

## **JAIL SECURITY CAMERA UPGRADE PROJECT CONTRACT**

THIS CONTRACT, made and entered into this 14<sup>th</sup> day of March, 2023, between Pacific County, hereinafter called the COUNTY, and Justice Systems Corp, hereinafter called the CONTRACTOR, for the following project: JAIL SECURITY CAMERA UPGRADE – Bid No. 2023-700.

COUNTY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **Article 1 – Work**

- 1.1 CONTRACTOR shall complete all work and furnish all materials and equipment as specified or indicated in the Contract Documents for:

Replacement and upgrade of existing (64) analog cameras and its video switching and recording equipment to an all IP based system of equivalent capability

- 1.2 The CONTRACTOR shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials, for constructing, cleaning up and completing the work provided for in the Contract Documents except those items mentioned therein to be furnished by the COUNTY.

### **Article 2 – Contract Time**

- 2.1 The date of commencement of the work shall be the date of this Contract unless otherwise agreed upon by both parties in writing. Work of the Contract shall be physically completed and ready for final payment no later than October 31, 2023.

### **Article 3 – Contract Price**

- 3.1 COUNTY shall pay CONTRACTOR for completion of the Work in the amount of two hundred eighty-six thousand two hundred ten dollars and zero cents (\$286,210.00) in accordance with the Contract Documents and estimated Contract Price as provided in CONTRACTOR's Bid Form attached as Exhibit A.

### **Article 4 – Taxes**

- 4.1 The CONTRACTOR shall pay sales, consumer, L&I, and other similar taxes that are legally enacted when bids are received or negotiations are concluded, whether or not effective or merely scheduled to go into effect.

### **Article 5 – Permits, Fees, Notices, and Compliance with Laws**

- 5.1 Unless otherwise provided in the Contract Documents, the CONTRACTOR shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.
- 5.2 The CONTRACTOR shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to the performance of the work. If the CONTRACTOR performs work knowing it to be contrary to applicable law, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the CONTRACTOR shall assume appropriate responsibility for such work and shall bear the costs attributable to correction.

## **Article 6 – Payment Procedures**

- 6.1 Following final inspection and acceptance of the upgraded camera system, the CONTRACTOR may request payment for the project. Applicable paperwork must be filed prior to release of payment, including but not limited to, prevailing wage and manufacturer's warranty documents.
- 6.2 Payment shall be made in full, provided that there are no related liens registered against the project at that time, and provided that the industrial insurance premiums with the Department of Labor and Industries are current.

## **Article 7 – Contractor's Representations**

CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR is familiar with the nature and extent of the Contract Documents, work site, locality, availability of labor, union or non-union practices, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.
- 7.2 CONTRACTOR has given COUNTY written notice of all conflicts, errors, or discrepancies that it has discovered and the written resolution thereof by COUNTY is acceptable to the CONTRACTOR.
- 7.3 CONTRACTOR is experienced and qualified to perform the services described herein, and is properly staffed and organized and financed to perform such services. CONTRACTOR shall act as an independent contractor and not as an employee or agent of COUNTY in performing its services, maintaining control over its employees and managing all subcontractors and suppliers.

## **Article 8 – Contract Documents**

- 8.1 The Contract Documents which comprise the entire Contract between COUNTY and CONTRACTOR concerning the work consist of the following:
  - A. This Contract
  - B. CONTRACTOR'S Proposal, attached as Exhibit A.
  - C. Addenda Numbers 1 to 1 inclusive, attached as Exhibit B.
  - D. Notice of Award, attached as Exhibit C.
  - E. Performance and Payment Bonds, attached as Exhibit D.
  - F. Certificates of Insurance, attached as Exhibit E.
- 8.2 The following which may be delivered or issued after the Effective Date of the Contract and are not attached hereto:

All written Amendments and other documents amending, modifying, or supplementing the Contract Documents.
- 8.3 There are no Contract Documents other than those listed in this Article 8. The Contract Documents may only be amended, modified, or supplemented as provided in the Special Provisions.

