PROFESSIONAL SERVICES OPERATING AGREEMENT

THIS AGREEMENT is made and entered into between Kittitas County, Washington (hereinafter referred to as the "County"), and Consolidated Food Management, Inc., a Washington Corporation licensed to do business in the States of Washington and Oregon (hereinafter referred to as "CFM").

For mutual consideration, the County and CFM agree as follows:

SECTION 1. Authorization, Service Area

1.01 CFM shall manage and operate the food service program located within the premises of the County's Corrections facility.

1.02 The County shall provide the kitchen space, facilities, utilities and equipment for the operation of the County's food service, which, however, shall be under the control of CFM, and shall be and remain sole property of the County. "Kitchen" is defined to include all walk-ins, store rooms, freezers, applicable equipment within those areas, and secure sally port.

1.03 The County shall provide adequate office space, furniture and a telephone for business use.

1.04 The County shall assign inmate kitchen helpers to assist the cook in meal preparation, service and sanitation. The County shall remove any such helpers to the extent they do not fully cooperate with CFM's efforts to provide food services under this Agreement.

SECTION 2. Service, Policies, Standards

2.01 CFM shall provide food service to inmates, staff and others as designated by the County on the premises, on such days and at such times as the County shall prescribe.

2.02 CFM shall not use the County's facilities for preparation of food that is to be served in any location other than the County's, unless the County gives permission in writing to do so.

2.03 CFM shall be responsible for the management and operation of the food services on the premises, including but not limited to general supervision of food service areas, recruiting, interviewing, training and direction of CFM food service employees, and the preparation and serving of food and beverages on the premises.

2.04 CFM shall be responsible for purchasing and paying for all food and supplies necessary for complying with this Agreement, and will be reimbursed by the County twice monthly. CFM will submit copies of all invoices for each billing period.

2.05 CFM shall provide input to the County on operating policies for the food service conducted by CFM. Policies shall be set by the County.

2.06 It is understood that the County reserves the right to review and inspect the food service program performed by CFM with respect to the quality and quantity of food served, and the sanitation of equipment and facilities, at any time.

2.07 CFM shall maintain the highest ethical relationships with its customers, employees, suppliers and competitors in the performance of this Agreement.

SECTION 3. Cleaning, Maintenance, Utilities

3.01 CFM shall be responsible for the supervision of washing of dishes, trays, pots, pans, and utensils; cleaning and sanitation of food equipment, counters, serving lines, and dishes; and periodic cleaning, sanitation and housekeeping in the entire kitchen and storage areas.

3.02 The County shall be responsible for maintenance of major equipment, floor drains, light fixtures, and other building maintenance as may be reasonably required by the County.

3.03 The County shall be responsible for the extermination of rodents, vermin, and any and all other unsanitary conditions in the kitchen and storage area.

3.04 The County shall be responsible for disposal of all rubbish and garbage resulting from food service operations. Each day, CFM shall remove all trash to the dumpsters designated by the County.

3.05 The County shall furnish and maintain at its expense all utilities, including but not limited to electricity, water, and telephone service, that are needed for food service operations. Internet service will be available for CFM ordering in the County control room. The County shall not permit any interruptions in utility service, except for an emergency, for circumstances reasonably beyond the control of the County, for necessary repairs, or for improvement of the service. The County will notify CFM as soon as reasonably possible of any interruption or proposed interruption in utility service.

3.06 The County shall supply, maintain and replace all kitchen small wares such as knives, spatulas, ladles, spoons, whips and related cooking utensils; eating utensils; and delivery system equipment.

3.07 Employees of CFM will comply with all County rules of conduct, which the County will provide in written form, to include those relating to security and sanitation. The County may require CFM to immediately remove any of CFM's employees from the County's premises for any reason deemed necessary by the County.

3.08 CFM will neither permit smoking within the Correctional Facility, except those areas that are designated for this purpose, nor permit any unlawful practices of any kind on County premises by CFM's employees. Any and all rules applicable to County Corrections staff shall apply equally to CFM employees.

