

**CONTRACT FOR CORRECTIONAL SERVICES**

**BETWEEN THE STATE OF MONTANA AND THE STATE OF NORTH DAKOTA**

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## CONTRACT FOR CORRECTIONAL SERVICES

In consideration of the cooperative relationship undertaken for the confinement, care, treatment, and rehabilitation of inmates on an interstate basis and in further consideration of services to be performed and benefits to be derived by each of the states to this agreement in the strengthening of their respective correctional programs, the undersigned states of MONTANA and NORTH DAKOTA acting by their duly constituted authorities, do hereby covenant and agree as follows:

### 1. INTERSTATE CORRECTIONS COMPACT

The provisions of the Interstate Corrections Compact ("Compact") are hereby made a part of this contract and no provision of this contract may be construed in any manner inconsistent with the Compact. The state of North Dakota is not a member state of the Interstate Corrections Compact, but agrees to the terms of the Compact as part of this agreement.

This agreement depends, at least in part, upon the continued availability of appropriated funds and expenditure authority from the respective state legislatures for the purposes contemplated herein. This agreement may be terminated if either legislature fails to appropriate funds or grant expenditure authority.

The state of MONTANA has the authority to enter into this agreement pursuant to MT § Interstate Corrections Compact 46-19-401 through 46-19-402 MCA, as enacted in the state of MONTANA.

The Director of the North Dakota Department of Corrections and Rehabilitation has the authority to contract for correctional services with the state of MONTANA and to contract to provide correctional services with the state of MONTANA in accordance with N.D.C.C. Section 54-23.3-04(11) and agrees to comply with the applicable terms and conditions of the Interstate Corrections Compact as provided in this contract.

### 2. GOVERNING LAW

Inmates from the sending state, while in the custody of the receiving state pursuant to this contract and the Compact, shall be subject to all of the provisions of law and regulations of the receiving state applicable to persons committed for violations of law of the receiving state not inconsistent with the sentence imposed by the sending state. However the fact of confinement in the receiving state shall not deprive the inmates so confined of the legal rights which they would have had if confined in an institution of the sending state.

### 3. TERMINOLOGY

All terms defined in the Interstate Corrections Compact and used in this contract shall have the same meaning in this contract as in the Compact. The terms "Sending State" and "Receiving State" shall be construed to include and refer to the appropriate official or agency thereof in each particular case. "Institutions" shall be construed to include all facilities normally utilized by the respective state correctional agency for the care and custody of inmates whether or not such facilities are owned, operated or under the exclusive control of the respective state agency. "Emergency" shall mean a condition or series of circumstances requiring measures to be taken beyond the normal range of operations. "Ordinary Health Services" shall be defined as health services rendered routinely to the individual for maintenance of an acceptable state of physical well being. "Extraordinary Health Services" shall be defined as health services which cannot routinely be performed by medical facilities at the institution and that the withholding of these services would pose a hazard to the health of the person.

### 4. DURATION

This contract shall enter into full force and effect at the time all signatures necessary for execution and approval of this contract have been subscribed hereto, but not until the executed and approved contract has been delivered to the respective parties. This contract shall remain in effect until terminated on notice from either party in accordance with Section 5 of this contract.

5. TERMINATION

- A. This agreement may be terminated by written notice of either party. That termination shall become effective ninety (90) days after receipt of said notice. Within a reasonable time of receipt of said notice, the sending state shall accept delivery of its inmates at the institution designated by the receiving state in accordance with Section 26 of this contract.
- B. Termination for lack of funding or authority. Either party may terminate this contract effective upon delivery of written notice to the other party, or on any later date stated in the notice, under any of the following conditions:
  - 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
  - 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
  - 3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

- C. Termination for cause. Either state, by written notice of default to the other, may terminate the whole or any part of this contract:
  - 1) If a party fails to provide services required by this contract within the time specified or any extension agreed to by the other party; or
  - 2) If a party fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of the parties provided in the above clause related to defaults by the other party are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6. OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this contract may be construed to abrogate or impair any agreement or contract for the confinement, rehabilitation or treatment of inmates now in effect between the parties in this contract.