## **Article 9 – Changes in the Work**

- 9.1 By appropriate modifications, changes in the work may be accomplished after execution of the Contract. The COUNTY, without invalidating the Contract, may order changes in the work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the work shall be authorized by written Change Order signed by the COUNTY's representative, and the CONTRACTOR.

- 9.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the work shall be determined by mutual agreement of the parties,
- 9.3 If concealed or unknown physical conditions are encountered during the project that differ materially from those indicated in the Contract Documents or from those conditions found to exist before execution of the Contract, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed upon between the COUNTY and the CONTRACTOR; provided that the CONTRACTOR provides prompt written notice to the COUNTY before conditions are disturbed.

#### **Article 10 – Correction of Work**

- 10.1 The CONTRACTOR shall promptly correct work rejected by the COUNTY or failing to conform to the requirements of the Contract Documents, whether discovered before or after substantial completion and whether or not fabricated, installed or completed. Costs of correcting such rejected work shall be at the CONTRACTOR's expense.
- 10.2 In addition to the CONTRACTOR's obligations of warrantee, if, within one year after the date of substantial completion of the work or designated portion thereof or by terms of an applicable special warranty required by the Contract Documents, any of the work is found to be not in accordance with the requirements of the contract documents, the CONTRACTOR shall correct it promptly after receipt of written notice from the COUNTY to do so unless the COUNTY has previously given the CONTRACTOR a written acceptance of such condition. The COUNTY shall give such notice promptly after discovery of the condition. During the one-year period for correction of work, if the COUNTY learns of the defect(s) and fails to notify the CONTRACTOR and give the CONTRACTOR an opportunity to make the correction, the COUNTY waives the right to require correction by the CONTRACTOR and to make a claim for breach of warranty.
- 10.3 If the CONTRACTOR fails to correct nonconforming work within a reasonable time, the COUNTY may correct it in accordance with the COUNTY's right to carry out work in a following Article.
- 10.4 The one-year period for correction of work shall be extended with respect to portions of work first performed after substantial completion by the period of time between substantial completion and actual completion of the work.
- 10.5 The one-year period for correction of work shall not be extended by corrective work performed by the CONTRACTOR pursuant to this Article.

#### **Article 11 – County's right to stop the work or to carry out the work**

- 11.1 If the CONTRACTOR fails to correct work that is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the work in accordance with the Contract Documents, the COUNTY may issue a written order to the CONTRACTOR to stop the work, or any portion thereof, until the cause for such order is eliminated; however, the right of the COUNTY to stop the work shall not give rise to a duty on the part of the COUNTY to exercise this right for the benefit of the CONTRACTOR or for any other person or entity.
- 11.2 If the CONTRACTOR defaults or neglects to carry out the work in accordance with the Contract Documents, and fails within a 10-day period after receipt of written notice from the COUNTY to commence and continue correction of such default or neglect with diligence and promptness, the COUNTY, without prejudice to any other remedy the COUNTY may have, or may, correct such deficiencies and may deduct the reasonable cost thereof, including the COUNTY's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the CONTRACTOR.

## **Article 12 – Warranty**

- 12.1 The CONTRACTOR warrants to the COUNTY that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The CONTRACTOR further warrants that the work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The CONTRACTOR's warranty excludes remedy for damage or defect caused by abuse, alterations to the work not executed by the CONTRACTOR, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

## **Article 13 – Work site**

- 13.1 The CONTRACTOR shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with equipment.
- 13.2 The CONTRACTOR shall keep the premises and surrounding area free from accumulation of waste materials, or rubbish caused by operations under the Contract. At completion of the work, the CONTRACTOR shall remove waste materials, rubbish, the CONTRACTOR's tools, construction equipment, machinery, and surplus material from and about the project.
- 13.3 The CONTRACTOR shall provide to the COUNTY access to the work in preparation and progress wherever located.

