

File No. 100919

Committee Item No. 6

Board Item No. 9

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Sub-Committee: BUDGET AND FINANCE

Date: August 4, 2010

BOARD OF SUPERVISORS MEETING

Date: 8/10/10

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
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OTHER

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Completed by: Andrea S. Ausberry

Date Thursday, July 29, 2010

Completed by: Ag

Date 8/5/10

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Authorizing the Sheriff's Department to amend its contract with ARAMARK Correctional
2 Services, LLC (formally known as ARAMARK Correctional Services, Inc.) for Jail Food
3 Services - Not to Exceed \$30,500,000]

4 **Resolution authorizing the Sheriff's Department to retroactively enter into a Third**
5 **Amendment to the Agreement between the City and County and ARAMARK**
6 **Correctional Services, LLC (ARAMARK), to increase the contract amount from**
7 **\$22,885,229 to an amount not to exceed \$30,500,000 and to extend the contract term to**
8 **June 30, 2012.**

9
10 WHEREAS, the Board of Supervisors approved the Controller's certification that
11 county jail food service management operations can practically be performed by a
12 private contractor at a lower cost than if work were performed by City employees at
13 budgeted levels, Proposition J approved yearly; and,

14 WHEREAS, the Board of Supervisors approved a contract for the preparation
15 and provision of meals in the San Francisco County Jails with ARAMARK Correctional
16 Services, LLC, contained in File No. 050216 dated March 23, 2005 in the Amount of
17 \$15,227,132 with a four-year term; and,

18 WHEREAS, The Sheriff's Department executed the First Amendment to the
19 Agreement March 16, 2007, to increase contract prices in accordance with the terms of
20 the agreement; and,

21 WHEREAS, The Sheriff's Department executed the Second Amendment to
22 increase the total contract amount to \$22,885,229 and to extend the term of the
23 Agreement to June 30, 2010, which amendment is on file with the Clerk of the Board of
24 Supervisors in File No. 08110, Resolution No. 432-08, dated October 30, 2008; and,
25

1 WHEREAS, Charter Section 9.118, "Contract and Lease Limitations", subsection
2 (b), requires Board of Supervisors' approval of an amendment of greater than \$500,000
3 to a contract of greater than \$10 million; and,

4 WHEREAS, ARAMARK Correctional Services, LLC has agreed to provide new
5 equipment and upgrade mechanical components of all existing jail refrigerators, at no
6 charge to the Sheriff's Department, for an estimated equipment value of \$150,000; and,

7 WHEREAS, The Sheriff's Department has negotiated savings with ARAMARK by
8 menu revisions and a kitchen closure, and negotiated to omit staff meals from the
9 ARAMARK contract; and

10 WHEREAS, Effective July 1, 2010, the City and ARAMARK negotiated a change
11 from a fixed price to a price per meal contract, determined in accordance with a sliding
12 scale, based on the average weekly meal count; and

13 WHEREAS, The Sheriff's Department has prepared this proposed Third
14 Amendment to increase the total contract amount to \$30.5 million and to extend the
15 term of the Agreement to June 30, 2012, which amendment is on file with the Clerk of
16 the Board of Supervisors in File No. 100919, which is hereby declared to be a part of
17 this resolution as if set forth fully herein; now, therefore, be it

18 RESOLVED, That the Board of Supervisors authorizes the Sheriff's Department
19 to retroactively execute the Third Amendment to the Agreement with ARAMARK
20 Correctional Services, LLC in increasing the contract total to an amount not to exceed
21 \$30.5 million and extending the contract term through June 30, 2012.

Item 6 File 10-0919	Department(s): Sheriff's Department
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EXECUTIVE SUMMARY**Legislative Objective**

- A resolution approving the Third Amendment to the jail food services agreement between the City, acting on behalf of the Sheriff's Department, and Aramark Correctional Services, LLC (Aramark), to (a) exercise an option to extend the term by two years from July 1, 2010 through June 30, 2012, and (b) increase the not-to-exceed amount by \$7,614,771, from \$22,885,229 to \$30,500,000 (see below for corrected amounts).

Key Points

- Subsequent to a competitive bidding process, on March 23, 2005, the Board of Supervisors approved an agreement between the City and Aramark for Aramark to provide (a) inmate meals, (b) staff meals, and (c) staff coffee (File No. 05-0216) under a fixed-cost pricing model. The subject agreement has been subsequently amended twice to a current not-to-exceed amount of \$22,885,229 and a term of 63.5 months (from March 16, 2005 through June 30, 2010), with one remaining option to extend services through March 15, 2013. The proposed resolution incorrectly refers to a current not-to-exceed amount of \$24,000,000, which the Budget and Legislative Analyst recommends correcting to \$22,885,229 (see Recommendations below).
- The Sheriff is now requesting the proposed Third Amendment, to (a) switch from a fixed-cost pricing model to a cost-per-meal pricing model, (b) exercise an option to extend the term by two years, retroactive to July 1, 2010 through June 30, 2012, and (c) increase the not-to-exceed amount by \$7,614,771, from the corrected current not-to-exceed amount of \$22,885,229 (instead of \$24,000,000) to \$30,500,000. The increase in the not-to-exceed amount provides for a contingency to allow for fluctuations in the inmate population above the current inmate population average of 1,800 inmates.
- The proposed Third Amendment is estimated to provide average annual cost savings between \$592,139 and \$896,871, depending on fluctuations in the inmate population, when compared to the FY 2009-2010 costs as defined by the terms of the existing agreement.
- Prior to the subject resolution, the Sheriff previously requested a different Third Amendment which provided less savings than the savings under the subject proposed Third Amendment pertaining to the annual cost of meal services. Due to concerns from the Budget and Legislative Analyst regarding cost, the Sheriff's Department withdrew its request for the previous Third Amendment in order to renegotiate with Aramark to achieve additional savings for the City. The proposed Third Amendment, which is the result of such renegotiations, is estimated to provide additional average annual cost savings of between \$52,191 and \$356,923, depending on fluctuations in the inmate population, when compared to the previously requested Third Amendment.

Recommendations

- Amend the proposed resolution to accurately reflect the current not-to-exceed amount of \$22,885,229, instead of a not-to-exceed amount of \$24,000,000.
- Amend the proposed resolution to reflect that the proposed Third Amendment is retroactive to July 1, 2010.
- Approve the proposed resolution, as amended.

