CONTRACT AMENDMENT
FACILITY DEVELOPMENT – DESIGN, BUILD
At Crossroads Correctional Center in Shelby, Montana

COPY

THIS CONTRACT AMENDMENT (**Amendment #2**) is made and entered into by and between the Montana Department of Corrections (Department) 1539 11th Ave., Helena, Montana 59620-1301 and **Corrections Corporation of America** (CCA) (Contractor) 10 Burton Hills Boulevard, Nashville TN 37215 to amend the Contract for Facility Development – Design, Build (Facility Development Contract). **This amendment shall be effective as of July 10, 2006.**

WHEREAS, for good and valuable consideration, the parties are amending their Contract for Operation and Management Services (Management Contract) simultaneously with this Amendment; and

WHEREAS, pursuant to the Amendment of the Management Contract, CCA will construct a ninety-six bed expansion of the Crossroads Correctional Center (Facility); and

WHEREAS, the Facility Development Contract provides for a "use fee" and grants Department certain options to acquire ownership of the Facility; and

WHEREAS, the parties desire to revise the "use fee" and purchase option terms specific to the ninety-six bed expansion.

NOW THEREFORE, in consideration of the mutual promises expressed herein and in the amendment of the Management Contract, the parties agree to revise the Facility Development Contract as follows (**new language underlined, old language interlined**):

Section II

(F) 2. Contractor agrees to charge and collect from the originating jurisdiction, a use fee of $9.14 per inmate per day for all inmates housed at the facility. Contractor shall credit the use fee toward facility construction costs. <u>This use fee shall also apply to all expansion beds.</u>

(H) 1. The Department has an option to purchase the Facility ~~if this Contract is terminated as set forth herein~~ for its Fair Market Value as determined in Paragraph 3 below, less the ~~then present value~~ <u>sum</u> of all payments made by the Department and other approved jurisdictions to Contractor under Paragraph F, Compensation (as of the purchase date). <u>The term "Fair Market Value", as used in this Agreement, shall be determined with regard to the ninety-six bed expansion.</u> The net amount shall be the "Purchase Price". Prior to purchase by the Department, the Contractor shall pay off or provide for the repayment of any outstanding debt secured by the Facility and remove all liens and encumbrances on the Facility. In the event that this option to purchase follows termination for cause, the Fair Market Value shall also be reduced by the Department's reasonable expenditures and damages arising from such termination. This paragraph shall survive the subsequent transfer(s) of this Contractor's interest in the Facility.

This constitutes the amendment to this Contract. All other provisions of the Facility Development Contract not otherwise amended herein or by the terms of the simultaneous amendment of the Management Contract shall remain in full force and effect.

SIGNATURES

DEPARTMENT

Mike Ferriter, Director
Department of Corrections

7/17/06
Date

CONTRACTOR

Damon Hininger, Vice President
Federal Customer Relations
Corrections Corporation of America

8/4/06
Date

Brian Schweitzer, Governor
State of Montana

Date

Approved for Legal Content by:

Diana Koch
Chief Legal Counsel
Montana Department of Corrections

7/17/06
Date

COPY

CONTRACT AMENDMENT
CONTRACT FOR FACILITY DEVELOPMENT – DESIGN, BUILD

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and **Corrections Corporation of America** (CONTRACTOR) 10 Burton Hills Boulevard, Nashville TN 37215, and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date on or about September 1, 1999 and Section II (CC) provides that the parties may modify their agreement in writing.

NOW THEREFORE, the parties agree as follows:

Section II, subsections (F)(2) and (H)(1) are amended to read (new language underlined, old language interlined):

(F)2. ~~The Department will pay Contractor a use fee of $9.14 per inmate per day, not to exceed $1,672,620 per year.~~ Contractor agrees to charge and collect from the originating jurisdiction, a use fee of $9.14 per inmate per day for all inmates housed at the facility. Contractor shall credit the use fee toward facility construction costs.

(H)1. The Department has an option to purchase the Facility if this Contract is terminated as set forth herein for its Fair Market Value as determined in Paragraph 3 below, less the then present value of all payments made by the Department and other approved jurisdictions to Contractor under Paragraph F, Compensation (as of the purchase date). The net amount shall be the "Purchase Price". Prior to purchase by the Department, the Contractor shall pay off or provide for the repayment of any outstanding debt secured by the Facility and remove all liens and encumbrances on the Facility. In the event that this option to purchase follows termination for cause, the Fair Market Value shall also be reduced by the Department's reasonable expenditures and damages arising from such termination. This paragraph shall survive the subsequent transfer(s) of this Contractor's interest in the Facility.

This constitutes the Amendment to the Contract. All other provisions contained in the original Contract, as amended, shall remain unchanged.

