IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

LAURNA CHIEF GOES OUT, LYNDA FRENCH, BRANDY BURKOWSKI and DAWN MORRIS AS NEXT FRIEND AND NATURAL MOTHER OF HER MINOR SON D.M., on behalf of themselves and all others similarly situated, Plaintiffs, v. MISSOULA COUNTY, CARL IBSEN, JASON KOWALSKI, MARK FOSS, AND MARK HARRIS, Defendants.	)	Cause No. CV 12-155-M-DWM **SETTLEMENT AGREEMENT**

SETTLEMENT AGREEMENT

The plaintiffs in this suit assert federal and state constitutional violations on behalf of a class of prisoners housed in Housing Unit 2 and the Juvenile Detention Center of the Missoula County Detention Facility ("MCDF") asserting lack of access to outdoor recreation. This Settlement Agreement relates to access to outdoor recreation for all prisoners housed in Housing Unit 2 and the Juvenile Detention Center at MCDF.

I. Preliminary Statement

A. The parties recognize that prisoners are entitled to outdoor exercise pursuant to the Eighth Amendment to the U.S. Constitution and Article II, §22 of the Montana Constitution.

B. The parties further recognize that pursuant to the Fourteenth Amendment to the U.S. Constitution and Article II, §4 of the Montana Constitution, female and juvenile prisoners similarly situated to male prisoners are entitled to equal access to outdoor exercise.

C. The parties agree that upon preliminary approval and notice to the class, the parties shall jointly move the Court to adopt this Settlement Agreement as a Consent Decree, Judgment and Order.

II. Construction of Outdoor Recreation Areas

A. Missoula County agrees to construct outdoor areas directly accessible from Housing Unit 2 and the Juvenile Detention Center in accordance with American Correctional Association Standard 4-4154 (2003) and architectural design.

B. One of the outdoor areas directly accessible from Housing Unit 2 and the outdoor area directly accessible from the Juvenile Detention Center shall each have a basketball hoop. Basketball privileges may be temporarily suspended in the event that basketball privileges are abused.

C. Missoula County has retained an architect to provide appropriate design.

D. Missoula County agrees to have the outdoor recreation areas completed no later than six months from the date on which this Court preliminarily approves this Settlement Agreement, unless unforeseen delays arise out of the city permitting process.

III. Access to outdoor recreation

A. Defendants shall make outdoor recreation available to each prisoner, including all prisoners housed in Housing Unit 2 and the Juvenile Detention Center, for (1) one hour, five days per week. Prisoners will be allowed to run, jog, or engage in calisthenics in the outdoor recreation area.

B. The outdoor schedule will be posted in the dayroom of each pod in all housing units.

C. During colder weather, Defendants will make available a sufficient number of clean and usable coats so that all prisoners who choose to go outdoors will have a coat, subject to paragraph III(E).

D. MCDF administrators have the authority to identify extreme weather conditions (e.g. cold/hot temperatures, blizzards, rain/thunder/lightning storms, and other inclement weather. In extreme weather conditions, and when it is in the best interest of the inmate(s) and MCDF staff, the outdoor recreation opportunities may be suspended or cancelled until weather conditions have improved.

E. Prisoners may not be denied access to outdoor recreation because they are in administrative segregation. Prisoners may be denied access to outdoor recreation only in extraordinary circumstances and upon a finding that providing access to outdoor recreation may create a danger that the prisoner will injure himself or herself or others. Where legitimate safety, security, and medical concerns are apparent, MCDF administrators may disallow outdoor recreation.

F. Any denial of access to outdoor recreation shall be for the least amount of time possible, and shall require a written "No Recreation Order" by MCDF officials and/or medical officials for each day access is denied, which shall be placed in the prisoners' custodial record.

G. Missoula County shall post the outdoor recreation schedule in each housing unit. Missoula County agrees to provide access to prisoners during reasonable times of day with regard to temperature and sunlight.

H. Defendants will maintain a log of outdoor recreation periods that includes the time that recreation was offered and the number of prisoners who went outside.

