

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



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TO: Potential Proposers

FROM: Montana Department of Public Health and Human Services
Disability Services Division
Developmental Disabilities Program (DDP)

SUBJECT: Request for Proposals for Services

DATE: July 10, 2009

The State Of Montana, Department of Public Health and Human Services (Department), is seeking proposals to provide in communities in DDP Region 3 in Montana the following services for persons with developmental disabilities.

- 1) Part C early intervention services for children birth to 36 months (Part C) ; and
- 2) General fund family education and support (FES).

Each of these services is to be provided through contract with the Department's Developmental Disabilities Program (DDP). The contracts are to be awarded on a competitive basis through a Request for Proposals process as required by 45 CFR Part 92 Subsection 92.36© & (d), 45 CFR Part 74 Subsections 74.43 and 74.44 and the Department of Public Health and Human Services policy published June 1, 1998.

The term for delivery of the contracted services will be from October 1, 2009 to June 30, 2010. Three one-year extensions of the contract may be available pending satisfactory performance during the initial term. The Request for Proposals (RFP) is attached and contains the information necessary for participating in the competitive process for selection of a contractor.

In order to receive the American Recovery and Reinvestment Act (ARRA) funding for FY10 specific to Part C services, a separate contract must be agreed to by the contractor. The DPHHS format of this contract is included in this RFP document as Attachment E.

The Department has previously issued a notice requesting any party interested in providing one or more of these services notify the DDP in the manner requested by 5:00 pm on May 15, 2009 of the intent to submit a proposal or proposals in response to this request for proposals. Three letters of intent were received in response to the notice. Only those proposers who submitted a letter of intent may submit a proposal for services.

REQUEST FOR PROPOSALS

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

DISABILITY SERVICES DIVISION

DEVELOPMENTAL DISABILITIES PROGRAM

TO PROVIDE

PART C EARLY INTERVENTION SERVICES (PART C)

AND

GENERAL FUND FAMILY EDUCATION AND SUPPORT (FES)

FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

AND THEIR FAMILIES LIVING IN

COMMUNITIES IN DDP REGION 3 OF MONTANA

July 2009

REQUEST FOR PROPOSALS

TABLE OF CONTENTS

Section	Description	Page
I.	GOALS OF THIS REQUEST FOR PROPOSALS	6
II.	RFP PROCESS GENERAL INFORMATION FOR PROPOSERS.....	6
A.	Compliance with Terms.....	6
B.	RFP Schedule.....	6
C.	Principal State Personnel and Addresses.....	7
D.	Notice of Intent to Propose.....	8
E.	Submission of Proposals and Rejection of Late Proposals.....	8
F.	Withdrawal and Resubmission.....	9
G.	Compliance with the Terms of This Request for Proposals.....	9
H.	Proposal Format.....	9
I.	Rejection of a Submitted Proposal as Nonresponsive.....	9
J.	Proposer’s Representations and Commitments.....	10
K.	Notice of Ambiguities, Inconsistencies or Errors.....	10
L.	Interpretations of, Corrections of, or Changes to This RFP.....	11
M.	Proposers’ Conference.....	11
N.	Presentation.....	11
O.	Availability of Proposals.....	11
P.	Questions and Answers and Presentations.....	11
Q.	Public Access and Confidential Information.....	12
R.	Costs of Developing and Presenting Proposal.....	13
S.	Rights Reserved to the Department.....	13
III.	SYSTEM OVERVIEW.....	14
A.	SERVICE OVERVIEW.....	14
B.	Regulations.....	16
C.	Philosophy.....	16
IV.	MINIMUM PROPOSAL REQUIREMENTS.....	17
A.	Introduction.....	17
B.	Administrative Description (all proposals).....	17
C.	Community Integration And Support (all proposals).....	18
D.	Part C Family Education And Support Services (PART C PROPOSALS).....	18
F.	Financial Information (include in all proposals).....	21
G.	Local Government Participation (include in all proposals).....	22
V.	INFORMATION ON CONTRACTUAL TERMS.....	22
A.	Contract Provisions.....	22
B.	Consideration and Payments.....	22

C.	Incorporations in Contract	23
D.	Subcontracting	23
E.	Indemnification	23
F.	Insurance Requirements	23
G.	Additional Contractual Requirements	24
H.	Availability of Funds	24
I.	Assignment, Transfer, and Subcontracting	24
J.	Contract Amendments	24
K.	Contract Extension	24
L.	Montana Law	25
M.	Venue	25
N.	Costs of Litigation	25
VI.	CONTENTS AND FORMAT OF PROPOSAL	25
A.	Contents	25
B.	Summary	26
C.	Description Of Service Delivery	26
D.	Administration	26
E.	Experience	26
F.	Resources/Supports	26
G.	Financial Management and Information	27
H.	Assurances	27
I.	Attachments	28
J.	Proposal Index	28
VII.	SELECTION PROCESS	28
A.	General Process	28
VIII.	EVALUATION PROCESS	29
A.	Evaluation Criteria	29
B.	Selection Criteria	29
C.	Information on Past Performances and Other Matters	30
D.	Proposal Evaluation Committee	30
E.	Decision	31
F.	Notice Letters	32
IX.	ENTERING INTO A CONTRACT	33
A.	Awarding of Contract	33
B.	Process	33
C.	Submission of Necessary Certificates and Forms	33
X.	ATTACHMENTS A THROUGH E	34
	ATTACHMENTS	35
	ATTACHMENT A Contract	36

ATTACHMENT B Numbers, Services, and Locations	101
ATTACHMENT C Federal Assurances.....	103
ATTACHMENT D Contracting Guidelines	107
ATTACHMENT E DPHHS ARRA Contract Format.....	118
ATTACHMENT F RFP Legal Notice for Newspapers	135

I. GOALS OF THIS REQUEST FOR PROPOSALS

The services to be contracted for include

- Part C early intervention services (Part C)
- General fund family education and support (FES)

A detailed description of the services to be provided appears in Section II. These services, the number of persons currently in these services and the location of service provision are detailed in Section X Attachment B of this RFP.

Funds available are those appropriated by the Montana legislature. These services are funded from the State General Fund, and Part C Early Childhood Education funds. The mix of funds is dependent upon the services being provided and the eligibility of the persons being served. The contractor is expected to meet all requirements of any funding source.

Any entity which has or can demonstrate the ability to deliver one or more of the fiscal and requested services and meet system requirements may submit a proposal or proposals to provide one or more of the services as specified in this RFP.

The term of the contracts is to be for a period of one year and will be in effect from October 1, 2009 through June 30, 2010. The contract may be extended for three (3) one (1) year periods if the parties agree to the extension and any necessary changes by prior to the end of the contracting period.

II. RFP PROCESS GENERAL INFORMATION FOR PROPOSERS

A. Compliance with Terms

Compliance with the terms of the RFP is necessary for the submission of a responsive proposal and for the performance of any of the proposed contracts.

The RFP contains the instructions governing the proposals to be submitted, the descriptions of the tasks to be performed, and the requirements necessary to undertake performance. The Department, acting through an evaluation committee and other personnel, will determine a proposer's compliance with the requirements of the RFP.

B. RFP Schedule

THE SPECIFIC DATES BY WHICH CERTAIN ACTIVITIES OR UPON WHICH CERTAIN EVENTS ARE TO OCCUR MUST BE SPECIFIED IN THIS PROVISION.

The following is the 2009 schedule of events for implementation of this RFP.

- 1) notice of intent to propose due from potential proposers - received May 15, 2009;
- 2) issue RFP - July 10;
- 3) written questions due - July 24 by 5:00 pm;
- 4) decision regarding proposer's conference - July 28 (need must be expressed to procurement official by July 27 at 5:00 pm);
- 5) proposer's conference (if needed) - July 30;
- 6) written answers distributed - July 31;
- 7) proposals due - August 10 at 5:00pm;
- 8) proposer's presentations - August 19, and
- 9) intended contract award - October 1, 2009.

The department within its discretion may change any or all of the dates specified in this provision.

C. Principal State Personnel and Addresses

The procurement official responsible for the conduct of this RFP process is:

Jackie Emerson
Developmental Disabilities Program
Disability Services Division
Department of Public Health and Human Services
111 Sanders, Room 305
P.O. Box 4210
Helena, MT 59604-4210
Telephone: (406) 444-2995
Fax: (406) 444-0230;
E-mail: jemerson@mt.gov

Any and all communications of any proposer with the Department relating to this RFP must be directed to the procurement official.

The program staff that is the liaison for the purpose of administering the contract to be entered into is:

Stephanie Kindt
Developmental Disabilities Program
Disability Services Division
Department of Public Health and Human Services
111 Sanders, Room 305
P.O. Box 4210
Helena, MT 59604-4210
Telephone: (406) 444-2995
Fax: (406) 444-0230;

E-mail: skindt@mt.gov

D. Notice of Intent to Propose

The Department has initiated this request for proposals process through a published and distributed notice requesting that entities that intend to submit a proposal or proposals in response to this RFP give notice to the Department of that intent by 5:00 pm on May 15, 2009.

That notice requires a potential proposer to submit a notice to the Department of intent to propose. The notice must provide the proposer's full name, business purpose, and address, expressly state the intention to submit a proposal, and denote which services for which a proposal or proposals will be submitted. The notice must clearly identify this RFP. Failure to submit a notice of intent to propose disqualifies a potential proposer from submitting any proposal.

E. Submission of Proposals and Rejection of Late Proposals

A proposer must submit its proposal as directed in this RFP.

A proposer must submit separate proposals for each type of service that it may desire to deliver.

A proposal must be received in its entirety no later than **August 10 by 5:00 pm.**

A proposal must be directed and addressed to the procurement official specified in Subsection C of this Section.

A proposal must be submitted by mail or personal delivery.. Submission by fax or e-mail is not permitted.

A proposal must include a statement identifying this RFP request with specificity and any subsequent addenda to this RFP.

6 copies of a proposal must be submitted.

The proposer is solely responsible for the timely delivery of the proposer's proposal. The Department does not waive delivery requirements due to failings in the mode of delivery selected by the proposer.

A proposal received after the date and time specified for submission of proposals is not accepted for consideration regardless of cause. A submitted proposal for which not all pages or attached materials are present at the date and time specified for submission of proposals is

not accepted for consideration regardless of cause.

A late proposal is destroyed unless the proposer requests return of the proposal and agrees to pay the costs involved.

F. Withdrawal and Resubmission

A proposer may withdraw a proposal at anytime prior to the date and time the Department designates for the submittal of proposals. A proposal withdrawn prior to the date and time may be resubmitted in a modified form if done so within the time period allowed for submittal of proposals.

G. Compliance with the Terms of This Request for Proposals

This RFP contains the instructions governing the submission of a proposal, the descriptions of the tasks to be performed, and the requirements necessary to undertake performance. The Department, acting through the designated procurement official, an evaluation committee, a division administrator and other personnel, determines a proposer's compliance with the requirements of this RFP.

The Department, in its discretion, may request:

- 1) further information, clarification or correction of obvious mistakes from any and all proposers at any stage in the RFP process,
- 2) a proposer to correct obvious mistakes or provide needed clarifications in a proposal either before or after the date for submittal.

A proposer may not unilaterally make changes in a submitted proposal after the date for submittal has passed except that the Department may allow, in its discretion, for changes to correct obvious, inconsequential mistakes or inconsistencies.

H. Proposal Format

A proposal must be written in a legible type, be organized by sections in accordance with this RFP, have numbered pages, and have a table of contents.

I. Rejection of a Submitted Proposal as Nonresponsive

The Department may reject any proposal that it determines fails to meet one or more of the requirements of the RFP, that is not in the best interests of the Department, or that is in any manner incomplete or irregular.

A proposal must meet basic requirements for delivery of services in order to be considered in the selection process.

A proposal may be found nonresponsive at any time during the selection process. Once a

proposal is determined to be nonresponsive no further consideration is given in the selection process to that proposal.

The Department will reject as nonresponsive any proposal when the cost is determined by the Department to be unrealistically low.

A proposal also may be found nonresponsive if it fails to meet the basic criteria for delivery of services. The basic criteria for delivery of services may include but is not limited to: performance of certain services by certain types of professionals or by persons with specified experience; possession of all requisite corporate and individual licensure, certification and other legally necessary requirements and approvals; requisite staffing and facility development and location for delivery to specified consumer populations or geographical areas; and a maximum limit to the costs of performance.

The Department, in evaluating the submitted proposals, first determines whether a proposal is responsive. A proposal may be rejected as nonresponsive and may receive no further consideration, if it: 1) is not presented substantively in the required format, 2) does not contain all the requested information, 3) contains clearly erroneous information, or 4) is deficient in any respect.

J. Proposer's Representations and Commitments

A proposer by submitting a proposal for consideration represents that this RFP has been read and is fully understood and that the submitted proposal is based upon the Proposer's understanding of the specifications, tasks and requirements described in this RFP.

This request for proposals along with the proposer's response to the RFP is to be incorporated into and made a part of the contract. Consequently, the provisions of this RFP and the Contractor's proposal are to be binding upon the Contractor.

The proposer by submitting a proposal agrees that, if it receives and accepts an offer to contract from the Department, it is to be bound by the terms of this RFP, the proposer's response to the RFP and the Department's contract along with any attachments to those documents.

A proposer further represents that it has the ability to deliver the services specified, to perform the tasks and responsibilities in accordance with the time lines presented in this RFP, and to deliver the services at no more than the costs specified in the Department's contract and the proposer's proposal.

K. Notice of Ambiguities, Inconsistencies or Errors

Notice of any possible ambiguity, inconsistency or error in the RFP discovered by a proposer must be provided in writing to the Department's procurement official for this RFP prior to or

at the time of the final date for the submittal of written questions.

L. Interpretations of, Corrections of, or Changes to This RFP

Any interpretation, correction of or change to this RFP made by the Department is to be made by written addendum. Any information provided or received in any other manner that purports to interpret, correct or change this RFP is not binding and may not be relied upon.

Any information received by a proposer that does not originate with the procurement official, is not in writing or is not shared with all proposers is not official, is not part of this RFP and may not be relied upon.

M. Proposers' Conference

A proposers' conference may be held at the discretion of the Department to provide parties interested in submitting proposals the opportunity to seek clarifications from the Department about the process and services.

A proposers' conference will be held if warranted. The decision to hold a conference will be made if more than one proposer indicates a need for such before the date specified in Subsection B of this Section. If the need is indicated, the conference will be held on the date specified in Subsection B of this Section at a time and place to be announced.

Any party interested in potentially providing the services to be contracted for may attend the proposers' conference.

N. Presentation

Presentations may be required at a time and place designated by the Department.

O. Availability of Proposals

All proposals will be available for inspection during regular business hours. Please contact the Department's officer responsible for the conduct of this request for proposal process for further details.

P. Questions and Answers and Presentations

Proposers may submit written questions concerning the RFP process and the services to be provided. Written questions must be submitted by the due date for submittal of written questions. Questions submitted to the Department are to be in writing and directed and addressed to the procurement official as specified in Section C. The Department responds in writing to written questions and to questions received at the proposer's conference, if held. The questions and answers are distributed to those entities that have requested this RFP by the date specified in Subsection B of this Section.

Oral questions, other than those presented at the proposer's conference, if held, are not accepted.

Q. Public Access and Confidential Information

1. Public Access

A proposal, inclusive of the information within and attached to the proposal, is submitted for the purpose of evaluation and, if the proposer is successful, is then incorporated into the contract as one of the principal features defining and governing performance. Upon entry into a contractual relationship, the Department has the right to use or disclose the proposal and related information to any extent required by law.

All proposals and other information received in response to this RFP are available to the public, except for trade secrets as defined by the Uniform Trade Secrets Act, Title 30, Chapter 14, Part 4, MCA, corporate financial information, matters of personal privacy, and other confidential information as recognized in Montana law.

All proposals are available for inspection during regular business hours. Please contact the procurement official for further details.

The proposer's conference, if held, and the meeting of the evaluation committee are open to the public for observation.

2. Submission of Confidential Information

Proposers are discouraged from submitting information for which there is a claim of confidentiality unless it is considered essential for proper evaluation of the application. The Department may not be able to enter into a contract with a proposer, if the proposer has claimed that proposal information is confidential, since the information is likely to be considered public information under Montana law.

The Department rejects as nonresponsive any proposal for which there is a claim of confidentiality for the proposed costs of service delivery or other information that is commonly recognized by the law to not be confidential in nature or, if recognized as confidential, is commonly available to the public based on the public interest in the right to know.

Upon receipt, proposal information is disclosed only to persons participating in the evaluation or contracting process until the proposal has been reviewed and all marked confidential information has been removed. After this review, all remaining proposal materials are open for public inspection and copying. Material marked as confidential may be released at a later date if it is determined that the material is not confidential or that, even if the material is

confidential, the public interest in the right to know outweighs the confidentiality interest. In addition, the Department may release any information for which there is a claim of confidentiality, if the information is available to the public without restriction from another source or has been released to the public otherwise by the proposer.

In order for a proposer to claim that information presented in the proposal is confidential, the following conditions must be met:

- 1) Information for which confidentiality is claimed must be clearly marked and separated from the rest of the proposal.
- 2) An affidavit from the proposer's legal counsel attesting to and explaining the claim of privacy for the information must be attached to the proposal.
- 3) A proposer making any claim for protection of information in a proposal as confidential must indemnify the Department in writing for the retention and costs of legal counsel and all other legal costs and fees necessary for and related to any defense of the claim of privacy.

Documents not meeting all of the requirements for protection from release based on confidentiality are available for public inspection, including copyrighted materials.

R. Costs of Developing and Presenting Proposal

The cost of developing and presenting a response to this RFP is entirely the responsibility of the proposer and is not reimbursable by the Department.

S. Rights Reserved to the Department

While the Department intends to award a contract, issuance of this RFP and the conduct of the selection process is a discretionary act and does not commit the Department to the award of a contract.

The Department reserves the right to:

- 1) cancel or terminate this RFP process at any time;
- 2) communicate or negotiate at any time with one or more proposers;
- 3) request one or more proposers to clarify their proposal or to supply any additional material deemed necessary to assist in consideration of the proposal;
- 4) reject any or all proposals received; and
- 5) waive any procedural or substantive requirement of this RFP which it determines does not substantively impact in a negative way this RFP process or any or all of the proposers.

The right of the Department to waive a requirement of this RFP does not afford a proposer the right to unilaterally fail to comply with a requirement or to obtain a waiver of a requirement.

III. SYSTEM OVERVIEW

State of Montana's Developmental Disabilities Service System

The State of Montana purchases a variety of services for its citizens with developmental disabilities and their families in communities throughout Montana.

A belief in human dignity, that each person is unique and capable of development, is a cornerstone for the Montana Developmental Disabilities Program. Montana's direction for providing services to persons with developmental disabilities calls for more normal and less institutional program settings, integration with non-handicapped persons, and individual participation in decisions concerning their lives.

A. SERVICE OVERVIEW

This service overview section provides a general description of the DDP services to be purchased.

The specific information regarding the development, operation and funding of the services is intended to assist proposers in preparing responsive proposals. Requirements for the provision of services are also found in the master contract, related contract appendices and the applicable laws, rules, regulations, policies and the contracting guidelines.

CHILD AND FAMILY SERVICES: SERVICE LOCATIONS ARE DEFINED IN ATTACHMENT B OF THIS DOCUMENT. Families who have a child with a disability cope with many challenges in order to keep the family together and raise their child at home. In addition, the early part of a child's life is the most critical stage in terms of development. Montana offers a variety of services to parents/guardians of children with developmental disabilities. These services enable the family to stay together and assist the child in reaching his or her full potential. Currently these services are provided by agencies with headquarters located in Glasgow, Miles City, Billings, Great Falls, Helena and Missoula. Each of these programs provides outreach services in one of five multi-county regions. These services to families are financed through different state and federal funding sources. Services vary in intensity and in the population eligible to be served. The services to be provided are as described in ARM 37.34.604. Services to families include:

PART C FAMILY EDUCATION AND SUPPORT (PART C): Part C Family Education and Support is a program of early intervention services for children with developmental delays and/or disabilities ages 0-36 months. Families with children who meet the eligibility criteria established by the state are entitled to a range of services defined under federal law. Services are delivered as part of an Individualized Family Service Plan (IFSP) developed in cooperation with the family. Services include:

- 1) Family Training, Counseling and Home Visits;
- 2) Special Instruction;
- 3) Speech, Occupational, and Physical Therapy;
- 4) Audiology;
- 5) Psychological Services;
- 6) Family Support Coordination;
- 7) Medical Services (limited);
- 8) Early Identification, Screening, and Assessment Services;
- 9) Health Services (limited);
- 10) Social Work Services;
- 11) Vision Services;
- 12) Assistive Technology; and
- 13) Transportation and related costs.

