

**Courier Services for Montana State Library**  
**LIB18-0013S**

**THIS CONTRACT** is entered into by and between the State of Montana, Montana State Library, (State), whose address and phone number are 1515 E. 6<sup>th</sup> Avenue, Helena, MT 59620, (406) 444-5350 and Montana Air Cartage, Inc., (Contractor), whose address and phone number are 5700 Titan Avenue, Billings, MT 59101 and (406) 245-8622.

**1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1 Contract Term.** The Contract's initial term is **May 1, 2018**, through **June 30, 2019**, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

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

**2. COST ADJUSTMENTS**

**2.1 Cost Adjustments Negotiated Based on Changes in Contractor's Costs.** *After the Contract's initial term and if State agrees to a renewal*, the parties may negotiate cost adjustments at the time of Contract renewal. Any cost increases must be based on demonstrated industrywide or regional increases in Contractor's costs. State is not obligated to agree upon a renewal or a cost increase.

**3. SERVICES AND/OR SUPPLIES**

Contractor will provide statewide courier services to serve the following drop sites: Bozeman, Butte, Baker, Glendive, Great Falls, Anaconda, Kalispell, Laurel, Helena, Livingston, Miles City, Missoula, Billings, Polson, Forsyth, Columbus, Whitehall, Whitefish, and Dillon. Libraries will have a designated location in their buildings that will be easily accessible for courier services. Please reference attachment A, Delivery Destinations.

Contractor shall provide the following:

- ⌚ Contractor will provide physical delivery of materials between libraries across the state of Montana. Materials shipped include but are not limited to books, CDs, DVDs, documents, envelopes, program trunks, and other library material.
- ⌚ Contractor will serve the drop sites as set forth in Attachment A to this Contract, that sign a Montana Service Agreement as part of this contract.
- ⌚ A stop is defined as arriving at one library on the scheduled day, and includes both dropping off all incoming items (provided there are any to drop off) and picking up all outgoing items (provided there are any items to pick up).
- ⌚ Contractor will establish standard arrival times with the State and each drop site member.
- ⌚ Contractor will schedule its delivery time during the hours a library is open to the public unless otherwise specified by the drop site member.
- ⌚ Contractor will not deliver items if the drop site member is closed unless an alternate arrangement has been confirmed in writing with the drop site library. Re-delivery will be attempted the next scheduled delivery day.
- ⌚ Contractor will be obligated to arrive within two hours of the time frame established with the State and each drop site member.

- ⌚ Contractor shall notify the drop site member and the State Library of any missed stops as soon as possible, preferably in advance, but no later than the close of the next business day.
- ⌚ Contractor shall provide written changes to delivery schedule to all drop site members and to the State Library in a timely manner, with a minimum of one week's notice for additions, deletions, or address changes.

The State Library reserves the right to deduct from the amount due the contractor for missed stops as follows:

- ⌚ If the Contractor does not notify the participating library by the close of the next business day of missed stops, twice the individual delivery charge may be deducted from the amount due the courier.
- ⌚ If the Contractor misses more than one stop to a library (with or without notice) during any five consecutive days when stops are scheduled, twice the delivery charge for each missed stop may be deducted from the amount due the Contractor.
- ⌚ Contractor is not allowed to charge any overtime.
- ⌚ Contractor shall maintain a 98% dependability rate, or the State Library will have the right to cancel the contract.

### **Holidays and scheduled closings**

- ⌚ Contractor must also provide an official list of its holidays and closed days to the State Library and to each drop site member. Service schedules may be changed occasionally with no less than one week's (seven calendar days') prior written notice.

### **Packaging**

- ⌚ If Contractor wishes to propose an alternative packaging procedure to streamline the process, it may do so when negotiating a contract renewal. However, the State reserves the right to select which procedure to implement.

### **Sorting**

- ⌚ Contractor will provide sorting at its facility as needed.

### **Tracking**

- ⌚ If the State chooses to purchase a system / process to track items, the Contractor will accommodate the system to the best of its ability.

### **Reports**

- ⌚ The Contractor will provide monthly reports to the State of the number of crates (not individual items) moved between drop sites, identified by drop site.

### **Personnel**

- ⌚ All Contractor employees engaged in this contract must adhere to all established library building policies and procedures regarding security and conduct.
- ⌚ Contractor shall name a single individual as project manager for the Contract. The manager will see that contract requirements are met and will be the point person for problem resolution.
- ⌚ Under no circumstances shall the Contractor or any subcontractor's personnel be deemed employees of the State.
- ⌚ Contractor or subcontractor personnel shall not represent themselves to be employees of the State.
- ⌚ All delivery vehicles must be supplied by the Contractor, maintained in a clean condition, and have sufficient cargo capacity to accommodate the volume of materials to be picked up.

