

## KEEFE COMMISSARY NETWORK AGREEMENT

This Agreement made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between KEEFE COMMISSARY NETWORK, L.L.C. an affiliate of THE KEEFE GROUP, ("KEEFE") and the County of San Luis Obispo, a political subdivision of the State of California ("the COUNTY") COUNTY .

Whereas, KEEFE is in the business of supplying food and other related products to inmate commissary departments of correctional facilities throughout the United States; and,

Whereas, COUNTY is in need of special services for the provision of merchandise to inmates housed at the County jail; and

Whereas, the parties wish to enter into a Commissary Agreement to facilitate the ordering of commissary supplies by inmates and the payment thereof,

Now therefore, inconsideration of the mutual promises and conditions herein contained, the parties hereby agree as follows:

**1. OPERATION OF COMMISSARY BY COUNTY**

During the term of this Agreement, COUNTY will, at its expense, provide personnel to operate the computer equipment, account for inmate welfare funds, and deliver the completed orders to the individual inmates.

**2. OPERATION OF COMMISSARY BY KEEFE**

On an as needed basis, KEEFE will download all inmate orders for commissary items. KEEFE will bag, box, and ship such commissary items to the COUNTY for distribution to the inmates and will bill the COUNTY monthly or more frequently for all such purchases. In addition, KEEFE will keep the computer equipment updated with complete information as to commissary items available, pricing, and other terms and conditions of sale. KEEFE will provide 5,000 Hygiene Stationary kits #9602 annually to COUNTY at no cost. Each kit after 5,000 will have a cost of \$2.15 per kit. Should stamp prices increase at any time, that increased amount will be passed along as part of the price of the kit.

**3. HARDWARE AND SOFTWARE**

During the term of this Agreement, KEEFE shall supply COUNTY with the computer equipment and software listed in Exhibit A, for the sum of \$40,067.00, as set forth in

Exhibit A. KEEFE agrees to delay payment of the cost of the equipment so long as COUNTY is utilizing the equipment as part of the Keefe Commissary Network program set forth in this Agreement. KEEFE hereby grants to COUNTY a royalty free license to use the KEEFE Commissary Network 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 Agreement without specific written permission of an Officer of KEEFE.

4. **PAYMENT**

KEEFE will invoice COUNTY for all commissary items purchased. COUNTY will pay such invoices in accordance with KEEFE'S standard credit terms (NET 30 DAYS) from the Inmate Trust Account.

5. **SERVICE FEE**

COUNTY will be paid a service fee for the services to be provided by it hereunder equal to 37% of adjusted gross sales. Adjusted gross sales are gross sales less the sales of noncommissioned items as determined by KEEFE and COUNTY listed on Exhibit B to this Agreement. In the event that the inmate's funds available to purchase commissary products are inhibited in any way by change in policy from COUNTY, the service fee paid to COUNTY shall be reduced accordingly by KEEFE after negotiation with COUNTY.

6. **MENU**

Product selection and pricing will be agreed upon by COUNTY and KEEFE. Menu selection shall be reviewed as needed, but not less frequently than annually. All changes must be approved by COUNTY. Price adjustments may be made annually on the contract anniversary date with prior approval of COUNTY.

7. **DEPOSIT SERVICES**

This Agreement shall include KEEFE'S Access Corrections® Deposit Services. KEEFE will facilitate family deposits to inmate trust accounts via website, toll free phone number and deposit kiosks placed in a mutually agreeable site within the facility. Facility will provide power and network connectivity for the kiosk. KEEFE will guarantee all deposits and ACH moneys to designated COUNTY bank accounts nightly. No fees for this service will be borne by COUNTY. (Please see Exhibit C for fee schedule.)

**8. TERM & TERMINATION**

This Agreement shall continue in effect for a period of three years (the base term) from the date hereof. The Agreement will automatically renew for two additional one year term(s) thereafter, unless either party to this Agreement gives notice in writing to the other party 90 days prior to the expiration of any term or extended term indicating that the party giving notice does not wish to extend this Agreement.

