

JEFFERSON COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA REQUEST

TO: Board of Commissioners  
FROM: Steve Richmond, JCSO Jail Superintendent  
DATE: February 4, 2011  
SUBJECT: Commissary and Cash Handling Services at the Jail

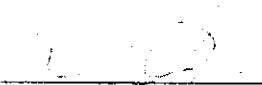
STATEMENT OF ISSUE: These changes will simplify and update our current commissary and cash handling services.

ANALYSIS: Inmates will deal directly with the commissary vendor. Cash will be deposited by inmates and family to their inmate trust account directly with the vendor. Funds due an inmate at release will be in the form of a debit card instead of a check.

FISCAL IMPACT: It is anticipated that there will be a savings of approximately 15-20 hours of Corrections staff time per week. The commissary and cash-handling equipment will be paid for by a service charge added to all transactions by the vendor, no cost will be incurred by the County.

RECOMMENDATION: Approve and sign by BoCC.

REVIEWED BY:

  
\_\_\_\_\_  
County Administrator

\_\_\_\_\_  
Date

**SWANSON SERVICES CORPORATION  
COMMISSARY SERVICE CONTRACT**

THIS AGREEMENT, made this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Jefferson County Sheriff's Office, located at 81 Elkins Road, Port Hadlock, WA 98339 hereinafter referred to as "Client" and Swanson Services Corporation with principal offices located at 1133 Pennsylvania St, Denver Co 80203, hereinafter referred to as "Swanson".

WITNESS TO:

Whereas, Client desires to avail itself of Swanson's services, and Swanson desires to provide such services to Client, in consideration of mutual covenants and agreements hereto set forth; the parties intending to be legally bound, hereby agree to as follows:

**SECTION ONE: CLIENTS GRANT TO SWANSON**

Client grants to Swanson, as an independent contractor, the exclusive right to sell commissary or food products and any other items which are charged to the residents account balance; including but not limited to debit phone cards, to the residents of the Jefferson County Sheriff's Office located at 81 Elkins Road, Port Hadlock, WA 98339, such location referenced herein as "premises" and any future locations managed by Client. Charges, by the Client, to a resident's account for services the Client provides to such resident, are excluded from this provision.

**SECTION TWO: SWANSON'S RESPONSIBILITIES**

A. Pursuant to the provisions of this agreement, Swanson will purchase and maintain at high standards of quality, a mutually agreed upon number and type of inventory items, at mutually agreed locations for the sales of food products, non-alcoholic beverages, tobacco products and other such articles; and will keep such inventory adequately serviced and supplied, with the appropriate merchandise in good quality. Swanson warrants that initial price list is subject to ordinary price adjustment that, from time to time, is necessary due to market factors beyond the control of Swanson during the term of this agreement.

B. Swanson agrees to comply with all applicable Federal, State and Local laws and regulations pertaining to wages and hours of employment.

C. All records will be kept on file by Swanson for a period of three (3) years, from the date which record is made. Upon reasonable notice, Swanson will give Client, or Client's authorized representative, the privilege of inspecting, examining and auditing, during normal business hours and with reasonable advance notice, such of Swanson's records directly relevant to client purchases. The cost of such inspection, examination or audit shall be the sole expense of Client. Such inspections shall take place at the Swanson location where said records are normally maintained.

D. Shipment of orders will be FOB: **Dock**

E. Only provisions contained in Swanson's proposal dated, November 2010, agreed to in writing, and attached as an exhibit to this agreement, are made a part of this agreement.

F. Swanson agrees to provide phone support for Swanson's software on a 24 hour, 7 days per week basis.

G. Swanson agrees to provide OnSite hardware support and maintenance on Swanson owned hardware. After installation of Swanson Software on Client's Hardware, Client agrees to compensate Swanson for direct, actual expenses related to providing support and maintenance on Client's Hardware.

