

COUNTY DETENTION CENTER REIMBURSEMENT AGREEMENT

AGREEMENT #COR-INTRGV-2020-0272-CJH

THIS AGREEMENT is made and entered into by and between the DEPARTMENT OF CORRECTIONS, P.O. Box 201301, 5 S. Last Chance Gulch, Helena, Montana 59620-1301 and the DEPARTMENT OF JUSTICE, 215 North Sanders, Helena, Montana 59601 hereinafter referred to as “State Arresting Agencies,” and **Pondera County**, 20 4th Ave. SW, Conrad, MT 59425 hereinafter referred to as “County.”

NOW THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants contained in this Agreement, the State Arresting Agencies and County agree as follows:

I. DEFINITIONS

- A. “Confinement” means the inmate is placed in a housing, detention, or isolation unit and provided with clothing, bedding, or a meal.
- B. “Day” means the 24-hour period (12:00 a.m. to 12:00 midnight) that is represented as one of the seven designated days of the week.
- C. “Detention Center” means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.
- D. “Inmate” means a person who is confined in a detention center.
- E. “State Arresting Agency” means one of the state agencies that is party to this Agreement and who has arrested an individual and placed said individual in the county detention center or who has authorized another law enforcement agency to arrest the individual.

II. DURATION OF THE AGREEMENT

- A. **TERM:** This Agreement shall be in effect **July 1, 2019 and terminate on June 30, 2021** unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed on a biennial basis for a period not to exceed a total of six (6) years, including the initial term and any renewals.

- B. RENEWAL:** Upon expiration of the term of this Agreement, the Agreement can be automatically renewed, on a month-to-month basis, for no more than ninety (90) days pending renewal.
- C. TERMINATION:** Either party may terminate this Agreement, without cause, upon thirty (30) days written notice to the liaisons identified in Section V of this Agreement.
- D. MODIFICATION & ASSIGNABILITY:** This Agreement contains the entire agreement between the parties and no statements, promises, or inducements made by either party, or agents of either party, that are not contained in or authorized by this written Agreement, are valid or binding. This Agreement may not be enlarged, modified, or altered except upon written agreement of all parties.

III. COMPENSATION

- A. ESTABLISHMENT OF DAILY PER DIEM RATE:** County agrees that the “costs of reasonable confinement” established herein are based on actual, reasonable costs and are exclusive of capital construction costs in accordance with 7-32-2242(2), MCA (2017).
- B. PAYMENT OF DAILY PER DIEM RATE:** State Arresting Agencies agree to pay County a daily per diem rate for each inmate confined in the County detention center who is the financial responsibility of a State Arresting Agency. The daily per diem rates are: **\$ 63.85** per day for Fiscal Year 2020 (**July 1, 2019 through June 30, 2020**) and **\$ 63.85** per day for Fiscal Year 2021 (**July 1, 2020 through June 30, 2021**). Reimbursement will include the first day of confinement (as described herein) but will not include the last day of confinement when the inmate is released/transferred from custody of the county detention center.
 - 1.)** The Department of Corrections will pay for:
 - i.** A parole violator;
 - ii.** A probationer serving a DOC sanction;
 - iii.** Confinement of an inmate upon oral pronouncement of a felony sentence of imprisonment or commitment to the Department of Corrections, unless the inmate continues to serve a county jail sentence of incarceration or unless the inmate has pending felony charges for which bond has been set.
 - 2.)** The Department of Justice, Montana Highway Patrol, will pay for:
 - i.** Any person arrested by the Highway Patrol – unless that person is serving

time in the detention center for any county or other arresting agency or the person is arrested pursuant to a warrant issued on behalf of the county.

- C. MEDICAL REIMBURSEMENT:** Under the terms of this Agreement, State Arresting Agencies will pay medical costs of inmates confined in the county detention center who are the responsibility of the State Arresting Agency. Medical costs shall be based on currently approved Medicaid reimbursement rates. State Arresting Agency will not reimburse expenses exceeding these rates. The State Arresting Agency agrees to provide direct payment to the medical service provider, if requested to do so by County.
- 1.) The determination to provide an inmate with non-emergency medication, medical services, or hospitalization shall be at the discretion of the detention center administrator.
 - 2.) Prior to authorizing non-emergency medical services for inmates whose medical costs are the responsibility of the Department of Corrections (DOC), County shall contact the DOC Health Services Bureau Chief at (406) 846-1320 ext. 2254.
 - 3.) County agrees to provide inmates with emergency medical treatment in accordance with acceptable standards of practice.
 - 4.) In the event an inmate requires hospitalization and the resulting medical costs are the responsibility of a State Arresting Agency, the State Arresting Agency agrees to reimburse County for costs associated with providing on-site security, including wages, employer contributions, and related incidental costs. County agrees to notify the State Arresting Agency of said hospitalizations within 24-hours of occurrence.
- D. COUNTY-TO-COUNTY TRANSFER:** If County transfers an inmate to another county detention center, State Arresting Agencies shall reimburse each county in accordance with their County Detention Center Reimbursement Agreement.
- E. BILLING:** On a monthly basis, County shall furnish each State Arresting Agency with an itemized statement specifying the name, date of birth, and dates of confinement of each inmate whose confinement expenses are the responsibility of the State Arresting Agency. County agrees to furnish a separate itemized statement for medical expenses that are the responsibility of the State Arresting Agency, as provided by this Agreement.