GENERAL FUND FAMILY EDUCATION AND SUPPORT (FES): State-funded family education and support services provide support coordination, training, support and assistance to families with children up to 21 years of age. Families with adults over 21 years of age may receive the limited and follow-along services described below. Children under the age of 36 months who do not qualify for Part C Family Education and Support Services may be served with General Fund Family Education and Support Services. These services enable the child or adult to remain in the family home and help the family to meet the challenges associated with having a member with a disability. Services are delivered as part of an Individualized Family Service Plan (IFSP) or Annual Service Agreement developed in cooperation with the family. Three levels of service are available depending on the needs of the family and the available resources:

1) Full Service: Services, supports and resources are provided in accordance with an IFSP through service coordination provided at a minimum of one staff contact per month. Though not an entitlement, as funding allows, this service does provide access to resource and support funds for the following services:

- a) Family Support Coordination;
- b) Assistive Technology;
- c) Audiology;
- d) Family Education, Counseling and Home Visits;
- e) Nursing Services (limited);
- f) Health Related Services (limited);
- g) Medical Services (limited);
- h) Nutrition Services;
- i) Occupational, Physical and Speech Therapy;
- j) Psychological Services;
- k) Vision Services;
- l) Social Work Services;
- m) Special Instruction; and,
- n) Transportation and related costs.

- 2) Limited Service: Services, supports, and resources are furnished to the family in accordance with an annual agreement which provides one to four staff contacts per year and limited access to monetary resources for resource and support wrap around services.
- 3) Follow-Along Service: Support coordination resources are developed and provided in accordance with an annual agreement for one to four staff contacts per year. No monetary resources are available for wrap around services under the follow-along service option.

B. Regulations

The programmatic rules and policies that govern the delivery of developmental disability community services are available upon request.

C. Philosophy

Montana's community services for persons with developmental disabilities are guided by a set of fundamental principles and basic assumptions. Among these assumptions are:

- 1) All persons are capable of learning something.
- 2) Learning is primarily a function of the characteristics of a person's living and working environment.
- 3) The best way to change inappropriate behaviors is to teach and reinforce appropriate behaviors. Behavioral intervention strategies must recognize the dignity and rights of the person and use the least intrusive and least restrictive means possible to change behavior.
- 4) Persons exposed to normal patterns of daily life at home, at work, and in the community, are more likely to develop culturally appropriate, acceptable and valued behaviors.
- 5) Persons should be integrated in, rather than isolated from, the communities in which they reside.
- 6) Training is one aspect of service delivery. Other aspects include a safe homelike environment, supervision when it is required, recreation and leisure activities, good food, clean well-fitting and appropriate clothing, the dignity of risk, freedom to make choices, community integration, social support, and friends.

Good services are characterized by a balance among all these elements, allowing each person the opportunity to exercise his or her fundamental rights.

The principles above **should** be considered when developing a service proposal, and **must**

be adhered to in the provision of services

IV. MINIMUM PROPOSAL REQUIREMENTS

A. Introduction

This section is a key component of this RFP. Final selection of the successful proposer will be based to a large degree on an evaluation of the material called for in this Section. **All proposals must provide at a minimum the information called for in this section. The information that must be included varies depending on the service(s) that the proposer is seeking to provide. The headings for each of the components in this section indicate in parenthesis when the information must be included in any given proposal.** In addition to the specific information requested in this section and discussed above, proposers should address how their proposal will meet service provision requirements outlined in the master contract, contract appendices and administrative rules. Proposers may and should provide other material and information to strengthen the case for final selection of their proposal.

B. Administrative Description (all proposals)

A sound administrative and delivery capacity is essential to the success of service delivery. Describe in detail the administrative structure and capacity to deliver of the proposer. Include the following information:

- 1) the name(s) of the party or corporation submitting the proposal; physical address, telephone number, fax number and e-mail address of the applicant or the organization's corporate office and the name of the director or chief executive;
- 2) employer identification number (EIN);
- 3) a list of the management personnel for the corporation providing services including a description of any experiences or skills for overseeing the management of the organization and the delivery of services;
- 4) proof of incorporation or certified statement of government status;
- 5) verification of workers' compensation coverage for any paid program employee;
- 6) a summary of the corporations' history, with emphasis on experience in delivering developmental disabilities services in general, and the service to be provided in particular. To assist in reference checks regarding past history of organization, include names, addresses and phone numbers of persons or organizations;
- 7) an organization chart and narrative describing how the services will be organized and supervised, including a description of the role, function and span of control of

administrative components, and the location of each full time equivalent employee in the organization's structure;

- 8) a delineation of the services that will be provided directly by the primary corporations' employees and those that will be provided by other service providers;
- 9) a copy of the agreements made with other providers, ensuring the ready availability of the service at the required levels;
- 10) evidence that the corporation has strong ties to the communities in which services will be provided;
- 11) the corporations' mission statements;
- 12) a statement of the principles that guide the organizations' delivery of services;

C. Community Integration And Support (all proposals)

Describe in detail the involvement in, and commitment to, the organization by local community leaders. Proposers that are for-profit organizations, other than contractors of transportation only, must have a local community advisory board. Include the following information:

- 1) evidence that local government, business, professional and education leaders understand and actively support the services;
- 2) if constructing or obtaining a new service site, an awareness and education plan that outlines the steps to be taken to help further neighborhood acceptance of the services;
- 3) an itemized list of any assets, services, or funds to be contributed by the local community to supplement the cost of operation; and
- 4) evidence of the level of consumer satisfaction with the performance of your organization, particularly in the delivery of the services you are proposing to provide.

D. Part C Family Education And Support Services (PART C PROPOSALS)

PART C SERVICE AREAS in this RFP are as follows:

Region III, section 1- Judith Basin, Fergus, Petroleum, Musselshell, Wheatland, Golden Valley, Yellowstone (*outside* of Billings City Limit), Stillwater, Carbon, and Big Horn counties.

Region III, section 2 - Billings City Limit

Describe in detail the services that will be provided. Include the following information:

- 1) the proposed service delivery system;
- 2) the staff qualifications which ensure that the State's personnel standards for Family Education and Support Services (Family Support Specialist Certification) will be met;
- 3) the agency's consumer satisfaction evaluation process;
- 4) the agency's public awareness program;
- 5) the agency's system of child find;
- 6) the agency's child and family evaluation and assessment process;
- 7) how the agency ensures that service delivery is family-centered, including a description of the areas in which families are the primary decision makers;
- 8) what information IFSPs will include;
- 9) how all resources which exist in communities and other service systems will be utilized to meet identified needs;
- 10) how required procedural safeguards will be followed, and how families will be informed of those safeguards. Procedural safeguards are as follows:
 - a. parental opportunity to examine, inspect or review records relating to evaluation, assessment, eligibility determination, IFSP development, implementation, complaints dealing with the child, and any other areas involving records about the child or family;
 - b. parental prior notice for matters of eligibility, evaluation, placement, or exchange of personally identifiable confidential information;
 - c. parental prior consent for initial evaluation, initiating the provision of services, and prior to the exchange of personally identifiable confidential information;
 - d. parental right to decline all or some services without losing services they want;
 - e. child right to surrogate parent appointment when appropriate;
 - f. the right to confidentiality of personally identifiable information at the points of collection, storage, disclosure and destruction; and
 - g. parental right to appeal contract decisions regarding services.
- 11) interagency service agreements which support coordination of services with schools, public health services, Head Start, and other appropriate agencies;
- 12) the agency's system for tracking data on all children and families served, including information that assures the system has the capacity to respond in a timely fashion to data requests from the Division;
- 13) how the agency ensures that all facilities used in the provision of services, other than the family's home, meet all applicable licensure requirement and health and safety codes; and
- 14) how the agency ensures that transportation services provided are safe and meet applicable standards.
- 15) how the service delivery system ensures that timetables for Part C services will be met- 2 day referral response, that services are delivered within 30 days of the parent(s) signing the IFSP and/or Part C service(s) scheduled to be provided within the first 30 days, 45 day IFSPs, etc.;

- 16) the process the service delivery system will use to ensure that Part C funds are expended only under “payor of last resort” circumstances; and
- 17) a clear demonstration that your agency understands both the specific requirements and the intent of the Part C federal legislation.

E. FES - Family Education and Support Services (for Part C / FES Proposals)

A provider must serve the entire service area, be a qualified Part C provider, and provide Part C services along with FES services.

FES SERVICE AREAS in this RFP are as follows:

Region III- Judith Basin, Fergus, Petroleum, Musselshell, Wheatland, Golden Valley, Yellowstone (*including* Billings city limits), Stillwater, Carbon, and Big Horn counties.

Describe in detail the services that will be provided. Include the following information:

- 1) the proposed service delivery system;
- 2) the staff qualifications which ensure that the state’s personnel standards for Family Education and Support Services (Family Support Specialist Certification) will be met;
- 3) the agency’s consumer satisfaction evaluation process;
- 4) the agency’s public awareness program;
- 5) the agency’s system of child find;
- 6) the agency’s child and family evaluation and assessment process;
- 7) how the agency ensures that service delivery is family-centered, including a description of the areas in which families are the primary decision makers;
- 8) what information IFSPs will include;
- 9) how all resources which exist in communities and other service systems will be utilized to meet identified needs;
- 10) how required procedural safeguards will be followed, and how families will be informed of those safeguards. Procedural safeguards are as follows:
 - a) parental opportunity to examine, inspect or review records relating to evaluation, assessment, eligibility determination, IFSP development, implementation, complaints dealing with the child, and any other areas involving records about the child or family;
 - b) parental prior notice for matters of eligibility, evaluation, placement, or exchange of personally identifiable confidential information;
 - c) parental prior consent for initial evaluation, initiating the provision of services, and prior to the exchange of personally identifiable confidential information;
 - d) parental right to decline all or some services without losing services they want;
 - e) child right to surrogate parent appointment when appropriate;
 - f) the right to confidentiality of personally identifiable information at the points of collection, storage, disclosure and destruction; and
 - g) parental right to appeal contract decisions regarding services.

- 11) how wraparound (resource and support) services will be provided as written in each child/family IFSP. Wraparound services include assistive technology services, audiology service, support coordination, family education, counseling, and home visits, health services (limited), nursing services(limited), medical services (limited), nutrition services, occupational therapy, physical therapy, psychological services, social work services, special instruction, speech-language pathology, transportation, and vision services;
- 12) as funding allows, how respite services will be provided as written in each child/family's IFSP;
- 13) the process the agency uses to recruit, screen, interview, and maintain a list of potential providers of some wraparound services (habilitation aides, educational aides, respite, etc.), assist the family to select and train wraparound service providers, and monitor and document wraparound service delivery;
- 14) interagency service agreements which support coordination of services with schools, public health services, Head Start, and other appropriate agencies;
- 15) the agency's system for tracking data on all children and families served, including information that assures the system has the capacity to respond in a timely fashion to data requests from the Division;
- 16) how the agency ensures that all facilities used in the provision of services, other than the family's home, meet all applicable licensure requirement and health and safety codes; and
- 17) how the agency ensures that transportation services provided are safe and meet applicable standards.

F. Financial Information (include in all proposals)

In order to ensure that expenditure information is in a consistent and readily interpretable form across all proposals, each proposer must submit a proposed annual budget that details how monies are to be allocated to assure appropriate performance of services.

All expenditures must be reasonable and allowable and are not to exceed revenue available.

Federal cost principles are used to determine whether contract costs are reasonable or allowable.

Provide in detail the following information regarding the financial operation of the corporation:

- 1) a description of the financial management plan, accounting practices and billing practices;
- 2) evidence that the proposer has, or can secure, sufficient working capital to maintain a positive cash flow;

- 3) the estimated total amount of capital expenditures to be financed, including as a separate item if needed, an estimate of the cost of group home construction;
- 4) a written commitment from a lending agency to provide the necessary capital financing or, if no agreement exists, an indication in writing from a lending agency that a strong likelihood of financing exists;
- 5) a description of the general terms of any existing or proposed capital financing arrangement; and
- 6) The name, address and phone number of the financial officer or other responsible fiscal person designated by the applicant organization.

G. Local Government Participation (include in all proposals)

Please answer the following questions regarding the level of ongoing and one-time financial support that local government is willing to contribute towards the program's operation:

- 1) Is any local government entity able to provide one-time contributions of public funds towards the delivery of services? If so, how much?
- 2) Is any local government entity able to provide any real property or equipment to support the development and delivery of services? If so, how much?

V. INFORMATION ON CONTRACTUAL TERMS

A. Contract Provisions

The successful proposer must agree to the inclusion in the contract of all the contract provisions which are included in the "Attachment A - Contract" attached to this RFP. In addition, further contract provisions may appear in the final contract based upon requirements of applicable federal and state law.

B. Consideration and Payments

Consideration under the contract will be as specified by the Department based upon the available funding for the services and the cost of services as specified by the successful proposer in its proposal or as specified in best and final negotiations between the parties.

The Department within its discretion may change the consideration during the term of the contract due to reductions in federal or state funding for the services, due to changes in responsibilities that were not contemplated at the time of award of the contract, or due to programmatic changes.

Upon any extension of the term of the contract, the Department provides no assurances that consideration would be increased at that time as requested by the contractor to cover increased costs.

Invoicing will be done in accordance with the practices of the Department.

See the "Consideration and Payments" provision in the "Contract".

C. Incorporations in Contract

The RFP and the accepted proposal, along with any modifications agreed to by the Department, will be attachments to any resulting contract.

D. Subcontracting

The successful proposer will be the prime contractor and will be responsible in total for all work performed under the contract. The contractor may not subcontract without the approval of the Department. All intended subcontractors must be listed in the Proposer's proposal.

The successful proposer is responsible to the Department for the acts and omissions of all subcontractors and of persons directly or indirectly employed by subcontractors, and for the acts and omissions of persons employed directly by the Proposer.

Nothing contained within this document or any contract documents derived from this document will be considered to create any contractual relationship between any subcontractor and the Department.

See the "Assignment, Transfer and Subcontracting" and "Indemnification" provisions in the "Contract".

E. Indemnification

The Contractor will be required to indemnify the State of Montana in relation to legal liabilities that may arise in the performance under the contract.

See the "Indemnification" provision in the "Contract".

F. Insurance Requirements

The Contractor will be required to maintain at all times during the term of the contract the types of insurance and the amounts of coverage specified in the contract.

See the "Insurance Coverage" provision in the "Contract".

G. Additional Contractual Requirements

The Contractor will be required to comply with all additional requirements of the “Contract” inclusive of the following:

- a) All accounting, cost principles, and audit requirements
- b) All record requirements
- c) All property ownership and management requirements
- d) All labor law requirements
- e) All federal law requirements
- f) All civil rights requirements
- g) All confidentiality of private information requirements
- h) All reporting requirements

H. Availability of Funds

The Department may unilaterally modify or cancel the contract when it determines that the public and other monies for funding the contract are not currently or in the future will not be available.

See the "Contract Termination" and Consideration and Payments” provisions in the “Contract”.

I. Assignment, Transfer, and Subcontracting

The contractor may not assign, transfer, or subcontract all or any portion of its duties and responsibilities under the contract without the express written permission of the Department and execution of the documents that are appropriate and necessary for the assignment, transfer, or subcontract.

See the "Assignment, Transfer and Subcontracting" provision in the “Contract”.

J. Contract Amendments

The contract may only be amended by written amendment entered into by both parties.

See the "Scope, Amendment and Interpretation of Contract" provision in the “Contract”.

K. Contract Extension

The Department in its discretion determines what extensions, if any, may occur to the contract. Contract extensions may only be extended in accordance with the possible terms of extension provided for in the RFP and the contract.

See the "Term of Contract" provision in the “Contract”.

L. Montana Law

Any contract resulting from this RFP must be governed by the laws of only the State of Montana.

See the "Choice of Law, Remedies, and Venue" provision in the "Contract".

M. Venue

Venue for purposes of litigation relating to the RFP and the contract is Lewis & Clark County.

See the "Choice of Law, Remedies, and Venue" provision in the "Contract".

N. Costs of Litigation

Each party to the contract must pay its own costs and attorney fees incurred as a result of litigation relating to the RFP and the contract.

See the "Choice of Law, Remedies, and Venue" provision in the "Contract".

VI. CONTENTS AND FORMAT OF PROPOSAL

A. Contents

A proposal must contain all of the following elements arranged in the following order:

- 1) Transmittal Letter
- 2) Summary
- 3) Description of Service Delivery
- 4) Administration
- 5) Experience
- 6) Resources/Supports
- 7) Financial Management and Information
- 8) Assurances
- 9) Attachments
- 10) Index

The transmittal letter will transmit the proposal and must identify all material and enclosures being forwarded collectively as a proposal to the RFP.

In addition to any items discussed below, **all information requested in Section III must be included.**

B. Summary

The Summary states the principal features of the proposal. The proposer may call attention to those aspects of proposed performance and its organization that it views as its strengths. The proposer should describe how these services will enhance the range and flexibility of services available to persons with developmental disabilities in the community. The executive summary affords an opportunity for the proposer to call attention to the unique strengths of the proposal which make it worthy of final selection.

C. Description Of Service Delivery

This section provides the proposer's plans for service delivery, including the related matters such as coordination with other entities and quality control measures.

D. Administration

This section provides general information about the administrative features of the proposer's organization.

E. Experience

This section provides information about the proposer's general background, relevant experience, and qualifications necessary for the effective delivery of the required services.

This section must include, but is not limited to the following:

- 1) A description of the primary purpose or goals of the organization;
- 2) A description of all of the services provided by the applicant or organization, including the locations of service sites;
- 3) Resume of key personnel that may be directly involved with the program/project;
- 4) A narrative describing the proposer's experience as it relates to this project;
- 5) Letters of support for your proposal which should demonstrate familiarity with the specifics of the proposal submitted; and
- 6) Any additional information related to the proposer's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the services described.

F. Resources/Supports

This section identifies the community and organizational features to be used that are necessary to or complementary to the delivery of services.

This section must include, but is not limited to the following:

- 1) Staff skills, experience and knowledge that support the effective and appropriate

- delivery of services;
- 2) Other agencies or professionals that would support service delivery;
- 3) Assistance from local government; and
- 4) Computer and software capabilities.

G. Financial Management and Information

This section provides the financial information and practices by which the Department can assess the appropriateness, and cost-effectiveness of the proposed services delivery.

H. Assurances

This section provides the Department with the assurances from the proposer that are necessary so that the proposer's organization is legally and otherwise acceptable as a contractor.

Failure to abide by these assurances during the course of contracting is cause for termination of the contract by the Department.

- 1) General Assurances
 - a) The proposer assures the Department that it will account for expenditures of monies provided through the type of documentation specified by the Department and will maintain an accounting system for its entire operation that is in accordance with Generally Accepted Accounting Practices (GAAP) and other requirements applicable to the expenditure of contract monies.
 - b) The proposer assures the Department that it will conduct its business in accordance with all federal and state legal authorities that are applicable to its operation.
 - c) The proposer assures the Department that it has not acted in collusion with other proposers or contractors for the purpose of gaining unfair advantages for it or other proposers or for the purpose of providing the services at a noncompetitive price or in a noncompetitive manner.

- 2) Labor Law Assurances

The proposer assures the Department that it is an independent contractor and that it will maintain necessary and appropriate workers' compensation and unemployment insurance coverage. The proposer assures the Department that it is to be solely responsible for and must meet all legal requirements pertaining to its activities and employees, including payment of all applicable taxes, premiums, deductions, withholdings, overtime and other amounts which may be legally required with respect to the Proposer, as a legal entity, and

the employment and use of all persons providing services for the contractor's performance under contract.

3) Assurances for Federal Law Purposes

Federal regulations require that a potential proposer sign and submit with its proposal a form containing a list of assurances that in part or in whole are applicable to a contractor receiving federal funding through this contract.

The Contractor, in addition to the federal requirements specified in this Contract and any attachments to this Contract, must comply with the applicable federal requirements and assurances for recipients of federal grants provided in the federal OMB 424B (Rev. 7-97) form, known as "ASSURANCES - NON-CONSTRUCTION PROGRAMS", and in the Department's "CERTIFICATION OF COMPLIANCE WITH CERTAIN REQUIREMENTS FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES (6-99)". Those assurance documents must be signed by the Contractor and submitted to the Department prior to the signing of this Contract.

A potential proposer must complete the certification which is found in Attachment D and submit it with its proposal.

An organization that is debarred or suspended from receiving federal funds may not submit a proposal for a contract that involves federal funding.

I. Attachments

This section should provide a comprehensive list naming and identifying the attachments to the proposal.

J. Proposal Index

In order to ensure a fair and complete evaluation of the proposal, the proposer **must** submit a detailed proposal index which identifies the location in the proposal, by page and paragraph, of each of the minimum proposal requirements found in Section IV of this RFP.

VII. SELECTION PROCESS

A. General Process

The selection of the proposer or proposers to be offered a contract with the Department for the purposes of this RFP is a discretionary act of the Department.

The selection of the proposer or proposers to be offered a contract is the responsibility of the

administrator of the division that administers the program of services the contract is in furtherance of.

The procurement official for the Department reviews the proposals initially to determine whether they have been submitted by the required time and date, whether they are in form and content in compliance with this RFP, and whether there are any matters such as claim of confidential material that must be immediately addressed.

The proposals that appear to be responsive are submitted to a proposal evaluation committee to be evaluated in relation to the scored and other criteria. The proposal evaluation committee, in addition to evaluating the scored criteria, may recommend that a proposal be rejected as nonresponsive for either form and content or failure to meet substantive requirements of this RFP.

The proposal evaluation committee, based upon the scores and other information obtained and evaluated by the committee, recommends to the administrator of the division the proposal or proposals to be selected.

The administrator of the division determines which departmental staff are to obtain and evaluate information from references and other sources.