COPY

SIGNATURES:

DEPARTMENT

Bill Slaughter, Director
Montana Department of Corrections

4/15/03
Date

Judy Martz, Governor
State of Montana

4-18-03
Date

CONTRACTOR

Anthony L. Grande, Vice President
State Customer Relations
Corrections Corporation of America

4-28-03
Date

Approved for Legal Content by:

Diana Koch
Chief Legal Counsel
Montana Department of Corrections

4/15/03
Date

COPY

1-01-71-19

CONTRACT FOR FACILITY DEVELOPMENT - DESIGN, BUILD

BY AND BETWEEN

MONTANA DEPARTMENT OF CORRECTIONS
1539 11th Avenue, Helena, Montana, 59620

and

CORRECTIONS CORPORATION OF AMERICA
10 Burton Hills Boulevard, Nashville, Tennessee, 37215

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE MONTANA UNIFORM ARBITRATION ACT

WHEREAS, in House Bill 2 the Fifty-fifth Montana Legislature authorized the Department to issue a Request for Proposals and enter into a contract with a private vendor during the 1999 biennium for the construction of a correctional facility of approximately 500 beds and the housing of inmates in the facility; and

WHEREAS, the Department of Corrections issued a Request for Proposals and received bid proposals from 5 private prison companies, including Corrections Corporation of America: and

WHEREAS, on the basis of the proposals, further clarifications, and best and final offers the Department of Corrections selected Corrections Corporation of America's proposal as the most advantageous for the State of Montana: and

WHEREAS, in House Bill 83 the Fifty-fifth Montana Legislature set standards for the construction and operation of private prisons in Montana: and

WHEREAS, the Montana Legislature has required that private prisons must substantially conform with recognized correctional standards such as the American Correctional Association standards and National Commission on Correctional Health Care standards;

NOW THEREFORE, the Montana Department of Corrections and Corrections Corporation of America as parties to this Contract, and in consideration of the mutual promises contained herein, agree as follows:

SECTION I

Contract Terms

ACA Standards; means Standards for Adult Correctional Institutions published by the American Correctional Association. Third Edition with 1998 Supplement.

A&E; means Architect and Engineering Division. Montana Department of Administration.

Biennium; means the two-year period beginning on July 1 and ending on June 30 of odd numbered years which correspond to Montana's legislative sessions and the state's budgeting period.

Bona fide Montana resident; means a person who. at the time of employment and immediately prior to the time of employment. has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be Bona fide residents of Montana.

Conflict of Standards: means in the event that conflict exists between ACA Standards. NCCHC Standards. and the Contract. the most stringent standard shall apply.

Contractor: means Corrections Corporation of America.

Department: means Montana Department of Corrections.

Design Team: means Department representatives. including representatives from the Montana Department of Administration. assigned to review Contractor's plans and specifications.

Development: means and includes design. construction. all infrastructure improvement.

Facility; means the fully equipped and furnished prison. including real estate. which is designed and constructed by the Contractor. Facility includes all housing units. administrative offices. classrooms. hearing room. medical infirmary unit and all other structures of whatever kind including roads. fences, infrastructure. utility systems. etc.. to be constructed for the incarceration of inmates assigned by the Department pursuant to the Department's Request for Proposals RFP No. PP.500-97.

FF&E; means furnishings, fixtures and equipment with a unit cost of $500.00 or more and a useful life of one year or more for the facility.

Fiscal Year; means a one year period beginning July 1 and ending June 30 the following year.

For Cause; includes, but is not limited to:

1) failure of a party to comply with the terms of this Contract;
2) Contractor bankruptcy, reorganization, or liquidation; or
3) failure of Contractor to comply with the Private Correctional Facility Act, ACA or NCCHC Standards, Department rules.

Infrastructure; means the utilities, roads, sewers, water systems, acreage, physical plant.

Inmate Day; means each day, or part of a day, including the first but not the last day in which an inmate is housed at the facility.

MDOC; means Montana Department of Corrections.

NCCHC; means Standards for Health Services in the Prison published by the National Commission on Correctional Health Care, 1997 Edition.

Operating Contract; means the Contract for Operation and Management Services for the Facility.

Proposal; means all materials submitted by the Contractor in response to the Department's RFP and any amendments thereto including the Department's Addendum #1 to the RFP dated December 19, 1997, follow up clarifications to Addendum #1 dated January 27, February 5 and 10, 1998, written responses to all questions for clarifications, and Contractor's Best and Final Offer dated June 12, 1998.

RFP; means the Department's Request for Proposals, titled "RFP No.PP.500-97: Design, Build, Operations and Management Project: 500 Bed Minimum, Medium and Close Security Prison for Adult Male Offenders."

