CONTRACT AMENDMENT NO. 3
CONTRACT FOR TEMPORARY WORKER SERVICES
CONTRACT # SPB12-2029P-2

This CONTRACT AMENDMENT No. 3 is to amend the above-referenced contract between the State of Montana, Department of Administration, State Procurement Bureau (STATE), whose address and phone number are Room 165 Mitchell Building, 125 N Roberts, PO Box 200135, Helena MT 59620-0135, (406) 444-2575 and **Express Employment Professionals** (CONTRACTOR), whose address and phone number are 1100 W. Custer, Helena, MT 59602, (406) 442-7501.

I. Purpose of Amendment

The STATE and CONTRACTOR desire to amend Contract #SPB12-2029P-2 to address the following issues:

1) Section 6.1 is amended to clarify that "employer," as used in the fourth sentence, refers to CONTRACTOR.
2) The Contract between STATE and CONTRACTOR provides that the contracted personnel may not remain in the service of the state agency for a period longer than 480 hours. Section 6.5 is amended to clearly indicate that the length of assignment limitation is specific to the position and to require the CONTRACTOR to notify the State Procurement Bureau's Contract Manager when a position assignment reaches 400 hours.
3) Section 12 is amended to include additional indemnification specific to the federal Patient Protection and Affordable Care Act.
4) The STATE and CONTRACTOR have contracted for services where CONTRACTOR is the employer and pays the wages, tax contributions and workers' compensation for its employees. Under this Agreement, CONTRACTOR provides personnel to perform temporary services to various state agencies. The Patient Protection and Affordable Care Act employer excise tax provisions became effective in 2015. Section 15 is amended to clarify that CONTRACTOR is the employer for the purpose of providing healthcare benefits to contract workers who are placed with the STATE under this Agreement and provides consideration for this amendment.
5) Section 16, Compliance with the Patient Protection and Affordable Care Act, is added. All subsequent sections are renumbered accordingly.

Now, therefore, the STATE and CONTRACTOR amend Contract #SPB12-2029P-2 as follows (new language underlined, old language interlined):

1. Section 6.1 is amended as follows:

6.1 Temporary Service Provider. The Contractor must be a temporary service contractor as defined in 39-71-116(38) MCA.

The temporary worker shall be an employee of the Contractor, not an employee of the State of Montana, (Ref. 39-71-116(40) MCA). However, if the temporary worker has retired from the Montana Public Employees' Retirement System (PERS), the hour and wage limitations applicable to working retirees are applicable to the temporary worker, (Ref. 19-3-1106, MCA). The employer *Contractor* of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board. (Ref. 19-3-1106(3), MCA)

Note: "Board" means the Public Employees' Retirement Board provided for in 2-15-1009, MCA.

The Contractor shall have a fully functional office open during regular business days, minimum of Monday through Friday, 8 a.m. to 5 p.m., to provide the support necessary for performance of the services required.

2. Section 6.5 is amended as follows:

6.5 Length of Assignment. Temporary workers shall be provided to the requesting agency/department for a maximum of three months or 480 hours *per position*, as required. (State agencies should use the modified FTE process for temporary employment requiring longer terms.)

Contractor shall notify the State Contract Manager listed in Section 17 via email when a position assignment reaches 400 hours. The notification must include the agency contact information, the position title, and the temporary worker's name. The State Contract Manager is responsible to follow up with the State agency.

3. Section 12 is amended as follows:

12. HOLD HARMLESS/INDEMNIFICATION

12.1 General Indemnification. The Contractor shall defend, indemnify and hold harmless the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action of any kind or character ("Claim" or "Claims"), including the cost of defense thereof, arising in favor of the 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 the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

12.2 Additional Indemnification. *Claims under this provision include those arising out of or that are in any way connected with Contractor's breach of this contract, including any Claims asserting that any of Contractor's employees are actually employees or common law employees of the State or any of its agencies, including, but not limited to, excise taxes or penalties imposed on the State under Internal Revenue Code ("Code") §§ 4980H, 6055 or 6056.*

4. Section 15 is amended as follows:

15. COMPLIANCE WITH LAWS

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

The Affordable Care Act requires a contractor to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours a week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage,

minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code, and (b) otherwise satisfy the requirements of Section 4980H if provided by the State.