7. MAILING ADDRESS

All notices, reports, billing and correspondence required by this contract shall be sent to the below listed addresses:

**MONTANA**

Linda Moodry, Interstate Compact Coordinator  
Montana Department of Corrections  
400 Conley Lake Road  
Deer Lodge, MT 59722

**NORTH DAKOTA**

Deputy Warden Auxiliary Services, Transfer and Scheduling  
North Dakota Department of Corrections  
P.O. Box 5521  
Bismarck, ND 58506

Notwithstanding the forgoing, the parties may give notice that particular correspondence pertaining to the specific matters be directed to other appropriate officials and addresses. The parties shall comply with such direction without requirement of written modification of this section. In addition, unless a particular means of giving notice is specified in this or any other

section of this contract, notice of any matter for which one party must give notice to the other shall be deemed as given when the receiving party has actual knowledge of the matter.

8. RIGHT OF INSPECTION

The sending state shall have access, at all reasonable times, to any institution of the receiving state in which it has a contractual right to confine inmates to determine if that institution maintains standards of care and discipline not incompatible with those of the sending state and that all inmates therein are treated equitably, regardless of races, religion, color, creed, or national origin. This right of inspection includes the right to visit and privately interview inmates of the sending state confined therein pursuant to this contract and Compact. This section does not impose any duty on the sending state to conduct such inspections.

9. VACANCIES

The receiving state hereby undertakes to make available to the sending state such places for inmates as may be vacant from time to time in any and all institutions of the receiving state as may be available for such confinement by the laws of the receiving state; provided, placement of the inmate in the receiving state will not immediately cause, or be likely to cause, a need for an increase in the correctional facilities in the receiving state.

10. APPLICATION

The sending state will submit a separate application to the receiving state for each individual inmate proposed for commitment. Said application shall consist of the following, if available: full information and all necessary documents relating to the case history, physical and clinical reports, judicial and administrative rulings and orders relating or pertinent to the inmate and the sentence or sentences pursuant to which confinement is to be had or to continue, reasons for the requested transfer, identification data, photographs, fingerprints, waiver and consent in the event of a voluntary transfer, and findings and order in the event of an involuntary transfer. If applicable, Sending State will detail any security concerns regarding release of public information regarding the inmate. Commitment will be deferred until approved by the receiving state.

11. PRISON RAPE ELIMINATION ACT (PREA)

Each party to this agreement shall comply with the Prison Rape Elimination Act of 2003 ("PREA"), 42 U.S.C. § 15601 et.seq., and all applicable PREA Standards for the prevention, detection, monitoring, investigation, and eradication of any form of sexual abuse within their facilities, programs, or offices, whether owned, operated or contracted. The parties hereby agree that each party will adopt and comply with the requirements of the Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. & 15601 et. Seq., and applicable PREA standards. Each party shall monitor the other party's compliance with the PREA standards.

12. DELIVERY OF INMATE

Upon receipt of the acceptance of the application by the receiving state, the sending state, at its expense, will deliver the inmate to the institution in the receiving state designated by the receiving state, together with the original or duly authenticated copy of his commitment, and any other official papers or documents authorizing detention. Whenever there is to be a mutual exchange of inmates between the parties to this contract, the authorities of one of the states may act as the agent of the other state for purposes of transferring its inmates so that the expenses to both states may be minimized.

13. TRANSFER OF FUNDS

Funds due transferred inmates shall be provided by the sending state to be credited to the account of the transferred inmate in the receiving state. Upon the return of the inmate to the sending state, or upon his release, the receiving state shall provide funds in the amount due the inmate at the time of return or release.

14. RESPONSIBILITY FOR OFFENDERS CUSTODY

It shall be the responsibility of the administration of the institution in the receiving state to confine inmates from a sending state; to give them reasonable and humane care and treatment, including the furnishing of subsistence and all necessary medical and hospital services and supplies; to provide for their physical needs; to make available to them the programs of training and treatment which are consistent with their individual needs; to retain them in safe custody; to supervise them; to maintain proper discipline and control; to make certain that they receive no special privileges and that the sentences and orders of the committing court in the sending state are faithfully executed. The sending state is responsible for interpreting sentences of the committing courts of the sending state and shall furnish all necessary documents and provide legal advice to the receiving state when necessary. Nothing herein contained shall be construed to require the receiving state or any of its institutions to provide treatment, facilities or programs for any inmate confined pursuant to the Interstate Corrections Compact which it does not provide for similar inmates of the receiving state.

