STATE OF MONTANA/COUNTY LEASE

1. PARTIES

This lease **(#03-005-ACCD)** is entered into by and between the Montana Department of Corrections, located at 1539 11th Avenue, PO Box 201301, Helena, MT 59620-1301, hereinafter referred to as "Department" and **Big Horn County, Board of Commissioners**, a political subdivision of the State of Montana, located at PO Box 908, Hardin, MT 59034, hereinafter referred to as "Contractor".

2. PURPOSE OF LEASE

Department has a need to lease premises in Hardin, Montana for the purpose of conducting Department business. Contractor has premises available for lease that are suitable for the stated purpose.

3. PREMISES DESCRIPTION

The area to be leased consists of 362 square feet and includes the right to use the common areas within the leased premises. **The leased area is more particularly described as Room #308 and is located in the County Courthouse building at 121 West Third in Hardin, Montana.**

4. TERM OF LEASE

The term of this lease shall be two (2) years, originating on the 1st day of July 2002 and terminating on the 30th day of June 2004, unless earlier terminated as provided in sections 14, 19, 20, and 21 of this lease or renewed as provided in section 5.

5. RENEWAL OPTION

This agreement may be renewed by the mutual consent of Contractor and Department for a successive two (2) year period by the following procedure:

> Contractor may notify Department at least one hundred and twenty (120) days prior to the lease expiration date of its intent not to renew the lease, and the lease shall terminate at the end of the lease period. In the event Contractor fails to notify Department of its intent to not renew the lease, Department may request lease renewal at least thirty (30) days prior to the lease expiration date.
>
> If Contractor rejects the request to renew within ten (10) days of the lease expiration date, the lease shall not be renewed. In the event Contractor notifies Department of such rejection within said ten (10) days, Department may holdover in the leased premises for up to one hundred and twenty days (120) days following receipt by Department of notification of rejection.
>
> In the event Contractor fails to notify Department of its rejection, Contractor shall be presumed to have accepted the request to renew the lease under the same terms and conditions - except for the rental rates to be established pursuant to Section 15-8-102, MCA.

6. CONSIDERATION

Department shall make **annual payments** to Contractor in the amount of **$2,896.00 (two thousand eight hundred ninety six dollars and 00/100).** This reflects a rate of $8.00 per square foot per year. Department shall pay Contractor rent by the 10th of the month that any rent payment is due. Payment shall be made by

written check.

Department shall not make lease payments until a signed lease is in place. Department shall make lease payments beginning from the date of the last signature on the lease. Department shall not make retroactive lease payments.

7. UTILITIES AND SERVICES

Contractor shall furnish and pay all utilities including: water, gas, electricity, garbage removal, and sewage charges. Contractor shall also replace all light bulbs, fluorescent tubes and other lighting elements at its expense and shall do so within seven (7) working days after notification of needed replacement.

Any increase in the number of telephone, electrical or computer network lines or change in location shall be done, with Contractor approval, at Department's expense.

At its own expense, Contractor shall provide janitorial services and all supplies consistent with janitorial services provided for other portions of the premises. This service shall provide, at a minimum:

Daily
Cleaning all bathrooms, including toilet and lavatory bowls
Refilling paper towel and toilet tissue dispensers
Emptying all trash containers

Bi-Weekly
Vacuuming carpets
Dusting furniture
Mopping floors

As needed, but not less than semi-annually
Waxing floors
Shampooing carpets
Washing interior windows
Cleaning light fixtures

8. PARKING SPACE

Contractor shall provide public parking spaces, including the requisite number of handicapped parking spaces to comply with the Americans with Disabilities Act.

9. PARKING AREA AND SIDEWALK MAINTENANCE

Contractor shall keep the parking area and sidewalks in good repair, and shall timely remove snow and ice from the parking area and sidewalk.

10. NOTICE PROTOCOL

Any notice or demand required or necessary under this lease must be in writing. Written notice shall be deemed given when hand delivered, or when mailed by first class mail, postage prepaid, to the addresses specified in this section.

Contractor's representative and address for purposes of receiving notice or demand is **Board of Commissioners, Big Horn County, PO Box 908, Hardin MT 59034, and telephone (406) 665-9700.**

Contractor's representative and address for purposes of receiving notice or demand is **Pam Bunke, 2615 4th Avenue South, PO Box 31518, Billings, MT 59107 and telephone (406) 896-5400.**

If either party changes its address or contact person, it must notify the other party in writing at the address provided in this section.

