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CONTRACT AMENDMENT
CONTRACT COR-SVCS-2019-0201-MCE

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the **Montana Department of Corrections** (DEPARTMENT) 5 S. Last Chance Gulch, Helena, Montana 59620-1301 and **J&V Restaurant Supply** (CONTRACTOR) 544 East Mendenhall, Bozeman MT 59715, (406) 587-9303, and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of January 30, 2019 and Section 30 provides that the parties may modify their agreement in writing;

WHEREAS, Effective Date, Duration, and Renewal section inadvertently included renewal options that are inapplicable to this Contract;

WHEREAS, section 2 entitled Cost Adjustments has no application in this Contract;

WHEREAS, section 5.5 entitled Reference to Contract duplicates a previous subsection; and

WHEREAS, Executive Order No. 15-2018 requires all executive branch agencies to include a disclosure of dark money spending clause in contracts for services exceeding $25,000 or a potential term of 24 months or more.

NOW THEREFORE, the parties agree to amend the Contract as follows:

Section titled EFFECTIVE DATE, DURATION, AND RENEWAL is hereby retitled EFFECTIVE DATE AND DURATION, and subsection 1.2 is deleted in its entirety;

Section 2, COST ADJUSTMENTS, is deleted in its entirety;

Section 3, SERVICES AND/OR SUPPLIES is renumbered **2**;

Section 4, WARRANTIES is renumbered **3** with subsections renumbered **3.1** Warranty of Products and **3.2** Warranty of Services;

Section 5, CONSIDERATION/PAYMENT is renumbered **4** with subsections **4.1** Payment Schedule, **4.2** Payment Terms, **4.3** Reference to Contract, **4.4** Withholding of Payment, and subsection 5.5 Reference to Contract is deleted;

Sections 6, AGENCY ASSISTANCE through 12, COMPLIANCE WITH WORKERS' COMPENSATION ACT are now numbered **5** through **11** respectively, including all subsections; reference to Section 3 in Agency Assistance is changed to Section 2;

ADD: 12. **COMPLIANCE WITH DARK MONEY SPENDING DISCLOSURE REQUIREMENTS**

Contractor shall comply with the provisions of the State of Montana Executive Order No. 15-2018. Contractor shall annually submit a declaration form to the contract liaison. Declaration forms can be found at: https://vendorresources.mt.gov/Portals/121/vendor_resources/EO_DECLARATION%20FORM.pdf?ver=2018-09-13-100259-243 .

Contractor shall also annually submit a disclosure form to the contract liaison as required. Disclosure forms can be found at:

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http://vendorresources.mt.gov/Portals/121/vendor_resources/Dark_Money_Disclosure_Template.xlsm.

All disclosures must be submitted to Department of Corrections, Contract Management Bureau, P.O. Box 201301, Helena MT 59620-1301, for reporting on https://transparency.mt.gov/. Failure to comply with these requirements may result in contract termination. Contractor agrees that such a failure is a material breach of this Contract.

Sections **13** through **32** remain unchanged.

This constitutes the Amendment to the Contract. All other provisions contained in the original Contract, as amended, shall remain unchanged.

STATE OF MONTANA
DEPARTMENT OF CORRECTIONS

DocuSigned by:
Gayle Butler
050F0626F7E44A1...

3/8/2019

Gayle Butler, Administrator
Montana Correctional Enterprises

Date

J&V RESTAURANT SUPPLY

3/1/19

Pat Laird, Account Executive

Date

Reviewed for Legal Content by:

DocuSigned by:
Lorraine Schneider
50C1253B257B4D4...

3/8/2019

Legal Counsel
Department of Corrections

Date

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(Cleveland Tumble Chillers-MCE)
(COR-SVCS-2019-0201-MCE)

THIS CONTRACT is entered into by and between the State of Montana, **Montana Department of Corrections** (Department), whose address and phone number are **5 S. Last Chance Gulch, Helena, MT 59601, (406) 444-3930** and **J&V Restaurant Supply,** (Contractor), whose address and phone number are **544 East Mendenhall, Bozeman, MT 59715** and **(406)-587-9303.**

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The contract's initial term is upon contract execution through **June 30, 2019** unless terminated earlier as provided in this contract. In no event is this contract binding on the Department unless the Department's authorized representative has signed it. The legal counsel signature approving legal content of the contract does not constitute an authorized signature.

