

AGREEMENT NO. __-__

Agreement for the Provision of Inmate Commissary Services

THIS AGREEMENT ("Agreement") is made and entered into this 25th day of June, 2024, by and between the County of Yolo, a political subdivision of the State of California ("County") and Keefe Commissary Network, LLC, a corporation authorized to do business in this State and County ("Contractor").

W I T N E S S E T H

WHEREAS, the County is authorized by Government Code Section 23004 to make contracts as necessary for the exercise of its powers; and

WHEREAS, the County desires to obtain inmate commissary services for the Monroe and Leinberger Detention facilities; and

WHEREAS, the County circulated and distributed a request for proposals for professional management of inmate commissary services; and

WHEREAS, the Contractor submitted a proposal to provide such services; and

WHEREAS, Contractor has represented and warrants to the County that it has the necessary training, experience, expertise and competency to provide the services, goods and materials that are described in this Agreement, at a cost to the County as herein specified; that it will be able to perform the herein described services at minimum cost to the County by virtue of its current and specialized knowledge of relevant data, issues, and conditions; and that it will do so in a manner consistent with and furthering of the Values of Yolo County; and

WHEREAS, Contractor represents and warrants that neither Contractor, nor any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners, is excluded or debarred from participating in or being paid for participation in any Federal or State program; and

WHEREAS, Contractor further represents and warrants that no conditions or events now exist which give rise to Contractor or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners being excluded or debarred from any Federal or State program; and

WHEREAS, Contractor understands that the County is relying upon these representations in entering into this Agreement.

NOW, THEREFORE, the County and the Contractor agree as follows:

I. BASIC SERVICES

A. Contractor shall furnish and perform the following services in a manner satisfactory to the Detention Captain and in accordance with the requirements set forth in Exhibit A and Exhibit B. For purposes of this Agreement, the Detention Captain shall be referred to as the "County Contract Manager". These services include the following tasks:

1. Provision, purchase, and maintenance of custody of inventory in a manner that meets all State and local health and sanitation standards as provided by law, including once-weekly delivery of items. Inventory provided and delivery schedule of said items must be mutually agreed upon between Contractor and the County.
2. Provision of a complete computerized inmate accounts system, including all hardware and software, which is compatible with Tiburon's Corrections Management System and/or any corrections management system that may be installed during the contract period. Contractor shall be responsible for any integration costs.
3. Responsibility for all inmate funds management.
4. Continuation of uninterrupted service from date of contract.
5. Provision of an assigned manager who will oversee Yolo County commissary operations and interact with the designated County liaison.
6. Provision of "returns" for orders delivered to inmates who are being released or are otherwise unable to receive merchandise.
7. Provision of a commissary order form system listing all approved items and prices.
8. Contractor shall insure that all products delivered shall conform to grade and quality and:
 - a. have been processed and packed in accordance with good commercial practice,
 - b. conform in all respects to all applicable standard promulgated under the Federal Food, Drug, and Cosmetic Act in effect at the time of delivery;
 - c. when applicable, be labeled so that they may be identified as having been officially inspected for wholesomeness;
 - d. shall be delivered with no less than one-half of the shelf life remaining

9. Contractor will provide any additional commissary services not identified herein, as mutually agreed upon at prices for said services.
10. Contractor will deliver the commissary order in clear bags directly to the inmate in the housing unit in accordance with regulations. Yolo County prefers the clear bags to be biodegradable or reusable.
11. Contractor will provide the order deadline and delivery date which will be the same time and day each week. The delivery schedule must be mutually agreed upon between Contractor and County and may be subject to change.
12. Contractor will provide all computers, kiosks, mounted tablets, internet connections, hardware and software for a fully operational system at no cost to the County. Kiosks and mounted tablets with color touch screens shall be available to inmates and inmate's families and friends. Contractor shall be responsible for all maintenance and repairs on this system. In addition, should automated system be unavailable, provision of a printed commissary order form listing all approved items and prices.
 - a. The location of kiosks and mounted tablets shall be: Eleven (11) in the housing pods and one (1) in the front lobby.
13. The kiosk application will be the source for all commissary orders, and Contractor shall insure that the inmate orders do not exceed account balances. In case of the kiosk ordering application being unavailable for an extended period, the Contractor will pick up the preprinted order forms or provide overnight postage for delivery to Contractor. Contractor maintains responsibility for rejecting invoices that exceed account balances.
14. Acceptance and processing of all written disputes from inmates regarding commissary service, with responses being based on the policy and procedures of Yolo County.
15. Contractor shall provide and maintain all microwaves, kiosks and tablets required at each specified location at no cost to the County. Contractor shall provide the County with a total of 15 microwaves, of which 4 will be used as spare for non-operational equipment.

