

Board of Supervisors Agreement No. _____
County (Munis) Agreement No. _____
Vendor No. 49252

**COUNTY OF MENDOCINO
STANDARD SERVICES AGREEMENT**

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and Elior, Inc. dba Summit Food Service, LLC, hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONTRACTOR for its kitchen and laundry services for the Mendocino County Jail; and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONTRACTOR to provide the services described in Exhibit "A", and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- | | |
|--------------|--|
| Exhibit A | Definition of Services |
| Exhibit B | Payment Terms |
| Exhibit C | Insurance Requirements |
| Exhibit D | Mendocino County ePayables Information |
| Appendix A | Certification Regarding Debarment, Suspension and Other Responsibility Matters |
| Addendum A-1 | CLETS Requirements for Escorted Contractors |

The term of this Agreement shall be from the date this Agreement becomes fully executed by all parties (the "Effective Date"), and shall continue through January 30, 2026. The Agreement shall renew for two additional one-year periods, upon mutual written agreement of the Parties at least sixty (60) days prior to the expiration date or unless this Agreement is otherwise terminated as set forth herein.

The compensation payable to CONTRACTOR hereunder shall not exceed Two Million Six Hundred Sixteen Thousand Dollars (\$2,616,000 / \$872,000 per year) for the three-year term of this Agreement.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

Darren Brewster Jan 17, 2023
Darren Brewster (Jan 17, 2023 10:27 PST)

SHERIFF'S OFFICE DATE

Budgeted: ☒ Yes ☐ No

Budget Unit: 2510

Line Item: JA - 862080 and 862090

Grant: ☐ Yes ☒ No

Grant No.: n/a

COUNTY OF MENDOCINO

By: _____
GLENN MCGOURTY, Chair
BOARD OF SUPERVISORS

Date: _____

ATTEST:

DARCIE ANTLE, Clerk of said Board

By: _____
Deputy

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

DARCIE ANTLE, Clerk of said Board

By: _____
Deputy

INSURANCE REVIEW:

By: Darcie Antle
Risk Management

01/17/2023
Date: _____

CONTRACTOR/COMPANY NAME

DocuSigned by:
By: Brittany Mayer-Schuler
/EED6E973A74444

Date: 1/18/2023

NAME AND ADDRESS OF CONTRACTOR:

Elior, Inc. dba Summit Food Service, LLC
500 East 52nd St North, Sioux Falls, SD 57104

Attn: April Lee

Ph: (208) 966-1084
Em: april.lee@summitfoodservice.com

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
County Counsel

By: Brina Blanton
Deputy

01/17/2023
Date: _____

EXECUTIVE OFFICE/FISCAL REVIEW:

By: Christopher
Deputy CEO

01/17/2023
Date: _____

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐ n/a

Mendocino County Business License: ☒ Exempt

Exempt Pursuant to MCC Section: March 21, 2017, Approval of Exemption, Item No. 4(p)

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable), each party

agrees that it will defend, indemnify and hold harmless the other party, its officers, directors, parent corporation, affiliates, employees and agents ("Indemnified Parties") against any and all liabilities, losses, damages, injuries, deaths, reasonable litigation expenses (including, without limitation, reasonable attorneys' fees), costs and costs of court (collectively, "Damages") which Indemnified Parties may hereafter sustain, incur or be required to pay arising out of the other party's negligent acts, omissions or failure to perform obligations pursuant to this Agreement. Provided, however, neither party shall be required to defend, indemnify and hold harmless the other party for any intentional or criminal actions of the other party or its employees, visitors or invitees. COUNTY agrees to defend, indemnify and hold harmless CONTRACTOR'S Indemnified Parties from all Damages which may arise due to any act or omission of a CONTRACTOR Party made in compliance with a COUNTY'S rules or requirements.

3. **INSURANCE AND BOND:** CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subcontractors' employees.

5. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify Mendocino County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.
 - c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
- 6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto as funding permits.

If COUNTY over pays CONTRACTOR for any reason, CONTRACTOR agrees to return the amount of such overpayment to COUNTY, or at COUNTY's option, permit COUNTY to offset the amount of such overpayment against future payments owed to CONTRACTOR under this Agreement or any other agreement.

