## 2. OPERATIONAL RESPONSIBILITIES:

**A. Facilities And Equipment:** The County shall, at its expense, provide ARAMARK with existing preparation kitchens and serving lines, office and storage facilities at the Facility, completely equipped and ready to operate, together with such heat, refrigeration and utilities services (including local telephone service and high-speed internet access) as may be reasonably required for the efficient performance of the Agreement. ARAMARK shall be responsible for the cost of long distance telephone service.

The County shall furnish building maintenance services for the Facility. The County shall furnish and maintain an adequate inventory of service ware, thermal tray and delivery equipment, pots, pans, beverage containers and utensils at the Facility. ARAMARK shall provide preventive maintenance and food service equipment repairs; provided, however, that the aggregate cost of such maintenance and repairs shall not exceed One Hundred Thousand Dollars ($100,000) per year. In the event that County maintenance personnel assist in maintaining any food service equipment, ARAMARK shall be responsible for the cost of all parts and supplies, subject to the $100,000 limit on ARAMARK's responsibility for preventive maintenance and food service equipment repairs. In the event food service equipment preventive maintenance and repair costs exceed $100,000 for any year, the County shall be responsible for the excess maintenance and repair costs including the cost of parts and supplies. Notwithstanding ARAMARK's general obligation to repair the County's food service equipment, ARAMARK shall not be required to repair any equipment whose cumulative repair costs over a rolling period of one year exceed the value of the equipment. Such equipment shall be replaced by the County at the County's expense.

Should the County fail to provide the equipment, repair, maintenance and replacement services or supplies described in this Section, within a reasonable time after notice from ARAMARK to do so, ARAMARK may, in its discretion and at its option, choose to provide, and bill the County for, such equipment, repair, maintenance and replacement services or supplies. In that event, the County shall pay for such equipment, repair, maintenance and replacement services or supplies at the prices billed by ARAMARK. Such prices shall be competitive with the cost of obtaining such products or services from an independent source in the open market.

**B. Emergency Plan:** ARAMARK shall submit a contingency emergency plan to provide for meal 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 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 or other disorder, strike or other work stoppage, act of terrorism, fire, flood, or any other act not within the control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent.

**C. Meal Delivery:** ARAMARK personnel shall distribute meals at each Facility's serving line, shall transport such meals to appropriate areas including Buildings E & J and feed-in areas including parts of the Main Building, and shall return all trays and delivery equipment to the appropriate Facility's kitchen, in a timely manner.

**D. Food Products And Cleaning Supplies:** ARAMARK shall purchase and pay for all food products and kitchen cleaning supplies. Products purchased for use in the food service operation shall be the property of ARAMARK.

**E. Sanitation:** ARAMARK 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. The County shall provide janitorial services outside the kitchen facilities provided to ARAMARK. 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 provision of dumpsters for trash and garbage from the designated food service areas and for the servicing of the dumpsters and other waste containers.

**F. Personnel:** ARAMARK shall provide on-site management and supervisory personnel, and from its regional and headquarters locations, administrative, dietetic, purchasing, equipment consulting and personnel advice and supervision. The County shall provide inmate workers at each Facility kitchen. The number of inmates required shall be determined by the County liaison and ARAMARK's district manager prior to the commencement of operations but in no event, less than the number specified in the County's Request for Proposals. Such inmates shall be assigned duties in the food service operation that may include sanitation, food preparation and production, and storeroom functions.

The County acknowledges that ARAMARK has invested considerable amounts of time and money in training its management and supervisory employees in systems, procedures, methods, forms, reports, formulas, computer programs, recipes, menus, plans, techniques and other valuable information which is proprietary and unique to ARAMARK's manner of conducting its business and that such information is available, on a confidential basis, to ARAMARK's management and supervisory employees. Therefore, the County agrees that management and supervisory employees of ARAMARK shall neither be hired by the County for the term of this Agreement and twelve (12) months thereafter, nor shall the County permit management and supervisory employees of ARAMARK to be employed on the County's premises for a period of twelve (12) months subsequent to the termination of this Agreement (unless such employees were formerly employees of the County). For the purpose of this prohibition, "management and supervisory employees" shall be defined as those persons who have directly or indirectly performed management or professional services on the County's premises at any time during the twelve (12) month period immediately preceding termination of this Agreement.