MANDATE STATEMENT AND BACKGROUND

Mandate Statement

Charter Section 9.118 requires that agreements with a term longer than ten years, or requiring anticipated expenditures over \$10,000,000, or an amendment to any such agreement which has an impact of more than \$500,000, be subject to the Board of Supervisors approval.

Background

Subsequent to a competitive bidding process, on March 23, 2005, the Board of Supervisors approved a four-year agreement between the City and Aramark in an amount not-to-exceed \$15,367,132¹, from March 16, 2005 through March 15, 2009, with options to extend the agreement for up to an additional four years through March 15, 2013. Under this agreement, Aramark is to provide (a) inmate meals, (b) staff meals, and (c) staff coffee (File No. 05-0216). Under the terms of this agreement, the City (a) paid a fixed annual amount for inmate meals, regardless of the actual number of meals served², (b) agreed to renegotiate the fixed-cost of inmate meals at any time if the average daily inmate population for any four week period exceeded 2,500 inmates, and (c) agreed to an escalation clause which provided for the annual renegotiation for the cost of inmate meals, with Board of Supervisors approval required for any renegotiation which resulted in a cost increase greater than five percent plus the U.S. Department of Agriculture's Regional Wholesale Food Price Index.

The Sheriff's Department executed the First Amendment to the jail food service agreement on March 16, 2007 which increased the not-to-exceed amount of the agreement by \$1,664,492, from \$15,367,132 to \$17,031,624³, in order to (a) allow for increases in wholesale food costs, (b) the inclusion of Sales Tax payable by the City which had been previously excluded in the original agreement⁴, and (c) a new requirement for the City to reimburse Aramark for costs to comply with the then new City Food Service Waste Reduction Ordinance⁵. The First Amendment also realigned the annual cost calculation

¹ The original agreement did not specify an overall agreement not-to-exceed amount. Instead the original agreement (a) provided a not-to-exceed amount of \$3,841,783 for the first year of the agreement, and (b) stated that for the remaining three years of the agreement's four year term, the annual cost would be renegotiated. For the purposes of this report, the overall not-to-exceed amount of the original agreement is assumed to be the first year not-to-exceed amount of \$3,841,783 times four years, the term of the agreement, for a total overall not-to-exceed amount of \$15,367,132 (4 x \$3,841,783).

² Prior to the flat-cost existing agreement with Aramark, the Sheriff procured meals on a per-meal basis. According to Ms. Maureen Gannon, the Sheriff's Chief Financial Officer, the Sheriff transitioned from a per-meal cost model to a fixed-cost model (a) to protect the Sheriff from volatility in food costs, and (b) provide budgetary predictability.

³ Similar to the original agreement, the First Amendment did not provide an overall agreement not-to-exceed amount, but provided periodic not-to-exceed amounts, and stated that costs for periods without specified not-to-exceed amounts would be subject to renegotiation. For the purposes of this report, the not-to-exceed amount as amended by the First Amendment was \$17,031,621, which includes (a) the specified not-to-exceed \$3,841,783 for the first year of the agreement which was unchanged by the First Amendment, plus (b) the specified not-to-exceed \$5,525,465 for the 15.5 month period between March 16, 2006 and June 30, 2007 (as shown in Table 1 below), plus (c) the specified not-to-exceed \$4,486,461 for the 12 month period between July 1, 2007 and June 30, 2008, at an average monthly cost of \$373,872 (\$4,486,461 divided by 12), and plus (d) a forecasted \$3,177,912 for the remaining 8.5 months of the agreement term which did not have a specified not-to-exceed amount, assuming the same average monthly cost of \$373,872 per month from the previous year.

⁴ According to Ms. Gannon, the calculation of the original agreement's not-to-exceed amount did not include Sales Tax payable by the City for meals because it was not determined that Sales Tax was applicable until after the original agreement was executed.

⁵ According to the City's Food Service Waste Reduction Ordinance, effective June 1, 2007, all food vendors within City facilities are required to use disposable food ware that is either biodegradable, compostable, or recyclable, unless there is no

periods defined in the agreement to coincide with the City's fiscal years. Although the First Amendment should have been subject to Board of Supervisors review because it increased the agreement's overall not-to-exceed amount by more than \$500,000, as required by City Charter Section 9.118, according to Ms. Maureen Gannon, the Sheriff's Chief Financial Officer, the Sheriff failed to submit the First Amendment to the Board of Supervisors due to staff oversight.

On October 30, 2008, the Board of Supervisors approved the Second Amendment to the jail food services agreement to (a) increase the agreement's not-to-exceed amount by \$5,853,605, from \$17,031,624 to \$22,885,229⁶, and (b) exercised an option to extend the term of the agreement by 15 months and 15 days from March 16, 2009 through June 30, 2010 (File No. 08-1110). The Second Amendment also suspended the escalation clause of the original agreement that required the City to renegotiate the agreement amount for FY 2008-2009 and FY 2009-2010. According to Ms. Gannon, Aramark agreed to forego renegotiating future escalation clauses under the agreement in order to assist the Department in keeping costs down in light of the City's difficult fiscal issues.

Table 1 below shows the total not-to-exceed amounts for each period of the current subject agreement, as amended by the First and Second Amendments discussed above, and the actual expenditures through June 30, 2010, totaling the current amount of \$22,885,229.

	Cost Periods As Defined in the Current Agreement					Total
	3/16/05 to 3/15/06	3/16/06 to 6/30/07	7/1/07 to 6/30/08 (FY 2007- 2008)	7/1/08 to 6/30/09 (FY 2008- 2009)	7/1/09 to 6/30/10 (FY 2009- 2010)	
Inmate Meal Costs	\$3,506,783	\$5,083,329	\$4,077,537	\$4,123,289	\$4,123,289	\$20,914,227
Staff Meal Costs	300,000	398,136	343,616	323,264	323,264	1,688,280
Meals Subtotal	\$3,806,783	\$5,481,465	\$4,421,153	\$4,446,553	\$4,446,553	\$22,602,507
Staff Coffee Service Costs	35,000	44,000	35,000	37,714	37,714	189,428
Compliance Costs ⁷	-	-	30,308	31,493	31,493	93,294
Not-To-Exceed Amount	\$3,841,783	\$5,525,465	\$4,486,461	\$4,515,760	\$4,515,760	\$22,885,229

Proposition J / Controller Certification

Charter Section 10.104.15 requires City departments, that use a private contractor to provide work or services on a continuing basis, to obtain a certification from the Controller's Office that such work or services can be practically performed under a private agreement at a lesser cost than similar work performed by City employees. For FY 2010-2011, the Controller certified that contracting out jail food services would result in estimated annual savings to the City of \$1,119,936. The Board of

suitable product that is within 15 percent of the cost of non-compostable or non-recyclable alternatives. That Ordinance also bans the use of styrofoam disposable food ware.

