

**CONTRACT AMENDMENT NO. 1**  
**CONTRACT FOR: ENHANCED/TRANSITIONAL SUPERVISION SERVICES (ETSS)**  
**CONTRACT NO. COR2019-0202N-1**

This CONTRACT AMENDMENT No. 1 amends the above-referenced contract between the **State of Montana, Department of Corrections** (State), whose address and phone number are P.O. Box 201301, 5 South Last Chance Gulch, Helena, MT 59620-1301, 406-444-3930 and **Boyd Andrew Community Services**, (Contractor), whose address and phone number are 60 South Last Chance Gulch, Helena, MT 59601, (406) 447-3262. This Contract is amended for the following purpose(s):

- 1) In accordance with Section 1, of the above referenced contract, entitled Effective Date, Duration, and Renewal, parties mutually agree to extend this Contract for the period July 1, 2021, through December 31, 2021, per the terms, conditions, and prices agreed upon. This is the 1<sup>st</sup> renewal, 3<sup>rd</sup> year of the Contract. This Contract, including any renewals, may not exceed a total of seven (7) years.
- 2) In accordance with Section 3, of the above referenced contract, entitled Services, parties mutually agree to the removal of subsection 3.12, entitled Offender Rights and Grievances, in its entirety. For clarity, subsequent sections will not be renumbered.
- 3) In accordance with Section 5, of the above referenced contract, entitled Consideration/Payment, the parties mutually agree to changes in subsections 5.1(a) through 5.1(i) to reflect rate changes. Parties also mutually agree to changes in subsection 5.2 to reflect rate changes:  
**(new language underlined, old language interlined):**

**5.1 Payment Schedule.** In consideration of the ETSS services to be provided, State shall pay Contractor according to the following schedule:

- a. One (1) one-on-one meeting with offender per week (one (1) allowed per offender per week): ~~\$20~~ **\$20.20 per meeting** (maximum of one (1) allowed per offender per week).
- b. Offender check-ins with Contractor once daily up to seven (7) times per week which may include breathalyzer testing, schedule check, and attendance verification for scheduled treatment, programming, self-help, court-ordered community service, or employment meetings/shifts: ~~\$10~~ **\$10.10 per meeting** (maximum of one (1) allowed per offender per day).
- c. Up to three (3) random drug/alcohol tests per week:
  - i. 7-drug panel urinalysis test: ~~\$7~~ **\$7.07 per test.**
  - ii. Drug-specific tests, upon approval of MDOC Contract Liaison:
 

▪ Heroin:	<del>\$8</del> <b><u>\$8.08 per test.</u></b>
▪ Spice:	<del>\$8</del> <b><u>\$8.08 per test.</u></b>
▪ PCP:	<del>\$8</del> <b><u>\$8.08 per test.</u></b>
▪ Benzodiazepine:	<del>\$8</del> <b><u>\$8.08 per test.</u></b>
- d. Development of a weekly itinerary in the community with periodic verification:
  - i. Meeting with a case manager to develop the itinerary: ~~\$10~~ **\$10.10 per week.** (maximum of one (1) allowed per offender per week).
  - ii. Meeting with a case manager to develop the itinerary plus up to three (3) verifications: ~~\$20~~ **\$20.20 per week.** (maximum of one (1) allowed per offender per week).

- e. Evidence-based, cognitive behavioral-based programming:
  - i. Moral Reconciliation Therapy (MRT): ~~\$30~~ **\$30.30 per offender per week.**
  - ii. Dialectical Behavior Therapy (DBT): ~~\$25~~ **\$25.25 per offender per week.**
- f. Job development services: ~~\$20~~ **\$20.20 per 30-minute session** (maximum of one (1) allowed per offender per week).
- g. Continuous drug/alcohol testing mechanisms approved by the State:
  - i. SCRAM: ~~\$11~~ **\$11.11 per day per offender** (cannot be combined with Remote Breath).
  - ii. Remote Breath: ~~\$7~~ **\$7.07 per day per offender** (cannot be combined with SCRAM).
- h. Electronic/GPS monitoring: ~~\$10~~ **\$10.10 per day per offender.**
- i. Assistance with application processes for needed services: ~~\$20~~ **\$20.20 per 30-minute session.**

