

1. **PARTIES**

The Montana Department of Corrections (**DEPARTMENT**) and Montana State University Billings (**CONTRACTOR**) enter into this Memorandum of Understanding (**14-MOU-MSUB**). The parties' names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Montana Correctional Enterprises
350 Conley Lake Road
Deer Lodge, MT 59722
(406) 846-1320

Montana State University Billings
1500 University Drive
Billings, MT 59101
(406) 657-2011

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS MEMORANDUM OF UNDERSTANDING AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. **DUTIES/RESPONSIBILITIES OF DEPARTMENT AND CONTRACTOR**

Training Provided to: Montana Correctional Enterprises (MCE) Division of the Montana Department of Corrections (MDOC)

Training Location: Montana Women's Prison Computer Lab
701 South 27th Street
Billings, Montana

Dates and Times: January 6, 2014 through May 30, 2014
4 nights a week - 7:00 pm to 9:00 pm

Project Description:

MSU Billings will provide up to 16 inmates at the Montana Women's Prison with the instruction and training necessary to be prepared for the A+ Certification test. This course work will teach entry-level skills in the essential IT domains, including computer repair, software & operating systems, information security and desktop PC troubleshooting. Chapter review and quizzes will be provided but there is no guarantee by MSU Billings that inmates will successfully pass the A+ Certification test.

Project Implementation and Completion dates:

A+ Certification training at the MWP will begin January 6, 2014 and be completed by May 30, 2014. If students still require A+ Certification Training after May 30, 2014 MSU Billings and MCE may agree in writing to extend the term of the contract up to September 30, 2014 with additional compensation to be paid to MSU Billings based on an hourly charges for services identified above.

Responsibility of Each Party:

Montana State University Billings:

- Provide two assistant instructors for up to 4 evenings each week (2 hours each evening). At least one assistant instructor will be available each evening. The assistant instructors will have successfully completed the A+ Certification training. The assistant instructors have committed their time to this contract until May 30, 2014. If one or both obtain employment prior to May 30, 2014 the lead instructor (MSU Billings faculty member) will work to complete additional class or testing requirements.

- Provide oversight of this training by the lead instructor (MSU Billings computer systems technology faculty member). The lead instructor will attend one evening (2 hours) of training each week to review progress, address problems, and set the study plan for the coming week.
- Provide MDOC IT (John Daugherty) and MCE Administrator (Gayle Lambert) with a list of required tools and equipment to be purchased prior to the training start date.
- Provide information on extra study or lab time needed by inmates participating in the training.
- Provide the name and version of the manuals that will be used in this training to be purchased and paid separately by MCE.
- Provide a testing site for those inmates that have completed the coursework for this training. Testing costs are an additional expense to be paid by MCE and not included in project costs identified in this MOU.
- Provide MSU Billings Certificates of Completion for inmates who have successfully completed the training.

MDOC -MWP:

- Provide a tour of the facility and class room to MSU Billings representatives.
- Provide orientation for instructors.
- Provide classroom for training.
- Provide security during each class and hands on lab time.
- Provide inventory storage and tracking of supplies and equipment provided for the training.
- Provide extra training hours (lab time) needed by inmates at the advice of the MSU Billings instructors.
- Provide a roster of class participants to MSU Billings and MCE.
- Provide a security mechanism for applicable inmates to test at the MSU Billings City College.

MDOC -MCE

- Complete policies for inmate computer access.
- SOAR instructor will provide MSU Billings a list of equipment items currently being used at the Montana State Prison for the same type of training.
- Provide computers for the training prior to 1/6/14 start date.
- Provide clear packing containers for the computers and associated equipment.
- In conjunction with MDOC MWP – complete the selection of up to 16 inmates to receive the training. This will be established within the criteria established in DOJ's Second Chance Act Grant.
- Pay separately the cost of all materials and supplies required for this training. This includes providing the training manuals for both the 801 and 802 classes.
- Pay separately A+ Certification testing costs.
- Track class participants from start to finish in accordance with DOJ's Second Chance Act Grant reporting requirements.
- SOAR instructor at MCE will observe MSU Billings class instruction to provide assistance as needed.

MDOC - IT

- Coordinate with MSU-B computer staff to upload software and/or hardware required for the training class.