⁶ The resolution approving the Second Amendment (File 08-1110) overstated the actual not-to-exceed amount of \$22,885,229 as \$24,000,000. The Sheriff adjusted for this overstatement when calculating the proposed new not-to-exceed amount of \$30,500,000.

⁷ As discussed above, through the First Amendment, the Sheriff agreed to reimburse Aramark for Aramark's cost to comply with the City's Food Service Waste Ordinance.

Supervisors approved this Controller’s Proposition J certification as part of the FY 2010-2011 budget process.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Third Amendment to the jail food services agreement between the City, acting on behalf of the Sheriff’s Department, and Aramark Correctional Services, LLC (Aramark), to (a) exercise an option to extend the term of the agreement by an additional two years from July 1, 2010 through June 30, 2012, and (b) increase the not-to-exceed amount to \$30,500,000.

As summarized in Table 2 below, the proposed Third Amendment to the existing jail food services agreement between the Sheriff’s Department and Aramark would increase the agreement amount by \$7,614,771, from a not-to-exceed \$22,885,229 to a not-to-exceed \$30,500,000, including (a) a savings of \$232,471 in FY 2009-2010 which have already been realized by the Sheriff as a result of midyear negotiations with Aramark to discontinue staff meals for Deputy Sheriffs and otherwise reduce meal costs, and (b) additional costs of \$7,847,242 to retroactively exercise the option to extend services from July 1, 2010 through June 30, 2012.

Table 2: Current and Proposed Third Amendment

	Not-To-Exceed Amount	Term
Current Agreement		
Original Agreement	\$15,367,132	48 months
Increase Provided by First Amendment	1,664,489	-
Increase Provided by Second Amendment	5,853,608	15.5 months
Current Agreement Total	\$22,885,229*	63.5 months
FY 2009-2010 Savings Previously Realized by the Sheriff	(\$232,471)	-
Proposed Third Amendment		
FY 2010-2011 and FY 2011-2012 Meal Costs	7,847,242	24 months
Proposed Not-to Exceed Additional Amount	\$7,614,771	24 months
Total Agreement As Amended By Proposed Third Amendment	\$30,500,000	87.5 months

* The proposed resolution incorrectly states that the not-to-exceed amount is \$24,000,000 instead of the correct amount of \$22,885,229

Reduction to Reflect Renegotiated Prices in FY 2009-2010

In response to mid-year budget reductions requested by the Mayor, Aramark and the Sheriff entered into mid-year negotiations in order to achieve cost savings in FY 2009-2010. According to Ms. Gannon, and as shown in Table 2 above and Table 3 below, the negotiations resulted in savings of \$232,471 in FY 2009-2010, including (a) a reduction in inmate meal costs of \$70,839, and (b) a savings of \$161,632 from the elimination of staff meals for Deputy Sheriffs beginning on January 1, 2010.

Table 3: Previously Realized Negotiated Savings in FY 2009-2010

	Current Terms	Renegotiated Terms, As Reflected in the Proposed Third Amendment	Savings
Inmate Meal Cost	\$4,123,289	\$4,052,450	\$70,839
Staff Meal Cost	323,264	161,632	161,632
Meals Subtotal	\$4,446,553	\$4,214,082	\$232,471
Staff Coffee Service	37,714	37,714	0
Compliance Costs	31,493	31,493	0
Total	\$4,515,760	\$4,283,289	\$232,471

Ms. Gannon noted that the \$232,471 in FY 2009-2010 savings shown in Table 3 above were previously realized by the Sheriff in FY 2009-2010 because Aramark invoiced the Sheriff in FY 2009-2010 based on the terms in the proposed Third Amendment.

Meal and Coffee Services for FY 2010-2011 and FY 2011-2012

For meal services in FY 2010-2011 and FY 2011-2012, the proposed Third Amendment would (a) replace the fixed-cost model of the current agreement with a cost-per-meal model which fluctuates with the number of meals served, (b) continue the elimination of staff meals for Deputy Sheriffs which were included in the mid-year negotiations for FY 209-2010 discussed above, (c) continue to provide free coffee for Sheriff's staff and (d) discontinue the reimbursement of Aramark's cost to comply with the City's Food Service Waste Ordinance. As shown in Table 4 below, and according to Ms. Gannon, the \$7,847,242 increase (see Table 2 above) in the not-to-exceed amount for meal and coffee services in FY 2010-2011 and FY 2011-2012 includes (a) \$7,177,778 in estimated meal costs based on an average daily population of 1,800 inmates, plus (b) fixed \$30,000 per year or \$60,000 over the two-year period for staff coffee services and (c) a contingency of \$609,464 to allow for fluctuations in the inmate population⁸.

⁸ According to Ms. Gannon, because the cost-per-meal cost pricing model does not provide for the same budgetary certainty as the previous fixed-cost model, the Sheriff included a contingency of \$609,464 as shown in Table 4 below. Ms. Gannon stated that while the subtotal of estimated costs of \$7,237,778 shown in Table 4 below is based on the current average daily inmate population of 1,800, during the term of the existing agreement, the average daily inmate population fluctuated from 1,815 (in FY 2009-2010) to 2,086 (in FY 2007-2008). The Budget and Legislative Analyst notes that, according to the cost-per-meal pricing schedule provided by Ms. Gannon, an increase in the average daily inmate population to the FY 2007-2008 level of 2,086 inmates would result in the Sheriff expending the entire contingency of \$609,464. Therefore, because the contingency is based on the historical highest average daily inmate population during the agreement term, the Budget and Legislative Analyst finds the requested not-to-exceed amount of \$30,500,000 to be reasonable.

