THIS CONTRACT AMENDMENT (Amendment #12) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 5 South Last Chance Gulch, Helena MT 59601 and Cascade County (COUNTY) Courthouse Annex, Great Falls MT 59401 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of October 22, 2003 and Section 45 provides that the parties may modify their agreement in writing.

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

SECTION 5 – BILLING, PAYMENT, AND COMPENSATION

C. PER DIEM

1) DEPARTMENT shall pay COUNTY the per diem charge for each day or part of a day, including the first day but not the last day, in which an inmate is housed at the Facility.

2) The per diem rate constitutes the sole and exclusive payment by DEPARTMENT for the provision of all services required herein, except as otherwise specifically provided in this Contract.

3) DEPARTMENT will guarantee payment for a minimum of seventy-six (76) inmates per day, per month, regardless of the actual number of inmates in the facility.

4) In consideration for all services provided, DEPARTMENT will pay COUNTY an Operations and Management per diem rate as follows:

   a) Retroactive to July 1, **2014** **2015 through June 30, 2016** the standard rate of per diem for General Population offenders is **$70.36 (seventy and 36/100 dollars)**, **$71.58 (seventy one and 58/100 dollars)** per offender, per day as agreed upon by both parties upon review of the most recent MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities submitted by the COUNTY. Unless superseded by legislation, this per diem rate will remain in effect until a new rate is submitted by the COUNTY and agreed upon, in writing, by both parties in accordance with the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities required by 53-30-507 MCA and ARM Title 20, Chapter 28 and included herein as Attachment A.

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

DEPARTMENT

Reginald D. Michael, Director
Montana Department of Corrections

Date 8/9/18

Steve Bullock, Governor
State of Montana

Date 8/20/18

COUNTY

Bob Edwards, Sheriff

Date 10/1/18

Cascade County Commissioner

Date 9/25/2018

Cascade County Commissioner

Date 9/25/2018

Cascade County Commissioner

Date 9/25/2018

Cascade County Clerk & Recorder

Date 9/25/2018

Reviewed for Legal Content by:

Legal Counsel
Montana Department of Corrections

Date 9/2/2018
ATTACHMENT A

MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities
Finalized August 2014

(Not viewable electronically)
THIS CONTRACT AMENDMENT (Amendment #11) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 5 South Last Chance Gulch, Helena MT 59601 and Cascade County (COUNTY) Courthouse Annex, Great Falls MT 59401 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of October 22, 2003 and Section 45 provides that the parties may modify their agreement in writing.

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

SECTION 5 – BILLING, PAYMENT, AND COMPENSATION

C. PER DIEM

1) DEPARTMENT shall pay COUNTY the per diem charge for each day or part of a day, including the first day but not the last day, in which an inmate is housed at the Facility.

2) The per diem rate constitutes the sole and exclusive payment by DEPARTMENT for the provision of all services required herein, except as otherwise specifically provided in this Contract.

3) DEPARTMENT will guarantee payment for a minimum of seventy-six (76) inmates per day, per month, regardless of the actual number of inmates in the facility.

4) In consideration for all services provided, DEPARTMENT will pay COUNTY an Operations and Management per diem rate as follows:

   a) Retroactive to July 1, 2013 the standard rate of per diem for General Population offenders is $73.42 (seventy-three and 42/100 dollars) $70.36 (seventy and 36/100 dollars) per offender, per day as agreed upon by both parties upon review of the most recent MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities submitted by the COUNTY. This per diem rate will remain in effect until a new rate is submitted by the COUNTY and agreed upon, in writing, by both parties in accordance with the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities required by 53-30-507 MCA and ARM Title 20, Chapter 28 and included herein as Attachment A.

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

DEPARTMENT

Mike Batista, Director
Montana Department of Corrections
6/29/16

Steve Bullock, Governor
State of Montana
7/18/16

COUNTY

Bob Edwards, Sheriff
7/25/16

Cascade County Commissioner
8/9/16

Cascade County Commissioner
8/9/14

Cascade County Commissioner
8/9/2016

Cascade County Clerk & Recorder
8/9/2016

Reviewed for Legal Content by:

Colleen E. Lombrose
Legal Counsel
Montana Department of Corrections
6-29-16

Cascade County
Amendment #11 to Contract #04-053-DIR
Contracting Authority: 33-30-504, MCA

2 of 3
CONTRACT TO PROVIDE OPERATION AND MANAGEMENT SERVICES

MINIMUM, MEDIUM, and CLOSE CUSTODY PRISON FOR ADULT MALE OFFENDERS

BY AND BETWEEN

MONTANA DEPARTMENT OF CORRECTIONS

5 S. Last Chance Gulch, Helena, Montana 59601

and

CASCADE COUNTY

Courthouse Annex, Great Falls MT 59401

The Montana Department of Corrections (hereinafter referred to as DEPARTMENT) and Cascade County (hereinafter referred to as COUNTY), as parties to this Contract and in consideration of the mutual promises contained herein, agree as follows:

This Amended Contract (17-006-DIR) shall replace the previous Contract (DIR--CCDF) in its entirety upon receipt of signatures by all parties.

SECTION 1 – DEFINITIONS

“ACA” means American Correctional Association

“ACA Standards” means Standards for Adult Correctional Institutions published by the American Correctional Association, in effect as of September 1999, and as the same may be modified, amended, or as supplemented in the future. In the event that ACA promulgates standards after September 1999 that are not consistent with the facility operations as set forth in this contract, DEPARTMENT and Cascade County will review the standards on a case-by-case basis to determine acceptable modifications or exceptions to the language in order to meet local and state needs.

“AOIS/ACIS/PRO-Files” means Adult Offender Information System, Adult Corrections Information System, or Program Reporting Offender Files and shall be interpreted as a reference to OMIS (Offender Management Information System), or the current version of DEPARTMENT's automated corrections information management system.

“Biennium” means the two-year period beginning on July 1 and ending on June 30 of odd numbered years which correspond to Montana’s legislative sessions and the state’s budgeting period.

“Bona fide Montana resident” means a resident as defined in Montana Code Annotated § 18-2-401(1).

“Close Custody” means the custody level of inmates whose movement within the Facility is very restricted. This level typically includes inmates released from Maximum Custody or disciplinary segregation who have serious records of institutional misconduct and are re-entering general population. Close custody also includes reception inmates awaiting transfer to the appropriate housing unit (excluding On Leave to Custody (OLTC) and ten-day furlough returns), “Pre-hearing Confinement” for inmates facing disciplinary and reclassification hearings for serious rule infractions, and inmates serving detention time for disciplinary
violations. Work assignments are only authorized within the secured area of the facility with direct supervision. Movement of Close Custody inmates within the Facility does not require restraints. Movement of Close Custody inmates outside the Facility does require wrist, belt, and leg restraints. Transport of Close Custody inmates outside the facility requires a minimum of two (2) staff persons.

"Conflict of Standards" means that a conflict exists between ACA Standards, NCCHC Standards, federal, state or local law or regulation, and/or the Contract.

"Contract Monitor" means DEPARTMENT employee or employees designated to monitor the operation of the facility for compliance with this Contract and the standards established within the parameters of nationally accepted sound correctional practices.

"COUNTY" means Cascade County.

"DEPARTMENT" means Montana Department of Corrections (MDOC).

"DEPARTMENT Policy" means all Department policies to include MSP policy and procedures. These are generally listed in attachment D.

"Direct Supervision" means constant, uninterrupted supervision of an inmate. The staff must be in the immediate presence of inmates at all times.

"Facility" means the fully equipped and furnished regional prison, operated by COUNTY, for the incarceration of inmates assigned by DEPARTMENT. Facility includes all housing units, administrative offices, classrooms, hearing room, health services unit and all other structures of whatever kind including roads, fences, infrastructure, utility systems, etc. dedicated to the management of DEPARTMENT inmates

"FF&E" means furnishings, fixtures and equipment with a unit cost of $500.00 or more and a useful life of one year or more for the facility.

"Fiscal Year" means a one-year period beginning July 1 and ending June 30 the following year.

"For Cause" includes, but is not limited to:

1) Failure of a party to comply with the terms of this Contract;

2) COUNTY Bankruptcy, reorganization, or liquidation; or

3) Failure of COUNTY to comply with the Regional Correctional Facility Act, ACA or NCCHC Standards, or DEPARTMENT rules.

"General Inmate Population" means an inmate of the Facility that does not require specialized programming – such as that required of a Special Needs Inmate described herein.

"Indirect Supervision" means a non-routine lapse in Direct Supervision is allowed for short, temporary periods provided the inmate is in a secure area or, staff may have visual supervision of an inmate without being within the immediate presence of the offender. When an inmate is housed in a secure area i.e. Pre-Hearing Confinement (PHC) or Disciplinary Detention (DD) the inmates shall be directly observed by staff at least every 30 minutes on a random irregular schedule. Inmates displaying violent, unusual mental or bizarre behaviors should receive more frequent observations as indicated by the assessed risk level.
“Infrastructure” means the utilities, roads, sewers, lagoons, and water system.

“Inmate” means an adult offender committed to the legal custody of DEPARTMENT but, in the physical custody and/or care of COUNTY.

“Inmate Day” means each day, or part of a day, including the first but not the last day in which an inmate is housed at the facility.

“Key/Critical” means a position that the parties agree is essential for the proper management of the Facility.

“MCE” means Montana Correctional Enterprises. MCE is a key component within the Montana Department of Corrections. MCE makes available within DEPARTMENT correctional institutions opportunities for employment of inmates in jobs which combat idleness and develop good working habits. MCE provides training and work experience that will assist inmates in eventually securing and holding gainful employment outside the correctional institution.

“Medium Custody” means the custody level of inmates whose movement within the Facility is restricted. Work assignments are authorized within the secured area of the Facility with indirect supervision. Movement of Medium Custody inmates with the Facility does not require restraints. Movement of Medium Custody inmates outside the Facility does require wrist, belt, and leg restraints. Transport of Medium Custody inmates outside the facility requires a minimum of one (1) staff person for local transports and a minimum of two (2) staff persons for mass transports to other facilities.

“Minimum Custody” means the custody level of inmates whose movement within the Facility is unrestricted. Moderate supervision may be implemented when minimum custody inmates are secured within their assigned housing unit or work site. Work assignments are authorized inside and outside the secured area of the Facility. Movement of Minimum Custody inmates does not require restraints. Transport of Minimum Custody inmates outside the facility requires a minimum of one (1) staff person for local transports and a minimum of two (2) staff persons for mass transports to other facilities.


“NCCHC” means National Commission on Correctional Health Care Standards for Adult Correctional Institutions published by the National Commission on Correctional Health Care, in effect as of September 1999, and as the same may be modified, amended, or as supplemented in the future. In the event that NCCHC promulgates standards after September 1999 that are not consistent with the facility operations as set forth in this contract, DEPARTMENT and County will review the standards on a case-by-case basis to determine acceptable modifications or exceptions to the language in order to meet local and state needs.

“Per Diem” means the cost per inmate, per day as determined in accordance with the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities required by 53-30-507 MCA and ARM Title 20, Chapter 28 and included herein as Attachment A. which the DEPARTMENT and COUNTY mutually agreed upon.

“P.O.S.T” means Montana Peace Officer Standards Training

“Priority 1 Incidents”, as identified in DEPARTMENT Policy 1.1.6 – Priority Incident Reporting and Acting Director System, includes but is not limited to: death of an inmate, employee, volunteer, or visitor; extensive property damage; hostage situations; sexual assaults; assaults involving hospitalization;
riot/disturbance; escape; power outage; suicide; strikes; and any occurrence the facility administrator believes may result in an unusual level of public attention.

“Special Needs Inmate” means an inmate in need of specialized programming, supervision, or housing arrangements (i.e., Sex Offender, Geriatric, Administrative Segregation, PHC, Detention). Reference DEPARTMENT Policy 4.2.2 – Special Needs Offenders.

“State” means State of Montana.

SECTION 2 – GENERAL REQUIREMENTS

A. This Contract is for the benefit of the public, COUNTY, and DEPARTMENT and is premised on the following goals:

1) To provide the public with correctional services that is cost efficient and effective with respect to the purposes and goals of incarceration.

2) To provide inmates with proper care, treatment, rehabilitation, and reformation; and

3) To provide both the public and inmates with correctional services that meet the requirements of the ACA, NCCHC, and DEPARTMENT including minimum facility standards promulgated by DEPARTMENT.

B. COUNTY shall provide all services and management for the operation of a 152 bed, minimum to medium security prison for adult male offenders. In emergent or other situations both parties may negotiate to house other custody levels by mutual agreement.

C. The Facility will house minimum and medium classified adult offenders as authorized by the Regional Correctional Facility Act (53-30-501 through 53-30-511, MCA). Any inmate reclassified to a level higher than medium custody shall be moved to another facility within two weeks unless both parties agree otherwise.

D. In the event the law permits housing inmates, other than those assigned by DEPARTMENT, DEPARTMENT retains first option to house its inmates in the Facility.

SECTION 3 – CONTRACT TERM

A. This Contract will be in effect beginning the date on which the last signature is obtained and terminating on June 30, 2024. The Contract may be amended from time to time, by mutual agreement of both parties. In no event can this Contract extend beyond June 30, 2024. The parties may negotiate a new contract to take effect after expiration or termination of this Contract.

B. COUNTY shall provide written notice to DEPARTMENT not less than 180 days prior to expiration of the Contract of COUNTY’S intent to renew or not renew this Contract. DEPARTMENT shall presume that COUNTY’S failure to provide such notice is evidence of COUNTY’S intent to renew.