**SECTION THREE: CLIENT'S RESPONSIBILITIES**

A. It shall be the sole responsibility of Client to insure that Client's employees follow and adhere to the accounting system provided by Swanson, and operating procedures presented during initial training provided by Swanson. This includes, but is not limited to, balancing cash drawers, daily trust fund balancing, weekly trust fund balancing and monthly check book and bank reconciliation.

B. It shall be the sole responsibility of the Client, to train replacement or relief personnel in processing commissary, and/or in maintaining the accounting system, provided by Swanson. Under no circumstance will Swanson be responsible for the integrity of the accounts or account balances maintained by Client. Should Client request additional training and support of Swanson, such training and support will be provided at a fee, mutually agreed to in writing, by the parties.

C. Client or Client's staff will adhere to mutually agreed to time frame for commissary order and delivery procedures, where delivery to residents is provided by Swanson staff.

D. Client shall promptly, and in a timely manner, notify Swanson of any changes in Client's Hardware, Software or Operating Procedures; that in any way affect Swanson's hardware, software or Swanson's performance under this agreement.

E. If Client delivers orders to the inmate, Client will accurately account for and deliver commissary orders shipped by Swanson, notifying Swanson immediately of any discrepancy.

F. With any interface, Client will insure that Client's Hardware or Software in no way results in the disruption of Swanson's Hardware or Software operating systems, files or file structure.

#### SECTION FOUR: FINANCIAL ARRANGEMENTS

A. Client agrees to reimburse Swanson each week for all purchases from Swanson.

B. Swanson is responsible for the payment of any sales fees, or other taxes, levied against the sales or performance under this contract.

C. Swanson agrees to remit any payments due Client within fifteen (15) days following the end of Swanson's fiscal accounting period.

D. Nothing in this agreement shall allow either party to withhold or refuse payment of any money due for service provided, in full compliance with the terms of this agreement.

#### SECTION FIVE: INDEMNIFICATION AND INSURANCE

A. The parties shall indemnify each other against any loss, damage, injury or death, caused by the negligent acts or omissions by their agents or employees; for losses, damages, injuries or death caused by their negligence and arising out of the consumption or use of the products sold or services provided. However nothing contained herein shall require the parties to defend or indemnify each other for losses, damages, injuries or death arising out of the negligence of their respective agents or employees.

B. The party's obligation to hold each other harmless, pursuant to the Agreement, shall be dependent upon promptly notifying each other in writing of any such claims or lawsuits against either Swanson or Client; in no event, later than thirty (30) days after the date of first receiving notice of such claim or lawsuit. Failure of either party receiving such notification, to notify the other party of any such claim or lawsuit within said thirty (30) day period, shall relieve that party of any and all responsibility and liability under the Agreement to Indemnify and hold harmless.

#### SECTION SIX: EMPLOYEES

A. Parties to this Agreement recognize that employees of Client are not employees of Swanson and employees of Swanson are not employees of Client.

B. During the term of this Agreement, and for a period of two (2) years from the termination of this agreement, including any renewal or extension of this agreement: the parties agree not to hire, and not to offer to hire, any employee or former employee of the other party, without the express written consent of that party.

#### SECTION SEVEN: COMMENCEMENT

This Agreement shall become effective as of the commencement date of service, and shall remain in effect for five (5) years, unless sooner terminated as herein provided. The commencement date of this contract shall be \_\_\_\_\_ 20\_\_\_\_. It shall thereafter renew itself automatically for similar terms until notice of termination, in writing, is given by either party by registered mail at least ninety (90) days prior to the expiration of this Agreement, or any renewal term thereof.

