

## OPERATING AGREEMENT FOR COMMISSARY SERVICES

This **COMMISSARY AGREEMENT**( the "Agreement") is made as of 11/1/17 between the **Cameron County Sheriff's Office**, with offices at 7300 Old Alice Road, Olmito, Texas 78526 (the "Sheriff"),and **JJ-AD ENTERPRISES, LLC, a Texas limited liability company, doing business as F-S & More** and having its principal place of business at,7593 Agave Ave. Brownsville, Texas 78526( "F-S & More").

WITNESSETH:

**1. GRANT:** The Sheriff hereby grants to F-S & More the exclusive right to provide commissary services for its inmates, staff and visitors at the Cameron County Jail located at 7300 Old Alice Road, Olmito, Texas (the "Facility"). F-S & More shall provide a large selection of Snack foods, candy and gum, non-alcoholic beverages, personal hygiene items, and general merchandise, including quality brand name products ( collectively, the "Products"), all of which shall be subject to the approval of the Sheriff. The Sheriff hereby approves all Products set forth on Exhibit A attached hereto. In addition, F-S & More shall also provide the Products set forth on Exhibit B attached hereto to indigent inmates (the "Indigent Products").

### **2. OPERATIONAL RESPONSIBILITIES:**

**A. FACILITIES AND EQUIPMENT:** The Sheriff shall, at its expense, provide F-S & More with adequate office and storage facilities at the Facility completely equipped and ready to operate together with such heat, and utilities services as may be reasonably required for the efficient performance of the Services. F-S & More shall install such computer hardware and related equipment and software (collectively "Computer Equipment"), including but not limited to F-S & More's Commissary Sales System as necessary to support F-S & Mores' commissary operations. The F-S & More's Commissary Sales System will interface with the Sheriffs existing Odyssey system. F-S & More shall remove all Computer Equipment upon the expiration or termination of this Agreement. The F-S & More's Commissary Sales System is and shall at all times be owned by F-S & More, which shall hold all rights relative thereto except as may be expressly granted hereunder and then only to the extent of such express grant. All use of the F-S & More's Commissary Sales System at the Facility shall immediately cease upon the expiration or termination of this Agreement F-S & More shall be responsible to support and maintain all Computer Equipment during the term of this Agreement, but any and all such obligations shall cease upon the termination or expiration of this Agreement. To the extent that it is necessary for F-S & More's or the Sheriff's employees to be trained to use the F-S & More's Commissary Sales System, F-S & More shall provide such training, provided that F-S & More shall have no other training obligations hereunder. Any and all kiosks necessary for the operation of the F-S & More's Commissary Sales System must be installed and functional within one-hundred twenty (120) days of the execution of this Agreement. The kiosks, in addition to being functional with the F-S & More's Commissary Sales System, will also be functional with the Sheriff's Odyssey system. The Sheriff shall furnish building maintenance services for the Facility and shall provide preventive maintenance and equipment repairs and replacements for any Sheriff-owned equipment.

**B. FORCE MAJEURE:** In the event of a Force Majeure, the Sheriff shall assist F-S & More by permitting reasonable variations in F-S & More's Product offerings and service methods. Additional costs, if any incurred in providing service in the event of a Force Majeure shall be borne by the Sheriff. The term "Force Majeure" means any war, riot or other disorder, strike or other work stoppage, fire, flood, or any other act not within the control of the party whose performance is interfered with and which, by reasonable diligence, such party is unable to prevent.

**C. PRODUCT DELIVERY:** F-S & More personnel shall transport such Products ordered by inmates to inmates, and shall deliver Products returned by inmates to F-S & More at its commissary facility, in a timely manner.

**D. SANITATION:** F-S & More shall be responsible for janitorial service in the commissary areas under F-S & More's control, and the Sheriff shall provide janitorial services for the remainder of the Facility. The Sheriff shall be responsible for extermination services and the removal of trash and garbage from the commissary areas.

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

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

**G. INSURANCE AND INDEMNIFICATION:** F-S & More shall furnish certificates of insurance as follows:

Worker's Compensation insurance as required by law.

Comprehensive General (Public) Liability to include (but not limited to) the following: Premises/operation; independent contractors; personal injury; products/completed operation; contractual liability, with a combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence.