State; means State of Montana.

SECTION II

A. General Requirements

1. Contractor shall be responsible for the design, construction, and provision of the Facility, including FF & E, to be located near Shelby, Montana, on the site which has been approved by the County of Toole and the City of Shelby.

   The Contractor shall provide a Facility in conformity to the architectural design and plans and specifications submitted by the Contractor in response to the RFP and as reviewed and approved by the Design Team. The Facility shall conform to all standards set forth in this Contract. Compliance with all applicable state and local codes, including but not limited to, building, electrical, plumbing, fire, and life safety, is mandatory.

2. The Facility will be constructed to house minimum, medium, and close custody adult male offenders as authorized by the Private Correctional Facility Act: 53-30-601 through 53-30-611, M.C.A. The Contractor shall comply with the provisions of 53-30-603, M.C.A. for housing inmates. In the event the law permits housing inmates, other than those assigned by the Department, the Department retains first option to house its inmates in the Facility.

3. Design/Build services shall begin within thirty (30) days of Contract execution. All requisite insurance policies, certificates of insurance and performance bonds must be submitted to the Department prior to start of construction but in no event later than ten (10) days before construction commences. Contractor's performance bonds and labor and material bonds must assure the payment of all subcontractors and suppliers as well as the performance of the general contractor or other authorized agents of the Contractor. The performance bonds shall also assure that the State is named as a third party beneficiary thereunder with full rights and benefits to enforce the terms and conditions of each bond as if the contract(s) was made directly with the State. The bonds shall be executed by a surety company authorized to do business in Montana.

4. Contractor, its general contractor and architectural design firm must be licensed and registered to conduct business in Montana.

5. The Facility must be designed and constructed to meet ACA and NCCHC Standards.

6. Contractor must construct the Facility in accordance with the ADA guidelines for correctional and justice facilities established by the Architectural Transportation Compliance Board in Washington D.C.

7. The Contractor will provide the Department, its representatives, and the Legislative Auditor unlimited access to the construction site and records pertinent to the design and construction of the Facility, including, but not limited to, financial records.

8. The Contractor agrees to pay up to $100,000 for the cost of a full-time, independent, on-site State representative. Contractor shall establish a trust account in the state of Montana prior to the commencement of construction, the purpose of which is to provide payments to the on-site State representative. The Contractor will deposit the sum of $100,000 into the trust account. The trustee shall be authorized to make payments to the on-site State representative upon receipt of a request for payment from the on-site State representative and authorization for payment by the State. In the event that construction is not substantially completed by August 1, 1999, Contractor agrees to pay an additional $9,000.00 (nine thousand dollars) per month for each month until substantial completion. In the event that there are funds remaining in the trust account at the completion of construction and the State has provided notice to the trustee that the on-site representative's final request for payment has been submitted, any remaining funds in the trust account will revert back to the Contractor. Prior to creation of the trust account, the Contractor shall submit all documents pertaining to the creation of the trust account to the Department. The State reserves the right to make amendments to the trust document prior to execution by the Contractor and the trustee. Appendix I delineates the scope of services provided by the on-site representative.

   Contractor shall provide the on-site State representative with total and unlimited access to the construction site. Contractor shall provide reasonable space for a trailer for use of the on-site State representative. Contractor shall provide utility connections for the on-site State representative's trailer. The cost for the trailer and use of utilities shall be borne by the on-site State representative.

9. The State shall have the unlimited rights to the drawings, design, and specifications developed during the design of the Facility, including the right to use the same without additional cost to the State for the purpose of maintaining or altering the Facility, or the construction of a like Facility. The Contractor, the Architect/Engineer or any other subcontractor shall not be liable for any future use

of, or modification to, the design drawings or specifications of the State. The Contractor and any of the Contractor's subcontractors shall grant the State an exclusive royalty free license to use such designs without any claim of patent or copyright violation.

10. After substantial completion, the Contractor must submit to the State a detailed set of as-built construction drawings, plans and specifications in both written and electronic form (AutoCad 14 or higher version) that depicts the size, location and description of the Facility, and all improvements as actually constructed. At the date of substantial completion the Contractor must also provide the State two (2) copies each of all operations manuals, warranties and other information regarding the startup operation and maintenance of the Facility and the Furnishings Fixtures & Equipment (FF&E).

11. The Department's RFP, Addendum to the RFP, follow up notices to the Addendum, Contractor's Proposal, and Contractor's changes to Proposal through the Best and Final Offer Process are hereby incorporated by reference and are made a part of this Contract as if set forth in full herein. This Contract consists of and precedence is established by the order of the following documents incorporated into this Contract:

a. This Contract document;
b. The RFP, including Addendums and follow up notices; and
c. The Proposal, including Addendums and Contractor's Best and Final Offer process, as accepted by the Department.