#### SECTION EIGHT: TERMINATION:

A. The following may not be a cause for termination of this agreement:

1. Any responsibility of Client referred to in Section Three: Responsibilities, of this agreement.

2. Failure of any third party delivery service to deliver a Swanson shipment in a timely and satisfactory manner.

B. This Agreement may only be terminated under the following circumstances:

1. Upon mutual agreement of both Client and Swanson, upon 30 days written notice.

2. For Cause, in the following manner:

a. If either party shall refuse, fail, or be unable to perform any of the terms of this agreement for any reason, other than excused performance stated in other sections of this agreement. The party claiming such failure shall give the other party written notice of such breach listing the event and necessary documentation supporting such breach.

b. Within 30 days, both parties shall meet and discuss the claimed breach, and set forth a mutually agreed upon resolution to such breach, and the time-line for correcting such breach in a manner satisfactory to both parties. Such resolution and time-line must be in writing, agreed to and signed by both parties.

c. If, a mutually agreeable resolution is not achieved, or if at the end of such time line, the agreed upon resolution and time-line are not being met; the injured party may cancel this agreement effective ten days (10) after the end of said agreed time line, or failure to mutually agree to a resolution.

3. By either party, upon ninety (90) days' notice to the non-terminating party, with or without cause.

C. Liquidated Damages:

1. Client agrees that Swanson must expend considerable time and resources in the implementation, training and execution of this agreement and that cancellation, for any reason, prior to completing the full term of this agreement, will result in Swanson suffering substantial losses.

2. In the event A) a claimed breach of contract occurs and a mutually agreeable resolution is not achieved, B) a proposed resolution of a claimed contract breach is not being fulfilled or C) the Client invokes Section 8.B.3 then Client agrees that Swanson is entitled to Liquidated Damages. In the event that either "A) or "B" as listed here are the event giving rise to Swanson's right to Liquidated Damages, then Swanson shall be entitled to as Liquidated Damages a sum equal to five percent (5%) of its sales at the Client's site for the prior twelve (12) whole months. This means that a breach of contract that is deemed incurable as of January 13, 2014 would entitle Swanson to Liquidated Damages equal to 5% of their sales at the Client's site for the months January through December 2013. In the event that "C)" is the event giving rise to Swanson's right to Liquidated Damages, then Swanson shall be entitled to as Liquidated Damages a sum equal to five percent (5%) of its sales at the client's site for the prior six (6) whole months. Thus, if the Client invoked Section 8.B.3 with an effective termination date of January 13, 2014, then Swanson would be entitled to Liquidated Damages equal to 5% of its sales at the Client's site for July, August, September, October, November and December 2013.

If Swanson and Client also have in place and executed a valid "COBRA COMBO CASHIER (Trademark) SERVICE AGREEMENT," at the time when Swanson is pursuant to this contract, then Swanson may elect to obtain Liquidated Damages through this Contract or that "Cobra Combo Service Agreement" but may not collect Liquidated Damages through or pursuant to both contracts.

3. Should Client fail to compensate Swanson for its Sales and/or any Liquidated damages outlined herein, Swanson shall be entitled to one and one-half (1.5%) percent interest, per month on any outstanding balance owed Swanson.

4. Swanson shall not be entitled Liquidated Damages if an event that would otherwise allow Swanson to obtain such damages pursuant to Section 8C above occurs or is established to have occurred on or after January 1, 2017.

#### SECTION NINE: INDEPENDENT CONTRACTOR RELATIONSHIP

It is mutually understood and agreed, and it is the intent of the parties, that subject to applicable terms and conditions set forth in the direct sales to client financial arrangement, if such is used; an independent contractor relationship be and is hereby established under the terms and conditions of this Agreement; that employees of Swanson are not nor shall be deemed to be employees of Client; and that employees of Client are not nor shall they be deemed to be employees of Swanson.

#### SECTION TEN: SWANSON'S TITLE TO THE SOFTWARE AND HARDWARE

A. All software installed by Swanson pursuant to the Agreement is proprietary, copyrighted and a patent application on file with regard to, not only the software, but also the operating technology involved in Swanson's services. This software and technology, shall at all times, remain the property of Swanson, with title and all rights vested in Swanson. Client shall have no property interest in said software and technology and shall at all times protect such software and technology from copying, removal, tampering with, or disclosure to other persons or companies, without the express, written consent of Swanson.