F-S & More agrees to defend, indemnify and hold harmless the Sheriff, its officers, employees, agents and servants or all third party personal injuries caused by the gross negligence of F-S & More in its performance of the services defined in this Agreement, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto. However, it is expressly understood that F-S & More shall not be responsible for damages, injuries, losses or claims caused by inmates or the Sheriff, its officers, employees, agents, servants or other

independent contractors. Neither any of the Sheriff's officers, employees, agents, servants or contractors, nor any inmates, are or will be deemed to be agents or employees of F-S & More and no liability is or will be incurred by F-S & More to such persons, except for bodily injury to such persons caused by F-S & More's gross negligence. Each party shall promptly notify the other of any claim for which indemnity is sought, and shall cooperate with the other party in the defense of such claim. The indemnifying party shall have the sole discretion to defend and settle such claim.

**H. HAZARDOUS SUBSTANCES; PRE-EXISTING CONDITIONS.** F-S & More has no duty to investigate detect, prevent, handle, encapsulate, remove, or dispose of, and will have no responsibility to the Sheriff or others for any exposure of persons or property to, asbestos, lead, fuel storage tanks or contents, indoor air pollutants or contaminants poor air quality, or hazardous, toxic, or regulated waste substances, mold, fungi, mildew, pollutants or contaminants, (Collectively, the "Hazardous Substances") at the Facility or the surrounding premises. The Sheriff will comply with all applicable federal, state, and local laws and regulations, which have been or will be enacted during the term of this Agreement, regarding such Hazardous Substances on the premises of the Cameron County Jail Facilities and Sheriff's Office. The Sheriff will inform F-S & More of the presence of such Hazardous substances and acknowledges that F-S & More employees will not be required to work in any location where they could be exposed to such Hazardous Substances. F-S & More has advised the Sheriff that it does not provide or assume any responsibility to monitor or remediate mold fungi, mildew, indoor air quality or any similar conditions, and that all determinations and corrective actions regarding mold, fungi, mildew, indoor air quality and any similar conditions shall be made by the Sheriff or a third party retained by the Sheriff. In no case will any F-S & More employee act in the capacity of a "Designated Person"(within the meaning of the Asbestos Hazard Emergency Response Act, "AHERA"), which duties remain solely with the Sheriff.

F-S & More will not be responsible for any conditions that existed in, on, or upon the Facility before the commencement date of this Agreement ("Pre-Existing Conditions"). Including, without limitation, environmental impairments, and other conditions.

**I. DAMAGES:** F-S & More's liability hereunder shall not under any circumstances exceed the greater of (a) two (2) percent of the net revenue received by F-S & More pursuant to this Agreement during the twelve (12) months prior to the applicable claim or (b) the actual proceeds of insurance (not to exceed the maximum limits of insurance required by Section 2.G.), less any applicable deductible. In no event will either party be liable to the other party for any loss of business, business interruption, consequential, special indirect or punitive damages.

**J. COMPLIANCE WITH LAWS:** Each party hereto shall comply with all statutes, lawful ordinances, regulations and requirements, federal, state, and local applicable to their activities hereunder. The Sheriff shall provide reasonable and adequate physical security at all times for F-S & More employees, suppliers, management and other authorized visitors.

**K. RETURN OF EQUIPMENT:** F-S & More shall return to the Sheriff at the expiration or on any termination of this Agreement the commissary areas under F-S & More's control and all equipment furnished by the Sheriff in the condition in which it was received

except for ordinary wear and tear and except to the extent that such commissary areas and equipment may have been lost or damaged by fire, flood or other disaster, and except to the extent that such equipment may have been stolen by persons other than employees of F-S & More without negligence on the part of F-S & More or its employees.

**L. LICENSE, FEES, PERMITS, AND TAXES:** F-S & More shall secure and pay for all federal, state and local licenses, permits and fees required for the commissary operation. F-S & More, as the retailer, shall be responsible for the collection and remittance of all applicable sales, use, excise and state and local business and income taxes attributable to the commissary operation and the sales of Products.

### **3. FINANCIAL ARRANGEMENTS:**

**A. PRODUCT ORDERS:** F-S & More shall process orders for Products from inmates in accordance with F-S & More's standard procedures. The Sheriff shall be responsible to collect record and make disbursements from inmate commissary accounts for purchases of such Products; provided, however, that F-S & More shall have access to each inmate account solely for the purpose of verifying that there are sufficient funds in such account to cover a Product order placed by such inmate, including but not limited to, any sales, use or other taxes related thereto.

