

## CONTRACT AMENDMENT CONTRACT 15-003-MWP

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 **Billings Public Schools** (CONTRACTOR) 415 North 30<sup>th</sup> Street and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of July 14, 2014 and Section 21 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2015 and Section 5 provides that the parties may extend the expiration date of the Contract.

NOW THEREFORE, the parties agree to amend the Contract as follows (**new language underlined, old language interlined**):

### 2. DUTIES/RESPONSIBILITIES OF CONTRACTOR

CONTRACTOR agrees to provide the following services:

CONTRACTOR agrees to provide necessary adult basic education and literacy education services to inmates at the Montana Women's Prison (MWP). The goal of these services is to assist inmates in making the personal choice to become contributing members of society. CONTRACTOR shall provide the following education positions and services:

A. A certified Adult Basic & Literacy Education (ABLE) teacher that will participate in MWP staffing and be responsible for overseeing and coordinating inmates' overall education and vocation plan. The ABLE teacher must provide the identified educational services 7.5 hours per school day, 187 days per school year. School year ~~2014-2015~~ 2015-2016 is defined from ~~August 25, 2014 to June 6, 2015~~ August 24, 2015 to June 4, 2016 and School year ~~2015-2016~~ 2016-2017 is defined from ~~August 24, 2015 to June 4, 2015~~ August 22, 2016 to June 2, 2017.

B.-C. No changes.

B. CONTRACTOR'S education program hereunder may include:

1. Education Guidance and Counseling
2. Education Assessments
3. Basic ~~GED~~ HiSET/Adult Basic & Literacy Education instructional testing
4. Literacy Programs
5. Computer Literacy Programs
6. Vocational Training Series Program ~~(Computer Skills, Accounting, and Professional certificate in secretarial and/or accounting skills)~~ (Accounting, Administrative Assistant, professional assistant or technician certificate courses, and computer skills application for the work place).
7. ~~Job~~ Work Readiness Programs
8. Higher Education Preparation (Assessment, Development, and Coordination)
9. Education Record Keeping

10. Coordination of educational services with ~~Adult Community Corrections~~ the Probation and Parole Bureau, County Detention Facilities, and community ABE sites. The development of the MWP education program shall be upon the advice and consent of CONTRACTOR.

E. Summer school classes will also be provided when requested, in advance, by DEPARTMENT. CONTRACTOR will provide up to fifty four (54), summer school days per summer school session. ~~2014 summer school session is defined from June 9, 2014 to August 22, 2014.~~ The 2015 summer school session is defined from June 8, 2015 to August 21, 2015. The 2016 summer school session is defined from June 6, 2016 to August 19, 2016. School days shall encompass all duties identified in 2(A.-D.) of this contract.

### 3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services (or goods), provided pursuant to Section 2, in the following manner:

A. For the services described herein, DEPARTMENT shall pay CONTRACTOR ~~\$624.82~~ \$648.70 per school day, not to exceed one hundred twenty one thousand three hundred six and 24/100 Dollars (\$121,306.24) ~~one hundred sixteen thousand eight hundred forty one and 34/100 Dollars (\$116,841.34)~~ per school year.

Beginning July 1, 2014, DEPARTMENT shall pay CONTRACTOR \$393.74 per summer school day, not to exceed twenty one thousand two hundred sixty one and 96/100 Dollars (\$21,261.96) per summer school session.

B.-E. No changes

### 5. TIME OF PERFORMANCE

~~This Contract shall take effect upon final contract signature and shall terminate on June 30, 2015, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of seven (7) years.~~

~~Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.~~

This Contract shall take effect upon final contract signature. This Contract shall expire on **June 30, 2016**, 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 June 30, 2016, 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.

In no event may this Contract continue or be renewed for a period exceeding a total of **seven (7) years**.