The administrator, based on cost information and on information from references or other sources concerning matters of past performance or fiscal and programmatic integrity, may select a proposer other than the proposer recommended by the evaluation committee.

Section II of this RFP sets forth procedures, criteria, and reserved rights pertinent to the selection process.

VIII. EVALUATION PROCESS

Section II of this RFP sets forth procedures, criteria, and reserved rights pertinent to the selection process.

A. Evaluation Criteria

A proposal that fails to receive the minimum points during evaluation for any one category will receive no further consideration and is considered unacceptable.

B. Selection Criteria

The proposals are to be evaluated based on the following criteria:

- 1) the scores of the various proposals received in the scored process of the evaluation,

- 2) the information concerning past performance and integrity received from references and other sources, and
- 3) the total costs of the proposals.

These criteria are independently evaluated by the Department.

The administrator selects the successful proposer or proposers based on the following results in the evaluation of the criteria:

- 1) the receipt of a high ranked scored evaluation;
- 2) the receipt of overall positive responses and information from references and other sources concerning past performance in respect to the areas and features of intended performance and in respect to integrity; and
- 3) the total cost being at an acceptable amount.

A proposal receiving a high score may not be selected if the Department determines that the cost is unacceptably high.

Consideration is given throughout the evaluation process to the current and long term needs of the developmental disabilities service system including the proposal's content that indicates commitment to the State's direction in service provision, community integration, community involvement and the efficient management and use of taxpayer resources.

C. Information on Past Performances and Other Matters

The Department obtains and relies upon information from references and other sources as to a proposer's past performances in respect to the areas and features of intended performance and in respect to fiscal and programmatic integrity. This information may include the proposer's history of working successfully and cooperatively with the Department and other entities.

D. Proposal Evaluation Committee

A Proposal Evaluation Committee is established by the Department to evaluate all proposals determined to be responsive and to make a recommendation based on the scored evaluation portion of the selection process as to the proposer or proposers to which contracts should be offered.

The Department selects the members of the committee.

The scored evaluation of this RFP is based on the following criteria:

- 1) Proposer's Experience and Capabilities: Possible points **40 points**. Minimum points necessary **25 points**.

This section is an evaluation of information related to the proposer's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the services described. The evaluation includes:

- * administrative capabilities of the organization in relation to the delivery of services;
- * resources and supports of the organization that can be applied to the delivery of services;
- * experience of organization in delivery of the sought after services or services similar to the sought after services; and
- * qualifications of staff to be assigned to the work.

- 2) Methods and Services: Possible points **40 points**. Minimum points necessary **25 points**.

This section is an evaluation of information presented by the proposer to substantiate the proposer's understanding of the duties and responsibilities and to determine the feasibility and quality of the proposer's proposed performance.

The evaluation includes:

- * appropriateness, quality, and effectiveness of the services as proposed for the delivery; and
- * resources and supports the organization can obtain from community and other sources that contribute to the development, maintenance and delivery of services.

- 3) Budget: Possible points **20 points**. Minimum points necessary **16 points**.

This section includes an evaluation of the proposed budget to determine whether the proposer has an appropriate budget proposal for purposes of adequate and competent performance of the contractual duties and responsibilities. This section includes evaluation of:

- * whether the budget categories are appropriate and acceptable for performance; and
- * whether the sums designated in the budget are appropriate for the various particulars of performance.

E. Decision

The selection of the successful proposer or proposers is made by the administrator of the division that is seeking services or other person specifically designated by the administrator

as the decision maker for this proposal process.

The selection is made after review of the recommendations of the proposal evaluation committee, the information concerning past performance and fiscal and programmatic integrity, and the total costs, along with supporting materials and other information obtained for purposes of the selection process.

F. Notice Letters

Upon a final decision as to the proposer or proposers to be offered a contract for services, the Department provides written notice of that decision to all proposers.

IX. ENTERING INTO A CONTRACT

A. Awarding of Contract

Upon review of and concurrence with the Proposal Evaluation Committee's evaluation and recommendation, the Department selects the most appropriate proposal or proposals and directs the contracting officer to enter into a contract or contracts.

The Department may then enter into best and final offer negotiation if that is in the best interest of the State with the most successful proposer. The Department may enter into best and final offer negotiation with another acceptable proposer if negotiation with the most successful proposer does not prove to be in the State's best interest.

B. Process

Prior to official execution of a contract, no contract or award may be assumed or announced.

A proposer may not commence work or commit funds, incur costs, or in any way act to obligate itself or the Department, as if it were the contractor prior to the award of the contract by the Department and the signing of the contract. All such efforts, costs, and other expenses incurred by a proposer prior to the announcement of the contract award by the Department and the signing of the contract are entirely the proposer's expense and may not be counted as performance or invoiced under any subsequently executed contract.

C. Submission of Necessary Certificates and Forms

1) Mandatory Submission

Contracts will not be issued to a successful proposer that fails to provide the required documentation within the allotted time frame. The contract of a contractor that submits inaccurate information on a form, that in any way misrepresents circumstances relating to the requirements noted below, that fails to appropriately revise a form or certification based on changing circumstances, or that fails to maintain a coverage requirement, is subject to termination by the Department.

2) Federal Forms

Any forms required for the receipt of any federal monies committed to the services to be delivered under the contract, must be completed and submitted by the intended contractor prior to the signing of the contract. The contractor must submit a revised form immediately upon any change in circumstances that effect a substantive change in the information or assurances provided through the then current form.

3) Workers' Compensation Coverage

A certificate of coverage for workers' compensation insurance or, if appropriate, an independent contractor's exemption, must be presented to the Department by the intended contractor prior to the signing of the contract. The insurance coverage or exemption must be maintained at all times during the term of the contract.

4) Insurance Coverage

A certificate of insurance coverage, indicating compliance with the required insurance coverage, must be presented to the Department by the intended contractor prior to the signing of the contract. The insurance coverage must be maintained at all times during the term of the contract.

X. ATTACHMENTS A THROUGH E

**ATTACHMENTS
FOR
REQUEST FOR PROPOSAL
ONLY**

ATTACHMENT A

CONTRACT

For Request for Proposals Only

CONTRACT

Between

MONTANA STATE DEPARTMENT

OF

PUBLIC HEALTH AND HUMAN SERVICES

And



Contract Number: 09-14_ -__00

Effective: July 1, 2009 through June 30, 2010

By: Developmental Disabilities Program

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page Number</u>
1.0	PARTIES.....	4
2.0	PURPOSE.....	4
3.0	TERM OF CONTRACT.....	6
4.0	DEFINITION OF TERMS.....	7
5.0	SERVICES TO BE PROVIDED.....	7

6.0	CONSIDERATION AND PAYMENTS.....	9
7.0	FINANCIAL REPORTING.....	13
8.0	ACCOUNTING, COST PRINCIPLES AND AUDIT.....	14
9.0	IMPOSITION OF FEES.....	16
10.0	CREATION AND RETENTION OF RECORDS.....	16
11.0	QUALITY ASSURANCE REVIEWS.....	17
12.0	RELATED PARTY TRANSACTIONS.....	17
13.0	CONFIDENTIALITY & HIPAA REQUIREMENTS.....	17
14.0	ASSIGNMENT, TRANSFER AND SUBCONTRACTING.....	18
15.0	INDEMNIFICATION	19
16.0	INSURANCE COVERAGE.....	19
17.0	BONDING.....	22
18.0	COMPLIANCE WITH BUSINESS, TAX, AND LABOR LAWS.....	22
19.0	COMPLIANCE WITH APPLICABLE LAWS, RULES AND POLICIES.....	23
20.0	FEDERAL REQUIREMENTS AND ASSURANCES.....	23
21.0	CIVIL RIGHTS.....	27
22.0	RECIPIENT GRIEVANCES AND APPEALS.....	28

23.0	PUBLIC INFORMATION AND DISCLAIMERS.....	28
24.0	PROPERTY.....	29
25.0	CORRECTIVE ACTIONS AND SANCTIONS.....	30
26.0	DEPARTMENTAL GUIDANCE.....	32
27.0	ACCESS TO PREMISES.....	32
28.0	CONTRACT TERMINATION.....	32
29.0	CONTRACTUAL DISPUTE RESOLUTION PROCESS.....	33
30.0	LIAISON AND SERVICE OF NOTICES.....	34
31.0	REGISTRATION OF OUT OF STATE ENTITIES.....	34
32.0	TECHNOLOGY ACCESS FOR PERSONS WHO ARE BLIND OR VISUALLY IMPAIRED.....	35
33.0	TOBACCO FREE WORKPLACE AND OTHER RESTRICTIONS.....	35
34.0	CHOICE OF LAW, REMEDIES AND VENUE.....	35
35.0	SCOPE, AMENDMENT AND INTERPRETATION OF CONTRACT.....	36
	DEPARTMENT CERTIFICATION FORM.....	38

APPENDICES

Definition of Terms Appendix A

Capacity and Expenditure Authorizations Appendix B

Case Management Services Appendix C

TRIC And FSSIN Appendix D

Adaptive Equipment Appendix E

Evaluation And Diagnosis Appendix F

Food Commodities Appendix H

Individual Corporation Plan Appendix I

PASARR/MR Evaluation And Specialized Services Appendix K

ATTACHMENTS

Contractor Budget.....Attachment A

HIPPA Guidelines.....Attachment 1-H

Contracting Guidelines.....Attachment B

CONTRACT FROM THE STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

CONTRACT NUMBER

09-14 - 00

1.0 PARTIES

THIS CONTRACT, is entered into between the Montana Department of Public Health and Human Services, (hereinafter referred to as the "Department"), whose address is 111 N. Sanders, P.O. Box 4210, Helena, Montana 59604, and whose phone number is 406.444.2995, and [REDACTED], (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number is [REDACTED], whose NPI # is [REDACTED], whose Montana Medicaid Provider ID # is [REDACTED], whose address is [REDACTED], phone number is 406 [REDACTED], fax number is 406 [REDACTED], and E-Mail address [REDACTED].

THE PARTIES AGREE AS FOLLOWS:

2.0 PURPOSE

2.1 The purpose of this Contract, in accordance with the terms of this Contract and other state and federal legal authorities, is to obtain developmental disabilities services for those Montana's citizens with developmental disabilities who are eligible for one or more of the developmental disabilities community services administered by the Department.

- 2.2 For each category of developmental disabilities community services that are to be delivered by the Contractor as specified in Section Five, the Contractor must be designated by the Department as a qualified provider if qualified provider status is required by the Department for purposes of delivery of that category of service.
- 2.3 The Contractor is ready, willing and able, to the extent provided for in this Contract, to accept into the Contractor's services persons with developmental disabilities who are eligible for one or more of the state administered developmental disabilities services. If the Contractor is to provide Part C services or state funded Family Education and Support services to children under the age of 6, the Contractor is ready, willing and able, to accept into those services children with developmental delays or developmental disabilities who are eligible for those services.
- 2.4 The Contractor is ready, willing and able to deliver developmental disabilities community services in the geographical areas and communities specified in Section 5 "Services to Be Provided".
- 2.5 This Contract implements for the Contractor reimbursement for the developmental disabilities services delivered by the Contractor based upon both the DD Program standardized rate reimbursement system and upon other methods of reimbursement inclusive of contracted for rates. Accordingly, some provisions in this Contract, as specified in their language, are limited in their applicability to only one of the methods of reimbursement.

- 2.6 The Contractor, if delivering services as described in this subsection, is designated by the State of Montana as an Organized Health Care Delivery System.

The Contractor must operate as an Organized Health Care Delivery System (OHCD). The term "organized health care delivery system" is a term of art appearing in a federal regulation, 42 C.F.R. § 447.10(b), concerned with the payment of Medicaid monies to providers of services. In order to be an OHCD the Contractor must provide at least one Medicaid funded health care service to its consumers directly through its own employees. The OHCD designation allows for the Contractor to bill on behalf of individual providers for the payment of Medicaid payable services if the subsumed providers have a contract with the OHCD providing for the billing arrangement.

As an OHCD, the Contractor is authorized to subcontract for the provision of services to consumers of home and community services funded with Medicaid monies. The subcontractors do not have to be enrolled Medicaid providers. The Contractor is responsible on behalf of the subcontractor for the billing for Medicaid monies for the services provided by the subcontractor and for the receipt of payment on behalf of the subcontractor. The subcontractor remains responsible generally for compliance with all legal and administrative requirements, inclusive of provider requirements, pertaining to the expenditure of Medicaid monies and the delivery of the services procured through this contract.

The Contractor must hold the subcontractor accountable for compliance with all legal and administrative requirements pertaining to the expenditure of Medicaid monies and the delivery of the services procured through this contract. Those requirements include, but are not limited to, federal requirements for purposes of

accounting, audit, civil rights compliance, debarment and suspension, and prohibitions on expenditures for lobbying. Furthermore, the Contractor must assure that the subcontractor provide indemnification and insurance in accordance with the provisions of this contract as they pertain to indemnification and insurance.

- 2.7 The Contractor has sound personnel management and responsible fiscal administration. The Contractor employs persons of good character who have a combination of education and experience that has prepared them to respectfully and competently provide services to persons with developmental disabilities. The Contractor=s services are appropriately configured and staffed to assure the quality and effectiveness of those services for individual consumers.
- 2.8 The Contractor may only receive reimbursement from the Department for services provided to those persons with developmental disabilities who have been determined by the Department to be eligible for one or more types of state administered developmental disabilities community services.
- 2.9 The Contractor, in order to receive reimbursement under this contract funded with Medicaid monies, must be an enrolled Montana Medicaid provider and be in compliance with all federal authorities governing the Contractor=s status as a provider of services reimbursed with Medicaid monies.

3.0 TERM OF CONTRACT

- 3.1 The term of this Contract for the purpose of delivery of services is from July 1, 2008 through June 30, 2009, unless terminated otherwise in accordance with the provisions of this Contract. This Contract at the discretion of the Department

may be extended for two one year terms not to exceed a total contractual term of four years if the parties agree to each of the extensions and each extension is provided for through amendment of this Contract prior to the end of the current term of this Contract.

3.2 The completion date of performance for purposes of final compensation under this Contract is the date upon which the Department determines that: 1) there remain no further performance requirements or corrective actions to be performed by the Contractor; and 2) all final reports as are required under this Contract are appropriately submitted and are satisfactory in form and contents.

3.3 The Contractor, after termination of this Contract, remains subject to and obligated to comply with all legal and continuing contractual obligations arising in relation to its contractual duties and responsibilities including, but not limited to, record retention, providing access and information for audits, indemnification, insurance, the protection of confidential information, participating in recipient grievances and appeals, and property ownership and use.

4.0 DEFINITION OF TERMS

The meaning of terms used in the provisions of this Contract are those specified in Appendix A to this Contract and as adopted in the Administrative Rules of Montana at Chapter 34 of Title 37, concerning the provision of developmental disabilities community services. In the circumstance that there is a conflict of definitions between Appendix A and the Rules, the definition as adopted in rule will govern.

5.0 SERVICES TO BE PROVIDED

5.1 The Contractor is authorized by this Contract to make available the following developmental disabilities community services in accordance with this Contract, the appendices to this contract, the rules adopted by the Department to govern the provision of developmental disabilities services, any state and federal laws pertinent to the provision of developmental disabilities community services including the HCBS waivers 0208.90, and other pertinent state and federal legal authorities.

Check the following that apply:

- Adult Companion Services
- Adult Foster Support
- Assisted Living
- Community Transition Services
- Case Management Services
- Day Habilitation
- Dietician Services
- Environmental modifications/Adaptive Equipment
- EVALUATION & DIAGNOSIS
- Family Support Coordination
- FES
- Homemaker Services
- Meals
- Occupational Therapy
- PASAAR services
- Personal Care Services
- Physical Therapy
- Private Duty Nursing
- Psychological and Counseling Services

	Residential Habilitation
	Residential Training Supports
	Respiratory Therapy
	Respite Services
	Speech Therapy
	Supported Employment
	Transportation Services

5.2 The Contractor may provide services funded through this Contract only to those persons the Department has determined are eligible for those services and for whom the Department has determined there are sufficient state program and financial resources available to fund their service needs as identified by the Department. The Contractor must confirm with the Department the status of persons to be served. Persons who contractors are authorized to serve are referred to for purposes of this Contract as "consumers".

5.3 The Contractor, other than for those services reimbursed through the DD Program standardized rates system, must provide services throughout the term of the Contract to the number of consumers specified by the Department in Appendix B, Capacity And Expenditure Authorizations. Appendix B is an electronically produced and maintained excel spreadsheet that is revised by the Department on a monthly basis and provided to the Contractor. Appendix B, for those services not reimbursed through the DD Program standardized rates system, specifies the names and/or the number of consumers to be served by the Contractor, the number of units of services available to each consumer, and the amounts of funding available for the provision of services for each consumer.

- 5.4 The Department may revise and reissue Appendix B as necessary to change: 1) a consumer's financial resources or services to be provided, 2) to change the number of persons the Contractor is to serve based on the movement of consumers into and out of the Contractor's services, and 3) to change reimbursement for one or more of a consumer's services to the standardized rate system. For consumers' services not received through the DD Program standardized rate system, the Contractor must continue to provide those services through to the end of the fiscal year even after such time as the Contractor has received maximum consideration available through this Contract.
- 5.5 The Contractor must deliver to each consumer the types, quantities, and quality of services that the Contractor is responsible for the delivery of as specified in the consumer's Individual Cost Plan (ICP) and related documents. The Contractor must assure the appropriate and consistent delivery of the features of a consumer's plan the Contractor is responsible for inclusive of number of direct service hours per month, staffing ratios, special assistance, supervision, training and support, and one time purchases.
- 5.6 Individual Cost Plans (ICP=s) identify the services and hours of direct care support necessary to meet the consumers habilitation needs while assuring that his/her health and safety needs are met. The Contractor agrees to provide sufficient direct care staffing to meet these needs.
- 5.7 COLLEGE OF DIRECT SUPPORTS

5.7.1 The Department will make the College of Direct Supports training classes available to all full time **Direct Care employees**.

5.7.2 The Contractor will require that all full time **Direct Care employees** complete the core program within six months of the system being operational and available. The Contractor will require that all new full time **Direct Care employees** hired after implementation complete the core program within six months.

6.0 CONSIDERATION AND PAYMENTS

6.1 In consideration of the services to be provided to consumers through this Contract, the Contractor is to receive payment from the Department in the performance of this Contract.

6.2 The Contractor's expenditures on services of monies that are not derived through the DD Program standardized rates reimbursement system must conform to the Contractor's budget as required in 6.4. For those services not reimbursed through the DD Program standardized rates reimbursement system, the Contractor may not receive more than the total amount of monies allocated by the Department for the delivery to consumers of each type of service as specified in Appendix B and the total consideration available through this Contract may not exceed the sum of the expenditures authorized in Appendix B.

6.3 Reimbursement for those individual consumer's services reimbursable through the DD Program standardized rate reimbursement system are limited on an individual basis to the total sum derived as the product of the units of the specific service

authorized for the consumer times the applicable reimbursement rate for the service. The units of services available to an individual consumer for a standardized rates reimbursed service are limited to those authorized through the Individual Cost Plan (ICP) developed by the Department for the consumer.

6.4 Reimbursement for a service to be delivered to a consumer reimbursed on a contracted for non-standardized rate basis is available in two formats.

6.4.1 The Contractor's budget, in accordance with this subsection and Subsections 6.19 and 6.20, may be revised as necessary during the term of this Contract. Upon any proposed revision to the Contractor's budget that involves 5% or more of the total monies budgeted for a service, the proposed revised budget must be submitted to the Department for review and acceptance memorialized by the dated signature of the Program Manager of the Developmental Disabilities Program. Upon acceptance by the Department, the revised budget replaces the current incorporated budget as Attachment A.

6.4.2 For the other non-standardized rate services, reimbursement to the Contractor is available only for actual expenses which are allowable and reasonably incurred in the delivery of the service up to the total amount of monies allocated to expend on that service for the specified consumer as stated in Appendix B. As provided for in Section 8.0 of this Contract, actual, allowable, and reasonable expenses are those costs actually incurred by the Contractor in performing this Contract, which would qualify for financial participation under the provisions of 45 CFR, Part 74, and Federal Grant Administration Regulations.

- 6.5 For those services reimbursed on a contracted for non-standardized rate basis, the Contractor must submit a detailed Contractor= Budget for the full term of the Contract on Form DPHHS / DDP 45, Forms DPHHS / DDP 41/42, or another form providing the same information, showing revenues and expenditures by account classification. The Contractor=s Budget, Attachment A, must encompass all intended expenditures other than those derived from reimbursement received from DD Program standardized rate reimbursement system.
- 6.6 The Contractor may only invoice for services that have been performed, and must submit invoices based on service units for reimbursement on forms provided by the Department. The invoice to be used is DPHHS-AD-58. Upon implementation of the new AWACS, the Contractor is to submit, at the direction of the Department, all billing through the AWACS online billing process.
- 6.7 The Contractor, except in the delivery of Part C and Family Education & Support, Evaluation and Diagnoses, and PASARR services, must allow for a consumer currently served by the Contractor to leave the Contractor's services if the consumer desires to obtain services from one or more other contractors and if all arrangements necessary for the move, inclusive of the provision of adequate funding for the new services and of acceptance by the other contractor, have been completed. The consumer may change services at any time during the fiscal year. Before a consumer may move and thereby leave the Contractor's services the consumer must provide the Contractor with a 90 day notice unless all parties to the move agree to implementation of the move without the full 90 day notice.

