

ATTACHMENT

**Contracts Between
Corrections Corporation of America
and Department of Corrections**

CONTRACTUAL SERVICES CONTRACT
BETWEEN
CORRECTIONS CORPORATION OF AMERICA

AND
STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS

THIS CONTRACT, is made this 2nd day of FEBRUARY, 1998, by and between the State of Wisconsin, Department of Corrections, having its principal office at 149 East Wilson Street, Madison, Wisconsin, 53702, hereinafter referred to as the "Department" and Corrections Corporation of America, a corporation organized under the laws of the State of Tennessee, having its principal office at 10 Burton Hills Boulevard, Nashville, Tennessee, 37215, hereinafter referred to as "Contractor".

WHEREAS, the Department is authorized pursuant to sec. 301.21, Stats., to enter into contracts for the transfer and confinement in another state of inmates who have been committed to the custody of the Department, and

WHEREAS, in accordance with the terms and conditions of Request for Proposal # C-461, on November 26, 1997, the Contractor submitted a Proposal to the Department and has been selected by the Department to house inmates committed to the Department, and

WHEREAS, the Department is authorized by statute to enter into this Agreement pursuant to which the Contractor will provide housing and care for certain inmates,

NOW, THEREFORE, in consideration of the promises, covenants and agreements contained herein, the parties hereto mutually agree as follows:

ARTICLE 1
DEFINITIONS

ACA – means American Correctional Association

ACA Standards – means the Standards for Adult Correctional Institutions, Third Edition, as same may be modified, amended or supplemented in the future, published by ACA.

Contract Administrator – means the person or designee appointed by the Department, who shall work for and be paid by the Department to act as the official liaison between the Department and Contractor on all matters pertaining to the services provided under this Contract.

Facilities – means the Hardeman County 1 and Hardeman County 2 secure correctional facilities located in Hardeman County, Tennessee.

Inmate – means any adult male committed to the Department and assigned to the Facilities.

Manday – means each day an inmate is admitted to the Facilities, including the first but not the last day of incarceration.

Service Commencement Date – means the first day inmates are received and incarcerated at the Facilities pursuant to this Contract.

State – means the State of Wisconsin.

Unforeseen Circumstances – means those acts or occurrences beyond the reasonable contemplation of the parties at the time of the execution of this Contract which materially alter the financial conditions upon which this Contract is based, including the failure of the Wisconsin legislature's Joint Finance Committee to approve this Agreement or appropriate funds to continue this Contract.

ARTICLE 2 TERM OF THE CONTRACT

- 2.0 The Contract shall be effective on the contract execution date and shall run for one (1) year from that date, with an option by mutual agreement of the Department and Contractor, to renew for 2 (two) additional 1 (one)-year periods.
- 2.1 This Contract may be canceled, with or without cause, by either party without penalty upon sixty (60) days advance written notice given by Certified Mail with return receipt requested. Notices to the respective parties of this Contract shall be sent in accordance with the Article dealing with Notices.
- 2.2 The Department may cancel this Contract in whole or in part without penalty due to nonappropriation of funds or failure of the Contractor to comply with terms, conditions and specifications of this Contract.

ARTICLE 3 INMATES

- 3.0 Contractor agrees to securely house and provide services for up to twelve hundred (1,200) male inmates at the Facilities. Offenders assigned will be adult males. The Contractor may transfer any of the inmates from one facility to the other without the Department's prior approval but will notify the Department of such transfer by the close of the business day following the transfer. After the initial transfer of inmates to the Facilities, it is anticipated that Hardeman 1 will house approximately 200 inmates and Hardeman 2 will house 1,000 inmates. The Department, subject to the Wisconsin legislature's Joint Finance Committee's approval of this Contract and availability of funds, shall transfer inmates to the Facilities in accordance with the following schedule:

February, 1998	200 inmates to Hardeman 1 Facility;
March, 1998	200 inmates to Hardeman 1 Facility;
July, 1998	400 inmates to Hardeman 2 Facility; and
August, 1998	400 inmates to Hardeman 2 Facility.

3.1 WORK STATEMENT

- 3.1.1 The Contractor shall provide confinement, care, treatment and rehabilitation for male inmates, transferred by the Department to the Contractor. Inmates shall be housed at the Contractor's correctional facilities in medium and maximum custody.
- 3.1.2 The Contractor shall perform the services set forth in this contract in accordance with federal, state and local laws, and ACA Standards in such a manner as to ensure equitable treatment of all inmates, regardless of race, religion, color, or national origin.

3.2. DELIVERY OF INMATE

The Contractor agrees it will provide and be responsible for the transportation of inmates to the Facilities and locally for medical appointments, emergency medical care and court appearances. The Contractor will provide and be responsible for the cost of transporting groups of ten(10) or more inmates back to Wisconsin while the Department agrees to be responsible for the transportation of groups of less than ten (10) inmates back to Wisconsin.

3.3 TRANSFER OF FUNDS

The Contractor shall establish and maintain a system to account for inmate general account (commissary) funds in accordance with Department Policies and ACA Standards. The Contractor shall credit to the inmate' accounts all funds due the inmate either from the Contractor or Department. Upon return of the inmate to the custody of Department, the Contractor shall transfer, within seven (7) calendar days, to Department, the balance remaining in the inmate's account. This shall include any moneys owed to the inmate by the Contractor at the time of the transfer. Contractor will provide the Department with a copy of accounting transactions of any inmate upon request within five (5) business days. Upon return of inmates to the Department, copies of all accounting transaction records for inmates shall be provided by Contractor. The handling of such funds shall be in accordance with the Department's policies and procedures.

3.4 REMOVAL FROM INSTITUTION

In the event of the removal or transfer of an inmate, the Contractor shall inform the Department of the whereabouts of the inmate as soon as possible but no later than the end of the next business day of said removal or transfer via telephone followed by a written notification within three (3) working days, of such removal or transfer.

3.5 RETAKING OF INMATES

3.5.1

The Department will retake any inmate, upon the written request of the Contractor, provided the Department concurs with the removal of the inmate from the Contractor's Facilities, within thirty (30) days after receipt of the request to retake.