SECTION 4. Equipment, Fixtures, Furniture, Expendables

4.01 The County shall provide and install at it expense the fixed equipment, fixtures and related furniture necessary to the efficient operation and control the food services to be performed by CFM as determined by the County. The County shall maintain, repair and replace such equipment at its own expense, except repairs or replacements caused by CFM's negligent or intentional acts or omission, which shall be the sole responsibility of CFM.

4.02 CFM shall take all reasonable care in the use of the premises, equipment and other items furnished by the County, less normal wear.

SECTION 5. Personnel

5.01 CFM agrees to staff its operation on the premises in the most efficient manner possible consistent with CFM's and the County's requirements.

5.02 During the term of this Agreement, and one year hereafter, neither CFM nor the County shall hire each other's employees without prior written consent from the other.

5.03 CFM employees who work within the County Corrections Center will be subject to a background investigation. This will be conducted by whomever the Kittitas County Sheriff's Office deems qualified to complete the investigation, and may include interviews of the CFM employees as well as random drug and alcohol testing.

SECTION 6. Equal Employment Opportunity/ Affirmative Action

6.01 In performance of this Agreement, CFM agrees as follows:

a.) CFM will not discriminate against any employee or applicants for employment because of race, color, religion, sex, age marital status, sexual orientation, national origin, or the presence of any physical, mental or sensory handicap. CFM will take Affirmative Action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, marital status, sexual orientation, national origin, or presence of any physical, mental, or sensory handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CFM agrees to post in conspicuous places, available to employees and applicants for employment, such notices concerning Equal Employment Opportunity as may be required by Federal, State or local law, rule or regulation.

b.) CFM will, in all solicitations and advertisements for employees placed by or on behalf of CFM state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, age, national origin, marital status, or presence of any physical, mental, or sensory handicap.

SECTION 7. Insurance, Indemnify, Safety

7.01 CFM shall maintain as a direct cost of operation, the following insurance coverage for CFM employees while performing services hereunder.

a.) Workmen's Compensation as required by law; and

b.) CFM shall secure and maintain in effect at all times during the Work such insurance as will protect CFM and its Additional Insured from all claims, losses, harm, costs, liabilities, damages and expenses arising out of personal injury (including death) or property damages that may result from performance of the work or this Agreement.

All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently Published edition of Best's Reports unless otherwise approved by the County. If an Insurer is not admitted, all insurance policies and procedures for issuing the insurance Policies must comply with Chapter 48.15 RCW and 284-15 WAC.

CFM shall provide proof of insurance for:

Commercial General Liability Insurance.
Coverage limits not less than:
-$1,000,000 per occurrence per project
-$2,000,000 general aggregate
-$1,000,000 products & completed operations aggregate
-$1,000,000 personal and advertising injury, each offense
Certificate Holder - Kittitas County. The Certificate must name the County as additional insured and CFM must provide thirty (30) days written notice to the County of cancellation of the insurance policy

Stop Gap/Employers Liability.
Coverage limits not less than:
-$1,000,000 each accident
-$1,000,000 disease – policy limit
-$1,000,000 disease – each employee
CFM must provide thirty (30) days written notice to the County of cancellation of the Insurance policy.

Commercial Automobile Liability Insurance.
Automobile Liability for owned, non-owned, hired, and leased vehicles, with an MCS 90 endorsement and a CA 9946 endorsement attached if 'pollutants' are to be transported
Coverage limits not less than:
-$1,000,000 combined single limit
CFM must provide thirty (30) days written notice to the County of cancellation of the Insurance policy.

CFM shall furnish the County a certificate of insurance with Endorsements as evidence that policies providing insurance required by this Agreement are in full force and effect.

CFM hereby waives all rights of recourse, including any right to which another may be subrogated, against Kittitas County for personal injury, including death, and property damage. CFM's insurance policies required above shall be primary insurance and shall be non-contributing with any other insurance maintained by Kittitas County.