C. DEPARTMENT shall provide written notice to COUNTY not less than 180 days prior to expiration of the Contract of DEPARTMENT’S intent to not renew this Contract. COUNTY shall presume that DEPARTMENT’S failure to provide such notice is evidence of DEPARTMENT’S intent to renew.
SECTION 4 - CONTRACT TERMINATION

This Contract will be subject to the following termination provisions, prior to its expiration date, and may be terminated by DEPARTMENT due to:

A. TERMINATION FOR DEFAULT OR NONCOMPLIANCE

If DEPARTMENT determines that COUNTY has breached any terms or conditions of the Contract, DEPARTMENT shall provide written notice of the breach to COUNTY. Upon receipt of such notice, COUNTY shall have 60 days to cure the default or be declared in default by DEPARTMENT. In the event DEPARTMENT declares COUNTY in default, DEPARTMENT shall have the following process and timeframes available to enforce the terms of the Contract prior to termination of the Contract:

1. The Department Contract Monitor will always first attempt to have all deficiencies corrected with a verbal notice of deficiency to the State side Unit Manager. If after 10 days the response is inadequate, he may then give verbal notice to the facility Warden and if that response is inadequate after another 10 days, the Contract Monitor will give verbal notice to the Sheriff.

2. If 30 days lapse with unsatisfactory corrections as listed in #1 above then the Department will send a written "notification of deficiency" to the COUNTY. COUNTY will then have 30 days to correct the deficiency. COUNTY can ask for a 30-day extension in writing which must be received by DEPARTMENT within 10 days of original notice of deficiency. If at the end of thirty (30) days (plus any granted exception) COUNTY has not fixed deficiencies, DEPARTMENT can invoke remedies as provided in Attachment B. Upon correction of the deficiency and 30 continuous days of deficiency-free operations (as related to the notice), COUNTY will no longer be subject to remedies identified in Attachment B.

3. Work with COUNTY to modify the terms of the agreement.

4. Provide direct short term assistance or training as determined by DEPARTMENT and the COUNTY.

DEPARTMENT shall provide written notification of DEPARTMENT’S intent to terminate the Contract. DEPARTMENT shall have the right to terminate the Contract on any future date not less than 10 days following written notification of DEPARTMENT’S intent to terminate. DEPARTMENT and COUNTY may agree in writing to extend the time period for COUNTY to cure any alleged breach.

Notwithstanding the foregoing, DEPARTMENT may terminate this Contract immediately and without notice to COUNTY if DEPARTMENT determines that COUNTY’S breach will result in an imminent threat of injury to life or property.

The following types of performance breach by COUNTY for which DEPARTMENT may terminate the Contract include, but are not limited to:

1) Failure to comply with any federal, state or local law;
2) Managing the inmate population in such a manner as to jeopardize the public’s, inmate’s, or employees’ safety, and place DEPARTMENT, State and public at legal risk; or

3) Failure to perform the Contract according to its terms, conditions and specifications.

COUNTY and/or its surety shall be jointly and severally liable to the State of Montana and DEPARTMENT for all loss, cost or damage sustained by the State of Montana and DEPARTMENT as a result of COUNTY’S default.

If COUNTY determines that DEPARTMENT has breached any terms or conditions of the agreement they shall provide written notice of such breach to DEPARTMENT. Upon receipt of such notice, DEPARTMENT shall have 60 days to cure the default or be declared in default by COUNTY. COUNTY shall provide written notification of COUNTY’S intent to terminate the Contract. COUNTY shall have the right to terminate the Contract on any future date not less than 10 days following written notification of COUNTY’S intent to terminate. COUNTY and DEPARTMENT may agree in writing to extend the time period for COUNTY or DEPARTMENT to cure any alleged breach. In the event of COUNTY’S termination, COUNTY shall pay back DEPARTMENT for its share of the capital construction costs of the facility, plus inflation and less depreciation, plus a value of the remaining contract.

B. TERMINATION FOR COUNTY INSOLVENCY

In the event of filing a petition for bankruptcy by or against COUNTY, DEPARTMENT shall have the right to terminate the Contract upon the same terms and conditions as termination for default. Additionally, DEPARTMENT may terminate under the same terms and conditions as termination for default in the following circumstances:

1) COUNTY applies for or consents to the appointment of a receiver, trustee or liquidator of itself or of all or a substantial part of its assets;

2) COUNTY files a voluntary petition in bankruptcy;

3) COUNTY admits in writing its inability to pay its debts as they become due;

4) COUNTY makes a general assignment for the benefit of creditors;

5) COUNTY files a petition or an answer seeking reorganization or rearrangement with creditors or, as a debtor, invokes or takes advantage of any insolvency law; or

6) A court of competent jurisdiction enters an order, judgment or decree, on the application of a creditor, adjudicating COUNTY as bankrupt or insolvent or approving a petition seeking reorganization of COUNTY or a substantial part of its assets, and such order, judgment or decree continues unstayed for thirty (30) days.

If any of these circumstances occur, DEPARTMENT shall provide COUNTY with written notice of the termination and provide a date when such termination will take effect.
C. TERMINATION FOR UNAVAILABILITY OF FUNDS

It is understood and agreed that this Contract is dependent upon appropriation of funds for this Contract by the Montana Legislature. Further, the parties recognize that the act of appropriation is a legislative act. DEPARTMENT and COUNTY agree to take such action as is necessary under the laws applicable to the State to timely and properly budget for and request the appropriation of funds from the Legislature of the State of Montana which will permit DEPARTMENT to make all payments required under this Contract. DEPARTMENT may terminate the Contract without penalty in the event funds for the Contract become unavailable for any reason. DEPARTMENT in conjunction with COUNTY may also adjust required services to match funding available as agreed to by both parties and documented in the per diem calculation in Attachment A.

D. TERMINATION DUE TO DESTRUCTION OR CONDEMNATION

If the facility is totally or extensively damaged by fire or other casualty so as to prevent or substantially limit COUNTY’S operations, or is condemned for public use by a legally constituted public authority, either party may terminate the Contract with written notice provided to the other party within thirty (30) days of the casualty or condemnation. The effective date of such termination shall be the date of the occurrence of the casualty or the effective date of the condemnation.

E. PROCEDURE ON TERMINATION

Upon delivery to COUNTY or DEPARTMENT of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the Contract is terminated, and the date on which such termination becomes effective, COUNTY shall:

1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

2) Place no further orders for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;

3) Terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination, except as may be necessary to avoid the occurrence of penalty assessments and the continuation of which DEPARTMENT has approved;

4) Assign to DEPARTMENT, or a subsequent contractor as the case may be, in the manner and to the extent directed by DEPARTMENT, all of COUNTY’S right and interest under the orders so terminated, in which case DEPARTMENT or a subsequent contractor shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders;

5) With DEPARTMENT’S approval or ratification, settle all outstanding liabilities and all claims arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provision of the Contract;

6) Deliver files, processing systems, data manuals, and/or documentation, in any form, to DEPARTMENT at the time and in the manner requested by DEPARTMENT; and
7) Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.

COUNTY shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this provision.

In the event that this Contract is terminated by DEPARTMENT, or as a result of DEPARTMENT'S non-compliance with the provisions of this Contract, then COUNTY will retain full ownership of the entire Facility.

In the event that this Contract is terminated by COUNTY, or as a result of COUNTY'S non-compliance with the provisions of this Contract, then COUNTY shall pay back DEPARTMENT for its share of the capital construction costs of the Facility, plus inflation and less depreciation plus a value of the remaining contract.

SECTION 5 – BILLING, PAYMENT, AND COMPENSATION

A. BILLING

All payments made under this Contract shall be made only upon submission by COUNTY of a Department of Corrections “Vendor Invoice” specifying the amounts due and certifying that services requested under the Contract have been performed in accordance with the Contract. The invoices shall be submitted each month for the fixed rate per inmate day of the preceding month and shall contain the names and inmate number (Adult Offender # (AO#)) of all inmates in the custody of COUNTY and their date of incarceration at the Facility and date of release, if applicable.

B. PAYMENT

DEPARTMENT shall pay each correctly submitted invoice within thirty (30) days of receipt. DEPARTMENT will make reasonable efforts to effect payment to COUNTY by wire transfer in accordance with COUNTY’S written instructions.

C. PER DIEM

1) DEPARTMENT shall pay COUNTY the per diem charge for each day or part of a day, including the first day but not the last day, in which an inmate is housed at the Facility.

2) The per diem rate constitutes the sole and exclusive payment by DEPARTMENT for the provision of all services required herein, except as otherwise specifically provided in this Contract. The per diem will be established in accordance with the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities required by 53-30-507 MCA and ARM Title 20, Chapter 28 and included herein as Attachment A.

3) DEPARTMENT will guarantee payment for a minimum of seventy-six (76) inmates per day, per month, regardless of the actual number of inmates in the facility.

4) In consideration for all services provided, DEPARTMENT will pay COUNTY an Operations and Management per diem rate as follows:
a) For each contract year beginning July 1 the per diem rate will remain in effect until a new rate is submitted by COUNTY and agreed upon, in writing, by both parties in accordance with the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities required by 53-30-507 MCA and ARM Title 20, Chapter 28 and included herein as Attachment A. These rates will always be retroactive to July 1st of the corresponding fiscal year.

b) Incorrect retro payments to COUNTY due to omission, error, or fraud shall be recovered from COUNTY by deduction from subsequent payments under this Contract, or other contracts between DEPARTMENT and COUNTY, or billed to COUNTY by DEPARTMENT as a debt due to DEPARTMENT. Should DEPARTMENT incur cost in enforcement of this provision, DEPARTMENT shall be entitled to reimbursement for reasonable attorneys’ fees, court costs, and witness fees from COUNTY.

5) Debt Owed to DEPARTMENT COUNTY’s failure to pay for liquidated damages as assessed in Attachment B as a result of non-performance of functions required by this Contract in a timely manner become a debt owed to DEPARTMENT and may be recovered from COUNTY by deduction from subsequent payments under this Contract. Any non-performance shall be calculated by DEPARTMENT and a bill presented to COUNTY. DEPARTMENT, at its sole discretion, may modify its billing, but said modification of one billing does not require DEPARTMENT to modify future billings of liquidated damages.

6) Option to Change Quantity of Service DEPARTMENT may upon mutual agreement increase/decrease the maximum amount payable under this contract based upon unit prices established in the Contract and the schedule of services required, as set by DEPARTMENT. DEPARTMENT may only exercise this right by increasing or decreasing services that do not relate to the security of the facility and only as they relate to DEPARTMENT required services. DEPARTMENT may exercise the option by written agreement with COUNTY within a reasonable time before the option begins. Upon mutual agreement any increases in services may need to have startup costs included. Performance of all unaffected services shall continue at the same rate and under the same terms as established in the Contract. The changes will be re-entered into the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities (included as Attachment A) and this Contract shall be amended to reflect any changes to the per diem as a result.

SECTION 6 – HOLD HARMLESS AND INDEMNIFICATION

A. COUNTY agrees that it is financially responsible (liable) for any audit exceptions or other financial loss to DEPARTMENT which occurs due to COUNTY’S negligence, intentional acts, or failure for any reason, to comply with the terms of this contract. DEPARTMENT agrees that it is financially responsible (liable) for any audit exceptions or other financial loss to COUNTY which occurs due to DEPARTMENT’S negligence, intentional acts, or failure for any reason, to comply with the terms of this Contract.

B. COUNTY agrees to protect, defend, and save DEPARTMENT, 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, and causes of action of any kind or character, including the cost of
defense thereof, arising in favor of COUNTY’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 COUNTY and/or its agents, employees, subcontractors, or representatives under this Contract. DEPARTMENT agrees to protect, defend, and save COUNTY, 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, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of DEPARTMENT’S employees or character, including the cost of defense thereof, arising in favor of DEPARTMENT’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 DEPARTMENT and/or its agents, employees, subcontractors, or representatives under this contract.

C. Except as expressly provided otherwise in this Section, each party must, at its own expense, be responsible for defending itself and its officers, employees, and agents in any action brought by any DEPARTMENT inmate in the physical custody of COUNTY. However, the DEPARTMENT must also defend COUNTY, COUNTY’S subcontractors, representatives and employees in any such action to the extent such action challenges the validity of the conviction or the sentence to DEPARTMENT or the transfer of the inmates to the Facility. Except as provided herein, COUNTY’S costs of legal services for protecting its interest in actions DEPARTMENT has agreed herein to defend, must be deemed usual costs incidental to the operation of COUNTY’S Facility for the DEPARTMENT’S-inmate per day rate.

SECTION 7 – RESPONSIBILITY FOR HABEAS CORPUS AND LITIGATION PROCEDURES

A. DEPARTMENT shall defend COUNTY, COUNTY’S subcontractors, representatives, and employees in any habeas corpus action to the extent such action challenges the validity of the inmate’s arrest, imprisonment or detention.. Except as provided herein, COUNTY’S costs of legal services for protecting its interest in actions DEPARTMENT has agreed to defend shall be usual costs incidental to the operation of the Facility. In no instance shall DEPARTMENT defend COUNTY from actions filed by COUNTY inmates.

B. COUNTY shall notify DEPARTMENT of any litigation filed by DEPARTMENT inmates and served upon COUNTY by complete FAX or scanned copy within twenty-four (24) hours of service upon or receipt by COUNTY, and COUNTY shall also mail copies of such documentation to DEPARTMENT within same twenty-four (24) hour period. All such documents will be faxed and mailed to DEPARTMENT’S chief legal counsel in Helena, Montana.

C. DEPARTMENT shall notify COUNTY of any litigation filed by DEPARTMENT inmates and served upon DEPARTMENT by complete FAX or scanned copy within twenty-four (24) hours of service upon or receipt by DEPARTMENT, and DEPARTMENT shall also mail copies of such documentation to COUNTY within same twenty-four (24) hour period. All such documents will be faxed and mailed to COUNTY Attorney in Great Falls, Montana.

SECTION 8 – INSURANCE

A. COUNTY must provide and 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 work performed by COUNTY, its agents, representatives, officers, assigns and servants.
B. COUNTY must procure and maintain Comprehensive General Liability Insurance (CGL) coverage from an insurer licensed to do business in Montana or a domiciliary state and with a Best's rating of no less than A-, or a political sub-division self-insured pool as defined under 2-9-211, MCA, and provide the following coverage at a minimum.

1) Coverage for the term of the Contract. COUNTY must provide thirty (30) days written notice to DEPARTMENT of any material change in coverage.

