

INCARCERATION AGREEMENT

by and between

STATE OF TENNESSEE, DEPARTMENT OF CORRECTION

and

HARDEMAN COUNTY

INCARCERATION AGREEMENT

THIS INCARCERATION AGREEMENT is made and entered into this ____ day of _____, 2002, by and between the STATE OF TENNESSEE, DEPARTMENT OF CORRECTION ("State") and HARDEMAN COUNTY, TENNESSEE.

WITNESSETH

WHEREAS, Hardeman County approved the creation of the Hardeman County Correctional Facilities Corporation (HCCFC) for the purpose of constructing and operating prisons and appointed its directors;

WHEREAS, the State of Tennessee, Department of Correction entered into an Incarceration Agreement with Hardeman County, Tennessee on September 18, 1996 to house inmates at the prison constructed by HCCFC;

WHEREAS, Hardeman County approved the creation of the Hardeman County Correctional Facilities Corporation-Two (HCCFC-Two) for the purpose of operating a second prison located in Hardeman County, known as the Whiteville Correctional Facility and appointed its directors;

WHEREAS, Hardeman County desires to enter into this contract to reserve, keep and maintain up to one hundred percent (100%) of the available beds for the State;

WHEREAS, the State desires to enter into this contract with Hardeman County to house at the Whiteville Correctional Facility, pursuant to the terms of this Contract, male felons (hereinafter "Inmates") sentenced to the care, custody and control of the Tennessee Department of Correction (the "Department");

WHEREAS, the State agrees to compensate the County as indicated below for all reasonable allowable costs as defined by the contract associated with the housing of Inmates at the Whiteville Correctional Facility;

WHEREAS, the State is authorized by T.C.A. § 4-3-603(b) to enter into agreements with local governments to house State prisoners.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the State and Hardeman County hereby agree as follows:

ARTICLE 1 DEFINITIONS

"ACA" means the American Correctional Association.

"ACA Standards" means the standards for Adult Correctional Institutions (Third Edition, January 1990; as the same may be modified, amended, or supplemented in the future) published by the ACA.

"Bed Allocation Per Diem Rate" means the bed fee per Inmate Day or per Bed Day, determined in accordance with the provisions of Section 6.2.

"Bed Day" means each calendar day that a bed at the Facility is made available to the State pursuant to an allocation requested in writing by the Department for the placement of an Inmate, including the first, but not the last day.

"Commissioner" means the Commissioner of the Tennessee Department of Correction.

"Contract" means this document, together with all written attachments, exhibits, amendments and modifications. The word "Agreement" also means this document, together with all written attachments, exhibits, amendments and modifications.

"Court Orders" means any orders, judgments or opinions issued by a court of competent jurisdiction or any stipulations, agreements or plans entered into in connection with litigation that are applicable to the operation, management or maintenance of the Facility or relate to the care and custody of Inmates of the Facility, whether currently existing or as may be rendered in the future.

"Department" means the Tennessee Department of Correction.

"Effective Date of Contract" means the date stated in Section 2.1 of this Contract.

"Facility" means the 1,536-bed correctional institution, with no dormitory housing, located in Hardeman County, Tennessee, and real property as specified in Exhibit A.

"Fiscal Year" means the period beginning July 1 and ending June 30 of each year.

"Indigent Inmates" means Inmates who are deemed indigent as defined by Departmental Policy 504.04, as said policy may be amended.

"Infirmary" means the provision of infirmary care as defined in TDOC policies 113.02 and 113.32.

"Inmate" means any person (male felon) committed to the custody and control of the

Department who is incarcerated in the Facility.

"Inmate Day" means each calendar day or part thereof that an Inmate is located at the Facility, including the first, but not the last day of incarceration at the Facility.

"Liaison" means a person or persons appointed and paid by the Department to monitor for the Department the implementation of this Contract and/or to act as the Commissioner's designee. The Liaison will also be the official liaison between the State and Hardeman County on matters pertaining to the operation and management services of the Facility and may perform other functions described herein and described in Departmental policies.

"Local Area" means Hardeman, Fayette, Haywood, Madison, Chester, McNairy and Shelby Counties in Tennessee.