In the event CONTRACTOR claims or receives payment from COUNTY for a service, reimbursement for which is later disallowed by COUNTY, State of California or the United States Government, the CONTRACTOR shall promptly refund the disallowance amount to COUNTY upon request, or at its option COUNTY may offset the amount disallowed from any payment due or that becomes due to CONTRACTOR under this Agreement or any other agreement.

All invoices, receipts, or other requests for payment under this contract must be submitted by CONTRACTOR to COUNTY in a timely manner and consistent with the terms specified in Exhibit B. In no event shall COUNTY be obligated to pay any request for payment for which a written request for payment and all required documentation was first received more than six (6) months after this Agreement has terminated, or beyond such other time limit as may be set forth in Exhibit B.
- 7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.

8. **OWNERSHIP OF DOCUMENTS:** CONTRACTOR hereby assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents, if created solely for the benefit of the COUNTY and not those items created by the CONTRACTOR for general business use, (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's subcontractors or third parties at the request of the CONTRACTOR (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONTRACTOR's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

The COUNTY's rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

9. **CONFLICT OF INTEREST:** The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
10. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided

that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: Mendocino County Sheriff's Office
951 Low Gap Rd.
Ukiah, CA 95482
Attn: Fiscal – Megan Miltimore

To CONTRACTOR: Elior, Inc. dba Summit Food Service, LLC
500 East 52nd Street North
Sioux Falls, SD 57104
ATTN: April Lee

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. USE OF COUNTY PROPERTY: CONTRACTOR shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:
CONTRACTOR certifies that it will comply with all Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
 - b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to

its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law.

- d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONTRACTOR shall include the provisions set forth in this paragraph in each of its subcontracts.
13. **DRUG-FREE WORKPLACE:** CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
14. **ENERGY CONSERVATION:** CONTRACTOR agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
15. **COMPLIANCE WITH LICENSING REQUIREMENTS:** CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses. To the extent required by law, CONTRACTOR shall display licenses in a location that is reasonably conspicuous. Upon COUNTY's request, CONTRACTOR shall file copies of same with the County Executive Office.

CONTRACTOR represents and warrants to COUNTY that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

16. **AUDITS; ACCESS TO RECORDS:** The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and

maintained by CONTRACTOR within the County of Mendocino, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County or CONTRACTOR shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONTRACTOR's books and records, including, but not limited to, travel, lodging and subsistence costs. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

17. **DOCUMENTS AND MATERIALS:** CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONTRACTOR under this Agreement.
18. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
19. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR thirty days' notice. Such notice shall be in writing and may be issued by any county officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person designated by the County Board of Supervisors. In the event that the COUNTY should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its kitchen and laundry services for the Mendocino County Jail shall not exceed \$2,616,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.

Contractor may suspend or terminate this Agreement without cause at any time upon giving the COUNTY thirty days' notice. CONTRACTOR shall be entitled to

payment for services provided hereunder prior to the effective date of said suspension or termination. Said payment shall be computed in accordance with Exhibit B hereto

20. **NON APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONTRACTOR prior to CONTRACTOR'S receipt of the termination notice.
21. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
22. **VENUE:** All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
23. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
24. **ADVERTISING OR PUBLICITY:** CONTRACTOR shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.
26. **HEADINGS:** Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.

27. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
28. **ASSURANCE OF PERFORMANCE:** If at any time the COUNTY has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
29. **SUBCONTRACTING/ASSIGNMENT:** Neither Party shall subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the other Party's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
 - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
30. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination or expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years.
31. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
32. **INTELLECTUAL PROPERTY WARRANTY:** CONTRACTOR warrants and represents that it has secured all rights and licenses necessary for any and all

materials, services, processes, software, or hardware ("CONTRACTOR PRODUCTS") to be provided by CONTRACTOR in the performance of this AGREEMENT, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights.

CONTRACTOR further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONTRACTOR PRODUCTS provided to COUNTY under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the COUNTY relating to a CONTRACTOR PRODUCT, CONTRACTOR shall indemnify and defend the COUNTY pursuant to Paragraph 2 of this AGREEMENT.

In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.