- 6.8 When a consumer, except for a consumer of Part C and Family Education & Support, Evaluation and Diagnoses, and PASARR services, whose services are reimbursed on a contracted for non-standardized rate basis changes to a service provided by another contractor, the Contractor's consideration to be received that fiscal year, as memorialized in Appendix B, will be accordingly reduced by an amount prorated based upon the remaining portion of the fiscal year. The monies allocable to the consumer are those determined appropriate based upon the available monies allocated to the consumer in Appendix B and as may be negotiated among the consumer and the current and prospective providers. If the consumer is entering a service that is compensated on a standardized rate basis, prorating will not be applied and the types and amounts of the services to be delivered to the consumer as set forth and authorized in the Individual Cost Plan (ICP) are reimbursed in accordance with the applicable rates adopted in the DD Program standardized rate reimbursement system.
- 6.9 When a consumer whose services are reimbursed on a standardized rate basis changes to a service provided by another contractor, the Contractor's consideration to be received that fiscal year, as memorialized in Appendix B, will be accordingly reduced by the total reimbursement available on the rate basis for the remaining period during which the consumer would no longer be served.
- 6.10 The Department reimburses the Contractor within thirty (30) days after the submission of an appropriately completed invoice by the Contractor to the Department.

- 6.11 The invoice must contain the names of the consumers receiving services from the Contractor for the invoice period along with the units of service provided to each of those consumers.
- 6.12 The Department may withhold payment at any time during the term of the Contract and may withhold final payments under the Contract if the Contractor is failing to perform its duties and responsibilities in accordance with the terms of this Contract and other authorities governing the delivery of developmental disability community services, the receipt and expenditure of the monies provided through this contract, and the conduct of the Contractor as a contractor for the State.
- 6.13 The consideration provided to the Contractor under this Contract may be adjusted by the Department in its discretion based on audit findings, failings in the Contractor's delivery of services, or reductions of funding.
- 6.14 The Contractor may not retain any payments made by the Department that are erroneously made or improperly obtained by the Contractor, its employees, or its agents. An erroneously made payment or improperly received payment is a debt of the Contractor owing to the Department. The Contractor must immediately notify the Department upon determination that a payment may be erroneous or improper. The Contractor is obligated to return an erroneous or improper payment within 30 days of the Department's request that the payment be returned. If the Contractor does not return the payment, the Department may deduct the payment from any future payments to be made to the Contractor. The Department may recover an erroneous or improper payment by a means available under law or through this Contract.

- 6.15 Medicaid monies received for developmental disabilities home and community services may not be used as reimbursement for "room and board" expenses as defined in federal regulations 42 CFR 441.310.
- 6.16 The sources for the funding for this Contract are identified by funding codes in Appendix B.
- 6.17 The monies provided through this Contract may not be applied as reimbursement for the costs of services to the extent that those services may be reimbursed, in whole or in part, from other programs and sources.
- 6.18 The monies provided through this Contract must be expended in accordance with the federal and state authorities governing: 1) the delivery of developmental disabilities community services, 2) the receipt and expenditure of the monies provided through this Contract, and 3) the conduct of the Contractor as a contractor for the State.
- 6.19 Transfer of Funds between Programs of Service Reimbursed On A Contracted For Non-standardized Rate Basis
6. 19.1 No transfer of monies may be made between or among any of the programs of service described in the Contractor=s Budget without an amendment as specified in Section 3.1 of this Contract.
- 6.20 Transfer of Funds within a Program of Service Reimbursed On A Contracted For Non-standardized Rate Basis

- 6.20.1 The transfer of funds within a program of service is allowed.
- 6.20.2 The transfer cannot result in a reduction in the quality or quantity of services or the provision of direct care staff below the minimum staff ratios as specified in this Contract, Department rules or any appendices attached to this Contract.
- 6.21 The Contractor is to pursue reimbursement for consumer services through other primary coverages available to individual consumers inclusive of private health and other insurances, state plan Medicaid services, and other sources of services or payments that may be obligated to provide coverage to a consumer.
- 6.22 The Montana Legislature in the 2007 Special Session, HB 2 of the Special Session, has appropriated monies in the sum of \$2,718,478 per fiscal year that are to be specifically applied to increases during the 2008/2009 biennium in the wages of those contractor staff providing developmental disabilities direct care services. Direct care staff must be compensated at no less than \$8.35 an hour. Monies of this appropriated sum, remaining after the expenditures necessary for implementing and maintaining this basic wage rate for all qualified direct care workers, are to be applied first to raise wages to \$8.50 an hour, then any additional amounts remaining are to be applied to raise the wages and accordingly increase the mandatory and non-mandatory benefits of direct care staff. The Contractor may not apply these monies in any manner that supplants other monies currently expended on wages or benefits, including the mandated minimum wage from the 2007 Session Re-Basing process.

The Department will implement this wage increase for all services inclusive of those reimbursed under the existing reimbursement system and those reimbursed under the standardized rate reimbursement system. The Contractor is obligated to provide the Department with the wage and benefits information necessary to assure compliance with the Legislature's direction as to the proper expenditure of the monies appropriate for this purpose and the reporting thereof. The Contractor is to provide the information at the times, on the forms and in the manner prescribed by the Department. The Contractor is obligated to implement the wage and benefit increases in accordance with the direction of the Legislature and the Department.

7.0 FINANCIAL REPORTING

7.1 Accuracy of Reports

The Contractor's accounting records, as described in Section 8.0, must support the accuracy of the Year End Income / Expense Report and the Annual Expenditure Report.

7.2 Year End Income / Expense Report for Services Reimbursed On A Contracted For Non-standardized Rate Basis

The Contractor must submit a Year End Income / Expense Report on Form DPHHS / DDP 43 or a form providing the same information covering each program of service. This report must detail the actual revenues and expenses incurred during the full term of the Contract including SSI benefits received on

the behalf of persons with developmental disabilities. These reports must be submitted to the Department within ninety (90) days of the end of each fiscal year of the contract term or the date of any termination or default, in whole or in part, of the contract.

7.3 Annual Expenditure Reporting Necessary For Federal Home And Community Services Waiver Implementation

The Contractor must submit an Annual Expenditure Report covering each discrete Medicaid funded home and community service. This report must detail the actual expenditures incurred and the number of unduplicated recipients served by waiver service category during each state fiscal year. This report must be submitted to the Department within ninety (90) days of the end of each state fiscal year or the date of any contract termination or default.

7.4 Other Financial Reports As Requested By The Department

The Contractor must submit a report that reconciles allowable costs, as defined in accordance with Section 8, that are components of the DD Program standardized rate system.

8.0 ACCOUNTING, COST PRINCIPLES AND AUDIT

8.1 The Contractor must maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (GAAP), as interpreted by the Department and other pertinent federal and state authorities, and that conforms to any other accounting requirements required by the Department or other entities or that may be

required under 18-4-311, MCA or any pertinent federal and state authorities. The Contractor must also maintain and document an adequate system of internal controls that address the five elements of internal controls: the control environment, the risk assessment, the control activities, information and communication, and monitoring.

- 8.2 The Department, the federal Departments Of Health And Human Services, Of Education, and Of Agriculture, and other authorized federal and state entities, their auditors, investigators and agents, in accordance with this Contract and applicable legal authorities, may conduct at any time during or after the term of this Contract audits and other investigations to assure the appropriate administration and expenditure of the monies provided to the Contractor through this Contract and to assure the appropriate administration and delivery of services delivered through this Contract.
- 8.3 The Contractor during the term of this Contract and for eight years thereafter must provide, in accordance with 18-1-118, MCA and other pertinent federal and state authorities, access to all of the Contractor's records, materials and information including any and all audit reports with supporting materials and work documents pertinent to the delivery of services provided under this Contract. Access is to be available for purposes of audit and other administrative activities and investigations. Access must be provided in a timely and unrestricted manner, and in a format acceptable by the Department. Access is to be available for the Department, the federal Departments Of Health And Human Services, Of Education, and Of Agriculture, and other authorized federal and state entities, their auditors, investigators and agents. The entities and their agents may record any information and make copies of any materials necessary for the conduct of an audit or other administrative activity or investigation.

- 8.4 The Contractor must, as directed by the Department or other auditing and investigatory entities, take corrective action to resolve audit findings. The Contractor must prepare a corrective action plan that specifies the particular audit findings necessitating corrective action and the actions the Contractor proposes to undertake. The Department may direct the Contractor to modify the corrective action plan as the Department determines is necessary and appropriate.
- 8.5 The Contractor must reimburse the Department or compensate the Department in any other manner as the Department may direct for any sums of monies determined by an audit or other administrative activity or investigation to be owing to the Department.
- 8.6 A non-profit contractor, if receiving \$500,000 or more in federal funds from any and all federal funding sources, other than those monies received through a standardized rate reimbursement system, must comply with the accounting and audit requirements of Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and the provisions of OMB Circular "A-122, Cost Principles for Non-Profit Institutions" concerning the use of the funds provided under this Contract.
- 8.7 A for-profit contractor, receiving monies other than through a standardized rate reimbursement system, must comply with the accounting and audit requirements in 45 CFR 74.26(d) and the cost principles and procedures for commercial organizations in 48 CFR 31 concerning the use of the funds provided under this Contract in the version in effect on the date this Contract is signed by both parties. Pursuant to 45 CFR 74.26(d), a "for-profit" organization may either

have an audit conducted in accordance with the Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" or the Government Auditing Standards.

8.8 All disbursements must be made by check except petty cash expenditures under \$100.00. A full accounting of petty cash expenditures must be available.

8.9 Accrual accounting is required for year-end financial reports. The Contractor may use the cash method for interim reports if the Contractor accrues the last month of each fiscal year's transactions during the term of the Contract.

9.0 IMPOSITION OF FEES

No fees, other than those set and authorized in writing or administrative rule by the Department, may be imposed by the Contractor on consumers whose participation in Contractor's programs of service is funded under this Contract.

10.0 CREATION AND RETENTION OF RECORDS

10.1 The Contractor must maintain records documenting compliance with the performance and financial requirements stated in federal and state law and in this Contract along with incorporated attachments. Records include all written and electronic documents memorializing and reporting on performance and financial accounting and any other documents as required by this Contract, state and federal laws, or other authorities or as otherwise maintained by the Contractor. The Contractor, upon request, must make these records available in

a timely and unrestricted manner to the Department, the federal Departments of Health And Human Services, Education, and Agriculture and to other authorized federal and state entities, their auditors, investigators and agents.

10.2 The Contractor must maintain for each consumer receiving services from the Contractor time and attendance records or, if appropriate, contact logs. The records or logs must be signed by an authorized person and certified as correct.

10.3 Records must be retained for a period of eight (8) years from the completion date of this Contract. If any litigation, review, claim or audit is started before the expiration of the eight year period, the records must be retained until all litigation, reviews, claims or audit findings involving the records have been resolved.

10.4 Records developed for the purposes of delivery of services to consumers under this Contract are the property of the Department and must be developed, maintained, and disposed of as provided in this Contract or as otherwise directed by the Department.

11.0 QUALITY ASSURANCE REVIEWS

11.1 The Department periodically, but at least annually, conducts quality assurance reviews in accordance with DDP Policy 500, Quality Assurance and Compliance, which is incorporated in this Contract as Attachment B, governing quality assurance with respect to developmental disabilities services provided on behalf of the State of Montana. A review may include on-site examination of the Contractor's services, program management, and financial records to insure

compliance with the terms and conditions of this Contract and other relevant authorities.

11.2 The Contractor must cooperate fully in these reviews.

11.3 The Department may impose such corrective action requirements upon the Contractor as it may believe is appropriate to assure that the Contractor conforms with the Department's standards for the delivery of quality services. In addition, the Department, in order to assure the delivery of quality services and to protect the interests of the consumers and the public, may pursue sanctions or contract termination as provided for in Section 25.

12.0 RELATED PARTY TRANSACTIONS

12.1 The Contractor may not enter into any contract or other arrangement for the use, purchase, sale, lease or rental of real property, personal property or services funded with monies of this Contract if an employee, administrator, officer or director of the Contractor may receive a financial or other valuable benefit as a result.

12.2 The Department may grant exceptions to this prohibition where it determines that the particular circumstances warrant the granting of an exception.

13.0 CONFIDENTIALITY & HIPAA REQUIREMENTS

13.1 The Contractor must, during and after the term of this Contract, protect confidential consumer and recipient information obtained and used in the

performance of contractual duties and responsibilities under this Contract in accordance with applicable legal and policy authorities.

- 13.2 All material and information containing consumer and recipient personal information provided to the Contractor by the Department or acquired by the Contractor on behalf of the Department, whether verbal, written, magnetic media, or in other forms, is to be regarded as confidential information and may only be used or disseminated by the Contractor, its subcontractors, or agents for the purposes allowed for under this Contract and any governing legal and policy authorities.
- 13.3 The Contractor, in relation to individually identifiable health information, must comply with the privacy requirement of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the regulations implementing that requirement at 45 CFR Part 160 and Sub-parts A and E of Part 164 as they may be applicable to the Contractor and the services provided through this Contract. Attachment 1-H to this Contract provides information as to where the Contractor may access the relevant HIPAA legal authorities and the interpretative direction provided by the federal government. The Department=s Certification Form, signed by the Contractor and incorporated as an attachment to this Contract provides for the Contractor=s certification of its determination as to whether it is legally subject to the HIPAA privacy requirements and, if subject to the HIPAA, certification of its determination that it is fully in compliance with HIPAA.
- 13.4 The Contractor must notify the Department in writing within 5 work days in the event that 1) a complaint is lodged with the Office of Civil Rights (OCR) of the Department of Health and Human Services alleging that determines that the

Contractor is not in compliance with HIPAA, 2) the Office of Civil Rights (OCR) of the Department of Health and Human Services determines that the Contractor is not in compliance with HIPAA, or 3) an administrative action or litigation is initiated against the Contractor based on any legal authority pertaining to the protection of confidential information. The Contractor must provide the Department with any notice a copy of the relevant administrative complaint, determination, or legal complaint.

13.5 Failure of the Contractor to be in compliance with this provision, the Department=s policies protecting confidential information, or federal and state legal authorities, inclusive of HIPAA, governing the protection of confidential information is cause for termination of this Contract by the Department.

14.0 ASSIGNMENT, TRANSFER AND SUBCONTRACTING

14.1 The Contractor may not assign, transfer, delegate or subcontract, in whole or part, this Contract or any right or duty arising under this Contract unless the Department in writing expressly approves the assignment, transfer, delegation or subcontract.

14.2 An assignment, transfer, delegation or subcontract entered into by the Contractor must be in writing, must be subject to the terms and conditions of this Contract, and must contain any further conditions as may be required by the Department.

14.3 The Department=s approval of any assignment, transfer, delegation or subcontract neither makes the Department a party to that agreement nor creates

any right, claim or interest in favor of any party to that agreement against the Department.

14.4 The Contractor must immediately notify the Department of any litigation concerning any assignment, transfer, delegation or subcontract.

14.5 The Contractor must, in accordance with the provisions of this contract regarding indemnification, indemnify and hold the Department harmless with respect to any suit or action arising out of or brought by any party to an assignment, transfer, delegation or subcontract.

15.0 INDEMNIFICATION

15.1 The Contractor must indemnify, defend, and hold harmless the State of Montana, its officials, employees, agents and volunteers acting within the scope of their duties against any claims, demands, causes of action of any kind, including the costs of defense and attorney's fees, in favor of the Contractor's officers, employees and agents or third parties 1) arising out of the performance of services or the omission of services under this contract, 2) resulting from the acts, errors, omissions or negligence, whether willful or not, of the Contractor or the Contractor's officers, employees or agents, or 3) from the failure of the Contractor or the Contractor's officers, employees or agents to comply with any federal, state, and local laws, regulations, and ordinances applicable to the services or work to be provided under this contract.

15.2 For purposes of this provision the term Contractor's agents is inclusive of subcontractors, representatives, assignees, volunteers and any other person,

partnership, corporation, or other legal entity performing work or services, or providing materials under this contract.

16.0 INSURANCE COVERAGE

16.1 General Liability Insurance

16.1.1 The Contractor must maintain for the duration of the contract, at its cost, primary standard general liability insurance coverage. The coverage must include tort and other claims of harm or loss arising from: injuries to persons, damages to property, contractual performance, rights to intellectual property, or other liabilities that may be claimed in relation to the provision of services under this Contract. The insurance must cover claims as may be caused by any act, omission or negligence, of the Contractor or the Contractor's officers, employees or agents.

16.1.2 The Contractor must maintain general liability insurance coverage inclusive of bodily injury, personal injury and property damage. The general liability insurance coverage must be obtained with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 per aggregate per year.

For contractors serving less than 5 persons with developmental disabilities or receiving less than \$75,000 in total Developmental Disabilities Program funding, the coverage must

be obtained with combined single limits for bodily injury, personal injury, and property damage of \$500,000 per occurrence and \$1,000,000 per aggregate per year.

16.1.3 The coverage must be from an insurer with a Best=s Rating of no less than A- or through a qualified self-insurer plan, implemented in accordance with Montana law and subject to the approval of the Department.

16.1.4 The State Of Montana, its officials, employees, agents, and volunteers, are to be covered and listed as additional insured's for liability arising out of activities performed by or on behalf of the Contractor, inclusive of the insured=s general supervision of the Contractor, products and completed operations; and arising in relation to the premises owned, leased, occupied, or used by the Contractor.

16.2 Automobile Liability Insurance

16.2.1 The Contractor must maintain, at its cost, automobile liability insurance coverage. The insurance must cover claims as may be caused by any act, omission, or negligence of the Contractor or the Contractors officers, employees, or agents.

The Contractor=s automobile liability insurance must be endorsed to cover Anon-owned≅ employee personal vehicles if the Contractor=s employees transport clients in their personal vehicles with personal injury protection for the passengers.

16.2.2 The Contractor must maintain automobile liability insurance coverage, inclusive of bodily injury, personal injury and property damage, with split limits of \$1,000,000 per person (personal injury), \$2,000,000 per accident occurrence (personal injury) and \$100,000 per accident occurrence (property damage), or combined single limits of \$1,000,000 per occurrence.

For contractors serving less than 5 persons with developmental disabilities or receiving less than \$75,000 in total Developmental Disabilities Program funding, the coverage must be obtained with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), or combined single limits of \$1,000,000 per occurrence.

16.2.3 The coverage must be from an insurer with a Best=s Rating of no less than A- or through a qualified self-insurer plan, implemented in accordance with Montana law and subject to the approval of the Department.

16.2.4 The State of Montana, its officials, agents, employees, and volunteers, are to be covered and listed as additional insured for liability arising out of activities performed by or on behalf of the Contractor, inclusive of the Contractor's general supervision, or arising in relation to automobiles leased, hired, or borrowed by the Contractor.

16.3 General Requirements

- 16.3.1 The Contractor must provide to the Department a copy of the certificate of insurance showing compliance with the requisite coverage. All insurance required under this Contract must remain in effect for the entire contract period. The Contractor must notify the Department immediately of any material change in insurance coverage and must provide to the Department copies of any new certificate or of any revisions to the existing certificate issued.
- 16.3.2 The Department may require the Contractor to provide copies of any insurance policies pertinent to these requirements, any endorsements to those policies, and any subsequent modifications of those policies.
- 16.3.3 The Contractor's insurance coverage is the primary insurance in respect to the State Of Montana, its officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the State Of Montana , its officials, employees, agents, and volunteers is in excess of the Contractor's insurance and does not contribute with it.
- 16.3.4 Any deductible or self-insured retention must be declared to and approved by the Department. At the request of the Department, the insurer must:

16.3.4.1 Reduce or eliminate such deductibles or self-insured retentions in relation to the state, its officials, employees, and volunteers;
or

16.3.4.2 the Contractor must procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

16.4 For purposes of this provision the term Contractor's agents is inclusive of subcontractors, representatives, assignees, volunteers and any other person, partnership, corporation, or other legal entity performing work or services, or providing materials under this contract.

17.0 BONDING

The Contractor must maintain a fidelity bond in the amount of 10 percent of the total monies allocated to the Contractor for the current fiscal year as stated in Appendix B indemnifying the Contractor against losses resulting from the fraud or lack of integrity, honesty, or fidelity of one or more employees, officers or other persons who are responsible for Contractor=s and consumers= funds or property.

18.0 COMPLIANCE WITH BUSINESS, TAX, AND LABOR LAWS

18.1 The Contractor assures the Department that the Contractor is legally authorized under state and federal business and tax laws to conduct business in accordance with this Contract.