**5.2 Total Contract Maximum.** For State fiscal years ~~2020 and 2021~~ **2022** the contract maximum value is ~~\$88,250.72~~ **\$174,753.91 per year.**

The State guarantees minimum payment of \$34,104 ~~\$17,052~~ each in fiscal year ~~2022~~. If at the end of a fiscal year ~~2022~~, the contractor has not invoiced the department at least \$34,104 ~~\$17,052~~ for the services it rendered during the fiscal year, the department will pay the difference between invoiced total and the \$34,104 ~~\$17,052~~ guarantee minimum.

- 4) In accordance, with Section 11, entitled Complying with Dark Money Spending Disclosure Requirements, parties mutually agree to delete the section in its entirety in accordance with State of Montana Executive Order 3-2021. For clarity, subsequent sections will not be renumbered.
- 5) In accordance with Section 12, of the above referenced contract, entitled Compliance with Laws, parties mutually agree to replace the previously agreed upon language with the State's current language as shown below:

### **12.1 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 42 U.S.C. § 18001 et seq. Contractor will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, MDOC Policy 1.1.17, Prison Rape Elimination Act, and ACCD 1.3.1400 PREA to include incident reporting. State has a zero-tolerance policy as to incidents of sexual assault/rape or sexual

misconduct in its correctional facilities or premises. Contractor is referred to § 45-5-501 MCA. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and State of Montana 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.

**12.2 Affordable Care Act.** 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 § 4980H (ACA) if provided by the State.

- 6) In accordance with Section 14, of the above referenced contract, entitled Registration with the Secretary of State, parties mutually agree to replace the previously agreed upon language to the State's current language as shown below:

#### **14. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-14-1505, 35-8-1001, and 35-12-1309 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. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. 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>.

Except as modified above, all other terms and conditions of Contract No. **COR2019-0202N-1**, remain unchanged.

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

**Boyd Andrew Community Services**  
**60 South Last Chance Gulch**  
**Helena, MT 59601**

DocuSigned by:  
  
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Megan Coy, Bureau Chief  
Program and Facilities Bureau  
8/23/2021  
(Date)

DocuSigned by:  
  
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Amy Tenney, Chief Executive Officer  
8/23/2021  
(Date)

Approved as to Form:

DocuSigned by:  
  
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Nolan Harris  
Contracts Officer  
State Procurement Bureau  
8/16/2021  
(Date)

Approved as to Legal Content:

DocuSigned by:  
  
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Legal Counsel  
Department of Corrections  
8/16/2021  
(Date)

**Enhanced/Transitional Supervision Services (ETSS)  
COR2019-0202N-1**

**THIS CONTRACT** is entered into by and between the State of Montana, **Department of Corrections**, (State), whose address and phone number are P.O. Box 201301, 5 S Last Chance Gulch, Helena, MT 59601, (406) 444-4333, and **Boyd Andrew Community Services**, (Contractor), whose address and phone number are 60 South Last Chance Gulch, Helena, MT 59601, (406) 447-3262.

**1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1 Contract Term.** The Contract's initial term is upon contract execution through **June 30, 2021**, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

**1.2 Contract Renewal.** State may renew this Contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in two-year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed a total of seven (7) years.

**1.3 Definition of Contract Execution.** Contract execution, as used in Section 1.1, refers to the joint execution of this contract and amendment #4 to contract 06-053-ACCD.

**2. PRICE ADJUSTMENTS**

After the Contract's initial term and if State agrees to a renewal, the parties may negotiate price adjustments at the time of Contract renewal. Any price increases must be based on demonstrated industrywide or regional increases in Contractor's costs. State is not obligated to agree upon a renewal or a price increase.

