

FOOD SERVICE AGREEMENT

This FOOD SERVICE AGREEMENT ("Agreement") is made effective as of September 26, 2011, by and between the County of Macomb, with offices at 43565 Elizabeth Road, Mt. Clemens, Michigan 48043 (the "County"), and Continental Café, Inc., a Michigan corporation d/b/a Canteen Correctional Services, with principal offices located at 35710 Mound Road, Sterling Heights, Michigan 48310 ("Continental"). The County and Continental are referred to in this Agreement individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the County desires to avail itself of Continental's food services; and

WHEREAS, Continental desires to perform such services for the County;

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

1. The County's Grant to Continental. The County grants unto Continental, as an independent contractor, the exclusive right to prepare and provide food service for jail inmates at the Macomb County Jail located at 43565 Elizabeth Road, Mt. Clemens, Michigan 48043 ("Premises") (the "Services").

2. Continental's Responsibilities.

A. Continental shall keep the Services adequately serviced and supplied with appropriate merchandise of good quality at the prices provided for in this Agreement. The food service shall meet all current applicable standards as established by: (a) the American Correctional Association, (b) the Food and Nutritional Board of the National Academy Science as prescribed for inmate, and (c) the State of Michigan.

B. Continental shall purchase and pay for all food products and kitchen cleaning supplies used in the daily routine of providing the Services. Products purchased for use in the food service operation shall be the property of Continental. Continental shall be responsible for daily cleaning and housekeeping in the food preparation, service, receiving and storage areas, and shall, on a continuing basis, maintain high standards for sanitation.

C. Continental agrees to pay all federal, state and local taxes which may be assessed against Continental's equipment or merchandise while in or upon the Premises, as well as all federal, state, and local taxes assessed in connection with the operation of its Services upon the Premises.

D. Continental shall be responsible for providing all food trays and service ware. Such food trays and service ware purchased for use in the food service operation shall be the property of Continental.

E. Continental agrees to comply with all federal, state, and local laws and regulations governing the preparation, handling, and serving of foods. Continental will also procure and keep in effect all necessary licenses, permits, and food handler's cards required by law, and to post such permits in a prominent place as required by law. All costs in connection with such taxes (excluding the County's real estate and personal property taxes), license, permits, and food handler's cards, shall be charged to the operation of the business. Continental agrees to comply with applicable federal, state and local laws and regulations pertaining to wages and hours of employment.

F. Continental shall hire all employees or engage all independent contractors necessary for the performance of this Agreement. All such individuals shall be subject to such health examination as city, state, or federal authority may require in connection with their employment/engagement, including background checks and drug testing. All persons employed by Continental will be the employees of Continental, and not of the County.

G. Continental shall secure and pay for all federal, state and local licenses, permits and fees required for the food service operation.

3. The County's Responsibilities.

A. The County shall, without cost to Continental, provide Continental with the necessary space for the operation of its Services, and shall furnish, without cost to Continental, all utilities and facilities reasonable and necessary for the efficient performance of Continental's services hereunder, include, but not limited to, the following: heating, air conditioning and ventilation, hot and cold water, gas, lights and electric current, garbage removal services, exterminator services, sewage disposal services, and office space.

B. The County shall, at its own cost and expense, provide food equipment necessary to prepare the food. The County shall provide facilities and floor space as mutually agreed that is necessary for the efficient provision of Continental's Services hereunder. The County will maintain, repair, and replace said equipment and facilities at its own expense. Notwithstanding the foregoing, if equipment provided by the County becomes inoperative, hazardous, or inefficient to operate Continental shall notify the County. The County shall permit Continental 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 the County to Continental are the sole property of the County, and Continental will not change, deface, or remove any symbol or mark of identity from said equipment furnished by the County.

C. The County shall furnish building maintenance services for the Premises and shall provide maintenance and equipment repairs "and replacements for the County owned equipment. The County shall, at its expense, provide Continental with adequate preparation kitchen facilities at the Premises completely equipped and ready to operate together with such heat, refrigeration and utilities services as may be reasonably required for the efficient performance of the Agreement.

D. The County shall provide janitorial services outside the kitchen facilities provided to Continental. The County shall clean the vents and ductwork leading to the roof from food preparation areas. The County shall be responsible for extermination services and the removal of trash and garbage from the designated food service area.

E. Inmate workers shall receive meals at the County kitchen, shall transport such meals to appropriate areas, and shall return all trays and delivery equipment to Continental at the County kitchen, in a timely manner.

F. The County shall provide reasonable and adequate physical security at all times for Continental employees, suppliers, management and other authorized visitors

G. The County shall comply with all statutes, lawful ordinances, regulations and requirements, federal, state, and local applicable to its activities.

