CONTRACT AMENDMENT
CONTRACT 12-046-PHYCF

THIS CONTRACT AMENDMENT (**Amendment #2**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 5 S. Last Chance Gulch, Helena, Montana 59620-1301 and **Prairie Travelers, Inc.** (CONTRACTOR) 130 3rd Street South, Suite 2 Glasgow, MT 59230 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of July 17, 2012 and Section 15 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 31, 2014 and Section 5 provides that the parties may extend the expiration date of the Contract.

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

5. <u>TIME OF PERFORMANCE</u>

This Contract shall take effect upon final contract signature and shall terminate on June 30, ~~2014~~ <u>2015</u> unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of seven (7) years.

Upon expiration of this Contract, and in the absence of a 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

Connie Winner — 6·17·14

Connie Winner, Administrator
Clinical Services Division

Date

CONTRACTOR

Shawn Lawson — 06/20/14

Shawn Lawson, Chief Operating Officer
Prairie Travelers, Inc.

Date

Reviewed for Legal Content by: Colleen Ambrose — 6-5-14

Legal Counsel
Department of Corrections

Date

CONTRACT AMENDMENT
CONTRACT 12-046-PHYCF

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 5 S. Last Chance Gulch, Helena, Montana 59620-1301 and **Prairie Travelers, Inc.** (CONTRACTOR) 130 3rd Street South, Suite 2 Glasgow, MT 59230 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of July 17, 2012 and Section 15 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on January 31, 2013 and Section 5 provides that the parties may extend the expiration date of the Contract.

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

5. <u>TIME OF PERFORMANCE</u>

This Contract shall take effect upon final contract signature and shall terminate on ~~January 31, 2013~~ <u>June 30, 2014</u> unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of ~~five (5) additional~~ <u>seven (7)</u> years.

Upon expiration of this Contract, and in the absence of a 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

Cindy McKenzie, Administrator
Youth Services Division

6·3·13
Date

CONTRACTOR

Shawn Lawson, Chief Operating Officer
Prairie Travelers, Inc.

6/10/13
Date

Reviewed for Legal Content by:

Legal Counsel
Department of Corrections

5/30/13
Date

1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **Prairie Travelers, Inc. (CONTRACTOR)** enter into this Contract **(12-046-PHYCF)**. The party's names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Youth Services Division
5 S. Last Chance Gulch
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

Prairie Travelers, Inc.
130 3rd Street South, Suite 2

Glasgow, MT 59230
406- 228-9541

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. DUTIES/RESPONSIBILITIES OF CONTRACTOR

A. NURSING SERVICES

CONTRACTOR agress to provide Pine Hills Youth Correctional Facility (PHYCF) in Miles City, MT with temporary nursing services by nurses appropriately qualified, trained, and licensed by the State of Montana. CONTRACTOR will provide the Contract liaison with resumes and other pertinent information for each nurse. DEPARTMENT reserves the right to reject proposed nurses, without cause, or to ask for removal of a nurse at anytime. CONTRACTOR shall ensure that all CONTRACTOR'S Employees sent to the facility under this agreement:

1. are appropriately licensed in the State;
2. have received appropriate training with respect to life and safety issues, HIPPA regulations, Infection Control and the transmission of blood borne pathogens;
3. have current TB testing; and
4. are trained, experienced and qualified to perform the duties specified and made known to CONTRACTOR by DEPARTMENT.

Further the parties agree that the contractual time period specified shall not be construed as an absolute right or guarantee of any nurse to work within the facility during this time period.

B. SCHEDULING

CONTRACTOR will provide appropriately licensed nurses to adequately cover the agreed upon daily nursing shifts. DEPARTMENT will provide nurses with ten (10) days advance notice prior to modifying the agreed upon schedule.

If a shift(s) is cancelled without proper advance notice, DEPARTMENT shall be liable to pay for that specified shift(s) and mileage incurred. Nurses will make every effort to provide (PHYCF) liaison at least 24 hours notice if a shift cannot be filled by said nurse. Absent such notice, said nurse shall complete all assigned shifts.

C. HOUSING

DEPARTMENT will provide nurses with adequate lodging that is quiet, clean, private, secure, climate controlled, and includes a television, at a motel in Miles City, Montana.

D. TRAINING

Nurses must attend a pre-employment safety and security training class at PHYCF prior to being allowed to work. This training will include a minimum of two hours of on-the-job training in the PHYCF Infirmary. Nurses will be compensated for training in accordance with the payment schedule listed herein.

E. EMPLOYEE SCREENING AND BACKGROUND CHECKS

Prior to hiring nurses that will provide services under this Contract, CONTRACTOR shall conduct reasonable and appropriate employment and other background or reference checks of said nurses and shall maintain the documentation for subsequent inspection by DEPARTMENT, as requested.