Nothing in this Agreement is intended to grant any rights to COUNTY under any patent, copyright, trademark, trade name, trade secret or other proprietary right of CONTRACTOR (whether now owned or hereafter developed or acquired), all of which are reserved to CONTRACTOR.

33. ELECTRONIC COPIES

The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.

34. COOPERATION WITH COUNTY

Contractor shall cooperate with County and County staff in the performance of all work hereunder.

35. PERFORMANCE STANDARD

Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. If County determines that any of Contractor's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following:

(a) require Contractor to meet with County to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of paragraph 19 (Termination) or (d) pursue any and all other remedies at law or in equity.

36. LIMITATION OF LIABILITY

CONTRACTOR's entire liability and COUNTY's exclusive remedy for damages arising out of or related to this Agreement or the Food Services shall not exceed the total amount paid by COUNTY to CONTRACTOR for the current term of this Agreement (not to exceed three (3) years). CONTRACTOR SHALL NOT BE LIABLE FOR LOSS OF BUSINESS, BUSINESS INTERRUPTION, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR FOR LOSS OF REVENUE OR PROFIT IN CONNECTION WITH THE PERFORMANCE OR FAILURE TO PERFORM THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY.

37. ATTORNEYS' FEES

In any action to enforce or interpret the terms of this agreement, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

CONTRACTOR shall provide the following services:

- A. CONTRACTOR shall provide a customized operational plan, along with a policy and procedures manual to be used as the framework for consistent service that exceeds expectations.
- B. CONTRACTOR will ensure that:
 - 1. All meals will be delivered to the designated service points by COUNTY staff.
 - 2. All carts will be loaded with the correct number of meals and related items.
 - 3. All special diet meal trays will be clearly identified.
 - 4. These procedures will be repeated at every meal service.
 - 5. All trays and related meal service support items are properly cleaned.
 - 6. Booking staff will be contacted daily to receive the sack meal order for the next day.
 - 7. Early breakfast meals for inmates scheduled to appear in court will be provided.
 - 8. Food served shall meet or exceed Title 15 requirements (15 C.C.R. § 1240 et seq.)
- C. CONTRACTOR will follow COUNTY procedures for meal counts as indicated directly from COUNTY staff.
- D. CONTRACTOR will work with inmates to offer hands-on education, training, and placement assistance to give them the tools and confidence needed for successful re-entry.
- E. CONTRACTOR will provide menus that will include:
 - 1. Quality ingredients and menu variety that meets COUNTY cost and nutrition requirements.
 - 2. Proven recipes approved by ACA, NCCHC, ICE, RLUPA, and state and local laws and regulations.
 - 3. Special diets supported by a team of professional dietitians.
 - 4. Sack meal menus that incorporate standard calorie requirements.
 - 5. High quality work release meals that ensure trustees are appropriately rewarded per COUNTY requirement.
- F. CONTRACTOR will utilize modified menus to accommodate a multitude of religious and lifestyle diets, meeting all RDA, ACA, NCHHCA, RLUPA, and DRI standards. A religious diet will be provided for individuals who follow various religious dietary laws whose needs cannot be met by the standard menu. COUNTY designee will order the appropriate religious diet for the individual and menus will be produced according to procedures in the Summit Diet Manual.
- G. CONTRACTOR will provide any sack meals requested by COUNTY. Sack meals will contain approximately one-third of the minimum daily nutrition requirement

and will include: Two (2) sandwiches, chips/side salad, fresh fruit, and a beverage.