The County retains the right to thoroughly investigate any current or prospective employees assigned to each Facility, subject to applicable Federal, state and local laws and regulations, including but not limited to, the Federal Polygraph Protection Act, as amended. If

ARAMARK incurs any costs, retroactive wages and damages, as a result of any personnel action taken by the County or by ARAMARK at the direction of the County, which ARAMARK would not have taken but for the County's direction, the County shall reimburse ARAMARK for such costs.

All employees of ARAMARK who shall regularly enter the Division of Corrections must first clear a criminal background check and be issued a Division ID card. Such background check shall be performed by the Division following the same standards as it applies to its own employees. This background check will be performed at the County's expense and shall not take more than 5 business days.

**G. Equal Employment Opportunity:** ARAMARK and the County mutually agree that they shall not discriminate against any employee or applicant for employment or on any matter directly or indirectly related to employment, because of race, color, religion, sex, sexual preference, national origin, physical or mental handicap where not relevant to the job, height, weight, age, marital status, or other criteria made illegal by state or federal law or the County policy. In addition, ARAMARK agrees to take affirmative steps to ensure that applicants are employed, and that employees are treated, during employment, without regard to the criteria listed above.

**H. Health Examinations:** ARAMARK shall cause its employees assigned to duty at either Facility to submit to periodic health examinations as required by law, and to submit satisfactory evidence of compliance with all health regulations to the County upon written request.

**I. Insurance And Indemnification:** 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.

ARAMARK agrees to defend, indemnify and hold harmless the County, its officers, employees, agents and servants for claims for death, bodily injury and damage to tangible property 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 caused by inmates nor for damage or injury caused by the County, its employees, officers, agents or servants. 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.

To the extent permitted by applicable law, the County agrees to defend, indemnify and hold ARAMARK harmless from any liability claim made by or through such persons against ARAMARK (except for claims for death, bodily injury or property damage caused by ARAMARK's sole negligence or a wrongful act of ARAMARK in its performance of this Agreement). Each party shall promptly notify the other of any claim for which indemnity is sought, and shall cooperate fully with the other party in the investigation, defense, and settlement of such claim. The indemnifying party shall have the sole discretion to defend and settle such claim. Notwithstanding the foregoing, ARAMARK understands and agrees that Shelby County Government is a governmental entity, as defined by Tennessee Code Annotated Section 29-20-101 et seq., and is self-insured for acts of negligence of its officers and employees. The County's liability shall be limited to the provisions of the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated, sections 29-20-101 et seq., for causes sounding in tort.

**J. 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. This shall not be interpreted to require County personnel to be present with ARAMARK employees when inmates are present; provided, however, in no event shall ARAMARK be responsible for the security of any inmate beyond ensuring the inmates are properly supervised in the manner in which they perform their assigned duties, and the Shift Commander and or Communications is promptly notified of any security breach or threat.

**K. License, Fees, Permits, And Taxes:** ARAMARK shall secure and pay for all federal, state and local licenses, permits and fees required for the food service operations. Except that ARAMARK understands and agrees that the County is a governmental entity that is exempt from taxation. In the event a newly enacted tax is assessed to ARAMARK under the terms of this agreement, or the County's exemption from taxation changes, the County shall reimburse ARAMARK for such tax.

**L. Independent Contractor:** The County's employees, affiliates, and/or inmates are not employees of ARAMARK. Accordingly, County shall be solely responsible for, and ARAMARK shall have no obligation with respect to (1) withholding of income taxes, FICA, or any other taxes or fees; (2) participation in any group insurance plans available to employees of County; (3) participation or contributions by County to the Public Employment Retirement System; (4) accumulation of vacation leave or sick leave; or (5) unemployment compensation coverage provided by County.

## 3. FINANCIAL AND ACCOUNTING ARRANGEMENTS:

**A. Meal Service and Prices:** ARAMARK shall provide meals to the County's inmates, staff and visitors at the per meal prices set forth in **Attachment A**. 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. Special religious meals requested by the administration or religious authority, such as Passover or Ramadan meals, shall be provided at the Diet Meal price set forth in Attachment A. Prepackaged meals shall be provided at a price to be mutually agreed in advance. The County shall make available to ARAMARK each day the actual number of inmates, based upon the midnight census, in order to determine the required number of meals for inmates. Staff meals that are necessary shall be determined by ARAMARK in order to have adequate food available for County staff assigned to work that day. When the midnight census is not available in a timely manner, ARAMARK shall prepare and will be paid based on the midnight census for the previous day.