11. QUIET ENJOYMENT

Department, shall peaceably and quietly have, hold and enjoy the leased premises and all rights, easements, covenants, and privileges belonging or in any way appertaining thereto, during the term of this lease. Department also agrees that Contractor and its employees are entitled to peaceably have, hold, and enjoy the remainder of the premises that have not been rented by Department.

12. INSPECTION

Upon prior notice, Department shall permit Contractor or its agent to enter into and upon the premises at all reasonable times to maintain or inspect the building in which the leased premises are located or to make repairs, alterations or additions to any portion of the building, including, but not limited to, the erection and maintenance of scaffolding, canopies, fences, and/or equipment as necessary. In the event of an emergency, Contractor may enter the premises without prior notice to Department. Contractor shall have 24-hour access to the leased premises to perform janitorial services pursuant to Section 7 of this lease.

13. MAINTENANCE OF PREMISES

Contractor shall be financially responsible to make repairs, keep the leased premises in a fit and usable condition and maintain the interior and exterior of the premises, including the roof and all fixtures and all related electrical, plumbing, sanitary, heating, ventilating, and air-conditioning owned by Contractor.

14. CASUALTY OR FIRE DAMAGE

In the event the leased premises becomes twenty-five percent (25%) or more destroyed or made uninhabitable by fire or other casualty, or if the premises are condemned by a proper authority, this lease may be terminated by either party.

If the premises are less than twenty-five percent (25%) destroyed or made uninhabitable by fire or other casualty, the rent shall be reduced by the proportion of the premises that have been rendered uninhabitable or declared unsafe. For purposes of this section, other casualty includes, but is not limited to, vandalism.

If the premises are not restored, or cannot be restored, and returned to proper condition for use and occupancy within thirty (30) days of the casualty, Contractor or Department may terminate the lease upon ten (10) days written notice to the other party.

Upon written notice of termination pursuant to this section, Contractor shall refund any unearned rent paid and Department shall have no further obligation to Contractor under this lease. Contractor shall continue to insure the premises until Department's personal property is removed from the premises. Department shall have 30 days after termination of this lease to remove its property from the premises.

15. ALTERATIONS TO PREMISES

Department agrees to make no substantial alteration to the premises without the prior written consent of Contractor. Permanent improvements or alterations shall remain the property of Contractor at the termination of the lease.

Department shall surrender the premises at the end of the lease term, or any extension thereof, in a condition substantially similar to the condition of the premises at the commencement of the lease - notwithstanding alterations agreed to by Contractor, reasonable wear and tear alone excepted.

16. SIGNS

If Contractor allows signage and Department wishes to advertise its location in the building, Department shall pay Contractor for installation of a suitable sign on the exterior of the premises at a location mutually agreeable to the parties.

17. HOLD HARMLESS AND INDEMNIFICATION

Contractor agrees to protect, defend, and save Department, 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 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, and subcontractors under this lease.

Department also agrees to assume the same duties and responsibilities specified above in defending and holding Contractor and its elected and appointed officials, agents, and employees harmless from all claims or causes of action arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Department and/or its agents, employees, representatives, assigns, and subcontractors.

18. INSURANCE SPECIFICATIONS

At its sole cost and expense, Contractor shall maintain property insurance upon the leased premises and Contractor fixtures for the term of the lease against the following hazards:

> Loss or damage by fire and such other risks (not including earthquake damage) in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis. This may be insured against by attachment of standard form extended coverage endorsement to fire insurance policies.
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> Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises.
>
> Loss or damage by explosion of steam boilers, pressure vessels, and oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or buildings on the premises.

Contractor shall also purchase Occurrence coverage with combined single limits of $1,000,000.00 per occurrence and $2,000,000.00 aggregate per year or when provided by statutory Tort limits of $750,000.00 per claim and $1,500,000.00 per occurrence as provided by the MACo/JPIA property and liability self- insured pool coverage. This insurance must be from an insurer licensed to do business in Montana or by a domiciliary state and with a Best's rating of no less than A- or by a public entity self-insured program either individually or on a

pool basis as provided by Title 2, MCA.

Department shall maintain its own insurance on the contents of the leased premises and its own property and Contractor shall not be liable for any damage done to or loss of personal property belonging to Department or its employees or for damage or loss suffered by the business or occupation of Department arising from any acts or neglect of Department, its employees, or other occupants of the leased premises. Department agrees to carry public liability insurance for bodily injury and property damage in which the limits of liability shall not be less than $750,000.00 for each claim and $1,500,000.00 for each occurrence.