Table 4: Service Costs in FY 2010-2011 and FY 2011-2012

	FY 2010-2011	FY 2011-2012	Total
Inmate Meal Costs	\$3,588,889	\$3,588,889	\$7,177,778
Staff Meal Costs	0	0	0
Meals Subtotal	\$3,588,889	\$3,588,889	\$7,177,778
Staff Coffee Service	30,000	30,000	60,000
Compliance Costs	0	0	0
Subtotal of Estimated Costs Without Contingency	\$3,618,889	\$3,618,889	\$7,237,778
Contingency for Fluctuations in Inmate Population	304,732	304,732	609,464
Total	\$3,923,621	\$3,923,621	\$7,847,242*

*As noted in Table 2 above, when the savings of \$232,471 as previously realized by the Sheriff's Department are considered, the net proposed increase to the not-to-exceed amount is \$7,614,771 (\$7,847,242 less \$232,471).

The proposed Third Amendment to exercise an option to extend inmate meal services from July 1, 2010 through June 30, 2012 at a total cost of \$7,847,242 (excluding the previously realized savings of \$232,471 as noted in Table 2 above) would be funded from (a) \$3,923,621 in General Fund monies appropriated by the Board of Supervisors in the Sheriff's FY 2010-2011 budget, and (b) \$3,923,621 in General Fund monies to be requested by the Sheriff in the Sheriff's FY 2011-2012 budget.

FISCAL ANALYSIS

The proposed Third Amendment would provide meal services at an annual cost of \$3,923,621 in both FY 2010-2011 and FY 2011-2012, including (a) \$3,618,889 in estimated costs based on an average daily inmate population of 1,800, and (b) a contingency of \$304,732 to allow for an increase in the average daily inmate population (see Table 4 above). As shown in Table 5 below, depending on whether or not the \$304,732 contingency is fully expended, the proposed Third Amendment provides for annual estimated savings ranging from \$592,139 to \$896,871, when compared to the costs defined by the terms of current agreement for FY 2009-2010.

Table 5: Estimated Savings Provided By The Proposed Third Amendment

	Assuming 100% Of Contingency Is Expended (Average Inmate Population of 2,086, see Footnote 8 above)	Assuming No Contingency Is Expended (Average Inmate Population of 1,800)
Annual Cost Under Current Agreement Terms for FY 2009-2010 (see Table 1 above)	\$4,515,760	\$4,515,760
Annual Cost Under Proposed Third Amendment (see Table 4 above)	3,923,621	3,618,889
Savings	\$592,139	\$896,871

The Budget and Legislative Analyst notes that because the cost-per-meal pricing model determines total cost based on inmate population, the total savings could differ from the figures shown in Table 5 above. However, because the range of savings shown above reflects the fluctuation in inmate

population which has occurred during the term of the subject agreement, the Budget and Legislative Analyst finds the savings estimates shown in Table 5 above to be reasonable.

However, the Budget and Legislative Analyst notes that the cost-per-meal pricing model could cause total costs to exceed the current costs provided under the fixed-cost pricing model under the agreement's current provisions. According to the cost-per-meal pricing schedule provided by Ms. Gannon, it would require a 665 inmate increase in the inmate population, or 35.9 percent, from the current average daily inmate population of 1,800 to 2,465, for the proposed cost-per-meal model to be more expensive than the FY 2009-2010 cost of \$4,515,760 (see Table 5 above) as defined by the terms of current agreement. According to Ms. Gannon, the likelihood of the inmate population averaging 2,465 is highly improbable because the highest inmate population over the past ten years was 2,157 (in 2003).

OTHER CONSIDERATIONS

The subject agreement was renegotiated rather than competitively bid.

Ms. Gannon stated that the Sheriff is requesting to extend the agreement with Aramark by two years through June 30, 2012, as permitted under the original agreement's option to extend through March 15, 2013, rather than issuing a new Request For Proposals (RFP) because (a) Aramark is one of only two firms currently operating in California capable of providing such institutional meal services, (b) Aramark has provided inmate meal services to San Francisco since 1980, (c) the Sheriff's Department is satisfied with the service being provided by Aramark, and (d) Ms. Gannon was confident that the direct negotiations between the Sheriff's Department and Aramark should result in significant cost savings.

Ms. Gannon noted that the Sheriff intends to issue a new RFP for the subject inmate meal services prior to when the subject agreement, as amended by the proposed Third Amendment, terminates on June 30, 2012, rather than enter into any further extensions as permitted under the original agreement's option to extend through March 15, 2013.

The Sheriff withdrew a previously requested Third Amendment to the subject agreement (File 10-0350) because the Budget and Legislative Analyst determined that the savings were inadequate.

Prior to the subject resolution, the Sheriff previously requested that the Board of Supervisors consider a different Third Amendment to the existing Aramark agreement which would have extended meal services for only one year at an annual cost of \$3,975,812. The previously requested Third Amendment would have also maintained (a) the fixed-cost model of the current agreement instead of the proposed cost-per-meal pricing model, and (b) the practice of reimbursing Aramark for the cost to comply with the City's Food Service Waste Reduction Ordinance.

However, due to concerns identified by the Budget and Legislative Analyst regarding (a) charges for reimbursing Aramark for the cost to comply with the City's Food Service Waste Reduction Ordinance, and (b) the cost of continuing under the fixed-cost model provided under the current

agreement⁹, the Sheriff withdrew their request for the previous Third Amendment to negotiate with Aramark for additional savings, and is now requesting the subject proposed Third Amendment as a result of such negotiations. The Budget and Legislative Analyst estimates the annual savings provided by the proposed Third Amendment exceed the annual savings provided by the previously requested Third Amendment by \$52,191 to \$356,923¹⁰.

According to Ms. Gannon, in order to secure the additional savings which would be realized under the proposed Third Amendment as compared to the previous Third Amendment which the Sheriff's Department had submitted to the Board of Supervisors, Aramark requested that the proposed Third Amendment extend the existing agreement by two years, instead of the one year extension included in the previously requested Third Amendment. Such an extension is permitted under the existing agreement.