4. Personnel.

Continental shall provide on-site management and supervisory personnel, and from its regional and headquarters locations, expert administrative, dietetic, purchasing, equipment consulting and personnel advice and supervision. The County shall provide inmate workers having approved medical and other clearances at the Premises kitchen. The number of inmates provided shall be determined by the County based upon availability and need prior to the commencement and throughout the course of operations. Such inmates shall be assigned duties in the food service operation that may include sanitation, food preparation and production, and storeroom functions.

5. Insurance and Indemnification.

A. Continental shall obtain and maintain insurance for the following risks in such amounts under such policies as appropriate: (i) general liability (including contractual liability, products and completed operations, independent contractors coverage, broad form general liability extensions or equivalent) in an amount not less than \$1,000,000 combined single limit for each occurrence with an annual aggregate of not less than \$2,000,000; (ii) workers' compensation in an amount not less than that required by applicable statute, (iii) employers' liability coverage with minimum limits of \$500,000 each accident, \$500,000 bodily injury by disease policy limit, \$500,000 bodily injury by disease each employee, (iv) motor vehicle liability insurance with limits of \$1,000,000 combined single limit for each occurrence for bodily injury and property damage, (v) professional liability insurance with minimum limits of \$1,000,000 each occurrence and \$2,000,000 aggregate.

B. The County shall obtain and maintain 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.

C. Certificates of Insurance for such coverage as required under this Agreement and obtained by Continental shall be provided by Continental with the County being named as an additional insured in respect to such coverage (other than worker's compensation) prior to the commencement of Services hereunder.

D. The County and Continental shall 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.

E. Each Party shall indemnify, defend, and hold harmless the other Party from any and all losses, damages, or expenses, including reasonable attorneys' fees, arising out of or resulting from claims or actions for bodily injury, death, sickness, property damage, or other injury or damage if caused by its sole negligence or wrongful act. Notwithstanding the foregoing, Continental shall not be responsible for damages caused by inmates.

F. 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. The indemnifying Party shall have the sole discretion to defend and settle such indemnification claim.

6. Financial Arrangements.

A. 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. Those financial arrangements are based on Continental providing services to the County under this Agreement and a Commissary Services Agreement dated as of the date hereof between Continental and the County (the "Commissary Services Agreement"). In the event the Commissary Services Agreement is terminated, the financial arrangements under this Agreement will be adjusted consistent with Continental's quote which provided financial arrangements with and without a Commissary Services Agreement.

B. The financial arrangements may be adjusted after one year and every twelve (12) months by Continental upon notice to the County to adjust the cost per meal at a rate equal to the then-current rate published for the relevant Consumer Price Index Food Away from Home.

C. Continental shall invoice the County on a weekly basis. Payment shall be made by check payable to Continental Café, Inc. within fifteen (15) days after the invoice date. Such payment shall be sent to the address set forth in the Notice Section.

D. The County may request Continental to provide additional services other than the Services from time to time. In such event, Continental and the County shall agree upon the amount to be paid for such services.

7. Term and Termination.

A. Unless sooner terminated as provided herein, the term of this Agreement shall commence on September 26, 2011 and continue through September 25, 2014 ("Initial Term"). By mutual agreement, this Agreement may be renewed for three (3) additional twelve (12) month periods. Thereafter, the County and Continental may extend this Agreement for additional periods of twelve (12) months each, provided that the services to be provided, and the prices thereof, for the extension period, have been mutually agreed upon by the County and Continental.

B. 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 10 of this Agreement, the Party claiming such failure shall give the other Party a written notice of such breach. If, within thirty (30) 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 thirty (30) day period.

C. If this Agreement is terminated under any circumstances, the County shall pay Continental for all inmate meals, and other services provided by Continental up to and including the date of termination, at the rates and within the payment periods set forth in this Agreement.

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

8. Confidential Information. All personnel materials and information, including, but not limited to, software, technical manuals, recipes, policy and procedure manuals and computer programs relative to or utilized in Continental's business (collectively, the "Continental Proprietary Information") are and shall remain confidential and the sole property of Continental and constitutes trade secrets of Continental. The County shall keep all Continental Proprietary Information confidential and shall use the Continental 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 Continental Proprietary Information without the prior written consent of Continental. Upon the expiration or any termination of this Agreement, all materials containing any Continental Proprietary Information, shall be returned to Continental.

Continental understands that records of the County are subject to the Michigan Freedom of Information Act and that all of the information Continental considers "proprietary" may not be proprietary under the Freedom of Information Act. If the County receives a Freedom of Information Act request for records relating to Continental, the County will notify Continental immediately before releasing such information to afford Continental the opportunity to contest any disclosure in the appropriate court.

