

C O N T R A C T

The COUNTY OF SAN BENITO ("COUNTY") and the **KEEFE COMMISSARY NETWORK LLC**, ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. Duration of Contract.

This contract shall commence on August 1, 2019, and end on June 30, 2022, unless sooner terminated as specified herein. Contract shall automatically renew for two (2) two-year extensions unless terminated by either party has specified herein.

2. Scope of Services.

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. Compensation for Services.

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. General Terms and Conditions.

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. Insurance Limits.

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000
- (b) Professional liability insurance: Not less than \$300,000 per claim
- (c) Comprehensive motor vehicle liability insurance: \$1,000,000

6. Termination.

The number of days of advance written notice required for termination of this contract is thirty (30) days.

7. Specific Terms and Conditions (check one)

- ☐ There are no additional provisions to this contract.
- ☒ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- ☒ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

8. Information about Contract Administrators.

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY:

Name: Tony Lamonica

Title: Captain

Address: 710 Flynn Road; PO Box 920
Hollister, CA 95023

Telephone No.: (831) 636-4060

e-mail.: tlamonica@sbcsheriff.org

Contract Administrator for CONTRACTOR:

Name: Dang Nguyen

Title: Account Manager

Address: 13369 Valley Blvd.
Fontana, CA 92335

Telephone No.: 909-429-6949

e-mail: dnguyen@keefegroup.com

SIGNATURES

APPROVED BY COUNTY:

Name: Mark Medina

Title: Chairman, San Benito Co Board of Supervisors

Date: _____

APPROVED BY CONTRACTOR:

Name: John Puricell

Title: Executive Vice President

Date: 6/28/19

APPROVED AS TO LEGAL FORM:

San Benito County Counsel

Shirley L. Murphy

By: Shirley L. Murphy, Deputy County Counsel

Date: July 3, 2019

ATTACHMENT A
Scope of Work
San Benito County Contract

CONTRACTOR, Keefe Commissary Network, agrees to provide the services requested by the San Benito County Jail in its Request for Proposal (RFP) and Keefe Commissary Network's proposal dated April 1, 2019.

1. Location

- a. Commissary shall be provided by Keefe Commissary Network, hereinafter CONTRACTOR, to inmates at the San Benito County Jail at the following locations:
 - i. 710 Flynn Road, Hollister, CA 95023
 - ii. 710-A Flynn Road, Hollister, CA 95023

2. Ordering

- a. CONTRACTOR will have printed scan forms available to all inmates for order placement.
- b. CONTRACTOR will provide, commissary interface once Telmate tablets are deployed in each housing unit to be used by inmates for paperless ordering and other options such as appointment requests, grievance requests, programming, etc. as mutually agreed upon by jail administration.
- c. CONTRACTOR and jail administration will meet and agree on the items and prices to be in effect for the first contract year. After the initial meeting, no items will be offered without the express written permission of the jail administration. Price changes may be submitted and, if allowed by jail administration, will go into effect the following month.
- d. CONTRACTOR shall be responsible for notifying the inmate population of any and all price changes, with notification method pre-approved by jail administration.
- e. CONTRACTOR to keep jail administration informed about new products that may be offered.
- f. The commissary schedule will be agreed upon by CONTRACTOR and jail administration, for delivery once every week.
- g. The maximum commissary purchase, per inmate, per week, will be agreed upon by CONTRACTOR and jail administration.

3. Delivery

- a. CONTRACTOR will be responsible for delivery of commissary to the inmates one (1) time per week, including indigent items. The commissary schedule will be agreed upon by CONTRACTOR and jail administration.
- b. CONTRACTOR will not substitute items and will have an order fill rate of greater than 99%. Back ordered items will not be allowed and will not be charged to inmate accounts. Any shortages charged to an inmate account will be credited by the on-site administrator of CONTRACTOR the next business day.

- c. If weekly commissary orders are delayed or do not arrive on time, CONTRACTOR shall be responsible to meet with each inmate housing unit to explain the delay and provide updates to the inmates and correctional staff as the delivery date becomes available. This notification shall be provided in writing and verbal form, and should be completed prior to the expected delivery time/date.