**3. SERVICES**

**3.1 Transitional Services.** Contractor shall provide Transitional Services to offenders who are being released from a prison, an assessment/sanction center, prerelease center, or treatment center for up to the first 90 days of community supervision after release. A Probation and Parole Officer (PO) will determine the specific services to be provided to each offender based on the offender's needs and individualized case plan as determined or developed by the State. The referring PO will complete an agreed upon referral form designating the services selected. Contractor will confirm availability of services, establish a start date, and return the referral form to the PO and the designated State staff.

**3.2 Enhanced Supervision Services.** Contractor shall provide Enhanced Supervision Services to offenders for whom an intervention has been imposed by a PO or State Hearing Officer in accordance with the Montana Incentives and Interventions Grid (MIIG) for Adult Probation and Parole. Services will be provided for up to 90 days, based on the level of the intervention. The supervising PO or a Hearing Officer will determine the specific services to be provided. The referring PO will complete an agreed upon referral form designating the services selected. Contractor will confirm availability of services, establish a start date, and return the referral form to the PO and the designated State staff. Offenders may be continued on community supervision or placed in jail pending services availability as determined by the PO and/or Hearing Officer.

**3.3 Offender Costs.** Offenders will not be responsible for any costs related to the provision of Transitional or Enhanced Supervision Services.

**3.4 Service Locations and Maximum Number of Offenders.** Contractor shall provide Transitional and Enhanced Supervision Services at two (2) locations in Helena, MT. The total maximum number of offenders receiving services and shall not exceed an average daily population of 50 offenders.

**3.5 Service Descriptions.** Available services for Transitional and Enhanced Supervision Services are:

- a. One (1) one-to-one meeting with the Contractor per week for case management services.
- b. Offender check-ins with Contractor once daily up to seven (7) times per week which may include breathalyzer testing, schedule check, and attendance verification for scheduled treatment, programming, self-help, court-ordered community service, or employment meetings/shifts.
- c. Up to three (3) random drug/alcohol tests per week as designated by the supervising PO.
- d. Development of a weekly itinerary in the community with periodic verification by Contractor.
- e. Evidence-based, cognitive behavioral-based programming.
- f. Job development services, including assistance preparing resumes and preparing for interviews.
- g. Continuous drug/alcohol testing mechanisms approved by the State.
- h. Electronic monitoring/global positioning system (GPS).
- i. Assistance with application processes for needed services, including but not limited to:
  - i. Treatment or programming
  - ii. Behavioral health peer support services
  - iii. Family services
  - iv. Reentry services, including housing, public assistance, budgeting/financial planning, veteran-specific, vocational, and educational services.

**3.6 Cognitive Behavioral-Based Programming.**

**3.6.1 Adherence to Evidence-Based Practices and Quality Assurance.** All cognitive behavioral-based programming delivered to offenders shall adhere to evidence-based or research-driven practices and shall be subject to ongoing quality assurance and evaluation by the State to ensure fidelity to delivery standards.

**3.6.2 Programming Approval.** All programming curriculum must be approved by the State prior to program delivery.

**3.6.3 Contractor Training and Certification.** All programming shall be delivered by appropriately trained or certified personnel in order to ensure fidelity to delivery standards.

**3.6.4 Reporting to State.** Contractor shall submit biannual reporting to the State regarding programming that includes the number of offenders referred by MDOC, the number of offenders successfully and unsuccessfully completing, the current programming capacity, and other information as requested by the State.

**3.7 Alcohol and Drug Testing.**

**3.7.1 Random and Non-Random Testing.** Contractor will establish a system of random and non-random drug and alcohol testing to test for use of substances.

**3.7.2 Testing Procedures.** Contractor will implement drug and alcohol testing procedures which promote a drug-free standard, offender accountability, and offender-self admissions.