**B. TRUST FUND:** The Sheriff shall manage all functions of inmate trust fund accounting and commissary account. The Sheriff will post all intake monies and mail monies to the trust fund accounting system on the next business day after its receipt of such monies. A lock box will be set up to receive all money orders from outside the facility. F-S & More shall disperse all transactions as well as checks upon the inmate's release. Trust fund hours will be from 5:00 AM. To 9:00 P.M. daily. F-S & More will remit to the Sheriff any monies collected from transactions charged to the inmates (i.e. medical charges, daily charges, and any other fees allocated by the Sheriff to be charged) once per month and complete the monthly bank reconciliation.

**C. BILLING AND PRICES;** F-S & More shall determine the prices at which Products shall be sold. If F-S & More sustains increases in its costs, including but not limited to, increases in its Product, labor or equipment or software-related costs, F-S & More may increase its prices to recover such increased costs. Additionally, F-S & More may, at its discretion perform a price audit to compare the prices at which it sells the Products contemplated by this Agreement with the prices at which similar products are being sold in retail outlets in the surrounding community ("Comparable Retail Values"). In the event that any of F-S & More's prices are below the Comparable Retail Values the parties shall agree to increase such prices under this Agreement to reflect the Comparable Retail Values. Prior to any price change for any item sold or provided by F-S & More to the Sheriff, the Sheriff must approve in writing the price adjustment. F-S & More shall submit to the Sheriff on the first day of every week, for the preceding week, an invoice for total Gross Sales of Products made during such week, and other goods or services provided by F-S & More during such week, if any. The term "Gross Sales" shall mean total commissary sales (including, but not limited to sales of stamps and pre-stamped envelopes, prepaid telephone calling cards or any other telephone sales, debit cards, and Indigent Product sales) any sales or

use taxes. For purposes of this Agreement, a sale shall be deemed made when a Product ordered by an inmate is delivered to the Sheriff for subsequent delivery to the inmate, and the Product is not returned. For purposes of this Agreement, all sales are final and no returns will be honored unless the inmate who ordered a Product refuses delivery of such Product at the time such Product is delivered. If an inmate is released prior to Product delivery and fails to claim such Product within seventy-two (72) hours after release, the Product shall become the property of the Sheriff.

**MANNER OF PAYMENT:** F-S & More shall bill the Sheriff on a weekly basis for Gross Sales made during the immediately preceding week, together with any additional services provided during such week. Payment shall be made by check payable to F-S & More within thirty (30) days after the invoice date. Such payment and any other notices shall be sent to:

**F-S & More  
7593 Agave Avenue  
Brownsville, Texas 78526**

If any invoices are not paid within thirty (30) days of the invoice date, interest shall be charged on each invoice at the Prime Interest Rate per annum on the unpaid balance (or in the event local law prohibits the charging of such rate, interest shall be charged at the maximum legal rate permitted computed from the invoice date until the date paid). The term "Prime Interest Rate" shall mean the interest rate published in The Wall Street Journal as the base rate on corporate loans posted by at least Seventy-Five Percent (75%) of the thirty (30) largest U.S. commercial banks, such rate to be adjusted on the last day of each F-S & More accounting period.

The right of F-S & More to charge interest for late payment shall not be construed as a waiver of F-S & More's right to receive payment of invoices within thirty (30) days of the invoice date.

F-S & More shall provide the Sheriff with a comprehensive monthly summary of Gross Sales, services and credits. This summary shall be forwarded to the Sheriff Administrator or his designee each month.

**D. COMMISSIONS:** F-S & More shall pay to the Sheriff a commission in an amount equal to forty-four (44%) of Net Sales. Within fifteen (15) days after the end of each month, F-S & More shall deliver to the Sheriff a check covering commissions on Net Sales made during such month. For purposes of this Paragraph, "Net Sales" means total Product sales (excluding all sales of stamps and pre-stamped envelopes, pre-paid telephone calling cards or any other telephone sales, debit cards, and Indigent Products) less sales or use taxes and authorized returns.

**E. OURTREAT:** F-S & More shall implement its OurTreat program at the Facility. F-S & More shall determine the prices at which OurTreat items shall be sold. If F-S & More sustains increases in its costs, including but not limited to, increases in its product, labor or equipment costs, F-S & More may increase its OurTreat prices to recover such increased costs,

with the Sheriff's approval. No returns shall be accepted unless the inmate, who ordered a product, is released prior to such delivery. All sales shall be deemed made when an OurTreat item purchased is delivered to the inmate.