The Budget and Legislative Analyst notes that the additional savings provided by the proposed Third Amendment were included in Budget and Legislative Analyst's recommended reductions¹¹ to the Sheriff's FY 2010-2011 budget, which were approved by the Board of Supervisors.

Due to the delays that the Sheriff's Office incurred in renegotiating with Aramark resulting from the cost concerns expressed by the Budget and Legislative Analyst, the proposed Third Amendment is now required to be retroactive back to July 1, 2010.

The proposed resolution incorrectly states that the not-to-exceed amount is \$24,000,000 instead of the correct amount of \$22,885,229

As shown in Table 1 above, the total not-to-exceed amount of the current agreement is \$22,885,229. The proposed resolution incorrectly states that the current not-to-exceed amount is \$24,000,000. Therefore, the Budget and Legislative Analyst recommends amending the proposed resolution to reflect the correct not-to-exceed amount of \$22,885,229, instead of \$24,000,000.

RECOMMENDATIONS

1. Amend the proposed resolution to reflect the correct not-to-exceed amount of \$22,885,229, instead of \$24,000,000 on page 1 at lines 6 and 21.
2. Amend the proposed resolution to reflect that the proposed Third Amendment is retroactive to July 1, 2010.
3. Approve the proposed resolution, as amended.

⁹ As discussed in the Background Section above, the current agreement provides for a fixed cost to the City, regardless of the number of meals served, unless the average daily population exceeds 2,500 inmates. The Budget and Legislative Analyst expressed concerns about continuing under such a fixed-cost model when, according to Ms. Gannon, the actual average daily inmate population from March 16, 2006 through June 30, 2010, the term of the existing agreement, was 1,933, which was 567 inmates or 22.7 percent less than the maximum population of 2,500 inmates allowed under the fixed-price model.

¹⁰ The estimated annual savings ranges from \$52,191 to \$356,923 depending on whether or not the \$304,732 annual contingency amount included in the proposed Third Amendment is fully expended.

¹¹ The Budget and Legislative Analyst recommended General Fund reductions of \$240,000 to the Sheriff's budget, or \$116,923 less than the total maximum savings provided by the proposed Third Amendment of \$356,923, in order to allow for fluctuation in the inmate population.

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: ARAMARK Correctional Services, LLC	
Board of Directors: Joseph Neubauer, Chairman & CEO, Mr. L. Frederick Sutherland, Director, Mr. Holland, Director	
Contractor address: ARAMARK Correctional Services, LLC Aramark Tower 1101 Market Street Philadelphia, PA 19107	
Date that contract was approved:	Amount of contract: \$30,500,000.
Describe the nature of the contract that was approved: The contract is for Inmate Meals.	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form.
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Clerk of the San Francisco Board of Supervisors	Contact telephone number: 415 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: bos.legislation@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

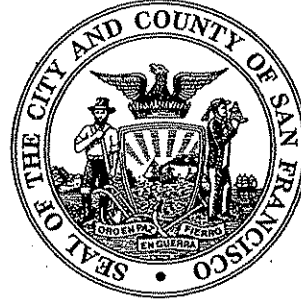
Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

City and County of San Francisco

OFFICE OF THE SHERIFF



Michael Hennessey
SHERIFF

(415) 554-7225

July 12, 2010
Reference: 10-068

File 100919

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Attached please find an original and four copies of a proposed resolution for approval by the Board of Supervisors.

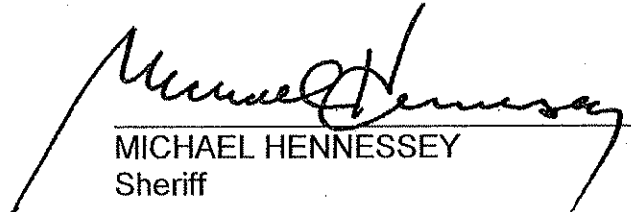
The resolution authorizes the Sheriff's Department to enter into a third amendment to the agreement between the City and County of San Francisco and ARAMARK Correctional Services, LLC, to increase the contract amount from \$24 million to an amount not to exceed \$30.5 million and to extend the contract term to June 30, 2012.

The following is a list of accompanying documents:

- Proposed Resolution
- Agreements with ARAMARK Correctional Services, LLC.

Please contact Maureen Gannon at (415) 554-4316 if you require more information. Thank you.

Sincerely,


MICHAEL HENNESSEY
Sheriff

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2010 JUL 10 AM 4:24

BY AK

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2010 JUL 20 PM 1:18

BY _____ *RV*

City and County of San Francisco
Office of Contract Administration
Purchasing Division

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of **March 4, 2010**, in San Francisco, California, by and between **ARAMARK Correctional Services, LLC**, formerly ARAMARK Correctional Services, Inc. ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and;

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period, increase the contract amount, change meal fee from fixed price to cost-per-meal fee payment based on a sliding scale, and define agreed upon Contractor provided equipment; and;

WHEREAS, approval for this Amendment was obtained from the San Francisco Board of Supervisors on XXXXXXXX, 2010, File Number XXXXXXX, Resolution No. XXXXX;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated March 16, 2005 between Contractor and City, as amended by the:

- First Amendment, dated March 16, 2007, and
- Second Amendment, dated July 1, 2008

1b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 2; Section 2 (Term) of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from March 16, 2005 to June 30, 2010. This Agreement may be extended an additional Thirty-Two (32) months, on a yearly basis, or month-to-month basis, up to March 1, 2013 on or after June 30, 2010 by mutual agreement of the parties.

Such section is hereby amended in its entirety to read as follows:

Subject to Section 1, the term of this Agreement shall be from March 16, 2005 to June 30, 2012. This agreement may be extended an additional Eight (8) months, on a yearly basis, or on a month-to-month basis up to March 1, 2013.

2b. Section 5, Section 5 (Compensation) of the Agreement currently reads as follows:

Compensation shall be made in Accounting Period payments on or before the 30th day following Contractor's invoice date each Accounting Period for work, as set forth in Section 4 of this Agreement that the Sheriff, in his sole discretion, concludes has been performed as of the last day of the immediately preceding Accounting Period, provided that City has received Contractor's invoice no later than 15 business days following Contractor's invoice date at the address specified in Section 25 (Notice to the Parties) of this Agreement. The term "Accounting Period" shall refer to Contractor's fiscal accounting period. In each quarter there shall be two (2) Accounting Periods of four (4) weeks each and one (1) Accounting Period of five weeks. The September Accounting Period in 2009 shall consist of six (6) weeks.