Continental further understands that regulatory licensing and accreditation agencies may require that such confidential information be provided to them. If the County receives such a request, the County will notify Continental immediately before releasing such information to afford Continental the opportunity to take whatever action it deems necessary to protect what it considers to be proprietary information, except in instances where any local, state or federal inspectors request for immediate delivery of policies, procedures, or manuals.

9. Independent Contractor Relationship. Continental shall be an independent contractor and shall retain control over its employees and agents. The employees of Continental are not, nor shall they be deemed to be, employees of the County and employees of the County are not, nor shall they be deemed to be, employees of Continental.

10. Excused Performance/Force Majeure. 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 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.

11. Assignment. Neither Continental nor the County may assign or transfer this Agreement, or any part thereof, without the written consent of the other Party. If this Agreement is properly assigned, then it will bind and benefit the successors and assigns of the Parties

12. Entire Agreement and Waiver. This Agreement together with the County's request for proposal, including all addenda, and Continental's response which are incorporated herein and made a part hereof as if fully set forth in this Agreement constitute the entire Agreement between the Parties with respect to the provision of Continental's Services, and there are no other or further written or oral understandings or agreements with respect thereto. In the event of any ambiguity or conflict between this Agreement and the County's request for proposal or Continental's response, the provisions of this Agreement shall govern. 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 Continental and the County. This Agreement supersedes all other agreements between the Parties for the provision of Continental's Services on the Premises.

13. 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 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 the County:	Macomb County Purchasing Polly A. Helzer, Purchasing Manager 10 N. Main Street – 13 th Floor Mt. Clemens, MI 48043	Macomb County Office of the Sheriff Michelle Sanborn, Jail Administrator 43565 Elizabeth Road Mt. Clemens, MI 48043
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If to Continental: Continental Café, Inc.
Attn: James D. Bardy
35710 Mound Road
Sterling Heights, Michigan 48310

With copy to: Bodman PLC
Attn: Forrest O. Dillon
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, MI 48226

14. Information Technology Services. In connection with the services being provided hereunder, Continental may desire to operate certain information technology systems not owned by the County (“Non-County Systems”), which Continental may request to interface with or connect to the County’s networks, internet access, or information technology systems (“County Systems”). Continental shall be responsible for all Non-County Systems, and the County shall be solely responsible for County Systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. If Continental serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then Continental will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data (“Data Protection Rules”). If Non-County Systems interface with or connect to County Systems, then County agrees upon request from Continental, to use best efforts to attempt to implement the changes to the County Systems that Continental reasonably requests and believes are necessary or prudent to ensure Continental’s compliance with the Data Protection Rules.

15. 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.

16. Governing Law and Venue. This Agreement shall be governed by Michigan law without regard to conflict of law principles and jurisdiction for any dispute between the Parties shall be in the state court and/or federal courts of the county of Macomb, state of Michigan.

17. **Press Releases.** Continental shall coordinate with the County Sheriff or his/her designee on any and all press or media releases.

18. **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.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

**Continental Café, Inc., d/b/a
Canteen Correctional Services**

**The County of Macomb
State of Michigan**

By: 
Name: MICHAEL RYSIA
Title: EXECUTIVE V.P.

By: 
Name: MARK DEWITT
Title: DEPUTY COUNTY EXECUTIVE

Effective 092611

Exhibit A
Financial Arrangements

<u>Number of Inmates</u>	<u>Cost per Meal – with Commissary</u>
801-900	\$1.066
901-1000	\$1.014
1001-1100	\$0.9653
1101-1200	\$0.9228
1201-1300	\$0.8975
1301-1400	\$0.8830

To: Mark Deldin
Deputy County Executive
From: Michelle M. Sanborn, J/A



Mark A. Hackel
County Executive

SUBJ: CONTRACT/PROGRAM REVIEW REQUEST

Title: PRISONER FOOD SERVICE AGREEMENT

Dept: Jail Administration

Contact Person: Michelle M. Sanborn

Date: September 21, 2011

Telephone Number: 586-307-9348

Initial Revision Extension Final Other:

Office of Corporation Counsel

Approved: [Signature]

Dated: 9-21-11

Department
Received Stamp

Rejected*: _____

Dated: _____

Finance Department

Approved: [Signature]

Dated: 9-22-11

Department
Received Stamp

Rejected*: _____

Dated: _____

Risk Manager

Approved: [Signature]

Dated: 9/21/11

Department
Received Stamp

Rejected*: _____

Dated: _____

Office of County Executive

Approved: [Signature]

Dated: 9-22-11

Department
Received Stamp

Rejected*: _____

Dated: _____

Contract/Program Synopsis:

Initial three year contract to provide Food service at the Macomb County Jail.