The Contractor shall notify the Department in writing of any alleged conflict between the documents and any alleged conflict shall be resolved by the Department after review of the alleged conflict according to the considerations set forth herein. The documents in the preceding paragraph are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency.

12. Any cost increases due to a change in the site location for the Facility shall be borne by the Contractor.

13. Any cost increases due to design modifications within the general scope of the plans submitted to and accepted by the Department in Contractor's Proposal, including the Best and Final Offer, shall be borne by the Contractor.

14. The Contractor shall submit all plans to the Design Team before construction. A design review meeting with the Contractor, the Contractor's subcontractors and the Design Team will be held no later than 14 days from execution of this Contract, at which time the Design Team will review the schematic design documents submitted as part of the Contractor's proposal and Best and Final Offer, and provide approvals and/or changes to the Contractor.

15. Contractor will submit 50% construction documents to the Design Team no later than August 27, 1998, and 95% construction documents no later than November 6, 1998. The Design Team shall have three weeks from receipt of the documents to review and approve and/or make changes to conform with the proposal design documents.

    In order to expedite the construction process, start of construction will occur on or about August 2, 1998, utilizing phased construction document packages. Contractor will begin construction of various components of the work upon completion of phased construction drawings. Assuming no major revisions pursuant to subsection 14 above, it is anticipated that the following construction drawing packages will be issued:

Construction Drawing Phase Packages	**Date**
Long Lead MEP Equipment Schedules	o/a 7/31/98
Mass Excavation	o/a 8/3/98
Civil Drawings	o/a 8/3/98
Foundation Structural & Underground	
Mechanical, Electrical, Plumbing & Security	o/a 9/1/98
Balance of Structural	o/a 11/6/98
Architectural	o/a 11/6/98
Security Electronics	o/a 11/6/98
Mechanical	o/a 11/6/98
Electrical	o/a 11/6/98

    The above-named document packages provided by the Contractor will be in conformance with the proposal design documents and will be issued to the Design Team for their review and approval.

16. Questions concerning design shall be directed to the Design Team. Questions concerning construction shall be directed to the on-site State representative.

B. Facility

The Facility shall initially be sufficient to support no fewer than 500 male inmates, plus the Contractor's staff. The infrastructure shall be sufficient to accommodate an additional 1000 inmates, for a total operating capacity of 1500 inmates.

1. Prior to and during construction, the Contractor shall provide the Department a schedule of all on-site testing and inspections to be done by the Contractor's inspectors, testers, independent testing firms and government agencies (e.g., soil compacting, concrete tests, etc.). Contractor agrees to perform independent quality assurance testing, as determined necessary by the Department or its representatives, at the Contractor's expense.

2. The Facility must include a clear space of not less than two hundred feet outside the fenced perimeter. Contractor shall provide a vegetative buffer or terrain features which reasonably obscure the Facility from public view.

3. Roadways must be constructed to conform with the local or State jurisdiction having authority over road construction. All roads and parking lots on the Facility property must be paved to Montana Public Works Standards, including parking lots for employee and visitor parking.

4. The Contractor must provide entrances for access to the Facility from publicly maintained roads. The access roads must be all-weather paved surfaces.

5. The water systems must be connected to an approved public water supply, and the water systems must comply with appropriate State and County laws, regulations and ordinances.

6. The Facility must be connected to an approved public waste water treatment system which meets appropriate State and County laws, regulations and ordinances.

C. Permits and Land Use Designation

1. Contractor must provide the Department with supporting evidence of having obtained appropriate zoning and land use designations from Toole County and/or

the City of Shelby (53-30-601 through 53-30-611 MCA). Contractor shall apply for all necessary permits and approvals within 14 days of Contract execution. Assuming reasonable review periods by State and local agencies, the Contractor will obtain all necessary permits and approvals within one-hundred twenty (120) days of the effective date of this Contract. Permits and approvals which may be needed include, but are not limited to:

a. Zoning
b. Montana Department of Environmental Quality
c. Utility easements
d. Building
e. Electrical
f. Plumbing

2. Contractor shall not sub-divide or in any way whatsoever use the site for any purpose except the construction and operation of a prison pursuant to this Contract.

D. Furnishings, Fixtures and Equipment (FF&E)

1. The Contractor will provide all FF&E to operate the Facility for its intended purpose, including FF&E for the Department's Contract Monitor. Contractor's detailed list of FF&E components is made part of this Contract as Appendix II. The Contractor will be required to safeguard, maintain and account for all FF&E at all times, and in the event of termination and/or expiration of Contractor's Operations and Management Contract, transfer them to the Department or the next Operations and Management Contractor, as the case may be, in good condition, except for reasonable wear and tear.