The initial inmate meal menus, including required portion sizes, are set forth in Attachment "C". Changes in the menu must be jointly approved in advance by the Director of Corrections or his designee and ARAMARK without a formal amendment to this Agreement. Staff meals shall be different from the inmates' meals and menus.

In the event the number of actual inmate meals served exceeds the midnight census, ARAMARK and the County shall mutually agree upon a method to be used to count inmate meals and ARAMARK shall then be entitled to charge the County for the greater of the number of inmate meals ordered (based on the midnight census) and the number of inmate meals served.

**B. Price Adjustments:** The per meal prices stated in this Agreement are firm for the period beginning on the Effective Date and ending on June 30, 2011.

**C. Capital Investment:** ARAMARK agrees to make a capital investment to County in an amount up to One Hundred Thousand Dollars ($100,000.00) (the "Investment"). County agrees to invest the Investment in food service facility renovations and in the purchase and installation of food service equipment in the County's kitchen facilities. Any equipment purchased by ARAMARK on County's behalf shall be purchased as a "sale-for-resale" to the County. County shall hold title to all such equipment upon such resale. County acknowledges that it is a tax-exempt entity and will provide ARAMARK with a copy of the appropriate tax-exempt certificate.

The Investment shall be amortized on a straight-line basis over a period of five (5) years, commencing upon the complete expenditure of the Investment. Upon expiration and non-renewal or termination of this Agreement by either party for any reason whatsoever prior to the complete amortization of the Investment, County shall reimburse ARAMARK for the unamortized balance of the Investment as of the date of expiration or termination.

**D. 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 an authorized representative at the Facility where the service is to be provided at mutually agreed upon prices for such services.

ARAMARK's Fresh Favorites program shall be initiated on a date to be mutually agreed upon by the parties.

**E. Initial Four-Week Payment:** Each County fiscal year (July 1 through June30), prior to the commencement of operations hereunder, ARAMARK shall submit to the County an invoice for an amount equal to the estimate of ARAMARK's total meal billings for one (1) four-week accounting period (the "Initial Payment"). This payment shall be applied against ARAMARK's billing for the final month of the County's fiscal year.

**F. Billing:** ARAMARK shall submit to the County by the tenth ($10^{th}$) day of every month, for the preceding month, an invoice for inmate meals based on the midnight census and new arrivals, if any, and for staff meals ordered or served, whichever is greater, and other goods or services provided by ARAMARK, if any. The invoice shall reflect the preceding month's food services detailing the exact number of meals served on a daily basis as follows:

1. Actual number of adult inmate 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 and annual summary of meals, services and credits. This summary shall be forwarded to the Facility Administrator or his designee each month.

**G. Manner of Payment:** Payment shall be made by check payable to ARAMARK Correctional Services, LLC within fifteen (15) days after receipt of the invoice. Such payment shall be sent to:

ARAMARK Correctional Services, LLC
P.O. Box 406019
Atlanta, Georgia 30384-6019

(Payments only shall be sent to this address, all other correspondence shall be sent to the address set forth in Section 9 hereof.)

**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 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 inmate population or the availability of inmate labor; Federal, State and local sales, and other taxes outside ARAMARK's control, then ARAMARK shall give County written notice of such increase or change, and within thirty (30) calendar days after such

notice, ARAMARK and 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, modifications to the menu, or modifications to ARAMARK's scope of services. ARAMARK understands and agrees that any material adverse change may be subject to approval by the County's Purchasing Administrator and/or subject to approval of additional funding by the Shelby County Commission.

5. **FEDERAL SURPLUS COMMODITIES:** ARAMARK may use available U.S. Department of Agriculture commodities in providing food service to the inmates and staff of each Facility. ARAMARK shall comply with the rules and regulations of the U.S. Department of Agriculture in securing said commodities. All books and records pertaining to the meal preparation and delivery for each Facility shall be available for a period of thirty-six (36) months after the close of federal fiscal year (October 1 through September 30) to which they pertain for inspection and audit by representatives of the United States Department of Agriculture, and/or the General Accounting Office at any reasonable time or place. Commodities received shall be used solely for the benefit of the County.