- 18.2 The Contractor, at all times during the term of this Contract, must maintain coverage for the Contractor and the Contractor's employees through workers' compensation, occupational disease, and any similar or related statutorily required insurance program. The Contractor must provide the Department with proof of necessary insurance coverage as it may be issued to the Contractor and must immediately inform the Department of any change in the status of the Contractor's coverage.
- 18.3 If the Contractor has received, for workers' compensation and other purposes, an independent contractor certification from the Montana Department Of Labor And Industry as to the Contractor, the Contractor must provide the Department with a copy of the current certification and must immediately inform the Department of any change in the status of the Contractor's certification.
- 18.4 The Contractor is solely responsible for and must meet all labor, health, safety, and other legal requirements, including payment of all applicable taxes, premiums, deductions, withholdings, overtime and other amounts, which may be legally required with respect to the Contractor, the Contractor's employees, and any persons providing services on behalf of the Contractor under this Contract. The Contractor may not use in the performance of its duties and responsibilities under this Contract a person as an independent contractor unless that person is currently and remains certified in accordance with Montana law as an independent contractor.
- 18.5 The provision of this Contract regarding indemnification applies with respect to any and all claims, obligations, liabilities, costs, attorney fees, losses or suits involving the Department that accrue or result from the Contractor's failure to comply with this section, or from any finding by any legal authority that any

person providing services on behalf of the Contractor under this Contract is an employee of the Department.

19.0 COMPLIANCE WITH APPLICABLE LAWS, RULES AND POLICIES

The Contractor must comply with all applicable federal and state laws, executive orders, regulations and written policies, including those pertaining to professional, facility, and program licensing.

20.0 FEDERAL REQUIREMENTS AND ASSURANCES

20.1 Generally

20.1.1 The Contractor, in addition to the federal requirements specified in this Contract and any attachments to this Contract, must comply with the applicable federal requirements and assurances for recipients of federal grants provided in the federal OMB 424B (Rev. 7-97) form, known as "ASSURANCES - NON-CONSTRUCTION PROGRAMS", and in the Department's "CERTIFICATION OF COMPLIANCE WITH CERTAIN REQUIREMENTS FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES (6-99)". Those assurance documents must be signed by the Contractor and submitted to the Department prior to the signing of this Contract.

- 20.1.2 The Contractor is responsible for determining which requirements and assurances are applicable to the Contractor.
- 20.1.3 Contractors receiving Title XIX - Home and Community Medicaid monies must comply with all applicable requirements of 42 CFR Part 441, Subpart G, 45 CFR Part 74, and OMB Circulars A-102, A-110, and A-133.
- 20.1.4 Contractors receiving Early Intervention Program for Infants and Toddlers with Disabilities (Part C) monies must comply with all applicable requirements of 34 CFR Parts 74 and 303; and OMB Circulars A-102, A-110, and A-133.
- 20.1.5 Contractors receiving Title XX SSBG monies must comply with all applicable requirements of 45CFR96; all applicable Information Memorandum Transmittals as found on the Title XX SSBG website (www//acf.dhhs.gov/programs/ocs/ssbg/); all applicable information found on the Title XX SSBG website; 45 CFR Part 74; and OMB Circulars A-102, A-110, and A-133.
- 20.1.6 The Contractor must ensure compliance of its subcontractors with the applicable federal requirements and assurances and any related reporting requirements.

20.2 Political and Lobbying Activities

- 20.2 .1 Federal monies received by the Contractor under the terms of this Contract may not be used for any political activities by the

Contractor, its employees or agents except as expressly permitted by state and federal law.

20.2 .2 As required by 31 U.S.C. 1352 and 45 CFR 93.100 et seq., federally appropriated monies may not be used to influence or attempt to influence an officer or employee of any agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress or an employee of a member of the U.S. Congress, in connection with the awarding of any federal contract, grant or loan, the making of any cooperative agreement or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

20.2 .3 If any funds other than federally appropriated funds are paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress or an employee of a member of the U.S. Congress in connection with this Contract, the Contractor must complete and submit to the Department the federally required form, "STANDARD FORM LLL".

20.2 .4 Federally appropriated monies received through the programs administered by the federal Departments of Health & Human Services, Education or Labor, as provided in Section 503 of H.R. 3010,"Departments Of Labor, Health and Human Services, and Education, and Related Agencies Appropriations

Act, 2006", Pub. L. No. 109-149, and as may be provided by congressional continuing resolutions or further budgetary enactments, may not be used:

20.2.4.1 to fund publicity or propaganda, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or a state legislature, except for presentations to the U.S. Congress or a state legislative body or one or more of its members as an aspect of normal and recognized executive-legislative relationships.

20.2.4.2 to pay the salary or expenses of any grant or contract recipient, or agent acting for the recipient, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or a state or local legislative body.

20.2.5 The Contractor must cooperate with any investigation undertaken regarding the expenditure of funds for political or lobbying activities.

20.2.6 Federal Debarment Requirements

20.2.6.1 The Department, in accordance with The Federal Acquisition Streamlining Act of 1994, P.L. 103-355, and Executive Orders #12549 and #12689, is prohibited from contracting with any

entity that is debarred, suspended, or otherwise excluded from participating in procurement activities funded with federal monies. This prohibition also extends to contracting with an entity that has a director, officer, partner, person with beneficial ownership of more than 5 percent of the entity=s equity, employee, consultant, or person otherwise providing items and services that are significant and material to the entity=s obligations under its Contract with the Department if that person has been debarred, suspended or otherwise excluded from participating in procurement activities funded with federal monies.

20.2.6.2 If the Department finds that the Contractor is not in compliance with federal debarment requirements, the Department;

20.2.6.2.1 must notify the federal government;

20.2.6.2.2 may continue this Contract unless the Secretary of the federal Department of Health and Human Services or other authorizing federal authority directs otherwise; and

20.2.6.2.3 may only renew or otherwise extend the duration of the existing Contract with the Contractor if the federal government provides to the Department and to Congress a written statement describing compelling reasons that exist for renewing or extending this Contract.

20.2.7 Federal False Claims Act Education

Any contractor and its subcontractors furnishing items or services funded with Medicaid monies at more than a single location or under more than one contractual or other payment arrangement and receiving aggregate payments of Medicaid monies totaling \$5,000,000 or more annually must comply with the requirements of 1902(a)(68) of the Social Security Act. It is the responsibility of the Contractor to establish written policies to be presented in handbooks and otherwise for all employees that include detailed educational information about the federal False Claims Act and the other provisions specified in section 1902(a)(68)(A).

21.0 CIVIL RIGHTS

21.1 Federal and State Authorities

The Contractor must comply with the applicable provisions of the Montana Human Rights Act (49-2-101, et seq., MCA), Governmental Code of Fair Practices (49-3-101, et seq. MCA) the federal Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), the federal Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), Section 504 of the federal Rehabilitation Act of 1973

(29 U.S.C. 794), and the federal Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.).

21.2 Discrimination

The Contractor, as provided at 49-3-207, MCA and other relevant authorities, may not discriminate in any manner against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

21.3 Employment

The Contractor, as provided at 49-3-207, MCA, must hire persons on the basis of merit and qualifications directly related to the requirements of the particular position being filled.

The Contractor, in accordance with federal Executive Orders 11246 and 11375 and 41 CFR Part 60, must provide for equal employment opportunities in its employment practices.

21.4 Any subcontractor for the Contractor entering into a performance for the purposes of this Contract must comply with the provisions of this Section.

21.5 The Contractor's subcontracts for the performance of services for the purposes of this Contract must contain these provisions.

22.0 RECIPIENT GRIEVANCES AND APPEALS

- 22.1 The Contractor must inform applicants for and recipients of services provided through this Contract of any right there maybe to present grievances to the Contractor and the Department or to receive a fair hearing.
- 22.2 If an appeal for a fair hearing is filed, the Contractor must appear, if requested by the Department, to present evidence on behalf of the Department in any hearing that may be held.
- 22.3 The Contractor, as directed by the Department, must provide services in accordance with the decision in a fair hearing concerning services provided by the Contractor to a recipient of services.

23.0 PUBLIC INFORMATION AND DISCLAIMERS

- 23.1 All public notices, information pamphlets, press releases, research reports, posters, public service announcements, web sites and similar modes of presenting public information pertaining to the services and activities funded with this Contract prepared and released by the Contractor must include the statement:

"This project is funded (in part) under a contract with the Montana Department of Public Health and Human Services. The statements herein do not necessarily represent the positions of the Department."

- 23.2 A Contractor providing consultation or training services to the public or departmental and other staff and professionals must inform audiences and

trainees that any opinions expressed by the Contractor do not necessarily represent the positions of the Department.

- 23.3 The Contractor, in accordance with Section 506 of H.R. 3010,"Departments Of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006", Pub. L. No. 109-149, and as may be provided by congressional continuing resolutions or further budgetary enactments, must state in all statements, press releases, and other documents or media pieces made available to the public describing the services provided through this Contract and funded in part or in whole with federally appropriated monies received through the programs administered by the federal Departments of Health & Human Services, Education or Labor, the percentage and the monetary amount of the total program or project costs funded with federal monies and the percentage and the monetary amount of the total costs funded with non-governmental monies.
- 23.4 All statements, press releases, and other documents or media pieces made available to the public describing the services provided with monies received through this Contract must be reviewed and approved by the Department prior to use, publication or release.
- 23.5 The Contractor may not expend monies under this Contract for the purchase of any media time for publicity or advertising concerning the Department=s services available through this Contract or the Contractor=s services and performance under this Contract that financially or textually directly or indirectly supports, opposes, or associates the Department or the services made available through this Contract with any specific political agenda, political party, a candidate for public office, or a matter to be voted upon by the public.

Media includes but is not limited to commercial and noncommercial print, verbal and electronic media.

24.0 PROPERTY

24.1 This provision is applicable to expenditures under this Contract of both federal and state funding, except for monies received through the DD Program standardized rates reimbursement system .

24.2 For purposes of this provision the following definitions based on the pertinent federal regulations apply:

"Equipment" means tangible non-expendable personal property, including exempt property, charged directly to the Contract having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit unless lower limits are otherwise established.

"Intangible property" means, but is not limited to, trademarks, copyrights, patents, and patent applications and such property as loans, notes and other instruments of property ownership, whether considered tangible or intangible.

"Personal property" means property of any kind of property except real property. It may be tangible, having physical existence, such as equipment and supplies, or intangible, having no physical existence, such as data, copyrights, patents, or securities.

"Property" means, unless otherwise stated, real property, equipment, and intangible property.

"Real property" means land, including land improvements, structures, and appurtenances thereto, but excludes movable machinery and equipment.

- 24.3 Property to be used for the purposes of carrying out the duties and responsibilities provided for in this Contract may be purchased with funds from this Contract only if authorized by the Department through the terms of this Contract. The requirements of this provision are not applicable to the expenditure of monies derived through a standardized rate reimbursement system.
- 24.4 Property purchased with federal funding must be purchased, managed, and disposed of in accordance with the pertinent provisions at 74 CFR __ 74.32, 74.34, 74.35, 74.36, and 74.37 and 92 CFR __ 92.31, 92.32, 92.33 and 92.34.
- 24.5 At such time as the Contractor no longer contracts to deliver services to the Department or as directed by the Department during the term of the Contract, the Contractor agrees to deliver, as may be required by law or as may be directed by the Department, title to and possession of any property purchased with contractual monies to the Department or to any entity designated by the Department.
- 24.6 All patent and other legal rights in and to inventions arising out of activities assisted by funds from this Contract must be available, in accordance with 37 CFR Part 401 and any other applicable legal authority, to the public for royalty-free and nonexclusive licensing. The Contractor must notify the

Department promptly in writing of any invention conceived or actually reduced to practice in the course of performance of this Contract.

24.7 The Department and any federal agency from which funds for this Contract are derived have, in accordance with 45 CFR _74.36 and 45 CFR _92.34, a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use for Department and agency purposes any written, audio or video material developed under this Contract.

25.0 CORRECTIVE ACTIONS AND SANCTIONS

25.1 The Department may impose corrective actions on the Contractor when the Department determines that the Contractor is not in compliance with the terms of this Contract, or any other authority, including statute, rules, or policy that govern the standards for performance, the receipt and expenditure of the monies provided through the Contract, and the conduct of the Contractor as a contractor for the State. Corrective actions are for the purpose of reforming failings in the Contractor's performance and conduct. The Department in its discretion may incorporate sanctions in the corrective action but need not employ corrective action prior to the imposition of sanctions.

25.2 The Department may impose sanctions, inclusive of termination of the contractual relationship, upon the Contractor's failure to perform or conform with, in whole or part, the duties and responsibilities provided for in this Contract or any other authority, including statute, rules, or policy that govern the standards for performance, the receipt and expenditure of the monies provided through the Contract, and the conduct of the Contractor as a

contractor for the State. The imposition of sanctions need not be accompanied by corrective action.

25.3 Failure to perform, in whole or in part, the duties and responsibilities of this Contract includes, but is not limited to, the following:

25.3.1 refusal or failure of the Contractor to participate in any aspect of a quality assurance review;

25.3.2 refusal or failure of the Contractor to implement changes in services, as requested by the Department;

25.3.3 refusal or failure of the Contractor to correct deficiencies noted in a quality assurance review;

25.3.4 the failure of the Contractor after corrective action measures to be in compliance with the pertinent quality assurance standards or to meet any affirmative requirements requested by the Department; or

25.3.5 the Contractor's management or delivery of services has resulted or is resulting in harm to staff, residents or others or poses a probable risk of harm to staff, residents and others.

25.4 Sanctions may include but are not limited to:

25.4.1 imposition of training and accountability measures;

25.4.2 imposition of further review measures;

25.4.3 imposition of further performance requirements;

25.4.4 imposition of a moratorium wherein the provider may not serve any additional consumers in existing openings or participate in any expansion activities;

25.4.5 suspension of contractual payments, in whole or part, for a specified time or amount; or

25.4.6 withdrawal of qualified provider status and termination of the contractual relationship.

25.5 The Department in its discretion may proceed to terminate this Contract without first imposing corrective actions and sanctions.

26.0 DEPARTMENTAL GUIDANCE

The Contractor may request from the Department guidance in administrative and programmatic matters that are necessary to the Contractor's performance. The Department may provide such guidance as it determines is appropriate. Guidance may include providing copies of regulations, statutes, standards and policies that are to be complied with under this Contract. The Department may supply essential interpretations of such materials and this Contract to assist with contract compliance by the Contractor. The Contractor is not relieved by a request for guidance of any obligation to meet the requirements of this Contract. Legal services will not be

provided by the Department to the Contractor in any matters relating to the Contractor's performance under this Contract.

27.0 ACCESS TO PREMISES

The Contractor must provide the State of Montana and any other legally authorized governmental entity, or their authorized representatives, the right to enter at all reasonable times the Contractor's premises or other places where contractual performance occurs to inspect, monitor or otherwise evaluate contractual performance.

The Contractor must provide reasonable facilities and assistance for the safety and convenience of the persons performing those duties. All inspection, monitoring and evaluation must be performed in such a manner as not to unduly interfere with contractual performance.

28.0 CONTRACT TERMINATION

28.1 The Department, in accordance with Section 25 of this Contract, may direct the contractor to take actions to correct failures in performance or to otherwise come into compliance with the terms of the contract or with applicable legal requirements. In addition, the Department may impose penalties upon the contractor for failures in performance.

28.2 The Department may immediately terminate the whole or any part of this Contract for failure of the Contractor to perform the Contract in accordance with the terms of the Contract or other governing legal authorities.

28.2.1 Failure to perform includes, but is not limited to, failure to:

- 28.2.1.1 perform the services as required and within the time limits specified in this Contract;
- 28.2.1.2 comply with any of the requirements of this Contract inclusive of reporting and accounting;
- 28.2.1.3 perform its contractual duties or responsibilities in accordance with the terms of the Contract or any other authority, including statute, rules, or policy ,that govern the standards for performance, the receipt and expenditure of the monies provided through the Contract, and the conduct of the Contractor as a contractor for the State;
- 28.2.1.4 maintain its status, if applicable, as a qualified provider of those developmental disabilities services that it receives reimbursement from the Department for the provision of.
- 28.2.1.5 comply with any law, regulation or licensure and certification requirement; or
- 28.2.1.6 respond to or to effectively implement corrective actions or other measures required by the Department.

28.3 The Department may terminate the whole or any part of this Contract when federal or state funding for this Contract becomes unavailable for any reason. The Department must give notice to the Contractor at least sixty (60) days

prior to the effective date of termination unless the parties agree to a shorter notice period.

28.4 Either party may terminate this Contract without cause. The party terminating this Contract must give notice of termination to the other party at least sixty (60) days prior to the effective date of termination. The parties may mutually agree to a different time period for notice.

28.5 Notice of termination must be given in writing addressed to the Contract liaison for the Department.

28.5.1 Notice of termination given to the Department by the Contractor may only be revoked with the consent of the Department.

28.6 Upon contract termination or non-renewal of this Contract, the Contractor must allow the Department, its agents and representatives full access to the Contractor's facilities and records as the Department determines is necessary to arrange for and implement the orderly transfer of the contracted activities.

29.0 CONTRACTUAL DISPUTE RESOLUTION PROCESS

29.1 The Contractor may appeal any issue concerning performance or consideration under the terms of this Contract by presenting a formal request for clarification to the Regional Manager for the Developmental Disabilities Program responsible for oversight of the services to which the performance issue pertains. The Regional Manager will provide a written clarification in response. Upon receiving the responsive clarification of performance duties and responsibilities under this Contract, if the Contractor disagrees with the

clarification from the Regional Manager, the Contractor may present the issue of performance to the Chief of the Financial Services Bureau of the Disability Services Division. The Chief of that Bureau will review the matter further in collaboration with appropriate and knowledgeable staff for the DD Program and then will provide a written response to the appeal. If the Contractor disagrees with the response of the Chief of the Financial Services Bureau, the Contractor may present the issue to the Administrator of the Disability Services Division for a final review and determination.

29.2 The Contractor in pursuing a review of an issue under this dispute resolution process may present any materials and other information to be considered by the Department. The Contractor may request at any stage in the process to present information in person to the Department.

29.3 This contractual dispute resolution process implements House Bill 437 of the 2007 Montana Legislature.

29.4 This contractual dispute resolution process is not applicable to the contest of any matters arising as an obligation of legal authority inclusive of federal or state law, regulation or rule.

30.0 LIAISON AND SERVICE OF NOTICES

30.1 [REDACTED] is the liaison for the Department. [REDACTED] is the liaison for the Contractor. These persons serve as the primary contacts between the parties regarding the performance of this Contract. The State's liaison and Contractor's liaison may be changed by written notice to the other party.

30.2 Written notices, reports and other information required to be exchanged between the parties must be directed to the liaison at the parties' addresses set out in this Contract.

31.0 REGISTRATION OF OUT OF STATE ENTITIES

A business that is incorporated in a state other than Montana or in a foreign country and that is conducting business in Montana may be required by 35-1-1026 and 35-8-1001, MCA, to register with the Montana Secretary Of State Office. Further information concerning these requirements may be obtained through the Business Services Division of the Montana Secretary Of State=s Office at <http://sos.mt.gov/BSB/index.asp> or by calling 406.444.3665.

32.0 TECHNOLOGY ACCESS FOR PERSONS WHO ARE BLIND OR VISUALLY IMPAIRED

Information technology equipment and software for use by employees, program participants, or members of the public purchased with monies derived from this Contract must provide persons who are blind or visually impaired with access, including interactive use of the equipment and services that is equivalent to that provided to persons who are not blind or visually impaired. The requirements of this provision are not applicable to the expenditure of monies derived through a standardized rate reimbursement system.

33.0 TOBACCO-FREE WORKPLACE AND OTHER RESTRICTIONS

The Contractor must provide a tobacco-free workplace. The Contractor must provide to the Department its policy for the implementation of a tobacco-free workplace.

The Contractor and its subcontractors during the term of this contract may not: 1) perform any work involved in the production, processing, distribution, promotion, sale, or use of tobacco products or the promotion of tobacco companies; or 2) accept revenues from the tobacco industry or subsidiaries of the tobacco industry.

34.0 CHOICE OF LAW, REMEDIES AND VENUE

34.1 This Contract is governed by the laws of the State of Montana.

34.2 Any remedies provided by this Contract are not exclusive and are in addition to any other remedies provided by law.

34.3 If there is litigation concerning this Contract, venue must be in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

34.4 If there is litigation concerning this Contract, the Contractor must pay its own costs and attorney fees.

34.5 If there is a contractual dispute, the Contractor agrees to continue performance under this Contract unless the Department explicitly waives performance in writing.

35.0 SCOPE, AMENDMENT AND INTERPRETATION OF CONTRACT

- 35.1 This Contract consists of numbered 40 pages, the Contracting Guidelines, and corresponding appendices. This is the entire Contract between the parties.
- 35.2 No statements, promises, or inducements made by either party or their agents are valid or binding if not contained in this Contract and its attachments.
- 35.3 The headings to the sections of this Contract are for convenience of reference and do not modify the terms and language of the provisions to which they are headings.
- 35.4 No contractual provisions from a prior contract of the parties are valid or binding in this contractual agreement.
- 35.5 This Contract, except as may be otherwise provided by the terms of this Contract, may not be enlarged, modified or altered except by written amendment signed by the parties to this Contract.
- 35.6 In the event of a dispute as to the duties and responsibilities of the parties under this Contract, the Contract along with any attachments prepared by the Department, inclusive of request for proposal, if any, govern over the Contractor's proposal, if any.
- 35.7 In the event that a provision of this Contract is determined by a court of law to be legally invalid, all other provisions of this Contract remain in effect and are valid and binding on the parties.