19. COMPLIANCE WITH LAWS

Contractor and Department each respectively understand that applicable state and federal law and local ordinances bind them. This includes, but is not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, PL 101-336, Section 504 of the Rehabilitation Act of 1973, and the Montana Safety Culture Act.

Contractor agrees to provide an additional alternative accessible site, other than the leased premises, for use by Department in the event it is necessary to provide services, benefits, or communication to individuals with a disability. In the event an alternative ADA site is not available or economically feasible for Contractor to provide within thirty (30) days of a written request thereof by Department, Department may terminate the lease with a thirty (30) day written notice.

Department and Contractor respectively agree to conform to all rules and regulations adopted under the Montana Safety Act and the Act itself. Department and Contractor further agree to comply with the ordinances and laws of the City of Hardin and the State of Montana, affecting the use of the premises and to assume all legal responsibility for any charges or damages for non-observance.

Contractor agrees to provide the Department of Administration, the Legislative Auditor, the Legislative Fiscal Division, and their authorized agents access to any records relating to this lease and will create and retain records relating to the lease for a period of three (3) years from lease termination or the conclusion of any claim, litigation or exception relating to the lease or a time period established by the local government records retention committee, whichever is longer.

20. ENVIRONMENTAL HAZARDS

Contractor represents that, to the best of its knowledge, any use, storage, treatment or transportation of hazardous substances which has occurred in or on the premises prior to the lease date has been in compliance with all applicable federal, state and local laws, regulations and ordinances.

Contractor further represents that, to the best of its knowledge, no release, leak, discharge, spill, disposal or emission of hazardous substances has occurred in, on or under the premises and that the leased premises are free of hazardous substances as of the lease date.

If either party to this agreement discovers that a release, leak, discharge, spill, disposal or emission of hazardous substances has occurred in, on or under the premises, or that the premises are not free from hazardous substances, the party shall immediately notify the other party.

If Department determines at any time that the leased premises pose a significant environmental hazard to its employees, Department may terminate the lease with a written thirty (30) day notice.

21. TERMINATION

Contractor acknowledges, understands, and agrees that Department, as a state agency, is dependent upon state and federal appropriations for its funding. In the event state or federal government funds available for this purpose are reduced, Department may terminate this lease by giving thirty (30) days written notice to Contractor.

Department shall not be liable to Contractor for any amount which would have been payable had the lease not been terminated under this provision. Department shall be liable to Contractor only for the amount owed to Contractor up to the date Department vacates the premises.

The failure of either party to this lease to fully perform under any or all of the terms and conditions shall constitute a breach of this lease, entitling the non-defaulting party to take any and all such action as may be provided by law.

Any breach or default alleged under this lease shall be occasioned by a thirty (30) day written notice of the same to the defaulting party. If at the end of such thirty (30) day period, the defaulting party has not cured the breach, the non-defaulting party may take any and all such actions as may be provided by law.

At the expiration or termination of this lease or any extension of it, Department will vacate and surrender the premises to Contractor in as good condition and repair as when it took possession, reasonable wear and tear excepted. All property and fixtures placed in the premises by Department, or owned by the State of Montana, may be removed by Department within thirty (30) days of termination.

22. SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this lease is held to be illegal, void or in conflict with any Montana law, the validity of the remaining terms and conditions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if this lease did not contain the particular term, condition, or provision held to be invalid.

23. VENUE AND INTERPRETATION

Contractor and Department agree that this lease shall be governed and interpreted according to the laws of the State of Montana. In the event of a dispute arising over this lease, the proper venue for the hearing of the case is the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark. Each party shall be responsible for its own attorney's fees and costs.

24. SUCCESSORS

All rights and liabilities herein given to and or imposed upon both parties shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

25. LEASE APPROVAL

This entire lease, in addition to any change, alteration, renewal, addendum, amendment, or letter of understanding may be subject to prior approval of the Department of Administration.

26. ENTIRE LEASE

This Agreement, consisting of Sections 1 through 28, contains the entire contract between Department and Contractor. Any lease hereafter made shall not be effective to modify this lease unless such agreement is in writing and signed by Contractor and Department.