- a. The location of microwaves shall be: one (1) A-1 Main Dayroom, one (1) A-2 Main Dayroom, one (1) B-1 Main Dayroom, one (1) B-2 Main Dayroom, one (1) C-2 Main Dayroom, four (4) Leinberger Housing Dayrooms, one (1) H-Pod, and one (1) Medical/Mental Health.
16. At the County's request, additional equipment, including kiosks, vending machines, and microwaves shall be installed and supplied by the Contractor at the same terms and conditions.
17. Contractor will pay for needed repairs to vendor owned equipment caused by normal wear and tear. Equipment, which in the opinion of the County has exceeded its useful life, will be replaced by Contractor after consultation with Contractor.
18. Contractor shall be responsible for immediately reporting all the facts relating to losses and/or personal injury. The County Contract Manager shall determine report recipients.
19. Contractor will provide all facilities, equipment, labor and materials necessary to provide the foregoing services in accordance with this Agreement. In addition, Contractor will assume all costs for permits, licenses, telephone service, faxing, copying, and other office expenses associated with the commissary operation.
20. Facility inspections shall be made by the County when deemed necessary, with or without advance notice to Contractor.
21. Contractor shall provide all personnel necessary for the performance of this Agreement. All Contractor employees who will enter or work in the jail will comply with all Yolo County Sheriff's Office written policy and procedures including without limitation those relating to facility security.
 - a. The County reserves the right to deny access to anyone acting on behalf of Contractor based on a potential risk to security in the facility in the sole and absolute discretion of the County.
 - b. Contractor shall notify the County in writing of any changes in staffing at least forty-eight (48) hours in advance.
 - c. Contractor shall notify the County of temporary changes in staffing due to illness, etc. at least four (4) hours in advance of entering the facility. The replacement personnel must have already received and passed the County-performed background check.
 - d. Contractor personnel shall be easily identifiable as non-County employees (i.e. work uniforms, badges, etc.) and must wear County-

issued identification at all times while within the facility.

Contractor shall recognize that security clearances are a necessary condition of employment and agrees to hold County harmless for any claims arising from or in connection to revocation or loss of any security clearance.

B. The complete contract shall include the following exhibits attached hereto and incorporated herein:

Exhibit A: Computerized Inmate Account System Requirements

Exhibit B: Minimum Computer Kiosk Requirements

In the event of any conflict between any of the provisions of this Agreement, the provision that requires the highest level of performance from Contractor for the County's benefit shall prevail.

C. Detention staff and Contractor shall schedule quarterly meetings to review compliance of this agreement. Any of these meetings may be cancelled and/or rescheduled upon mutual agreement of both parties.

D. The County Purchasing Manager may approve modifications of the term, scheduling, billing rates, and allocation of funds between the tasks and subtasks (if any) set forth above, provided that there is no increase in the total compensation as set forth in Section II of this Agreement.

II. COMPENSATION AND REIMBURSEMENT OF EXPENSES

A. Contractor will pay a commission of 38% to the Inmate Welfare Fund on all net inmate commissary sales within thirty (30) calendar days of the close of each accounting month. Net sales shall be defined as all sales made to inmates of the County by Contractor, minus sales tax and the cost of non-commissionable items: indigent kits, designated indigent items, postage, and postage stamped envelopes.