**3.7.3 Best Practices/Standards for Testing.** Contractor will ensure drug and alcohol testing is in accordance with best practices/standards for testing.

**3.7.4 Testing Data.** Contractor will gather and report information about drug and alcohol testing services provided, including:

- a. The number of tests completed and results;
- b. Whether tests were random or required by the offender's PO;
- c. The number of positive tests and the types of substances detected;
- d. The number of self-admissions;
- e. Record of violation reports

**3.7.5 Employee Training.** Contractor will ensure employees responsible for drug and alcohol testing:

- a. Are trained in the appropriate methods of collection, testing, and reporting procedures.
- b. Comply with specimen collections procedures recommended by the State.
- c. For purposes of urine collection:
  - i. Are the same gender as the offender;
  - ii. Collect specimens in a private setting;
  - iii. Observe the offender's urine flow from body to collection cup to avert adulteration or substitution of urine;
  - iv. Establish the chain of evidence for the sample at the point of collection to confirm the whereabouts of the evidence at all times;
  - v. Accurately input all appropriate testing date in the Offender Management Information System (OMIS);
  - vi. Submit positive samples for confirmatory testing when necessary;
  - vii. Report all positive samples, refusals to provide a specimen, or instances of potential specimen tampering to the PO.

### **3.8 General Requirements for Services.**

**3.8.1 Offender Orientation.** Contractor shall complete an orientation with each offender upon placement into the program.

**3.8.2 Documentation of Services and Update to the State.** Contractor will maintain written documentation of all scheduled meetings and communications related to participating offenders and provide documentation to the supervising PO when requested. Contractor will provide status updates when requested by the supervising PO or the State. Contractor will contact the supervising PO for any significant issues

related to the offender (e.g. failed drug/alcohol test, failure to check in daily, etc.). Issues will be reported to the supervising PO within two (2) business days.

**3.8.3 Notification of Completion/Failure.** Contractor will complete an agreed upon *Notification of Completion/Failure* form and forward it to the supervising PO and the State upon an offender's completion or termination from services.

**3.8.4 Documentation of Services and Update to the State.** Contractor will maintain appropriate documents and store them in a locked cabinet in a locked room. All offender files are the property of the State and shall be returned to the State upon offender release from the program or upon request.

**3.9 Program Progress/Failure.** Contractor will monitor offender participation in the program and report progress/non-compliance to the supervising PO. If the Contractor believes an offender's behavior warrants removal from the program, Contractor will report the issue to the supervising PO, who will make the final decision about the offender's continued participation in the program.

**3.10 Program Recruitment, Hiring Practices, Selection, and Staffing.** Contractor will hire all program and support staff. Contractor will include a criminal background check in its hiring process for all employees and may use the process provided by the State. Contractor will provide documentation of completed criminal background checks to the State. It shall be the responsibility of the Contractor to hire and retain an adequate number of fully qualified and trained staff to ensure that the delivery of scheduled services to offenders is in accordance with the Proposal for services submitted by the Contractor to the State and with this contract. Contractor will ensure that services are never disrupted or compromised due to employees' absences from work or because of vacant positions.

**3.11 Data Requirements.** The State owns all data associated with offenders under the custody or control of the State. Pursuant to Montana Code Annotated 44-4-1203 and at the direction of the State, Contractor will electronically enter all alcohol and drug testing data in OMIS. This data includes, but is not limited to the following:

- a. Enrollment information associated with an offender.
- b. All Test event data results.

**3.12 Offender Rights and Grievances.** Contractor shall implement and maintain a grievance and grievance appeal process for offenders to resolve complaints and report alleged violations regarding the operation of the program in a timely and confidential manner. Contractor shall report and provide copies of all grievances and resolutions to the State on a monthly basis. Allegations of abuse of offenders by Contractor's staff will be reported to the State immediately. Contractor shall provide statistical information on the number and type of grievances received, as required by the State on an annual basis or as requested.

