

**AGREEMENT TO PROVIDE FOOD SERVICE
JACKSON COUNTY JAIL AND DEPARTMENT OF AGING**

THIS AGREEMENT, made as of the _____ day of _____, 2021 by and between the COUNTY OF JACKSON, a political subdivision of the State of North Carolina (hereinafter referred to as the “County”), and KIMBLE’S FOOD BY DESIGN, INC. d/b/a/ SKILLET KITCHEN, a Georgia corporation registered to do business in North Carolina (hereinafter referred to as “Contractor”) (collectively the “Parties”) shall constitute the terms and conditions under which the Contractor shall provide food service at the Jackson County Jail and provide services to the Jackson County Department on Aging.

WITNESSETH:

That for and in consideration of the mutual covenants and agreements herein set forth, the County and the Contractor hereby agree as follows:

ARTICLE I. PAYMENT

Jackson County shall pay the Contractor for meals served and/or prepared.

The Contractor shall submit to the County an invoice for meals ordered or meals served, whichever is greater, on a monthly basis in a format specified by the County. Payment shall be made within 30 days from the invoice date.

ARTICLE II. SCOPE OF WORK

The Contractor agrees to provide all necessary services in accordance with the County’s Request for Proposals For Food Service and Kitchen Management Services marked as Attachment “B” and hereby incorporated as if fully set forth herein (hereinafter referred to as “Scope of Work”). In addition to what is shown on the Scope of Work, the Contractor will procure all food, cleaning chemicals and paper goods for the kitchen operation as well as all food and paper goods for the Department of Aging. The Contractor will employ sufficient staff to provide the necessary services. Background checks and drug testing will be conducted on all Contractor staff working on property owned by Jackson County.

ARTICLE III. GENERAL CONDITIONS

Accuracy of Work. The Contractor shall be responsible for the accuracy of the work and any error and/or omission made by the Contractor in any phase of the work under this agreement. Contractor’s liability for any such error or omission shall not exceed the amount invoiced or to be invoiced for the work that is the subject of the error or omission.

Additional Work. If the Contractor is asked by the County to perform work beyond the Scope of Work, Contractor shall notify the County in writing, stating that the work is considered outside the Scope of the Work of this Agreement, give a proposed cost for the additional work, and obtain the approval in writing from the County prior to performing the additional work for which Contractor is to be paid. The County shall in no way be held liable for any work performed under this section which has not first been approved in writing by the County. Any additional work performed by the Contractor will be for County related or approved purposes.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall commence on or about the First of October, 2021 and will continue for three (3) years thereafter. Notwithstanding anything to the contrary, the terms and conditions of this Agreement shall continue to apply as long as Kimble's continues to provide services hereunder to Customer after the expiration or termination of this Agreement.

Ownership of Documents. All documents, including drawings, estimates, specifications, and data are and remain the property of the County. The Contractor agrees that the County may reuse for its own purposes any and all plans, specifications, drawings, estimates, or any other data or documents described herein in its sole discretion without first obtaining permission of the Contractor and without any payment of any monies to the Contractor therefore. However, any reuse of the documents by the County on a different site shall be at its risk, and the Contractor shall have no liability where such documents are reused.

Records Retention. The Contractor agrees to maintain all invoices and records related to food preparation and operations onsite at the Jail for a period of two (2) years. The Contractor will maintain electronic copies of such information indefinitely.

Successors and Assigns. The County and the Contractor each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the County nor the Contractor shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other.. Nothing herein shall be construed as creating any personal liability on the part of any officers or agents of the County or Contractor, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the parties to this Agreement.

Review and Acceptance. Work performed by the Contractor shall be subject to review and acceptance in stages as required by the County. Acceptance shall not relieve the Contractor of its professional obligation to correct, at its own expense, any errors in the work. The County will not be responsible for payment for meals determined to be non-compliant with the standards identified in this contract. Meals determined to be non-compliant with the standards of this contract will still be considered in the overall meal count for that particular day as it relates to sliding scale cost adjustments.

Pricing. Pricing indicated on Attachment "A". Skillet Kitchen reserves the right to negotiate CPI and operational cost increases no more than once per year. Skillet Kitchen will utilize the "Food Away From Home" consumer price index from the U.S. Bureau of Labor Statistics. All proposed increases will be delivered to the Jackson County Manager's Office. All proposed increases must be mutually agreed upon between the County and the Contractor. A minimum of 30 days' notice will be given before such price increase is implemented. Sales tax is not charged to the County related to the services outline in this agreement. Either party may terminate this agreement by providing a 90 day notice of termination if an agreement cannot be reached regarding proposed CPI and operational cost increases.