B. Contractor shall not be entitled to reimbursement for any expenses except as specifically set forth in this Section.

III. METHOD OF PAYMENT

A. Contractor shall invoice the County for Contractor's share of the inmate commissary weekly sales. The County shall transmit the Contractor's share of the inmate's payments for commissary, less the 38% commission identified by Contractor, to Contractor. If requested by the County, Contractor shall provide any further documentation to verify the compensation and reimbursement sought by Contractor.

B. Within fifteen (15) calendar days of the receipt of Contractor's detailed invoice, the County Contract Manager or his/her designee shall either authorize payment or advise Contractor in writing of any concerns that the County Contract Manager or his/her designee has with the invoice or any need for further documentation.

C. Within thirty (30) calendar days of authorization by the County Contract Manager or his/her designee for payment of an invoice, the County Auditor-Controller shall either authorize payment of the compensation sought and/or payment of the reimbursement of expenses sought or advise Contractor in writing of any concerns that the County Auditor-Controller has with the request or any need for further documentation.

IV. REPORTS

A. Contractor shall provide such reports as are required by this Agreement and such additional information and reports relating to the services otherwise required by this Agreement as are reasonably requested by the County Contract Manager, at the times and in the manner specified by this Agreement, or by the County Contract Manager if not so specified.

B. County shall provide Contractor with all information pertinent to the services required of Contractor by this Agreement which is requested by Contractor and which is within County's possession. No charge will be made for these materials.

V. OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All professional and technical documents and information developed under this Agreement, and all work products, including writings, work sheets, reports, and related data, materials, copyrights and all other rights and interests therein, shall become the property of the County, and Contractor agrees to deliver and assign the foregoing to the County, upon completion of the services hereunder or upon any earlier termination of this Agreement. Contractor assigns the work products, as and when the same shall arise, for the full terms of protection available throughout the world. In addition, basic data prepared or obtained under this Agreement shall be made available to the County without restriction or limitation on their use.

No additional charge will be made for any of the foregoing.

VI. RECORDS RETENTION

All records, documents, and general correspondence relating to the project in possession of the Contractor shall be retained and available for review. If requested, a copy of said record shall be supplied to the Sheriff or designee on a monthly basis on the first working day of the subsequent month. In addition, all such records shall be available for auditing by the County at any time during regular working hours. At least thirty (30) calendar days prior to any destruction of these records

following the four years, Contractor shall notify the County Contract Manager. Upon such notification, the County shall either agree to the destruction or authorize the records to be forwarded to the County for further retention.

VII. DISPUTES

Any dispute arising under this Agreement shall be decided by the County Administrative Officer who shall put his or her decision in writing and mail a copy thereof to the address for the notice to Contractor. The decision of the County Administrative Officer shall be final unless, within thirty (30) days from the date such copy is mailed to Contractor, Contractor appeals the decision in writing to the County Board of Supervisors. Any such written appeal shall detail the reasons for the appeal and contain copies of all documentation supporting Contractor's position. In connection with any appeal proceeding under this paragraph, Contractor shall be afforded the opportunity to be heard and offer evidence in support of its appeal to the County Board of Supervisors at a regular Board meeting. Pending a final decision of the dispute, Contractor shall proceed diligently with the performance of this Agreement and in accordance with the County Administrative Officer's decision. The decision of the County Board of Supervisors on the appeal shall be final for purposes of exhaustion of administrative remedies.

VIII. TERM AND TERMINATION

- A.** The term of this Agreement shall be from July 1, 2024 to June 30, 2027 unless sooner terminated as hereinafter provided. This Agreement may be extended for two additional one-year periods at the same pricing and terms if mutually agreed between the County and Contractor, in writing, sixty (60) days prior to expiration of the current term.
 - a.** County is not obligated to exercise any of the extension periods. In the event that any extension options, or portions thereof, are not exercised and additional time is required by the County to initiate a new Request for Proposal and subsequent agreement documents, Contractor agrees to continue to provide goods and services to the County on a month to month basis, for a period not to exceed six months, at the same pricing basis, terms, and conditions currently in effect at the Agreement expiration date.