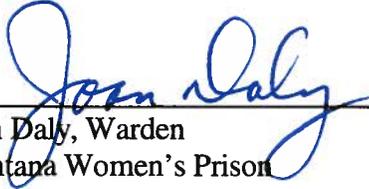
### 6. LIAISONS AND NOTICE

A. Annamae Siegfried-Derrick (247-5102), 701 South 27<sup>th</sup>, Billings MT 59101 or successor serves as DEPARTMENT liaison.

- B. ~~Red See~~ Brian Kroll (247-5001), 415 North 30<sup>th</sup> Street, Billings MT 59101 or successor serves as CONTRACTOR liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

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

**DEPARTMENT**

  
\_\_\_\_\_  
Joan Daly, Warden  
Montana Women's Prison

7/27/15  
\_\_\_\_\_  
Date

**CONTRACTOR**

  
\_\_\_\_\_  
Brian Kroll  
Billings Public Schools

7/31/15  
\_\_\_\_\_  
Date

Reviewed for Legal Content by:

  
\_\_\_\_\_  
Legal Counsel  
Department of Corrections

7/15/15  
\_\_\_\_\_  
Date

**1. PARTIES**

The Montana Department of Corrections (DEPARTMENT) and Billings Public Schools (CONTRACTOR) enter into this Contract (#15-003-MWP). The parties' names, addresses, and telephone numbers are as follows:

Montana Department of Corrections  
Montana Women's Prison  
5 S. Last Chance Gulch  
PO Box 201301  
Helena, MT 59620-1301  
(406) 444-3930

**Billings Public Schools**  
**415 North 30<sup>th</sup> Street**  
**Billings, MT 59101**  
**(406)-247-5001**

**DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:**

**2. DUTIES/RESPONSIBILITIES OF CONTRACTOR**

CONTRACTOR agrees to provide the following services:

CONTRACTOR agrees to provide necessary adult basic education and literacy education services to inmates at the Montana Women's Prison (MWP). The goal of these services is to assist inmates in making the personal choice to become contributing members of society. CONTRACTOR shall provide the following education positions and services:

- A. A certified Adult Basic & Literacy Education (ABLE) teacher that will participate in MWP staffing and be responsible for overseeing and coordinating inmates overall education and vocation plan. The ABLE teacher must provide the identified educational services 7.5 hours per school day, 187 days per school year. School year 2014-2015 is defined from August 25, 2014 to June 6, 2015 and School year 2015-2016 is defined from August 24, 2015 to June 4, 2015.
- B. A certified Computer Technology teacher that will participate in MWP staffing and will instruct and assist inmates in the use of ABLE and vocational software applications, as assigned by Computer Technology or ABLE certified teachers. These teachers shall also be responsible for overseeing and coordinating each inmates overall vocational plans and providing inmates with on-site introduction in office skills for the workplace. The Computer Technology teacher must provide the identified educational services 7.5 hours per school day, 187 days per school year.
- C. Educational Counseling, including career guidance.
- D. CONTRACTOR'S education program hereunder may include:
  - 1. Education Guidance and Counseling
  - 2. Education Assessments
  - 3. Basic GED/Adult Basic & Literacy Education instructional testing
  - 4. Literacy Programs
  - 5. Computer Literacy Programs
  - 6. Vocational Training Program (Computer Skills, Accounting, and Professional certificate in secretarial and/or accounting skills)
  - 7. Job Readiness Programs

8. Higher Education Preparation (Assessment, Development, and Coordination)
9. Education Record Keeping
10. Coordination of educational services with Adult Community Corrections, County Detention Facilities, and community ABE sites. The development of the MWP education program shall be upon the advice and consent of CONTRACTOR.

E. Summer school classes will also be provided when requested, in advance, by DEPARTMENT. CONTRACTOR will provide up to fifty four (54), summer school day per summer school session. 2014 summer school session is defined from June 9, 2014 to August 22, 2014. The 2015 summer school session is defined from June 8, 2015 to August 21, 2015. School days shall encompass all duties identified in 2(A.-D.) of this contract.