4. Commissary Administrator

- a. CONTRACTOR shall provide 1 FTE on-site commissary administrator to carry out all aspects of the inmate commissary services. In the case that CONTRACTOR'S employee does not perform commissary duties in a satisfactory manner, jail administration has the right to immediately pull the security clearance of CONTRACTOR'S employee after discussion with CONTRACTOR. CONTRACTOR shall have a substitution plan to replace employee within 72 hours of dismissal. COUNTY shall have no role in personnel issues of CONTRACTOR. CONTRACTOR'S employee will be expected to provide services in a matter outlined in Keefe Commissary Network's "Onsite Commissary Managers Policies & Procedures" manual, (confidential material provided by Keefe Commissary and on file with the Sheriff's Office).
- b. CONTRACTOR'S employees and agents shall comply with and observe all applicable rules and regulations for code and conduct on the premises at all times.
- c. In case of planned or unplanned absences, sick time, and/or vacation, CONTRACTOR shall provide, upon approval of the jail captain, a back-up commissary administrator within 24 hours. Jail administration shall be notified, at a minimum, of 2 hours of absence of commissary administrator. Commissary administrator shall report as required to jail administration. Commissary administrator services include, but are not limited to:
 - Collecting and processing all commissary orders;
 - Process orders only that are correctly filled out;
 - Maintain exchange item inventory;
 - Process commissary refunds, as needed and authorized by the jail administration and/or CONTRACTOR;
 - Respond to inmate requests and grievances pertaining to commissary;
 - Commissary administrator shall work with jail administration to customize the commissary system as requested, i.e. product restrictions, debts, priorities, reports, etc.), and serve as liaison between CONTRACTOR and COUNTY;
 - Troubleshoot basic repairs to commissary related equipment; specifically kiosks;
 - If needed repairs are outside of the on-site administrator, administrator shall make necessary arrangements and schedule repair work upon coordination with jail administration.

5. Commission, Sales and Invoicing

- a. Commission shall be paid by invoicing the full sales amount less commission, within fifteen (15) calendar days after the end of each month.
- b. "Net sales" are defined as "gross sales, less any applicable sales tax." Gross sales are all monies received from the sale of merchandise, products or services, less any refund,

allowances or adjustments for returns, defective or unsatisfactory merchandise, products or services.

- c. Commission is not paid on stamped envelopes, or items agreed to in writing by both parties to be sold at or near cost.

6. Commissary items specifications

- a. All food items shall be wrapped, packaged and dated for individual consumption.
- b. All containers shall be made of non-breakable material and clear where available.
- c. Combs and hair picks shall be made of non-breakable plastic and no longer than 6 (six) inches.
- d. All consumable products shall be non-alcoholic.
- e. No foil packaged items, staples or paper clips.

7. Technology

- a. CONTRACTOR shall provide all new hardware, equipment, static kiosks, tablets and other items for the function related to commissary services, as required within the RFP and Proposal.
- b. CONTRACTOR shall provide a complete Inmate Trust Fund Accounting System at no cost to COUNTY.
- c. CONTRACTOR shall oversee and assist in the set-up of the proposed system.
- d. CONTRACTOR shall work with San Benito County Information Technology Division and/or Jail Management System provider to ensure proper interface with the current system, network installation of software, security controls, data integrity and data back-up.
- e. CONTRACTOR shall work with Global-Tel Link, the inmate phone system provider, to ensure proper interface to effect purchase of telephone time through the commissary.
- f. CONTRACTOR shall provide all training necessary for COUNTY'S officer personnel to operate all components of the Inmate Trust Fund Accounting System, consistent with the different security levels.
- g. CONTRACTOR shall provide system updates and system upgrades as they become available, at no cost to COUNTY. CONTRACTOR shall inform jail administration at least 30 days prior to any planned installation or upgrades.
- h. CONTRACTOR shall provide a custom online Secure Pak program giving inmate family/friends the option to order from an a-la- art menu; 24/7, 365 days a year.
- i. During the term of this contract, CONTRACTOR shall supply the COUNTY with computer equipment which includes, all wiring, operating software as well as banking software, hardware, kiosks and all necessary items needed to provide all components for the operation of inmate commissary services. CONTRACTOR hereby grants COUNTY a royalty free license to use CONTRACTOR'S software. COUNTY acknowledges the proprietary nature of the software and/or written software documentation and hereby agrees NOT to disclose, reproduce, transfer or use the software and/or documentation for any

purpose other than those specifically allowed by the terms of this contract without specific written permission of an officer of CONTRACTOR.