3.5.2

If an inmate's sentence is terminated for any reason, the Department shall notify the Contractor as soon as possible and shall take custody of the inmate at the Contractor's facility either by an employee of the Department or by an agent of the Department acting under authority of contract.

3.6 DEATH OF INMATE

3.6.1

In the event of the death of an inmate, the Contractor shall notify the Department of such event as soon as possible, but not later than two (2) hours after Contractor first learns of the death. The Contractor shall provide an official copy of the local state/county medical examiner/coroner's report and a complete set of fingerprints to the Department within five (5) calendar days. The Contractor shall take whatever actions it can to obtain an autopsy of the inmate and provide any other information concerning the death of the inmate as requested by Department, including but not limited to an autopsy report, to the Department as soon as possible. The Contractor shall pay any costs associated with obtaining the autopsy. The Contractor shall assist the Department in arranging transportation of the deceased inmate to Wisconsin at the Department's expense. Logistics for the transfer of the body shall be coordinated between the Contractor and the

Department and shall be approved in advance by the Department. The Contractor shall not release the body of the inmate to any authority other than the Department, except as permitted by a written order from the Department.

3.6.2

The Contractor shall submit a certified copy of the death certificate to the Department within fifteen (15) working days after the death of an inmate while in the Contractor's custody. The Contractor shall promptly return the dead inmate's property and funds to the Department.

3.6.3

The provisions of this section shall govern the responsibilities only of the Department and the Contractor and shall not be construed to affect the liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

3.7 OFFENDER PROPERTY

Contractor shall manage offender property in accordance with it's policy.

3.8 CLASSIFICATION AND APPLICATION

3.8.1

The Department shall only send, and the Contractor shall only be required to receive, medium and maximum inmates in accordance with the Department's classification system. The Department shall, at its own expense and within thirty (30) calendar days upon notice from the Contractor, take back an inmate if the Contractor determines and the Department concurs that the inmate is no longer a medium or maximum inmate. The Contractor shall house inmates in disciplinary segregation when such status is imposed by the Contractor.

3.8.2

The Department shall submit a pre-transfer application to the Contractor on each inmate proposed for confinement in the Contractor's Facilities. The application will be made available to the Contractor at least ten (10) calendar days prior to the inmate's transfer. The application will contain complete up-to-date information and the supporting documents (when applicable) relating to the inmate's personal and institutional information such as name, Department inmate number, date of birth, case history, physical and clinical condition, judicial and administrative rulings, photographs and fingerprints. Upon the receipt of the transfer package, the Contractor shall have five (5) calendar days to review the transfer package. If the Contractor objects to the transfer of an inmate(s) the Contractor shall notify the Department of its objection and the Contractor and the Department shall attempt to resolve the objection within ten (10) calendar days from the receipt of the transfer package. If the objection is a classification issue it shall be resolved in accordance with the Department's classification system. In the event there is no mutual agreement between the Contractor and the Department on the objection within the ten (10) day time frame, the Department's decision regarding the objection shall govern.

ARTICLE 4
SCOPE OF SERVICES

4.0 MEDICAL SERVICES

4.0.1

The Contractor agrees to provide a program of inmate medical, mental and dental health care delivered by licensed health care staff overseen by a health care administrator who,

in conjunction with the appropriate care provider, shall have final responsibility for clinical decisions. The licensed staff shall include:

- physician - both primary care and psychiatrist
- registered nurse(s)
- dentist
- dental hygienist.

The Contractor agrees this health care shall be delivered onsite, at least 16 hours per day Monday through Friday and at least 8 hours per day Saturday, Sunday and legal holidays, with provision for emergency services 24 hours, seven days, either on or offsite at a nearby emergency facility. The Contractor agrees there shall be on call nursing coverage during hours when there is no health care staff at the institution.

The Contractor agrees to provide, at a minimum, health care that meets the essential standards for health care of inmates in correctional facilities as provided for in the AMA 1979 standards and subsequent NCCHC prison standards. The Department agrees it will not transfer to the Facilities any inmate with a known serious, ongoing medical problem.

Contractor agrees the primary health care services it provides under this Contract will include but not necessarily be limited to the following onsite services:

1. Primary care services, including sick call on a daily basis to general and lockdown populations;
2. Medical and surgical specialty clinics;
3. Emergency care;
4. Infirmary services;
5. Pharmacy services;
6. Special medical and dental diets;
7. Dental services;
8. Vision services;
9. Laboratory services;
10. Radiology services;
11. Physical medicine, physical therapy services, speech therapy, and occupational therapy;
12. Quality assurance/quality improvement/utilization review;
13. Mortality and peer review;
14. Infection control;
15. Staff development and training;
16. Treatment, management, and control of TB, HIV/AIDS, and other infectious diseases;
17. Mental health services; and
18. Medical and dental prostheses.

Contractor agrees the medical care it provides pursuant to this contract shall comply with all applicable federal, state and local laws and regulations on this subject.

4.0.2

Medical Records

Contractor agrees to implement a medical record system utilizing the Department's medical record and chart forms as provided by the Department. The Contractor agrees to use the Problem Oriented Medical Record (POMR) format, and shall ensure that accurate, comprehensible, legible, up-to-date medical information is maintained on each inmate placed under its care by the Department pursuant to this Contract. The Department agrees to provide Contractor with a summary of an inmate's medical record prior to the inmate's transfer to Contractor's custody and to provide a complete copy of the inmate's medical record to the Contractor once the inmate is transferred to the Facilities.

Medical records will be considered confidential and the Contractor agrees to ensure specific compliance with laws and standards regarding confidentiality, informed consent, and access/disclosure. The Contractor agrees to establish procedures for the receipt and filing of all outside consults, emergency room visits and inpatient hospitalizations.

The contractor agrees to comply with the Wisconsin state statute regarding retention of health records. All medical records of Wisconsin inmates sent to the Contractor under this Contract, whether or not the inmate is ultimately sent to the Facilities, including x-ray films, are the property of the Department. These records will accompany inmate movement among contractor's Facilities and to and from the state of Wisconsin.