B. All hardware installed by Swanson shall remain the property of Swanson, unless purchased by Client.

C. All Maintenance, repair, or replacement of hardware shall be the responsibility of: Swanson

**SECTION ELEVEN: EXCUSED PERFORMANCE**

In case performance of any terms or provisions hereof (other than the payment of monies) shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, State, or Federal, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, acts of God, or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option suspend, without liability, the performance of its obligations hereunder during the period of such suspension of performance of duties hereunder.

**SECTION TWELVE: ASSIGNMENT**

Neither Swanson nor Client may assign or transfer this Agreement, or any part thereof, without the express written consent of the other party.

**SECTION THIRTEEN: ENTIRE AGREEMENT; WAIVER**

This Agreement constitutes the entire Agreement between the parties with respect to the provision of Commissary Services; and there are no other or further written, or oral, understandings or agreements with respect thereto. No variation or modification of this Agreement, and no waiver of its provisions, shall be valid unless in writing and signed by the duly authorized officers of Swanson and Client. This Agreement supersedes all other agreements between the parties for the provision of Services outlined herein.

**SECTION FOURTEEN: NOTICES**

All notices to Client shall be addressed to:

Jefferson County Sheriff's Office  
81 Elkins Road  
Port Hadlock, WA 98339

All notices to Swanson shall be addressed to:

Swanson Services Corporation  
1133 Pennsylvania St  
Denver, Co 80203

**SECTION FIFTEEN: GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Washington

IN WITNESS WHEREOF, the parties hereto affirm that they have the authority to execute this agreement on behalf of their respective entities for the entire term and have hereunto set their hands and seals of the day and year first above written.

JEFFERSON COUNTY

By: \_\_\_\_\_

TITLE: \_\_\_\_\_

(TYPED NAME OF OFFICIAL SIGNING)

SWANSON SERVICES CORPORATION

By: \_\_\_\_\_

TITLE: \_\_\_\_\_

(TYPED NAME OF OFFICIAL SIGNING)

*David Gray*  
12/21/04

## COBRA COMBO CASHIER™ SERVICE AGREEMENT

This Kiosk Site Agreement (this "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between Swanson Services Corporation®, a Florida Corporation ("SSC"), located at 1133 Pennsylvania Street, Denver, Colorado 80203, and the Jefferson County Sheriff's Office, ("Site Operator") located at 81 Elkins Road, Port Hadlock, WA 98339

WHEREAS, SSC is willing and able to provide to Site Operator without charge a means to collect, disburse, and account for the funds used by Site Operator's clientele through the use of Kiosks (as described herein); and

WHEREAS, Site Operator desires for SSC to provide such equipment and services at no charge to the facility and the placement, maintenance, and support for the Kiosk is funded from a surcharge per transaction to the depositor; and

WHEREAS, Site Operator agrees to only accept moneys for deposit on resident accounts through electronic methods as provided by Swanson; or during the booking process

In consideration of the foregoing and the terms, covenants and conditions set forth in this Agreement, SSC and Site Operator hereby agree as follows

**1.0 Surcharge Notices.** Site Operator is not authorized to change the surcharge or collect any other surcharge or fee for use of the Kiosk. Surcharge amounts will be set and determined solely by SSC.

**2.0 Title.** The Kiosk shall remain the property of SSC. Site Operator shall keep the Kiosk free and clear of any liens or other encumbrances, and shall not permit any act where SSC's or third party title or rights may be negatively affected.