CFM shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, CFM's employee-owned tools, machinery, equipment, or motor vehicles owned or rented by CFM, or CFM's agents, suppliers or contractors.

CFM shall have sole responsibility for ensuring the insurance coverage and limits required are obtained by subcontractors.

NOTE: No contract shall form until and unless a copy of the Certificate of Insurance with Endorsement, properly completed and in the amount required, is attached hereto.

7.02 CFM hereby releases and shall indemnify, defend, and hold harmless the County, its subsidiaries, affiliates, officers, agents, employees, successors, assigns, and authorized representatives of all of the foregoing from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney fees, costs, and expenses of any kind or nature, including those arising out of injury to or death of CFM's employees, whether arising before or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence of CFM, CFM's sub-contractors, or of anyone acting under CFM's direction or control, or on CFM's behalf in connection with the performance of this Agreement. The County shall be indemnified and held harmless to the fullest extent permitted by law. CFM expressly waives its immunity under industrial insurance, Title 51 RCW, in relation to claims by and/or against the County; however, this provision does not otherwise waive immunity in relation to claims by CFM employees against CFM. This waiver was mutually negotiated by the parties. If any portion of this indemnity clause is invalid or unenforceable, it shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

CFM hereby agrees to require all its sub-contractors or anyone acting under its direction, control, or on its behalf in connection with, or incidental to the performance of this Agreement to execute an indemnity clause identical to the preceding clause, specifically naming the County as indemnitee.

7.03 CFM agrees to notify the County, promptly in writing of any death, serious injury, or serious damage arising out of its operations on the County's premises, and to comply at all times with the requirements and provisions of the Occupational Safety and Health Act and related rules and regulations.

SECTION 8. Laws, Licenses and taxes

8.01 CFM shall comply with all Federal, State and local laws, regulations and requirements applicable to the services and operations provided herein, and applicable Federal and State wage and hour requirements.

8.02 CFM shall obtain any and all licenses or permits necessary for the food service operation on the premises, as a direct cost of operation.

8.03 In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Kittitas. This Agreement shall be governed by the law of the State of Washington

SECTION 9. Additional Services, Evaluations, Performance

9.01 The County has the right to request CFM to render additional food services on the premises, including but not limited to special functions, banquets, parties, etc., reasonably related to CFM's services under this Agreement; including modified diet meals when authorized in writing by the County medical staff. The menu, amount and cost of such additional services shall be as mutually agreed in writing in advance by the County and CFM.

9.02 CFM shall require that a member of its resident management staff on the County's premises be available for food service meetings on a regular basis, as determined by the County, as well as participate in mutually agreeable activities, promotions and Communications campaigns related to its food service program.

9.03 The County reserves the right to change any meal schedule and agrees to give CFM at least twenty –four (24) hours advance notice of such changes, except in an emergency, when as much advance notice as possible will be given.

SECTION 10. Financial and Accounting

10.01 CFM shall manage and operate the County's food service on Reimbursable Cost and Management basis as follows:

10.02 To provide food service of three meals per day, seven days per week for inmates, staff and others as designated by the County Corrections Facility.

10.03 CFM will submit a weekly invoice to the County, for reimbursement of food and supplies

purchased for the County by CFM, and payment of the management services, as indicated by the following bid schedule. The County will pay CFM twice monthly. Upon non-payment of invoices, stoppage of services shall occur and supersede any clause within this contract.

Daily Meals	Cost per Meal 2011
200 - 219	1.256
220 - 239	1.122
240 - 259	1.074
260 - 279	1.024
280 - 299	0.979
300 - 319	0.960
320 - 339	0.939
340 - 359	0.896
360 - 379	0.887
380 - 400	0.883

10.04 All records of CFM bearing upon food service operations on the County's premises shall be maintained by CFM. CFM shall keep accurate records and accounts of all operating costs in connections with its operation of the food service and this Agreement hereunder. Upon reasonable notice, the County shall have the right to inspect, audit and copy, at any time during business hours, and at the principal place of business of CFM, such books and records that pertain to this Agreement. All such records shall be kept on file for six (6) years from the year during which they were created. Upon receiving notice of a public records request or of pending litigation that may involve records related to this Agreement, the County will contact CFM to discuss additional records retention. The County shall have the right to conduct audits, reviews and inspections of the food service operation.