I. MCDF staffing shall be adequate and appropriate to provide consistent and scheduled access to outdoor recreation to all prisoners for one (1) hour five (5) days per week. Defendants agree to hire a minimum of one employee to meet increased staff demands that the obligations set forth in this Settlement Agreement require.

J. Defendants agree to implement a policy outlining the outdoor recreation procedures set forth herein.

K. The ACLU of Montana and Greg Munro agree that they will not bring an action on behalf of Housing Unit 1 or 3 prisoners based on the claim that existing Housing Unit 1 and/or Housing Unit 3 outdoor recreation areas are inadequate relative to the newly constructed outdoor recreation areas for the duration of this case

IV. Monitoring and Jurisdiction

A. The parties agree that this Court has jurisdiction over the parties and the subject matter of this Action.

B. Upon adoption as a Consent Decree, Order and Judgment, this Settlement Agreement shall continue in full force and effect. All parties to this agreement recognize the continuing jurisdiction of this Court for the purpose of enforcing this Settlement Agreement and awarding post-judgment attorneys' fees upon a properly filed motion.

C. Defendant Missoula County agrees to make available for inspection the written logs for outdoor recreation every three months for a period of two years beginning on the date the outdoor recreation areas are first utilized. Every six months for a two year period, defendants agree to allow plaintiffs' counsel access to confidential interviews with class members in the Missoula County Detention Facility for the sole purpose of discussing outdoor recreation access. After two years, this Consent Decree, Order and Judgment may be terminated pursuant to 18 U.S.C. §3626(b) of the Prison Litigation Reform Act ("PLRA").

D. The parties agree that the Court shall have jurisdiction for the purposes of enforcing this Settlement Agreement adopted as a Consent Decree, Order and Judgment, and to determine the amount of attorneys' fees to be awarded post-judgment, if any, on a properly filed motion. The parties agree that the relief granted by this Agreement is narrowly drawn, extends no further than necessary to correct the alleged violations of plaintiffs' federal and state rights, and is the least intrusive means necessary to correct the alleged violations, thereby satisfying the requirements of 18 U.S.C. §3626(a)(1)(A).

V. Payment and Special Levy

A. Missoula County is self-insured and a special levy will be required to pay for all of the associated costs to Missoula County, including architectural and design fees, construction of the proposed outdoor facilities, attorney's fees, if any, and additional MCDF staffing. Nevertheless, Missoula County acknowledges and agrees that performance of the obligations binding it herein is not contingent on any subsequent event or condition.

VI. Attorney's Fees

A. Attorneys' fees, if any, are to be determined by Stipulation, or by Order of this Court. Should the parties be unable by separate agreement to decide agree upon an amount of attorneys' fees, plaintiffs expressly reserve the right to seek attorneys' fees from the Court.

CAUSE NO. CV 12-155-M-DWM SETTLEMENT AGREEMENT SIGNATURE PAGE

Dated this 20th day of June, 2013

MISSOULA COUNTY SHERIFF CARL IBSEN

Dated this 20th day of June, 2013

MISSOULA COUNTY COMMISSIONER
CHAIR, MICHELE LANDQUIST

Dated this 20th day of June, 2013

MISSOULA COUNTY COMMISSIONER
JEAN CURTISS

Dated this _____ day of June, 2013

MISSOULA COUNTY COMMISSIONER
BILL CAREY

NOT AVAILABLE FOR SIGNATURE

APPROVED AS TO FORM AND CONTENT:

Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula, MT 59807-7909
Attorneys for Defendants

By _____
Charles E. McNeil
Dated this 24 day of June, 2013

AMERICAN CIVIL LIBERTIES UNION
OF MONTANA
P.O. Box 9138
Missoula, MT 59807

By _____
Anna Conley
Dated this 27 day of June, 2013

Greg Munro, Attorney at Law
3343 Hollis Street
Missoula, MT 59801

By _____
Greg Munro
Dated this 26th day of June, 2013