**3.0 Term and Termination.** This Agreement shall commence on the Effective Date and shall continue for \_\_\_\_\_ ( ) years. Thereafter it shall automatically renew for similar periods under the same terms and conditions stated herein, unless terminated by either party in writing at least ninety (90) days prior to the expiration date of the then current period. The initial period and all subsequent periods shall together constitute the Term. Either party may terminate this Agreement by giving the other party ninety (90) days prior written notice based on any of the following:

3.1 The other party's failure to comply with any provision of this Agreement within thirty (30) days after receipt of written notification sent certified mail;

3.2 Mutual agreement of the parties.

3.3 A unilateral decision, with or without cause, to terminate this Agreement.

3.4 Site Operator agrees that SSC must expend considerable time, money and resources in the installation, implementation, training, and support of this agreement and that termination, for any reason, prior to completing the initial term of this agreement, will result in SSC being less likely to recoup the initial cost of implementing this agreement. In the event A) a claimed breach of contract occurs and a mutually agreeable resolution is not achieved, B) a proposed resolution of a claimed contract breach is not being fulfilled or C) either party invokes Section 3.3 above then Client agrees that Swanson is entitled to Liquidated Damages.

Should the event giving rise to SSC's right to Liquidated Damages be either "A)" or "B)" as listed herein, then SSC is entitled to as Liquidated Damages a sum to be computed as follows:

For each Kiosk installed at the Client's site

The lesser of \$16,500.00 (\$1,375 x 12 months) or the average monthly transaction volume (or "AMTV") x \$2.75 (the convenience fee) x 12.

Should the event giving rise to SSC's right to Liquidated Damages be "C)" as listed herein, then SSC is entitled to as Liquidated Damages a sum to be computed as follows:

For each Kiosk installed at the Client's site

The lesser of \$8250.00 (\$1,375 x 6 months) or the AMTV x \$2.75 (the convenience fee) x 6.

The parties agree that the AMTV shall be computed by dividing the total number of transactions over the prior whole twelve (12) months by 12. In the event that fewer than 12 whole months are available for this computation, all available whole months shall be used. The parties also agree that if said computation results in a whole number and a fraction, then the AMTV shall be rounded down to the next lowest whole number.

The parties also agree that \$1,375.00 was chosen for this calculation because it is a sum equal to the collection of 500 distinct convenience fees. Should the cost of the convenience fee increase or decrease during the effective term of this Agreement, the lump sum reflected in the above listed formulas shall be adjusted accordingly to reflect the revised cost of the convenience fee. If SSC and Client also have in place and executed a valid "Commissary Services Contract" at the time when SSC is entitled to Liquidated Damages pursuant to this contract, then SSC may elect to obtain Liquidated Damages through either this Contract or that "Commissary Services Contract" but may not collect Liquidated Damages through or pursuant to both Contracts.

In addition, Client shall have access to any data, spreadsheet, worksheet or other data source that indicates, collects or reflects the total number of transactions occurring at SSC Kiosks at Client's site before agreeing to what number represents the AMTV for Liquidated Damages purposes.

3.5 No Liquidated Damages shall be available to SSC if any of the events listed above in Section 3.4 that would otherwise allow Swanson to obtain such damages occur or are established to have occurred on or after January 1, 2017.

**4.0 Damage and Loss.** In the event the Kiosk is lost or damaged as a result of Site Operator's negligence or intentional act or omission, including, but not limited to service or modification by persons not so authorized by SSC, Site Operator shall pay to SSC the repair cost or if damaged beyond repair, the replacement cost of the Kiosk, not to exceed \$7,500.00 per incident. The affected Kiosk shall be repaired or replaced and the obligations of this Agreement shall continue in full force and effect through the Term.

**5.0 Duties of SSC.**

- 5.1 SSC shall install, operate and provide all maintenance for the Kiosk to keep it in good working order and repair at its own expense. SSC shall be entitled to use third party service providers to perform maintenance and repair functions for the Kiosk.
- 5.2 Swanson shall guarantee payments applied to resident accounts through the kiosk to the Site Operator.