**3.13 Unlawful Behavior by Offenders.** Contractor shall report allegations of criminal conduct by offenders to local law enforcement officials and the State. Contractor shall cooperate with any administrative or criminal investigation regarding an offender.

**3.14 Contractor Employee Training.** Contractor will develop and implement a training strategy to ensure employees obtain the following training:

- a. Gender- and culture-specific training, with emphasis on Native American culture.
- b. Basic Prison Rape Elimination Act (PREA) training and such ongoing annual training as is required by law, the State, and Contractor policy.



- c. Specialized PREA training for employees who may be first-line responders to allegations of sexual assault, rape, or sexual misconduct.
- d. Motivational Interviewing.
- e. Training specific to facilitation of cognitive behavioral-based programming for employees tasked with facilitating offender programming.

Contractor will provide proof of employee completion of mandated training prior to delivery of services.

**3.15 Training for Probation and Parole Staff.** Through coordination with the State, Contractor shall provide one (1) training per year, at no additional cost to the State, at the Helena Probation and Parole Office. The training shall include information about the services provided by the Contractor, the referral process, communication strategies for providing status updates to POs, and other information about the services, as requested by the State.

#### **4. WARRANTIES**

**System Security.** The Contractor acknowledges responsibility for loss or unauthorized acquisition of personal information it holds such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. In absence of insurance coverage specific to this type of coverage, Contractor assumes personal liability for any such information breaches.

#### **5. CONSIDERATION/PAYMENT**

**5.1 Payment Schedule.** In consideration of the ETSS services to be provided, State shall pay Contractor according to the following schedule:

- a. One (1) one-on-one meeting with offender per week (one (1) allowed per offender per week): **\$20 per meeting** (maximum of one (1) allowed per offender per week).
- b. Offender check-ins with Contractor once daily up to seven (7) times per week which may include breathalyzer testing, schedule check, and attendance verification for scheduled treatment, programming, self-help, court-ordered community service, or employment meetings/shifts: **\$10 per meeting** (maximum of one (1) allowed per offender per day).
- c. Up to three (3) random drug/alcohol tests per week:
  - i. 7-drug panel urinalysis test: **\$7 per test**
  - ii. Drug-specific tests, upon approval of MDOC Contract Liaison:
    - Heroin: **\$8 per test**
    - Spice: **\$8 per test**
    - PCP: **\$8 per test**
    - Benzodiazepine: **\$8 per test**
- d. Development of a weekly itinerary in the community with periodic verification:
  - i. Meeting with a case manager to develop the itinerary: **\$10 per week** (maximum of one (1) allowed per offender per week).
  - ii. Meeting with a case manager to develop the itinerary plus up to three (3) verifications: **\$20 per week** (maximum of one (1) allowed per offender per week).
- e. Evidence-based, cognitive behavioral-based programming:

- i. Moral Reconciliation Therapy (MRT): **\$30 per offender per week**
- ii. Dialectical Behavior Therapy (DBT): **\$25 per offender per week**
- f. Job development services: **\$20 per 30-minute session** (maximum of one (1) allowed per offender per week).
- g. Continuous drug/alcohol testing mechanisms approved by the State:
  - i. SCRAM: **\$11 per day per offender** (cannot be combined with Remote Breath).
  - ii. Remote Breath: **\$7 per day per offender** (cannot be combined with SCRAM).
- h. Electronic/GPS monitoring: **\$10 per day per offender.**
- i. Assistance with application processes for needed services: **\$20 per 30-minute session.**

**5.2 Total Contract Maximum.** For State fiscal years 2020 and 2021, the contract maximum value is **\$174,753.91 per year.**

The State guarantees minimum payment of \$34,104 each fiscal year. If at the end of a fiscal year, the contractor has not invoiced the department at least \$34,104 for the services it rendered during the fiscal year, the department will pay the difference between invoiced total and the \$34,104 guarantee minimum.