IV. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

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

V. ACCESS AND RETENTION OF RECORDS

County agrees to provide the State Arresting Agencies, the Legislative Auditor, or their authorized agents with access to any records necessary to determine contract compliance. County agrees to create and retain records supporting the services rendered for a period of eight years after either the completion date of the Agreement or the conclusion of any claim, litigation, or exception relating to the Agreement taken by the State of Montana or third party.

VI. INDEMNIFICATION

County shall protect, defend, and save the State Arresting Agency, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death which injury, death, or damage, arises out of services performed or omissions of services or in any way results from negligent acts or omissions of the County, its agents, agents, or subcontractors, except the sole of the State Arresting Agency.

VII. INSURANCE

A. GENERAL REQUIREMENTS: County shall maintain for the duration of this Agreement, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by County, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be cause by any negligent act or omission.

B. PRIMARY INSURANCE: County's insurance coverage shall be primary insurance with respect to State Arresting Agency, its officers, officials, employees, and volunteers and shall apply separately to each project or location.

Any insurance or self-insurance maintained by State Arresting Agency, its officers, officials, employees, or volunteers shall be excess of County's insurance and shall not contribute with it.

C. SPECIFIC REQUIREMENTS FOR COMMERCIAL GENERAL LIABILITY:

County shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$750,000 per occurrence and \$1,500,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of County or its officers, agents, representatives, assigns, or subcontractors. State Arresting Agency, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of County, including the insured's general supervision of County, products and completed operations, and the premises owned, leased, occupied, or used.

D. DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductible or self-insured retention must be declared to and approved by State Arresting Agency. At the request of State Arresting Agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State Arresting Agency, its officers, officials, employees, or volunteers; or (2) at the expense of County, County shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

E. CERTIFICATE OF INSURANCE/ENDORSEMENTS: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by the Department of Corrections, P.O. Box 201301, Helena, Montana 59620-1301. The certificates must name the State of Montana as certificate holder and County shall provide copies of additional insured endorsements required by County's commercial general liability policy. County must notify State Arresting Agency immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State Agency reserves the right to require complete copies of insurance policies at all times.

VIII. COMPLIANCE WITH WORKERS' COMPENSATION ACT

County shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405 and 39-71-417 MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither County nor its employees are State employees. This insurance/exemption must be valid for the entire Agreement term and any renewal.

Upon expiration, a renewal document must be sent to Department of Corrections, P.O. Box 201301, Helena, Montana 59620-1301.

IX. COMPLIANCE WITH LAWS

County shall, in performance of work under this Agreement, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1974, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. County is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.1. 111-148, 124 Stat. 119]. 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. County shall establish a zero-tolerance policy to incidents of sexual assault/rape or sexual misconduct. Any subletting or subcontracting by County subjects its subcontractors to the same provisions. In accordance with 49-3-207 MCA, and Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Agreement will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Agreement.

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

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

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

Auditing: The State Arresting Agency may audit County's operations to ensure that the Count has complied with the statements made above.

X. DISABILITY ACCOMODATIONS

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

XI. LIAISON

Pat Schlauch, pschlauch@mt.gov, (406) 444-4939, is the Contract Administrator for the Department of Corrections. Contract Administrator, or designee, shall perform all administrative duties on Department's behalf. Written notices and requests, or any issues not related to project management and coordination regarding this Contract should be directed to Department's Contract Administrator.

Mike Milburn, Chief of Staff, mmilburn@mt.gov, or designee, (406) 444-2026, is the liaison for the Department of Justice.

Robert Skorupa, Sheriff, robertskorupa@ponderacounty.org, (406) 271-4060, is the liaison for the County.

Liaison or their successors or assigns, shall serve as liaisons for purposes of discussions with respect to this Agreement. Liaisons and Contract Administrator may be changed by written notice to the other party. Written notices, requests, or complaints must be directed to the Liaison and Contract Administrator. Notice may be provided by email, personal service, mail, or facsimile. If notice is provided by email, personal service, or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective three (3) business days after date of mailing.

XII. VENUE

This Agreement is governed by the laws of Montana. This parties agree that any litigation arising from this Agreement must be brought to the First Judicial District in

and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

XIII. MISCELLANEOUS PROVISIONS

- A.** This Agreement must be filed with the appropriate county clerk and recorder and the Secretary of State, pursuant to Title 7, Chapter 11, Part 1, MCA.
- B.** There shall be no separate legal entity created as a result of this Agreement.
- C.** This Agreement will not result in the acquisition of property requiring disposal upon termination of this Agreement.
- D.** The above-stated provisions constitute the entire Agreement between the parties hereto.

XIV. SIGNATURES

STATE ARRESTING AGENCIES

DocuSigned by:
Reginald Michael
9E85110E4C59476...
REGINALD D. MICHAEL, Director
Department of Corrections

3/19/2020

Date

DocuSigned by:
Mike Milburn
ABD375646EAB427...
MIKE MILBURN, Chief of Staff
Department of Justice

3/12/2020

Date

COUNTY

DocuSigned by:
Thomas A. Kupa
C9649985C2E2438...
THOMAS A. KUPA, Chairman
Pondera County Commissioners

3/12/2020

Date

APPROVED FOR LEGAL CONTENT BY:

DocuSigned by:
Colleen Ambrose
FFF888078013447...
COLLEEN AMBROSE, Chief Legal Counsel
Department of Corrections

3/12/2020

Date

APPROVED AS TO FORM BY:

DocuSigned by:
Pat Schlauch
8737BA31A5794F3...
PAT SCHLAUCH, Contract Administrator
Department of Corrections

3/12/2020

Date