**6.0 Duties of Site Operator.**

- 6.1 Site Operator shall make available as much space within the Premises as is necessary to enable users to have access to the Kiosk and for SSC or its service providers to perform maintenance and repair on the Kiosk and provide to SSC, third party servicing agents, and users of the Kiosk free and unrestricted access to the Kiosk within the Premises during Site Operator's regular hours of operation.
- 6.2 Site Operator shall provide and maintain within two feet of the Kiosk Site a dedicated 110V electrical power outlet with low power usage on same circuit, for the sole use of the Kiosk and a dedicated CAT 5 cable to be used for network connection to the internet and to the COBRA Banker Database Server.
- 6.3 Site Operator shall maintain adequate security to prevent any unauthorized use of or damage to the kiosk and shall notify SSC or its designated service providers promptly of any trouble or irregularity in the functioning of the Kiosk, and discontinue use of the Kiosk until the Kiosk is serviced or instructions are received from SSC or its service providers. In no event shall Site Operator permit any tampering with or attempts to service the Kiosk except by persons authorized by SSC.

**7.0 Ownership of Kiosk Cash.** SSC is at all times the sole owner of all Kiosk Cash from the moment of insertion into Kiosk. No other person, including Site Operator shall have any right, title, claim or interest in the Kiosk Cash contemplated by this Agreement. SSC's ownership of and right to access Kiosk Cash shall not be subject to any claim, set off, arbitration or lien by Site Operator or others under any circumstances.

**8.0 Bank's Access to Kiosk Cash.** Site Operator agrees to provide SSC and its armored carrier ready access to the Kiosk upon request. The parties understand and agree that Kiosk Cash funds must be readily available to SSC. SSC shall have the right to demand the return of any portion or all of its Kiosk Cash at any time, with or without cause. Without limiting the generality of the foregoing, SSC shall be entitled to demand the return of its Kiosk Cash whenever: (a) it is directed to do so by state or federal regulatory agencies; (b) SSC has reason to believe that its Kiosk Cash may be subject to loss through fraud or other means; (c) SSC has reason to believe its access to Kiosk Cash may be delayed (e.g., due to a threatened strike or labor dispute); (d) Site Operator breaches this or any other Agreement with SSC; (e) SSC has reason to believe that Kiosk transactions will not be processed in a correct or timely fashion, or that SSC will not receive timely payment for Kiosk Cash cleared from any Kiosks.

**9.0 Assignment.** Neither this Agreement nor Site Operator's rights hereunder are assignable except with SSC's prior, written consent. SSC may assign this Agreement in conjunction with the sale of a substantial part of its business utilizing this Agreement. Any unauthorized assignment of this Agreement is void.

**10.0 Indemnification.** Except for damages, claims or losses due to SSC's willful misconduct or gross negligence, Site Operator, to the extent permitted by law, will indemnify, defend and hold SSC and SSC's property, free and harmless from any liability for losses, claims, cost or expense (including reasonable attorneys' fees) injury to or death of any person, or for damage to property arising from or relating to the installation, maintenance or removal of the or from the acts or omissions of any person or persons, including Site Operator, using or possessing the Kiosk with Site Operator's express or implied consent.

**11.0 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

**12.0 Notice.** Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered overnight delivery service to:

Swanson Services Corporation  
Charles L. Swanson III, Vice President  
2115 63<sup>rd</sup> Avenue East  
Bradenton, Florida 34203

**13.0 Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of the Agreement. This Agreement may be modified in writing and must be signed by both SSC and Site Operator.

**ACCEPTED AND AGREED TO:**

Swanson Services Corporation

By: \_\_\_\_\_

Signature

Date

\_\_\_\_\_  
Printed Name & Title

**ACCEPTED AND AGREED TO:**

Jefferson County

By: \_\_\_\_\_

Signature

Date

\_\_\_\_\_  
Printed Name & Title

*Charles L. Swanson III* 1/24/2011