- B.** Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party may notify the defaulting party of such default in writing and provide not less than fifteen (15) days to cure the default. Such notice shall describe the default, and shall not be deemed a forfeiture or termination of this Agreement. If such default is not cured within said fifteen-day period (or such longer period as is specified in the notice or agreed to by the parties), the party that gave notice of default may terminate this Agreement upon not less than fifteen (15) days advance written notice. The foregoing notwithstanding, neither party waives the right to recover damages against the other for breach of this Agreement.

C. This Agreement is subject to the County, the State of California and the United States appropriating and approving sufficient funds for the activities required of the Contractor pursuant to this Agreement. If the County's adopted budget and/or its receipts from California and the United States do not contain sufficient funds for this Agreement, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Contractor, in which event the County shall have no obligation to pay the Contractor any further funds or provide other consideration and the Contractor shall have no obligation to provide any further services under this Agreement.

D. This Agreement may be terminated for any reason or no reason by either party at any time during its term, by giving thirty (30) days written notice to the other party.

E. If Contractor, or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners, becomes excluded, debarred or suspended from participation in Federally or State funded programs, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Contractor.

F. Upon termination of this Agreement or suspension of work by either County or Contractor, Contractor shall furnish to County all documents and drawings prepared under this Agreement, whether complete or incomplete. In the event of termination for any reason, reproducible copies of all finished or unfinished documents, drawings, maps, models, photographs, and reports prepared by Contractor shall become the sole and exclusive property of Yolo County and Contractor shall be entitled to receive compensation for any work completed on such documents and other materials determined by the County Contract Manager or his/her designee to be of satisfactory quality and within the terms and conditions of this Agreement. All creative work undertaken by Contractor such as sketches, copy, dummies and all preparatory work for which Contractor is not compensated by the County shall remain the sole and exclusive property of the Contractor.

G. During and following the term of this Agreement, Contractor shall not use, distribute or otherwise circulate any of the materials developed pursuant to this Agreement and for which Contractor was compensated by the County without the express written permission of the County Contract Manager or his/her designee.

IX. APPLICABLE LAWS

In the performance of the services required by this Agreement, Contractor shall comply with all applicable Federal, State, and County statutes, ordinances, regulations, directives and laws. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed and resolved in a California State court located in Woodland, California.

X. NON-DISCRIMINATION IN SERVICES AND BENEFITS

Contractor certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and County laws and regulations and any administrative directives established by the County Board of Supervisors or the County Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

XI. CONTRACTOR'S RESPONSIBILITIES; LABOR CODE REQUIREMENTS

A. Contractor shall exercise all of the care and judgment consistent with good practices in the performance of the services required by this Agreement. In addition, with the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, defend and hold harmless the County of Yolo, its officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorney fees) and liability of any kind or nature arising out of or resulting from performance of the work, provided that any such claim, damage, demand, loss, cost, expense or liability is caused in whole or in part by any negligent or intentional act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Contractor and/or subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

B. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services hereunder are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the County,

its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all Subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

C. If the services hereunder are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all Subcontractors performing such services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any Subcontractors, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

D. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of the Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the County. Contractor shall defend, indemnify and hold the County, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

In providing any defense under this Section, Contractor shall use counsel reasonably acceptable to the County Counsel. The provisions of this Section shall survive the termination or expiration of this Agreement.

XII. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

A. During the term of this Agreement, Contractor shall at all times maintain, at its

expense, comprehensive general liability insurance, Workers' Compensation and Employers' Liability insurance as required by the State of California, professional liability insurance and automobile liability insurance (including coverage for hired and non-owned vehicles). The comprehensive general liability insurance shall include broad form property damage insurance.