4.0.3

Pharmacy Services

The Contractor agrees to provide pharmacy services which provide for necessary prescription and appropriate over-the-counter (OTC) medications.

4.0.4

Offsite Health Care

The Contractor agrees this care shall be limited to emergency, specialty and tertiary care as directed by the Facilities licensed health care providers. The Department agrees that physical therapy, speech therapy and occupational therapy services may be provided offsite.

4.0.5

Outpatient Care

The Contractor agrees it shall provide at its cost outpatient care pursuant to this Contract. Such care shall be subject to a pre-authorization utilization review for necessity by a licensed health care provider who can legally direct alternate care options, except in the case of emergency health care services such as those provided at an emergency room.

The Contractor shall also provide onsite emergency treatment to officials of the state of Wisconsin who become ill or injured while on official business at the Facilities. Treatment to consist of stabilization, referral or call for emergency medical services/ambulance. Facilities used for outpatient services to inmates and Wisconsin officials shall be licensed practitioners, clinics, and care centers appropriate for the required care.

4.0.6

Inpatient Health Care

The Contractor agrees a licensed hospital(s) which provides for all inpatient medical/psychiatric services as appropriate will be utilized. There shall be a program of prior pre-authorization carried out by the Contractor for all but emergency inpatient admissions for necessity, which shall be conducted by a licensed health care provider who can legally direct alternate care.

4.0.7

Administrative Reports

The Contractor agrees it will provide quarterly reports covering the actual provision of services to inmates pursuant to this Contract. At a minimum such reports shall show numerically the number of inmates actually seen for each of the following services: sick call; medical appointments broken down as to a) physician, b) registered nurse, c) nurse practitioner or physician assistant, d) dentist, and e) mental health provider; number of offsite outpatient visits; number of offsite inpatient discharges; number of onsite emergencies treated; number of labs per inmate; and number of x-rays per inmate.

4.0.8

Payment for Health Services

1. Onsite

The Contractor agrees it is financially responsible for the cost of all health care, including staff, medications, supplies, services, equipment, and communications provided to or for inmates onsite, whether required by Contractor staff or offsite consultants. The cost of adding additional pages, forms, and incorporation of outside medical consultant report to the medical record is included in costs paid by the Contractor.

2. Offsite Outpatient

The Contractor will be responsible for payment direct to the billing facility for the costs of all such care, including medications, special treatments, supplies, and prostheses ordered by the outpatient provider for the health care of the inmate, which originates while this Contract is in effect.

3. Offsite Inpatient Hospital

The Contractor agrees to be responsible for payment direct to the billing facility for the costs of all such care provided in the hospital or ordered to be provided after the inmate is returned to the Facilities. The Contractor may claim reimbursement from the Department at the rate of 60% of all charges over \$60,000 per inpatient hospital discharge for each single hospital stay which originates while the contract for services is in effect between the Contractor and the Department.

4.0.9

Medical Services Claims

The Contractor agrees to submit claims for medical services rendered pursuant to this Contract as received. The Department reserves the right to audit the billings for such charges for accuracy and medical necessity as part of the claim process. The Contractor may negotiate with Department to return inmates with high-cost medical problems.

The Department may return to Wisconsin any inmate in order to meet their health care needs or to control the cost of care to such inmate.

The Contractor agrees to maintain coverage for medical malpractice negligence claims from Wisconsin inmates up to \$2,000,000.00 per claim.

4.0.10

Security of Inmate While Obtaining Offsite Medical Care

The Contractor agrees to cover the cost of and take all necessary precautions and exercise custodial supervision in order to assure the safekeeping of the inmate while the inmate is absent from the Contractor's Facilities.

4.1 FOOD SERVICE

The Contractor shall provide food services for all inmates in compliance with applicable ACA Standards. The Contractor shall provide modified diets for inmates with medical or dental conditions, as prescribed by physicians or dietitians. Food shall not be withheld for disciplinary reasons. Modified diets prescribed by recognized medical authority or religious authority will be provided as required.

4.2 SANITATION

The Contractor shall ensure that all inmates are living under healthy, sanitary conditions in accordance with all laws, regulations and ACA Standards.

4.3 RECORDS AND REPORTS

4.3.1

The Contractor shall prepare and maintain all necessary and pertinent records, including name, Department inmate number, birth date, the date and the place from which the inmate was transferred to the Contractor, the date of inmate return to the Department,

and the inmate's medical/ psychiatric/dental records, classification/housing status, and educational/vocational/treatment program activities during his stay in the Contractor's facility. When returning an inmate to the custody of the Department, the Contractor shall turn over all associated records of such inmate to the Department at the time the inmate is returned to the custody of the Department.

4.3.2

Within thirty (30) days following the transfer of an inmate to one of Contractor's facilities, the Contractor shall furnish to the Department an admission summary and classification study report outlining the inmate's custody level, housing assignment, medical/psychiatric, education, and vocational findings and indicating the institutional program which the Contractor recommends.

4.3.3

The Contractor shall provide the Department with quarterly reports on all inmates confined in the Contractor's Facilities. This report must contain, a summary by inmate of each inmate's disciplinary actions(s), grievance and drug testing activities.

The report shall be submitted by the Contractor to the Department's Contract Administrator or designee no later than the tenth (10) day after the quarter ends.

4.4 MUTUAL AID AGREEMENTS

The Contractor shall develop and implement mutual aid agreements with local law enforcement agencies, the Fire Department, Ambulance/Rescue Services, State Police, National Guard and other entities as deemed appropriate to assist in emergency response efforts.

4.5 VISITATION

The Contractor shall provide a visitation program for inmates (visiting program) consistent with ACA Standards. Additionally, within sixty (60) calendar days after this contract is executed, Contractor shall make accommodations to the Facilities to provide video visitation to accommodate families and friends unable to visit on site because of financial travel limitations or other reasons. The logistics shall be coordinated with the Department's Contract Administrator.