### 3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services (or goods), provided pursuant to Section 2, in the following manner:

A. For the services described herein, DEPARTMENT shall pay CONTRACTOR **\$624.82 per school day**, not to exceed one hundred sixteen thousand eight hundred forty one and 34/100 Dollars (\$116,841.34) per school year.

Beginning July 1, 2014, DEPARTMENT shall pay CONTRACTOR **\$393.74 per summer school day**, not to exceed twenty one thousand two hundred sixty one and 96/100 Dollars (\$21,261.96) per summer school session.

- 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.
- C. DEPARTMENT agrees to pay CONTRACTOR within thirty (30) days following receipt of a correct invoice.
- D. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- E. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

### 4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. 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 telephone service (e.g., Montana State Prison and Montana Women's Prison do not allow wireless phones within facility).

### 5. TIME OF PERFORMANCE

This Contract shall take effect on upon final contract signature and shall terminate on June 30, 2015, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual

agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of **seven (7)** years.

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

**6. LIAISONS AND NOTICE**

- A. Annamae Siegfried-Derrick (247-5102), 701 South 27<sup>th</sup>, Billings MT 59101 or successor serves as DEPARTMENT liaison.
- B. Rod Svec (247-5001), 415 North 30<sup>th</sup> Street, Billings MT 59101 or successor serves as CONTRACTOR liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

**7. OWNERSHIP AND PUBLICATION OF MATERIALS**

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

**8. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Neither CONTRACTOR nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Contracts Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

**9. HOLD HARMLESS AND 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. INSURANCE**

- A. **General Requirements:** CONTRACTOR shall maintain for the duration of the 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.

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

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

**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 must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverages, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

B. **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.

**Additional Insured Status:** The State, its officers, officials, employees, and volunteers are to be covered 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; premises owned, leased, occupied, or used.

## 11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

## 12. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

**13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

**14. AMENDMENTS**

All amendments to this Contract shall be in writing and signed by the parties.

**15. COMPLIANCE WITH LAWS**

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

**16. MEETINGS**

CONTRACTOR is required to meet with DEPARTMENT liaison, or designated representatives, to resolve technical or contractual problems that may occur during the term of the Contract or to discuss the progress made by CONTRACTOR and DEPARTMENT in the performance of their respective obligations, at no additional cost to DEPARTMENT. Meetings will occur as problems arise and will be coordinated by DEPARTMENT. CONTRACTOR will be given 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. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination.

**17. CONTRACTOR PERFORMANCE EVALUATION**

During the term of this Contract, DEPARTMENT may evaluate CONTRACTOR'S performance. Prior to completion of the evaluation, CONTRACTOR will be given an opportunity to review the evaluation and provide additional information and/or clarification. CONTRACTOR will also be asked to sign the evaluation document to acknowledge receipt of the document and an opportunity to respond. This Contract may be terminated by DEPARTMENT as a result of said evaluation and documented non-performance. CONTRACTOR Performance Evaluations may be considered in future solicitations and contracts.

**18. TERMINATION AND DEFAULT**

A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.

- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.
- C. DEPARTMENT, at its sole discretion, may, without 30 days notice, terminate or reduce the scope of this Contract if available funding is reduced for any reason. If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled. (Ref. 18-4-313(4)), MCA.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

**19. CHOICE OF LAW AND VENUE**

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning 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 (Ref. 18-1-401, MCA).

**20. LICENSURE**

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

**21. INTEGRATION**

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

**22. SEVERABILITY**

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

**23. COMPLETED CONTRACT**

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts Management Bureau, PO Box 201301, Helena, MT 59620-1301.

**SIGNATURE**

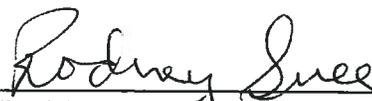
**DEPARTMENT**



Joan Daly, Warden  
Montana Women's Prison

7/7/14  
Date

**CONTRACTOR**



Rod Svec, Interim  
Adult Education Center

7-14-14  
Date

Approved for Legal Content by:



Legal Counsel  
Department of Corrections

6-27-14  
Date