2. Contractor agrees that Montana Correctional Enterprises (MCE) shall have the right of first refusal to meet the quality, price and delivery time of FF&E required by the Contractor. If MCE can meet requirements as to quality, price and time of delivery, the Contractor must purchase the FF&E from MCE.

3. If any FF&E requires software systems to operate and/or maintain the Facility, the Contractor must obtain a license which allows the State or subsequent Contractor to use the software for the operation of the Facility and it must be transferrable without cost or restriction to the State or subsequent contractor.

a. All software, hardware and firmware purchased and/or leased by the Contractor which will be used prior to, during or after the calendar year 2000, shall include, at no added cost to the State, design and performance so that there is no experience of software abnormality and/or generation of incorrect results from the software due to date oriented processing.

b. The software, hardware and firmware design to insure year 2000 compatibility must include, but is not limited to: date structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates the same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; use interfaces (i.e. screens, reports, etc.) that accurately show four (4) digit years; and assurance that the year 2000 will be correctly treated as a leap year within all calculation and calendar logic.

E. Schedule for Occupancy; Penalties

1. Contractor will deliver a fully developed Facility including all infrastructure and FF&E, capable of accepting and housing 500 inmates no later than September 1, 1999. Any delay beyond that date must be approved in writing by the Department. The Contractor shall be responsible for all actual, consequential and incidental damages incurred by the Department for each day the Facility is not approved through licensure by the State for occupancy beyond August 1, 1999.

2. In the event that the Facility is not fully developed and capable of accepting inmates by September 1, 1999, the Contractor will pay the Department five thousand dollars ($5,000.00) for each day beyond September 1, 1999 that the Facility is not fully developed and accepting inmates. Said payment shall constitute a pre-payment of damages incurred by the Department for the delay of the Contractor, and shall be paid to the Department within 30 days of the date the obligation to pay accrues. Upon a determination of the Department's actual, consequential and incidental damages attributed to the delay, the Contractor shall pay any additional amounts above the pre-payments made by the Contractor, or the Department shall reimburse a portion of the pre-payments which are in excess of the Department's actual, consequential and incidental damages.

3. The Facility shall be licensed as a "private correctional facility" in accordance with the requirements of 53-30-601 through 53-30-611, MCA.

F. Compensation

1. The Department agrees to pay Contractor for the use of the Facility beginning with the first month of occupancy and ending with the month the Department either exercises its purchase option as provided herein, or this Contract is terminated.

2. The Department will pay Contractor a use fee of $9.14 per inmate per day, not to exceed $1,672,620 per year.

3. All payments made under this Contract shall be made only upon submission by Contractor of an invoice which specifies the amounts due and certifies that services requested under the Contract have been performed in accordance with the Contract. The invoices shall be submitted by Contractor each month for the fixed rate per inmate day of the preceding month and shall contain the names and inmate number (A.O.#) of all inmates in the custody of the Contractor and their date of incarceration at the Facility and date of release, if applicable. The Department shall pay each correctly submitted invoice within ten (10) days of receipt of invoice. The Department will make reasonable efforts to effect payment to Contractor by wire transfer in accordance with Contractor's written instructions.

G. Duration

This Contract is effective for an initial term of 20 years, beginning with operation of the Facility on or about, September 1, 1999, and ending on or about, August 31, 2019. Upon mutual written agreement of the parties, this Contract may be renewed for two(2), five (5) year periods, subject to satisfactory evidence of contractual compliance. The total life of this Contract shall not exceed 30 years.

H. Right To Purchase by the Department

1. The Department has an option to purchase the Facility if this Contract is terminated as set forth herein for its Fair Market Value as determined in Paragraph 3 below, less the then present value of all payments made by the Department to Contractor under Paragraph F. Compensation (as of the purchase

date). The net amount shall be the "Purchase Price". Prior to purchase by the Department, the Contractor shall pay off or provide for the repayment of any outstanding debt secured by the Facility and remove all liens and encumbrances on the Facility. In the event that this option to purchase follows termination for cause, the Fair Market Value shall also be reduced by the Department's reasonable expenditures and damages arising from such termination. This paragraph shall survive the subsequent transfer(s) of this Contractor's interest in the Facility.

2. Termination of this Contract and/or exercise of the option to purchase the Facility shall not limit the Department's right to receive compensation, without duplication, for (a) any amounts that may be owed in accordance with paragraph F, Compensation; (b) actual damages sustained by tortious acts or omissions of Contractor and not otherwise compensated or provided for under this Contract; or (c) any rights that are stated in this Contract or surviving termination.