March 16, 2006 through June 30, 2007: In no event shall the amount of this Agreement for the term March 16, 2006 to June 30, 2007 for both prisoner meals and Department staff meals and sales taxes on such meals exceed Five Million, Four Hundred Eighty-One Thousand, Four Hundred Sixty-Five Dollars (\$5,481,465). It is estimated that charges for the Department staff meals will not exceed Three Hundred Ninety-Eight Thousand, One Hundred Thirty-Five Dollars (\$398,135) for the term March 16, 2006 to June 30, 2007. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

July 1, 2007 through June 30, 2008: In no event shall the amount of this Agreement for the term July 1, 2007 to June 30, 2008, for both prisoner meals and Department staff meals and sales taxes on such meals exceed Four Million, Four Hundred Twenty-One Thousand, and One Hundred Fifty-three Dollars (\$4,421,153). It is estimated that charges for the Department staff meals will not exceed Three Hundred Forty-Three Thousand, Six Hundred Sixteen Dollars (\$343,616) for the term July 1, 2007 to June 30, 2008. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

The City and Contractor agree to renegotiate the amount and/or method of compensation each year from March 16, 2006 to March 15, 2009. The City and Contractor agree that the maximum compensation amount of Four Million, Four Hundred Twenty-One Thousand, One Hundred Fifty-Three Dollars (\$4,421,153) for the period from July 1, 2007 through June 30, 2008, and includes a three point one percent (3.1%) increase allowed under the Agreement, and shall be the basis for subsequent 12-month renewals. The Agreement shall be modified each remaining year of the term of the Agreement through annual amendments to the Agreement.

In the event that the renegotiation of this Agreement results in an annual projected cost increase in excess of five (5%) more than the increase justified by the percentage changes in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-(CPI) Food Away from Home Index for this regional area the corresponding amendment to this Agreement shall be subject to approval by the City's Board of Supervisors. The City and Contractor agree to use the month of December's CPI-Food Away from Home Index rate change to renegotiate the annual projected cost increase for the term of this agreement.

The price of meals, other than prisoner meals and Department staff meals, will be mutually agreed upon. The City has the option of either (a) providing all all-purpose cleaning chemicals and floor cleaning chemicals utilized by Contractor in the performance of its duties hereunder at no cost to Contractor, or (b) requiring the Contractor to purchase all all-purpose cleaning chemicals and floor cleaning chemicals to be utilized by Contractor in the performance of its duties hereunder in which case the City will reimburse the Contractor for the cost of such chemicals at Contractor's invoice cost without markup. For purposes of compliance with the City's Food Service Waste Reduction Ordinance, the City will reimburse the Contractor for the cost of biodegradable/compost able or recyclable disposable food service ware at Contractor's invoice cost, without mark-up in an amount not to exceed Thirty Thousand Three Hundred Eight Dollars (\$30,308) for the period July 1, 2007 through June 30, 2008. In addition, the cost of coffee service for Department Staff, which may not exceed Forty-Four Thousand Dollars (\$44,000) for the 15-month period, from March 16, 2006 through June 30, 2007, and which may not exceed Thirty Five Thousand Dollars (\$35,000) for the 12-month period from July 1, 2007 through June 30, 2008, and will be billed separately. Invoices for such "other meals, chemicals (if purchased by Contractor) and coffee service are not subject to the maximum compensation referred to above.

July 1, 2008 through June 30, 2009: In no event shall the amount of this Agreement for the term July 1, 2008 to June 30, 2009, for both prisoner meals and Department staff meals and sales taxes on such meals exceed Four Million, Four Hundred Forty-Six Thousand, Five Hundred, Fifty-Three Dollars (\$4,446,553). The charges for the Department staff meals will not exceed Three Hundred Twenty-Three Thousand, Two Hundred Sixty-Four Dollars (\$323,264) for the term July 1, 2008 to June 30, 2009. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

July 1, 2009 through June 30, 2010: In no event shall the amount of this Agreement for the term July 1, 2009 to June 30, 2010, for both prisoner meals and Department staff meals and sales taxes on such meals exceed Four Million, Four Hundred Forty-Six Thousand, Five Hundred, Fifty-Three Dollars (\$4,446,553). It is estimated that the charges for the Department staff meals will not exceed Three Hundred Twenty-Three Thousand, Two Hundred Sixty-Four Dollars (\$323,264) for the term July 1, 2009 to June 30, 2010. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

The above not-to-exceed amounts have been negotiated and agreed upon by the San Francisco Sheriff's Department and ARAMARK Correctional Services, LLC. for the contract periods stated, and will not vary, regardless of any increased percentage changes in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-(CPI) Food Away from Home Index for this regional area.

The price of meals other than prisoner meals and Department staff meals will be mutually agreed upon. The City has the option of either (a) providing all all-purpose cleaning chemicals and floor cleaning chemicals utilized by Contractor in the performance of its duties hereunder at no cost to Contractor, or (b) requiring the Contractor to purchase all all-purpose cleaning chemicals and floor cleaning chemicals to be utilized by Contractor in the performance of its duties hereunder in which case the City will reimburse the Contractor for the cost of such chemicals at Contractor's invoice cost without markup. For purposes of compliance with the City's Food Service Waste Reduction Ordinance, the City will reimburse the Contractor for the cost of biodegradable/compost able or recyclable disposable food service ware at Contractor's invoice cost, without mark-up in an amount not to exceed Thirty-One Thousand Four Hundred and Ninety-Three Dollars (\$31,493) for the period July 1, 2008 through June 30, 2009 and in an amount not to exceed Thirty-One Thousand, Four Hundred Ninety-Three Dollars (\$31,493) for the period July 1, 2009 through June 30, 2010.. In addition, the cost of coffee service for Department Staff may not exceed Thirty-Seven Thousand Seven Hundred and Fourteen Dollars (\$37,714), for the period July 1, 2008 through June 20, 2009 and in an amount not to exceed Thirty-Seven Thousand, Seven Hundred Fourteen Dollars (\$37,714) for the period July 1, 2009 through June 30, 2010. Such services will be billed separately. Invoices for such other meals, and chemicals.(if purchased by Contractor) are not subject to the maximum compensation limits referred to above.