15. MEDICAL SERVICES

Inmates from the sending state shall receive such medical, psychiatric and dental treatment as may be necessary to safeguard their health and promote their adjustment as self-supporting members of the community upon release. Unless an emergency is involved, the receiving state shall contact the sending state for advance authority in writing before incurring medical, psychiatric, or dental expenses for which the sending state is responsible under the terms of this contract. In an emergency, the receiving state may proceed with the necessary treatment without prior authority, but in every such case the receiving state shall notify the sending state immediately and furnish full information regarding the nature of the illness, the type of treatment to be provided and the estimated cost thereof.

When medical, psychiatric or dental care or treatment requires the removal of the inmate from the institution, the inmate shall be removed only after notification to the sending state. In the event of an emergency which does not permit prior notification, the institution shall notify the sending state as promptly thereafter as practicable. All necessary precautions shall be taken to assure the safekeeping of the inmate while he is absent from the normal place of confinement. Necessary custodial supervision shall be provided by the receiving state.

Any cost of medical, psychiatric or dental service shall be considered normal costs incidental to the operation of the institution in the receiving state if the service is rendered by staff personnel or on-site contract comprehensive health care providers and in regularly maintained facilities operated or utilized by the institution as part of the health or correctional program thereof and if the inmate requires no special medication, drugs, equipment, anesthetics, surgery or nursing care in addition to that commonly available on an infirmary basis. The cost of any special services, medication, equipment, surgical, or nursing care shall be chargeable to the sending state.

Cost for services that are the responsibility of the sending state will be forwarded by the receiving state to the sending state on the appropriate claim form. Forwarded information should include the inmate name and number, valid diagnosis codes and current procedure/service codes. Claims will be reviewed and submitted to the sending state's third party provider for processing if approved. Reimbursements will be made by the third party provider according to current fee schedules and limits. Balance billing will not be paid by MONTANA.

16. TRAINING OR EMPLOYMENT

Inmates from the sending state shall be afforded the opportunity and shall be required to participate in programs of occupational training and industrial or other work on the same basis as inmates of the receiving state. Compensation in connection with any such participation (whether as payment, incentive or for any other therapeutic or rehabilitative reason) shall be paid to inmates of the sending state on the same basis as to inmates of the receiving state. Any such inmates of the sending state shall be subject to the regular work discipline imposed upon other inmate participants in the particular program. However, nothing contained herein shall be construed to permit or require any inmate of a sending state to participate in any training, industrial or other work program contrary to the laws of the sending state.

The receiving state shall have the right to dispose of all products produced by an inmate, shall retain all proceeds there from, and shall bear all costs of said program.

In the case of handicraft or hobby craft programs, the inmate shall have the right to dispose of the products of his/her labor and to retain the proceeds of any sale of his/her work in accordance with the rules of the receiving state.

**17. DISCIPLINE**

The receiving state, as agent for the sending state, shall have physical control over and power to exercise disciplinary authority over all inmates from sending states. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by the laws of the sending state.

**18. LAWS AND REGULATIONS**

Inmates while in the custody of the receiving state shall be subject to all the provisions of law and regulations applicable to persons committed for violations of law of the receiving state not inconsistent with the sentence imposed.

**19. RECORDS AND REPORTS FROM RECEIVING STATE**

Within ninety (90) days following the receipt of an inmate from the sending state, the receiving state shall furnish an admission classification report outlining the inmate's background, medical, psychiatric, education and vocational findings and indicating the institutional program which has been recommended. Thereafter, at intervals of six months, the receiving state shall furnish the sending state a report giving a summary of the inmate's progress and adjustment since the last report, including a recommendation for retention or return. Said report shall include 1) work, schools and program participation, 2) Assessment of presence or lack of conduct evincing and intent to reoffend and 3) Assessment of the Inmates adherence to rules and policies of the receiving state. All such reports shall be forwarded to the sending state.

The superintendent or other administrative head of an institution in which inmates from sending states are confined shall keep all necessary and pertinent records concerning such inmates in a manner consistent with the keeping of records in the normal course of business of such institution. During the inmate's continuance in the institution, the sending state shall be entitled to receive, and upon request shall be furnished, with copies of any such record or records. Upon termination of confinement in the institution, the sending state shall receive the complete file of the inmate. But nothing herein contained shall be construed to prevent the receiving state or any institution thereof from keeping copies of any such record or records upon and after termination of confinement.

