



## **FOOD SERVICES AGREEMENT**

THIS AGREEMENT is made by and between Rowan County, with principal offices located at 130 West Innes Street, Salisbury, NC 28144 ("Client"), and Trinity Services Group, Inc., a Florida corporation with principal offices located at 477 Commerce Boulevard, Oldsmar, FL 34677-3018 ("Trinity").

### **WITNESSETH:**

**WHEREAS**, Client has issued a Request for Proposal for Inmate Food Services at the Rowan County Main Detention Center and the Jail Annex ("RFP") and Trinity submitted its proposal to provide the necessary food services ("Proposal"); and

**WHEREAS**, Client desires to accept the Proposal and avail itself of Trinity's services; and

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

**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. CLIENT'S GRANT TO TRINITY**

Client grants to Trinity, as an independent contractor, the exclusive right to operate inmate food services at Rowan County Main Detention Center and the Jail Annex (such location 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 Client (such food service hereinafter referred to as "Services").

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

**2.1.** Pursuant to the terms, conditions and requirements of the RFP, including but not limited to the Proposal, all of which are incorporated herein by this reference, and 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. Such Services shall meet or exceed the North Carolina Jail Standards regarding food service.

**2.2.** Trinity 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 regarding food service. 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. All costs in connection with such taxes (excluding Client'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 and borne solely by Trinity. Except in circumstances in which the Client is exempt from sales tax, Trinity shall bill and Client shall pay for all applicable sales taxes.

**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 city, 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 Client. All persons employed by Trinity will be the employees of Trinity, and not of the Client, and will be covered by employee dishonesty coverage. The Client 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 Client 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, foodservice 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 Client 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 Client 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 Client imposes upon Client'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 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 Client 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. Client 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 Client's Obligations.

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

**3.1.** Client shall, without cost to Trinity, provide Trinity with the necessary space for the operation of its Services, and shall furnish, without cost to Trinity, sufficient inmate labor and all utilities and facilities reasonable and necessary for the efficient performance of Trinity's services hereunder, include, 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.** Client 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 Client will maintain, repair, and replace said equipment and facilities at its own expense. Notwithstanding the foregoing, if equipment provided by Client becomes inoperative, hazardous, or inefficient to operate Trinity shall notify Client and have the right to effect repairs or replacements at the expense of the Client, if the Client 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 Client shall, if applicable, pay the cost of all paper products used during such time period. Client 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 Client to Trinity are the sole property of the Client, and Trinity will not change, deface, or remove any symbol or mark of identity from said equipment furnished by the Client.

**3.3.** Client 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 Client staff or inmate workers and supervised by Client staff and shall be performed on a schedule determined by agreement between the Client and Trinity.

**3.4.** Client will reimburse Trinity for all paper products used during lock down events.

**3.5.** Client shall not, during the term of this Agreement nor for one (1) year following its termination or expiration, solicit to hire, hire, or contract with any employee or former employee of Trinity or any of its subsidiaries. In the event that Client breaches the terms of this provision, Client shall pay Trinity an amount equal to the annual salary of such Employee. This provision shall not apply to any person who was employed by the Client prior to being employed by Trinity.

**3.6.** Client shall pay all real estate taxes with respect to the Premises, and Client shall pay all personal property taxes and similar taxes with respect to Client'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.** Trinity shall indemnify the Rowan County Commissioners, Rowan County Sheriff, the Rowan County Manager and Rowan County employees on the terms related to indemnification stated in the RFP.

**5.2.** Notification of an event giving rise to an indemnification claim ("Notice") must (a) be received by the indemnifying party 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 shall obtain and maintain insurance as required by the terms of the RFP.

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

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

**6.1.** Unless sooner terminated as provided herein, the term of this Agreement shall be for three (3) years beginning on July 1, 2020. Thereafter, upon mutual agreement of the parties, the term of this Agreement may be extended for additional one (1) year terms from year to year.

**6.2.** Either party may terminate this Agreement, for any reason, 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, and where applicable, remove its property and equipment and return the Premises to Client, together with all the equipment furnished by the Client 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 Client and employees of Client 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.

Trinity shall not be subject to fines or other charges if the performance of any terms or provisions of the Agreement shall be delayed or prevented because of Trinity's 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, shortages, strikes, lockouts, differences with workmen, fires, floods, Acts of God or Nature, or any other reason whatsoever which is not within Trinity's control and which, by the exercise of reasonable diligence, Trinity is unable to prevent.