10.05 CFM shall conduct its operations on the County's premises in the most professional and efficient manner possible consistent with the County's policies, facilities, and good food service practices, and in accordance with applicable government regulations.

10.06 In the event CFM has failed to perform any obligation to be performed by CFM under this agreement within the time set forth in this Agreement, then the Country may, upon written notice, withhold all monies due and payable to CFM, without penalty, until such failure to perform is cured or otherwise adjudicated.

10.07 If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. As long as the County provides CFM with

notice of any funding deficiency, no penalty or expense shall accrue to the County in the event this provision applies. If sufficient funds are not appropriated, this shall cause immediate termination of contract and the stopping of services by CFM.

SECTION 11. Term, Renewal, Termination

11.01 This Agreement shall be effective for the term of twenty-four (24) months, beginning _____, 2011 and shall be renewed automatically thereafter on its anniversary date for one year periods, unless either party advises the other in writing sixty (60) days before renewal date, of their intent not to renew.

11.02 Either party may terminate the agreement by giving the other party not less than sixty (60) days advance written notice of intention to terminate, at any time during the term of this agreement.

11.03 Upon termination of this Agreement, CFM shall vacate all parts of the premises occupied by CFM in the same condition as made available to CFM, reasonable wear and tear accepted.

11.04 No change, amendment or modification of any provisions of this agreement shall be valid unless set forth in a written instrument signed by the party to be bound thereby.

SECTION 12. Notice

12.01 Any notice required hereunder shall be deemed to have been given if delivered in writing personally to, or three business days after being sent a registered or certified United States mail return receipt requested and addressed as follow:

a.) THE COUNTY: Kittitas County Corrections
205 West Fifth Street
Ellensburg, WA 98926

b.) CFM: Consolidated Food Management, Inc
7429 SE 27th Street
Mercer Island WA 98040

SECTION 13. Independent Contractor, Entire Agreement

13.01 CFM, its employees and agents, is an independent contractor and shall not be, or be deemed for any purpose to be, an employee(s) of the County.

13.02 CFM is a professional food service organization, and under the terms of this Agreement between the County and CFM, the County has exclusive control of all policy, operational and service procedures over the food service program.

13.03 This Agreement constitutes the entire Agreement of the parties and supersedes and cancels all previous written or oral communications between the parties referring to the subject matter of this Agreement.

13.04 The headings of the sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provision of such sections or paragraphs.

13.05 The performance of all or part of this Agreement by CFM shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of CFM or any employee of CFM or any sub-contractor or any employee of any sub-contractor by the County at the present time or in the future.

13.06 If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid terms, conditions or application. To this end, the terms and conditions of this Agreement are declared severable.

13.07 Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. Either party's failure or delay to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be constructed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions, rights or remedies in that or any other instance; rather the same shall be and remain in full force and effect.

In witness whereof, the parties hereto enter into and execute this agreement this _____ day of _____, 2011.

Kittitas County Board of County Commissioners
Date:_____

By: _____
Paul Jewell, Chair

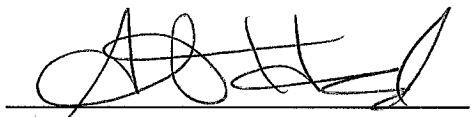
_____
Alan Crankovich, Vice-Chair

_____
Obie O'Brien, Commissioner

ATTEST:

_____
Julie Kjorsvik, Clerk of the Board

APPROVED AS TO FORM:


3/2/11

Stephanie Happold, WSBA# 38112

Consolidated Food Management, Inc.

Signed:_____

Print: _____

Title:_____

Date:_____