4.6 OFFICIAL HEARINGS

4.6.1

The Contractor shall provide adequate facilities, including but not limited to video conferencing capabilities, for proceedings of any nature including but not limited to administrative, probation, parole, attorney-client or judicial proceedings.

4.6.2

The Contractor shall conduct reclassification and housing hearings on each inmate on an as needed basis, but not less than once every six (6) months. Copies of the written reports of the results of all hearings shall be provided to the Department within thirty (30) days after each hearing is completed. This report must contain by inmate, a summary of each inmate's housing, custody status, disciplinary actions(s), mental/physical health, and vocational/academic/treatment program activities.

4.7 TRAINING OR EMPLOYMENT

4.7.1

The Contractor shall have sufficient programming to allow every general population inmate to participate in programs of occupational training and industrial or other work in accordance with applicable ACA Standards. Nothing contained herein shall be construed to permit or require any inmate to participate in any training, industrial, or other work

program contrary to the laws of the jurisdiction in which the facility is located or the laws of the State of Wisconsin.

4.7.2

The Contractor shall have the right to dispose of all products produced by an inmate, shall retain all proceeds therefrom, and shall bear all costs of work programs.

4.7.3

In the case of handicraft or hobby craft programs, the inmate shall have the right to dispose of the products of his labor through sale on site, mailed or transferred to visitors, and if sold, to retain the proceeds of any sale of his work in accordance with the rules of the Contractor.

4.7.4

The Contractor is responsible for paying inmate wages from the inmate Manday rate in accordance with its policies and procedures.

4.8 DISCIPLINE

The Contractor shall be responsible for setting the standards of behavior and imposing discipline of inmates in accordance with federal, state, and local laws and the ACA Standards.

The Contractor shall, within fifteen (15) days after this Contract is executed, provide the Department with a copy of its standards of inmate behavior, inmate rules and regulations and standard operating procedures for administrative disciplinary hearings.

4.9 LAW LIBRARY

The Contractor shall provide the inmates in each of Contractor's facilities the same or equivalent access to court resources as the Department's inmates, including CD ROM legal research resources.

4.10 PROGRAMS

The Contractor agrees to provide sufficient programs to allow every general population inmate to participate in meaningful educational, vocational, drug or other treatment or work programs. The educational programs shall include but not be limited to Adult Basic Education (ABE) and General Equivalency Diploma (GED) or similar high school equivalency or literacy programs.

4.11 RELIGIOUS SERVICES

The contractor shall provide physical space and program services for the practice of all recognized faith groups consistent with ACA standards.

4.12 LEISURE ACTIVITIES

The Contractor shall provide recreational, library and leisure skills activities in accordance with applicable ACA standards. Indoor activities must be out-of-cell.

4.13 RIGHT OF INSPECTION

The Department shall have the right to inspect, at any time, any correctional institution of the Contractor in which Department inmates are confined in order to determine if that institution maintains standards of care and discipline in accordance with the ACA Standards and that the inmates therein are treated equitably, regardless of race, religion, color or national origin.

4.14 CONFIDENTIALITY OF INFORMATION AND INSPECTION OF RECORDS

4.14.1

All information obtained by the Contractor relating to any inmate of the Department shall be kept in absolute confidence and shall not be used by the Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm or corporation, without prior written consent of the Department.

4.14.2

The Contractor shall keep proper and complete books, records, and accounts with respect to the operation of each of the contractor's Facilities in which the Department's inmates are housed and shall permit the Department to inspect the same and make and take away copies thereof.

4.14.3

The Contractor shall establish appropriate safeguards to protect the confidentiality of inmate records and minimize the possibility of their theft, loss, or destruction. Any and all records delivered by the Department to the Contractor or any employee or subcontractor of the Contractor are deemed confidential and privileged information.

4.15 LAWS AND REGULATIONS

The Contractor shall at all times perform its duties under this contract in accordance with all applicable federal, state, and local laws and regulations, including protection of the confidentiality of all applicant recipient records, papers, documents, tapes or any other materials that have been or may hereafter be established which relate to this contract.

4.16 USE OF FORCE

4.16.1

The Contractor's employees shall be authorized to carry and use weapons only in accordance with ACA Standards, federal laws and the laws and regulations in effect in the state in which the Contractor's Facilities are located.

4.16.2

The Contractor's employees shall be authorized to use non deadly force as the circumstances require and then only in accordance with federal laws and the laws and regulations in effect in the state in which the Contractor's facility is located.

4.16.3

The Contractor's employees shall use deadly force only in accordance with federal law and the laws and regulations in effect in the state in which the Contractor's Facilities are located.

4.17 ESCAPE

In the event of an escape the Contractor shall take all reasonable measures to recapture and prosecute inmates consistent with the laws of the state in which the Contractor's facility is located. The Contractor shall notify the Contract Administrator as soon as possible, but no more than two (2) hours upon the discovery of the escape of a Department inmate from the Contractor's custody. Documentation shall be forwarded to the Department demonstrating the reasonableness and the extent of all efforts to recapture the inmate(s). All recapturing costs shall be the responsibility of the Contractor.

4.18 PHOTOGRAPHING AND RELEASE OF INMATE INFORMATION

The Contractor shall not release to the public any information, records or other data concerning inmates. The Contractor shall not release to the public personal histories or photographs of inmates or information concerning inmate's delivery, removal, intra-institutional transfer, retaking or release. The Contractor shall not permit reporters or photographers to interview or photograph inmates without the express written prior permission of the Department.

4.19 DISCLOSURE OF INFORMATION

No information regarding the Contractor's performance of the contract shall be disclosed by the Contractor to anyone other than the Department's officials unless written approval is obtained in advance from the Department.

4.20 DRUG FREE FACILITY

The Contractor shall make a good faith effort to maintain a drug-free facility.

4.21 CONTINUITY OF SERVICES

It is essential that the Contractor maintain continuity of service under this contract. Therefore, the Contractor shall cooperate with both the Contract Administrator and any successor Contractor to enable the smooth transition from one Contractor to another. This cooperation shall include the transfer of all records regarding each inmate. The Contractor shall assure that his/her direct staff is available for transition meetings and conferences with the Department's staff and the staff of the new Contractor.