**9. GOVERNING LAW**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to its conflict of law provisions. Venue for any cause of action arising out of or in connection with the terms of this Agreement shall be in the Superior Court for the State of California in and for the County of San Luis Obispo.

**10. ENTIRE AGREEMENT-WAIVER**

This Agreement constitutes the entire Agreement between the parties with respect to the provision of delivery services, and there are no other or further written or oral understandings or agreements with respect thereto. No variation or modification of the Agreement and no waiver of its provision shall be valid unless in writing and signed by the duly authorized officers of KEEFE and COUNTY. This Agreement supersedes all other agreements between the parties for the provision of commissary delivery services.

**11. INDEMNIFICATION**

KEEFE shall defend, indemnify and hold harmless the COUNTY, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, or other losses that may be asserted by any person or entity, including KEEFE, and that arise out of or are made in connection with the acts or omissions relating to the performance of any duty, obligation, or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims or losses in their entirety. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of COUNTY, its officers and employees.

## 12. INSURANCE

KEEFE, at its sole cost, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. All of the insurance companies providing insurance for KEEFE shall have, and provide evidence of, an A.M. Best & Co. rating of A:VII or above, unless an exception is granted by the County Risk Manager, and be authorized to do business in the State of California. Further, all policies shall be maintained for the full term of this Agreement and related warranty period if applicable.

### a. **Scope and Limits of Required Insurance Policies.**

1.) Commercial General Liability. The policy shall include coverage at least as broad as set forth in Insurance Services Office Commercial General Liability Coverage (CG 00 01) with policy limits of not less than one million dollars (\$1,000,000.00) combined single limit per occurrence. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:

a) The County of San Luis Obispo, its officers and employees, is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

b) The insurance provided herein shall be considered primary coverage to the County of San Luis Obispo with respect to any insurance or self insured retention maintained by the County. Further, the County's insurance shall be considered excess insurance only and shall not be called upon to contribute to this insurance.

c) The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County of San Luis Obispo.

2.) Business Automobile Policy. The policy shall include coverage at least as broad as set forth in the liability section of Insurance Services Office Business Auto Coverage (CA 00 01) with policy limits of no less than \$1 million dollars combined single limit for each occurrence. Said insurance shall include coverage for owned, non-owned, and hired vehicles. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:

a.) The County of San Luis Obispo, its officers and employees, is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

b.) The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County of San Luis Obispo.

3.) Workers' Compensation/Employer's Liability Insurance.

a) The workers' compensation policy shall provide statutory limits as required by the State of California. The policy shall be endorsed with the following specific language or contain equivalent language in the policy:

(i) KEEFE and its insurer shall waive all rights of subrogation against the County, its officers and employees for workers' compensation losses arising out of this Agreement.

(ii) The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County of San Luis Obispo.

b) Employer's Liability Policy – The employer's liability policy shall provide one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

**b. Deductibles and Self-Insurance Retentions**

All deductibles and self-insured retentions which apply to the insurance policies required herein will be declared in writing and approved by the County prior to commencement of this Agreement.

**c. Documentation**

Prior to commencement of work and annually thereafter for the term of this Agreement, KEEFE will provide to the County of San Luis Obispo properly executed certificates of insurance clearly evidencing the coverage, limits, and endorsements specified in this Agreement. Further, at the County's request, KEEFE shall provide copies of endorsements and certified copies of the insurance policies within thirty days of request.

**d. Absence of Insurance Coverage**

County may direct KEEFE to immediately cease all activities with respect to this Agreement if it determines that KEEFE fails to carry, in full force and effect, all insurance policies with coverage levels at or above the limits specified in this Agreement. Any delays or expense due to stopping of work and change of insurance shall be considered KEEFE's delay and expense.