3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services, provided pursuant to Section 2, in the following manner:

A. DEPARTMENT shall compensate CONTRACTOR $43.10 per hour for Registered Nurse (RN); $35.00 per hour for Licensed Practical Nurse (LPN); $21.00 per hour for Certified Nurses Aid (CNA); and $26.00 per hour for Medication Aides. RN on-call will be billed at $12.00 per hour and the call back will be charged one and one half (1½) times the hourly rate. DEPARTMENT shall pay time and one-half the regular hourly rate for nurses working in excess of forty (40) hours per week (Sunday-Saturday). If nurse's assignment falls on a State of Montana observed holiday, DEPARTMENT agrees to pay CONTRACTOR in accordance with State of Montana regulations and DEPARTMENT policy. Compensation paid to CONTRACTOR **shall not exceed $30,000.00** (thirty thousand and 00/100 dollars) annually for the services described herein.

B. **TRAVEL:**

DEPARTMENT will also compensate CONTRACTOR at the rate of $.50 per mile for travel incurred by Contract employee's as defined herein. DEPARTMENT will reimburse automobile travel expenses for round trip by the most direct route from the Contract employee's permanent residence or from the last assignment, whichever is closer, but not to exceed 330 miles roundtrip. Travel time from the motel to the work-site will not be reimbursed. Travel compensation shall not exceed rates established by the State of Montana Travel Policy.

C. DEPARTMENT agrees to pay CONTRACTOR within thirty (30) days following receipt of a correct invoice.

D. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.

E. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., Montana State Prison and Montana Women's Prison do not allow wireless phones within facility).

5. TIME OF PERFORMANCE

This Contract shall take effect upon final contract signature and shall terminate on January 31, 2013 unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of five (5) additional years.

Upon expiration of this Contract, and in the absence of a 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.

6. LIAISONS AND NOTICE

A. Sandy Fogle (406-232-1377) 4 N Haynes, Miles City, MT 59301 or successor serves as DEPARTMENT liaison.

B. Shawn Lawson (406-228-9541) 130 3rd Street South, Suite 2, Glasgow, MT 59230 or successor serves as CONTRACTOR liaison.

C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, and mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. PREVAILING WAGE REQUIREMENTS

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

Unless superseded by federal law, each contractor shall ensure that at least 50% of a contractor's workers performing labor on a construction project are bona fide Montana residents.

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

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

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

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

Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract

All contractors and employers shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification, or type of employee established by the Commissioner of the Montana Department of Labor and Industry, and shall pay each such employee a rate of wages not less than the standard prevailing rate as specified in the Montana Prevailing Wages Rates for Nonconstruction Services 2012 (Attachment A).

8. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

9. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither CONTRACTOR nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Contracts Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

10. HOLD HARMLESS AND INDEMNIFICATION

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, 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, or subcontractors - except the sole negligence of the State under this agreement.

11. INSURANCE

A. **General Requirements:** CONTRACTOR shall maintain 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 CONTRACTOR, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

Primary Insurance: CONTRACTOR'S insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

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

Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverages, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

B. **Specific Requirements for Commercial General Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000 per occurrence and $3,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

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 CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations; premises owned, leased, occupied, or used.

C. **Specific Requirements for Automobile Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $100,000 per occurrence and $300,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for automobiles leased, hired, or borrowed by CONTRACTOR.

D. **Specific Requirements for Professional Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of $1,000,000 per occurrence and $3,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, CONTRACTOR may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

12. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

13. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

14. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

15. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

16. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the 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 ADA Amendments Act of 2008, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, 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 persons performing the Contract.

17. TERMINATION AND DEFAULT

A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.

B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.

C. DEPARTMENT, at its sole discretion, may, without 30 days notice, terminate or reduce the scope of this Contract if available funding is reduced for any reason. If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled. (Ref. 18-4-313(4), MCA.

D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

18. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. 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, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

19. LICENSURE

CONTRACTOR agrees to provide copies of current licenses and certifications that register CONTRACTOR and any associates performing under this Contract.

20. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements 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.

21. SEVERABILITY

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

22. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts Management Bureau, PO Box 201301, Helena, MT 59620-1301.

SIGNATURE

DEPARTMENT

Cindy McKenzie, Administrator
Youth Services Division

7-16-12
Date

CONTRACTOR

Shawn Lawson, Chief Operating Officer
Prairie Travelers, Inc.

7-17-12
Date

Approved for Legal Content by: Diana L. Koch
Legal Counsel
Department of Corrections

7/12/12
Date

Attachment A

Montana Prevailing Wages Rates for Nonconstruction Services 2012
Effective February 10, 2012

(Nonconstruction Services Booklet electronically attached as .pdf)