

**CITY OF CHULA VISTA  
CONSULTANT SERVICES AGREEMENT  
WITH KEEFE COMMISSARY NETWORK  
TO PROVIDE COMMISSARY RELATED SERVICES AND PRODUCTS TO THE  
INMATES OF THE CHULA VISTA POLICE DEPARTMENT CITY JAIL**

This Agreement is entered into effective as of September 15, 2016 (“Effective Date”) by and between the City of Chula Vista, a chartered municipal corporation (“City”) and **KEEFE COMMISSARY NETWORK**, a Limited Liability Company (“KEEFE”) (collectively, the “Parties” and, individually, a “Party”) with reference to the following facts:

**RECITALS**

WHEREAS, City, through its Chula Vista Police Department, operates a Type I and II jail facility (“Jail”); and

WHEREAS, the Jail offers a commissary service that allows its inmates to purchase a variety of commissary items at their expense; and

WHEREAS, prior to 2011 commissary services were managed directly by City staff who were required to purchase, transport, maintain, and deliver an inventory of commissary products to the inmates; and

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, in 2011 the Parties entered into an agreement for commissary services, which reduced staff time and provided more-efficient services to the Jail; and

WHEREAS, products purchased by inmates under the commissary service are paid for by City, which is subsequently reimbursed by the inmates themselves utilizing funds contained within each inmate’s individual Inmate Account; and

WHEREAS, in 2012 City and KEEFE mutually agreed to amend the service rate outlined in the 2011 agreement; and

WHEREAS, in 2014 City and KEEFE mutually signed a Letter of Understanding to expand the methods for facilitating deposits into Inmate Accounts; and

WHEREAS, over the life of the 2011 agreement, Police Department policies, procedures, and administrative systems that facilitate commissary services, including but not limited to electronic depositing systems, maintenance and reconciliation of Inmate Accounts, menu selections, and ordering and receiving systems, have become intertwined with the commissary products and services offered exclusively by KEEFE; and

WHEREAS, in 2016 the total aggregate expenditures made pursuant to the 2011 agreement exceeded \$100,000 (one hundred thousand dollars) and triggered a requirement for a formal bid procedure pursuant to Section 2.56.070 of the City of Chula Vista Municipal Code; and

WHEREAS, City staff has conducted research to re-evaluate the 2011 agreement and consider other providers offering equivalent services, and determined that other service providers were either unwilling to entertain agreements with the Jail given its small capacity or offered services that were more expensive than those offered by Consultant; consequently City is contracting with KEEFE as a sole source pursuant to Section 2.56.070.B.3 of the Chula Vista Municipal Code; and

WHEREAS, in consideration of these complex factors the Parties agreed to merge the 2011 agreement along with all subsequent amendments into one, new Agreement; and

WHEREAS, KEEFE warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of KEEFE to City in accordance with the time frames and the terms and conditions of this Agreement.

**[End of Recitals. Next Page Starts Obligatory Provisions.]**

## **OBLIGATORY PROVISIONS**

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and KEEFE hereby agree as follows:

**1. OPERATION OF COMMISSARY BY FACILITY**

City agrees that during the term of this Agreement, it will, at its expense, process all orders and facilitate delivery by providing City employees for delivery of commissary products.

**2. OPERATION OF COMMISSARY BY KEEFE**

KEEFE agrees that on an as needed basis, it will process all inmate orders for commissary products. KEEFE will process orders, bag, box, and deliver such commissary items to the Jail.

**3. HARDWARE**

No equipment to be provided at this time.

**4. PAYMENT**

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

**5. SERVICE FEE**

City will receive a fee of 7% of adjusted gross sales for the services to be provided. Adjusted gross sales are gross sales less the sales of noncommissioned items as determined by KEEFE and City listed on Exhibit A 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 City, the service fee paid to City shall be reduced accordingly by KEEFE after negotiation with City.

**6. MENU**

Product selection and pricing will be agreed upon by City and KEEFE. Menu selection shall be reviewed as needed, and no less than annually. All changes must be approved by City. Any price adjustments will be made at least yearly on the contract anniversary date with prior approval of City.