4.22 DRUG AND ALCOHOL TESTING

The Contractor shall provide for drug and alcohol testing of all Inmates on a random basis, routine follow-up testing for those testing positive, routine testing for those for whom there are reasonable suspicions of drug use.

4.23 SAFETY AND EMERGENCY PROCEDURES

The Contractor shall provide copies of their safety, emergency and evacuation procedures in accordance with this Contract, including, but not limited to, contingency plans to assure operation of the Facilities in the event of an Employee labor dispute, riot, fire, civil disaster or power failure.

4.24 LAUNDRY

Contractor will provide laundry services.

4.25 COMMISSARY

Contractor will provide a commissary in accordance with ACA standards.

4.26 MAIL

Contractor will provide delivery of mail to inmates and send out mail from inmates in compliance with ACA standards.

4.27 SUPPLIES

Contractor will provide offenders with the following:
Clothing—outerwear, underwear, socks and shoes.
Hygiene—body soap, toothpaste, toothbrush.
Linen—sheets, pillow, blanket, towel, washcloth.

Contractor will provide for periodic exchange of durable items and replacement for non-durable.

4.28 GRIEVANCE PROCEDURE

Contractor will establish a formal grievance procedure for offenders in accordance with ACA standards.

ARTICLE 5 COMPENSATION AND ADJUSTMENTS

5.0 PAYMENT/INVOICES

5.0.1

The Department shall pay the Contractor monthly for services rendered at the fixed daily Manday rate of \$42.00 per inmate. The Contractor shall submit itemized invoices setting forth the name of each Department inmate in one of the Contractor's Facilities and the number of days such inmate was in the care and custody of the Contractor during the month.

5.0.2

Payment shall be based on the actual number of inmates per day at the Manday rate. The daily count of inmates at each of Contractor's facilities shall be the number of inmates as reported in the daily midnight Census Report. The Department will pay the Manday rate for the day of arrival, but not for the day of departure.

5.0.3

The Contractor shall submit monthly invoices to the Contract Administrator no later than the tenth day of the month following the provision of services under this contract. The Contract Administrator shall be required to certify receipt of satisfactory services prior to authorizing payments to Contractor. The billing procedures set forth in paragraph number 11 in the Standard Terms and Conditions are incorporated herein by reference. Explicit reference to that paragraph here does not imply the balance of the Standard Terms and Conditions are not incorporated herein; the Contractor and the Department expressly agree that all of the Standard Terms and Conditions are intended to be incorporated herein.

5.0.4

The Contractor shall include the following information in invoices:

- The contract number;
- The daily count for each Facility housing Department inmates;
- The service dates;
- The total amount due; and
- The Contractor's authorized signature.

5.0.5

The Contractor shall submit a final invoice no later than sixty (60) days after expiration of the contract.

5.0.6

At any time before final payment and three (3) years thereafter, the Contract Administrator may have the Contractor's invoices or vouchers and statements audited. The Department may reduce any payment by an amount determined by the Contract Administrator to constitute unallowable charges.

5.1 ASSIGNMENT OF CONTRACT PAYMENTS

The Contractor shall not assign any interest in the contract agreement after the award, and shall not transfer any interest in the same, whether by assignment or notation without the prior written approval of the Contract Administrator.

5.2 FUNDS AVAILABLE AND AUTHORIZED

Contractor shall not be compensated for work performed under this Contract by any other agency or department of the State of Wisconsin. The Department has sufficient funds currently available and authorized for expenditure to finance the costs of transferring 500 inmates to the Contractor's Facilities. An additional 700 beds will be used by the Department per the schedule set forth in Section 3.0 upon the Wisconsin Legislature's Joint Finance Committee's approval. The parties understand that the Wisconsin Legislature's Joint Finance Committee must approve this Contract before it goes into effect.

ARTICLE 6 INDEMNIFICATION, INSURANCE AND DEFENSE OF CLAIMS

6.0 INDEMNIFICATION , INSURANCE AND DEFENSE OF CLAIMS

6.0.1

The Contractor shall defend, indemnify, and hold harmless the State of Wisconsin and the Department, and their officers, employees and agents against any and all claims, suits, causes of action, damages, liability, and judicial, administrative or regulatory orders, awards and notices of violation, court, including all costs, expenses, and attorneys' fees incurred, as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees, relating to or arising out of this Contract.

6.0.2

The Contractor shall not waive, release, or otherwise forfeit or impair any possible claims, the State may have against any person or entity or any defense the State may have regarding claims related to or arising from or made in connection with the use, possession or operation of the Facilities by Contractor without the consent of the State. The Contractor shall, at its own expense, preserve all such available defenses and cooperate with the State to make such defenses available to the maximum extent allowed by law.

6.0.3

In case any action, suit, notice of violation or proceeding is brought against the State by reason of any such claim, Contractor, upon notice from the State, shall, at its own expense, defend against such action by counsel satisfactory to the State, unless such action, suit, notice of violation or proceeding is defended against by counsel for any carrier of liability insurance provided for herein.

6.1 INSURANCE

6.1.1

Without limiting Contractor's indemnification, Contractor shall continuously maintain and pay for such insurance as will protect Contractor and will protect the Department as a named insured and the State's employees from:

- a) all claims, including but not limited to claims for injury or death and claims based on violation of civil rights, arising from the services performed under the Contract; and
- b) actions by a third party against Contractor as a result of the Contract.