35.8 If any provision of this Contract, per se or as applied, is determined by the Department to be in conflict with any federal or state law or regulation then the provision is inoperative to the extent that the Department determines it is in conflict with that authority and the provision is to be considered modified to the extent the Department determines necessary to conform with that authority.

35.9 Waiver of any default, breach or failure to perform under this Contract may not be construed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of any default, breach or failure to perform may not be construed to be a modification of the terms of this Contract unless reduced to writing as an amendment to this Contract.

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

MONTANA DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

By: _____ Date
____/____/____

Joe A Mathews, Administrator
Disabilities Services Division

By: _____ Date
____/____/____

Chairperson or Board President's Name,
Provider Name

- D. That the Contractor is in compliance with all of the privacy, security, electronic transmission, coding and other requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing rules as may be applicable to the Contractor.

- E. That the Contractor, if receiving federal monies, does not expend federal monies in violation of federal legal authorities prohibiting expenditure of federal funds on lobbying federal and state legislative bodies or for any effort to persuade the public to support or oppose legislation.

- F. That the Contractor, if receiving federal monies, prohibits smoking at any site of federally funded activities that serves youth under the age of 18. This is not applicable to sites funded with Medicaid monies only or to sites used for inpatient drug or alcohol treatment.

- G. That the Contractor, if receiving federal monies, maintains drug free environments at its work sites, providing required notices, undertaking affirmative reporting, et al., as required by federal legal authorities.

- H. That the Contractor manages any real, personal, or intangible property purchased or developed with federal monies in accordance with federal legal authorities.

- I. That the Contractor, if receiving federal monies, is not delinquent in the repayment of any debt owed to a federal entity.

- J. That the Contractor, if expending federal monies for construction purposes or otherwise for property development, complies with federal legal authorities

relating to flood insurance, historic properties, relocation assistance for displaced persons, elimination of architectural barriers, metric conversion and environmental impacts.

- K. That the Contractor, if expending federal monies for research purposes, complies with federal legal authorities relating to use of human subjects, animal welfare, bio-safety, misconduct in science and metric conversion.

- L. That the Contractor, if receiving \$100,000 or more in federal monies, complies with all applicable standards and policies relating to energy efficiency which are contained in the state energy plan issued in compliance with the federal Energy Policy and Conservation Act.

The Contractor is obligated during the duration of the contractual relationship to abide by those requirements pertinent to it in accordance with the governing legal authorities.

Not all of these assurances may be pertinent to the Contractor's circumstances. This certification form, however, is standardized for general use and signing it is intended to encompass only provisions applicable to the circumstances of the Contractor in relation to the federal and state monies that are being received.

These assurances are in addition to those stated in the federal OMB 424B (Rev. 7-97) form, known as "ASSURANCES - NON-CONSTRUCTION PROGRAMS", issued by the federal Office of Management of the Budget (OMB). Standard Form

424B is an assurances form that must be signed by the Contractor if the Contractor is to be in receipt of federal monies.

There may be program specific assurances, not appearing either in this form or in the OMB Standard Form 424B, that the Contractor may have to provide by certification.

This form, along with OMB Standard Form 424B, are to be provided with original signature to the Department's contract liaison. The completed forms are maintained by the Department in the pertinent purchase and contract files.

Further explanation of several of the requirements certified through this form may be found in the Department's standard Request for Proposal (RFP) format document, standard contracting requirements document, and set of standard contract provisions.

In addition, detailed explanations of federal requirements may be obtained through the Internet at sites for the federal departments and programs and for Office for Management of the Budget (OMB) and the General Services Administration (GSA).

INSERT NAME OF CONTRACTOR

By: _____ Date _____

_____ as _____

Typed/Printed Name

Title

Address



Phone Number



Federal I.D. Number

The Department's "POLICY ON STANDARD CONTRACTUAL TERMS" has been prepared by the DPHHS Office of Legal Affairs.

ATTACHMENT B
NUMBERS OF PERSONS, SERVICES DESIRED,
AND LOCATIONS

The number of persons, the services, and locations may change as contract negotiations occur. These numbers will change as persons have different service needs or move to different communities. These numbers are the current estimates of services needed for the next biennium based on past contractual agreements and current data.

NUMBERS AND SERVICE AREAS FOR DDP REGION 3

ONLY PART C EARLY INTERVENTION SERVICES: This contractor would serve infants and toddlers in Part C services *only inside* the Billings city limits

FY10 total contract numbers (including ARRA funded) will remain the same as the ending FY09 contract numbers as identified in DDP Contract Amendment #01 dated 11-1-08 for this service.

SERVICE AREA	NUMBER OF INDIVIDUALS FOR PART C IN CONTRACT
<u>PART C - REGION III – SECTION 2</u> Billings city limits	<u>PART C - REGION III – SECTION 2</u> At least 134 infants and toddlers

BOTH PART C AND GENERAL FUND FAMILY EDUCATION AND SUPPORT (FES) SERVICES – This contractor would serve individuals in FES services in the entire DDP service region *and* infants and toddlers in Part C services in all of the region *except* inside the Billings city limits

FY10 total contract numbers (including ARRA funded) will remain the same as the ending FY09 contract numbers as identified in DDP Contract Amendment #01 dated 11-1-08 for this service.

SERVICE AREA	NUMBER OF INDIVIDUALS IN CONTRACT
<u>FES - REGION III (entire region)</u> Judith Basin, Fergus, Petroleum, Musselshell, Wheatland, Golden Valley, Yellowstone (INCLUDING Billings city limits), Stillwater, Carbon, and Big Horn counties	<u>FES - REGION III (entire region)</u> Full Services – 37 Limited Services – 97 Follow along Services - 8
<u>PART C - REGION III – SECTION 1</u> Judith Basin, Fergus, Petroleum, Musselshell, Wheatland, Golden Valley, Yellowstone (<i>outside</i> Billings city limits), Stillwater, Carbon, and Big Horn counties	<u>PART C - REGION III – SECTION 1</u> At least 93 infants and toddlers

ATTACHMENT C
FEDERAL ASSURANCES

DEPARTMENT CERTIFICATION FORM

CERTIFICATION OF COMPLIANCE WITH CERTAIN REQUIREMENTS FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES CONTRACTORS (June 2007)

The Contractor, **Company Name**, for the purpose of contracting with the Montana Department of Public Health & Human Services, certifies to the Department its compliance, as may be applicable to it, with the following:

- A. That the Contractor does not act in collusion with other contractors for the purpose of gaining unfair advantages for it or other contractors or for the purpose of providing the services at a noncompetitive price or otherwise in a noncompetitive manner.
- B. That the Contractor is an independent contractor; that it maintains necessary and appropriate workers compensation and unemployment insurance coverage; that it is solely responsible for and must meet all labor and tax law requirements pertaining to its employment and contracting activities, inclusive of insurance premiums, tax deductions, tax withholding, overtime wages and other employment obligations that may be legally required with respect to it.
- C. That the Contractor, any employee of the Contractor, or any significant subcontractor in the performance of the duties and responsibilities of the proposed contract, are not currently suspended, debarred, or otherwise prohibited from entering into a federally funded contract or participating in the performance of a federally funded contract.
- D. That the Contractor is in compliance with all of the privacy, electronic transmission, coding and other requirements of the Health Insurance Portability And Accountability Act of 1996 and its implementing rules as may be applicable to the Contractor.
- E. That the Contractor, if receiving federal monies, does not expend federal monies in violation of federal legal authorities prohibiting expenditure of federal funds on lobbying federal and state legislative bodies or for any effort to persuade the public to support or oppose legislation.
- F. That the Contractor, if receiving federal monies, prohibits smoking at any site of federally funded activities that serves youth under the age of 18. This is not applicable to sites funded with Medicaid monies only or to sites used for inpatient drug or alcohol treatment.
- G. That the Contractor, if receiving federal monies, maintains drug free environments at its

work sites, providing required notices, undertaking affirmative reporting, et al., as required by federal legal authorities.

- H. That the Contractor manages any real, personal, or intangible property purchased or developed with federal monies in accordance with federal legal authorities.
- I. That the Contractor, if receiving federal monies, is not delinquent in the repayment of any debt owed to a federal entity.
- J. That the Contractor, if expending federal monies for construction purposes or otherwise for property development, complies with federal legal authorities relating to flood insurance, historic properties, relocation assistance for displaced persons, elimination of architectural barriers, metric conversion, and environmental impacts.
- K. That the Contractor, if expending federal monies for research purposes, complies with federal legal authorities relating to use of human subjects, animal welfare, biosafety, misconduct in science and metric conversion.
- L. That the Contractor, if receiving \$100,000 or more in federal monies, complies with all applicable standards and policies relating to energy efficiency which are contained in the state energy plan issued in compliance with the federal Energy Policy and Conservation Act.

The Contractor is obligated during the duration of the contractual relationship to abide by those requirements pertinent to it in accordance with the governing legal authorities.

Not all of these assurances may be pertinent to the Contractor=s circumstances. This certification form, however, is standardized for general use and signing it is intended to encompass only provisions applicable to the circumstances of the Contractor in relation to the federal and state monies that are being received.

These assurances are in addition to those stated in the federal OMB 424B (Rev. 7-97) form, known as "**ASSURANCES - NON-CONSTRUCTION PROGRAMS**", issued by the federal Office of Management of the Budget (OMB). Standard Form 424B is an assurances form that must be signed by the Contractor if the Contractor is to be in receipt of federal monies.

There may be program specific assurances, not appearing either in this form or in the OMB Standard Form 424B, that the Contractor may have to provide by certification.

This form, along with OMB Standard Form 424B, are to be provided with original signature to the Department's contract liaison. The Department maintains the completed forms in the pertinent purchase and contract files.

Further explanation of several of the requirements certified through this form may be found in the Department's standard Request For Proposal (RFP) format document, standard contracting requirements document, and set of standard contract provisions. In addition, detailed explanations of federal requirements may be obtained through the Internet at sites for the federal departments and programs and for Office for Management of the Budget (OMB) and the General Services Administration (GSA).

Contractor Name

By: _____ Date _____

Typed/Printed Name as _____
Title

Address

Phone Number

Federal I.D. Number

ATTACHMENT D

CONTRACTING GUIDELINES

**INCLUDES INFORMATION ON COMPLETION OF
CONTRACTING INCLUDING INFORMATION FOR BUDGET SHEETS FOR
COMPETITIVE PROPOSALS, NON-COMPETITIVE PROPOSALS AND
CONTRACT NEGOTIATIONS**

DEVELOPMENTAL DISABILITIES PROGRAM

GUIDELINES FOR CONTRACT SFY 2010

For the Period July 1, 2009 through June 30, 2010

SECTION 1

INTRODUCTION

1. Introduction

The following are the contract guidelines for preparing your FY 2010 contract.

This supplemental contract process information is provided to corporations who will be contracting for the State Fiscal Year 2010 with the Department to provide services to persons with developmental disabilities. (The state fiscal year begins July 1, 2009 and ends June 30, 2010). All contractors should review the contents of these guidelines to be aware of specific provisions that affect the current contract.

Included in this packet are instructions for completing the following:

Section 2 – Service Proposal, New Contract Period

Section 3 – FY10 Budgets-a budget must be developed for FY10 for services not authorized through the AWACS Individual Cost Plan authorization process (i.e. Evaluation and Diagnosis, PASARR, Family Education and Supports general fund and Part C, etc).

You may use either the DD-45, DDP 41/42, or your individual format that provides the same data. This document must be submitted to the regional office by **June 12, 2009** based on beginning FY10 Appendix B amounts (this is the same as the FY 2009 June appendix B annualized amount).

Proposals not complying with the procedures outlined in these guidelines will be considered incomplete.

2. Contractor Checklist for FY10

All Contractors are required to submit the required information listed below to their Regional Office by **May 29, 2009**.

- ___ 1. Cover letter requesting contract.
- ___ 2. List of current board members and officers, their contact information including an e-mail address.
- ___ 3. A description of any significant changes proposed or made in the corporate goals and objectives or in the programs of service since the previous FY2009 contract period.
- ___ 4. If changes to Appendix I have been negotiated with the Regional Office and agreed to by both parties, then include a written request describing the changes. Performance requirements contained in the Contract Appendices will be negotiated for each program of service by regional staff if changes are necessary.

___ 5. Report a list of holidays that your corporation recognize for purposes of the Rates Reimbursement Methodology (if different than standard State holidays)

FY10 State Holidays

Independence Day	Friday, July 3
Labor Day	Monday, September 7
Columbus Day	Monday, October 12
Veterans' Day	Wednesday, November 11
Thanksgiving Day	Thursday, November 26
Christmas Day	Friday, December 25
New Year's Day	Friday, January 1
Martin Luther King Jr. Day	Monday, January 18
Presidents' Day	Monday, February 15
Memorial Day	Monday, May 31

___ 6. For services not authorized through the AWACS Individual Cost Plan authorization process (i.e. Evaluation and Diagnosis, PASARR, Family Education and Supports general fund and Part C, etc), submit budget sheets by **June 12, 2009**

**SECTION 2
SERVICE PROPOSAL, NEW CONTRACT PERIOD**

1. Procedures for Contract

- a. The following information should be provided in addition to providing an updated list of agency board members and officers. Please provide updates on any of the following information if it has changed since the negotiation of the SFY08 contract or the last amendment in the case of individuals served.
 - i. Name, address, telephone number, FAX number (if any), and E Mail address of the corporation.
 - ii. Federal Tax Identification Number.
 - iii. **NPI** (National Provider Identifier) number of provider
 - iv. **A list of the names, addresses, e-mail addresses, and titles of Officers and Board of Directors-UPDATE REQUIRED**
 - v. A detailed description of any service provision which the Contractor desires to assign, transfer, delegate or subcontract under this contract. The description must include the services to be provided with their frequency and location, who will receive the services and who will provide the services.
This information will be used during negotiations and the signed contract will constitute the written approval from the Department required prior to any assignment, transfer, delegation or subcontract. Changes from this description will need to be submitted to the Department prior to their occurrence.
- b. The contract must be signed by the Chairperson of the Board of Directors or a member designated by the Board.
- c. The contract and all appendices and attachments must be submitted to the DDP Central Office for final processing and approval.

2. **NOTE:** Performance requirements contained in the Contract Appendices will be negotiated for each program of service by regional staff if changes are necessary.

NOT ALL APPENDICES APPLY TO ALL CONTRACTS.

(1) A detailed description and definition of each program of service is provided in the Administrative Rules of Montana or the following Appendices of the Master Contract for **FY 2008** as follows:

Definition of Terms	Appendix A
Capacity and Expenditure Authorizations	Appendix B
Case Management Services	Appendix C
Family Support Service Information Network/TRIC	Appendix D
Adaptive Equipment	Appendix E
Evaluation and Diagnosis Services	Appendix F
Food Commodities	Appendix H
Individual Corporation Plan.....	Appendix I
Pasarr/MR Evaluation and Specialized Services	Appendix K

SECTION 3
FY 2010 CONTRACTOR BUDGETS
(For services not authorized through the AWACS ICP authorization process)

1. Procedure for FY10 Budgets

As mentioned in the introduction, these budget forms are either the DDP-45, DDP 41/42, or your individual format that provides the same data. Budget forms will be completed and submitted for all contracts using a budget-based or cost-based methodology (all services not authorized through the AWACS ICP authorization process).

Non-DDP income and expense, with the exception of SSI income, should be combined in the "other" column. ***DDP service income projected for services authorized through the AWACS ICP process may all be reported in one column, such as "ICP Authorized", or in separate columns for each service.*** These forms must be submitted to regional offices by June 12, 2009 based on FY10 appendix B (same as FY09 June Appendix B annualized amounts).

If you use Microsoft Excel, these forms are available electronically, upon request.

Follow the specifications below including heading titles, order of titles, categories, detail lines, etc. A separate budget form must be prepared for the fiscal year 2010 and will become part of the contract as Attachment A for 2010. Submit 3 (three) hard copies of all budget attachments.

The instructions, forms and special considerations that may affect the allocation and allowances for various types of costs are included on the following pages as a guide in completing the budgets.

a. Contractor Position/Budget Detail form (specifically staff position information)

The "Contractor Position/Budget Detail" allocates all staff positions across the various programs of service. See the enclosed samples. The numbers in parentheses in the sample refer to numbers in the following budgeting instructions section.

i. Contractor Name

Legal incorporated name of Contractor.

ii. Contract Number

Assigned by the DDP, as shown on the contract (e.g., 08-14X-XXXX). The first two digits of the contract number match the State Fiscal Year. The third and fourth digits identify the program within the Department of DPHHS (e.g., Developmental Disabilities Program). The fifth digit identifies the region assigned to the Contractor. The last two digits identify the individual Contractor.

iii. Position Title

Please summarize all positions according to the major work function of each position and classify as either Administrative or Direct Care. If an individual performs more than one function, or clearly functions in both Administrative and Direct Care, each part of FTE should be indicated proportionately. (See paragraph 1.a.vii Total Compensation Allocation for an example.

"Administrative Staff" means a position employed by a contractor into an Administrative position whose duties focus on supporting the operation of the organization such as administrative assistants, directors, fiscal staff, janitors, supervisory staff, program managers etc. **Although at times they may need to do so, the primary duties of an Administrative position are not the direct provision of services to persons with developmental disabilities or their families.**

"Direct Care Staff" means a person employed by a contractor in a position whose duties focus on the hands-on delivery of services to persons with developmental disabilities. Direct care tasks include: monitoring and delivering basic life and health care needs, implementing individuals' programs, intervening when maladaptive behaviors occur, recording progress toward meeting goals and objectives, documenting incidents, and sharing information with supervisory staff or other professionals according to the policies and procedures of the contractor. Examples of these positions include: group home workers, day program and sheltered-workshop workers, supported living staff, personal care attendants, and licensed practical nurses.

It is possible that your corporation has a staff member whose duties come from two different positions. One position (% of FTE) may be assigned to administrative and the other position (% of FTE) may be assigned to the Direct Care. However this staff member would carry a reduced caseload for Direct Care equal to % of FTE in the administrative function.

Full Time Equivalent (FTE): The basis for computing an FTE is one fiscal year. An FTE of 1.00 is defined as an employee working 2,080 hours. Express FTE factors in decimals carried out to the nearest hundredth. (See paragraph 1.a.vii Total Compensation Allocation for an example.)

Work Year	Employee Works	Calculation	FTE
2080 hours	1,420 hours	1420/ 2080	.68
260 days	162 days	162/260	.62
52 weeks	22 weeks	22/52	.42
40 hr/week	24 hr/week	24/40	.60
12 months	10 months	10/12	.83

iv. FY2010 Salaries & Benefits

Total compensation (salary, benefits, etc.) projected to be paid during FY2010 should be reported for "ADMINISTRATIVE" and for "DIRECT CARE". Any other compensation not related to these two categories (i.e. wages paid to individuals

served) must be reported in total as "additional compensation".

v. FY2010 FTE

Include the total number of FTE(s) for each position title as approved by the Board of Directors for each fiscal year.

vi. Position FTE Allocation

Allocate a portion of the total FTE for each position to the appropriate service(s). PLEASE DO NOT USE PERCENTAGES. PLEASE USE DECIMALS (up to two places) IN THESE COLUMNS.

vii. Total Compensation Allocation

The total reported for salaries and benefits should be allocated across all service programs and other income sources based on the ACTUAL FTE FOR THAT PROGRAM AS A PERCENTAGE OF TOTAL FTEs. (See following example.)

Two positions are in this example. The first position is a 1/2 FTE and the second is a 3/4 FTE. The allocation is 50% to each of two services. Therefore .25 of the first FTE is allocated to each program and .375 of the second FTE is allocated to each program. All partial FTE's should be allocated based on the actual percentage.

TOTAL FY2010 BUDGET

Position Title	FTE	Amount	E&D	FTE	Pasarr	FTE
First	0.50	\$10,000	5,000	0.25	5,000	0.25
Second	0.75	\$15,000	7,500	0.37	7,500	0.375
Total Compensation	1.25	\$25,000	12,500	0.62	12,500	0.62

b. Contractor Position/Budget Detail form (specifically budget/income info)

The budget sheets reflect the Contractor's financial plan by Program of Service.

Contracts that encompass two or more non-ICP services will be required to show the anticipated cost and source of income for each program within the budget. Budgets must include ALL sources of income and expense. Non-DDP income and expenses, with the exception of SSI income, should be reported in the other column provided. **DDP service income projected for services authorized through the AWACS ICP process may all be reported in one column, such as "ICP Authorized", or in separate columns for each service.** A system that provides for budgeting and reporting only positions applicable to DDP activities is not acceptable.

i. FY2010 Budget

Include the total amount of income needed, by funding source, to support the anticipated program expenditures for fiscal year 2010 as approved by the Board of

Directors.

ii. Program Funding Allocation

Allocate total income budgeted for FY2010 to each major program activity.

iii. Total Program Budgets

Total all columns for the fiscal year. Remember to include any S.S.I. subsidy assistance income and expenditures in the correct columns. Community Supports income and expenditures must also be reported in the identified columns.

iv. Budget/Fiscal Requirements

Uniform requirements for the administration of Department contracts and principles for determining allowable program costs are referenced in the master contract.

v. Cost Principles

The principles to be used in determining allowable costs of activities conducted by the nonprofit organizations are contained in OMB Circular A-87 and OMB-A-122.