**7. DEPOSIT SERVICES**

This agreement shall include KEEFE'S Access Corrections® Deposit Services. KEEFE will facilitate family deposits to inmate trust accounts via online website, and toll free phone number. KEEFE will guarantee all deposits and ACH moneys to designated City bank account nightly. No fees for this service will be borne by City. Standard fees to end user apply.

Each party shall be responsible for calculating, collecting and remitting their own federal, state and/or local taxes associated with the deposit services. Once funds are received by the City from KEEFE, via EFT for Online Website, City agrees that it shall, to the full extent allowed by law, assume all liability for any mishandling of funds or for any losses associated with any funds coming into City's possession expressly attributed to an inmate account deposit. KEEFE reserves the right to refuse deposits for inmates who have received deposits with credit/debit cards used without permission or from credit/debit cards reported as stolen.

KEEFE shall support the following "Payment Methods" for facilitating deposits into Inmate Accounts:

"Online Website": Described as, any public or personal computer user shall have the ability to visit a website to make deposits using any card carrying the MasterCard or Visa logo; and

“Call Center”: Described as, any personal or public phone user shall have the ability to call a toll-free number to make deposits using any card carrying the MasterCard or Visa logo; and

**KEEFE RESPONSIBILITIES FOR DEPOSIT SERVICES:** KEEFE shall receive payments from the public, directed to inmates of City via the KCN electronic payment service. KEEFE will transfer payment files to City on a daily basis. KEEFE will deliver payments to City by the second business day following (but not including) the day of the transaction by means of an Electronic Funds Transfer (“EFT”) to City’s designated bank account. KEEFE shall provide City with daily payment information via the “KCN Client interface”. KEEFE shall be responsible for responding to and resolving inquiries and complaints from senders of funds arising out of KEEFE’S failure to timely transmit any payment to City. KEEFE shall provide sufficient promotional material to be posted in each housing and public area of City. KEEFE agrees that it shall, to the full extent allowed by law, assume all liability, responsibility and risk of loss associated with its breach of this Agreement and/or its negligence in the performance of its duties hereunder. KEEFE agrees to keep all information about inmates confidential and to make no disclosure thereof to any third party, except as may otherwise be required by law. KEEFE agrees to give City prompt notice of any such disclosure.

**CITY RESPONSIBILITIES FOR DEPOSIT SERVICES:** City will provide KEEFE with the required bank account information for transmission of an Electronic Funds Transfer (“EFT”). City agrees to notify KEEFE, in writing, giving fourteen (14) days’ notice, of any changes to the bank account information. City will, upon receipt of written/documented proof of overpayment, promptly refund any overpayment made by KEEFE, for any reason. This is to include duplicate payments, payments refunded to Customers by KEEFE and any incorrect payments. At

KEEFE'S option and in lieu of foregoing, KEEFE may offset any such overpayments from future payment amounts transmitted by KEEFE to City and notify City of any such offset. City will promptly report receipt of each payment to the designated inmate in accordance with City policy. City will be responsible for resolving any inquiries or complaints arising from City's failure to promptly and properly credit the inmate's account. City agrees that it shall, to the full extent allowed by law, assume all liability, responsibility and risk of loss associated with its breach of this Agreement and/or its negligence in the performance of its duties hereunder.

**8. TERM & TERMINATION**

This Agreement shall terminate on June 30, 2017. This Agreement may be extended administratively in one-year increments, up to a total of five extensions, with the mutual agreement of the Parties.

Either Party may terminate this Agreement at any time for any reason by giving specific written notice to the other Party of such termination and specifying the effective date thereof, at last thirty (30) days before the effective date of such termination.

**9. GOVERNING LAW /VENUE/CLAIMS REQUIREMENT**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal and state courts located in San Diego County, State of California. No suit or arbitration shall be brought arising out of this Agreement, against City, unless a claim has first been presented in writing and filed with the City and acted on by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code.