6.2 TYPES OF INSURANCE

6.2.1

Contractor must provide evidence (Certificate) of coverage at the Service Commencement Date of the contract, and within 30 days, the Contractor shall provide insurance policies and endorsements, in a form and with terms satisfactory to the Department, evidencing occurrence based insurance coverage of the following types, for the following purposes and in the following amounts:

a) Standard Worker's Compensation and Employers' Liability Insurance protecting the Contractor from claims for damages for physical or personal injury which may arise from operations performed pursuant to this Contract, whether such operations are performed by the Contractor, by a subcontractor, or by a person directly or indirectly employed by either of them, in the amount required by the Department.

b) Comprehensive General Liability Insurance, in an amount not less than two million dollars (\$2,000,000) for each occurrence with an aggregate of at least five million dollars (\$5,000,000). Coverage must include civil rights violations, which will include all claims brought by any persons, including but not limited to inmates, based in whole or in part on an alleged violation of this Contract, the United States or Wisconsin, statutes, policies, procedures, standards or regulation, including but not limited to, suits brought pursuant to 42 U.S.C. § 1983. Coverage shall include medical and professional liability for employed or contracted nurses, doctors, attorneys, counselors, psychologists and/or social workers.

c) Automobile and other vehicle liability insurance in an amount not less than \$2,000,000 per occurrence; to be provided under a business auto form.

6.2.2

All policies of insurance shall also include unlimited defense coverage in addition to the minimum levels of coverage required above.

6.3 INSURANCE SERVICES

6.3.1

All insurance policies required under this Contract must name the Wisconsin Department of Corrections, its officers, employees and agents as additional insureds and provide no less than sixty (60) days advance notice to the Department of any contemplated cancellation. The Department shall have the right, but not the obligation, to advance money to prevent the insurance herein from lapsing for nonpayment of premiums. If the Department advances such amount, then the Contractor shall be obligated to repay the Department the amount of any advances plus interest thereon at the legal maximum rate, and the Department shall be entitled to set off and deduct such amount from any amounts owed the Contractor pursuant to this Contract. No election by the Department to advance money to pay insurance premiums shall be deemed to cure default by the Contractor of its obligation under this Contract to provide insurance.

6.3.2

At least thirty (30) days prior to each policy anniversary date, the Contractor must provide the Department with renewal information, including estimated renewal premiums and suggested coverage changes.

6.3.3

Contractor shall provide constant monitoring of all companies providing coverage to ensure that the carriers are financially sound.

6.4 NOTICE OF CLAIMS

Within ten (10) business days after the Department receives a summons or other notice of claim, the Department shall notify Contractor in writing of the commencement thereof. Neither the State, its officers, employees or agents shall have any liability whatever for any failure to comply with the time requirements set forth in this Section.

6.5 SURVIVAL

Provisions of this Section survive the expiration or termination of this Contract.

**ARTICLE 7
EMPLOYEES**

7.0 INDEPENDENT CONTRACTOR

7.0.1

Contractor is associated with the State only for the purposes and to the extent set forth in this Contract. Contractor is and shall be an independent contractor and, subject to the terms of this Contract, shall have the sole right to manage, control, operate and direct the performance of its duties under this Contract. Contractor, its agents and Employees shall not be considered agents or employees of the State, nor shall agents or employees of the State be considered agents or employees of the Contractor. Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding use of the Department's vehicles or any other benefit afforded to the employees of the Department as a result of this Contract.

7.0.2

Contractor shall provide sufficient qualified and trained personnel to meet its obligations under this Contract.

7.0.3

Contractor's personnel will receive training in accordance with ACA Standards.

**ARTICLE 8
CONTRACT COMPLIANCE**

8.0 BREACH

8.0.1

A party shall be deemed to have breached this Contract if any of the following occurs: (a) failure to perform in accordance with any term or provision of this Contract; (b) partial performance of any term or provision of this Contract; or (c) any act prohibited or restricted by this Contract.

8.0.2

The Contractor shall be deemed to have materially breached the Contract and the Department may terminate the Contract for cause if any of the following occurs: (a) failure to completely and timely perform any term or provision of the Contract; or (b) performance or occurrence of any act or condition prohibited or restricted by the Contract. For purposes of this Article, items (a) and (b) shall hereinafter be referred to as "Contractor Breach."

8.0.3

In the event of a Contractor Breach, the Department shall have available the following remedies, any one or more of which may be exercised by the Department: (a) actual

damages and any other remedy available at law or equity; and/or (b) partial withholding of the Department's performance under the Contract; and/or termination of the Contract.

8.0.4

In the event of Contractor Breach, the Department's Contract Administrator shall provide the Contractor with written notice of the Contractor Breach and a time period to cure said Contractor Breach. In the event the Contractor disagrees with the Department's determination of the Contractor Breach, period to cure, imposition of partial withholding or termination of the Contract, the Contractor shall appeal by notifying the Department's Contract Administrator in writing, who shall forward the appeal to the Department's Secretary for decision; provided, however, any appeal to the Department's Secretary shall not toll or otherwise affect the period to cure. In the event the Contractor fails to cure the Contractor Breach within the time period provided, then the Department shall have available any and all remedies described herein.

8.0.5

The language in 8.0.4 above regarding notice and opportunity to cure shall not be applicable in the event of successive or repeated Contractor Breaches of the same nature, in the event of abandonment of the Facilities by the Contractor, or in the event of a Court Order directing remedial action by the Department, in which case the Secretary may order immediate compliance, partial termination of the Contract for cause or termination of the Contract for cause.

8.0.6

The following shall constitute the breaches of the Contract on the part of the Department for which the Contractor may terminate the Contract: (a) To the extent it causes the Contractor to be unable to perform its obligations under this Contract, the persistent or repeated failure or refusal by the Department to substantially fulfill any of its obligations under this Contract, unless justified by Force Majeur, waived by the Contractor or excused by Contractor's default.

8.0.7

In the event of a breach by the Department, the Contractor shall notify the Department in writing within 30 (thirty) days after Contractor becomes aware of the breach. Said notice shall contain a description of the alleged breach. The Department shall be afforded a 45 (forty-five) day period in which to effect a cure or in which to take reasonable steps to effect a cure. If any cure is commenced within the time permitted which will take more than the time allotted above to effect a cure, then the Department shall be allowed the additional time as mutually agreed to by the parties.

8.0.8

Failure of the Contractor to provide the written notice described in 8.0.7 shall operate as an absolute waiver by the Contractor of the Department's breach.

8.0.9

In no event shall any breach on the part of the Department excuse the Contractor from full performance under this Contract.

