

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

Third Amendment

THIS AMENDMENT (this “Amendment”) is made as of **September 1, 2019**, in San Francisco, California, by and between **Keefe Commissary Network, LLC** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

Recitals

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period for six months and update Appendix A, Calculation of Charges; and

WHEREAS, the Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through RFP SHF2014-03 issued on January 24, 2014 and this modification is consistent therewith; and

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number PSC 34899-18/19 on May 29, 2019;

WHEREAS, the City’s Board of Supervisors approved this Agreement by Resolution No. 318-14, File No. 140799 on July 29, 2014;

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

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term “Agreement” shall mean the Agreement dated September 1, 2014 between Contractor and City, as amended by the:

First amendment,	dated September 1, 2017, and
Second amendment,	dated September 1, 2018.

1.2 **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

Article 2 Modifications to the Agreement.

The Agreement is hereby modified as follows:

2.1 **Definitions.** *The following is hereby added to the Agreement as a Definition in Article 1:*

1.10 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

2.2 **Management of Private, Proprietary or Confidential Information and City Data.** *The following is hereby added and incorporated into Article 11 of the Agreement:*

11.15 **Management of Private, Proprietary or Confidential Information and City Data.**

11.15.1 **Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

11.15.2 **Confidential Information.** In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

11.15.3 **Access to City Data.** City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost

11.15.4 **Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

11.15.5 **Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

11.15.6 **Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

2.3 **Assignment.** *The following is hereby added to Article 4 of the Agreement, replacing the previous Section 4.5 in its entirety:*

4.5 **Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable

satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

2.4 **Withholding.** *The following is hereby added to Article 7 of the Agreement:*

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

2.5 **Consideration of Salary History.** *The following is hereby added to Article 10 of the Agreement, replacing the previous Section 10.4 in its entirety:*

10.4 **Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

2.6 **Limitations on Contributions.** *The following is hereby added to Article 10 of the Agreement, replacing the previous Section 10.11 in its entirety:*

10.11 **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a

candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

2.7 **Distribution of Beverages and Water.** *The following is hereby added to Article 10 of the Agreement, replacing the previous Section 10.17 in its entirety:*

10.17 Distribution of Beverages and Water.

10.17.1 Sugar-Sweetened Beverage Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 Packaged Water Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

2.8 **Term of the Agreement.** *Section 2, Term of the Agreement currently reads as follows:*

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from September 1, 2014 to August 31, 2019.

Such section is hereby amended in its entirety to read as follows:

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from September 1, 2014 to February 28, 2020.

2.9 **Department Liaison.** *Appendix A, Section 3, Department Liaison currently reads as follows:*

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the Sheriff's Department will be Lt. John Ramirez, Custody Operations and Henry Gong, Contract Administrator.

Such section is hereby amended in its entirety to read as follows:

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the Sheriff's Department will be Lt. John Caramucci, Custody Operations and Henry Gong, Contract Administrator.

2.10 **Calculation of Charges.** *Appendix B, Section 3, Medical Starter Kit of the Agreement currently reads as follows:*

3) Medical Starter Kit

The Department shall pay to the Contractor \$0.25 per Medical Starter Kit. A Medical Starter Kit will consist of the following:

- a) Five (5) packages of Acetaminophen or Ibuprofen (325 mg) as directed by SFSD;
- b) A letter to the patients explaining the policy for "over the Counter" (OTC) medication;
- c) A handout: "How to Take Care of Common Medical Problems in Jail"

*The OTC letter and handout will be supplied to Contractor by Jail Health Services.

All other revenue to the Contractor for performance of the services described in this contract shall be paid by inmate purchases of commissary items.

Such section is hereby amended in its entirety to read as follows:

3) Medical Starter Kit

The Department shall pay to the Contractor \$0.25 per Medical Starter Kit. A Medical Starter Kit will consist of the following:

- a) Five (5) packages of Acetaminophen or Ibuprofen (325 mg) as directed by SFSD.

All other revenue to the Contractor for performance of the services described in this contract shall be paid by inmate purchases of commissary items.

2.11 **Calculation of Charges.** *Section Appendix B, Section 4, Standard Inmate Deposit Fee Structure of the Agreement currently reads as follows:*

4) Standard Inmate Deposit Fee Structure

Standard fees paid by family and friends making a deposit to an inmate trust account. The Contractor will collect and retain the inmate deposit fees.

STANDARD FEE STRUCTURE				
Gross Amount Deposited	Web	Phone	Credit at Lobby	Cash at Lobby
\$0.01 - \$19.99	\$2.95	\$3.95	\$2.95	\$2.00
\$20.00 - \$99.99	\$5.95	\$6.95	\$5.95	\$2.00
\$100.00 - \$199.99	\$7.95	\$8.95	\$7.95	\$2.00
\$200.00 - \$300.00	\$9.95	\$10.95	\$9.95	\$2.00

Such section is hereby amended in its entirety to read as follows:

4) Standard Inmate Deposit Fee Structure

Standard fees paid by family and friends making a deposit to an inmate trust account. The Contractor will collect and retain the inmate deposit fees.

STANDARD FEE STRUCTURE			
Gross Amount Deposited	Web	Phone	Cash at Lobby
\$0.01 - \$19.99	\$4.95	\$6.95	\$0.00
\$20.00 - \$99.99	\$7.95	\$9.95	\$0.00
\$100.00 - \$199.99	\$9.95	\$11.95	\$0.00
\$200.00 - \$300.00	\$11.95	\$13.95	\$0.00

Article 3 Effective Date

Each of the modifications set forth in Section 2 shall be effective on and after September 1, 2019.

Article 4 Legal Effect

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY
Recommended by:

CONTRACTOR
Keefe Commissary Network, LLC.

Vicki Hennessy
Sheriff
Sheriff's Department

John Puricelli
Executive Vice President, GM
10880 Linpage Place
Saint Louis, MO 63132

City Supplier number: 0000017052

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____

Jana Clark
Deputy City Attorney