**10. ENTIRE AGREEMENT-WAIVER**

This Agreement constitutes the entire Agreement between the parties with respect to the provision of delivery and deposit 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 City. This Agreement supersedes all other agreements between the parties for the provision of commissary delivery and deposit services, including the 2014 Letter of Understanding concerning deposit services.

#### **11. INSURANCE**

KEEFE shall procure and maintain, during the entire term of this Agreement, and for twelve months after termination of this Agreement, the policies of insurance described on the attached Exhibit B, incorporated into the Agreement by this reference (the "Required Insurance"). The Required Insurance shall also comply with all other terms of this Section.

Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.

Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of A V or better, or, if insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. For Workers' Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.

#### **12. INDEMNIFICATION**

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.

13. CONTACT INFORMATION

A. KEEFE (name of POC, address, phone, email)

Dang Nguyen-Account Manager

13369 Valley Blvd. Fontana, Ca 92335

(909) 429-6949

[dnguyen@keefegroup.com](mailto:dnguyen@keefegroup.com)

B. City (name of POC, address, phone, email)

Lt. Phil Collum

Chula Vista Police Department

315 Fourth Avenue

Chula Vista, Ca 91910

(619) 476-2454

[pcollum@chulavistapd.org](mailto:pcollum@chulavistapd.org)

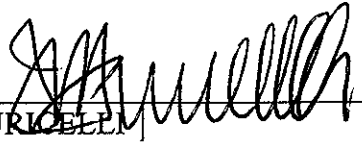


**SIGNATURE PAGE  
CONSULTANT SERVICES AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and KEEFE agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

KEEFE COMMISSARY NETWORK

CITY OF CHULA VISTA

BY:   
\_\_\_\_\_  
[JOHN PURICELLI]  
[EXECUTIVE VICE PRESIDENT, GM ]

BY: \_\_\_\_\_  
[DAVID BILBY, MSBA, CPFO ]  
[DIRECTOR OF FINANCE/TREASURER ]

APPROVED AS TO FORM

BY: \_\_\_\_\_  
GLEN R. GOOGINS  
CITY ATTORNEY

**EXHIBIT A**  
**NONCOMMISSIONED ITEMS**

Noncommissioned items shall include the following: Stamped envelopes, postage stamps, indigent kits, admission kits, and on-site, special commissary item sales sold by FACILITY.

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

**EXHIBIT B  
INSURANCE REQUIREMENTS**

KEEFE shall adhere to all terms and conditions of Section 11 of the Agreement and agrees to provide the following types and minimum amounts of insurance, as indicated by checking the applicable boxes (x).

|                                     | Type of Insurance                                                                                  | Minimum Amount                                                                                                                                                                                                                                                                                                                                                                                                                                                | Form                                                                                                                      |
|-------------------------------------|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | General Liability:<br>Including products and completed operations, personal and advertising injury | \$2,000,000 per occurrence for bodily injury, personal injury (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit<br><br>Additional Insured Endorsement or Blanket AI Endorsement for City*<br><br>Waiver of Recovery Endorsement | Insurance Services Office Form CG 00 01<br><br><i>*Must be primary and must not exclude Products/Completed Operations</i> |
| <input type="checkbox"/>            | Automobile Liability                                                                               | \$1,000,000 per accident for bodily injury, including death, and property damage                                                                                                                                                                                                                                                                                                                                                                              | Insurance Services Office Form CA 00 01<br>Code 1-Any Auto<br>Code 8-Hired<br>Code 9-Non Owned                            |
| <input type="checkbox"/>            | Workers' Compensation<br>Employer's Liability                                                      | \$1,000,000 each accident<br>\$1,000,000 disease policy limit<br>\$1,000,000 disease each employee<br>Waiver of Recovery Endorsement                                                                                                                                                                                                                                                                                                                          |                                                                                                                           |
| <input type="checkbox"/>            | Professional Liability (Errors & Omissions)                                                        | \$1,000,000 each occurrence<br>\$2,000,000 aggregate                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                           |

Other Negotiated Insurance Terms: [NONE]