2) Occurrence coverage of one million dollars ($1,000,000) combined single limit (personal injury property damage) and an aggregate single limit of two million dollars ($2,000,000) per year. The occurrence limit must apply separately to each project/location/individual and the general aggregate limit must be twice the required occurrence limit.

3) The State of Montana must be named as an “additional insured” for liabilities.

4) COUNTY’S insurance coverage must be primary as respects the state, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the state, its officers, officials, and employees must be excess of COUNTY’S insurance and must not contribute with it.

5) Certificates of insurance must be received by DEPARTMENT before the work commences. DEPARTMENT reserves the right to require complete, certified copies of all required insurance policies or endorsements at any time.

C. COUNTY must procure and maintain Comprehensive Automobile Liability Insurance coverage from an insurer licensed to do business in Montana or a domiciliary state and with a Best’s rating of no less than A-, or a political sub-division self-insured pool as defined under 2-9-211, MCA, and provide the following coverage at a minimum.

1) Coverage for the term of the contract. COUNTY must provide thirty (30) days written notice to DEPARTMENT of any material change in coverage.

2) Occurrence coverage of one million dollars ($1,000,000) combined single limit (personal injury and property damage) and an aggregate single limit of two million dollars ($2,000,000) per year. The occurrence limit must apply separately to each accident occurrence and the general aggregate limit must be twice the required occurrence limit.

3) The State of Montana must be named as an “additional insured” for liability arising out of vehicles loaned, leased, or used by COUNTY.

4) COUNTY’S insurance coverage must be primary as respects the state, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the state, its officers, officials, and employees must be excess of COUNTY’S insurance and must not contribute with it.

5) A certificate of insurance must be received by DEPARTMENT. DEPARTMENT reserves the right to require complete, certified copies of all required insurance policies and endorsements at any time.
D. COUNTY must maintain workers’ compensation insurance as required by the labor code of the State of Montana. COUNTY will at all times comply with applicable workers’ compensation, occupation disease, and occupation health and safety laws, statutes, and regulation to the full extent applicable. COUNTY agrees to provide to DEPARTMENT proof of workers’ compensation insurance.

E. Neither COUNTY nor its employees, agents, subcontractors or representatives will be defended or indemnified by the State of Montana without the express written consent of the State of Montana.

SECTION 9 – PREVAILING WAGE

A. COUNTY shall give a preference to the employment of bona fide Montana residents and must apply the prevailing rate of wages, including fringe benefits for health and welfare and pension contributions in effect and applicable to COUNTY or locality in which the work is being performed, as required by State law (Sections 17-6-325, 18-2-401, et. Seq., MCA).

B. COUNTY shall post a legible statement of all wages to be paid to employees of the Facility in a prominent and accessible site on the project or work area, not later than the first day of work, as required by State laws (Section 18-2-406, MCA).

C. COUNTY agrees to pay the applicable standard prevailing rate of wages as determined by the Commissioner of Labor and Industry, State of Montana for work performed by COUNTY’S employees or the employees of COUNTY’S subcontractors, as required by State law. Appendix #1 contains the current Montana standard prevailing rate of wages, including fringe benefits, and is incorporated herein by reference.

SECTION 10 – PHYSICAL PLANT CONSIDERATIONS

A. COUNTY shall be in compliance with all requirements related to Americans with Disabilities Act Accessibility Guidelines.

B. COUNTY shall comply with all applicable federal, state, and local codes, rules, regulations, and statutes related to the operation and maintenance of this facility. COUNTY will also have a plan in place to ensure equipment and the facility is maintained to achieve maximum usefulness for the life of the equipment and the facility.

C. COUNTY shall undertake all necessary and reasonable measures to assure that all “fatal” and “critical” Facility equipment, appliances, software, firmware, computers, communication, medical, security equipment, building systems, and services to be utilized in performance under this Contract are maintained in good working order and are compatible with DEPARTMENT systems where necessary.

1. “Fatal” shall be defined as a function that is essential to Facility operations, which cannot be worked around, and the failure of which could result in death, injury, severe financial loss, or legal liability to COUNTY or the DEPARTMENT. Examples include defibrillators, preferably Automated External Defibrillator (AED), sterilizers, and pagers for medical staff.

2. “Critical” shall be defined as a function crucial to Facility operations, which can be worked around, but only with difficulty and only for short periods. Examples include food service appliances and equipment, programmable environmental controls, security systems, badge readers, communications equipment, and surveillance systems.
D. COUNTY shall provide a complete set of as-built contract documents including topography drawings, aerial photographs from the cardinal directions, and all aboveground and underground utilities.

E. Upon execution of this Contract, COUNTY shall not alter the size, configuration or mission of the Facility nor demolish any structure without prior notification and review by appropriate DEPARTMENT personnel. DEPARTMENT approval of physical plant modification is not required; however, COUNTY covenants to negotiate in good faith over any concerns raised by DEPARTMENT’S review of proposed physical plant modifications to ensure the ongoing safety and security of operations at said facility. Notifications of such proposed modifications shall be provided to the MSP Contract Placement Bureau Chief.

SECTION 11 – FACILITY ADMINISTRATION

COUNTY shall confine and supervise inmates that DEPARTMENT has determined are suitable for transfer to the Facility. COUNTY shall furnish subsistence and all constitutionally mandated health services; provide for the inmates’ physical needs; provide programs, training and treatment which are consistent with individual needs; retain the inmates in safe, supervised custody; maintain proper discipline and control; make certain that sentences and orders of the committing court are faithfully executed; provide access to legal assistance for inmates of the Facility; and comply with all applicable federal and state constitutional requirements, laws, rules, regulations, ordinances and court orders.

A. Subject to the terms of this Contract, it shall be COUNTY’S responsibility to ensure that its Administrator has in place a method to facilitate communication, establish policy, explore problems, ensure conformity to legal and fiscal requirements, and implement programs that, from time to time, DEPARTMENT may request to be incorporated into COUNTY’S operation. Any new programming which requires startup costs will be funded by the DEPARTMENT.

B. COUNTY shall have a policy and procedure manual approved by DEPARTMENT, which specifically describes its programs and services. All policies and procedures used to govern operations at the facility will be in accordance with national corrections standards and achieve the same standard of services as identified in DEPARTMENT and MSP Administrative Regulations, policies and procedures. COUNTY’S policies and procedures shall result in operations that meet the requirements of Montana Statutes, applicable court orders and ACA standards, and achieve the objectives of DEPARTMENT. It is understood by both parties that there are some physical plant limitations that may not allow all ACA standards to be met. These areas should be listed as mutually agreed to and the standard should be strived for compliance to the extent possible. COUNTY’S policies will be adopted and generally replicate MSP and DEPARTMENT policies and procedures to encourage consistent inmate management and treatment. The management of DEPARTMENT/MSP Offenders in the Facility shall be consistent with the management of DEPARTMENT/MSP Offenders in all DEPARTMENT operated/contracted facilities and specific DEPARTMENT/MSP policies and procedures to be followed are outlined in attachment D. COUNTY may utilize its own procedures for policy implementation. The policy manual shall be reviewed annually by COUNTY and DEPARTMENT and updated when necessary. All revisions to the manual must be submitted to the Contract Monitor for review of compliance. The manual must be accessible to all employees and all revisions must be circulated to all employees prior to implementation.

C. Throughout the term of the Contract and any renewals, COUNTY shall comply with written requests from DEPARTMENT to provide additional written documentation related to Regional Prison
operations. COUNTY will provide DEPARTMENT with copies of its institutional orders, post orders, lesson plans, and manuals that support DEPARTMENT written instructions and service specifications related to Regional Prison operations.

D. COUNTY must have a system in place to self-monitor its programs through inspections and reviews by the Administrator or designated staff. Copies of the inspection and review reports will be submitted to the DEPARTMENT Contract Monitor quarterly.

E. COUNTY shall, on an annual basis, review its Contingency, Emergency Response and Mutual Aid plans required by DEPARTMENT Policies for Emergency Management and the Emergency Operations Plan of the DEPARTMENT Policy Manual. COUNTY shall meet with DEPARTMENT on an annual basis to review the plans.

E. Required Meeting Attendance;
COUNTY and/or Designated COUNTY staff shall be required to attend periodic meetings, within the State of Montana, scheduled by DEPARTMENT for the purpose of coordination of services. Attendee titles used by COUNTY may be different and may be collateral duties for staff as long as the position is equivalent. All associated costs to attend described meetings shall be the responsibility of COUNTY and figured into the per diem. The attendance may be by video conferencing if available. Regularly scheduled meetings shall include, but need not be limited to, the following:

<table>
<thead>
<tr>
<th>Security Committee</th>
<th>Chief of Security/designee</th>
<th>Annually/as scheduled</th>
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</thead>
<tbody>
<tr>
<td>Health Services</td>
<td>Health Services Administrator</td>
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<tr>
<td>Emergency Preparedness</td>
<td>Designated Staff</td>
<td>Quarterly/as scheduled</td>
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<tr>
<td>Grievance/Disciplinary</td>
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<tr>
<td>Administrators/PIB</td>
<td>Warden/designee</td>
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<tr>
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<td>Mental Health/TX Providers</td>
<td>Annually/as scheduled</td>
</tr>
<tr>
<td>Classification/Case Management</td>
<td>Supervisor/designee</td>
<td>Monthly/as scheduled</td>
</tr>
</tbody>
</table>

F. DEPARTMENT Contract Monitor(s), authorized DEPARTMENT personnel, and the Montana Legislative Auditor shall have immediate, unlimited access at all times to all areas of the Detention Facility. All persons desiring access of the Facility will be subject to COUNTY’S routine security inspection. COUNTY shall be given reasonable advance notice to accommodate organized tours of the Facility.

G. The on-site Contract Monitor and IPPO shall each be provided a single office space including telephones and dedicated telephone lines in each office, for the exclusive use of DEPARTMENT. DEPARTMENT shall be responsible for all costs associated with the telephone service, such as: monthly access and local and long distance charges. After assignment of such office space, COUNTY shall not relocate DEPARTMENT staff without first consulting DEPARTMENT. The Contract Monitor’s office key shall not be re-mastered and shall only be controlled by the Contract Monitor with the master key kept in a break box in central control. The facility may have a key to this office upon mutual agreement of DEPARTMENT and COUNTY, but must submit a completed incident report to the contract monitor if the office is accessed without DEPARTMENT permission.

I. In the event of a conflict of standards, the most stringent standard shall apply.
SECTION 12 – GENERAL ADMINISTRATION

A. COUNTY must have written policies that are implemented to ensure that no inmate or group of inmates is in a position of control or authority over other inmates.

B. COUNTY must adopt MSP Policy/Procedure 4.1.3 Personal Property, specifying the personal property that inmates may retain in their possession.

C. COUNTY must adopt MSP Policy 3.4.3 Tobacco Use Regulations, which restricts the use of tobacco, tobacco products, and tobacco substitutes.

D. All Facility rules and regulations pertaining to inmates must be conspicuously posted in the Facility housing units.

E. COUNTY must develop and implement a plan for the dissemination of information about the Facility to the public, governmental agencies, and the media. The plan must be made available to all persons upon request.

F. COUNTY must develop and implement a written policy and procedure consistent with DEPARTMENT Policy 3.3.4 – Media Access to Offenders.

G. COUNTY must develop and implement policies and procedures on incident reporting and self-monitoring of Facility standards.

H. COUNTY must be in substantial compliance with MSP Policy/procedure 1.2.12 Inmate Welfare Accounts.

I. COUNTY will be responsible for replacing all equipment, perishables and supplies during the term of the Operations and Management Revenues.

J. COUNTY will be required to provide complete inmate laundry services. Inmates must be furnished correctional uniforms, underwear, socks, and appropriate footwear for housing and job assignments and climatically appropriate outerwear for recreation, which may be re-issued or distributed as needed. Clean linen, including sheets, blankets and towels, must be provided to each inmate at least weekly, or sooner, if excessively soiled.

K. The State shall be responsible for costs associated with a trial of an inmate for escape and for the trial of an inmate for the commission of any other crime committed in or at the Facility, as provided in 53-30-110, MCA.

L. Prison Rape Elimination Act (PREA)
COUNTY 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.

DEPARTMENT will provide PREA instructor training classes. COUNTY shall be required to send instructor candidates to the instructor PREA training program. COUNTY shall require all staff,
volunteers, contract staff to attend the basic PREA training and such on-going annual training as may be required by law, DEPARTMENT and COUNTY policy. COUNTY shall require first-line responders or staff who may be involved in incidents of sexual assault/rape or sexual misconduct to attend specialized PREA training. COUNTY shall provide proof of compliance.

COUNTY shall ensure that during orientation offenders receive Facility orientation and orientation material regarding PREA. Offenders shall be required to sign an acknowledgement of having received the information.

Whenever possible, COUNTY will send inmates suspected of having been sexually assaulted/raped to a hospital. COUNTY shall separate the perpetrator and victim. When an Offender is suspected or has been sexually assaulted/raped or been a victim of sexual misconduct, COUNTY shall provide mental health treatment/counseling to the Offender.

Information regarding sexual predators or victims will be forwarded to the Contract Placement Bureau when the identified Offender is transferred from one facility to another. COUNTY shall keep that information confidential. COUNTY shall report all incidents or suspected incidents of staff misconduct to DEPARTMENTS' PREA unit and Contract Placement Bureau, as well as, all reportable incidents of sexual assault/rape, sexual misconduct or sexual acts involving inmates.

SECTION 13 – FISCAL MANAGEMENT

COUNTY shall provide DEPARTMENT with a detailed copy of the approved, annual facility budget, as well as quarterly budget status reports. Copies of financial COUNTY audits will also be forwarded to DEPARTMENT, when received by the Facility. A year-end accounting of all actual costs related to the facility must also be provided as required in Administrative Rules of Montana.