"Operating Per Diem Rate" means the operational cost per Inmate, per Inmate Day, as defined in Section 6.1.

"Post Order" means standing orders which delineate the task and job duties of each security position at the Facility.

"Primary Health Care Contractor" means the Department's contract provider of primary and specialty care physician and dental services, non-physician professional services, hospital services, and, at certain institutions, health services staffing.

"Service Commencement Date" is October 16, 2002.

"Staffing Pattern" means each functional area by position, with an indication of shift assignment and number of days covered, relief factors and total staffing.

"State" means the State of Tennessee, including, but not limited to, the Department.

"State Bed Days" means the State's total allocation of Bed Days.

"TOMIS" means the Tennessee Offender Management Information System, a mainframe computer system that automates the management of information about offenders under the supervision of the Tennessee Department of Correction. TOMIS captures all offender related information at the point of origin to provide accurate and timely information to those who use it.

ARTICLE 2
TERM AND SCOPE OF THE CONTRACT

Section 2.1. Term. This Contract is effective October 1, 2002 and continues until September 30, 2005.

Section 2.2. Renewals. The State shall have the option to renew this Contract upon the same terms and conditions for two (2) one (1) year terms; provided, however, that such option to renew may be exercised only if, at the time of the exercise of the option, the Commissioner, in the Commissioner's sole discretion, determines that the available facilities and institutions of the Department are overcrowded. The State may exercise its option to renew by giving Hardeman County 180 days advance written notice of its intent to renew. If Hardeman County does not receive notice of the State's intent to renew 180 days in advance, it shall notify the Commissioner of Correction and the Commissioner of Finance and Administration of that fact by certified mail and the State shall have an additional 30 days from receipt of such notice within which to exercise its option to renew.

Section 2.3. Requirements. This Contract is not binding until execution by all parties.

Section 2.4. Scope of Agreement. This Contract, including all exhibits attached hereto which are incorporated herein by reference, shall constitute the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party that are not contained in this Contract shall be valid or binding with the exception of Opinion of Contractor's Counsel described in Section 12.7. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

ARTICLE 3
MAINTENANCE

Section 3.1. Maintenance.

(a) At least 20 days before the Service Commencement Date, Hardeman County shall provide the State with a written plan, including a preventive maintenance program, to maintain the Facility and all property, both real and personal, contained therein. Said plan shall be subject to the written approval of the State and shall not be altered, amended, modified, revised or supplemented without the prior written approval of the State. Hardeman County shall implement the provisions of plan throughout the term of the Contract.

(b) Hardeman County shall provide for maintenance, repair, and replacement for the Facility and shall keep said Facility in good repair, working order and condition, subject to

normal wear and tear. Hardeman County shall be responsible for all expenses incurred in said maintenance, repair and replacement.

Section 3.2. Utilities and Taxes. Hardeman County shall pay all taxes associated with this Contract and utility costs of the Facility, including, but not limited to, water, gas, sewage and electric.

Section 3.3. Property Insurance. Hardeman County shall obtain and keep in force casualty insurance on the Facility and on all property to be located at the Facility.

ARTICLE 4 CONTRACT MONITORING

Section 4.1. Monitoring.

(a) The State has the right and authority under this Contract to monitor Hardeman County's performance hereunder. Such monitoring shall include but not be limited to observing and reporting on the day-to-day operational performance of Hardeman County regarding compliance with all terms and conditions of this Contract. Such monitoring or failure to monitor shall not relieve Hardeman County of its responsibility, obligation and liability under this Contract.

(b) The State, through the Department's Contract Management Unit, shall develop reporting requirements for Hardeman County that shall include but not be limited to weekly, monthly, and/or quarterly reports on the following subjects: Inmate jobs and education, incident reports, disciplinary reports, Inmate grievances, staff turnover and vacancies, staff training, employee grievances, employee discipline, health care access, reclassifications, transfers, furloughs, releases, media contacts, lawsuits, volunteers, drug audits, cell searches, visitation, and maintenance. Also, an emergency reporting process shall be established that shall address, at a minimum, segregation of Inmates, use of force, and incidents which involve substantial risk to property, life, or institutional security.