1. The limits of such insurance shall be no less than \$2,000,000 per individual/ \$4,000,000 per occurrence for the comprehensive general liability insurance, \$1,000,000 for the Workers' Compensation/Employers' Liability insurance per accident for bodily injury or disease, and \$1,000,000 general and \$1,000,000 property per occurrence for the automobile liability insurance.
2. Said policies shall remain in force through the life of this Agreement and shall be payable on a "per occurrence" basis unless the County Risk Manager specifically consents in writing to a "claims made" basis. If the County Risk Manager does consent to "claims made" coverage, Contractor shall purchase "tail" coverage in the event that the Contractor changes insurance carriers during the term of this Agreement and for not less than one year thereafter. Proof of such "tail" coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.
3. The County, its elected representatives, officers, agents, employees and volunteers shall be named as additional insured on all but the workers' compensation and professional liability coverages.
4. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the County Risk Manager.
5. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County Contract Manager.
6. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A, unless otherwise approved by the County Risk Manager.
7. The policies shall cover all activities of Contractor, its officers, employees and agents arising out of or in connection with this Agreement.
8. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects the County, its officers, agents, employees and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.

B. Prior to commencing services pursuant to this Agreement, Contractor shall furnish the County Risk Manager with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Contractor may use forms provided by the County Risk Manager or, as an alternative, may provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

C. During the term of this Agreement, Contractor shall furnish the County Contract Manager with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Contractor may use forms provided by the County Risk Manager or, as an alternative, may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

XIII. WORKERS' COMPENSATION

Contractor shall provide workers' compensation coverage as required by State law, and prior to commencing services pursuant to this Agreement shall file the statement attached with the County Risk Manager certifying compliance.

XIV. NOTICE

A. All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Contractor at their respective addresses as follows:

Contractor: Keefe Commissary Network
 13369 Valley Boulevard
 Fontana, CA 92335
 Attn: Angelo Leber, Regional Sales Manager

County: Yolo County Sheriff's Department
 140A Tony Diaz Drive
 Woodland, CA 95776
 Attn: Detention Captain

B. In lieu of written notice to the above addresses, any party may provide notices through the use of facsimile machines provided confirmation of delivery is obtained at the time of transmission of the notices.

C. Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

D. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

XV. CONFLICT OF INTEREST

A. Contractor shall comply with the laws and regulations of the State of California and County regarding conflicts of interest, including, but not limited to, Section 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.

B. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Contractor's obligations and responsibilities hereunder. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed. This covenant shall remain in force until Contractor completes performance of the services required of it under this Agreement.

C. Contractor agrees that if any fact comes to its attention that raises any question as to the applicability of any conflict of interest law or regulation, Contractor will immediately inform the County and provide all information needed for resolution of the question.

XVI. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability, or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

XVII. AUDITS

A. Contractor shall be subject to examination and audit by the State or the County, or

both, for a period of three years from the date that final payment is made pursuant to this Agreement. This does not preclude access to records by County, State, the Comptroller General of the United States, or any of their authorized representatives, as otherwise provided by this Agreement, the State contract, or State or Federal laws and regulations. Contractor agrees that County and/or State has the right to review, obtain, and copy all records pertaining to the performance of this contract, and agrees to provide County and/or State with any and all relevant information requested.

B. Any and all books, records, and facilities maintained by Contractor related to services provided under this Agreement may be audited, inspected and copied at any time during normal business hours. Unannounced visits may be made at the discretion of the County or State. Employees who might reasonably have information related to such records may be interviewed. All expenditures of State and federal funds furnished to Contractor pursuant to this Agreement are subject to audit by County, State and/or Federal representatives. Such audits shall consider and build upon external independent audits performed pursuant to audit requirements of the Office of Management and Budget (OMB) Circular A-133 as described in Section C to follow.

C. Should Contractor expend \$300,000 or more in Federal funds during any fiscal year, Contractor shall furnish County a certified copy of an Audit Report from an independent CPA firm covering the Contractor's preceding fiscal year of January 1 through December 31. This Audit shall be performed in accordance with OMB Circular A-133 and conducted in accordance with generally accepted government auditing standards as described in Government Auditing Standards (1994 Revision) and provided in a form satisfactory to the Director.