3. **Fair Market Value**

   a. If, pursuant to the terms of this Contract, the Fair Market Value of the Facility is to be determined, such value shall be the value which would be obtained for the Facility, in an arm's length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller, under no compulsion to sell, and based upon the continued use of the Facility as a prison.

   b. The Department and Contractor shall attempt to agree upon the Fair Market Value through discussions and negotiation for a period of 60 days following the Department's giving the Contractor notice of its wish to commence negotiations therefor. If the Contractor and the Department are unable to agree upon a Fair Market Value for the Facility within such 60 day period, then either the Contractor or the Department may give notice to the other party requesting a determination of Fair Market Value by appraisal. Appraisals shall be made by two independent appraisers who shall be MAI appraisers, one of whom shall be chosen by the Contractor and one of whom shall be chosen by the Department. If the two appraisers cannot agree upon the Fair Market Value within 15 days of the completion of their respective appraisals, then a third appraiser shall be chosen by the two appraisers, and a written appraisal from each of the two appraisers

presented to the third appraiser. This third appraiser shall determine Fair Market Value by appraisal.

4. Upon the termination of this Contract for any reason, the Contractor shall immediately deliver to the Department any operating and maintenance manuals, licenses, or other technical information ("Operating Materials") that exist, in addition to any previously submitted to the Department for the Facility. Thereafter, all Operating Materials shall be the property of the Department. It is the understanding of the parties that the Operating Materials referred to herein shall be sufficiently detailed to enable the Department to fully operate and maintain the Facility after a termination of this Contract for whatever reason. If a termination occurs prior to the completion of such Operating Materials, the Contractor shall deliver to the Department the Operating Materials as completed through the date of termination.

5. In the event the Contractor leases or sells the Facility, the Contractor shall ensure that the terms of lease or sale to a third party include a provision that the Department shall retain the option to purchase the Facility.

6. The Department shall retain the right to approve the lease or sale of the Facility by the Contractor to a third party.

7. Prior to any lease or sale by the Contractor or any subsequent owner or lessor of the Facility, the Department must be provided a copy of the final contract between the transferring parties. The Department shall retain the right to make reasonable changes to such contract in order to ensure protection of the Department's rights as set forth in this Contract.

8. The Contractor shall ensure that the terms of any sale or lease by the Contractor to a third party, or any sale or lease by any subsequent owner or lessor, shall not result in any additional costs to the Department beyond the compensation provided to the Contractor by the Department as set forth in this Contract.

9. The Contractor shall ensure that the terms of any sale or lease of the Facility by the Contractor shall not adversely affect the Department's and Contractor's rights and obligations under this Contract.

10. Purchase of the Facility by the Department is contingent upon Legislative approval. In order to accommodate this requirement, the Department's option to purchase shall remain valid from the date the Department give notice of its intent

to exercise its option to purchase until July 10 following the next Legislative session.

I. Right of Entry

1. The Department shall have a right to enter the premises at any time, with or without notice.

2. If the Contractor fails to comply with Title 53, Chapter 30, Part 6, Montana Codes Annotated, applicable American Correctional Association Standards, National Commission on Correctional Health Care Standards, Department rules, or Contract requirements, the Department shall have the right to assume control of the Facility to protect inmates, staff, or the public.

3. The Department shall have the right to assume emergency control of the Facility if there exist substantial violations which affect the life, health, or safety of the inmates, Facility employees, or the public or that otherwise substantially impact the security of the Facility.

J. Compliance With Laws

The Contractor shall, at all times during the performance of its obligations of this Contract strictly adhere to all applicable ACA and NCCHC Standards; local, state and federal laws and regulations, including, but not limited to, protection of the confidentiality of all applicant/recipient records, papers, documents, tapes or any other materials that have been or may hereafter be created which relate to this Contract. The Contractor acknowledges that said laws include, but are not limited to: Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, the Education Amendments of 1972, the Age Discrimination Act of 1975, the Americans With Disabilities Act, including Title II, Subtitle A, 24 U.S.C. Sec. 12101, et seq. and all rules and regulations applicable to these laws prohibiting discrimination because of race, religion, color, national origin, creed, sex, age or handicap.

K. Changes

The Department may, at any time by a written order, make changes within the general scope of the Contract. Contractor may not make any changes in the general scope without the approval of the Department. If any change of scope causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work

under the Contract, a mutually satisfactory adjustment must be made in the Contract and must be modified in writing accordingly.

Notwithstanding the foregoing, any cost increases due to a change in the site location of the Facility and any costs increases due to design modifications within the general scope of the Contractor's Proposal, including Best and Final Offer, shall be borne by the Contractor.

