage	Minimum Limits
Workers Compensation	Statutory/Iowa
Employer's Liability Coverage (B)	$500,000/$500,000/$500,000
Commercial General Liability (CGL)	
General Aggregate	$2,000,000
Each Occurrence	$1,000,000
Products and Completed Operations Aggregate	$2,000,000
Personal and Advertising Liability	$1,000,000
Umbrella	$4,000,000
Automobile Liability (including hired/non-owned)	
Combined Single Limit	$1,000,000

5.3.2 Insurance Requirements

a. The Contractor is required to maintain the above insurances and keep said insurances in effect during the course of this contract. The Contractor shall provide a Certificate of Insurance listing the County as an additional insured on the Contractor's Commercial General Liability (CGL) policy.

b. Prior to beginning work, the Contractor shall provide the County a current certificate of insurance with the required coverage and limits of insurance issued by an insurance company licensed to do business in the State of Iowa and signed by an authorized agent.

c. Commercial General Liability includes but is not limited to consumption or use of products, existence of equipment or machines on location and contractual obligations to customers.

d. These policies shall contain a covenant requiring thirty (30) days written

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notice by the insurer to the County before cancellation, reduction or other modifications of coverage.

e. In the event of non-renewal, cancellation or expiration of insurance, the Contractor shall provide the County evidence of the new source(s) of required insurance within twenty-one (21) calendar days after the County's receipt of the thirty (30) day notice.

6. INDEMNIFICATION:

The Contractor agrees that it will hold harmless, indemnify, and defend the County, it's Commissioners, officers, agents and employees against any and all claims, expenses (including attorney's fees), losses, damages or lawsuits for damages arising from or related to providing or failing to provide services hereunder, to the extent caused by the Contractor's negligent performance of professional services under this contract and that of its subcontractors or anyone for whom the Contractor is legally liable.

The County agrees that it will hold harmless, indemnify, and defend the Contractor, officers, agents and employees against any and all claims, expenses (including attorney's fees), losses, and damages to the extent caused by the County's negligence and the acts of its Commissioners, officers, contractors, subcontractors or anyone for whom the County is legally.

Neither the County nor the Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

7. PERMITS/LICENSES/BONDS/SECURITY:

The Contractor shall be financially responsible for obtaining all required permits and licenses to comply with pertinent municipal, county, state and federal laws and regulations.

7.1 Food Service Areas
The Contractor may utilize all space assigned by the County for commissary services.

7.2 Employees
Contractor's employees will be distributing the commissary products.

7.3 Facility Security
The Contractor, if it has employees present, is responsible for control of keys and other entry devices obtained from the County for Contractor's employees, if and for the security of those areas that are used by its employees, staff or subcontractors.

7.4 Lock/Cylinder/Key Installation and Replacement
The Contractor, if it has employees present, shall be responsible for the cost for replacement of lost keys and the cost of re-keying and replacement of lock cylinders required as a result of its negligence and/or loss of keys.

7.5 County Security
The County shall provide the Contractor with safety and security services inside the County's facilities.

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8. STANDARD TERMS AND CONDITIONS:

8.1 Deviations and Exceptions

Deviations and exceptions from terms, conditions, or specifications shall be described fully on the Contractor's letterhead, signed and attached to the request. Any deviation or exception from terms, conditions or specifications shall be approved by the County.

8.2 Applicable Law

This contract shall be governed under the laws of the State of Iowa. The Contractor shall at all times comply with and observe all federal, state and local laws, ordinances, and regulations that are in effect during the period of the Contract and which in any manner affect the work or its conduct.

8.3 Contract Assignment

No right or duty in whole or in part of the Contractor under the contract may be assigned or delegated without the prior written consent of the County.

8.4 Recycled Materials

Contractor will make every effort to support any commitment the County has to encourage the purchase of recycled materials whenever technically or economically feasible or required by law.

8.5 Material Safety Data Sheet

If any item(s) used by the Contractor is a hazardous chemical, as defined under 29CFR 1910.1200, the Contractor must provide one (1) copy of a Material Safety Data Sheet for each item to the County for approval prior to use, including reformulated chemicals.

8.6 Commission

Contractor shall pay a monthly commission to the County of 34% percent of net sales. Net sales are defined as total gross sales minus sales tax, postal products, credits and any other items sold at cost or no mark-up.

Fees related to inmate debit calling transactions and inmate emails will not be included in net sales and will not be subject to commission.

8.7 Independent Contractor

The parties recognize that Contractor is an independent contractor and not an employee or agent of County. Neither party shall hold the other out to be in any capacity other than that which is contemplated under this Contract. County shall not withhold any taxes for monies paid nor shall Contractor have any right to participate in any of the benefit programs offered to employees of County.

8.8 Contract Term

This Contract will commence on the 7th day of July, 2015 and terminate on the 6th day of March, 2020. The Contract can be renewed for additional one (1) year periods with the same terms and conditions unless County notifies Contractor of its intent not to renew sixty (60) days prior to the expiration of the Contract or any renewal period.

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9. **CONTRACT ADJUSTMENTS:**
After the first year of the Contract Term and each subsequent year of the Contract Term and renewals thereof, the parties may adjust the contract pricing based on the CPI (Consumer Price Index) "Food Away From Home Index" for the previous year. This index is published by the Department of Labor Bureau of Statistics. Additional adjustments may be made due to federally mandated legislation for medical coverage and any other uncontrollable circumstances.

10. **TERMINATION:**
Either party may terminate this Contract for any reason by providing the other party sixty (60) days written notification. In case of such termination, the Contractor shall be entitled to receive payment from The County for work completed prior to the termination date in accordance with the terms and conditions of this Contract and The County shall be entitled to receive payment for any commissions due in accordance with this Contract.

11. **ENTIRE AGREEMENT:**
This written contract with referenced parts, attachments and addendums shall constitute the entire agreement and no other terms or conditions in any document, acceptance or acknowledgment shall be effective or binding unless expressly agreed to in writing by all parties to this Agreement. Any future Contracts to the contract shall be in writing and attached to the original contract. Any dispute arising from the terms and conditions of the contract that cannot be resolved by mutual agreement shall be tried in Woodbury County, Iowa.

Dated this 30th Day of July, 2015

WOODBURY DETENTION CENTER:

Dave Drew
Woodbury County Sheriff

By Mark Monson
Board of Supervisors

Dated this 30th Day of July, 2015

CATERING BY MARLIN'S, INC.
D/B/A CBM MANAGED SERVICES:

Marlin C. Sejnoha, Jr.
President/CEO

Witness

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