Contractor shall provide this Audit Report no later than July 31 of each year. In the event that this Agreement expires or is terminated on a date other than December 31, Contractor shall provide County such an Audit Report covering the preceding period of January 1 through the date of expiration or termination no later than July 31 after the date of expiration or termination. Contractor shall ensure that audit work papers supporting the report are retained for a period of three (3) years from the date of the audit report, and longer if notified by the State or County to extend the retention period and are made available to the State and/or County upon request.

D. Should an Audit Report or any State or County audit determine that Contractor has misspent funds and been overpaid based on the requirements of this Agreement and applicable laws and regulations, County shall demand repayment from Contractor in the amount of such audit findings and withhold any payment otherwise due under this Agreement until Contractor repays such amount. Contractor shall repay County such amount within sixty (60) days of the date of the County's demand for repayment. Should Contractor fail to repay County within sixty (60) days of the date of County's demand for repayment, the County may offset the amount due from Contractor against any amounts that would otherwise be due from the County to Contractor pursuant to this Agreement or any other agreement or source.

E. Any failure or refusal by Contractor to permit access to any facilities, books, records or other information required to be provided to the State &/or the County by this Agreement &/or the State contract shall constitute an express and immediate breach of this Agreement.

XVIII. ASSIGNMENT AND SUBCONTRACTS

The services and obligations required of Contractor under this Agreement are not assignable in whole or in part. In addition, Contractor shall not subcontract any portion of the services required of Contractor by this Agreement without the express written consent of the County Contract Manager or his/her designee. If any portion of the services required of Contractor are subcontracted, the subcontractor(s) shall maintain the same insurance as required of Contractor by this Agreement and Contractor shall be fully responsible to the County for all work undertaken by subcontractors.

XIX. STATUS OF CONTRACTOR

A. It is understood and agreed by all the parties hereto that Contractor is an independent contractor and that no relationship of employer-employee exists between the County and Contractor. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of the County. Contractor hereby indemnifies and holds the County harmless from any and all claims that may be made against the County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.

B. It is further understood and agreed by all the parties hereto that neither Contractor nor Contractor's assigned personnel shall have any right to act on behalf of the County in any capacity whatsoever as an agent or to bind the County to any obligation whatsoever.

C. It is further understood and agreed by all the parties hereto that Contractor must issue any and all forms required by Federal and State laws for income and employment tax purposes, including W-2 and 941 forms, for all of Contractor's assigned personnel.

XX. AMENDMENT

This Agreement may be amended only by written instrument signed by the County and Contractor.

XXI. WAIVER

The waiver by the County or any of its officers, agents or employees or the failure of the County or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

XXII. AUTHORIZED REPRESENTATIVE

The person executing this Agreement on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of Contractor and to bind Contractor to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of Contractor and Contractor understand that the County is relying on this representation in entering into this Agreement.

XXIII. PUBLIC RECORDS ACT

Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

XXIV. ADDITIONAL PROVISIONS

A. Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both. Should the County choose to excuse any given failure of Contractor to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be, or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or obligation or any other found in this document. All conditions, covenants and obligations continue to apply no matter how often County may choose to excuse a failure to perform them.

B. Except where specifically stated otherwise in this document, the promises in this document benefit the County and Contractor only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the parties hereto intend to convey to anyone any "legitimate claim of entitlement" with the meaning and rights that phrase has been given by case law.

C.

1. By signing this agreement, the Contractor agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to, 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.

2. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

b. Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment

rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction. violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Section 2(b) herein;

d. Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default;

e. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State; and

f. Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

3. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the County program funding this contract, and the County shall have the option of terminating this Agreement immediately or at any time thereafter, upon giving Contractor written notice of such termination, if the explanation is not found satisfactory by the County in its sole discretion.

4. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

5. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the County may terminate this Agreement at any time upon giving Contractor written notice of such termination.