(c) Hardeman County agrees to cooperate with the State, including any representatives of the State, in the Contract monitoring effort of the State through such means as may be requested from time to time, including, but not limited to the reporting of information as requested. The State and Hardeman County agree that the information collecting and monitoring processes described in this Section 4.1.(a) - (c), in accordance with the policies and procedures of the Tennessee Department of Correction.

Section 4.2. Liaison.

(a) The State shall provide Liaison(s) to be located at the Facility. The Liaison(s) will be an employee(s) of the Department and will be paid by the Department. Hardeman County shall have no control over the activities of the Liaison(s), supervisory or

otherwise.

(b) The Liaison(s) shall be the representative of the State at the Facility to monitor Hardeman County's compliance with the Contract. The Commissioner may also appoint the Liaison to act as his designee. The Liaison may also have functions described in Department policies. The Liaison may have other functions as provided by the Commissioner in writing.

(c) Unless otherwise specified by the Commissioner, in writing, the Liaison(s) shall be the designated recipient of all information required of Hardeman County. Hardeman County shall be notified of the identity of any Contract Liaison, in writing, signed by the Commissioner.

(d) The individual(s) acting as Liaison(s) may be changed during the term of the Contract, at the discretion of the Commissioner.

(e) The State hereby expressly disclaims that the Liaison or any other state employee or official has any authority, apparent or otherwise, to bind the State under this Contract unless expressly stated herein; provided, however, that the Commissioner shall have the same authority granted any state employee under this Contract and the Commissioner retains authority over the Inmates which may not be delegated at law.

(f) In addition to the Liaison(s) employed by the Department, the State may monitor the Contract through other representatives of State as it deems appropriate. Such representative(s) shall have the same right of access to information, the facility, Inmates, and Hardeman County's employees and agents as set out herein for Liaison(s).

Section 4.3. Multiple Liaisons.

(a) In the event that the Commissioner designates more than one individual to act as Liaison, the State shall provide Hardeman County with a description of the Liaisons' levels of authority in writing executed by the Commissioner.

(b) In the event Hardeman County believes it is receiving conflicting instructions from the Liaison(s) or that the Liaison is acting beyond its level of authority under the Contract or as provided in subsection (a), Hardeman County shall notify the Commissioner in writing. The written response of the Commissioner shall be final.

Section 4.4. Office Space.

(a) Hardeman County shall provide, at its expense, adequate office space and local telephone service for the Liaison(s) and the staff of the Liaison(s), which may include a secretary, in close proximity to other administrative offices.

(b) Hardeman County also shall provide the Liaison(s) and staff with access to all major office equipment, at Hardeman County's expense.

(c) Hardeman County shall not provide the Liaison(s) or Liaison(s)' staff with gifts or any form of compensation at any time.

Section 4.5 Liaison Access.

(a) The Liaison(s) shall have immediate, complete, and unrestricted access to all parts of the Facility at any and all times.

(b) The Liaison(s) shall have immediate, complete, and unrestricted access to all documents in any way pertaining to the obligations of Hardeman County under this Contract, including but not limited to Facility records, Inmate files, personnel files, and financial records relating to the operation of the Facility. In the event that any such document is not located on the facility site, upon request Hardeman County agrees to provide the Liaison with a copy of the document within seventy-two (72) hours of the request.

(c) The Liaison(s) shall have immediate, complete and unrestricted access to all Inmates and access at a reasonable time and place to all employees of Hardeman County, including, but not limited to, the warden.

(d) The Liaison(s) shall have immediate, complete, and unrestricted access to all meetings and hearings which in any way pertain to the obligations of Hardeman County under this Contract. Hardeman County agrees to notify the Liaison of the time, place, and agenda at least twenty-four (24) hours in advance of any such meeting or hearing, unless it is not reasonable to provide said notice in which case the Liaison shall be notified simultaneously with the other participants; provided, however, the Liaison may not have access to meetings covered by the attorney-client privilege.