- j. CONTRACTOR to provide an inventory listing of all equipment proposed to be provided, installed, and used in the set-up of tablets for inmate commissary use.
- k. All equipment, computer hardware, systems, et. al., to be provided, maintained, and warranted at no additional cost for the life of this contract.

8. Deposit Services

- a. CONTRACTOR shall facilitate family deposits to inmate trust accounts via website, toll free phone number and deposit kiosk places in mutually agreed upon locations. CONTRACTOR will guarantee all deposits and ARC monies to designated COUNTY bank account nightly. No fees will be charged to COUNTY for these services.

END OF ATTACHMENT A

ATTACHMENT B
Payment Schedule

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☒ One month in arrears.
- ☐ Upon the complete performance of the services specified in Attachment A.
- ☐ The basis specified in paragraph B-4.
- ☐ In full upon approval of Agreement

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

- ☐ a total lump sum payment of \$ _____
- ☐ a total sum not to exceed \$ _____

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

B-4. SPECIAL COMPENSATION TERMS: (check one)

- ☐ There are no additional terms of compensation.
- ☒ The following specific terms of compensation shall apply: (Specify)

CONTRACTOR shall invoice COUNTY the full sales amount, less commission, within fifteen (15) calendar days of each month.

END OF ATTACHMENT B

ATTACHMENT C

General Terms and Conditions

C-1 INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

C-2 GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

C-4. CERTIFICATE OF INSURANCE.

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

C-5. RECORDS TO BE MAINTAINED.

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

C-6. RETENTION OF RECORDS.

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

C-7. TITLE TO DOCUMENTS; COPYRIGHT.

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

C-8. INDEPENDENT CONTRACTOR.

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

C-9. CONFLICT OF INTEREST.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

C-10. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

C-11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

C-12. BANKRUPTCY.

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

C-14. NEGOTIATED CONTRACT.

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

C-15. SEVERABILITY.

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

C-16. ENTIRE CONTRACT.

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

C-17. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this contract.

C-18. TERMINATION.

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

C-19. NOTICES.

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or

- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

C-21. MATERIALITY.

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-22. WAIVER.

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

C-23. AUTHORITY AND CAPACITY.

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-24. BINDING ON SUCCESSORS.

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-25. CUMULATION OF REMEDIES.

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

C-26. INDEPENDENT ADVICE.

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also

represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

C-27. NO RELIANCE ON REPRESENTATIONS.

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

C-28. REDUCTION OF CONSIDERATION.

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

C-29. COUNTERPARTS.

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

END OF ATTACHMENT C.

ATTACHMENT D
Commissary Commission

CONTRACTOR shall pay COUNTY 31% commission on commissary and Securepak Orders. Commission is not paid on stamped envelopes, or items agreed to in writing by both parties to be sold at or near cost.

CONTRACTOR shall pay COUNTY 20% on Trinity Take-Out orders.

END OF ATTACHMENT D

ATTACHMENT E
No Hostage Policy

CONTRACTOR is aware of and agrees that the San Benito County Jail has a **No Hostage Policy**. Should an employee or visitor be taken hostage, the San Benito County Jail **will not** allow an inmate to escape, provide any weapon to an inmate, provide alcohol or any drug to an inmate or allow additional persons to be placed at risk in order to secure the release of the hostage. The San Benito County Jail will do everything possible within the above guidelines to protect and secure the release of the hostage. Personnel should keep their personal safety in mind when in this area.

END OF ATTACHMENT E