XXV. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the County and Contractor and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of

any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above set forth.

Contractor:

County:

By _____

By _____

Lucas Frerichs, Chair
Yolo County Board of Supervisors

Attest:
Julie Dachtler, Senior Deputy Clerk
Yolo County Board of Supervisors

By: _____
Deputy (Seal)

Approved as to Form:

By  _____
Philip J. Pogledich, County Counsel

EXHIBIT A – COMPUTERIZED INMATE ACCOUNT SYSTEM REQUIREMENTS

Contractor shall provide all hardware and software for a computerized Inmates Accounts System to keep accurate and complete records of all money activity and balances of individual inmate accounts. This system must be approved by the County.

The system shall be multi-terminal with multi-user and function capability.

The system shall allow jail staff to create an inmate account by using the inmate identification number at the time of booking and have the ability to enter inmate's possession of money. This permanent ID number for an inmate's account will allow an account to be reopened as needed.

The system shall allow for at least the following functionality and types of transactions to occur on the inmate's accounts system:

- Draw funds from an account by issuing a check via system printer.
- Deduct commissary and other charges in a "live" environment. Inmate monies will not be taken from the books until product is received or services have been performed.
- Process credits.
- Allow for ad hoc reports.
- Allow for the addition of inmate information to control commissary purchases (i.e., disciplinary controls).

The system shall adhere to generally accepted accounting principles and provide a complete audit trail of all transactions. It must allow for both scheduled and unannounced audits.

The system shall provide a series of reports as requested by the County, including: detailed weekly invoices, cash reconciliation, and records of charges to inmates for all services. Ad hoc reporting capability shall be available on any or all fields.

The system shall provide various levels of security, including password control and tracking of transactions by individual and station, shall be present in the software system. These levels will have the capability to be customized by the Sheriff's Office Detention Staff.

The system shall have comprehensive financial management features. Additionally, the system must have a capability to print financial management registry based on multiple criteria which can be queried by jail staff personnel.

Contractor shall install the system, train County personnel, provide documentation and provide a toll free 24-hour emergency “hot line” to insure maximum utilization and minimal down time of the inmate accounts system.

Contractor shall provide continuing support for the software and hardware throughout the length of the contract. Support shall include correcting program and system problems plus updates and enhancements to the software.

EXHIBIT B – MINIMUM KIOSK REQUIREMENTS

The kiosks supplied by Contractor must, at minimum:

- Offer all approved commissary products and prices for sales and delivery to inmates in County Sheriff's Office facilities at pricing agreed upon in the RFP
- Be easy to use, clear, concise and user friendly
- Consist of rugged hardware not susceptible to inmate damage or tampering
- Have a design and construction approved by the County
- Incorporate Touch Screen Technology
- Allow inmate families and friends to deposit monies to inmate trust bank accounts using ATM, credit cards and cash
- Allow inmates to enter and track requests for commissary orders
- Provide user privacy without room modification such that screen is not easily viewed by other others
- Print an order receipt
- Refund of money if inmate is absent at time of commissary delivery but still in custody.
- Provide ability to create a debit card for disbursement of inmate account balance upon release at minimal cost to inmate
- Provide ability for inmates to access account history and responses to requests and grievances
- Be able to address any disciplinary or medical restrictions in place.
- Have a built-in electronic system that signals Contractor's office directly when malfunctions occur, with 24x7x365 repair/maintenance capabilities for all system components, data backups and cash handling
- Offer multiple selectable languages for user interface, minimally English and Spanish
- Be ADA Compliant

- Provide daily, weekly and monthly usage and sales activity reports to the County
- Provide comprehensive audit reporting for all kiosk transactions
- Provide security preventing inmate access to other County systems
- Provide staff the ability to view, manage and secure the routing of requests and their responses and review inmate ordering history
- Provide staff the ability to impose spending limits and restrict the purchase of commissary items
- Provide reporting of kiosk usage by user at a supervisory workstation while maintaining compliance with privacy regulations