SECTION 14 – PROGRAM AUDITS

COUNTY must provide access to the Facility, records, financial records, staff and inmates, to enable DEPARTMENT, the Montana Board of Pardons and Parole, the Montana Legislative Auditor, or other entities of the State, the opportunity to conduct periodic program reviews and/or Contract audits of the Facility and its programs. COUNTY agrees to cooperate fully with DEPARTMENT in its Facility audits and inspections by granting DEPARTMENT access to all areas of the Detention Facility premises, and by providing sufficient staff as necessary to gain access to such areas. DEPARTMENT shall notify COUNTY in writing within thirty (30) days of each deficiency or item of noncompliance discovered during its audits and inspections. If not corrected during DEPARTMENT visit, (on spot correction) COUNTY will provide DEPARTMENT a written corrective plan within thirty (30) working days of receipt thereof; the parties may agree to a longer response period, not to exceed sixty (60) working days. The corrective plan will entail specific actions and timetables to rectify the deficiency, methods, and equipment to carry out such actions, and the names and titles of Facility staff responsible for implementing the plan. DEPARTMENT will review the plan, provide necessary comments, and communicate rejection or approval within fifteen (15) working days of receipt of corrective plan. Any DEPARTMENT rejection of a corrective plan will include the reason for rejection. Failure of COUNTY to successfully implement its corrective plan within allotted period will constitute cause for the exercise of Attachment B.

Unless otherwise provided, COUNTY shall submit, on a monthly and quarterly basis required written program reports specifying progress made for each activity identified in COUNTY’S duties and obligations regarding the performance of the Contract. Such written analysis shall be in accordance with the procedures developed and prescribed by DEPARTMENT’S Monthly/Quarterly Report Template. The preparation of reports and required data in a timely manner shall be the responsibility of COUNTY, and failure to comply
may result in delay of payment of funds and other remedies outlined in the Contract. Required reports and data shall be submitted to DEPARTMENT or designee not later than the 10th of the month for monthly reports, and the 10th of the month following the end of each calendar quarter for the quarterly reports, or such time as otherwise specified in writing by the DEPARTMENT.

### MONTHLY & QUARTERLY REPORT TEMPLATE

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<td>UA RANDOM TESTING/MIN 5%</td>
<td>MONTHLY TOTALS</td>
</tr>
</tbody>
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### SECTION 15 – RECORDS AND INFORMATION SYSTEMS

COUNTY shall maintain offender records and provide reports that conform to those of DEPARTMENT in both format and content in reference to DEPARTMENT Policy 1.5.4 Transfer of Offender Records. COUNTY is required to utilize DEPARTMENT’S online offender management system and incorporate it into its operation, as well as, interface with the current information systems developed for and in use by DEPARTMENT to report and track inmate record information including inmate population census reporting per Department Policy 1.7.1 Information Technology Services. COUNTY must maintain current and accurate inmate records.

A. COUNTY shall provide a Local Area Network with Internet Protocol (IP) capabilities for access to, and use of, DEPARTMENT’S Offender Management Information System (OMIS) and the State’s electronic mail system. DEPARTMENT is responsible for the actual cost of maintenance and support of the OMIS system. Software used by COUNTY to transport information not in OMIS, or to communicate with DEPARTMENT, must be compatible with the software utilized by DEPARTMENT. DEPARTMENT will alert COUNTY concerning any projected change in DEPARTMENT’S software standards, including effective dates for implementation.

B. DEPARTMENT will provide necessary and reasonable training and technical assistance associated with input of data, by COUNTY personnel, into OMIS. COUNTY’S personnel responsible for data collection and input into OMIS will be required to attend on-site and/or periodic off-site training sessions provided by DEPARTMENT. All training and assistance related to this input will be provided by DEPARTMENT at no charge to COUNTY. Only those Facility employees given security clearance by DEPARTMENT may input and/or view data. All input data will be audited by DEPARTMENT. COUNTY will be responsible for assuring the accuracy of data input into OMIS, and will be responsible for costs attributed to ensuring and/or correcting incorrect or incomplete data.

Data collection and input into OMIS must include, but is not limited to:
1) Inmate movements (internal/external);
2) Custody classification;
3) Disciplinary infraction and sanctions;
4) Demographic information;
5) Scars and marks;
6) Aliases;
7) Address data for offender and family;
8) Risk and needs;
9) Military data;
10) Association information;
11) Legal data;
12) Electronic images;
13) Fingerprints;
14) Sentencing; and
15) Treatment and education.
16) Visitation records

C. COUNTY will not allow inmates any access to OMIS or to reports generated from OMIS.

D. COUNTY will prohibit inmate access to the Internet in accordance with DEPARTMENT Policies 1.7.13 Offender Access to Computers and 1.7.1 Information Technology Services.

E. COUNTY will ensure all records and reports will be made available to any authorized person appointed by DEPARTMENT or any other state agency having specific authority to inspect such records and reports.

F. COUNTY must provide the Montana Board of Pardons and Parole with required reports concerning the conduct and character of any DEPARTMENT inmate in COUNTY’S custody. COUNTY must also provide additional information or fact deemed appropriate by the Montana Board of Pardons and Parole pertinent to any inmate. In the event the Board asks for extraordinary information, DEPARTMENT will assist COUNTY in compiling the information.
SECTION 16 – PERSONNEL

A. Staffing Mandated for Secure Operation

DEPARTMENT has determined that sufficiently staffed security, health services, education and food service positions are required to ensure the secure, orderly and appropriate operation of the Facility. COUNTY agrees to be responsible for staffing each and every post according to the mandated staffing pattern and schedule as required in Attachment C, Mandated Staffing Pattern. COUNTY shall at all times provide sufficiently trained staff to provide for and maintain the security, control, custody and supervision of inmates at the Facility in compliance with applicable court orders, ACA Standards, Department Policy and procedures, and this Contract. COUNTY must comply with Federal and State laws related to employment and personnel practices. Bona fide Montana residents must be given hiring preferences in the staffing of the Facility. COUNTY must ensure all areas of responsibilities are addressed relative to hiring requirements (background investigations, fingerprinting, licensure, and registration), recruitment and hiring of vacant and critical positions and position descriptions. The cost for all proposed positions shall be funded within the proposed per diem rate identified in Attachment A. COUNTY shall ensure background investigations are conducted and completed on all potential employees who will work at the regional prison, to include volunteers, consultants, independent Contractors, subcontractors, and the employees and agents of each.

B. The Facility shall staff all positions with qualified employees and “Position Descriptions” for each position must be agreed upon by the DEPARTMENT. DEPARTMENT and the COUNTY agree that the positions, or their functional equivalents, highlighted in yellow in Attachment C are considered “key/critical”. It is understood that not all positions are full time or directed solely to the State side of the facility. This will be determined and clearly defined in Attachment A.

C. COUNTY agrees to be responsible for staffing as required in Attachment C General Staffing Pattern. The parties understand that Attachment C does not account for all positions required to operate a correctional facility.

D. DEPARTMENT understands that vacancies will occur at the facility from time to time and may provide assistance to the Facility, to the extent practicable. For purposes of this agreement, a vacancy in a position is defined to occur when the employee assigned to that position has resigned, been terminated, or is reassigned to another position and no other qualified employee/person is available to perform the duties of the vacant position.

Since vacant positions can have an adverse effect on the Facility’s ability to provide adequate services to DEPARTMENT, COUNTY shall notify the on-site Contract Monitor, in writing, within 72 hours after: a) receiving a termination notice from an employee in a key/critical position; or b) a key/critical position becomes vacant. Notification to DEPARTMENT must be made even if the position is filled, or will be filled, within 72 hours of the vacancy. Notification shall include the Facility’s interpretation of the impact of the vacancy as well as the intended course of action to be taken by the Facility as a result of the vacancy.

COUNTY shall maintain staffing levels at the Facility in sufficient numbers and rank to maintain the safety of the public, staff, and offenders, and to adequately carry out the provision of this Contract. DEPARTMENT reserves the right to review and provide comments prior to selection of or the appointment of personnel for positions (or their equivalents) to include: Facility Warden, Assistant Warden, Detention Unit Manager and Health Services Administrator.
If a key/critical position(s) is vacant, or anticipated to be vacant, for more than one hundred and twenty (120) consecutive days, DEPARTMENT reserves the right to withhold the transfer of additional State inmates to the facility or, at DEPARTMENT’S discretion, remove State inmates from the facility until such time as DEPARTMENT believes the Facility has the appropriate staff necessary to provide services in accordance with the contract terms and conditions.

DEPARTMENT shall not incur any financial liability for withholding or removing inmates from the Facility. Guaranteed payments for inmate minimums shall be null and void in the event that DEPARTMENT withholds or removes inmates from the Facility due to vacancy related concerns. The decision to withhold or remove inmates from the Facility will be at the direction of the Director of DEPARTMENT of Corrections. The Director will give reasonable consideration to the requests of COUNTY.

E. Background checks of all potential employees (including consultants, subcontractors and their employees and their agents, independent contractors and their employees and agents, and volunteer workers) are required and must be comparable with those required for DEPARTMENT employees. These include completion of a background investigation and a criminal history records check. COUNTY must not hire any person with a prior felony conviction without DEPARTMENT’S approval.

F. COUNTY will provide daily access to reports which detail contract requirements to include staff assignments (showing attendance) and post coverage by identifying the date, position title, name and rank/title of the person staffing the post, day or night shift and whether or not the position was filled within 2 hours of the beginning of the shift if vacant.

G. COUNTY must develop and implement written personnel policies for the Facility.

H. COUNTY must keep DEPARTMENT informed about programmatic and health services work that COUNTY subcontracts, including the names of the subcontractors. COUNTY agrees to consult with DEPARTMENT on any changes to any subcontractors which may affect services to DEPARTMENT inmates.

I. COUNTY must use its best efforts to reach an early and peaceful settlement to any labor dispute including but not limited to picketing, lockouts and strikes. COUNTY must have plans in place similar to MSP Procedure 3.7.13 Emergency Staffing Plan/Job Action Plan, to address staffing during a strike. COUNTY must notify DEPARTMENT at least sixty (60) calendar days prior to the termination of any labor agreement with its Facility employees and must notify DEPARTMENT immediately upon learning of a potential or impending strike or labor dispute at the Facility. In the event of a strike or labor dispute, DEPARTMENT may call on available emergency resources to operate or control the Facility until the strike or dispute has ended. In the event of a strike or labor dispute, COUNTY must cooperate fully with DEPARTMENT to ensure safe operations and must reimburse DEPARTMENT for any costs it may incur during or related to the strike or dispute.

J. Current wages will be factored into the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities (Ref. Attachment A). These wages will generally be based upon positions equivalent to DEPARTMENT’S positions and current wages.
SECTION 17 – TRAINING

A. Staff who will be employed by COUNTY must: be at least 18 years of age; not have a record of a felony conviction; not have any domestic violence convictions (individuals who will be carrying a firearm); pass the pre-service training program provided by COUNTY; pass Correctional Detention Officer Basic training per POST standards.

B. Training shall be required for all COUNTY employees in accordance with the Contract provisions herein and ACA Standards, regardless of job function.

C. COUNTY must provide, at its expense (included in the per diem), employee-training programs substantially similar to those used by DEPARTMENT. COUNTY must have a written detailed training curriculum plan that differentiates between training provided to different classes of employees (e.g., security, clerical) and be available for review by DEPARTMENT.

D. All of COUNTY’S Pre-Service and Advanced Training instructors must meet or exceed ACA requirements. Those individuals who train specialty areas, e.g., Pressure Point Control Tactics, Electronic Restraining Devices, Firearms, Spontaneous Knife Defense, First Aid/CPR or Medic First Aid, Sexual Misconduct, PREA, must have completed additional training which meets the specifications of a copyright holder or the specifications of DEPARTMENT or COUNTY and ACA Standards.

E. Costs for pre-service training, in service/advanced specialized training, and ITIP training will be COUNTY’S responsibility. Initial operational training provided by DEPARTMENT, to include, but not limited to, classification, disciplinary procedures, and daily reports will be provided at DEPARTMENTS expense.

F. COUNTY shall establish and maintain all staff training records in accordance with guidelines outlined by COUNTY policy, ACA Standards, and DEPARTMENT policy.

G. COUNTY may not employ anyone who fails to comply with training rules or fails to satisfy applicable training requirements. Training instructors must meet or exceed the same minimum job requirements and qualifications as those employed by DEPARTMENT. Detailed documentation records of all training activities must be maintained by COUNTY and made available to DEPARTMENT.

SECTION 18 – SECURITY AND CONTROL

A. COUNTY must have a written Fire & Life Safety plan in accordance with DEPARTMENT’S Policy on Fire and Life Safety. All employees and inmates must be informed of and trained to this policy. COUNTY shall ensure that state or local fire officials conduct annual inspections of the facility for compliance with state and local law applicable to the facility’s operation.

B. COUNTY must have a written Emergency Response (Emergency Preparedness) Plan including appropriate procedures which must be reviewed and approved by DEPARTMENT annually. DEPARTMENT will assist if necessary to ensure the Plan and procedures comply with DEPARTMENT’S Emergency Preparedness Policy and ACA Standards. COUNTY must have a written plan for dealing with inmate disturbances and hostage taking. COUNTY must have a signed Mutual Aid Agreement in place with local fire and health agencies. COUNTY’S policy on the pursuit of escapees must be consistent with DEPARTMENT Policies and procedures.
COUNTY shall develop, train, and maintain in accordance with DEPARTMENT and ACA Standards, an Emergency Response Team to assist in controlling Offender populations in the event of an emergency.

C. COUNTY must adopt DEPARTMENT and MSP Policies/Procedures 3.1.8 Use of Force and Restraints; and 3.1.17 A & B Searches and Contraband Control (additional items of contraband may be identified and clearly defined in the Facility policy).

D. COUNTY must have a written plan to control movement inside and outside the Facility consistent with DEPARTMENT Policy 3.1.11 Offender Movement Control. The Facility policy and procedure must account for the whereabouts of the inmates at all times. COUNTY will be required to provide security at all times for inmates assigned to its custody. This includes, but is not limited to: inmate counts, court appearances, off-site medical appointments, and hospital stays.