- H. CONTRACTOR will develop and implement informed kitchen practices, innovative food recovery programs, and energy management that include the following:
1. Train kitchen staff on proper portioning and prepping techniques to minimize overproduction.
 2. Quality ingredients and tested recipes that will be enjoyed and not thrown away.
 3. Strict food safety and equipment monitoring practices to avoid spoilage or mishandling.
 4. Composting programs.
 5. Utilization of quality licensed waste removal/recycling partners.
 6. Bio-disposal.
 7. Turning off lights and equipment when not in use.
 8. Pre-heating ovens only the length of time required to reach proper temperatures.
 9. Proper use of refrigeration and defrosting techniques.
 10. Preventive maintenance on equipment.
 11. Sustainable cleaning products.
- I. COUNTY will be responsible for maintenance and repairs of equipment. Except that any repairs required as a result of negligence of CONTRACTOR's employees (or CONTRACTOR-supervised inmates) will be the responsibility of CONTRACTOR.
1. CONTRACTOR will not allow untrained employees to use facility equipment.
 2. CONTRACTOR will inventory and assess equipment frequently to ensure everything needed to prepare meals is in good working order.
 3. CONTRACTOR will immediately discuss issues or necessary repairs with COUNTY staff.
- J. CONTRACTOR will have all manuals required on hand, updated annually, and ensure team members are trained on the required elements regularly. These include, but are not limited to: State DHEC Regulations for Retail Food Establishments, State DHEC Minimum Standards for Licensing Hospitals and Institutional General Infirmaries, State Minimum Standards for Local Detention Facilities and Local Juvenile Detention Facilities, Operations Manual ICE Performance-Based National Detention Standards, ACA Standards for Adult Local Detention Facilities, AJA Standards for Adult Local Detention Facilities, NCCHC Jail Health Standards and Juvenile Health Standards, The Religious Land Use and Institutionalized Persons Act of 2000, The Prison Rape Elimination Act, and the National Fire Protection Association (NFPA), International Fire

Service Training Association (IFSTA) and International Building Code (IBC) Fire Codes.

- K. CONTRACTOR shall conduct Quality Assurance Inspections at a minimum of quarterly and shall cover critical areas such as:
1. Safety and security
 2. Food safety and sanitation
 3. Personal hygiene and infection control
 4. Food preparation and meal quality
 5. Management systems and training
- L. CONTRACTOR shall be responsible for placing food orders to ensure two weeks of inventory are on-hand to prepare menus, as well as any emergency supplies. Orders are placed through approved suppliers, and order guides are set up by CONTRACTOR's national purchasing team.
- M. CONTRACTOR agrees to purchase all paper, plastic, small, and service wares. COUNTY is responsible for purchasing any additional (or replacement) trays, racks, warming carts, and industrial kitchen equipment (stoves, tilt skillets, etc.)
- N. CONTRACTOR shall handle all laundering needs. CONTRACTOR will manage inmate laundry workers to ensure safety through policies, procedures and guidelines. CONTRACTOR shall promote a safe and clean work environment. CONTRACTOR's laundry program shall include the proper use and storage of all laundry chemicals, proper inmate supervision, equipment training, simple equipment cleaning techniques, bio-hazard handling and the proper lifting techniques to avoid injury to all inmate workers as well as civilian staff.
- O. CONTRACTOR shall provide laundry services such as washing, extracting, drying, folding and light mending services as necessary. CONTRACTOR will maintain all required licenses, permits, and certificates required by law.
- P. CONTRACTOR shall use non-allergic soaps, detergents and other chemicals. All chemicals used shall be eco-friendly to minimize environmental impact. CONTRACTOR will purchase and pay for all laundry supplies, commodities, and chemicals used in the laundry operation. Additionally, CONTRACTOR shall:
1. Follow all guidelines and operational requirements.
 2. Supervise the receiving, cleaning and re-dispensing of all inmate linens per any existing policies.
 3. Keep daily and monthly records regarding number of loads ran, chemical usage and repair records.
 4. Ensure equipment is being properly used and maintained and personnel, including inmates, will be properly trained before using equipment.

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

A. COUNTY shall pay CONTRACTOR per the following instructions:

1. COUNTY will use 30-day periods from receipt of invoice as a basis for payment for this Agreement.
2. COUNTY will pay CONTRACTOR an annual amount of Eight Hundred Seventy-Two Thousand Dollars (\$872,000) on a cost-plus basis for all services under this contract, based on an inmate population of 300, that will include the following:
 - a. CONTRACTOR will staff one management position seven days per week to oversee the entire operation including food service, laundry and staff dining.
 - b. Menus, food ordering, inventory, training, vocational program and other services required to maintain the food and laundry programs.
 - c. COUNTY will staff all hourly cook positions, as well as one supervisor.
 - d. CONTRACTOR will bill for all costs associated with the management of the program plus a 20% management fee. This includes all food, labor, any labor needed to backfill vacant county positions, chemicals, travel, and other expenses associated with managing the food service and laundry programs.
3. CONTRACTOR will submit an invoice, with a breakout of the actual costs of each billing period, addressed to:

Mendocino County Sheriff's Office
951 Low Gap Road
Ukiah, CA 95482
Attn: Fiscal

OR

Email to: accounting@mendocinosheriff.org

CONTRACTOR will include their County vendor number and County contract number on each invoice.
4. Payments under this agreement shall not exceed Two Million Six Hundred Sixteen Thousand Dollars (\$2,616,000) for the three-year term of this agreement.
5. CONTRACTOR acknowledges that the COUNTY cannot pay CONTRACTOR any amount over the amount identified on page 1 and Exhibit B – Clause 2 as the maximum amount payable under this agreement without amending this agreement.

[END OF PAYMENT TERMS]

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, Contractor's indemnity obligations under Paragraph 2 of this Agreement.

CONTRACTOR shall obtain and maintain insurance coverage as follows:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

CONTRACTOR shall furnish to COUNTY certificates of insurance evidencing the minimum levels described above.

COUNTY and CONTRACTOR waive any and all right of recovery from each other for property damage or loss of use thereof, however occurring, which loss is insured under a valid and collectible insurance policy to the extent of any recovery collectible under such insurance. 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 death or injury. In any event, CONTRACTOR shall not be held liable for any cause to an extent which would exceed effective coverage and dollar limits prevailing under the policies of insurance described in this Agreement.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT D

MENDOCINO COUNTY EPAYABLES INFORMATION

The County of Mendocino is currently making credit card payments to all of our vendors and suppliers who qualify. To qualify, vendors need to currently accept credit card payments. To achieve this more efficient form of payment, the County has partnered with Bank of America and their ePayables credit card program. This electronic initiative will yield many benefits to its participants:

- Expedited receipt of cash – electronic credit card payments provide cash flow benefits by eliminating mail and paper check float
- Elimination of check processing costs
- Remittance data transmitted with payment for more efficient back-end reconciliation
- No collection costs associated with lost or misplaced checks
- Reduced exposure to check fraud
- More efficient handling of exception items
- Fits with existing accounting software – requires no purchase of software, no modifications to existing accounts receivable system and no change to bank accounts.
- Going green with paperless electronic credit card payments help conserve the environment by eliminating printing and mailing of paper checks.

For information regarding the payment process, please email
Auditorap@mendocinocounty.org.

Additional information regarding the Bank of America Program is also available at:

http://corp.bankofamerica.com/business/ci/landing/epayables-vendors?cm_mmc=sb-general_-vanity_-sq01vn000r_epayablesvendors_-na

Appendix A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, and OTHER RESPONSIBILITY MATTERS LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 **Federal Register** (pages 19160-19211).

- (1) The primary principal certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency:
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment tendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification, and
 - (d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the primary principal is unable to certify to any of the statements in this certification, such principal shall attach an explanation.

Brittany Mayer-Schuler

(Type Name)

President

(Title)

DocuSigned by:
Brittany Mayer-Schuler

(Signature)

Elior, Inc. dba Summit Food Service, LLC

(Organization Name)

500 East 52nd Street North, Sioux Falls, SD
57104

(Organization Address)

1/18/2023

(Date)

Addendum A-1

CLETS Requirements for Escorted Contractors

- A. CONTRACTOR shall ensure that all CONTRACTOR'S employees, subcontractors and employees of subcontractors have completed the following forms, training or other requirements, unless waived by MCSO CLETS Coordinator, Rose Britton (all items must be completed):
- CLETS Private Contractor Management Agreement - HDC 0004B
 - CLETS FBI CJIS Security Addendum - HDC 0012
 - Security Awareness Training & signed attendance roster
- B. Forms and information needed to complete these requirements shall be provided by COUNTY. **Contact Rose Britton at brittonr@mendocinosheriff.org or 707-463-4095.**

I certify that I have read and understand the requirements of Addendum A-1 and will comply and keep records for possible audit purposes by the Department of Justice (DOJ).

Brittany Mayer-Schuler

Name (printed)

DocuSigned by:
Brittany Mayer-Schuler

Signature

President

Title

1/18/2023

Date

☐ CLETS Requirements waived by _____. Date _____ *

*Note: This waiver may be rescinded if the onsite/virtual activities change.