L. Prevailing Wage

1. The Contractor agrees to pay the applicable standard prevailing rate of wages as determined by the Commissioner of Labor and Industry, State of Montana for work performed by Contractor's employees or the employees of Contractor's subcontractors. Appendix III contains the current Montana standard prevailing rate of wages, including fringe benefits, and is incorporated herein by reference.

2. Except for heavy and highway construction, the Contractor must pay 1) the travel allowance that is in effect and applicable to the district in which the work is being performed and 2) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and is in effect and applicable to the district in which the work is being performed.

3. For heavy and highway construction, the Contractor shall pay the heavy and highway construction wage rates established statewide for the project.

4. Contractors, subcontractors, and employers who are performing work or providing services under this Contract shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages to be paid to the employees employed on such site or work area.

5. Pursuant to Section 18-2-404, MCA, the Department will withhold the first $1,000.00 of the Contract price of the Development Contract until termination thereof.

M. Preferences

1. The Contractor must ensure that at least 50% of the workers (including workers employed by subcontractors) are Bona fide Montana residents, as defined in § 18-2-401, MCA.

2. The Contractor must use Montana-made goods if they are comparable in price and quality to goods manufactured outside of Montana, as required by § 18-1-112, M.C.A.

3. The Contractor must give preference to the employment of Bona fide Montana residents, as defined in § 18-2-401, M.C.A.

N. Worker's Compensation

Contractor shall supply the Department with proof of Workers' Compensation Insurance pursuant to 39-71-120/401/405, MCA, which covers the Contractor and all employees while performing work in the State of Montana. Neither the Contractor nor its employees are employees of the State. The proof of insurance must be valid for the entire contract period and must be received by the Department within ten (10) working days following Contract execution and annually thereafter.

O. Indemnification and Insurance

1. Indemnification

The Contractor agrees to protect, defend, and save the 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, and causes of action of any kind or character, 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 under this Contract.

2. Insurance

Contractor shall maintain, or cause to be maintained, for the duration of the 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 the contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission

3. **Insurance Specifications**

a. **General Liability**

i. The Contractor shall maintain, or cause to be maintained, occurrence coverage with combined single limits of $10 million per occurrence/$10 million aggregate per year for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.

ii. The Contractor's insurance coverage shall be primary insurance as respects the state, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

b. **Vehicle Liability**

i. The Contractor shall maintain, or cause to be maintained, automobile liability occurrence coverage with combined singled limits of $1 million per occurrence/$2 million aggregate per year for bodily injury and property damage. If commercial automobile liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.

ii. The Contractor's insurance coverage shall be primary insurance as respects the state, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the state, its officers, officials, employees, or volunteers shall be excess of the contractor's insurance and shall not contribute with it.

c. **Professional Liability**

The Contractor shall maintain, or cause to be maintained, professional liability insurance for coverage with combined single limits for each wrongful act of $2 million aggregate single limit per year for all architects, engineers, surveyors, and design professionals whether employed, subcontractors, or independent contractors who provide design, surveying, and other professional services. The coverage must remain in effect for a minimum of four years.

d. **Property**

The Contractor shall maintain, or cause to be maintained, during the period of the Contract, Builder's Risk/Installation insurance on a 'special causes of loss form' (so called "all risk") for the completed value of the work. All subsequent change orders will be insured by the Contractor for the entire project.

4. **Certificates of Insurance/Endorsements**

Insurance is to be placed with an insurer with a Best's rating of no less than A- unless the contractor is self-insured. All certificates and endorsements are to be received by the state prior to the provision of a service or purchase of a product. The state reserves the right to require complete copies of all insurance policies at any time.

5. **Additional Insured Status**

The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor.

P. **Force Majeure**

The Contractor will not be liable for any financial penalties to the Department if the failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, quarantine restriction, court orders, strikes and freight embargoes. In all cases, the failure to perform must be beyond the control and without fault or

negligence on the part of the Contractor. The Contractor will take all possible steps to recover from such occurrences. In no event, however, will the Department be responsible for any additional costs for the Contractor's failure to perform.

Q. Liaison

1. The Department Facilities Manager will be the liaison for the Department in matters concerning the Contract. The Vice President of Design and Construction Management will be the liaison for the Contractor.

2. Except as otherwise expressly stated in this Contract, written notices or complaints will first be directed to the liaison.

R. Venue

This Contract is governed by the laws of Montana. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

S. Freedom From Discrimination Statement:

Contractor agrees that all hiring must be done on the basis of merit and qualifications and there may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin by the person or persons performing the Contract.

T. Licensure

The Contractor agrees to provide copies of current licenses and certifications which register the Contractor and associates covered under this Contract.