E. COUNTY must have written policy/procedures consistent with Policy/Procedure 3.1.12 Inmate Escort & Transport governing the transportation of inmates. DEPARTMENT will provide initial transportation of inmates to the facility on a weekly basis. COUNTY is responsible for all other transportation and security functions including, but not limited to, transportation for health care services, on-site parole board hearings, disciplinary/management transfer, returns, and local court appearances. DEPARTMENT and COUNTY agree to coordinate and share transportation responsibilities and costs not specifically addressed in this contract. DEPARTMENT Offenders shall not be transferred from the Facility without express prior written authorization from DEPARTMENT'S Contract Placement Bureau. In the event of an emergency or after normal business hours a verbal approval may be made by DEPARTMENT'S Contract Placement Bureau with a written authorization to follow as soon as possible. In the event a DEPARTMENT Offender’s behavior becomes unmanageable at the Facility and an immediate move becomes necessary, the Facility Warden or designee shall submit a Classification Review and all pertinent reports to the Contract Placement Bureau for determination of appropriate placement. In such cases, COUNTY will provide transportation to the selected DEPARTMENT facility.

F. COUNTY must have a written policy and procedure for UA testing consistent with DEPARTMENT’s Policy 3.1.20 Offender Drug Testing Program. Each month, COUNTY must randomly test a minimum of 5% of the population and provide DEPARTMENT with a report of the tests and results. All costs of testing are the responsibility of COUNTY.

G. COUNTY shall be responsible to prevent escapes from the facility. COUNTY shall engage in immediate pursuit of an escapee and coordinate continuous off-site pursuit with local law enforcement agencies. COUNTY shall immediately notify local law enforcement agencies, the MSP Command Post, and Contract monitor upon discovery of an unauthorized absence or escapee. COUNTY shall have in place, specific escape action plans that address initial notifications, deployment of escape posts and follow-up actions. MSP shall be responsible for entering the escapee into NCIC by issuing an “attempt to locate” and “pick up and hold” notifications. Escape flyers will be distributed to local law enforcement and media representatives. COUNTY shall be responsible for all costs associated with the pursuit and capture of an escapee and his transportation back to secure custody in the State of Montana.

H. COUNTY shall be responsible for all costs incurred by the State or any political subdivision of the State as the result of escapes, riots, disturbances, or other natural or human caused events at the Facility with the exception of court costs identified in 53-30-110 MCA.
I. COUNTY shall not permit any inmate to work outside the fenced perimeter of the Facility without the express written approval of DEPARTMENT, and shall be in substantial compliance with DEPARTMENT Policy 5.1.1 Inmate Assignments.

J. COUNTY must have written policy and procedure governing the control and use of keys and tools consistent with DEPARTMENT Policies 3.1.13 Key Control and 3.1.14 Tool Control and 3.2.12 Control and Use of Hazardous Material.

K. COUNTY shall submit written procedures, position descriptions, policy and post orders for Facility security and control to DEPARTMENT. Written procedures, position descriptions, and post orders addressing Correctional Officer Posts shall be consistent with DEPARTMENT Policy 3.1.2 Facility Security Manuals, and shall include, but need not be limited to, the following:

1. Procedures to ensure COUNTY control of an Offender incident, in accordance with the DEPARTMENT'S Emergency Plan, until/if relieved by DEPARTMENT. COUNTY shall establish a designated Emergency Response Team as specified in DEPARTMENT'S emergency plan within the Facility.

2. Facility procedures regarding the use of restraints and physical force in accordance with MSP Policies 3.1.8 Use of Force and Restraints; 3.1.8A Use of Chemical Agents & Oleoresin Capsicum (OC); and 3.1.8B Taser Deployment.

3. Procedures to address those matters defined as Priority 1 Incidents in DEPARTMENT Policy 1.1.6.

4. COUNTY’S post orders/security manuals shall provide direction to staff regarding responsibilities assigned to specific posts in support of Facility procedures.

5. During the term of the contract and any renewals thereof, when changes occur to existing DEPARTMENT and/or MSP Policies and Procedures, Administrative Rules, courses or curriculum, that are determined to be relevant to the operation of the Regional prison, DEPARTMENT shall notify COUNTY in writing or by electronic notification.

   a. Required changes to COUNTY’S written procedures, post orders, or manuals shall be accomplished by COUNTY within sixty (60) days after receipt of DEPARTMENT’S written notice and submitted to the Contract Monitor, or designee, for review of compliance.

   b. The Contract Monitor, or designee, shall notify COUNTY within ten (10) days after receipt of the revised documents as to compliance of the revision.

   c. Unsatisfactory revision shall be rewritten by COUNTY with direction provided by DEPARTMENT and resubmitted to the Contract Monitor, or designee, for review of compliance within a time frame stipulated by DEPARTMENT.

COUNTY must have written policy and procedures addressing entrance procedures into the facility and security inspection of the facility. The policies and procedures shall be consistent with DEPARTMENT Policies 3.1.5 Entrance Procedures and Detainment of Non-offenders and 3.1.15 Security Inspections.
SECTION 19 – FOOD SERVICES

A. COUNTY must provide three meals including two hot meals for each inmate at regular meal times during each 24-hour period, with no more than 14 hours between the evening meal and breakfast. Variations may be allowed based on weekend and holiday food demands. Further, COUNTY must:

1) Provide the same daily menu for staff and inmates.

2) Serve all regular menus based on the Recommended Dietary Allowances (RDA) for males aged 25-50 years as provided by the National Research Council Food and Nutrition Board.

3) Maintain adequate refrigeration, cooler and dry storage space to keep a minimum one-week food inventory supply on hand at the Facility.

4) Keep the kitchen and the dining area adequately ventilated, properly furnished, and clean. A supervisor must conduct routine inspections on a weekly basis.

5) Keep documentation at the Facility by state or local inspection authorities that food service facilities and equipment meet established governmental health and safety codes. Deficiencies must be noted and corrected as quickly as possible and within a reasonable period of time.

6) Require all food service personnel to have clean hands and fingernails; wear hairnets or caps and washable garments; be in good health and free from communicable disease and open infected wounds; and practice hygienic food handling techniques. All foods must be properly stored, or disposed of as appropriate, at the completion of each meal.

7) Adopt and implement DEPARTMENT Policy 4.3.4 Food Service in Special Housing Units.

8) Be in substantial compliance with Department Policies 4.3.1, 4.3.2 & 4.3.3 dealing with Food Service

B. COUNTY breakfast, lunch, and dinner menus must provide a minimum of 63 grams of protein and a minimum of 2,900 calories for each inmate during each 24-hour period. These amounts must conform, at a minimum, to the recommended dietary allowances provided by the National Research Council Food and Nutrition Board. The food service area must comply with state and local health regulations.

C. Food service staff must develop and publish advance menu plans that are approved by a registered dietician. Copies of all menus served must be kept at the Facility with menu substitutions documented.

SECTION 20 – HEALTH CARE SERVICES

COUNTY is responsible for providing health care services to inmates as an integral part of this contract. In accordance with the language of this section, COUNTY agrees to develop and implement an on-site health services delivery system to provide a constitutionally mandated level of health care. COUNTY further agrees that costs incurred in the provision of health services shall be routinely compared with costs incurred by other facilities within Montana’s correctional system for parity and uniformity. All medical/dental services must comport with DEPARTMENT policies and National Standards such as National Commission...
on Correctional Health Care (NCCHC) and American Correctional Association (ACA). This section is divided into four categories: medical care, dental care, mental health treatment and a general category applicable to the provision of health care regardless of a specific treatment area. The general provisions are applicable to all categories except to the extent of any conflict within a specific treatment area.

A. General Provisions

1) Emergency Care

   a. COUNTY shall provide emergency response twenty-four (24) hours a day, seven (7) days per week. The cost of off-site emergency services such as emergency room charges will be the responsibility of DEPARTMENT. Services provided will be billed to the department’s current third party administrator on a HCFA-1500 claim form. Billing information shall include, but not be limited to: the inmate AO number, valid diagnosis codes, and Montana Medicaid’s current procedure/service codes. Third party service providers will be compensated by the department’s current third party administrator according to current fee schedules and limits. Only claims submitted within one (1) year of date of service shall be processed.

2) Nursing Care

   a. COUNTY shall provide on-site RN or LPN nursing care sixteen (16) hours a day, Monday through Friday, with adequate coverage on Saturday and Sunday to provide for triage, treatment and medication administration. COUNTY shall ensure that individuals providing nursing care are licensed to provide such care in the state of Montana. COUNTY shall ensure the appropriate training of nursing personnel to provide adequate assessment and triage. At a minimum, COUNTY shall provide an RN to supervise LPN’s employed at the facility. The cost of nursing care will be COUNTY’S responsibility as part of the per diem.

3) Consistency of Care

   a. COUNTY shall provide sufficient personnel and training of personnel to ensure continuity of care that meets or exceeds ACA and/or NCCHC standards as well as compliance with Montana and Federal laws governing the provision of health care to inmates. Additionally, COUNTY shall comply with appropriate DEPARTMENT policies governing medical care. The cost of ensuring consistency of care will be COUNTY’S responsibility as part of the per diem.

4) Laboratory Services

   a. COUNTY shall provide on-site specimen collection of lab tests and shall contract with a licensed laboratory service provider to perform laboratory work, including all STAT work. COUNTY may perform “waived” tests under the Clinical Laboratory Inspection Act (CLIA) on-site. All laboratory work will be the responsibility of the Department. All unapproved laboratory costs shall be the responsibility of the COUNTY. Services provided will be billed to the department’s current third party administrator on a HCFA-1500 claim form. Billing information shall include, but not be limited to: the inmate AO number, valid diagnosis codes, and Montana Medicaid’s current procedure/service codes. Third party service providers will be compensated.
by the department's current third party administrator according to current fee
schedules and limits. Only claims submitted within one (1) year of date of service
shall be processed.

b. The following diagnostic labs do not require pre-authorization, when
supported by clinical symptomology: CBC, CMP, BMP, Cholesterol/Lipid Panel,
PT/Coumadin, Amylase/Lipase, HbA1c, Glucose, TSH, and PSA. Pre-
authorizations must be submitted to cormedical@mt.gov for approval.

c. The following diagnostic labs require pre-authorization and need to be
supported by clinical symptomology and/or risk factors: Hep C/HIV screening, and
all other labs not listed in 4b.

d. Laboratory services are not approved for routine health screening.

5) Medications

a. COUNTY shall provide medications, both prescribed and over-the-counter and
supply documentation and personnel to administer and account for medications in
keeping with DEPARTMENT’S drug formulary and with the Montana Nurse
Practice Act and Board of Pharmacy regulations. COUNTY will advise local
providers to use the DEPARTMENT drug formulary in most instances. Local
providers must be able to justify the use of non-formulary medications at the
DEPARTMENT Medical Directors request. All medications will be a direct bill to
the DEPARTMENT. COUNTY must utilize the Department’s designated
pharmaceutical supplier to ensure the use of the most cost-effective pharmaceutical
medications and supplies.

b. COUNTY must have written policies regarding the possession and use of controlled
substances, prescribed medications and over-the-counter drugs. The policies must
stipulate that prescribed medications are administered according to the directions of
the prescribing professionals. There must be written policies and procedures which
specify that the records of all medications distributed by Facility staff will be
maintained and audited monthly and include the date, time and names of the inmates
receiving medication, and identification of the staff member distributing such
medication. The cost of all medications, both prescribed and over the counter will
be a direct bill to the DEPARTMENT.

6) Health Education

a. COUNTY shall provide health education to all inmates on topics including, but not
limited to, hygiene, nutrition, physical fitness, stress management, drug and alcohol
addiction, and treatment and prevention of sexually transmitted diseases including
HIV. COUNTY shall provide health education on a rotating twelve (12) month
curriculum. A copy of the curriculum shall be provided to the DEPARTMENT’S
Medical Director for review and approval. Reference DEPARTMENT Policy 4.5.24
– Offender Health Education and Promotion. The cost of health education is
COUNTY’S financial responsibility as part of per diem.
7) **OSHA Compliance**

   a. COUNTY shall develop and implement both an OSHA exposure prevention plan and post-exposure treatment plan. The plan must include an infectious disease control plan and monitoring according to ACA, NCCHC and/or CDC guidelines. The cost to ensure and maintain compliance is COUNTY’S responsibility.

8) **Health Screening**

   a. COUNTY shall perform health screening upon arrival and a full health assessment at the facility within fourteen (14) days of arrival of each inmate, unless the inmate received a DEPARTMENT physical within the previous (6) months. COUNTY agrees to continue treatment and medications received by each inmate without interruption. COUNTY shall keep all individual health records current at all times, and shall provide a complete copy of the health record when COUNTY returns an inmate to DEPARTMENT.

   b. DEPARTMENT shall provide a transfer summary of the medical record and will provide COUNTY with additional information as clinically indicated and required. Whenever possible, these records will accompany the inmate to the facility.

   c. COUNTY agrees that health care personnel will review each inmate’s medical records within twenty-four (24) hours of the inmate’s arrival. Additionally, COUNTY agrees that at least one individual from the health care personnel pool will participate in the inmate classification process to ensure that no inmate is assigned work or housing placement contraindicated by the inmate’s medical condition.

   d. Cost of health screening and assessment is COUNTY’S responsibility as part of the per diem.

9) **Sick Call**

   a. COUNTY shall ensure that facility health care staffs triage inmate health care complaints daily.

   b. COUNTY must provide nursing assessment to inmates in general housing no less than five (5) days per week.

   c. COUNTY shall require health care personnel to assess inmates in administrative or disciplinary segregation for suitability in such placements. All inmates in segregation shall be provided the opportunity to request and receive health care seven (7) days per week.

   d. COUNTY shall ensure that appropriate referrals to a Physician will be made when clinically indicated.

   e. Costs of services set forth in this [subsection 9] are COUNTY’S responsibility as part of per diem.
10) **Off-site Security and Transportation**
   
a. COUNTY shall be responsible for all transportation of inmates to off-site health service facilities, including ambulance, and costs for such transportation are included within the per diem rate. COUNTY is also responsible for providing an appropriate level of security for all off-site medical treatments/admissions. The costs for the first eight (8) hours of security will be the responsibility of COUNTY. DEPARTMENT will be responsible for the costs of security for all hours, or partial hours, thereafter.