**5.3 Funding Shortages.** Parties agree to proactively monitor funds allocated and to immediately notify the other Party if funding seems inadequate to meet the needs of one or more service categories. The Parties agree to meet to discuss whether to reallocate services or redistribute funds across service categories for the remainder of the funding period.

**5.4 Withholding of Payment.** In addition to its other remedies under this Contract, at law, or in equity, State may withhold payments to Contractor if Contractor has breached this Contract. Such withholding may not be greater than, in the aggregate, 15% of the total value of the subject statement of work or applicable contract.

**5.5 Payment Terms.** Unless otherwise noted in the solicitation document, State has thirty (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 State's electronic funds transfer payments.

**5.6 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, State is not obligated to timely pay the invoice.

**5.7 Contract Invoices.** Contractor shall submit all invoices and supporting documentation in a format provided by the State.

## **6. ACCESS AND RETENTION OF RECORDS**

**6.1 Access to Records.** Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under Section 15, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

**6.2 Retention Period.** Contractor shall create and retain all records supporting the services rendered for a period of eight years after either the completion date of this Contract or termination of the

Contract. This includes offender records from the time of creation through the life of the Contract and eight years from the Contract's final day.

## **7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (18-4-141, MCA) Contractor is responsible to State 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 State under this Contract.

## **8. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, and save State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of State, under this Contract.

## **9. REQUIRED INSURANCE**

**9.1 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.

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

**9.3 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 per occurrence and \$2,000,000 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.

State, 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.

**9.4 Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

**9.5 Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

**9.6 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, 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.

**9.7 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 State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

## **10. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State 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 State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

## **11. 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 disclosure form to the contract liaison. Disclosure forms can be found at: [https://vendorresources.mt.gov/Portals/121/vendor\\_resources/EO\\_DECLARATION%20FORM.pdf?ver=2018-09-13-100259-243](https://vendorresources.mt.gov/Portals/121/vendor_resources/EO_DECLARATION%20FORM.pdf?ver=2018-09-13-100259-243).

All disclosures must be submitted to 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.

## **12. COMPLIANCE WITH LAWS**

**12.1 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.L. 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 1.1.17, Prison Rape Elimination Act, and ACCD 1.1.1700 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 its 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.

**12.2 Affordable Care Act.** 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.

**12.3 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.

**12.4 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.

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

### **13. DISABILITY ACCOMMODATIONS**

State 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.

### **14. 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>.

## **15. CONTRACT TERMINATION**

**15.1 Termination for Cause with Notice to Cure Requirement.** State 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.

**15.2 Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State 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.

**15.3 Reduction of Funding.** State must by law cancel this Contract if funds are not appropriated or otherwise made available to support State'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 state 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, State shall cancel this Contract as required by law. State shall provide Contractor the date State's cancellation shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been canceled under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's cancellation takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from cancellation under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

## **16. EVENT OF BREACH – REMEDIES**

**16.1 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:

- a. Products or services furnished fail to conform to any requirement;
- b. Failure to submit any report required by this Contract;
- c. 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 State approval or breaching Section 20.1, Technical or Contractual Problems, obligations; or
- d. Voluntary or involuntary bankruptcy or receivership.

**16.2 Event of Breach by State.** State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

### **16.3 Actions in Event of Breach.**

Upon Contractor's material breach, State may:

- a. Terminate this Contract under Section 15.1, Termination for Cause, and pursue any of its remedies under this Contract, at law, or in equity; or
- b. Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- a. Terminate this Contract under Section 15.2, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
- b. 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.

## **17. 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.

## **18. 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.

## **19. LIAISONS AND SERVICE OF NOTICES**

**19.1 Contract Liaisons.** All project management and coordination shall be performed by the Department's point of contact designated below. Contractor shall designate a liaison that will provide project 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.