The principles to be used in determining allowable costs of work performed by for-profit organization (other than hospitals) are contained in 48 CFR Part 31.

The principles that guide cost allowances for governments are contained in OMB Circular A-87; and for hospitals see 45 CFR 74, Appendix E.

vi. General Principles

To be allowable under this contract, costs must meet the following general criteria:

- (1) Expenses must not be used to meet cost sharing or matching requirements of any other governmental financed program.
- (2) Unit costs must be uniform across funding sources for the same service unless justification based on the needs of the individual served dictates otherwise.
- (3) A cost is reasonable if, by its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. **CONTRACTORS ARE ENCOURAGED TO CONSULT WITH THEIR AUDITORS FOR FURTHER GUIDANCE ON THIS SUBJECT.**

vii. Total Compensation (salaries and benefits)

Record all subtotals (administrative, direct care and additional compensation) as well as total compensation.

viii. Vacation/Sick Leave Accruals:

The Department does not recognize as an item of allowable cost, any portion of vacation or sick leave credits earned, but not used during the contract period (e.g., reimbursement is limited to actual cost or those year end accrual amounts for which payment is to be made at the beginning of the next fiscal year for vacation earned and taken).

ix. Equipment

Equipment purchased under this contract is defined as an item having a unit cost of **\$5000** or more and a life span of more than one year. Funds budgeted for equipment will meet that criterion. All items costing less than **\$5000** will be budgeted as Expendable Supplies. (Department of DPHHS Administrative Manual, Purchasing and State of Montana Policy).

All Contractors are required by Federal and State regulations to have an equipment inventory of all equipment purchased with funds provided through the DDP contracts or grants for FY04 through the current fiscal year on equipment.

Federal regulations mandate that proposed equipment purchases under this contract that exceed **\$5000** must be approved by DDP. To assist contractors in meeting these requirements, each contractor may show equipment to be purchased in the equipment line item or submit a copy of the on-site operating plan for any fiscal year in which purchases are proposed.

Request for approval of additional or major changes in equipment purchases may be made in writing during the year to the Regional Manager.

x. Depreciation of Buildings and Equipment

As of July 1, 1995 contractors are compensated for the use of real property, capital improvements, and equipment purchased with other than state or federal funds and owned by the Contractor, by means of depreciation.

- (1) "Depreciation" is defined as: A charge to current operations that distribute the cost of a tangible capital asset over the estimated useful life of the asset in a systematic and logical manner.
- (2) Computation of depreciation for reimbursement purposes will exclude both the cost and any portion of the cost paid for or donated by any governmental agency, irrespective of where title was originally vested or where it presently resides.
- (3) Depreciation schedules are determined by the consistent application of the straight-line method.
- (4) As per CMS Publication 15; Part 1; Section 104.17, dated 12-31-2002 the following American Hospital Association (A.H.A.) "Estimated Useful Lives of Depreciable Hospital Assets - should be utilized depending upon the date of purchase of the asset.
 - 1-1-83 thru 8-1-88 : AHA Edition 1983
 - 8-1-88 thru 3-1-93 : AHA Edition 1988
 - 3-1-93 thru 3-1-98 : AHA Edition 1993
 - 3-1-98 to current date : AHA Edition 1998

xi. Rent/Lease Agreements

- (1) Subject to the limitations as described below, Rent/Lease costs are allowable to the extent that the rates are reasonable in light of such factors as costs of

comparable property, market conditions in the area, available alternatives, and the type, life expectancy, condition and value of the property leased.

- (2) Rental costs under "less-than-arm's-length leases" are allowable only up to the amount that would be allowed had title to the property vested in the organization (i.e. the organization leasing the property). For this purpose, a lease which is "less-than-arm's-length" is one under which one party to the lease is able to contract or substantially influence the actions of the other (e.g., a lease between two corporations having the same board of directors).

xii. Interest Charges

Costs incurred for interest on borrowed operating capital or temporary use of endowment funds, however represented, are unallowable.

xiii. Travel

Travel reimbursement will be at the same rate that is allowed to State employees. Travel costs can include transportation, lodging, meals, and other necessary miscellaneous expense. The current maximum in-state allowable rates can be found at www.discoveringmontana.com/doa/doa-travel/travelmain.asp

ATTACHMENT E

DPHHS ARRA Contract Format



**CONTRACT FROM THE STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
FOR THE PROVISION OF SERVICES
FUNDED WITH FEDERAL ARRA MONIES**

CONTRACT NUMBER _____

1.0 PARTIES

THIS CONTRACT, is entered into between the Montana Department of Public Health and Human Services, (hereinafter referred to as the "Department"), whose address, phone number, and email address are 111 N. Sanders, P.O. Box 4210, Helena, Montana 59604, 406-444-2995, and _____ and the _____ whose nine (9) digit Federal ID Number is _____, and whose address, phone number, and email address are _____, _____, Montana _____, 406.____.____, and _____.

THE PARTIES AGREE AS FOLLOWS:

2.0 PURPOSE

2.1 The purpose of this Contract is to provide to the Contractor additional federal funding received by the State Of Montana under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, otherwise known as the "ARRA". The expenditure of monies under the Act are intended during this period of economic contraction and resulting personal financial stress and need for individual persons and families to provide funding for additional services to further meet the needs of persons who are recipients of the human services programs that the U.S. Congress has chosen to fund through the ARRA. These additional monies are in consideration for the delivery by the Contractor of further services for the persons who are during the term of this Contract to be eligible recipients for the services for which the funding, in accordance with the governing federal and state law and the terms of this Contract, is dedicated.

2.2 This Contract is also in furtherance of the purposes of Contract # _____, entered into between the Contractor and the Department for the term of _____ through _____ and future contracts for services entered into between the Department and the Contractor.

3.0 TIMELINESS AND ACCOUNTABILITY ARE IMPERATIVE

The U.S. Congress has mandated that the States expend the monies that are the consideration for this Contract in a timely and appropriate manner so as to achieve the fiscal and programmatic purposes of the ARRA. Consequently, there are substantive performance criteria that the Contractor must conform with. Those performance criteria include but are not limited to: 1) definite time periods for performance; 2) fiscal expenditure requirements and limitations; 3) accounting requirements; 4) programmatic performance requirements, and 5) fiscal and programmatic reporting requirements. Failure of the Contractor to perform in accordance with the performance criteria established in law and by this Contract and other governing contractual obligations will result in action by the State, as it determines in its discretion appropriate, to remedy the Contractor's failings. Actions may include but are not limited to 1) corrective contractual actions; 2) contractual recoveries; 3) administrative or criminal investigations; 4) administrative, civil or criminal remedies and penalties; 5) contractual termination and 6) debarment of the Contractor. The State furthermore may take action to terminate the State's contractual relationships with the Contractor under the existing Contract # _____ and any and all other contracts the Contractor may have entered into with the Department.

4.0 TERM OF CONTRACT – CONTRACT CONTINGENT ON FUNDING

4.1 The term of this Contract for the purpose of delivery of services is from _____ through _____ unless terminated otherwise in accordance with the provisions of this Contract. This Contract is a one time contract and therefore may not be extended for any period beyond that specified herein.

4.2 The term of this Contract is contingent on 1) the availability of the monies appropriated by the U.S. Congress through the ARRA and 2) the expenditure and accountability requirements of the ARRA. This Contract for purposes of performance, but not with respect to compliance requirements, may be terminated by the Department at any time during the term of this Contract if the Department determines 1) that the monies to fund this Contract are no longer available as a whole or in part through federal or state appropriation or authorization; or 2) the Contractor is failing as determined by the Department to meet any of the performance, fiscal and reporting requirements under this Contract.

4.3 The completion date of performance for purposes of issuance of final payment for services is the date upon which the Contractor submits to the Department such final reports as are required under this Contract and are satisfactory in form and contexts as determined by the Department.

4.4 The Contractor, after termination of this Contract, remains subject to and obligated to comply with all legal and continuing contractual obligations arising in relation to its duties and responsibilities that may arise under this Contract including, but not limited to, ARRA reporting requirements, record retention, audits, indemnification, insurance, the protection of confidential information, recipient grievances and appeals, and property ownership and use.

5.0 CENTRAL CONTRACTOR REGISTRATION AND DATE UNIVERSAL NUMBERING SYSTEM REQUIREMENTS

The Contractor, as required by Section 1512(h) of the ARRA and by the Federal Funding Accountability And Transparency Act, Pub. L. 111-5 (the Transparency Act), must prior to entering into this Contract and at all times during the term of this Contract be registered in the federal Central Contractor Registration (CCR) database at <http://www.ccr.gov>. In order to proceed with CCR registration the Contractor must first obtain a Date Universal Numbering System (DUNS) number. DUNS numbers are available through Dun & Bradstreet, the international business information corporation. The DUNS numbers may be obtained at <http://fedgov.dnb.com/webform/CCRSearch.do>. If a corporation has multiple DUNS numbers based upon multiple corporate sites, the primary business DUNS number is the only number that may be reported and relied upon in

Attachment E

DPHHS ARRA Contract Format

order to proceed with obtaining the CCR registration.

6.0 GOVERNANCE OF EXISTING CONTRACT

The delivery of services purchased under this Contract are, except as otherwise provided by federal and state law and the terms of this Contract, subject to the terms of the existing contract between the parties, Contract #_____.

7.0 REPORTING FOR ARRA, TRANSPARENCY ACT, MONTANA REINVESTMENT ACT AND OTHER PURPOSES

- 7.1** Reports of fiscal, employment and programmatic performance are an essential obligation of the Contractor as a subrecipient of ARRA monies. The State Of Montana must generate reports as required by federal and state law and direction in order to garner and retain without penalty or loss the ARRA monies that are available to Montana. Timely and full and complete reporting by subrecipient Contractors is essential to the completion of the State's reporting obligation.
- 7.2** The Contractor must comply, as directed by the Department, with the various reporting requirements of the ARRA, the Transparency Act and other federal and state laws that are applicable to performance under this Contract. For purposes of performance under this Contract, the Contractor must comply with the reporting timelines, procedures and other requirements established by the Department for purposes of delivery of services under this Contract. The Contractor must prepare and submit to the Department reports in conformance with the particular timelines and reporting requirements that are stated in Addendum A to this Contract and any other items deemed necessary by the Department.
 - 7.2.1** Addendum A Section 1. Section 1 of the ARRA Common Data Elements Report titled Contract Summary Information must be completed upon contract initiation and emailed to the Department Contract Liasison.
 - 7.2.2** Addendum A Section 2. Section 1 of the ARRA Common Data Elements Report titled Invoice Details must be completed and emailed to the Department Contract Liaison with each payment request.
- 7.3** The Contractor, when preparing a Schedule Of Expenditures Of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) as required by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits Of States, Local Governments, And Non-Profit Organizations", must identify separately on the forms the monies expended under the federal ARRA".
- 7.4** Definitions
 - 7.4.1** "Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (ARRA). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR [2.101](#)). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
 - 7.4.2** "Jobs retained" means an estimate of those previously existing filled positions that are

retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (ARRA). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR [2.101](#)). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

7.4.3 “Total compensation” means the cash and noncash dollar value earned by the executive during the contractor’s past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

7.4.3.1 *Salary and bonus;*

7.4.3.2 *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments;

7.4.3.3 *Earnings for services under non-equity incentive plans.* Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees;

7.4.3.4 *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans

7.4.3.5 *Above-market earnings on deferred compensation which is not tax-qualified;* and

7.4.3.6 *Other compensation.* For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

8.0 ACCOUNTING, COST PRINCIPLES AND AUDIT

8.1 The Contractor must maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (GAAP), as interpreted by the Department and other pertinent federal and state authorities, and that conforms to any other accounting requirements required by the Department or other entities or that may be required under 18-4-311, MCA or any pertinent federal and state authorities.

8.2 The Department, the federal Departments Of Health And Human Services, Agriculture, Energy, or Education, and other authorized federal and state entities, their auditors, investigators and agents, in accordance with this Contract and applicable legal authorities, may conduct at any time during or after the term of this Contract audits and other investigations to assure the appropriate administration and expenditure of the monies provided to the Contractor through this Contract and to assure the appropriate administration and delivery of services delivered through this Contract.

8.3 The Contractor during the term of this Contract and for eight years thereafter must provide, in accordance with 18-1-118, MCA and other pertinent federal and state authorities, access to all of the Contractor’s records, materials and information including any and all audit reports with supporting materials and work documents pertinent to the delivery of services provided under this Contract. Access is to be available for purposes of audit and other administrative activities and investigations. Access must be provided in a timely and unrestricted manner, and in a format acceptable by the Department. Access is to be available for the Department, as applicable, the federal Departments Of Health And Human Services, Agriculture, Energy, or Education, and other authorized federal and state entities, their auditors, investigators and agents. The entities and their agents may record any

information and make copies of any materials necessary for the conduct of an audit or other administrative activity or investigation.

- 8.4 The Contractor must, as directed by the Department or other auditing and investigatory entities, take corrective action to resolve audit findings. The Contractor must prepare a corrective action plan that specifies the particular audit findings necessitating corrective action and the actions the Contractor proposes to undertake. The Department may direct the Contractor to modify the corrective action plan as the Department determines is necessary and appropriate.
- 8.5 The Contractor must reimburse the Department or compensate the Department in any other manner as the Department may direct for any sums of monies determined by an audit or other administrative activity or investigation to be owing to the Department.
- 8.6 A non-profit contractor, if receiving \$500,000 or more in federal funds from any and all federal funding sources, other than those monies received through a standardized rate reimbursement system, must comply with the accounting and audit requirements of Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and the provisions of OMB Circular "A-122, Cost Principles for Non-Profit Institutions" concerning the use of the funds provided under this Contract.
- 8.7 A for-profit contractor, receiving monies other than through a standardized rate reimbursement system, must comply with the accounting and audit requirements in 45 CFR 74.26(d) and the cost principles and procedures for commercial organizations in 48 CFR 31 concerning the use of the funds provided under this Contract in the version in effect on the date this Contract is designed by both parties. Pursuant to 45 CFR 74.26(d), a "for-profit" organization may either have an audit conducted in accordance with the Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" or the Government Auditing Standards.

9.0 COMPLIANCE WITH BUSINESS, TAX, AND LABOR LAWS INCLUSIVE OF THE FEDERAL DAVIS-BACON ACT

- 9.1 The Contractor assures the Department that the Contractor is legally authorized under state and federal business and tax laws to conduct business in accordance with this Contract.
- 9.2 The Contractor, at all times during the term of this Contract, must maintain coverage for the Contractor and the Contractor's employees through workers' compensation, occupational disease, and any similar or related statutorily required insurance program. The Contractor must provide the Department with proof of necessary insurance coverage as it may be issued to the Contractor and must immediately inform the Department of any change in the status of the Contractor's coverage.
- 9.3 If the Contractor's performance under this Contract involves the expenditure of ARRA funding in whole or in part for construction, alteration, maintenance, or repair, the Contractor, as directed by Section 1606 of the ARRA, must pay wages to laborers and mechanics involved in those activities in accordance with the federal Davis-Bacon Act, 40 U.S.C. 31, subchapter IV, and implementing regulations at 29 CFR parts 1, 3, and 5.
- 9.4 The Contractor, as a recipient of state contracted for services, must comply with the provisions the Montana prevailing wage requirements in Title 18, chapter 2, part 4, MCA unless the services contracted for are "human services" which are excluded from the definition of the term "public works contract" for purposes of the prevailing wage requirement.

- 9.5** If the Contractor has received, for workers' compensation and other purposes, an independent contractor certification from the Montana Department Of Labor And Industry, the Contractor must provide the Department with a copy of the current certification and must immediately inform the Department of any change in the status of the Contractor's certification.
- 9.6** The Contractor is solely responsible for and must meet all labor, health, safety, and other legal requirements, including payment of all applicable taxes, premiums, deductions, withholdings, overtime and other amounts, which may be legally required with respect to the Contractor, the Contractor's employees, and any persons providing services on behalf of the Contractor under this Contract. The Contractor may not use in the performance of its duties and responsibilities under this Contract a person as an independent contractor unless that person is currently and remains certified in accordance with Montana law as an independent contractor.
- 9.7** The provision of this Contract or the Contract referenced in Section 6, regarding indemnification, applies with respect to any and all claims, obligations, liabilities, costs, attorney fees, losses or suits involving the Department that accrue or result from the Contractor's failure to comply with this section, or from any finding by any legal authority that any person providing services on behalf of the Contractor under this Contract is an employee of the Department.

10.0 CREATION AND RETENTION OF RECORDS

- 10.1** The Contractor must maintain records documenting compliance with the performance and financial requirements stated in federal and state law and in this Contract along with incorporated attachments. Records include all written and electronic documents memorializing and reporting on performance and financial accounting and any other documents as required by this Contract, state and federal laws, or other authorities or as otherwise maintained by the Contractor. The Contractor, upon request, must make these records available in a timely and unrestricted manner to the Department, the federal Departments Of Health And Human Services, Education, Energy, and Agriculture and to other authorized federal and state entities, their auditors, investigators and agents.
- 10.2** Records must be retained for a period of eight (8) years from the completion date of this Contract. If any litigation, review, claim or audit is started before the expiration of the eight (8) year period, the records must be retained until all litigation, reviews, claims or audit findings involving the records have been resolved.
- 10.3** The Contractor must provide the Department and its authorized agents with reasonable access to records the Contractor maintains for purposes of this Contract. The Contractor must make the records available at all reasonable times at the Contractor's general offices.
- 10.4** Records developed for the purposes of delivery of services to consumers under this Contract are the property of the Department and must be developed, maintained, and disposed of as provided in this Contract or as otherwise directed by the Department.

11.0 INDEMNIFICATION

- 11.1** The Contractor must indemnify, defend, and hold harmless the State of Montana, its officials, employees, agents and volunteers acting within the scope of their duties against any claims, demands, causes of action of any kind, including the costs of defense and attorney's fees, in favor of the Contractor's officers, employees and agents or third parties 1) arising out of the performance of services or the omission of services under this Contract, 2) resulting from the acts, errors, omissions

or negligence, whether willful or not, of the Contractor or the Contractor's officers, employees or agents, or 3) from the failure of the Contractor or the Contractor's officers, employees or agents to comply with any federal, state, and local laws, regulations, and ordinances applicable to the services or work to be provided under this Contract.

- 11.2** For purposes of this section the term Contractor's agents is inclusive of subcontractors, representatives, assignees, volunteers and any other person, partnership, corporation, or other legal entity performing work or services, or providing materials under this Contract.

12.0 INSURANCE COVERAGE

12.1 General Liability Insurance

12.1.1 The Contractor must maintain for the duration of the contract, at its cost, primary standard general liability insurance coverage. The coverage must include tort and other claims of harm or loss arising from: injuries to persons, damages to property, contractual performance, rights to intellectual property, or other liabilities that may be claimed in relation to the provision of services under this Contract. The insurance must cover claims as may be caused by any act, omission or negligence, of the Contractor or the Contractor's officers, employees or agents.

12.1.2 The Contractor must maintain general liability insurance coverage inclusive of bodily injury, personal injury and property damage. The general liability insurance coverage must be obtained with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 per aggregate per year.

12.1.3 The coverage must be from an insurer with a Best's Rating of no less than A- or through a qualified self-insurer plan, implemented in accordance with Montana law and subject to the approval of the Department.

12.1.4 The State Of Montana, its officials, employees, agents, and volunteers, are to be covered and listed as additional insured's for liability arising out of activities performed by or on behalf of the Contractor, inclusive of the insured's general supervision of the Contractor, products and completed operations; and arising in relation to the premises owned, leased, occupied, or used by the Contractor.

12.2 Automobile Liability Insurance

12.2.1 The Contractor must maintain, at its cost, automobile liability insurance coverage. The insurance must cover claims as may be caused by any act, omission, or negligence of the Contractor or the Contractor's officers, employees, or agents.

12.2.2 The Contractor must maintain automobile liability insurance coverage, inclusive of bodily injury, personal injury and property damage, with split limits of \$1,000,000 per person (personal injury), \$2,000,000 per accident occurrence (personal injury) and \$100,000 per accident occurrence (property damage), or combined single limits of \$1,000,000 per occurrence.

12.2.3 The coverage must be from an insurer with a Best's Rating of no less than A- or through a qualified self-insurer plan, implemented in accordance with Montana law and subject to the approval of the Department.

12.2.4 The State of Montana, its officials, agents, employees, and volunteers, are to be covered and listed as additional insured for liability arising out of activities performed by or on behalf of the Contractor, inclusive of the Contractor's general supervision, or arising in relation to automobiles leased, hired, or borrowed by the Contractor.

12.3 Professional Liability Insurance

12.3.1 The Contractor must maintain at its cost occurrence coverage with combined single limits

for each wrongful act of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

- 12.3.2** If “occurrence” coverage is unavailable or cost prohibitive, the Contractor may provide “claims made” coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are filed after the cancellation or expiration date of the policy.