5. Section 16 is added as follows:

16. COMPLIANCE WITH THE AFFORDABLE CARE ACT

16.1 Contractor is Employer. *Contractor is the employer and, therefore, responsible for providing healthcare benefits for its employees under the Affordable Care Act. Contractor states that all individuals who perform services for an agency of the State are and at all times shall remain Contractor's common law employees. Contractor further acknowledges and agrees that, throughout the term of this contract, Contractor retains the right to direct and control its employees.*

16.2 State Benefit Plans. *Contractor agrees and acknowledges that it, its agents or employees are not entitled to participate in any of the benefit plans or programs that the State now or hereafter maintain for its employees. If any state or federal court, or any local, state or federal government agency, division or other related government entity, shall determine that Contractor, its agents, or employees, are considered an employee or common law employee of the State, or if for any reasons Contractor, its agents or employees, were to meet the eligibility criteria with respect to any benefit plan or program now or hereafter available to State employees or otherwise become eligible to participate in any State-sponsored benefit plans or programs, Contractor, its agents, or employees, waive any right to participate in, either retrospectively or prospectively, or receive any benefits under any State-sponsored benefit plans or programs. This waiver of any right to participate in State-sponsored employee benefit programs represents a material component of the terms and compensation agreed to by these parties and is not in any way conditioned on any representation or assumption concerning status of Contractor, its agents, or employees, with respect to the State, as employee, common law employee, independent contractor or temporary employee.*

16.3 Contractor Provided Health Care Coverage. *Contractor shall offer to all its agents or employees who perform services for the State under this contract for more than 30 hours a week and their dependents under age 26 health care coverage under its health care plans. Such coverage must provide minimum essential coverage and minimum value, and be affordable for purposes of the employer responsibility provisions under Section 4980H of the Code, and otherwise satisfy the requirements of Code § 4980H if provided by the State.*

16.4 Reporting Requirements. *Contractor further states that it shall satisfy all reporting requirements under Code §§ 6055 and 6056 for individuals who perform services for the State.*

16.5 Auditing. *The State may audit Contractor's operations to ensure that Contractor has complied with the statements made above.*

16.6 Additional Costs. *As consideration for this amendment, the fees paid to Contractor by the State are revised to include an additional fee in the amount of ten percent (10%) of the actual cost of coverage attributable to those individuals who perform services for the State and who elect medical coverage under Contractor's medical plans. For this purpose, the "actual cost of coverage" equals the cost of coverage determined for purposes of compliance with the continuation of coverage requirements under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), reduced by the 2% COBRA administration fee and further reduced by the portion of such cost paid by the individual electing coverage, which shall be no less than* ***50%*** *of such cost, except to the extent necessary to meet the affordability requirements under Code § 4980H. The actual cost of coverage shall be determined on a payroll period basis and paid only for those pay periods during which the individual performing services is enrolled in Contractor's medical plan.*

Except as modified above, all other terms and conditions of Contract SPB12-2029P-2 remain unchanged.

DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT BUREAU
PO BOX 200135
HELENA MT 59620-0135

BY: Penny Moon, Senior Contracts Officer
(Name/Title)

Penny Moon
(Signature)

DATE: 9 June 2015

EXPRESS EMPLOYMENT PROFESSIONALS
1100 W. CUSTER
HELENA MT 59602
FEDERAL ID # 84-0909680

BY: Lynne Johnson, Owner
(Name/Title)

Lynne Johnson
(Signature)

DATE: 6/1/2015

Approved as to Legal Content:

Mike Manion 6/9/15
Legal Counsel (Date)