The Sheriff shall earn a commission in an amount equal to forty-four (44%) of Net Sales of all OurTreat packages. For purposes of this Paragraph, "Net Sales" means total OurTreat sales, less sales or use taxes and authorized returns.

**F. LOCAL FAVORITES:** F-S & More shall implement its Local Favorites program. F-S & More shall determine the prices at which Local Favorites items shall be sold. If F-S & More sustains increases in its costs, including but not limited to, increases in its product, labor or equipment costs, F-S & More may increase its Local Favorites prices to recover such increased costs, with the Sheriff's approval. No returns shall be accepted unless the inmate, who ordered a product, is released prior to such delivery. All sales shall be deemed made when a Local Favorite item purchased by an inmate is delivered.

F-S & More shall pay to the Sheriff a commission in an amount equal to forty-four percent (44%) of Net Sales on the Local Favorite items. Within Fifteen (15) days after the end of each month, F-S & More shall deliver to the Sheriff a check covering commissions on Net Sales made during the prior month. For purposes of this Paragraph "Net Sales" means total Local Favorite products sales, less sales or use taxes and authorized returns.

**G. TREAT-CART:** F-S & More shall implement its Treat-Cart program at the Facility. F-S & More shall determine the prices at which the Treat-Cart items shall be sold. If F-S & More sustains increases in its costs, including but not limited to, increases in its product, labor or equipment costs, F-S & More may increase its Treat-Cart prices to recover such increased costs, with the Sheriff's approval. No returns shall be accepted unless the inmate, who ordered a product, is released prior to such delivery. All sales shall be deemed made when a Treat-Cart item purchased by an inmate is delivered. F-S & More agrees to establish a Treat-Cart operating schedule to follow with the Sheriff or designee.

**H. PAYMENT PROCESSING SERVICES:** F-S & More will implement a payment processing service for commissary payments ("Services") at Sheriff's Facility or shall bring a third party supplier of payment processing services within one hundred twenty days (120) of execution of this agreement. Our goal being to increase inmate's monetary benefit by reducing fees. Said services shall include commissary payments made by cash, credit card or debit card. F-S & More or the third party will charge each person who uses the services a transaction fee. The transaction fee schedule shall be provided once agreement is executed.

**I. ADDITIONAL SERVICES:** Food, beverage and other services required by the Facility outside the scope of this Agreement shall be provided by F-S & More upon written authorization by the Sheriff and/or Sheriff at mutually agreed upon prices for such services.

**J. MATERIAL ADVERSE CHANGE:** The financial arrangements in this Agreement are based on conditions existing as of the effective date including any representations regarding existing and future conditions made by Sheriff in connection with the negotiation and

execution of this Agreement. If such conditions change due to causes beyond F-S & More's control, including but not limited to, a change in the scope of F-S & More's services, a decrease in the Facility's inmate population or the availability of inmate labor, efforts to organize labor; increases in food, fuel, equipment, utilities and supply costs, Federal, State and local sales and other taxes and other operation costs; a change in Federal, State and local standards, requirements recommendations, and regulations; changes in phone service providers or a change in the way phone service is sold to inmates; or other unforeseen external market conditions outside of F-S & More's control, then F-S & More shall give Sheriff written notice of such increase or change, and within thirty (30) calendar days after such notice, F-S & More and Sheriff shall mutually agree upon modification(s) to offset the impact of the increase or change, which modifications may include any or a combination of the following: an adjustment to F-S & More's prices or commission, modifications to the Product offerings and/or pricing, or modifications to F-S & More's scope of services.

4. **ACCESS AND RECORDS:** F-S & More will maintain accurate books and records in connection with the commissary service operation and shall retain such records for twelve (12) months after the expiration or any termination of this Agreement.

5. **TERM OF AGREEMENT:** This Agreement shall commence on January 1, 2018, and shall end on December 31, 2020.

6. **TERMINATION:**

**A. TERMINATION FOR CONVENIENCE:** Either party may terminate this Agreement for convenience, at any time during the term or any renewal or extension, upon sixty (60) days' notice to the other party.