ARTICLE 9
MISCELLANEOUS

9.0 INVALIDITY AND SEVERABILITY

In the event that any provisions of this Contract shall be held to be invalid, such provision shall be null and void, and the validity of the remaining provisions of the Contract shall not in any way be affected thereby.

9.1 VENUE

This Contract shall be interpreted according to the law in the State of Wisconsin.

9.2 RELEASE

Contractor, upon final payment of the amount due under this Contract, releases the Department, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Contract. Contractor agrees not to purport to bind the Department to any obligation not assumed herein by the Department unless the Contractor has prior express written authority to do so, and then only within the strict limits or that authority.

9.3 AMENDMENT

This Contract shall not be altered, changed or amended except by mutual consent of all appropriate signatories, their designees or successors in writing.

9.4 ENTIRE AGREEMENT

This Contract incorporates the RFP #C-461, including but not limited to the Standard Terms and Conditions which are part thereof, the November 21, 1997, clarification to RFP #C-461 issued by the Department, the Contractor's November 26, 1997, response to RFP #C-461, and any and all written exchanges and agreements between the Contractor and the Department.

Any disputes between the parties as to the meaning of the agreement between the parties shall be resolved by referring to this Contract, then to the documents mentioned immediately above in the order in which they are listed.

9.5 FORCE MAJEURE

Neither party shall be deemed to be in violation of this Contract if is prevented from performing any of its obligations hereunder for any reason beyond its control, including acts of God, civil or military authority, act of public enemy or any other serious cause beyond the reasonable control of either party.

9.6 NO THIRD PARTY BENEFICIARIES

Nothing contained in this Contract or inferable from this Contract is intended to confer any rights or remedies upon any person whatsoever other than the parties named herein. Furthermore, no portion of this contract is intended to relieve or discharge the obligation of any third persons to any party to this Contract, and no provision herein contained shall be construed to give any third party any claim, action or right of subrogation against any party hereto.

9.7 SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.8 INTERNAL RELATONSHIPS

Nothing in this agreement shall be construed to affect the internal relationships of the subdivision, offices, departments or agencies of the parties.

9.9 NOTICES

All notices shall be sent certified mail, return receipt requested, to:

Department: Dick Verhagen, Administrator
Division of Adult Institutions
Wisconsin Department of Corrections
149 E. Wilson Street
Madison, Wisconsin 53702

Contractor: Linda G. Cooper, Vice President, Legal Affairs
Corrections Corporation of America
10 Burton Hills Boulevard
Nashville, Tennessee 37215

9.10 POWERS OF THE PARTIES

The parties understand and agree that no clause, term, or condition of this Contract shall be construed to supersede the lawful powers or duties of either party.

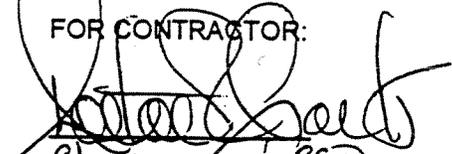
9.11 JUDICIAL ACTIONS

Any judicial action relating to the construction, interpretation or enforcement of the Contract shall be brought and venued in Dane County Circuit Court in Madison, Wisconsin. The Contractor hereby consents to personal jurisdiction in that venue and waives any defenses the Contractor otherwise might have relating thereto. The Contractor also hereby waives its right to a jury trial in connection with any judicial action or proceeding that may arise between the State and the Contractor concerning the construction, interpretation or enforcement of the contract.

The Contractor agrees to provide the Department with copies of civil and criminal pleadings filed by inmates in the Facilities by first class mail within ten (10) days after service on the Contractor. The Contractor shall not have to provide such copies to the Department if the pleadings appear to be frivolous in nature.

IN WITNESS WHEREOF, the parties hereunto affix their signatures below.

FOR CONTRACTOR:


Chairman & CEO

Date: 2 Feb 98

FOR THE DEPARTMENT:

Michael J. Sullivan, Secretary

Date: _____

Agenda Item II
DNR - Air Management & Asbestos

Background:

DNR wants 1 two-year project position for asbestos management. It would be funded with existing air bureau expenditure authority. This employee would help ensure state facilities comply with federal and state asbestos rules when doing demolition work or renovating.

The amount of money involved is \$120,000 PR (97-99) for the project position, and \$50,000 for computer software.

FB Analysis:

EPA is not happy with asbestos abatement work being done at state buildings right now. DNR & DOA told EPA they would seek funding to remedy the problem (and hopefully EPA will stop suing the state). There is plenty of money in the existing appropriation to be reallocated for this purpose.

Alternatives:

Recommend Alt 1

(note: alt's 2 & 3 are not acceptable)



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

March 5, 1998

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Natural Resources: Section 16.505 Request Related to Air Management, Asbestos Management--Agenda Item II

BACKGROUND

On January 20, 1998, the Department of Administration (DOA) forwarded a s.16.505 request to the Joint Committee on Finance from the Department of Natural Resources (DNR) for one, two-year project position which would be funded from existing expenditure authority in the DNR air management program revenue appropriation for asbestos management. On February 9, 1998, the Committee Co-Chairs notified DOA that a meeting would be scheduled to review the request.

DNR also requested increased expenditure authority of \$60,000 PR in 1997-98 and \$60,500 PR in 1998-99 for the project position, and \$50,000 PR in 1997-98 for a computer software upgrade related to tracking of asbestos project records. DOA did not forward the expenditure authority increase request to the Committee because available expenditure authority can be reallocated within the current appropriation.

DNR is responsible for administering asbestos abatement regulations in conformance with federal Environmental Protection Agency (EPA) requirements. Persons who perform demolition or certain renovations which remove asbestos-containing material must follow asbestos abatement regulations to minimize the release of asbestos fibers into the air. Persons must notify DNR before they perform asbestos abatement and must pay an asbestos inspection fee ranging from \$50 to \$200 and a permit exemption review fee of \$50 or \$125, depending on the project size. DNR is authorized to initiate enforcement action against persons who do not comply with asbestos abatement regulations.

