Region VI UA Testing
(16-020-PPD)

THIS CONTRACT is entered into by and between the State of Montana, **Montana Department of Corrections** (Department), whose address and phone number are **5 S. Last Chance Gulch, Helena, MT 59601, (406) 444-3930** and **Roosevelt County**, (Contractor), whose address and phone number are 416 ½ 2nd Avenue South, Wolf Point, MT 59201 and (406)-653-6230.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The contract's initial term is upon contract execution through **September 30, 2016**, unless terminated earlier as provided in this contract. In no event is this contract binding on the Department unless the Department's authorized representative has signed it. The legal counsel signature approving legal content of the contract does not constitute an authorized signature.

1.2 Contract Renewal. The Department may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in one-year intervals, or any interval that is advantageous to the Department. This contract, including any renewals, may not exceed a total of seven (7) years.

2. COST ADJUSTMENTS

2.1 Cost Increase by Mutual Agreement. After the contract's initial term and if the Department agrees to a renewal, the parties may agree upon a cost increase. The Department is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

3. SERVICES AND/OR SUPPLIES

Contractor shall provide the Department the following:

A. Upon receipt of a written request from Region VI Probation and Parole (P&P) staff, CONTRACTOR agrees to conduct Urinalysis (UA's) testing to detect illegal drug use by DOC offenders and conduct Portable Breath Testing (PBT) and/or Intoxilyzer testing to detect alcohol use by DOC offenders. Contractor also agrees to conduct "check ins" wherein DOC offenders will present themselves to Contractor as directed by the Probation and Parole staff for the purpose of verifying their presence and/or providing information about their activities. Written requests will be initiated by DEPARTMENT using a signed, authorization form (copy attached). All UA testing kits will be provided to CONTRACTOR by DEPARTMENT.

   CONTRACTOR further agrees, upon receipt of a written request from DEPARTMENT staff, to conduct visits to DOC offender residences to confirm compliance with curfew requirements and/or to determine whether the offender is involved in activities that would be a violation of DOC offender's probation or parole and/or to investigate whether there is contraband in an offender's vehicle, residence, or another area under the offender's control.

4. WARRANTIES

4.1 Warranty of Services. Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. The Department's acceptance of services provided by Contractor shall not relieve Contractor from its obligations

under this warranty. In addition to its other remedies under this contract, at law, or in equity, the Department may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration of the services to be provided, the Department shall pay Contractor according to the following schedule:

A. Department shall pay Contractor **$20.00 per UA/PBT/Intoxilyzer/check-in/visit, not to exceed five thousand and 00/100 Dollars ($5,000.00)** per Fiscal Year for the services described herein.

B. This rate is inclusive of all travel and per diem. Department will not compensate Contractor for travel or travel time, lodging, meals, supplies, or any other expense incurred by Contractor while performing services identified within this Contract.

5.2 Payment Terms. Unless otherwise noted in the solicitation document, the Department has 30 days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate the Department's electronic funds transfer payments.

5.3 Reference to Contract. The contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the Department is not obligated to pay the invoice.

6. AGENCY ASSISTANCE

To the extent possible, Contractor shall use its' own equipment in providing the goods/services set forth in Section 3. However, the parties recognize that services provided to Department may occur within the confines of a secure correctional facility necessitating the use of Department facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and phone service (e.g., Montana State Prison does not allow cellular or digital phones within the facility).

7. ACCESS AND RETENTION OF RECORDS

7.1 Access to Records. Contractor shall provide the Department, Legislative Auditor, or their authorized agent's access to any records necessary to determine contract compliance. The Department may terminate this contract under section 15, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

7.2 Retention Period. Contractor shall create and retain all records supporting the services rendered for a period of eight years after either the completion date of this contract or termination of the contract.

8. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this contract without the Department's prior written consent. (18-4-141, MCA) Contractor is responsible to the Department 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 Contractor. No contractual relationships exist between any subcontractor and the Department under this contract.

9. HOLD HARMLESS/INDEMNIFICATION

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

10. REQUIRED INSURANCE

County shall procure and maintain, in full force and effect during the term of this agreement, insurance issued by a reliable company or companies with minimum personal injury limits of $750,000 per person and $1,500,000 per occurrence. County shall provide an officially executed copy of such insurance policy to State for review. Said insurance shall be in a form suitable to the State.

11. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the Department 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 Contractor nor its employees are Department employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the Department's Contracts Management Bureau, P.O. Box 201301, Helena, MT 59620.

12. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, 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 Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this 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 the persons performing this contract.

13. DISABILITY ACCOMMODATIONS

The Department 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.

14. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such

businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at http://sos.mt.gov.

15. CONTRACT TERMINATION

15.1 Termination for Cause with Notice to Cure Requirement. The Department may terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

15.2 Termination for Cause with Notice to Cure Requirement. Contractor may terminate this contract for the Department's failure to perform any of its duties under this contract after giving the Department written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30 days**. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

15.3 Reduction of Funding. The Department must by law terminate this contract if funds are not appropriated or otherwise made available to support the Department's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the Department budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the Department shall terminate this contract as required by law. The Department shall provide Contractor the date the Department's termination shall take effect. The Department shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the Department shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the Department's termination takes effect. This is Contractor's sole remedy. The Department shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

16. EVENT OF BREACH – REMEDIES

16.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

- products or services furnished fail to conform to any requirement;
- failure to submit any report required by this contract;
- failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior Department approval; or
- voluntary or involuntary bankruptcy or receivership.

16.2 Event of Breach by Department. The Department's failure to perform any material terms or conditions of this contract constitutes an event of breach.

16.3 Actions in Event of Breach.

Upon Contractor's material breach, the Department may:

- terminate this contract under Section 15.1 and pursue any of its remedies under this contract, at law, or in equity; or
- treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon the Department's material breach, Contractor may:

- terminate this contract under Section 15.2 and pursue any of its remedies under this contract, at law, or in equity; or
- treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

17. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

18. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

19. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the Department's Contracts Management Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

20. LIAISONS AND SERVICE OF NOTICES

20.1 Contract Liaisons. All project management and coordination on the Department's behalf must be through a single point of contact designated as the Department's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the Department's liaison and Contractor's liaison.

Emery Brelje, Regional Administrator is the Department's liaison.
312 1st Aly North
Glasgow, MT 59230
Telephone: (406)-228-4871
E-mail: ebrelje@mt.gov

Jason Fredericks, County Sheriff is Contractor's liaison.
416 ½ 2nd Avenue South
Wolf Point, MT 59201
Telephone: (406)-653-6230

20.2 Notifications. The Department's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

21. MEETINGS

21.1 Technical or Contractual Problems. Contractor shall meet with the Department's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the Department in the performance of their respective obligations, at no additional cost to the Department. The Department may request the meetings as problems arise and will be coordinated by the Department. The Department shall provide Contractor a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

21.2 Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the Department, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

21.3 Department's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the Department's failure or delay in discharging any Department obligation, the Department shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the Department agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the Department does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

22. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the Department or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The Department shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If the Department terminates a project or this contract for cause, then the Department may offset the cost of paying Contractor for the

additional resources Contractor utilized in providing transition assistance with any damages the Department may have sustained as a result of Contractor's breach.

23. CHOICE OF LAW AND VENUE

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or 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.

24. TAX EXEMPTION

The Department of Montana is exempt from Federal Excise Taxes (#81-0302402).

25. AUTHORITY

This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

26. SEVERABILITY CLAUSE

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

27. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

27.1 Contract. This contract consists of 8 numbered pages and any Attachments as required. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

27.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

28. WAIVER

The Department's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

29. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

DEPARTMENT OF MONTANA
Montana Department of Corrections
5 S. Last Chance Gulch
Helena, MT 59601

Roosevelt County
416 ½ Avenue South
Wolf Point, MT 59201

Kevin Olson, Administrator
Probation and Parole Division

DATE: 10/5/15

Jason Frederick, Sheriff
Roosevelt County

DATE: 10-19-15

Roosevelt County Commissioner

10-19-15
Date

Roosevelt County Commissioner

10-19-15
Date

Roosevelt County Commissioner

Date

Roosevelt County Clerk & Recorder

10-19-15
Date

Approved for Legal Content by:

Legal Counsel
Department of Corrections

9-30-15
Date