1.2 Contract Renewal. The Department may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in one-year intervals, or any interval that is advantageous to the Department, unless either party provides a written notice of cancelation at least 30 days prior. In the event neither party provides a written notice of cancelation 30 days prior to the expiration date, this Contract shall continue on a month-to-month basis until such time as the parties mutually agree to an annual renewal of the contract or either party provides a written 30 day notice of cancellation. This contract, including any renewals, may not exceed a total of seven (7) years.

2. COST ADJUSTMENTS

2.1 Cost Increase by Mutual Agreement. After the contract's initial term and if the Department agrees to a renewal, the parties may agree upon a cost increase. The Department is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

3. SERVICES AND/OR SUPPLIES

Contractor shall provide the Department the following:

Contractor shall provide one P-TC-220 Cleveland Cook-Chill Tumble Chillers to the Montana Correctional Enterprises (MCE) Food Factory located at 350 Conley Lake Road, Deer Lodge, MT 59722 including removal of the existing Tumble Chillers, installation of the new Tumble Chillers, start up and testing of the new Tumble Chillers, connection to plant utilities, manufacture warranty, and staff training on the operation of the new equipment. The responsibilities of each party are listed below and will be provided in accordance with this contract and in accordance with the bid response submitted to COR-IFB-2019-0171.

Department responsibilities:

1. The Department will provide a staff person at the site at all times.
2. The Department will provide removal of the old equipment from the work area.

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Contractor responsibilities:

1. The Contractor will be responsible for removal of the existing Tumble Chillers in such a matter as to not damage the equipment or any plant connections such as the steam, plumbing, and electrical connections. This may include partial removal of sections of the existing wall.
2. The Contractor will be responsible to install the new equipment in such a way as it is fully operational and is fully warrantable by the manufacturer. Contractor will return the physical plant to the condition it was prior to the install.
3. The Contractor and/or his subcontractors will be responsible for the proper connections to all facility utilities such as steam, water, and electricity so that the equipment is fully operational and is fully warrantable by the manufacturer.
4. The Contractor will be responsible for the supervision and coordination of all subcontractors.
5. The Contractor will coordinate with the manufacturer's representative and all subcontractors to complete the removal, installation, and start-up of the equipment over a four-day period consisting of a Friday, Saturday, Sunday, and Monday. Monday will be the day designated for MCE staff training for maintenance, calibration, and operation. It is vital that the Food Factory normal meal production not be impacted by the new equipment installation.

4. WARRANTIES

4.1 Warranty of Products. Contractor warrants that the products supplied conform to the specifications requested, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defect. The length of warranty may vary by product. Contractor further warrants that the products are new and unused and of the latest model or manufacture, unless the Department specifies otherwise. Contractor acknowledges that exceptions will be rejected.

4.2 Warranty of Services. Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. The Department's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the Department may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration of the supplies and services to be provided, the Department shall pay Contractor according to the following schedule:

A. Department shall pay Contractor upon completion of the project an amount not to exceed **one hundred seventy six thousand two hundred twenty seven and 00/100 Dollars ($176,227.00)** for the services described herein.

B. This rate is inclusive of all travel and per diem. Department will not compensate Contractor for travel or travel time, lodging, meals, supplies, or any other expense incurred by Contractor while performing services identified within this Contract.

5.2 Payment Terms. Unless otherwise noted in the solicitation document, the Department has 30 days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate the Department's electronic funds transfer payments.

5.3 Reference to Contract. The contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the Department is not obligated to pay the invoice.

5.4 Withholding of Payment. In addition to its other remedies under this contract, at law, or in equity, the Department may withhold payments to Contractor if Contractor has breached this contract.

5.5 Reference to Contract. The contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the Department is not obligated to pay the invoice.

6. AGENCY ASSISTANCE

To the extent possible, Contractor shall use its own equipment in providing the goods/services set forth in Section 3. However, the parties recognize that services provided to Department may occur within the confines of a secure correctional facility necessitating the use of Department facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and phone service (e.g., Montana State Prison does not allow cellular or digital phones within the facility).

7. ACCESS AND RETENTION OF RECORDS

7.1 Access to Records. Contractor shall provide the Department, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. The Department may terminate this contract under section 17, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

7.2 Retention Period. Contractor shall create and retain all records supporting the services rendered and supplies provided for a period of eight years after either the completion date of this contract or termination of the contract.

8. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this contract without the Department's prior written consent. (18-4-141, MCA) Contractor is responsible to the Department for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the Department under this contract.

9. HOLD HARMLESS/INDEMNIFICATION

Contractor agrees to protect, defend, indemnify, and hold harmless the Department, its elected and appointed officials, agents and employees from and against all legal, equitable or administrative claims, causes of action, damages, losses and expenses, of any kind or character, including but not limited to attorneys' fees and the costs of defense, arising in favor of Contractor's employees or third parties on account of bodily injury, sickness, disease, death, personal injury, violation of an offender's constitutional or statutory rights, or to injury to or destruction of tangible property except for such claims, causes of action, damages, losses or expenses which are solely due to the fault or negligence of the party seeking indemnity.

10. REQUIRED INSURANCE

10.1 General Requirements. Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

10.2 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to the Department, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the Department, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

10.3 Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000.00 per occurrence and $2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The Department, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

10.4 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the Department. At the request of the Department either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Department, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

10.5 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by the Department's Contracts Management Bureau, P.O. Box 201301, Helena, MT 59620. Contractor must notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The Department reserves the right to require complete copies of insurance policies at all times.

11. LICENSURE

Contractor agrees to provide copies of current licenses and certifications that register Contractor and any associates performing under this Contract.

12. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the Department of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are Department employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the Department's Contracts Management Bureau, P.O. Box 201301, Helena, MT 59620.

13. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.I. 111-148, 124 Stat. 119]. CONTRACTOR will comply with the Prison Rape Elimination Act 42 U.S.C.A. § 15601ff, the Prison Rape Elimination Act final rule 28 CFR Part 115, MDOC Policy 1.3.14, Prison Rape Elimination Act, and ACCD 1.3.1400 PREA to include incident reporting. CONTRACTOR shall establish a zero tolerance policy to incidents of sexual assault/rape or sexual misconduct. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

The Affordable Care Act requires a contractor, if contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980 H (ACA) if provided by the State.

Additional Indemnification. Claims under this provision also include those arising out of or in any way connected with Contractor's breach of this contract, including any Claims asserting that any of Contractor's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to, excise taxes or penalties imposed on the State under the Code §§ 4980H, 6055 or 6056.

Reporting Requirements. Contractor, if contractor is an applicable large employer under the ACA, further states that it shall satisfy all reporting requirements under the Code §§ 6055 and 6056 (ACA) with respect to individuals who perform services for the State.

Auditing. The State may audit Contractor's operations to ensure that the Contractor has complied with the statements made above.

14. DISABILITY ACCOMMODATIONS

The Department does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

15. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such

businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at http://sos.mt.gov.

16. INTELLECTUAL PROPERTY/OWNERSHIP

16.1 Ownership of Work Product. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as the Department may reasonably request, to perfect the Department's ownership of any Work Product.

16.2 Ownership of Contractor Pre-Existing Materials. Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this contract is executed or otherwise developed or acquired independent of this contract and employed by Contractor in connection with the services provided to the Department (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to the Department before its use and to prove its ownership. If, however, Contractor fails to disclose to the Department such Contractor Pre-Existing Materials, Contractor shall grant the Department a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the Department to receive the intended benefit under this contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 16.1 or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this contract.

17. CONTRACT TERMINATION

17.1 Termination for Cause with Notice to Cure Requirement. The Department may terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

17.2 Termination for Cause with Notice to Cure Requirement. Contractor may terminate this contract for the Department's failure to perform any of its duties under this contract after giving the Department written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30 days**. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

17.3 Reduction of Funding. The Department must by law terminate this contract if funds are not appropriated or otherwise made available to support the Department's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the Department budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the Department shall terminate this contract as required by law. The Department shall provide Contractor the date the Department's termination shall take effect. The Department shall not be liable to Contractor for any payment that would have been payable had the contract not been

terminated under this provision. As stated above, the Department shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the Department's termination takes effect. This is Contractor's sole remedy. The Department shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

18. CONTRACT PERFORMANCE ASSURANCE

18.1 Permits/Notices/Fees. Contractor shall secure and pay for all permits and inspections; give all notices; pay all taxes and fees; and comply with all laws, ordinances, rules, regulations, and lawful orders bearing on the performance of the work.