Dan Kissner is State's liaison  
5 S Last Chance Gulch  
Helena MT 59620-1301  
Telephone: (406) 444-6483  
E-mail: [dkissner@mt.gov](mailto:dkissner@mt.gov)

Amy Tenney is Contractor's liaison  
60 Last Chance Gulch  
Helena MT 59624  
Telephone: (406) 443-2343  
E-mail: [atenney@boydandrew.com](mailto:atenney@boydandrew.com)

**19.2 Contract Manager.** Department's Contract Manager identified below shall perform all Contract management duties on Department's behalf. Written notices and requests or any issues, not related to project management and coordination, regarding this Contract should be directed to Department's Contract Manager.

Pat Schlauch is Department's Contract Manager

5 S Last Chance Gulch

Boyd Andrew Community Services  
Contract # COR2019-0202N-1  
Contracting Authority: 18-4-132 MCA



Helena MT 59620-1301  
Telephone: (406) 444-4931  
E-mail: [pschlauch@mt.gov](mailto:pschlauch@mt.gov)

Amy Tenney is Contractor's Contract Manager

60 Last Chance Gulch  
Helena MT 59624  
Telephone: (406) 443-2343  
E-mail: [atenney@boydandrew.com](mailto:atenney@boydandrew.com)

**19.3 Notifications.** The Department's and Contractor's Liaisons and Contract Managers may be changed by written notice to the other party. Written notices, requests, or complaints must be directed to the Liaison and Contract Manager. Notice may be provided by email, personal service, mail, or facsimile. If notice is provided by email, personal service, or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective three business days after date of mailing.

## **20. MEETINGS**

**20.1 Technical or Contractual Problems.** Contractor shall meet with State'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 State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as problems arise and will be coordinated by State. State 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.

**20.2 Progress Meetings.** During the term of this Contract, State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and State's progress in the performance of their respective obligations. These progress meetings will include State's Project Manager, Contractor's Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of State to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**20.3 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 State, 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.

**20.4 State's Failure or Delay.** For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of State's failure or delay in discharging any State obligation, State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If State 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 State 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.

## **21. 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 State 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. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

## **22. 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.

## **23. TAX EXEMPTION**

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

## **24. PERSONAL PROPERTY TAX**

All personal property taxes will be paid by the Contractor.

## **25. AUTHORITY**

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

## **26. SEVERABILITY**

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.

## **27. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**27.1 Contract.** This Contract consists of 15 numbered pages, Solicitation # **COR-RFP-2019-0163N**, Contractor's response to the solicitation, all procedures (including Q&A Board materials), manuals, and forms which governed the procurement, as provided in ARM 2.5.202(1).

**27.2 Entire Agreement.** The documents referred to in 27.1 are the entire agreement of the parties. All prior negotiations, representations, and understandings between the parties are superseded by the Contract. Any amendment or modification of this contract must be in a written agreement signed by the parties.

## **28. WAIVER**

State'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.

**29. EXECUTION**

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

**STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
5 S Last Chance Gulch  
Helena MT 59601**

**BOYD ANDREW COMMUNITY SERVICES  
60 South Last Chance Gulch  
Helena, MT 59601**

BY: Megan Coy, Bureau Chief  
(Name/Title)

BY: Amy Tenney, Chief Executive Officer  
(Name/Title)

DocuSigned by:  
Megan Coy  
81BB6FEFC95846B...  
(Signature)

DocuSigned by:  
Amy Tenney  
5E060B064C7B41F...  
(Signature)

DATE: 10/25/2019

DATE: 10/25/2019

Approved as to Legal Content:

DocuSigned by:  
Lorraine Schneider 10/18/2019  
50C1259B257B4D4  
Legal Counsel (Date)

Approved as to Form:

DocuSigned by:  
Nicole Orta 10/18/2019  
6407350C31CE4E8  
Procurement Officer (Date)  
State Procurement Bureau