## **Article 14 – Protection of Persons and Property**

- 14.1 The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The CONTRACTOR shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:
- A. Employees on the work site and other person who may be affected thereby; and
  - B. The work and materials and equipment to be incorporated therein, whether in storage on or off site, under care, custody or control of the CONTRACTOR or the CONTRACTOR's subcontractors; and
  - C. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.
- 14.2 The CONTRACTOR shall promptly remedy damage and loss to property caused in whole or in part by the CONTRACTOR or subcontractors or anyone directly or indirectly employed by any of them.

## **Article 15 – Indemnification/Hold Harmless**

- A. Indemnification by Contractor.** To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property, including the loss of use resulting therefrom. The indemnity includes but is not limited to: 1) liability arising in whole or in part by any action or omission, negligent or otherwise, of the CONTRACTOR, its employees, agents or volunteers or CONTRACTOR's subcontractors and their employees, agents or volunteers; or 2) liability directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) liability based upon the CONTRACTOR'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY.

This indemnification obligation of the CONTRACTOR shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the CONTRACTOR shall not be limited in any way by the Washington State Industrial Insurance Act RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the CONTRACTOR hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into the Contract, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties.

**B. Participation County – No Waiver.** The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONTRACTOR's indemnity obligations under the Contract.

**C. Survival of Contractor's Indemnity Obligations.** The CONTRACTOR agrees all CONTRACTOR's indemnity obligations shall survive the completion, expiration or termination of this Contract.

#### **Article 16 – Public Records Act**

16.1 This Contract and all public records associated with this Contract shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the CONTRACTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the COUNTY. If the CONTRACTOR considers any portion of any record provided to the COUNTY under this Contract, whether in electronic or hard copy form, to be protected from disclosure under law, the CONTRACTOR shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the CONTRACTOR and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the CONTRACTOR (a) of the request and (b) of the date that such information will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the CONTRACTOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONTRACTOR for releasing records not clearly identified by the CONTRACTOR as confidential or proprietary. The COUNTY shall not be liable to the CONTRACTOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

CONTRACTOR agrees to indemnify and, to the greatest extent legally possible, to hold harmless the COUNTY in any action by a third party due to the negligence, recklessness or intentional actions by the CONTRACTOR relating to its performance of this contract. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

## **Article 17 – Ownership**

- 17.1 Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the CONTRACTOR or the CONTRACTOR's subcontractors or consultants for delivery to the COUNTY under this Contract shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the CONTRACTOR uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the CONTRACTOR and is not "work made for hire" within the terms of this Contract.

## **Article 18 – Instruments of Service Defined**

- 18.1 Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and Architect's consultants under their respective professional services Contracts. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials created by the Architect or the Architect's agents.

## **Article 19 – Insurance**

- 19.1 Without limiting the CONTRACTOR'S indemnification of COUNTY, and prior to commencement of this Contract, CONTRACTOR shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

- A. General Liability Insurance.** CONTRACTOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
- B. Professional Liability (Errors & Omissions) Insurance.** CONTRACTOR shall maintain professional liability insurance that covers the services to be performed in connection with this Contract, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and CONTRACTOR agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Contract.
- C. Workers' Compensation Insurance.** CONTRACTOR shall, at its own expense, maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

CONTRACTOR shall submit to COUNTY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of COUNTY, its officers, agents, employees and volunteers.

- D. Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

**E. Automobile Liability Insurance.** CONTRACTOR shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the CONTRACTOR arising out of or in connection with Work to be performed under this Contract, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**F. Umbrella or Excess Liability Insurance.** CONTRACTOR shall obtain and maintain an umbrella or excess liability insurance policy with limits of not less than \$4,000,000 that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

- A dropdown feature requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrence of effective dates with primary policies; and
- Policies shall "follow form" to the underlying primary policies.
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

19.2 The CONTRACTOR shall provide the COUNTY with properly executed certificate of insurance and provide a policy endorsement naming the COUNTY as an additional insured.

CONTRACTOR agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state.