11) **Staffing & Equipment**
   
a. COUNTY shall provide adequate numbers of trained staff and equipment to provide health care in accordance with community and National standards. COUNTY must also provide for annual re-certification of all officers and health care staff in basic cardiopulmonary resuscitation. Staff must also be certified/licensed in accordance with state law. Costs of this service will be the responsibility of COUNTY and part of per diem.

12) **Informed Consent**
   
a. COUNTY shall obtain and document informed consent for health care and treatment of inmates by health care staff consistent with DEPARTMENT Policy 4.5.31 – Informed Consent. COUNTY must also ensure that inmates have the right to refuse treatment consistent with DEPARTMENT Policy 4.5.32 – Right to Refuse Medical Treatment. Any costs are COUNTY responsibility and part of per diem.

13) **Suicide**
   
a. COUNTY shall implement a suicide prevention and management program. Inmates that COUNTY identifies as “at risk” for suicide must be appropriately managed to prevent harm to both the inmate and to others. The cost of the program shall be borne by COUNTY and part of per diem.

14) **Notification of Next of Kin**
   
a. COUNTY shall adopt policies and procedures providing for the prompt notification of an inmate’s next of kin and DEPARTMENT in case of death, surgery, injury, or serious illness as defined in DEPARTMENT Policy 4.5.33 – Offender Medical Emergency Notifications. Any death must be reported immediately to the proper officials as specified in DEPARTMENT Policy 4.5.34 – Offender Death. The cost will be COUNTY’S responsibility and part of per diem.

15) **Continuous Quality Improvement**
   
a. COUNTY shall provide a Continuous Quality Improvement program and provide reports to DEPARTMENT Medical Director relative to findings, actions, and assessments pertaining to the provision of health care services within the Facility. Requested reports will be provided to DEPARTMENT Medical Director and will include:
1. Number of nursing contacts.
2. Number of provider contacts.
3. Number of outside referrals.
4. Inmate name, medication, and number of prescriptions per inmate.
5. Timeliness of sick call, triage and evaluation by discipline (Nursing, Mid-Level, M.D.).
6. Number of transports to hospital or outside provider.
7. Number of admissions to hospital with diagnosis.
8. Number of emergency room visits with diagnosis.

16). Medical Costs

a. All on-site medical care will be part of the per diem and will include the full scope of primary care, i.e. family practice, general practice or internal medicine, including minor surgery such as skin biopsies, suturing of lacerations and ingrown toenails. DEPARTMENT'S Medical Director may be consulted as to whether or not the service is within the scope of primary care. The Medical Director's decision as to scope of primary care is final.

b. All non-emergency medical, surgical or diagnostic services, or durable medical equipment or supplies costing over $250.00 will require prior approval from the Medical Director/designee and/or Medical Review Panel (MRP). Failure of COUNTY to receive prior approval will result in COUNTY being solely responsible for the costs.

c. Emergency cases do not need prior approval for the initial assessment. However, DEPARTMENT’S Clinical Services Division must be notified within 48 hours of the incident and must be notified of all emergency inpatient admissions (over 24 hours) on the next working day following the admission by emailing cormedical@mt.gov.

d. All billed services must comply with the STATE’S contracted Administrator’s requirements.

e. All services identified as an DEPARTMENT cost responsibility will be billed to the department’s current third party administrator on a HCFA-1500 claim form. Billing information shall include, but not be limited to: the inmate AO number, valid diagnosis codes, and Montana Medicaid’s current procedure/service codes. Third party service providers will be compensated by the department’s current third party administrator according to current fee schedules and limits. Only claims submitted within one (1) year of date of service shall be processed.
16A) Exceptions

f. DEPARTMENT shall be solely responsible for the treatment costs associated with HIV/AIDS related illness (e.g., Karposi’s Sarcoma, Pneumocystis Pneumonia). This section, however, should not be construed to include other disease states not typically considered as AIDS-related.

g. COUNTY is solely responsible for all health care expenses resulting from the negligence or willful misconduct of COUNTY, its subcontractor(s), or any of COUNTY’S officers, agents, volunteers or employees.

h. The State, pursuant to Montana Code Annotated § 46-4-122(2)(a), is solely responsible for the cost of a post-mortem examination conducted upon an inmate who dies in the custody of the Facility.

i. Upon a request by the Montana Board of Pardons, COUNTY will arrange for psychological assessments as required. DEPARTMENT shall be responsible for the cost of such assessments.

B. Medical Services

1) Continuity of Care

a. COUNTY shall address and provide continuity of care for inmates with chronic illness through regular follow-up consultation and, when appropriate, treatment. Chronic illness includes, but is not limited to, diabetes, pulmonary diseases, cardiovascular diseases, hypertension, seizures, TB treatment/prophylaxis and infectious diseases. The costs associated with providing continuity of care are COUNTY’S responsibility. This is only primary care onsite and does not mean specialty consultations when they are indicated.

2) Diagnostic Exams-Costs

a. COUNTY shall receive prior approval for non-emergent diagnostic tests (other than lab) costing more than $250 per test. Failure of COUNTY to receive prior approval will result in COUNTY being solely responsible for the costs.

b. COUNTY shall provide radiological and interpretive services for plain film. All other diagnostic tests are the responsibility of DEPARTMENT. The cost of such will be the responsibility of the Department.

3) Vision Exams

Inmates may request and shall be offered a complete vision exam with appropriate refraction every two years. Inmates diagnosed with Diabetes shall receive a vision exam annually. Optical services must be coordinated with DEPARTMENT and receive prior approval. The cost of optical services will be DEPARTMENT responsibility. However, the DEPARTMENT reimbursement rate is the standard Medicaid schedule and is the maximum amount to be paid to the service provider for an examination or eyeglasses.
C. Mental Health

1) Emergency Mental Health Services

a. COUNTY shall have the capability and, when clinically indicated, will provide emergency mental health services twenty-four (24) hours per day, seven (7) days per week. Mental health services must be available and provided by licensed mental health clinicians and/or unlicensed mental health clinicians who by virtue of their education, credentials, and experience are permitted by law to evaluate and care for the mentally ill under the supervision of a licensed mental health clinician. Nothing in this section shall be interpreted to prevent a licensed clinician from using psychotropic medications when required in an emergency situation to prevent the inmate from causing injury to the inmate’s self or others.

b. Certified staff who are not considered licensed or unlicensed mental health clinicians and who participate in any component of mental health services must receive specific training and certification related to the service provided and be under the supervision of a licensed mental health clinician. The licensed clinician would also have to be the one responding to emergency mental health issues. Documentation is needed on any kind of “certification” staff completes to be considered certified to run a mental health group. Any increased cost related to requiring licensed staff will be the responsibility of the DEPARTMENT for one year to allow COUNTY to adjust their budget accordingly; thereafter it will be the COUNTY’S responsibility and part of the per diem.

2) Costs of Mental Health Services

a. COUNTY may provide mental health services off-site and shall be responsible for all costs, including transportation and security. This does not include actual mental health hospital admission costs that are the responsibility of DEPARTMENT. County must notify DEPARTMENT through cormedical@mt.gov of all hospitalizations and all claims for services provided will be billed to the DEPARTMENT’S current third party administrator on a HCFA-1500 claim form. Billing information shall include, but not be limited to: the inmate AO number, valid diagnosis codes, and Montana Medicaid’s current procedure/service codes. Third party service providers will be compensated by the DEPARTMENT’S current third party administrator according to current fee schedules and limits. Only claims submitted within one (1) year of date of service shall be processed.

3) Treatment Plan

a. COUNTY shall ensure that any inmate identified as suffering from mental illness receives the appropriate mental health treatment. The inmate must receive a mental health treatment plan developed with a psychiatrist or physician knowledgeable in the prescribing of psychotropic medications. The prescribing of medication should only occur when indicated and when other interventions have failed. The treatment plan must be reviewed every ninety (90) days, the cost of such will be the responsibility of the DEPARTMENT.
4) Physical Restraints
   
a. Physical restraints (for medical purposes) shall only be used by order of a physician after less restrictive measures have been unsuccessful. Restraints are to be used only to prevent immediate harm to self/others.

5) Segregation

Facilities will develop procedures to ensure facility staff notify qualified health care professionals within 24 hours of an inmate admission to locked housing consistent with DEPARTMENT policy 4.5.21 Locked Housing Offender Health Assessment and Services. The qualified health care professional will notify and consult with the facility administrator on offender housing alternatives if there are medical, dental or mental health contraindications to placement in locked housing.

D. Dental Services

1) Type of Service

COUNTY shall provide dental services based on routine, preventive care. Routine care shall include: Exams (including x-rays), all non-surgical treatment (cleaning for treatment of gum disease), operative dentistry (fillings, single tooth extractions, restorations, and non-surgical periodontal therapy including scaling and root planning). All services shall be performed by properly licensed personnel – either on-site or off-site. The cost of such will be the responsibility of the DEPARTMENT and be a direct bill.

2) Treatment Plans

a. COUNTY shall provide dental service in accordance with DEPARTMENT policy 4.5.26 – Offender Dental Services. COUNTY shall ensure that each inmate is provided a comprehensive dental treatment plan including prioritization of needs, counseling on oral hygiene, and identification of conditions. The cost of such will be the responsibility of the DEPARTMENT and be a direct bill.

b. All routine dental care will be provided according to guidelines for care as outlined by DEPARTMENT'S Dental Director (see Sec. 20, D – Dental Services, part 1 above) as part of the per diem. The cost of such will be the responsibility of the DEPARTMENT and be a direct bill.

c. All non-routine dental care will be provided by COUNTY and billed to the DEPARTMENT. The cost of non-routine dental care – which includes but is not limited to, oral surgery and dentures – is the responsibility of the DEPARTMENT. Non-routine dental care will require pre-authorization from the DEPARTMENT Clinical Services Division. Failure of COUNTY to receive prior approval will result in COUNTY being solely responsible for the costs.
E. **Budgetary Consideration – Health Care Services**

1) Budgetary reconsideration will be made every two years for medical/dental/mental health services. COUNTY will be responsible to provide objective data to support requests for legislative appropriations for health care services.

2) Per Diem Health Care Cost will be re-evaluated every two (2) years by the Clinical Services Division and compared to national health care costs trends.

**SECTION 21 – CASE MANAGEMENT AND CLASSIFICATION**

Case Management functions within COUNTY shall include managing appropriate and timely classification of all inmates, parole reports, providing crisis intervention, work assignments, programmatic activities, managing behavior, developing MORRA plans and keeping open communication between staff and inmates, assisting with facility operations, file management, and inmate development. Other functions consist of documenting and communicating to other personnel any behavior that would present a risk to the facility, staff, other inmates, or the public to ensure appropriate action is taken to safeguard DEPARTMENT’S and COUNTY’S mission. Some of the duties described here can be assigned as collateral duties of others as prescribed by DEPARTMENT’S position descriptions.

Inmates shall have accessibility to Case Management staff. COUNTY will have scheduled case management coverage a minimum of five days per week. Case Management staff will be assigned to work hours as determined by facility heads to allow for inmate accessibility compatible with the role of case management and facility need.

**SECTION 22 – COUNSELING, RECREATIONAL AND RELIGIOUS PROGRAMMING**

In order to provide a continuum of services for inmates, COUNTY shall provide academic and counseling programs within the budgetary constraints as agreed upon by both parties. The programs to be offered by COUNTY require review and approval by DEPARTMENT prior to implementation.

A. **COUNSELING**

The content of counseling programs shall be comparable with those offered by DEPARTMENT and those required by the courts and the Board of Pardons and Parole. While any inmate is housed at the Facility, COUNTY shall provide sufficient counseling resources and personnel to ensure that any court-ordered counseling requirements for the programs listed herein may be completed prior to the initial parole eligibility date of the inmate, provided that the inmate is placed in the facility in a timely manner that permits programming to occur. Counseling programs shall include, at a minimum, the following:

1) **Cognitive Restructuring**

COUNTY shall provide a Cognitive Restructuring Treatment Program in accordance with the following:

- Two separate groups composed of a minimum of 4 and a maximum of 10 inmates per group.
- 1 to 2 facilitators per session.
- Each group will meet at least once per week.
2) Anger Management

Anger management/Dispute Resolution programming will be provided for appropriate inmates, in accordance with the following:

- One group composed of a minimum of 4 and a maximum of 10 inmates.
- The group will meet once a week, until the program is completed.
- Anger Management groups may be consolidated into the Cognitive Restructuring groups as allowed by DEPARTMENT.

3) Chemical Dependency Treatment

Chemical Dependency Programming will use a cognitive, behavioral approach treatment model. Approximately ten (10) total inmates will be enrolled in the continuum of care. The continuum of care should include a sixteen-week (approximate length) program for primary treatment, with unlimited aftercare. The following components are the minimum standards to be used:

a. Primary Treatment

- One individual weekly session as needed.
- One (1) 2-hour group per week to average 2 hours per week, per offender.
- 16-week program length (approximate).

B. RECREATION AND HOBBY

1) COUNTY must provide adequate opportunities for physical exercise. Recreational programs shall include indoor and outdoor activities. The type, frequency, and level of activities must meet ACA Standards. Inmates participating in recreational activities will generally be directly supervised.

2) COUNTY must establish and operate a hobby program consistent with ACA Standards. In addition, COUNTY must establish a hobby policy that generally conforms to MSP Policy/Procedures.

C. RELIGIOUS ACTIVITIES

COUNTY must provide religious programs and activities for inmates in accordance with ACA Standards.

D. EDUCATIONAL SERVICES

ACADEMIC

COUNTY may provide academic services upon availability that include the following curriculum model – with placement based upon TABE scores:

- Adult Basic Education  (3.5 – 7.9)
- Basic Literacy         (3.5 – 7.9)
• HiSET (8.0 – 11.9)

Inmates falling below 6.0 grade level on the TABE test are highly recommended for education. Offenders who score below an 8.0 grade level may be provided an Adult Basic Education (ABE) course as a prerequisite to entry into HiSET preparation.

If applicable, COUNTY shall provide Academic programs in accordance with the following:
- All teachers must be certified through Montana Office of Public Instruction.
- Post testing of the inmate will be conducted at least every six months to show progress.
- All programs must be consistent with the educational program at MSP.