Such section July 1, 2009 through June 30, 2010 is hereby amended as follows:

July 1, 2009 through June 30, 2010: In no event shall the amount of this Agreement for the term July 1, 2009 to June 30, 2010, for prisoner meals and sales taxes on such meals exceed Four Million, Fifty-Two Thousand, Four Hundred Fifty Dollars (\$4,052,450). The charges for the Department Staff meals will not exceed One Hundred Sixty-One Thousand, Six Hundred Thirty-Two Dollars (\$161,632) for the term July 1, 2009 to June 30, 2010.

The above amended sections and amounts are based upon the following: a. Reduction in inmate meal calories from 3000 per day to 2800 per day (\$16,354) b. Elimination of Staff Meals (\$161,632 from 01/01/10-06/30/10) and c. Closure of jail kitchen at CJ#2 on March 4, 2010 (\$54,485). If, at any time, jail kitchen closure proves to be inadequate, then both parties agree to renegotiate and amend the contract accordingly.

The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

The above not-to-exceed amounts have been negotiated and agreed upon by the San Francisco Sheriff's Department and ARAMARK Correctional Services, LLC. for the contract periods stated, and will not vary, regardless of any increased percentage changes in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-(CPI) Food Away from Home Index for this regional area.

The price of meals other than prisoner meals and Department staff meals will be mutually agreed upon. The City has the option of either (a) providing all all-purpose cleaning chemicals and floor cleaning chemicals utilized by Contractor in the performance of its duties hereunder at no cost to Contractor, or (b) requiring the Contractor to purchase all all-purpose cleaning chemicals and floor cleaning chemicals to be utilized by Contractor in the performance of its duties hereunder in which case the City will reimburse the Contractor for the cost of such chemicals at Contractor's invoice cost without markup. For purposes of compliance with the City's Food Service Waste Reduction Ordinance, the City will reimburse the Contractor for the cost of biodegradable/compost able or recyclable disposable food service ware at Contractor's invoice cost, without mark-up in an amount not to exceed Thirty-One Thousand Four Hundred and Ninety-Three Dollars (\$31,493) for the period July 1, 2008 through June 30, 2009 and in an amount not to exceed Thirty-One Thousand, Four Hundred Ninety-Three Dollars (\$31,493) for the period July 1, 2009 through June 30, 2010. In addition, the cost of coffee service for Department Staff may not exceed Thirty-Seven Thousand Seven Hundred and Fourteen Dollars (\$37,714), for the period July 1, 2008 through June 20, 2009 and in an amount not to exceed Thirty-Seven Thousand, Seven Hundred Fourteen Dollars (\$37,714) for the period July 1, 2009 through June 30, 2010. Such services will be billed separately. Invoices for such other meals, and chemicals (if purchased by Contractor) are not subject to the maximum compensation limits referred to above.

July 1, 2010 through June 30, 2011 is hereby added as follows:

July 1, 2010 through June 30, 2011: In no event shall the amount of this Agreement for the term July 1, 2010 to June 30, 2011 for prisoner meals and sales taxes on such meals exceed Three Million, Five Hundred Eighty-Eight Thousand, Eight Hundred Eighty-Nine Dollars (\$3,588,889). There will be no staff meals for the term July 1, 2010 to June 30, 2011. The price per meal shall be determined in accordance with the sliding scale attached as Appendix B, "Calculation of Charges", hereto and incorporated by reference as though fully set forth herein. The total number of inmate meals served per week shall be divided by 21 in order to determine the price point on the sliding scale. The total number of inmate meals served shall be based upon the weekly count sheets for each jail signed by the Captain.

The above not-to-exceed amounts have been negotiated and agreed upon by the San Francisco Sheriff's Department and ARAMARK Correctional Services, LLC. for the contract periods stated, and will not vary, regardless of any increased percentage changes in the United States Department of Labor, Bureau of Labor Statistics; Consumer Price Index-(CPI) Food Away from Home Index for this regional area.

The Contractor and the San Francisco Sheriff's Department agree to re-negotiate the not-to-exceed amount if the average daily meal count exceeds 2,160 for four consecutive weeks.

The price of meals other than prisoner meals will be mutually agreed upon. The City has the option of either (a) providing all all-purpose cleaning chemicals and floor cleaning chemicals utilized by Contractor in the performance of its duties hereunder at no cost to Contractor, or (b) requiring the Contractor to purchase all all-purpose cleaning chemicals and floor cleaning chemicals to be utilized by Contractor in the performance of its duties hereunder in which case the City will reimburse the Contractor for the cost of such chemicals at Contractor's invoice cost without markup. The Contractor has reviewed the City's Food Service Waste Reduction

Ordinance and agrees to provide compliant products. Contractor will not charge the San Francisco Sheriff's Department for these products.

In addition, the cost of coffee service for Department Staff may not exceed Thirty Thousand Dollars (\$30,000), for the period July 1, 2010 through June 30, 2011. Such services will be billed separately. Invoices for such other meals, and chemicals (if purchased by Contractor) are not subject to the maximum compensation limits referred to above.

In addition, ARAMARK will provide the following equipment at no charge to the Sheriff's Department:

1. Purchase One Commercial Grade Freezer comparable to current make and model.
2. Upgrade the mechanical components of all existing refrigerators at CJ#4 (Value is approximately \$110,000).
3. Purchase One (1) set of stack ovens at CJ#2 (Value is approximately \$10,000).
4. Purchase one commercial grade, 1000 lb. cuber replacement ice machine for CJ#5. (Value is approximately \$10,000)
5. Purchase Food Distribution Equipment at CJ#1, CJ#2 and CJ#6 (Value is approximately \$20,000).

Approximate Total Value: \$150,000.