**13. NOTICES**

All notices given or made pursuant hereto shall be in writing and shall be deemed to have been duly given if delivered personally, mailed by registered or certified mail (postage paid, return receipt requested) or sent by a nationally recognized overnight courier (providing proof of delivery) to the parties at the following addresses, or sent by electronic transmission to the following facsimile numbers (or at such other address or facsimile number for a party as shall be specified by like notice):

**To the Sheriff's Office:**

Lt. George R. Clarkson  
Sheriff's Office  
1585 Kansas Ave.  
San Luis Obispo, CA 93405  
(805) 781-4646

**To Keefe:**

Angelo Leber  
Keefe Group  
13369 Valley Blvd.  
Fontana, CA 92335  
(909) 357-2352

Any such notice shall be deemed to have been received if: (a) in the case of personal delivery or facsimile transmission with confirmation retained, on the date of such delivery; (b) in the case of nationally recognized overnight courier, on the next business day after the date sent; (3) in the case of mailing, on the third business day following posting.

**14. POWER AND AUTHORITY OF CONTRACTOR**

KEEFE warrants that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement warrants that he or she has been properly authorized and empowered to enter into this Agreement. If the Contractor is a corporation, KEEFE represents and warrants that it is and will remain, throughout the term of this Agreement, either a duly organized, validly existing California corporation in good standing under the laws of the State of California or a duly organized, validly existing foreign corporation in good

standing in the state of incorporation and authorized to transact business in the State of California.

**15. SEVERABILITY**

KEEFE agrees that if any provision of this Agreement is found to be invalid, illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Agreement shall remain in full force and effect. Upon determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effectuate the original intent of the parties as closely as possible.

**16. NON-ASSIGNMENT OF CONTRACT**

Inasmuch as this Agreement is intended to secure the specialized services of the Contractor, KEEFE shall not delegate, assign, or otherwise transfer in whole or in part its rights or obligations under this Agreement without the prior written consent of County. Any such assignment, transfer, or delegation without the COUNTY's prior written consent shall be null and void.

**17. NONDISCRIMINATION**

KEEFE agrees that it will abide by all Federal and State labor and employment laws and regulations pertaining to unlawful discrimination prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sexual orientation, disability or national origin, and those conditions contained in Presidential Executive Order number 11246.

**18. AUDIT**

**a. County Audit.** KEEFE shall allow the COUNTY to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Agreement and to inspect evaluate and audit any and all books, records, and facilities maintained by KEEFE and sub-contractors, pertaining to such service at any time during normal business hours. Books and records include, without limitation, all physical records originated or prepared pursuant to the performance under this Agreement including work papers, reports, financial records and books of account. Upon request, at any time during the period of this Agreement, and for a period of five years thereafter, KEEFE shall furnish any such record, or copy thereof, to COUNTY. If any audit of KEEFE's records show that inmate's payments transmitted by COUNTY exceed the allowable

costs that have actually been incurred by KEEFE under the terms of this Agreement, KEEFE shall pay to the COUNTY within 30 days of demand by the COUNTY any such excess amount.

**b. State Audit.** Pursuant to California Government Code section 8546.7, every County contract involving the expenditure of funds in excess of ten thousand dollars (\$10,000) is subject to examination and audit of the State auditor for a period of three years after final payment under the Agreement. KEEFE shall permit the State Auditor to have access to any pertinent books, documents, papers and records for the purpose of said audit.

**19. INDEPENDENT CONTRACTOR**

KEEFE shall be deemed to be an independent contractor of COUNTY. Nothing in this Agreement shall be construed as creating an employer-employee relationship, partnership or a joint venture relationship. Nothing in this Agreement authorizes or permits the COUNTY to exercise direction or control over the professional manner in which KEEFE provides services. KEEFE's services shall be provided in a manner consistent with all applicable standards and regulations governing such services.

KEEFE understands and agrees that KEEFE and its personnel are not, and will not be, eligible for membership in or any benefits from any COUNTY group plan for hospital, surgical, or medical insurance, or for membership in any COUNTY retirement program, or for paid vacation, paid sick leave, or other leave, with or without pay, or for any other benefit which accrues to a COUNTY employee.