18.2 Labor/Materials/Equipment. Unless otherwise specified, Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction, and services necessary for the proper execution and completion of the work. All material provided shall be new and in good condition. All workmanship shall be of good quality and in accordance with acceptable standards of the respective trades.

18.3 Secure Facility. All work will occur within the confines of a secure, correctional facility and employees working under the direction and control of Contractor must pass a background check by Montana State Prison, Montana Correctional Enterprises staff before admission onto the secure grounds will be allowed.

18.4 Project Change Orders. Department and Contractor agree to the contract term for project completion and understand this is an "estimated" schedule that is dependent upon the actions of both parties.

Contractor agrees to keep designated Department staff informed of all actions having a direct impact on the length of the project. Both parties must mutually agree, through a written change order document or contract amendment, before changes can be made to the project completion date.

18.5 Contractor Registration. Construction contracts greater than $2,500.00 require Contractors to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA **prior** to Contract execution. A copy of the registration certificate must be provided to Department. **Contractor's registration number is #7715 - expiration date of 10/29/19.**

18.6 Gross Receipts Tax. In compliance with 15-50-206 MCA, Department will withhold 1% of all payments due Contractor for Contracts over $5,000. Contractor is also required to withhold 1% of all payments due to its sub-contractors who perform work greater than $5,000 under this Contract. Contractor shall utilize the required forms and notify the Department of Revenue of the amount withheld.

19. EVENT OF BREACH – REMEDIES

19.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

- products or services furnished fail to conform to any requirement;
- failure to submit any report required by this contract;
- failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior Department approval; or
- voluntary or involuntary bankruptcy or receivership.

19.2 Event of Breach by Department. The Department's failure to perform any material terms or conditions of this contract constitutes an event of breach.

19.3 Actions in Event of Breach.

Upon Contractor's material breach, the Department may:

- terminate this contract under Section 17.1 and pursue any of its remedies under this contract, at law, or in equity; or
- treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon the Department's material breach, Contractor may:

- terminate this contract under Section 17.2 and pursue any of its remedies under this contract, at law, or in equity; or
- treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

20. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

21. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

22. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the Department's Contracts Management Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

23. LIAISONS AND SERVICE OF NOTICES

23.1 Contract Liaisons. All project management and coordination on the Department's behalf must be through a single point of contact designated as the Department's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the Department's liaison and Contractor's liaison.

Joe Mihelic is the Department's liaison.
350 Conley Lake Road
Deer Lodge, MT 59722
Telephone: (406)-846-1320 x2120
E-mail: jmihelic@mt.gov

Pat Laird is Contractor's liaison.
544 East Mendenhall
Bozeman, MT 59715
(406)-587-9303
E-mail: plaird@jvrestaurant.com

23.2 Notifications. The Department's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

24. MEETINGS

24.1 Technical or Contractual Problems. Contractor shall meet with the Department's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the Department in the performance of their respective obligations, at no additional cost to the Department. The Department may request the meetings as problems arise and will be coordinated by the Department. The Department shall provide Contractor a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

24.2 Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the Department, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

24.3 Department's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the Department's failure or delay in discharging any Department obligation, the Department shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the Department agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the Department does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

25. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the Department or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The Department shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If the Department terminates a project or this contract for cause, then the Department may offset the cost of paying Contractor for the

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additional resources Contractor utilized in providing transition assistance with any damages the Department may have sustained as a result of Contractor's breach.

26. CHOICE OF LAW AND VENUE

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or this contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

27. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

28. AUTHORITY

This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

29. SEVERABILITY CLAUSE

A declaration by any court or any other binding legal source that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually and materially dependent.

30. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

30.1 Contract. This contract consists of 10 numbered pages and any Attachments as required. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

30.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

31. WAIVER

The Department's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

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32. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

DEPARTMENT OF MONTANA
Montana Department of Corrections
5 S. Last Chance Gulch
Helena, MT 59601

J&V Restaurant Supply
544 East Mendenhall
Bozeman, MT 59715

DocuSigned by:
Gayle Butler
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Gayle Butler, Administrator
Montana Correctional Enterprises

DATE: 1/29/2019

Pat Laird
J&V Restaurant Supply

DATE: 1/30/19

Approved as to Legal Content:

DocuSigned by:
Colleen J Ambrose 1/24/2019
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Legal Counsel (Date)

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