#### **Article 20 – Disputes/Choice of Law, Jurisdiction and Venue/Severability**

20.1 If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.

**A. Disputes.** Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due CONTRACTOR shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue.**

**B. Choice of Law, Jurisdiction and Venue.** This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.

**C. Severability.** If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

#### **Article 21 – Contract Provisions**

- 21.1 Payments due to the CONTRACTOR under this Contract are expressly conditioned upon the CONTRACTOR's strict compliance with all insurance requirements under this Contract. Payment to the CONTRACTOR shall be suspended in the event of non-compliance. Upon receipt of evidence of full compliance, payments not otherwise subject to withholding or set-off will be released to the CONTRACTOR.

#### **Article 22 – Termination of Contract by County for Cause**

- 22.1 The COUNTY may terminate the Contract if the CONTRACTOR:

- A. repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- B. fails to make payments to employees or subcontractors for materials or labor in accordance with the respective Contracts between the Contractor and employees or subcontractor;
- C. disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority; or
- D. otherwise substantially breaches a provision of the Contract Documents.

- 22.1 When any of the above reasons exists, the COUNTY, may, without prejudice to any other remedy the COUNTY may have and after giving the CONTRACTOR seven days' written notice, terminate the Contract and take possession of the site and of all materials thereon owned by the CONTRACTOR and may finish the work by whatever reasonable method the COUNTY may deem expedient. Upon request of the CONTRACTOR, the COUNTY shall furnish to the CONTRACTOR a detailed accounting of the costs incurred by the COUNTY in finishing such work.

- 22.2 When the COUNTY terminates the Contract for one of the reasons enumerated above, the CONTRACTOR shall not be entitled to receive further payment until the work is finished.

- 22.3 If the unpaid balance of the Contract Sum exceeds costs of finishing the work, such excess shall be paid to the CONTRACTOR. If such costs and damages exceed the unpaid balance, the CONTRACTOR shall pay the difference to the COUNTY.

- 22.4 The COUNTY's decision not to terminate the Contract upon a breach does not constitute a waiver of any of its rights.

#### **Article 23 – Termination by County for Convenience**

- 23.1 The COUNTY may, at any time, terminate the Contract for the COUNTY's convenience and without cause. The Contractor shall be entitled to receive payment for work executed, costs incurred by reason of such termination, and damages for lost profit. The CONTRACTOR retains the duty to mitigate its lost profit.



**Article 24 – Assignment**

24.1 The CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without the prior written consent of the COUNTY.

**Article 25 – Binding Effect**

25.1 COUNTY and CONTRACTOR each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, Contracts, and obligations contained in the Contract Documents.

**Article 26 – Entire and Complete Contract**

26.1 This Contract represents the entire and integrated Contract between the parties hereto and supersedes all prior negotiations, representations, or Contracts, either written or oral. In the event of any conflict between the language set forth in this Contract, any of the exhibits hereto, Standard Specifications, or Special Provisions, the language in this Contract shall prevail, and this Contract shall be interpreted as if that conflicting language was not a part of the Contract between the parties.

**Article 27 – Contact Information**

27.1 Following is the contact information for the designated representative of each party:

Justice Systems Corp.  
Paul Allyn, P.E. President  
3902 West Valley Hwy N Ste #306  
Auburn, WA 98001  
253/981-4398

Department of Public Works  
Nick Milton, Asst. Telecommunications Engineer  
300 Memorial Drive  
South Bend, WA 98586  
360/875-9300 ext. 3444

Any changes to this contact information shall be communicated to the other party in writing sent via U.S.P.S. first class mail within one week of the change.

IN WITNESS WHEREOF, this Contract is executed and shall become effective as of the last date signed below.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CONTRACTOR  
Justice Systems Corp.

BOARD OF COUNTY COMMISSIONERS  
PACIFIC COUNTY, WASHINGTON

\_\_\_\_\_  
Paul Allyn                      Date  
P. E., President

\_\_\_\_\_  
Lisa Olsen, Chair

\_\_\_\_\_  
Jerry Doyle, Commissioner

\_\_\_\_\_  
David Tobin, Commissioner

APPROVED AS TO FORM

ATTEST

\_\_\_\_\_  
Prosecutor's Office              WSBA#

\_\_\_\_\_  
Amanda Bennett                      Date  
Clerk of the Board