**Support: Lost or damaged items**

- ⌚ Where it is proven to the satisfaction of the State that the item was lost or damaged during the period of time it was the Contractor's responsibility: in transit from drop site to drop site, being delivered or picked up by the Contractor, or being sorted by the Contractor, the Contractor will reimburse the library that suffers the loss or damage directly, for any lost or damaged items, within 45 days of the reported problem.
- ⌚ Contractor will respond to all reported problems within 24 hours, Monday-Friday.

**The State Library will:**

- ⌚ Negotiate and maintain a single contract, together with any Addendums referenced herein, with the Contractor
- ⌚ Facilitate and provide centralized communication tools
- ⌚ Collect consistent and standardized statistics from drop site members and Contractor
- ⌚ Providing support to libraries in troubleshooting issues with the Contractor
- ⌚ Providing standards for labeling, turnaround time, reporting closed days and changes to delivery schedules

**4. WARRANTIES**

**4.1 Warranty of Services.** Contractor warrants that the services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a part of this Contract. State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

**5. CONSIDERATION/PAYMENT**

**5.1 Payment Schedule.** In consideration of the Courier Services to be provided, State shall pay Contractor according to the following schedule:

The fee schedule shall be based on the rate of twenty-five (\$25.00) per stop. Each drop site shall pay three dollars (\$3.00) per additional crate beyond five crates. Contractor will invoice drop site libraries and the State for all stops and excess crate charges at the end of the month for that month's service. Each drop site library shall pay \$22.50 per stop. The State shall pay \$2.50 per stop for all drop site libraries.

**5.2 Withholding of Payment.** In addition to its other remedies under this Contract, at law, or in equity, State may withhold payments to Contractor if Contractor has breached this Contract. Such withholding may not be greater than, in the aggregate, fifteen percent (15%) of the total value of the subject statement of work or applicable contract.

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

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

## **6. PREVAILING WAGE REQUIREMENTS**

**6.1 Montana Resident Preference.** The nature of the work performed, or services provided, under this Contract meets the statutory definition of a "public works contract" in 18-2-401, MCA. Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services. Contractor shall abide by the requirements set out in 18-2-401 through 18-2-432, MCA, and all administrative rules adopted under these statutes.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

**6.2 Standard Prevailing Rate of Wages.** In addition, unless superseded by federal law, all employees working on a public works contract must be paid prevailing wage rates in accordance with 18-2-401 through 18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in 18-2-401, MCA, in which the total cost of the contract is greater than \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

The standard prevailing rate of wages paid to workers under this Contract must be adjusted 12 months after the date of the award of the public works contract per 18-2-417, MCA. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the Contract. This adjustment is the sole responsibility of Contractor and no cost adjustment in this Contract will be allowed to fulfill this requirement.

Because this Contract has an initial term of 12 months with optional renewals, this Contract is subject to the 3% adjustment when the Contract length becomes more than 30 months. The 3% rate increase becomes effective upon the second renewal, and the 3% is paid starting in the third year of the Contract beginning with the 25th month. The adjustment must be made and applied every 12 months for the term of the Contract. This adjustment is the sole responsibility of Contractor and no cost adjustment in this Contract will be allowed to fulfill this requirement.

**6.3 Notice of Wages and Benefits.** Furthermore, 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with 18-2-423, MCA.

**6.4 Wage Rates, Pay Schedule, and Records.** 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each contractor, subcontractor, and employer shall maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract. The Commissioner of the Montana Department of Labor and Industry has established the standard prevailing rate of wages in accordance with 18-2-401 and 18-2-402, MCA, for Truck Drivers (Light or Delivery) to be from \$14.47 per hour, plus a benefit rate of \$3.69.

All contractors and employers shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification, or type of employee established by the Commissioner of the Montana Department of Labor and Industry, and shall pay each such employee a rate of wages not less than the standard prevailing rate as specified in the Montana Prevailing Wages Rates for truck drivers (light or delivery) for 2018.

## **7. ACCESS AND RETENTION OF RECORDS**

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

**7.2 Retention Period.** Contractor shall create and retain all records supporting Courier Services for a period of eight years after either the completion date of this Contract or termination of the Contract.

## **8. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

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

## **9. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, and save State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of State, under this Contract.

## **10. REQUIRED INSURANCE**

**10.1 General Requirements.** Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**10.2 Primary Insurance.** Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**10.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of 1,000,000 per occurrence and 2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

**10.4 Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage 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 to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

**10.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**10.6 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been uploaded to the Contractor's vendor profile in eMACS, ([www.vendorportal.mt.gov](http://www.vendorportal.mt.gov)). *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

## **11. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be uploaded to the Contractor's vendor profile in eMACS, ([www.vendorportal.mt.gov](http://www.vendorportal.mt.gov)).

## **12. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

## **13. DISABILITY ACCOMMODATIONS**

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

#### **14. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

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

#### **15. CONTRACT TERMINATION**

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

**15.2 Termination for Convenience.** State may, by written notice to Contractor, terminate this Contract without cause and without incurring liability to Contractor. State shall give notice of termination to Contractor at least 30 days before the effective date of termination. State shall pay Contractor only that amount, or prorated portion thereof, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

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

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

**16. EVENT OF BREACH – REMEDIES**

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

- Ⓢ Products or services furnished fail to conform to any requirement;
- Ⓢ Failure to submit any report required by this Contract;
- Ⓢ Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval or breaching section 21.1, Technical or Contractual Problems, obligations; or
- Ⓢ Voluntary or involuntary bankruptcy or receivership.