3. COMPENSATION/BILLING/OUTCOMES

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

- A. DEPARTMENT shall pay CONTRACTOR **\$560.48 per week** not to exceed eleven thousand eight hundred and 00/100 (**\$11,800.00**) for 21 weeks for the services described herein.

Project costs are based on one (1) lead instructor for two (2) hours each week and two (2) assistant instructors for two (2) hours each night, four (4) nights a week for 21 weeks. DEPARTMENT will be charged for actual hours worked by the lead instructor and the two (2) assistant instructors, including start up activities and time and effort resulting from time spent at Montana Women's Prison in the case of a "lock down" related event.

Lead instructor costs are \$71.60 per hour and assistant instructors costs are \$26.08 per hour. Hourly charges for services include instructor pay, employer provided benefits, and administrative costs.

In the event the initial training period exceeds 21 weeks, the instructor rates listed above will apply, not to exceed fifteen thousand and 00/00 (**\$15,000.00**) for the entire course instruction.

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

4. TIME OF PERFORMANCE

This Memorandum of Understanding shall take effect on January 6, 2014 and shall terminate on May 31, 2014, unless terminated earlier in accordance with the terms of this Memorandum of Understanding. This Memorandum of Understanding may, upon mutual agreement and according to the terms of the existing Memorandum of Understanding, be extended, as needed, up to September 30, 2014.

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

5. LIAISONS AND NOTICE

- A. Andrew Olcott, Business Manager, Montana Correctional Enterprises, 350 Conley Lake Road, Deer Lodge, MT 59722, (406) 846-1320 ext.2324 or successor serves as DEPARTMENT liaison.

Joan Daly, Warden, Montana Women's Prison, 701 S. 27th, Billings, MT 59101, (406) 247-5112 or successor serves as DEPARTMENT's facility liaison.

- B. John Walsh, Manager, MSU Billings Extended Campus, 112 N. Broadway, Billings, MT 59101, (406) 247-3081 or successor serves as Contractor's liaison.
- C. All notices and invoices required in this Memorandum of Understanding shall be in writing, properly addressed to the liaison in (A) and (B) above, and mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

6. **AMENDMENTS**

All amendments to this Memorandum of Understanding shall be in writing and signed by the parties.

7. **TERMINATION AND DEFAULT**

- A. The DEPARTMENT may, by written notice to CONTRACTOR, terminate this Memorandum of Understanding in whole or in part at any time CONTRACTOR fails to perform as required in this Memorandum of Understanding.
- B. Either party may terminate this Memorandum of Understanding without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Memorandum of Understanding shall provide written notice to the other, which notice will establish a termination date not less than thirty (30) days from the date of such notice.

8. **INTEGRATION**

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

9. **SEVERABILITY**

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

10. **ACCESS AND RETENTION OF RECORDS**

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

11. **PUBLIC INFORMATION**

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade

secret” as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

12. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

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

13. COMPLIANCE WITH LAWS

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

14. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

15. HOLD HARMLESS AND INDEMNIFICATION

CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the DEPARTMENT, its elected and appointed officials, agents and employees from and against all legal, equitable or administrative claims, causes of action, damages, losses and expenses, of any kind or character, including but not limited to attorneys' fees and the costs of defense, arising in favor of CONTRACTOR'S employees or third parties on account of bodily injury, sickness, disease, death, personal injury, violation of an offender's constitutional or statutory rights, or to injury to or destruction of tangible property except for such claims, causes of action, damages, losses or expenses which are solely due to the fault or negligence of the party seeking indemnity.

16. OWNERSHIP AND PUBLICATION OF MATERIALS

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

Neither party will include the name of the other party or any of its employees in any advertising, sales promotion or other publicity matter without prior written approval.

17. **COMPLETED MEMORANDUM OF UNDERSTANDING**

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

SIGNATURE

DEPARTMENT

CONTRACTOR



Andrew Olcott, Business Manager
Montana Correctional Enterprises

Terri Iverson, Administrative Vice Chancellor
MSU Billings Extended Campus

12/19/2013
Date

12/20/13
Date

Approved for Legal Content by:



Legal Counsel
Department of Corrections

12-19-13
Date