No records received from the sending state, whether maintained separately from, or commingled with, or incorporated into the records of the receiving state shall be released to, or made available for inspection or copying by any inmate from the receiving state or the representative of such inmate during confinement in the receiving state or anytime thereafter without the express written authorization of the sending state or court order from either state. In the event records of the sending state are demanded pursuant to legal proceedings, the receiving state shall notify the sending state immediately and shall cooperate in preserving the confidentiality and privileged status of such records.

**20. REMOVAL FROM INSTITUTION**

An inmate from the sending state legally confined in any institution of the receiving state shall not be removed by any person without an order from the sending state. This provision shall not apply to an emergency necessitating the immediate removal of the inmate for medical, dental, or psychiatric treatment or to a removal made necessary by fire, flood, earthquake or other catastrophe or condition presenting danger to the safety of the inmate. In case of any removal for such emergency cause, the receiving state shall inform the sending state of the whereabouts of the inmate or inmates so removed at the earliest practicable time, and shall exercise all reasonable care for the safe-keeping and custody of such inmate or inmates.

21. HEARINGS

The receiving state shall provide adequate facilities for any hearing by authorities of the sending state, to which an inmate may be entitled by the laws of the sending state. Upon the request of the sending state, the authorities of the receiving state will be authorized to and will conduct any such hearings, prepare and submit the record of said hearings, together with any recommendations of the hearing officials, to the officer or officers of the sending state before whom the hearing would have been held if it had taken place in the sending state. The sending state shall provide the receiving state with a copy of its rules and regulations relating to such hearings.

22. INTER-INSTITUTIONAL TRANSFERS

Notwithstanding any provision herein to the contrary, the receiving state may transfer an inmate to any institution under its control of the same security level or a higher security level whenever it deems such action appropriate. Notice of such a transfer shall immediately be sent to the sending state. An inmate may not be transferred to an institution with a lower security level without the express approval of the sending state.

23. ESCAPE

In case any such inmate shall escape from custody in the receiving state, that receiving state will use all reasonable means to recapture the inmate. The escape shall be reported immediately to the sending state. The receiving state shall have the primary responsibility for and authority to direct the pursuit and retaking of inmates within its own territory. Any costs in connection therewith shall be chargeable to and borne by the receiving state. The sending state shall have the responsibility for initiation of extradition or rendition proceedings in the event the escape is to a jurisdiction other than the sending or receiving state.

24. DEATH OF INMATE

In the event of the death of an inmate from a sending state, the medical examiner, coroner or other official having the duties of such an officer in the jurisdiction shall be notified. The sending state shall receive copies of any records made at or in connection with such notification.

When the medical examiner, coroner or other official having the duties of such officer determines that an autopsy is not necessary to determine the cause of death, the Superintendent or Department Director of the receiving or sending state may request an inquest. If an inquest is held and no autopsy ordered, or if no inquest is held, the Superintendent or Department Director of the receiving or sending state shall request permission from those persons authorized to have an autopsy performed outside the receiving or sending states' institutions at a facility appropriately equipped to provide the requested service. Neither the Department Director nor the Superintendent of the receiving or sending states can order an autopsy when the county coroner or medical examiner has determined that an autopsy is unnecessary to establish the cause of death and when the next of kin refuses to permit one.

The institution in the receiving state shall immediately notify the sending state of the death of an inmate, furnish information as requested, and follow the instructions of the sending state with regard to the disposition of the body. The body shall not be released except on order of the appropriate officials of the sending state. All expenses relative to any necessary preparation of the body and shipment or express charges shall be paid by the sending state. The sending and receiving states may arrange to have the receiving state take care of the burial and all matters related or incidental thereto and all such expenses shall be paid by the sending state. The provisions of this paragraph shall govern only the relations between or among the party states and shall not affect the liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

The sending state shall receive a certified copy of the death certificate for any of its inmates who have died while in the receiving state.

25. GRATUITIES AND EXPENSES ATTENDANT UPON RELEASE

The provision of clothing, gratuities and any other supplies upon release of an inmate shall be at the expense of the sending state and shall be in accordance with its laws.

26. RETAKE OF INMATES

The receiving state will deliver any of said inmates to the proper officials of the sending state upon demand made to the receiving state and presentation of official written authority to receive said inmate.

The sending state will retake any inmate, upon the request of the receiving state.

In case the commitment under which any of said inmates is terminated for any reason, the sending state agrees to accept delivery of the inmate at the institution of the receiving state, and at its expense return him to the jurisdiction of the sending state. However, by agreement among the sending and receiving states and the inmate, at the termination of his confinement by reason of discharge, conditional or otherwise, he may be released within the jurisdiction of the receiving state.