27. SUBLEASE

If Department would like to assign or sublet the leased premises, Department shall first offer the leased premises back to Contractor. If Contractor does not agree to resume control of the leased premises and to discharge Department's obligations under the lease, Department agrees that it will not assign or sublet in whole or part any portion of the leased premises without the prior written consent of Contractor. If Contractor withholds consent, Department's obligations under this lease shall be discharged.

28. SMOKE FREE ENVIRONMENT

Contractor shall make the portions of the building occupied by state agencies smoke-free. "Smoke" means smoke from a lighted cigar, cigarette, pipe, or any other lighted tobacco product as defined in MCA 50-40-202.

IN WITNESS WHEREOF, Contractor and Department have entered into and executed this lease.

BOARD OF COUNTY COMMISSIONERS

By: _____ Date: 7/30/02

By: _____ Date: 7-30-02

By: _____ Date: 7-30-02

Approved for legal content

By: _____ Date: 7/30/02
County Attorney

DEPARTMENT

By: _____ Date: 6/21/02
Mike Ferriter, Administrator
Adult Community Corrections Division.

_____ Date: 6/21/02
Legal Counsel
Department of Corrections

CONTRACT AMENDMENT
CONTRACT #03-005-ACCD

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) PO Box 201301, 1539 11th Avenue, Helena MT 59620-1301 and **Big Horn County, Board of Commissioners** (CONTRACTOR) a political subdivision of the State of Montana, located at PO Box 908, Hardin, MT 59034 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of July 1, 2002 and Section 5 provides that the parties may modify their agreement in writing.

NOW THEREFORE, the parties agree to amend the Contract as follows **(new language underlined, old language interlined)**:

4. TERM OF LEASE

The term of this lease shall be ~~two (2)~~ ~~four (4)~~ years, originating on the 1st day of July 2002 and terminating on the 30th day of June ~~2004~~ 2006, unless earlier terminated as provided in sections 14, 19, 20, and 21 of this lease or renewed as provided in section 5.

5. RENEWAL OPTION

~~This agreement may be renewed by the mutual consent of Contractor and Department for a successive two (2) year period by the following procedure:~~

~~Contractor may notify Department at least one hundred and twenty (120) days prior to the lease expiration date of its intent not to renew the lease, and the lease shall terminate at the end of the lease period. In the event Contractor fails to notify Department of its intent to not renew the lease, Department may request lease renewal at least thirty (30) days prior to the lease expiration date.~~

~~If Contractor rejects the request to renew within ten (10) days of the lease expiration date, the lease shall not be renewed. In the event Contractor notifies Department of such rejection within said ten (10) days, Department may holdover in the leased premises for up to one hundred and twenty days (120) days following receipt by Department of notification of rejection.~~

~~In the event Contractor fails to notify Department of its rejection, Contractor shall be presumed to have accepted the request to renew the lease under the same terms and conditions - except for the rental rates to be established pursuant to Section 15-8-102, MCA.~~

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

DEPARTMENT

Mike Ferriter, Administrator
Adult Community Corrections Division

5-20-04
Date

CONTRACTOR

Board of Commissioners

5/25/04
Date

Board of Commissioners

5-25-04
Date

Board of Commissioners

5-25-04
Date

Approved for legal content

County Attorney
Big Horn County

5-27-04
Date

Reviewed for Legal Content by:

Legal Counsel
Department of Corrections

5/14/04
Date

CONTRACT AMENDMENT
CONTRACT #03-005-ACCD

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 **Big Horn County, Board of Commissioners** (CONTRACTOR) PO Box 908, Hardin, Montana 59034 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of July 1, 2002 and Section 26 provides that the parties may modify their agreement in writing.

NOW THEREFORE, the parties agree to amend the Contract as follows **(new language underlined, old language interlined)**:

4. TERM OF LEASE

The term of this lease shall be ~~four (4) years, originating on the 1st day of July 2002 and~~ extended for two (2) additional years, terminating on the 30th day of June ~~2006~~ 2008, unless earlier terminated as provided in sections 14, 19, 20, and 21 of this lease or renewed as provided in section 5.

Upon expiration of this Contract, and in the absence of new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

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

DEPARTMENT

Mike Ferriter, Administrator
Adult Community Corrections Division

Date: 4-5-06

CONTRACTOR

Board of Commissioners

Date: 4-13-06

Board of Commissioners

Date: 4-13-06

Board of Commissioners

Date: 4/17/06

Approved for legal content

County Attorney
Big Horn County

Date: 4/17/06

Reviewed for Legal Content by:

Legal Counsel
Department of Corrections

Date: 3/30/06