**B. TERMINATION FOR DEFAULT:** Either party may terminate this Agreement upon a breach or default of this Agreement by the other party, which is not cured within thirty (30) days after receipt by the defaulting party of a notice from the non-defaulting party, specifying the nature of such breach or default.

**C. CONSEQUENCES OF TERMINATION:** If this Agreement is terminated under any circumstances, the Sheriff shall pay F-S & More for all services provided by F-S & More up to and including the date of termination, at the rates and within the payment periods set forth in this Agreement. The Sheriff's obligation to pay for services provided shall survive the termination or expiration of this Agreement.

Upon the expiration or any termination of this Agreement, the Sheriff agrees, if requested by F-S & More., to purchase F-S & More's usable inventory of products and supplies. The purchase price for such inventory shall be F-S & More's invoice cost

7. **NOTICE:** All notices or other communication hereunder shall be deemed to be duly given when made in writing and delivered in person or deposited in the United States mail, postage prepaid certified mail, return receipt requested and addressed to the party at its

respective address first set forth above, or such other address as it may designate by notice given as aforesaid.

8. **CONFLICTS OF INTEREST:** F-S & More covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with performance of this Agreement and no person having any such interest shall be employed. In addition, no officer, agent or employee of the Sheriff and no member of the Cameron County Commissioners Court shall participate in any decision relating to this Agreement which affects his/her personal interest or any corporation partnership, association which he/she is directly or indirectly interested or has any personal or pecuniary interest.

9. **CONFIDENTIAL INFORMATION:** All financial, statistical, operating and personnel materials and information, including, but not limited to, the F-S & More's System, related to or utilized in F-S & More's business (collectively, the "F-S & More Proprietary Information") is and shall remain confidential and the sole property of F-S & More and constitutes trade secrets of F-S & More. The Sheriff, subject to the: Texas Public Information Act, shall keep all F-S & More Proprietary Information confidential and shall use the F-S & More Proprietary Information only for the purpose of fulfilling the terms of this Agreement The Sheriff shall not photocopy or otherwise duplicate any materials containing any, F-S & More Proprietary Information without the prior written consent of F-S & More Upon the expiration or any termination of this Agreement, all manuals, software, computers, diskettes, disks and disk drives, and other materials or documents containing any F-S & More Proprietary Information, shall be returned to F-S & More.

10. **ASSIGNMENT:** F-S & More may not assign this Agreement without the Sheriff's prior written consent.

11. **PRESS RELATIONS:** F-S & More shall coordinate with the Sheriff or his designee on any and all press or media releases.

12. **EXTENT OF AGREEMENT:** This Agreement represents the entire agreement and understanding between the Sheriff and F-S & More and supersede all prior negotiations, representations or agreements, either written or oral including without limitation, any request for proposal invitation to bid, bid specifications, bids proposals or other similar document. This Agreement may be amended only by written instrument signed by both the Sheriff and F-S & More.

13. **SEVERABILITY:** If any provision hereof or the application thereof to any person or circumstance is held to any extent, to be void, invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

14. **WAIVER:** The failure of F-S & More or the Sheriff to exercise any right or remedy available under this Agreement upon the other party's breach of the terms. Covenants and conditions of this Agreement or the failure to demand the prompt performance of any obligation



under this Agreement shall not be deemed a waiver of such right or remedy; or the requirement of punctual performance; or of any subsequent breach or default on the part of the other party.

**15. COUNTERPARTS; PDF and Facsimile Signatures:** This Agreement may be executed in counterparts each of which shall be an original, but all of which shall constitute one, and the same, document. Signatures of the Parties may be exchanged by pdf or facsimile, and such pdf or facsimile signature pages shall be deemed originals in all respects. It shall not be necessary in making proof of this Agreement or any counterpart to produce or account for any of the other counterparts.

**16. VENUE:** For purposes of any legal action both parties agree that venue shall be in Cameron County, Texas.

**IN WITNESS HEREOF,** the parties hereto have caused this Agreement to be signed by their duly authorized representatives the day and year first above written.

**F-S & More**

A large, irregular black redaction box covering the signature area of the party identified as "F-S & More".

**Cameron County Sheriff**

A large, irregular black redaction box covering the signature area of the Cameron County Sheriff.

**EXHIBIT B**

Indigent Kit shall contain:

1 toothbrush, 1 toothpaste, 1 pen, 2 writing paper, 2 stamped envelopes