SECTION 23 – INMATE WORK AND PAY

Inmates shall be required to work to the extent possible subject to work opportunity limitations of the facility and the health or physical limitations of each individual inmate. Inmate workers must receive pay comparable to that received by State inmates housed in other DEPARTMENT facilities consistent with DEPARTMENT Policy 5.1.1. Inmate Assignments. Funds for institutional workers’ pay are included in the per diem rate as set forth in Section V. Payment to inmates employed in the MCE industries programs will be the responsibility of MCE.

SECTION 24 – INMATE BANKING PROCESSES

COUNTY will input deposits and withdrawals into the DEPARTMENT inmate banking system, and it will collect mandatory restitution and/or child support in accordance with State laws and administrative regulations. Offender accounts are not to be charged by COUNTY for damages and other non-mandatory charges if it will cause the Offender’s account to go into a negative balance. All inmate pay and incoming money orders for DEPARTMENT inmates are to be deposited by COUNTY. COUNTY will provide the Offender with a receipt for incoming money order deposits. Offender requests for withdrawals will be done in accordance with DEPARTMENT policies and procedures. COUNTY will follow DEPARTMENT/MSP policies and procedures in regards to the inmate banking process to include but not limited to offender debt collection, canteen, offender restitution and child support withholding. DEPARTMENT will furnish revisions to Policies and Procedures as they are issued. COUNTY will issue a generated inmate bank statement to each DEPARTMENT Offender on a monthly basis.

SECTION 25 – INMATE ORIENTATION

COUNTY shall provide orientation to inmates which includes, but is not limited to, a handbook containing information on: rules, penalties and offenses, disciplinary procedures, access to courts and attorneys, mail, telephone, grievances, PREA regulations, medical care, religion, and programs available. Inmate orientation must be conducted within one week after arrival at the Facility and must be documented by employee and inmate signatures.

SECTION 26 – INMATE MAIL, TELEPHONES, AND VISITATION

A. COUNTY must adopt and implement DEPARTMENT Policies 3.3.6 Offender Mail and 3.3.7 Offender Access to Telephones. The facility inmate phone system must charge rates that are similar to the rates charged in all DEPARTMENT facilities.
B. COUNTY must attempt to provide physical space, furniture, equipment and supervision for contact and non-contact visitation in accordance with MSP Policy 3.3.8 Inmate Visiting. The Facility may modify time limits, frequency, and contact visits. The facility may provide video visitation that is substantially similar, in price and service, to that provided in all Department facilities.

SECTION 27 – INMATE RIGHTS

A. GRIEVANCE PROCEDURES

COUNTY must adopt and implement MSP Policy 3.3.3 Inmate Grievance Program. COUNTY must provide DEPARTMENT’s on-site monitor with copies of all inmate grievances upon request, along with statistical information on number and type of grievances received, as required by DEPARTMENT. The final appeal for all inmate grievances shall be made to DEPARTMENT’S Contract Placement Bureau Chief or his designee.

B. DISCIPLINE

COUNTY shall provide staff to conduct disciplinary hearings for all major and minor disciplinary actions taken and enter the findings on the DEPARTMENT’S OMIS.

COUNTY must adopt and implement MSP Policies/procedures 3.4.1, 3.4.100, and 3.4.101 Institutional Discipline. Disciplinary offenses and penalty codes must be posted in each inmate living area and other appropriate areas accessible by inmates. Offender disciplinary actions at the Facility must be reasonable and proportionate in relation to the violation, be taken in an impartial and nondiscriminatory manner, not be arbitrary or retaliatory, and not be physically abusive. On a weekly basis, COUNTY must provide DEPARTMENT with copies of all documentation concerning Severe and Major disciplinary actions taken by COUNTY against inmates. On a monthly basis, COUNTY shall also provide statistical information on the number and types of disciplinary reports and their dispositions. DEPARTMENT shall have final authority to approve, amend, or disapprove severe level disciplinary actions by COUNTY.

COUNTY may, in conjunction with disciplinary proceedings, make recommendations for the forfeiture of good time credits to DEPARTMENT. The decision to forfeit good time credits is at the sole discretion of DEPARTMENT.

C. LEGAL ASSISTANCE

COUNTY must provide inmates with assistance in accessing the courts as directed and funded by the Department.

SECTION 28 – INMATE TELEPHONES/COMMISSIONS

A. COUNTY must contract with a telephone service provider similar to the Department’s provider to provide coin-less, collect telephone service to the State inmate population. The telephone service contract must be submitted to DEPARTMENT for review and approval prior to acceptance by COUNTY. Rebates/commissions or other compensation received by COUNTY from the telephone service provider must be directed to a separate Inmate Welfare Fund account. Copies of source documentation supporting said rebates/commissions must be available for DEPARTMENT review.
B. Monies received from use of State Inmate phones must be deposited in a separate account and utilized for inmate rehabilitative needs in conformity with the Montana State Prison Inmate Welfare Fund. The State shall have final authority to approve or disapprove use of the funds in this account.

C. The selected service provider shall allow COUNTY and the DEPARTMENT'S contract monitor and investigators the ability to monitor and record inmate telephone conversations and ensure that certain phone numbers, (e.g. attorney, legal, and other authorized calls) cannot be monitored. In addition, the provider must allow the Facility to control what phone numbers an inmate may access.

SECTION 29 – CANTEEN

A. COUNTY is required to use MCE Canteen Services for DEPARTMENT offender purchases of canteen items. MCE Canteen Services will provide a list of merchandise consistent with MSP Procedure 4.1.3 Offender Personal Property and sales prices to COUNTY prior to offering items for sale to the offender population. MCE Canteen Services will sell and deliver the canteen order to COUNTY on a weekly basis. The orders will be inspected by COUNTY for accuracy and contraband and dispersed to the Department offenders by COUNTY staff. DEPARTMENT Offender accounts will be charged for the Canteen purchases and any non-DEPARTMENT Offender orders will have to be paid for by COUNTY. The Canteen orders will be in a sealed tamperproof bag that allows inspection of the contents without breaking the package open. MCE Canteen Services will establish the price of items sold to the offenders. MCE Canteen Services will provide COUNTY with a recap of orders purchased and total dollar amount of orders delivered.

SECTION 30 – CLASSIFICATION AND TRANSFER

A. Inmates to be transferred to the Facility may be assigned a custody classification by DEPARTMENT or by COUNTY in consultation with DEPARTMENT. COUNTY must utilize MSP Policy 4.2.1Offender Classification System and DEPARTMENT Policy 4.2.2 Special Needs Offenders as well as other relevant classification and housing policies, as developed. COUNTY has no authority to transfer, discharge, or release an inmate without the prior written approval of DEPARTMENT. DEPARTMENT has final authority with respect to any placement, transfer, discharge, or release decision. DEPARTMENT/MSP Offenders to be housed in the Facility shall be selected by the Contract Placement Bureau Staff on the basis of the criteria set out in DEPARTMENT/MSP Policy/Procedures 4-8-100 Contract Placement Bureau Operations.

B. COUNTY Sheriff or Jail Administrator may request exclusion of a given inmate at the facility, based upon the crime committed by the inmate, location of the crime, the inmate’s past history, and/or local needs/concerns of COUNTY. The request for exclusion must include supporting justification. Absent extraordinary circumstances, DEPARTMENT will make reasonable efforts to honor such requests.

C. Inmates placed in the Facility may not be reduced increased to a classification of lower/higher risk unless mutually agreed to by DEPARTMENT and COUNTY consistent with the policies and procedures of DEPARTMENT. COUNTY will be required to perform a custody reclassification review every six (6) months. COUNTY shall provide DEPARTMENT with a summary of reclassification decisions on a monthly basis.

D. COUNTY will be responsible for preparing, maintaining and providing parole reports, progress reports, special progress reports (as requested), and disciplinary records to DEPARTMENT and/or the Montana Board of Pardons and Parole.
E. DEPARTMENT shall be solely responsible for the calculation of sentence discharge dates and parole eligibility dates. No inmate shall be discharged from the Facility without written authorization from DEPARTMENT.

F. COUNTY shall be responsible for providing all necessary services related to the discharge of an inmate, including but not limited to, property removal, and provision of suitable clothing as provided in 53-30-111, MCA. DEPARTMENT will ensure gate monies are paid.

SECTION 31 – COMMUNICATIONS

A. Priority 1 incidents

Following pertinent portions of DEPARTMENT Policy 1.1.6 Priority Incident Reporting and Acting Director System, the Facility Administrator will ensure that the MSP Command Post and Contract Monitor receive immediate oral reports of all Priority 1 incidents. Written reports concerning these incidents shall be faxed to DEPARTMENT within 8 hours of discovery of the incident.

In addition to Priority 1 Incidents, COUNTY shall immediately inform DEPARTMENT of all reportable incidents involving DEPARTMENT Offenders assigned to the Facility. Reportable incidents shall be reported and documented on the daily operational reports.

B. Daily operational reports

The daily operations form (supplied by DEPARTMENT) includes issues such as all temporary lock up incidents, severe and major disciplinary reports, off-site medical transport, use of force incidents, administrative segregation placements, inmate on inmate assaults, and inmate on staff assaults, contraband seizures, daily counts, and urinalysis reports. Daily reports completed by the facility shall be electronically transferred to the on-site monitor and the Contract Placement Bureau or, at the request of the Contract Placement Bureau Chief, faxed or scanned to the Contract Placement Bureau.

Any count changes at the facility will be reported on the daily reports to the on-site contract monitor and electronically to MSP. Count changes include: inmates on leave to court; transfers from other facilities; transfers to prerelease placements, MCDC, TSCTC (Boot Camp), or Connections Corrections; discharge; parole; or, extended hospital stays. The report shall include the new total count and the inmate(s) name and AO number that were moved.

C. Additional reports requested by DEPARTMENT will be immediately faxed or scanned to the Contract Placement Bureau.

D. Video recordings, if applicable, must be sent to DEPARTMENT within three (3) days of a request.

E. COUNTY will designate and provide a listing of on-site key personnel responsible for the effective exchange of information.

F. DEPARTMENT Liaison for this Section will be the Contract Placement Bureau Chief.

SECTION 32 – INDIGENT INMATES

COUNTY shall provide indigent inmates with personal health and welfare items in accordance with DEPARTMENT Policy 4.4.1 Offender Hygiene. Clothing, and Linen Supplies. COUNTY shall provide
indigent inmates with postage for mailing legal materials in accordance with DEPARTMENT Policy 3.3.2 Offender Legal Access to Courts.

SECTION 33 – REMEDIES.

A. Withholding of Payment for Non-Performance

1. In the event of a non-performance by COUNTY of a type described in Attachment B, DEPARTMENT may withhold payment for non-performance in the amounts designated in Attachment B from any amounts owed. The parties agree that, due to the complicated nature of COUNTY’S obligations under this Contract, it would be difficult to specifically designate a monetary amount for a nonperformance by COUNTY designated in Attachment B. Said amounts are likely to be uncertain and not easily proven. COUNTY hereby represents and covenants that it has carefully reviewed the withholding of payment for non-performance contained in Attachment B and agrees that said amounts are the specific payments for non-performance. Damages resulting from negotiation between the parties, represent a reasonable relationship between the amount and what might reasonably be expected in the event of nonperformance, and are a reasonable estimate of the damages that would occur from a nonperformance.

2. DEPARTMENT shall notify the COUNTY in writing of the non-performance and the amounts to be withheld as liquidated damages. DEPARTMENT’S Contract Monitor will prepare a Notice of Non-Compliance that will identify each instance of non-compliance with this Contract. DEPARTMENT will grant COUNTY sixty (60) days to rectify the noncompliance and may also allow COUNTY additional time, as appropriate, provided COUNTY demonstrates a good-faith effort to achieve compliance.

3. If the Contract Placement Bureau Chief determines that COUNTY has not rectified the non-compliance within the time period specified, the Contract Monitor shall prepare a Notice of Non-Compliance and Withholding of Funds for Services Not Provided (hereafter "Notice of Assessment"). The Notice of Assessment shall identify each instance of non-compliance which was not rectified in the requisite period of time, along with the amount of the funds withheld and assessed for each instance of non-compliance. DEPARTMENT’S Contract Monitor will mail the Notice of Assessment to COUNTY’s contact person, certified, return receipt requested.

4. If COUNTY disputes the assessment, COUNTY shall mail a Notice of Disputed Assessment to the Contract Placement Bureau Chief within 10 days of date of receipt of the Notice of Assessment, and said Notice of Disputed Assessment shall be mailed certified, return receipt requested. The Contractor must specifically indicate the basis for its dispute with the finding of non-compliance and the assessment, and must provide supporting documentation. If COUNTY fails to dispute the finding of non-compliance and assessment of fine within the 10 days, or fails to provide a basis and/or documentation as required by this paragraph, COUNTY waives the right to contest the assessment of non-compliance by DEPARTMENT.

5. DEPARTMENT shall have 10 days from receipt of COUNTY Notice of Disputed Assessment to reconsider the assessment. If DEPARTMENT does not respond to the Contractor within said 10 days, DEPARTMENT will be considered to have affirmed the assessment of the non-compliance. DEPARTMENT action or inaction as set forth in this paragraph shall be considered its final decision.

6. In the event that DEPARTMENT’S final decision is to assess a withholding of funds, the amount of the withholding shall be deducted from the next payment made to COUNTY by DEPARTMENT.
7. If COUNTY is not satisfied with the final decision of DEPARTMENT, COUNTY may utilize the Alternate Dispute Resolution procedure provided for in Section 48, Alternate Dispute Resolution, of this Contract.

8. In the event that COUNTY is determined not liable for the withholding, COUNTY shall be reimbursed the amount of the withholding, plus interest at a rate equal to the short term investment pool rate (STIP)

9. It is hereby agreed between the parties that the withholding of payment for non-performance represents solely the damages and injuries sustained by DEPARTMENT in losing the benefit of the bargain with COUNTY and does not include:

   a. Any injury or damage sustained by a third party and COUNTY agrees that the withholding of payment for non-performance amount is in addition to any amounts COUNTY may owe DEPARTMENT.

   b. Any damage sustained to the Facility or property located therein as a result of COUNTY’S non-performance.