U. Alternate Dispute Resolution

Any controversy regarding this Contract that the parties are unable to resolve by mutual agreement may be submitted to binding arbitration in Helena, Montana in accordance with the rules of the American Arbitration Association and the Montana Uniform Arbitration Act.

Any decision of the arbitrators shall be conclusive as to the matter submitted and may be enforced in any court of competent jurisdiction in the State of Montana. Issues under

arbitration shall be heard and decided by three arbitrators. one of whom shall be designated by the Department. one of whom shall be designated by the Contractor. and one of whom shall be designated by the American Arbitration Association. Any factual decision on an issue being arbitrated made by at least two of the arbitrators shall be the decision of the arbitrators and such decision shall be final. non-appealable. and binding on both parties.

The following terms shall be binding on the parties:

1. Either party may require that the hearing be recorded.

2. The costs of the arbitrators shall be borne equally by the parties.

3. After it is determined to submit a dispute to arbitration. it shall be so submitted within 15 working days. After submission, a written decision shall be rendered within ninety (90) days. unless an extension is agreed to by both parties.

4. Neither party shall appoint an employee or agent as an arbitrator.

5. Each party reserves the right to appeal any question of law.

6. Discovery shall be conducted in accordance with the Federal Rules of Civil Procedure.

7. Arbitration pursuant to this sub-section shall operate only by mutual consent of the parties.

V. Termination

1. **Termination For Cause:** This Contract may be terminated by the Department for cause. by sixty (60) days written notice mailed to the Contractor by registered U.S. mail. return receipt requested.

2. **Termination for Unavailability of Funds:** In the event that the Department funds for the Contract become unavailable, the Department shall have the right to terminate the Contract, with or without cause, without penalty.

   If the Department decides not to renew this Contract due to the unavailability of funds, then the Department will provide a courtesy notice of non-renewal, if possible. ninety (90) days prior to the expiration date of this Contract.

The Contractor shall have no right to any general, special, incidental, consequential, or any damages whatsoever of any description or amount. Notwithstanding the foregoing, if the Department terminates the Contract prior to substantial completion of the Facility, the Contractor may seek available legal remedies.

3. **Miscellaneous:** Any notice mailed and any notice served by personal delivery shall be deemed delivered and effective upon receipt. This method of notification will be used in all instances, except for emergency situations when immediate notification is required pursuant to the appropriate sections of this Contract.

W. Contractor Status

The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Contractor nor any agent, subcontractor or employee of the Contractor shall be or shall be deemed an agent or employee of the State. Contractor shall have no authorization, express or implied, to bind the Department to any contracts, liability or understanding except as expressly set forth herein.

X. Assignment

No right or interest pursuant to this Contract shall be assigned or delegated by the Contractor without the prior written permission of the Department. The Department, in its sole discretion, may approve or disapprove any assignment or delegation.

Y. Severability

If any term or condition of this Contract shall be held to be invalid, illegal or unenforceable, this Contract shall be construed and enforced without such provision, to the extent this Contract is then capable of execution within the original intent of the parties.

If, however, the Department determines that the invalid provision or provisions are essential to the purpose or performance of the Contract, it may terminate the Contract. Such a termination shall be deemed a termination for cause.

Z. Risk of Physical Damage to Facility

The risks and costs of physical damage to the Facility incurred as a direct result of the placement of Montana inmates in the Facility shall be considered usual costs incidental to

the operation of the Facility and part of the costs reimbursed by the fixed rate per inmate day as provided by Section II. F. Compensation.

AA. Headings

Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Contract.

BB. Time of the Essence

Time is of the essence in the performance of all of the parties' obligations and duties under this Contract.

CC. Modification

This Contract contains the entire agreement and understanding between the parties and no statement, promise or inducement made by either party or agents thereof which are not contained in the written Contract shall be binding or valid. This Contract shall not be enlarged, modified or altered except upon written agreement signed by all parties to the Contract.

DD. Completed Contract

The Department cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Director's Office, Department of Corrections, 1539 11th Avenue, Helena, Montana 59620-1301.

SECTION III

Completed Contract

This Contract contains 23 pages plus three Appendices. The Department cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Director's Office, Department of Corrections, 1539 11th Avenue, Helena, Montana, 59620-1301.

SIGNATURE:

DEPARTMENT

Rick Day, Director
Department of Corrections

7-22-98
Date

CONTRACTOR

Doctor R. Crants, Chairman/CEO
Corrections Corporation of America

7-22-98
Date

Marc Racicot, Governor
State of Montana

7-22-98
Date

Approved for Legal Content by:

David L. Ohler
Chief Legal Counsel
Department of Corrections

7/22/98
Date