**20. WARRANTY OF CONTRACTOR**

KEEFE warrants that KEEFE has obtained and shall keep in full force and effect during the term of this Agreement all permits, registrations and licenses necessary to accomplish the work specified in the Agreement. KEEFE warrants that it, and each of the personnel employed or otherwise retained by KEEFE, will at all times, to the extent required by law, be properly certified and licensed under the local, federal, state, and local laws and regulations applicable to the provision of services herein.

**21. COMPLIANCE WITH ALL LAWS**

KEEFE warrants that KEEFE shall keep informed of, observe, and comply with, and cause all of its agents and personnel to observe and comply with all federal, state, and local laws and rules and regulations made pursuant to such laws, which in any way affect the conduct of work under this Agreement. If any conflict arises between provisions of the scope of work or specifications in this Agreement and any law, then KEEFE shall immediately notify the County in writing.

**KEEFE COMMISSARY NETWORK  
(KEEFE)**

By:   
John Paricelli, Executive Vice  
President, General Manager  
Date: 5/12/15

**COUNTY OF SAN LUIS OBISPO,  
A Public Entity of the State of California**

By: \_\_\_\_\_  
Chairperson of the Board of Supervisors  
Date: \_\_\_\_\_

**APPROVED AS TO FORM AND  
LEGAL EFFECT:**

RITA L. NEAL  
County Counsel

By:   
Deputy County Counsel  
Date: 5-19-15

**ATTEST:**

TOMMY GONG  
County Clerk Recorder and Ex-Officio  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk  
Date: \_\_\_\_\_

# Exhibit "A"

## Hardware Featured

Description	Qty	Cost
Dell Optiplex 7010, Intel i7-3770 3.4 GHz, 16 GB RAM, 1 TBHD (Windows 7 64-bit)	1	\$ 1,184.70
Dell PE T110 II, Intel Xeon E3-1220 3.1GHz, 8GB RAM, 4x500GBHD dual-port NIC (Server 2008)	1	\$ 3,282.58
Ethernet Cable 10 ft.	2	\$ 12.00
Dell Laser B2360dn 1 yr warranty + add'l 2 yr warranty (duplex and networking)	1	\$ 276.00
USB Printer Cable 2.0 Type A to Type B Cable - 6.6 ft	1	\$ 4.00
Inducomp - New Model Edge Kiosk -	8	\$ 12,000.00
Windows licensing for Edge Kiosk -	8	\$ 680.00
Network Switch for Power Over Ethernet Kiosks	8	\$ 1,200.00
AntiVirus Software (additional license)	2	\$ 150.00
Afaria License	2	\$ 520.00
Wiring, mounting, installation (per kiosk)	8	\$ 12,000.00
Lobby Kiosk - Inducomp (updated 3/28/11)	1	\$ 6,280.00
Lobby Kiosk Log Me In IT Reach remote dial in software	1	\$ 60.00
Afaria License	1	\$ 260.00
Installation (per kiosk / Estimate)	1	\$ 350.00
Annual Lobby Kiosk On Site Service and Maintenance	3	\$ 1,800.00
		<b>\$ 40,067.28</b>

## **Commissary Agreement**

### **Exhibit B**

#### **Noncommissioned Items**

Stamped envelopes

Postage stamps

Indigent Kits

Admission Kits

On-site, special commissary item sales sold by INSTITUTION

## Commissary Agreement

### Exhibit C

STANDARD FEE STRUCTURE				
Gross Amount Deposited	Web	Phone	Credit at Lobby	Cash
\$0.01 - \$19.99	\$2.95	\$3.95	\$2.95	\$3.00
\$20.00 - \$99.99	\$5.95	\$6.95	\$5.95	\$3.00
\$100.00 - \$199.99	\$7.95	\$8.95	\$7.95	\$3.00
\$200.00 - \$300.00	\$9.95	\$10.95	\$9.95	\$3.00

## How Commissions Are Determined

The commissions will be based on the weekly, adjusted gross commissary sales. Adjusted gross sales are gross sales less postage sales or other noncommissioned sales.

Monthly Sales  
Less Postage/Non Commissionable  
= Adjusted Gross Sales

x 37% Commission Offered

\*Postage sales and stamped envelopes are noncommissioned.