ARAMARK shall credit the invoice presented to the County for the value of U.S. Department of Agriculture commodities used, minus any shipping or handling charges actually incurred. The value of the commodities shall be the value set forth on the invoice, bill of lading, delivery receipt or other similar document from the U.S. Department of Agriculture or distributing State agency. If no value is set forth, the County and ARAMARK shall together contact the U.S. Department of Agriculture or distributing State agency to ascertain such value.

6. **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).

7. **TERM OF AGREEMENT:** The initial term of this Agreement shall commence on August 21, 2008, and shall continue through June 30, 2009. By mutual agreement, the term of this Agreement may be renewed for two (2) additional one year periods at the then existing terms and conditions. Thereafter, the County and ARAMARK may extend this Agreement provided that the extension period, services to be provided, and the prices thereof, for the extension period, have been mutually agreed upon by the County and ARAMARK.

8. **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 thirty (30) 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. For purposes of this Paragraph 8.B, breach or default by

ARAMARK is defined as:

(i) ARAMARK or any of its principals, partners or members, including the limited liability company itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to government bidding and governmental contracting;

(ii) ARAMARK has subcontracted, assigned, delegated, or transferred its rights, obligations or interests under this Agreement in violation of Paragraph 12 hereof.

(iii) ARAMARK has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of ARAMARK's assets.

**C. 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 may choose, 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.

**9. 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 below, or such other address as it may designate, by notice given as herein provided:

County: Shelby County Division of Corrections
1045 Mullins Station Road
Memphis, TN 38134-7723
Attn: Director

and

Shelby County Government
Contract Administration
160 N. Main, St., Suite 550
Memphis, TN 38103

ARAMARK: ARAMARK Correctional Services
2300 Warrenville Road
Downers Grove, IL 60515

and

ARAMARK Correctional Services, LLC
ARAMARK Tower
1101 Market Street
Philadelphia, PA 19107
Attn: President

**10. 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.

**11. 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.

**12. 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.

**13. PRESS RELATIONS:** ARAMARK shall coordinate and have advance approval of the Director of Corrections on any and all press or media releases.

**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.

**17. SUBJECT TO FUNDING**: The contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for the contract are not appropriated by Shelby County Government for any of its fiscal period during the term hereof, then the contract will be terminated. In the event of such termination, ARAMARK shall be entitled to receive compensation for any satisfactory work performed as of the termination date and shall be reimbursed for the unamortized balance, if any, due ARAMARK pursuant to Paragraph 3.C hereof.

**18. ORDER OF PRECEDENCE:** It is understood and agreed between the parties that in the event of a variance between the terms and conditions of the Agreement and any exhibit, attachment or amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the following order of precedence applies: (a) the body of the Agreement; (b) Attachment C; and (c) Attachment B.

**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.

[The remainder of this page is left blank intentionally.]

**ARAMARK CORRECTIONAL SERVICES, LLC**

By:_____
Name: David Kimmel
Title: Vice President, Finance

**SHELBY COUNTY GOVERNMENT**
State of Tennessee

By:_____
Name: AC Wharton Jr.
Title: County Mayor

APPROVED:

_____
Contract Administrator
Assistant County Attorney

COMPANY ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared David Kimmel, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be an officer authorized by appropriate action and/or Resolution to execute the preceding instrument of ARAMARK Correctional Services, LLC, the within named bargainer, a limited liability company, and that he as such Vice President, Finance, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as Vice President, Finance.

WITNESS my hand and official seal at office this _____ day of _____, 2008.

_____
Notary Public

My Commission Expires: _____

**Attachment A**
**Shelby County Corrections Center**

| | Effective 7/1/2008 - 6/30/2009 | Effective 7/1/2009 - 6/30/2010 | Effective 7/1/2010 - 6/30/2011 |
|---|---|---|---|
| Inmate Meals | $1.253 | $1.303 | $1.355 |
| Trusty Meals (including kitchen) | $1.253 | $1.303 | $1.355 |
| Diet Meals* | $1.820 | $1.893 | $1.969 |
| AOC Meals | $1.253 | $1.303 | $1.355 |
| Officer Meals | $1.820 | $1.893 | $1.969 |

The foregoing prices are based on the 3000 calorie Menu Option A in ARAMARK's proposal. All menus may be changed from time to time as mutually agreed upon by the parties without formally amending this Agreement.

*Special religious meals, such as meals for Passover or Ramadan, shall be provided at the Diet Meal price.