**16.2 Event of Breach by State.** State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

**16.3 Actions in Event of Breach.** Upon Contractor's material breach, State may:

- Ⓢ Terminate this Contract under Section 15.1, Termination for Cause with Notice to Cure and pursue any of its remedies under this Contract, at law, or in equity; or
- Ⓢ Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.
  
- Ⓢ Terminate this Contract under Section 15.2, Termination for Convenience and pursue any of its remedies under this Contract, at law, or in equity; or
- Ⓢ Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- Ⓢ Terminate this Contract under Section 15.2, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
- Ⓢ Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

**17. FORCE MAJEURE**

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

**18. WAIVER OF BREACH**

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



## 19. CONFORMANCE WITH CONTRACT

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

## 20. LIAISONS AND SERVICE OF NOTICES

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

Cara Orban is State's liaison  
1515 E. 6<sup>th</sup> Street  
Helena, MT 59620  
Telephone: 406-444-5350  
Fax: 406-444-0266  
E-mail: [corban@mt.gov](mailto:corban@mt.gov)

Wade Kiernan is Contractor's liaison  
Montana Air Cartage  
5700 Titan Avenue  
Billings, MT 59101  
Telephone: (406) 245-8622  
Fax: (406) 245-1045  
E-mail: [Montanaaircartage@gmail.com](mailto:Montanaaircartage@gmail.com)

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

## 21. MEETINGS

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

## 22. TRANSITION ASSISTANCE

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

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

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

**23. CHOICE OF LAW AND VENUE**

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

**24. TAX EXEMPTION**

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

**25. PERSONAL PROPERTY TAX**

All personal property taxes will be paid by the Contractor.

**26. AUTHORITY**

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

**27. SEVERABILITY**

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

**28. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**28.1 Contract.** This Contract consists of 13 numbered pages, any Attachments as required, Solicitation # LIB-IFB-2018-0013S, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

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

**29. WAIVER**

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

**30. EXECUTION**

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

**STATE OF MONTANA**  
**Montana State Library**  
**1515 E 6<sup>th</sup> Avenue**  
**Helena, MT 59620**

**Montana Air Cartage Inc.**  
**5700 Titan Avenue**  
**Billings, MT 59101**  
**FEDERAL ID # 84-1374487**

BY: Jennie Stapp State Librarian  
(Name/Title)

BY: Wade Kiernan president  
(Name/Title)

DocuSigned by:  
Jennie Stapp  
2AD538F9A8D14ED...  
(Signature)

DocuSigned by:  
Wade Kiernan  
D9C7FA3F04BA45B...  
(Signature)

DATE: 5/1/2018

DATE: 4/30/2018

Approved as to Legal Content:

DocuSigned by:  
Jeffrey Doud 4/30/2018  
8663D1F0582242A  
Legal Counsel (Date)

Approved as to Form:

DocuSigned by:  
Carrie Schell 4/30/2018  
E7DDDEB96436419  
Procurement Officer (Date)  
State Procurement Bureau

## ATTACHMENT A- DELIVERY DESTINATIONS

### Group P1: IMAGINEIF

Monday through Friday five-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

### Group P2: POLSON

Monday through Friday five-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

### Group P3: BOZEMAN

MONDAY-WEDNESDAY-FRIDAY three-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

### Group P4: LEWIS & CLARK

MONDAY-WEDNESDAY-FRIDAY three-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

### Group P5: MSU-BILLINGS

MONDAY-WEDNESDAY-FRIDAY three-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

### Group P6: WHITEHALL

MONDAY-WEDNESDAY-FRIDAY three-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

### Group P7: WHITEFISH COMM.

MONDAY-WEDNESDAY-FRIDAY three-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

### Group P8: BUTTE

Tuesday & Friday two-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

### Group P9: GREAT FALLS

Tuesday & Friday two-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

### Group P10: UM-WESTERN

Tuesday & Friday two-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

**Group P11: FALLON**

Thursday one day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

**Group P12: GLENDIVE**

Monday & Thursday two-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

**Group P13: LAUREL**

Monday & Thursday two-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

**Group P14: MISSOULA**

Monday through Friday five day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

**Group P15: ROSEBUD**

Monday & Thursday two-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

**Group P16: HEARST FREE**

Tuesday & Thursday two-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

**Group P17: LIVINGSTON**

Tuesday & Thursday two-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

**Group P18: STILLWATER**

Tuesday & Thursday two-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.

**Group P19: MILES CITY**

Wednesday & Friday two-day service at twenty-five dollars (\$25.00) per day for up to five crates. Three dollars (\$3.00) per tote after five totes.