#### **SECTION 9. ASSIGNMENT**

Neither Trinity nor Client 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 including the RFP and Proposal 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 variation or modification of this Agreement, and no waiver of its provisions, shall be valid unless in writing and signed by the duly authorized representatives of Trinity and Client. This Agreement including the RFP and Proposal 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 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 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 personal service; or (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 Client: Rowan County Finance Department  
Attn:  
130 West Innes Street, Suite 110-120  
Salisbury, NC 28144

If to Trinity: Trinity Services Group, Inc.  
Attn: Chief Operating Officer  
477 Commerce Boulevard  
Oldsmar, FL 34677-3018

With copy to: Trinity Services Group, Inc.  
Attn: General Counsel  
1260 Andes Boulevard  
St. Louis, MO 63132

#### **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, Client security means and methods, recipes, 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 the extent permitted by law, 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; or (f) as required by order during the course of a judicial or regulatory proceeding or as required by a governmental authority. 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 13. EXECUTION**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the Parties. The Parties may execute this Agreement and any amendment hereto by an exchange of scanned and emailed executed copies. In the event of such an exchange, this Agreement and any applicable amendment shall become binding and any scanned and emailed signed copies shall constitute admissible evidence of the existence of this Agreement and applicable amendment.

#### **SECTION 14. DISPUTE RESOLUTION AND GOVERNING LAW**

This Agreement shall be governed by the laws of the State of North Carolina 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 within the State of North Carolina.

#### **SECTION 15. 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.

#### **SECTION 16. NON-APPROPRIATION CLAUSE**

Trinity acknowledges that Client is a governmental entity, and the Agreement validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of Client's obligations under this Agreement, then this Agreement shall automatically expire without penalty to Client thirty (30) days after written notice to Trinity of the unavailability and non-appropriation of public funds. It is expressly agreed that Client shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations.

In the event of a change in Client's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects Client's authority to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to Client upon written notice to Trinity of such limitation or change in Client's legal authority.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals.

**Rowan County**

By: Aaron Church

Printed Name: AARON CHURCH

Title: COUNTY MANAGER

Date: 6-30-2020

**Trinity Services Group, Inc.**

By: David M. Miller

Printed Name: David M. Miller

Title: Chief Operating Officer

Date: 5/21/20

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE  
MANNER REQUIRED BY THE LOCAL GOVERNMENT  
BUDGET AND FISCAL CONTROL ACT.

Leslie E. Heidrich  
FINANCE DIRECTOR



## **EXHIBIT A FINANCIAL ARRANGEMENTS**

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

Client 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.

Meal prices shall be adjusted annually, effective on the anniversary date of the Agreement, by an amount equal to the change in the Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, U.S. City Average, Food Away From Home data published by the Bureau of Labor Statistics in the month of June.

In the event of material cost changes in federal, state, or local taxes including, but not limited to, social security taxes, unemployment taxes or payroll based taxes or an increase in the minimum wage rate or the implementing regulations or the enactment or application of any "living wage", "prevailing wage" or similar laws by any governmental entity; and/or an increase in employee benefits whether as a result of a change in federal, state, or local laws or a federal, state, or local legislative or regulatory mandate or otherwise, it is agreed that the parties shall adjust the meal prices to reflect said increases. 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 or changes in federal, state or local standards or regulations or other unforeseen conditions beyond Trinity Services' control, it is agreed that the parties shall adjust the meal prices to reflect the impact of the change in circumstances.

### **II. PAYMENT TERMS**

Trinity shall invoice Client each week, in arrears, for the total amount due from Client as the result of the number of meals served in the preceding week. Client 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 Client'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 Client.

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 Client.

### **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 Client desires Trinity to change the operation or scope of its Services, Client and Trinity shall mutually agree on the appropriate financial adjustments for the requested changes.

**SCHEDULE 1  
SCALE**

TRINITY SERVICES GROUP								
Rowan County Main Detention Center and Jail Annex								
INMATE POPULATION								
FROM		TO		Year 1		Year 2		Year 3
140	-	159	\$	2.320	\$	2.366	\$	2.413
160	-	179	\$	2.124	\$	2.167	\$	2.210
180	-	199	\$	1.972	\$	2.012	\$	2.052
200	-	219	\$	1.851	\$	1.888	\$	1.925
220	-	239	\$	1.751	\$	1.786	\$	1.822
240	-	259	\$	1.668	\$	1.702	\$	1.736
260	-	279	\$	1.598	\$	1.630	\$	1.663
280	-	299	\$	1.538	\$	1.569	\$	1.600
300	-	319	\$	1.486	\$	1.516	\$	1.546
320	-	339	\$	1.440	\$	1.469	\$	1.498
340	-	359	\$	1.400	\$	1.428	\$	1.457
360	-	379	\$	1.368	\$	1.396	\$	1.424
380	-	399	\$	1.340	\$	1.367	\$	1.394
400	-	419	\$	1.314	\$	1.341	\$	1.367
420	-	439	\$	1.291	\$	1.317	\$	1.343
440	-	459	\$	1.270	\$	1.295	\$	1.321
460	-	479	\$	1.251	\$	1.276	\$	1.301
480	-	499	\$	1.233	\$	1.258	\$	1.283
500	-	519	\$	1.217	\$	1.241	\$	1.266
520	-	539	\$	1.202	\$	1.226	\$	1.251
540	-	And over	\$	1.188	\$	1.212	\$	1.236