12.4 General Requirements

- 12.4.1** The Contractor must provide to the Department a copy of the certificate of insurance showing compliance with the requisite coverage. All insurance required under this Contract must remain in effect for the entire contract period. The Contractor must notify the Department immediately of any material change in insurance coverage and must provide to the Department copies of any new certificate or of any revisions to the existing certificate issued.
- 12.4.2** The Department may require the Contractor to provide copies of any insurance policies pertinent to these requirements, any endorsements to those policies, and any subsequent modifications of those policies.
- 12.4.3** The Contractor’s insurance coverage is the primary insurance in respect to the State Of Montana, its officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the State Of Montana , its officials, employees, agents, and volunteers is in excess of the Contractor’s insurance and does not contribute with it.
- 12.4.4** Any deductible or self-insured retention must be declared to and approved by the Department. At the request of the Department, the insurer must:
- 12.4.4.1** Reduce or eliminate such deductibles or self-insured retentions in relation to the state, its officials, employees, and volunteers; or
 - 12.4.4.2** the Contractor must procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

- 12.5** For purposes of this provision the term Contractor's agents is inclusive of subcontractors, representatives, assignees, volunteers and any other person, partnership, corporation, or other legal entity performing work or services, or providing materials under this contract.

13.0 REPORTING OF FALSE CLAIMS, FRAUD, AND OTHER CRIMINAL MATTERS

- 13.1** The Contractor and its employees, agents and subcontractors must report, relative to the federal source of the funding for this Contract, either to the Office Of Inspector General for the federal Department Of Health & Human Services, the federal Department Of Education or the federal Department Of Agriculture any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has submitted a false claim under the federal False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.
- 13.2** The Contractor and its employees, agents and subcontractors must report to the Department or other appropriate state authority any credible evidence that an act in violation of the Montana False Claims Act, at Title 17, chapter,8, part 4, MCA, has been committed.

14.0 ANTITRUST VIOLATIONS

The Contractor, may not engage in any price fixing activities that violate the federal antitrust Sherman Act, 15 U.S.C. §§ 1 – 7. Collusion to fix prices may constitute further violations of federal laws including those prohibiting mail or wire fraud and false statement. Violations by the Contractor of federal antitrust and other laws are bases for termination of this Contract.

15.0 RECOVERY ACT WHISTLEBLOWER PROTECTION

- 15.1** The Contractor may not discharge, demote, discriminate, or treat in an adverse manner any employee as reprisal against the employee for communicating evidence of any of the following abuses of ARRA funds to the Recovery Accountability And Transparency Board (RAAT), a federal Inspector General, the federal Comptroller General, a member of Congress, a state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee, a court or grand jury, or the head of a federal agency or a representative of the head.
- 15.1.1** gross mismanagement of an agency contract or grant relating to covered funds;
 - 15.1.2** a gross waste of covered funds;
 - 15.1.3** a substantial and specific danger to the public health or safety related to the implementation or use of covered funds; or
 - 15.1.4** a violation of law, rule, or regulation related to an agency contract or grant awarded or issued relating to covered funds.
- 15.2** The Contractor must post notice of the employee rights and remedies related to whistleblower protection under the Recovery Act.

16.0 PUBLIC INFORMATION AND DISCLAIMERS

- 16.1** All statements, press releases, and other documents or media pieces made available to the public describing the services provided with monies received through this Contract must be reviewed and approved by the Department prior to use, publication or release.
- 16.2** This Contract is exclusively funded with monies appropriated by the U.S. Congress and the Montana Legislature for the purpose of furthering the ARRA goal of economic recovery for the national and international economy.
- 16.2.1** All public communications concerning the expenditure of funds and delivery of services under this Contract must carry the following statement and must be approved by the Department.
"This project/activity is funded as a whole or in part with monies received through the "American Recovery And Reinvestment Act of 2009". This project/activity is intended to further the recovery of the economy through the retention of or increase in jobs for Montanans and through supplemental funding of human services programs to meet the needs of Montanans who due to the economic contraction are in need of the aid of society."
 - 16.2.2** The Contractor must include in all public notice and publicity documents produced by the Contractor concerning performance under this Contract the federal and Montana ARRA logos.
- 16.3** All public notices, information pamphlets, press releases, research reports, posters, public service announcements, web sites and similar modes of presenting public information pertaining to the services and activities funded with this contract prepared and released by the Contractor must include the statement:

"This project is funded in whole or in part under a contract with the Montana Department of Public Health and Human Services. The statements herein do not necessarily reflect the opinion of the Department."

- 16.4** A Contractor providing consultation or training services to the public or departmental and other staff and professionals must inform audiences and trainees that any opinions expressed by the Contractor do not necessarily represent the positions of the Department.
- 16.5** The Contractor, in accordance with Section 506 of H.R. 1105,"Omnibus Appropriation Act, Division F, Departments Of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2009", Pub. L. No. 111-8, and as may be provided by congressional continuing resolutions or further budgetary enactments, must state in all statements, press releases, and other documents or media pieces made available to the public describing the services provided through this Contract and funded in part or in whole with federally appropriated monies received through the programs administered by the federal Departments of Health & Human Services, Education or Labor, the percentage and the monetary amount of the total program or project costs funded with federal monies and the percentage and the monetary amount of the total costs funded with non-governmental monies.
- 16.6** The Contractor may not expend monies under this Contract for the purchase of any media time for publicity or advertising concerning the Department's services available through this Contract or the Contractor's services and performance under this Contract that financially or textually directly or indirectly supports or opposes, or associates the Department or the services made available through this Contract with any specific political agenda, political party, a candidate for public office, or a matter to be voted upon by the public. Media includes but is not limited to commercial and noncommercial print, verbal and electronic media.

17.0 GENERALLY APPLICABLE FEDERAL REQUIREMENTS

17.1 Generally

- 17.1.1** The Contractor, in addition to the federal requirements specified in this contract and any attachments to this contract, must comply with the applicable federal requirements and assurances for recipients of federal grants provided in the federal OMB 424B (Rev. 7-97) form, known as "ASSURANCES - NON-CONSTRUCTION PROGRAMS", and in the Department's "CERTIFICATION OF COMPLIANCE WITH CERTAIN REQUIREMENTS FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES (12-06)". Those assurance documents must be signed by the Contractor and submitted to the Department prior to the signing of this contract.
- 17.1.2** The Contractor is responsible for determining which requirements and assurances are applicable to the Contractor.
- 17.1.3** The Contractor must ensure compliance of its subcontractors with the applicable federal requirements and assurances and any related reporting requirements.

17.2 Political and Lobbying Activities

- 17.2.1** Federal monies received by the Contractor under the terms of this contract may not be used for any political activities by the Contractor, its employees or agents except as

expressly permitted by state and federal law.

- 17.2.2** As required by 31 U.S.C. 1352 and 45 CFR 93.100 et seq., federally appropriated monies may not be used to influence or attempt to influence an officer or employee of any agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress or an employee of a member of the U.S. Congress, in connection with the awarding of any federal contract, grant or loan, the making of any cooperative agreement or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- 17.2.3** If any funds other than federally appropriated funds are paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress or an employee of a member of the U.S. Congress in connection with this contract, the Contractor must complete and submit to the Department the federally required form, "STANDARD FORM LLL".
- 17.2.4** Federally appropriated monies received through the programs of the federal Departments of Health & Human Services, Education or Labor, as provided in Section 503 of H.R. 1105, "Omnibus Appropriation Act, Division F, Departments Of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2009", Pub. L. No. 111-8,, and as may be provided by congressional continuing resolutions or further budgetary enactments, may not be used:
- 17.2.4.1** to fund publicity or propaganda, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or a state legislature, except for presentations to the U.S. Congress or a state legislative body or one or more of its members as an aspect of normal and recognized executive-legislative relationships.
- 17.2.4.2** to pay the salary or expenses of any grant or contract recipient, or agent acting for the recipient, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or a state or local legislative body.
- 17.2.5** The Contractor must cooperate with any investigation undertaken regarding the expenditure of funds for political or lobbying activities.
- 17.2.6** Federal monies received through Title III of the Older Americans Act for services to the aged, in accordance with 42 U.S.C. 3026, may be used for the following activities:
- 17.2.6.1** providing voters and prospective voters with transportation to polling places and voter registration sites;
- 17.2.6.2** providing assistance in voter registration;
- 17.2.6.3** providing registration and voting assistance that does not influence voter choice; and
- 17.2.6.4** advocating in the community for the elderly by monitoring, evaluating, and commenting upon policies, programs, hearings, levies, and community actions affecting the elderly.
- 17.2.7** The Contractor must ensure the compliance of any subcontractors with these restrictions and any related reporting requirements.

17.3 Federal Debarment Prohibition

Attachment E

DPHHS ARRA Contract Format

17.3.1 The Department, in accordance with The Federal Acquisition Streamlining Act of 1994, P.L. 103-355, and Executive Orders #12549 and #12689, is prohibited from contracting with any entity that is debarred, suspended, or otherwise excluded from participating in procurement activities funded with federal monies. This prohibition also extends to contracting with an entity that has a director, officer, partner, person with beneficial ownership of more than 5 percent of the entity's equity, employee, consultant, or person otherwise providing items and services that are significant and material to the entity's obligations under its contract with the Department if that person has been debarred, suspended or otherwise excluded from participating in procurement activities funded with federal monies.

17.3.2 If the Department finds that the Contractor is not in compliance with federal debarment requirements, the Department;

17.3.2.1 must notify the federal government;

17.3.2.2 may continue this contract unless the Secretary of the federal Department of Health and Human Services or other authorizing federal authority directs otherwise; and

17.3.2.3 may only renew or otherwise extend the duration of the existing contract with the Contractor if the federal government provides to the Department and to Congress a written statement describing compelling reasons that exist for renewing or extending this contract.

17.4 Federal False Claims Act Education

17.4.1 Any contractor and its subcontractors furnishing items or services funded with Medicaid monies at more than a single location or under more than one contractual or other payment arrangement and receiving aggregate payments of Medicaid monies totaling \$5,000,000 or more annually must comply with the requirements of 1902(a)(68) of the Social Security Act pertaining to the federal False Claims Act. It is the responsibility of the Contractor to establish written policies to be presented in handbooks and otherwise for all employees that include detailed educational information about the federal False Claims Act and the other provisions specified in section 1902(a)(68)(A).

18.0 BUY AMERICAN FOR PUBLIC WORKS PROJECTS

Iron, steel, and manufactured goods used in the construction, alteration, maintenance, or repair of a public building or public work funded through the expenditure of ARRA monies in accordance with Section 1605 of the Act must be produced in the United States. The federal Office Of Management And Budget issued in the Federal Register, vol. 74, No. 77, p.18449, an Interim Final Guidance providing the compliance with the Section 1605 requirement.

19.0 CIVIL RIGHTS

19.1 Discrimination Prohibited Federal and State Authorities

The Contractor, in accordance with federal and state law cited herein and as other wise may be applicable, may not discriminate in any manner against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

19.2 Montana Human Rights Act

The Contractor in the performance of this Contract must act in compliance with the applicable anti-discrimination requirements of the Montana Human Rights Act at part 3 of Title 49, chapter 2, MCA.

19.3 Montana Governmental Code Of Fair Practices

19.3.1 As implemented by this provision, the Contractor is prohibited by the Montana Governmental Code Of Fair Practices at 49-3-205, 49-3-206, and 49-3-207, MCA from discriminating on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin in the performance of the contract or in the delivery of state services or funding on behalf of the State. The Contractor may not receive funds from the State if the Contractor engages in discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

19.3.2 As implemented by this provision, the Contractor, in accordance with the Montana Governmental Code Of Fair Practices at 49-3-207, MCA, must for purposes of performance of this Contract hire persons on the basis of merit and qualifications directly related to the requirements of the particular position being filled.

19.4 Federal And State Authorities

The Contractor must comply with the applicable provisions of:

1. the Montana Human Rights Act (49-2-101, et seq., MCA);
2. the Montana Governmental Code of Fair Practices (49-3-101, et seq. MCA);
3. the federal Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), prohibiting discrimination based on race, color, or national origin;
4. the federal Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), prohibiting discrimination based on age;
5. the Education Amendments of 1972 (20 U.S.C. 1681), prohibiting discrimination based upon gender;
6. Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794), prohibiting discrimination based upon disability;
7. the federal Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), prohibiting discrimination based upon disability; and
8. the federal Executive Orders 11246 and 11375 and 41 CFR Part 60, requiring equal employment opportunities in employment practices.

19.5 Civil Rights Violations

The Department may undertake any and all actions, inclusive of contractual termination, necessary to remedy any prohibited discriminatory action by the Contractor or to remedy any failure by the Contractor to carry out an affirmative action as required in federal or state law.

20.0 CONTRACTUAL DISPUTE RESOLUTION PROCESS FOR HUMAN SERVICES CONTRACTS

20.1 The Contractor, if delivering human services under this Contract on behalf of the Department, may appeal any issue concerning performance or consideration under the terms of this Contract by presenting a formal request for clarification to the Bureau Chief responsible for oversight of the services to which the performance issue pertains. The Department provides a written clarification in response. Upon receiving the responsive clarification of performance duties and responsibilities under this Contract, if the Contractor disagrees with the clarification from the Department, the Contractor may present the issue of performance to the Division Administrator of the administrating

division for a final review and determination.

- 20.2** The Contractor in pursuing a review of an issue under this dispute resolution process may present any materials and other information to be considered by the Department. The Contractor may request at any stage in the process to present information in person to the Department.
- 20.3** This contractual dispute resolution process implements 2-15-2230, MCA.
- 20.4** This contractual dispute resolution process is not applicable to the contest of any matters arising as an obligation of legal authority inclusive of federal or state law, regulation or rule.

18.0 CONTRACT TERMINATION

18.1 The Department may immediately terminate this Contract, in whole or in part, for failure of the Contractor to perform the Contract in accordance with the terms of the Contract or other governing legal authorities.

18.1.1 Failure to perform includes, but is not limited to, failure to:

18.1.1.1 perform the services as required and within the time limits specified in this Contract;

18.1.1.2 comply with any of the requirements of this Contract inclusive of reporting and accounting;

18.1.1.3 perform its contractual duties or responsibilities in accordance with the terms of the Contract or any other authority, including statute, rules, or policy, that govern the standards for performance, the receipt and expenditure of the monies provided through the Contract, and the conduct of the Contractor as a contractor for the State;

18.1.1.4 maintain its status, if applicable, as an enrolled medicaid provider;

18.1.1.5 comply with any law, regulation, licensure and certification requirement, or other legal authority;

18.1.1.6 respond to or to effectively implement corrective actions or other measures required by the Department; or

18.1.1.7 reimburse overpayments, penalties, or other sums owing to the Department.

18.2 The Department may immediately terminate the whole of this Contract or any aspect of performance under this Contract based upon the Contractor's violations of federal or state laws, regulations, executive orders, et al as determined by the Department or other appropriate entities.

18.2.1 Violations of federal or state legal authorities include, but are not limited to:

18.2.1.1 the Recovery Act;

18.2.1.2 the Transparency Act;

18.2.1.3 the federal and state false claims acts;

18.2.1.4 the federal debarment legal authorities;

18.2.1.5 the Sherman Act;

18.2.1.6 the federal and state civil rights legal authorities;

18.2.1.7 state licensing legal authorities.

18.3 The Department may terminate this Contract, in whole or in part, when federal or state funding for this Contract becomes unavailable for any reason. The Department, except as may be otherwise required or necessitated by federal or state legal authorities inclusive of the Recovery Act, must give notice to the Contractor at least sixty (60) days prior to the effective date of termination unless the parties agree to a shorter notice period.

18.4 Either party may terminate this Contract without cause. The party terminating this Contract without cause must give notice of termination to the other party at least sixty (60) days prior to the effective date of termination. The parties may mutually agree to a different time period for notice. Notice of termination given to the Department by the Contractor may only be revoked with the consent of the Department.

18.5 Notice of termination given by the Contractor must be given in writing addressed to the Contract liaison for the Department.

18.6 Upon contract termination of this Contract, the Contractor must allow, as the Department determines is necessary, the Department and its agents and representatives full access on a continuing as needed basis to the Contractor's facilities and records for conducting, as necessary, audits and investigations or to arrange for and implement the orderly transfer of the activities and other features of performance.

19.0 SCOPE, AMENDMENT AND INTERPRETATION OF CONTRACT

19.1 This Contract consists of ___ numbered pages, appendices ____, RFP # _____, and any current related contract as expressly denoted in Section 6. This is the entire Contract between the parties.

19.2 No statements, promises, or inducements made by either party or their agents are valid or binding if not contained in this Contract and materials expressly referenced in this Contract.

19.3 The headings to the sections of this Contract are for convenience of reference and do not modify the terms and language of the provisions to which they are headings.

19.4 No contractual provisions from a prior contract of the parties, except as denoted in Section 6, are valid or binding in this contractual agreement.

19.5 This Contract, except as may be otherwise provided by the terms of this Contract, may not be enlarged, modified or altered except by written amendment signed by the parties to this Contract.

19.6 In the event of a dispute as to the duties and responsibilities of the parties under this Contract, the Contract along with any attachments prepared by the Department, inclusive of the request for proposal, if any, govern over the Contractor's proposal, if any.

19.7 In the event that a provision of this Contract is determined by a court of law to be legally invalid, all other provisions of this Contract remain in effect and are valid and binding on the parties.

19.8 If any provision of this Contract, per se or as applied, is determined by the Department to be in conflict with any federal or state law or regulation then the provision is inoperative to the extent that the Department determines it is in conflict with that authority and the provision is to be considered modified to the extent the Department determines necessary to conform with that authority.

19.9 Waiver of any default, breach or failure to perform under this Contract may not be construed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of any default, breach or failure to perform may not be construed to be a modification of the terms of this Contract unless reduced to writing as an amendment to this Contract.

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

By: _____ Date _____
_____, Administrator
_____ Division

By: _____ Date _____

_____, Branch Manager
_____ Branch

By: _____ Date _____
Title - _____

ATTACHMENT F

RFP Legal Notice for Newspapers

RFP LEGAL NOTICE FOR NEWSPAPERS

Notice Requesting Intent to Propose

May 4, 2009

The Developmental Disabilities Program (DDP) in the Department of Public Health and Human Services will be procuring for the state fiscal year 2010 the following services:

- 1) Part C Early Intervention Services (Part C) and
- 2) General Fund Family Education and Support Services (FES)

It is the intent of the Department to obtain these services through a Request for Proposal process. The Department is requesting parties that are interested in potentially submitting a proposal or proposals to provide one or more of these services to indicate that interest through the submission of an Intent to Propose document. The Department will only accept proposals in response to its request for proposals from parties that have submitted an Intent to Propose at the time and in the manner directed by this notice.

The Intent to Propose must include the following information:

1. Proposer's Name and Business
2. Address
3. Telephone Number
4. Fax Number
5. E-Mail Address
6. The services which the proposer desires to provide
7. The area/region of the state to be served

A brief description of the services follows:

- 1) **CHILD AND FAMILY SERVICES:** To submit an Intent to Propose document, the proposer must currently be a DDP qualified provider for the service (s).
 - a. **Part C Family Education and Support:** Part C services are federally funded early intervention services for children with disabilities ages 0-36 months. Families with children who meet the eligibility criteria established by the state are entitled to a range of services defined under federal law.

Part C Service Regions in the RFP are as follows:

DDP Region III, section 1- Judith Basin, Fergus, Petroleum, Musselshell, Wheatland, Golden Valley, Yellowstone (*outside* of Billings City Limit), Stillwater, Carbon, and Big Horn counties.

DDP Region III, section 2 - Billings City Limit

- b. **Family Education and Support (FES):** *FES services must be provided by a qualified Part C Provider who also provides Part C services.* State-funded family education and support services provide support coordination, training, support and assistance to

families with children up to 21 years of age. Families with adults over 21 years of age may receive limited and follow-along services. Children under the age of 36 months who do not qualify for Part C Family Education and Support Services may be served with General Fund Family Education and Support Services. These services enable the child or adult to remain in the family home and help the family to meet the challenges associated with having a member with a disability.

FES Service Region in this RFP is as follows:

DDP Region III- Judith Basin, Fergus, Petroleum, Musselshell, Wheatland, Golden Valley, Yellowstone (*including* Billings city limits), Stillwater, Carbon, and Big Horn counties.

Part C and FES Services for DDP Regions I, II, IV, and V are not included in this RFP. Intensive Family Education and Support (IFES) services funded with Medicaid monies are not included in this RFP.

Proposals may be submitted for:

- 1) Part C in Region III, section 2 (Billings City limits) only; or
- 2) Part C in Region III, section 1 (see Part C Service Region description above) and FES for all of Region III; or
- 3) Both 1 and 2 for Part C and FES to cover all of Region III.

Further detailed information concerning these services may be obtained by contacting the Department's Developmental Disabilities Program at Developmental Disabilities Program, Department of Public Health and Human Services, 111 Sanders Room 305, P.O. Box 4210, Helena, MT 59604; Telephone: (406) 444-2995; Fax: (406) 444-0230.

The Intent to Propose must be received at the Developmental Disabilities Program by May 15, 2009 at 5:00 pm. Documents should be clearly marked as Intent to Propose and be directed to Jackie Emerson in the Developmental Disabilities Program at the above address or by fax to (406) 444-0230. Failure to submit this document on time or submitting it with incomplete information disqualifies an interested party from submitting a proposal.

The DD Program has not yet set a date for the submission of proposals.

The DD Program will inform any Proposers and the public by June 1, 2009 what, if any, intents to propose received and if there are two or more, what the anticipated date for submission of proposals will be.