10. DEPARTMENT may continue to withhold payment for services not provided or a portion thereof until COUNTY cures the non-performance or DEPARTMENT terminates the Contract.

11. DEPARTMENT is not obligated to assess withholding of payment for non-performance before availing itself of any other remedy.

12. DEPARTMENT may choose to discontinue withholding of payment for non-performance and avail itself of any other remedy available under this Contract or at law or in equity.

SECTION 34 – FURNISHINGS, FIXTURES, AND EQUIPMENT (FF&E)

A. COUNTY shall maintain and replace all FF&E utilized for the operation of the State portion of the Facility.

B. COUNTY is encouraged to purchase FF&E from Montana Correctional Enterprises whenever quality, price, and delivery schedules are better than, or comparable to, other providers. However, COUNTY is under no obligation to purchase from MCE. DEPARTMENT will ensure that COUNTY is provided with a current copy of the MCE catalogue and updates as they are released.

SECTION 35 – LIAISONS

In order to effectively administer this Contract, each party has appointed the following contact persons:

A. The Contact Persons for DEPARTMENT are:

   Operational Issues: On-site Contract Monitor/Contract Placement Bureau Chief

   Contract Issues: Contracts Manager

   Notice/Litigation: Chief Legal Counsel
Emergency Contact: MSP Command Post

B. The Contact Persons for COUNTY are:

Operational Issues: Facility Administrator
Contract Issues: Sheriff/designee
Notice/Litigation County Attorney

Replacement of the positions identified herein shall be accomplished by written notice to the other party. All notices, reports, billings, and correspondence to the respective parties of this Contract shall be sent to the attention of the appropriate person in the position listed above.

SECTION 36 – GOVERNING LAW

The laws and administrative rules and regulations of the State of Montana shall govern in any matter relating to any inmate confined pursuant to this Agreement.

SECTION 37 – EMERGENCY OPERATIONS AND MANAGEMENT

DEPARTMENT shall have the right to enter and assume control of the State side of the Facility if COUNTY fails to correct substantial contractual violations documented by the Contract Monitor, or upon the occurrence of other serious circumstances (e.g., strike, acts of God) involving COUNTY’S ability to operate the Facility which the DEPARTMENT believes may affect the life, health, or safety of inmates, Facility employees, or the public, or that may otherwise substantially impact the security of the Facility. If DEPARTMENT takes control of the Facility, DEPARTMENT shall suspend all contractual payments to COUNTY and undertake all applicable costs for the State side for the period DEPARTMENT occupies and operates the facility. The DEPARTMENT will not take immediate control of the operations and management of the Facility in instances involving contractual violations without providing COUNTY 48 hours verbal notice with written notice to follow.

COUNTY acknowledges that DEPARTMENT has the authority at all times to enter the Facility for the purpose of quelling disturbances and maintaining the orderly operation of the facility if DEPARTMENT Director or his/her designee determines, in conjunction with the Sheriff and facility Warden, that such action is necessary to protect the public safety. This authority entails providing assistance to Facility staff up to and including assuming operational control of the Facility until the disturbance is completely controlled. Both parties will cooperate in quelling disturbances in the Facility. At all times while engaged in such operations in the Facility, DEPARTMENT staff will retain their character as State employees and will remain under the control and direction of DEPARTMENT Director or his/her on-site designee. DEPARTMENT staff shall at no time be under the control or direction of the Sheriff, Facility warden or County staff. DEPARTMENT staff, during such operation, will conduct themselves in accordance with DEPARTMENT Administrative Rules, policies and procedure governing Facility disturbances and use of force. Nothing herein may be construed to restrict the right of DEPARTMENT Director to immediately withdraw DEPARTMENT Offenders from the Facility if, in his/her sole discretion, such action is necessary to preserve the public safety or the health and safety of Offenders or staff. DEPARTMENT will integrate into its emergency plans provisions for subduing Facility disturbances, and will incorporate such provisions into its special operations. A Facility disturbance is defined as a riot, organized group disturbance, inmate work stoppage, hostage situation, or any other major incident that disrupts or is likely to disrupt normal Facility operations. COUNTY agrees to cooperate fully with DEPARTMENT in planning and training.
related to subduing Facility disturbances. COUNTY will reimburse DEPARTMENT for associated costs through an itemized billing, for actual costs incurred in responding to and quelling the disturbance and for incidental and consequential cost to DEPARTMENT as a result of the disturbance including, but not limited to, all Offender and staff medical expenses if the event is determined to be a result of COUNTY negligence. Such costs not paid within 30 days from the receipt of the itemized billing may be set off against accrued bed-day payments. To the extent DEPARTMENT is involved in the operation of the facility, COUNTY’S indemnification and hold harmless liabilities under this contract shall not extend to any claims arising from the negligent or wrongful act or omission of DEPARTMENT or its employees. It is the duty of COUNTY to notify DEPARTMENT immediately of the outbreak of all Facility disturbances. Nothing herein is to be construed to mean that COUNTY may not officially request assistance from DEPARTMENT Director at any time for the purposes of controlling disturbances or otherwise protecting the public safety.

SECTION 38 – CONTRACTOR STATUS

COUNTY shall perform its duties hereunder as an independent Contractor and not as an employee of DEPARTMENT, nor any agent or employees of COUNTY shall be or shall be deemed an agent or employee of DEPARTMENT. COUNTY shall have no authorization, express or implied, to bind DEPARTMENT to any contracts, liability or understanding except as expressly set forth herein.

SECTION 39 – ASSIGNMENT

No right or interest pursuant to this Contract shall be subcontracted, assigned or delegated by COUNTY without prior notification to the DEPARTMENT. In the event that some or all of the services are subcontracted or assigned, COUNTY shall guarantee that the subcontractor, assign, or delegate will comply with all of the provisions of this Contract. Should COUNTY elect to subcontract an entire program area such as medical, mental health, or food service, DEPARTMENT hereby retains the right to review, prior to selection, a proposed program services subcontractor. All such subcontracts and all of the subcontractor’s contracts shall have the capacity of conforming to COUNTY’S obligations to meet the specifications under this contract. No subcontract shall relieve COUNTY of any obligation whatsoever under this Contract; COUNTY shall at all times be responsible for all performance under this Contract. In the event of a subcontract, COUNTY shall provide DEPARTMENT a copy of said subcontract and copies of liability insurance certificates in accordance with Contract Section titled “Insurance.”

All subcontractors shall be subject to the same licensure, certification, performance, and insurance obligations as COUNTY.

COUNTY accepts full responsibility for the activity or inactivity of all subcontractors. Subcontracting for services shall not relieve COUNTY from the primary responsibility of complying with the terms, conditions, requirements and responsibilities of this Contract.

The cost for all subcontractors shall be included in the per diem rate. COUNTY shall not dismiss the services of a subcontractor until prior written notice to DEPARTMENT has been given, along with COUNTY’S plan to ensure continuation of services without interruption via COUNTY’S staff or a substitute subcontractor.

COUNTY further agrees to provide approved training for any subcontractor’s officers, employees, and agents, except for training that DEPARTMENT expressly agrees to provide pursuant to this Contract.
SECTION 40 – NO THIRD-PARTY BENEFICIARY ENFORCEMENT

It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to DEPARTMENT and COUNTY, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other person. It is the express intention of DEPARTMENT and COUNTY that any entity, other than DEPARTMENT or COUNTY receiving services or benefits under this Contract, shall be deemed an incidental beneficiary only.

This Contract is not intended to create any rights, liberty interests, or entitlements in favor of any DEPARTMENT Offender. Offenders shall have only those entitlements created by Federal or State constitutions, statutes, regulations or case law.

SECTION 41 – VENUE

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this contract must be brought in the First Judicial District in and for COUNTY of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Ref: 18-1-401, MCA)

SECTION 42 – SEVERABILITY

If any term or condition of this Contract shall be held to be invalid, illegal or unenforceable, this Contract shall be construed and enforced without such provisions to the extent this Contract is then capable of execution within the original intent of the parties. If, however, DEPARTMENT determines that the invalid provision or provisions are essential to the purpose of performance of the Contract, it may terminate the Contract. Such a termination shall be deemed a termination for cause.

SECTION 43 – PHYSICAL DAMAGE TO FACILITY

The risks and costs of physical damage to the Facility incurred as a direct result of the placement of inmates in the Facility shall be considered usual costs, incidental to the operation of the Facility, and part of the costs reimbursed through the daily per diem rate paid by DEPARTMENT.

SECTION 44 – FORCE MAJEURE

Neither party shall be deemed to be in default for any delay or failure to perform under this Contract if such delay or failure to perform results from an act of God, civil or military authority, or other occurrence beyond that party’s control, provided however, that COUNTY’S security obligations under this Contract do not end in the event of an inmate disturbance, riot, or other incident. A Force Majeure incident may not be caused by or under the control of the party asserting it and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

SECTION 45 – COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS

COUNTY will provide services in compliance with all Federal and State of Montana laws, Administrative Rules of Montana, all agreed upon DEPARTMENT/MSP policies, and DEPARTMENT Compliance Standards and ACA/NCCHC Standards [pertaining to inmate services and programs] as they may subsequently be amended and adopted. COUNTY shall protect the confidentiality of all applicant/recipient records, papers, documents, tapes or any other materials that have been, or may hereafter be created, as a result of this Contract. COUNTY acknowledges that said laws include, but are not limited to: the Prison
Rape Elimination Act 42 U.S.C.A. § 15601ff; Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1972; the Education Amendments of 1972; the Age Discrimination Act of 1975; the Americans with Disabilities Act, including Title II, Subtitle A, 24 U.S.C. Sec. 12101, et seq.; and all rules and regulations applicable to these laws prohibiting discrimination because of race, religion, color, national origin, creed, sex, age or handicap.

A. Contract Compliance

Except as noted herein, the parties agree that a negotiation of prisoner per diem rate increases will not be allowed unless COUNTY has achieved and maintained an overall compliance rating of not less than 90% on each compliance monitoring review/audit conducted by DEPARTMENT. The review/audit should take place on a biennial schedule.

*Exception - In the event that COUNTY does not achieve and maintain an overall compliance rating of not less than 90% on a compliance monitoring review/audit, COUNTY will be given an opportunity and period of time to address the area(s) of concern via a DEPARTMENT-provided action plan. Negotiations of per diem rate increases will only be allowed after COUNTY has successfully achieved the overall compliance rating defined herein. Action plans will be reviewed quarterly at a meeting between COUNTY and DEPARTMENT.

SECTION 46 – CONFIDENTIALITY OF RECORDS

A. In the event COUNTY shall obtain access to any records or files of DEPARTMENT in connection with this Contract, or in connection with the performance of its obligations under this Contract, COUNTY shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to DEPARTMENT.

B. COUNTY acknowledges that release of information maintained within inmate records is governed by the Montana Constitution, federal and state law, and DEPARTMENT Policies 1.1.8 Media Relations, 1.5. 5 Offender Records Management, Access and Release, and 3.3.4 Media Access to Offenders. COUNTY shall develop policies that maintain the appropriate level of confidentiality expected in inmate records pursuant to applicable law. At a minimum, COUNTY’S policies should include a description of information suitable for public disclosure, law enforcement agency access to inmate records, and a process by which inmates may provide written consent to information releases. COUNTY policy shall be reviewed and approved by the Contract Monitor prior to implementation.

C. COUNTY agrees to notify and advise in writing, all employees, agents, consultants, licensees, or subcontractors of the said requirements of confidentiality and of possible penalties and fines imposed by violation thereof, and secure from each an acknowledgment of such advisement and Agreement to be bound by the terms of this Contract as an employee, agent, consultant, licensee or subcontractor of COUNTY, as the case may be.

D. Any breach of confidentiality by COUNTY or third party agents of COUNTY shall constitute good cause for DEPARTMENT to cancel this Contract, without liability. Any records and files delivered to COUNTY shall be returned to DEPARTMENT.

E. Any DEPARTMENT waiver of an alleged breach of confidentiality by COUNTY or third party agents of COUNTY is not to imply a waiver of any subsequent breach.
SECTION 47 – HEADINGS

Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Contract.

SECTION 48 – TIME IS OF THE ESSENCE

Time is of the essence in the performance of all of the parties’ obligations and duties under this Contract.

SECTION 49 – MODIFICATION AND BREACH

This Contract contains the entire agreement and understanding between the parties and no statement, promise or inducement 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.

SECTION 50 – ALTERNATE DISPUTE RESOLUTION

Any dispute between the parties concerning any and all matters related to this Contract will be resolved as follows:

A. Step 1: Each party will appoint a person who shall be responsible for administering the resolution procedures regarding claims. Those appointed persons shall attempt to settle such claim. If they are unable to resolve the claim within thirty (30) days after either party notifies the other that the claim has been referred for resolution, either party may declare that an impasse has been reached and proceed to Step 2.

Step 2: Upon declaration of an impasse, the parties will seek mediation by a certified civil mediator within thirty (30) days of the decision to mediate, said mediator will be chosen by the party seeking mediation. The cost of the mediation will be split equally between the parties.

Step 3: Either party may seek the remedy available under law.

SECTION 51 – CHANGES

DEPARTMENT and COUNTY can, by written approval between both parties, make changes within the general scope of the Contract. If any change of scope causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under the Contract, a mutually satisfactory adjustment must be made in the Contract and must be modified in writing accordingly.

SECTION 52 – COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the DEPARTMENT of Corrections, Accounting & Financial Services Division, PO Box 201301, Helena MT 59620-1301.
SIGNATURES

DEPARTMENT

Mike Batista, Director
Montana Department of Corrections

Steve Bullock, Governor
State of Montana

COUNTY

Cascade County Sheriff, Robert Edwards

Cascade County Commissioner

Cascade County Commissioner

Cascade County Commissioner

Cascade County Clerk & Recorder

Reviewed for Legal Content by:

Legal Counsel
Montana Department of Corrections

Date