July 1, 2011 through June 30, 2012 is hereby added as follows:

July 1, 2011 through June 30, 2012: In no event shall the amount of this Agreement for the term July 1, 2011 to June 30, 2012 for prisoner meals and sales taxes on such meals exceed Three Million, Five Hundred Eighty-Eight Thousand, Eight Hundred Eighty-Nine Dollars (\$3,588,889). There will be no staff meals for the term July 1, 2011 to June 30, 2012. The price per meal shall be determined in accordance with the sliding scale attached as Appendix B, "Calculation of Charges", hereto and incorporated by reference as though fully set forth herein. The total number of inmate meals served per week shall be divided by 21 in order to determine the price point on the sliding scale. The total number of inmate meals served shall be based upon the weekly count sheets for each jail signed by the Captain.

The above not-to-exceed amounts have been negotiated and agreed upon by the San Francisco Sheriff's Department and ARAMARK Correctional Services, LLC. for the contract periods stated, and will not vary, regardless of any increased percentage changes in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-(CPI) Food Away from Home Index for this regional area.

The Contractor and the San Francisco Sheriff's Department agree to re-negotiate the not-to-exceed amount if the average daily meal count exceeds 2,160 for four consecutive weeks.

The price of meals other than prisoner meals will be mutually agreed upon. The City has the option of either (a) providing all all-purpose cleaning chemicals and floor cleaning chemicals utilized by Contractor in the performance of its duties hereunder at no cost to Contractor, or (b) requiring the Contractor to purchase all all-purpose cleaning chemicals and floor cleaning

chemicals to be utilized by Contractor in the performance of its duties hereunder in which case the City will reimburse the Contractor for the cost of such chemicals at Contractor's invoice cost without markup. The Contractor has reviewed the City's Food Service Waste Reduction Ordinance and agrees to provide compliant products. Contractor will not charge the San Francisco Sheriff's Department for these products.

In addition, the cost of coffee service for Department Staff may not exceed Thirty Thousand Dollars (\$30,000), for the period July 1, 2011 through June 30, 2012. Such services will be billed separately. Invoices for such other meals, and chemicals (if purchased by Contractor) are not subject to the maximum compensation limits referred to above.

2c. Section 8, Section 8 (Submitting False Claims; Monetary Penalties) is hereby replaced in its entirety to read as follows:

Submitting False Claims; Monetary Penalties.

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

2d. Section 42, Section 42 (Limitations on Contributions) is hereby replaced in its entirety as follows:

Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the

commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

2e. Section 43, Section 43 (Requiring Minimum Compensation for Covered Employees) is hereby replaced in its entirety to read as follows:

___ Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

2f. Section 44, Section 44 (Requiring Health Benefits for Covered Employees) is hereby replaced in its entirety to read as follows:

Requiring Health Benefits for Covered Employees.

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco

Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

l. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

2g. Section 45, Section 45 (First Source Hiring Program) is hereby replaced in its entirety to read as follows:

____ First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of

contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.** Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as

determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

2h. Section 58, Section 58 (Cooperative Drafting) is hereby added to the Agreement, as follows:

 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after March 4, 2010.

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

ARAMARK Correctional Services, LLC.

Michael Hennessey
SHERIFF
San Francisco Sheriff's Department


David Kimmel
Vice President
Aramark Tower
1101 Market Street
Philadelphia, PA 19107

Approved as to Form:

City vendor number: 18054

Dennis J. Herrera
City Attorney

By:



Sallie Gibson
Deputy City Attorney

Approved:

Naomi Kelly
Director of the Office of Contract
Administration, and Purchaser

**Third Amendment - Appendix B
Summary**

	FY 2009-2010 Current Contract	Original Proposed Savings, (for 78 Weeks - 1/1/10 - 6/30/11)	Saving Per week	# of weeks of Saving	Prorated 01/1/10- 06/30/10
Fixed Cost for Meals					
Inmate Meals	\$ 4,123,289				\$ 4,123,289
Staff Meals	\$ 323,264			26	\$ 161,632
Meals Subtotal	\$ 4,446,553				\$ 4,284,921
Paper	\$ 31,493				\$ 31,493
Coffee	\$ 37,714				\$ 37,714
Total Contract	<u>\$ 4,515,760</u>				<u>\$ 4,354,128</u>
Savings: Effective 3/04/10 - 6/30/10					
Menu revision savings		\$ (75,000)	\$ (962)	17	\$ (16,354)
Labor savings		\$ (250,000)	\$ (3,205)	17	\$ (54,485)
Savings Subtotal					<u>\$ (70,839)</u>
					Revised Total Contract
					<u><u>\$ 4,283,289</u></u>

Cost Per Meal	FY 2010-2011	FY 2011-2012
Estimated Average Meals = 1800 plus 20% for Trustee Meals		
\$1.52443 price per meal	\$ 3,588,889	\$ 3,588,889
Coffee Service	\$ 30,000	\$ 30,000
Not to Exceed Contract Amount	<u>\$ 3,618,889</u>	<u>\$ 3,618,889</u>

Third Amendment – Appendix B

Food Agreement – Sliding Scale

Average Meals		Price Per Meal
1100	- 1149	\$ 2.17248
1150	- 1199	\$ 2.11479
1200	- 1249	\$ 2.06190
1250	- 1299	\$ 2.01324
1300	- 1349	\$ 1.96833
1350	- 1399	\$ 1.92675
1400	- 1449	\$ 1.88813
1450	- 1499	\$ 1.85218
1500	- 1549	\$ 1.81862
1550	- 1599	\$ 1.78723
1600	- 1649	\$ 1.75780
1650	- 1699	\$ 1.73016
1700	- 1749	\$ 1.70414
1750	- 1799	\$ 1.67961
1800	- 1849	\$ 1.65644
1850	- 1899	\$ 1.63452
1900	- 1949	\$ 1.61376
1950	- 1999	\$ 1.59406
2000	- 2049	\$ 1.57535
2050	- 2099	\$ 1.55755
2100	- 2149	\$ 1.54059
2150	- 2199	\$ 1.52443
2200	- 2249	\$ 1.50900
2250	- 2299	\$ 1.49426
2300	- 2349	\$ 1.48015
2350	- 2399	\$ 1.46665
2400	- 2449	\$ 1.45371
2450	- 2499	\$ 1.44130
2500	- 2549	\$ 1.42938
2550	- 2599	\$ 1.41793
2600	- 2649	\$ 1.40693

*The total number of inmate meals served per week shall be divided by 21 in order to determine the price point on the sliding scale. The total number of inmate meals served shall be based upon the weekly count sheets for each jail signed by the Captain.