Termination of Agreement. If either party defaults in the performance of any obligation under this Agreement, then the non-defaulting party shall give the defaulting party written notice of its default, setting forth specifically the nature of the default. If the defaulting party fails to cure its default within thirty (30) days after receipt of the notice of default, then the non-defaulting party shall have the right to terminate this Agreement upon thirty (30) days written notice. If terminated by the County, the written notice shall be sent to the Contractor, addressed as follows:

Kimble's Food by Design
Kimble Carter, President
100 Webster St.
LaGrange, GA 30241

All notices sent to the above address shall be binding upon the Contractor unless said address is changed by the Contractor in writing to the County. If this Agreement is so terminated the Contractor shall be paid as provided herein before.

If terminated by the Contractor, the written notice shall be sent to the County at the following addresses:

Jackson County Manager
401 Grindstaff Cove Rd.
Sylva, NC 28779

All notices sent to the above address shall be binding upon the County unless said address is changed by the County in writing to the Contractor. If this Agreement is so terminated, the County shall not be liable to Contractor for payments owed after the date of the notice of termination.

It is extremely important for the contractor to meet or exceed all meal standards identified in this contract. If it is found that the Contractor is not meeting the meal standards identified in this contract then the Contractor must immediately correct these errors. Failure of the contractor to immediately correct issues related to meal standards will be considered a default in the performance of an obligation under this agreement. More than two (2) defaults by the Contractor under this provision shall provide the County the right to terminate this Agreement upon thirty (30) days written notice.

Indemnification Agreement. As between the County and the Contractor as the other party, the Contractor shall assume responsibility and liability for any damage, loss, or injury, including death, of any kind or nature whatsoever to person or property, including employees and property of the County, caused by or resulting from any negligent act of the Contractor or its subcontractors or any of their officers, agents, servants, or employees, arising from the performance of the work under this Agreement. The Contractor shall defend, indemnify, and hold harmless the County and all of its officers, agents, servants, or employees from and against any and all claims, loss, damage, charge, or expense to which they or any of them may be put or subjected by reason of any such damage, loss, or injury. The Contractor expressly agrees to defend against any claims brought or actions filed against the County, where such claim or action involves, in whole or in part, the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed.

As between the Contractor and the County as the other party, to the fullest extent allowed by North Carolina Law and the North Carolina Constitution, the County shall assume responsibility and liability for any damage, loss or injury, including death, of any kind or nature whatsoever to person or property, including employees and property of the Contractor, cause by or resulting from any negligent act of the County or its subcontractors or any of its officers, agents, servants or employees, arising from the performance of the work under this Agreement. The County shall defend, indemnify and hold harmless the Contractor and all of its officers, agents, servants or employees from and against any and all claims, loss, damage, charge or expense to which they or any of them may be put or subjected by reason of any such damage, loss, or injury. The County expressly agrees to defend against any claims brought or actions filed against the Contractor, where such claim or action involves, in whole or in part, the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed.

Insurance. The Contractor shall furnish the following along with the Agreement documents sent to the County for execution:

1. Certificates of Insurance in companies doing business in North Carolina and reasonably acceptable to the County covering:
 - a. Statutory Workers' Compensation Insurance, and to have all subcontractors likewise carry statutory Worker's Compensation Insurance, or proof that the Contractor or its subcontractors are not required to provide such coverage under State law; and
 - b. Comprehensive Liability Insurance as follows:
 - i. Comprehensive Liability Insurance covering all operations and automobiles:

<u>TYPE</u>	<u>COVERAGE FEATURES</u>	<u>LIMITS</u>
Automobile		\$1,000,000
Worker's Compensation		As required by law
Employer's Liability		\$1,000,000
Comprehensive General		\$2,000,000
Liability (including bodily injury & admin)		\$1,000,000
Aggregate		\$5,000,000

County named as additional insured only to the extent of Contractor's insurance coverage.

1. Certificates to contain policy number, policy limits, and policy expiration date of all policies issued in accordance with this Agreement;
 2. Certificates to contain the location and operations to which the insurance applies;
 3. Certificates to contain Contractor's protective coverage for any subcontractor's operations;
 4. Certificates to contain Contractor's contractual insurance coverage;
- ii. The Contractor shall be wholly responsible for securing certificates of insurance coverage as set forth above from all subcontractors who are engaged in this work.

North Carolina Law Governs. This Agreement shall be governed by and construed and enforced in accordance with the laws of North Carolina.

Venue. This Agreement shall be deemed to have been made and performed in Jackson County, North Carolina. For the purposes of venue, all suits or causes of action arising out of this Agreement shall be brought in the courts of Jackson County, North Carolina.