27. TRANSPORTATION

Any and all costs of transportation incurred prior to admission to an institution in the receiving state, and transportation at the time of, or as an incident to release or discharge, conditional or otherwise, shall be charged to the sending state.

28. RESPONSIBILITY FOR LEGAL PROCEEDING

The sending state shall undertake to defend any action or proceeding involving the legality of detention, sentences, transfer procedures and alleged prejudice due to incarceration in another state.

The receiving state shall undertake to defend against all actions or proceeding related to conditions of confinement or other cause of action which may accrue to the inmate based upon occurrences in or through the alleged fault of the receiving state.

The sending state and the receiving state each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

29. ACCESS TO COURTS

The sending state shall be responsible for providing sufficient legal research materials for the inmate to be capable of bringing a suit before the appropriate court challenging his or her conviction or sentence where the same are not available in the institution of the receiving state. Whereas the receiving state shall be responsible for providing sufficient legal research materials for the inmate to be capable of bringing suit before an appropriate court challenging his or her conditions of confinement.

30. WORK RELEASE, FURLOUGHS OR PRE-RELEASE PROGRAMS

Eligibility for furloughs, work release or other pre-release programs shall be determined in accordance with the applicable laws and regulations of the receiving state.

No inmate transferred by contracting states under the Interstate Corrections Compact may be placed on a work release program, granted a furlough, or be allowed to participate in pre-release programs by the receiving state without review by the sending state and approval of the program change.

If an inmate confined under the terms of this agreement is approved for participation in one or more of these programs, the terms of such approval shall limit the program to the geographical limits of the receiving state and shall

be subject to the relevant procedures of the receiving state subject to recommended limitation(s) by the sending state, which limitation(s) are not violative of those procedures in the receiving state.

31. EXPENSES

There will be no monetary reimbursement exchanged between the parties to this agreement. In all cases possible, the parties will exchange prisoners on a day for day basis. In the event that an equal exchange of inmates is not maintained, it is agreed that future credit days will be provided. Other expenses incurred will be calculated and reimbursed as otherwise provided in this agreement.

32. INTERNAL RELATIONS

Nothing in this contract shall be construed to affect the internal relationships between or among the party states and their subdivisions, officers, departments or agencies but each party state undertakes and acknowledges liability and responsibility for making each other party state whole in respect of any obligation imposed upon it by or pursuant to this contract.

33. ACCESS TO LEGAL MATERIALS

The sending state shall be responsible for furnishing the inmate access to the sending state law materials where the same are not available in the institution of the receiving state.

34. PUBLIC INFORMATION

The receiving state and the sending state may release information in accordance with their State's open records laws as well as their governing statutes, internal rules, policies and regulations.

35. THIRD-PARTY RIGHTS

The parties to this contract understand that this contract does not create or intend to confer any rights in or on persons or entities not a party to this contract.

36. AMENDMENT AND MODIFICATION

No alterations or variations to this contract shall be valid unless made in writing and signed by the parties. Amendments to this contract shall be accomplished through a formal document.

37. WAIVER

Either party may elect not to enforce its rights and remedies under this contract as to a breach by the other party of any term or condition of this contract. In any event, the failure by either party to enforce its rights and remedies under this contract shall not be construed as a waiver of any subsequent breach of the same or any other term or condition of this contract.

38. INTEGRATION AND MERGER

This contract, when executed, approved and delivered, shall constitute the final, complete and exclusive contract between the parties containing all the terms and conditions agreed on by the parties. All representations, understandings, promises and agreements pertaining to the subject matter of this contract made prior to or at the time this contract is executed are superseded by this contract unless specifically accepted by any other term or provision. There are no conditions precedent to the performance of this contract as expressly set forth herein.

IN WITNESS WHEREOF, the undersigned duly authorized officers have subscribed their names on behalf of the State of MONTANA and the State of North Dakota.

STATE OF MONTANA  
Department of Corrections

STATE OF NORTH DAKOTA –DOCR  
Department of Corrections & Rehabilitation

Signature: *Signature of Mike Batista*

Name (Print): Mike Batista

Title: Director Montana Dept. of Corrections

Date: 9-19-14

Signature: *Signature of Leann K. Bertsch*

Name: Leann K. Bertsch

Title: Director of Corrections

Date: 10-9-14