The DNR project position would work on a two-year pilot program to help DOA improve its compliance with asbestos abatement regulations on demolition or renovation projects conducted by DOA and its contractors at state-owned facilities. The position would: (a) attend meetings with DOA project managers and DOA's contractors before the contractor begins asbestos abatement projects; (b) perform random inspections at the abatement projects; and (c) attend project closeout meetings with DOA and contractors to ensure compliance with asbestos abatement regulations before DOA closes the project.

ANALYSIS

The asbestos management appropriation is authorized \$281,500 PR annually with one position to administer the program in the Madison central office. The position administers the assessment and collection of the fees. Further, the position and a portion of the time of 12 to 15 regional air program staff (funded from federal funds, new source air pollution permit fees and air emissions fees) perform asbestos inspections. The appropriation also funds three contracts with several local governments to perform asbestos inspections. Approximately \$162,600 of the \$281,500 expenditure authority is utilized for staff (\$53,300) and contracts (\$109,300), which results in \$118,900 in unallocated expenditure authority.

The appropriation received \$252,000 in asbestos fee revenues in 1996-97 and had a July 1, 1997, balance of \$432,500. Reallocation of existing expenditure authority to the requested project position and computer software upgrade would likely result in a June 30, 1999, appropriation balance in excess of \$400,000. If DNR signs additional asbestos inspection contracts with local governments, the appropriation balance would decrease accordingly.

EPA has expressed concern over asbestos abatement work being done in several buildings owned by the State. EPA is in the process of filing a lawsuit against the State related to an asbestos abatement violation at a state facility. DNR identified potential asbestos problems at 15 DOA asbestos abatement projects between March, 1994, and July, 1997. DNR identified problems with DOA or contractor notification of DNR and DOA preinspection and project oversight of contractor work.

In December, 1997, the Secretaries of DOA and DNR signed a memorandum of agreement (MOA) regarding asbestos abatement at state facilities which specified that DOA is responsible for oversight of contracts for asbestos abatement at state facilities and is to comply with state and federal laws regarding asbestos abatement and DNR is responsible for regulation of asbestos abatement activities and enforcement of asbestos control regulations in administrative code Chapter NR 447 and in compliance with EPA regulatory requirements. The major MOA provisions include that: (a) DOA will modify its contract development, contract management, inspection and final review actions to improve compliance by DOA contractors; (b) a final project review and inspection at DOA projects will be made by DOA or DOA's inspection contractor, DNR and the abatement contractor; (c) DNR staff will attend pre- and post-abatement meetings with DOA and its contractors to make all parties aware of the contractor's

responsibilities; (d) DNR will notify DOA of apparent violations at DOA projects; (e) DOA will take any necessary measures to address violations identified by DNR; (f) DNR will provide DOA with access to DNR asbestos abatement notification files; (g) DNR will assist DOA in developing standardized inspection and contract forms; and (h) work on abatement projects will be suspended at the request of DNR staff on projects in which hazardous or unsafe conditions are present.

On December 18, 1997, the Secretaries of DNR and DOA informed EPA's Region 5 administrator that the two agencies had entered into the MOA and that both agencies would seek funds to increase oversight of asbestos abatement. EPA responded that: (a) adherence to the MOA should reduce the need for EPA to undertake enforcement actions at state facilities; (b) the MOA appropriately states that it is not intended to restrict DNR's delegated authority nor its ability to implement and enforce state and federal regulations regarding asbestos abatement; and (c) EPA will recommend a similar proactive approach to other Region 5 states.

DNR and DOA officials indicate that the request is for a DNR, rather than DOA position, because the position would have regulatory responsibilities related to ensuring DOA compliance with asbestos abatement regulations. The two agencies hope that increased DOA compliance will decrease the likelihood of future EPA litigation against the state regarding state asbestos abatement projects. It is likely that the MOA and future DOA compliance will not eliminate EPA enforcement actions related to allegations of prior asbestos violations.

If the project position authority is not approved, DOA could approve a transfer of existing expenditure authority within the DNR asbestos management appropriation from supplies and services to limited-term employe salaries and fringe benefits to provide assistance under the MOA. However, it is anticipated that DNR would assist DOA for longer than the six months normally allowed for LTE activities. If the Committee prefers that neither a DNR project nor LTE position be provided to assist DOA, DNR expenditure authority could be decreased by \$60,000 annually.

DNR can reallocate current expenditure authority to make the computer software upgrade, whether or not the Committee approves the requested position authority. DNR officials indicate that the \$50,000 computer upgrade would be part of ongoing efforts to complete an existing air compliance data system that would provide data about facilities to DNR staff throughout the state. DNR would add asbestos abatement records to the data system, including information about the owner, contractor, location of the abatement project and notification, inspection and enforcement activities. The system would allow some electronic access by statewide DNR staff, DOA, other state agencies, local governments and contractors. Increased accessibility and availability of information may help DOA and DNR improve oversight over contractors and increase compliance. The computer software upgrade has not yet been designed. Therefore, it is not clear at this time what will be accomplished with the \$50,000 until DNR meets with the various affected people and designs the upgrade.

It could be argued that the computer upgrade project would be more appropriately considered during biennial budget deliberations as part of Departmental informational technology

efforts. However, the appropriation balance is sufficient to begin work now rather than wait a year or more. In addition, the computer upgrade could assist in increasing compliance with asbestos management regulations by DOA and contractors by making asbestos information more accessible. If the Committee prefers to consider the computer upgrade as part of biennial budget deliberations, DNR expenditure authority could be decreased by \$50,000 annually. As a result, the appropriation's base funding would not be available for the computer upgrade, but would be sufficient for currently-anticipated expenditures.

ALTERNATIVES

1. Approve the DOA recommendation to provide 1.0 PR two-year project position in DNR's air management asbestos management appropriation.

No - 2. Decrease DNR expenditure authority in the air management asbestos management appropriation by one or both of the following:

a. \$60,000 PR annually to remove funding for the position (if the position is denied).

b. \$50,000 PR annually to remove funding for the computer software upgrade.

No - 3. Deny the request.

Prepared by: Kendra Bonderud