Modification. This Agreement may be modified or amended by the County to reduce the scope of work or project description upon seven (7) days written notice; the written notice shall be sent to the Contractor addressed as follows:

**Kimble's Food by Design
Kimble Carter, President
100 Webster St.
LaGrange, GA 30241**

All notices sent to the Contractor address shall be binding upon the Contractor unless said address is changed by the Contractor in writing to the County.

County Representative. The County may designate representatives through whom the Contractor will contact the County. In the event of such designation, said representative shall be consulted and their written recommendation obtained before any request for extra work is presented to Jackson County. Payments to the Contractor shall be made only upon itemized bill submitted to and approved by said representative, which approval shall not be unreasonably withheld, delayed, or conditioned.

Contractor's Status. The relationship between the County and the Contractor shall be that of owner and independent contractor, and all employees of Contractor assigned to the County's facility shall be strictly employees or agents of Contractor, and in no event shall employees of Contractor be considered agents or employees of the County. Contractor shall assign to duty at the County's facility only employees that are reasonably qualified to perform the services required under this Agreement, and that are acceptable to the Sheriff. Contractor agrees that it will conduct appropriate background checks on all employees assigned to the County facilities and warrants that all such employees will be suitable for the position to which they have been assigned.

Sole Agreement. This Agreement and the Scope of Work attached and incorporated constitute the sole agreement between the Parties. No representations oral or written not incorporated herein shall be binding on the Parties. No amendment or modifications of this Agreement shall be enforceable unless approved by action of the County and Contractor.

Controlling Provisions. In the event of a conflict between the County's Request and the Contractor's response, the provisions of this Agreement shall control over any conflicting provisions contained in the Contractor's response.

ARTICLE V. INFORMATION TECHNOLOGY SECURITY

In connection with the services being provided hereunder, Contractor may need to operate certain information technology systems not owned by the County (non-client systems) which may need to interface with or connect to the County networks, internet access, or information technology systems (County systems). Contractor shall be responsible for all non-county systems, and the County shall be solely responsible for County systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. If the Contractor serves as the services provider hereunder, then the Contractor will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data (data protection rules). If non-County systems interface with or connect to County systems, then the County agrees to implement forthwith upon request from the Contractor at its own expense, the changes to the County systems that the Contractor reasonably requests and believes are necessary and prudent to ensure Contractor's compliance with the Data Card Protection Rules. Each party shall indemnify, defend and hold harmless the other party from all claims, liabilities, damages and costs (including reasonable attorney's fees) to the extent caused by the indemnifying party's failure to comply with its obligations in this Article.

ARTICLE VI. MISCELLANEOUS

Equipment. The County agrees to provide, in good working order existing equipment necessary for the preparation of the meals for inmates, staff and the Department on Aging Programs. Contractor is responsible for the cleaning and care of such equipment. The county will be responsible for all maintenance of the kitchen equipment. Existing equipment shall mean the equipment identified in Attachment "C".

E-Verify. E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to federal law. Contractor shall ensure that Contractor and any subcontractor performing work under this Agreement: (i) uses E-Verify if required to do so by North Carolina law; and (ii) otherwise complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. A breach of this provision by Contractor will be considered a breach of this Agreement, which entitles County to terminate this Agreement, without penalty, upon notice to Contractor.

Iran Divestment. Pursuant to Article 6E of Chapter 147 of the North Carolina General Statutes, County must require most entities with which it contracts, which would include Contractor under this Agreement, to certify that the entity is not identified on a list created by the State Treasurer pursuant to N.C.G.S. § 147-86.58 (the "Final Divestment List"). This requirement is related to ensuring that entities with which local governments contract are not involved in investment activities in Iran. Contractor certifies that: (i) it is not listed on the Final Divestment List, and (ii) it will not utilize any subcontractor performing work under this Agreement which is listed on the Final Divestment List.

ARTICLE VII. ATTACHMENTS TO AGREEMENT

Attachment "A" - Pricing

Attachment "B" - County's Request for Proposals For Food Service and Kitchen Management Services

Attachment "C" - Kitchen Equipment

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this Agreement to be duly executed in two counterparts, each to be considered as an original by their authorized representative, the day and date hereinabove written.

ATTEST:

COUNTY OF JACKSON

BY: _____
Angela M. Winchester, Clerk to the Board

BY: _____

PRINTED NAME _____

TITLE _____

DATE: _____

ATTEST:

KIMBLE'S FOOD BY DESIGN, INC.

BY: _____

BY: _____

PRINTED NAME: _____

TITLE _____

DATE: _____