Section 4.6 Meetings with Liaison. Hardeman County agrees to hold regularly scheduled meetings with the Liaison as requested by the Liaison to report on the operations of the Facility and to respond to any questions raised by the Liaison. Said regular meetings shall be in addition to interim meetings requested by the Liaison; provided, however, the frequency of such meetings is subject to modification at the sole discretion of the State. Hardeman County agrees that a representative of Hardeman County having supervisory responsibility and authority to address the issues raised shall be in attendance at said meetings. An agenda shall be developed for said meetings and meeting minutes shall be recorded and filed with the Contract Management Unit of the Department of Correction.

Section 4.7 Requests for Information.

(a) Hardeman County shall provide the Liaison(s) with written responses to any information requested by the Liaison(s) or Commissioner concerning Hardeman County's performance of this Contract within the period prescribed in the State's request.

(b) Hardeman County shall certify that said information is accurate and if

Hardeman County is unable to so certify then Hardeman County shall state the reason therefor.

(c) Upon written request by the Liaison(s) or Commissioner, Hardeman County shall compile information in the requested form and provide documentation substantiating said information.

(d) Documents related in any way to the Hardeman County's performance under the Contract shall be retained for the periods of time required for similar documents created or used by the Department, as described in Department policy and retention schedules.

Section 4.8 State Inspection. The Commissioner or his/her designee(s) shall have the same access as described in Section 4.5, Liaison Access, which access shall include but not be limited to persons designated by the Commissioner to inspect or audit the Facility and/or Hardeman County's performance under this Contract. Hardeman County is also obligated to provide appropriate access to authorized inspection and regulatory agencies. Hardeman County shall exercise due diligence for the safety and welfare of the Liaison(s), any other State employee, and any visitor at the Facility.

Section 4.9. Immediate Compliance.

(a) If the Commissioner determines that Hardeman County is not operating in compliance with a term or condition of this Contract which in the opinion of the Commissioner adversely affects the security of the Facility or which may present a hazard to the safety or health of Inmates or other individuals, Hardeman County shall be notified in writing (or verbally if it is believed an emergency situation exists). The notice shall direct Hardeman County to immediately correct the noncompliance.

(b) Hardeman County shall immediately notify the Commissioner of the proposed corrective action. If the Commissioner does not object to the proposed corrective action, Hardeman County shall immediately implement said corrective action.

(c) If the Commissioner disagrees with the proposed corrective action or if Hardeman County fails to notify the Commissioner immediately of its proposed corrective action, the Department shall specify corrective action which Hardeman County shall immediately implement.

(d) Notwithstanding any provision contained herein to the contrary, in such a circumstance, Hardeman County shall immediately implement the corrective action specified by the Department before any appeal is taken.

(e) In the event Hardeman County disagrees with the determination of noncompliance or designated corrective action, a request for reconsideration may be taken to the Commissioner. In no event shall the corrective action be delayed pending appeal.

(f) Upon examination, if the Commissioner determines in his or her sole discretion that noncompliance did not exist or that the corrective action required by the Department was excessive, the Commissioner shall authorize payment to Hardeman County of the actual expense incurred in taking said corrective action or excessive corrective action upon receipt of appropriate documentation substantiating said expense from Hardeman County.

Section 4.10. Incident Reports. Hardeman County shall implement Departmental policy regarding the reporting of incidents.

ARTICLE 5 OPERATION OF FACILITY

Section 5.1. Obligations of Hardeman County. Hardeman County will perform all acts and services and comply with all duties and promises as described and in conformance with the following, which are incorporated herein by reference and made a part of this Contract:

(a) All applicable constitutional standards, federal, state and local laws and rules and regulations, court decisions, and Court Orders, consent agreements, whether currently existing or as may be enacted or rendered in the future;

(b) All existing State and Departmental policies, or, in the discretion of the State, policies approved by the Department which may not be identical to State or Department policies.

(c) Such other policies as the Department may make applicable to Hardeman County in writing during the term of this Contract as same may be amended during the term of this Contract. Any change in the scope of services as a result of this would be compensated by an adjustment either upward or downward in accordance with Section 6.6, Compensation Adjustment for Change of Service;

(d) ACA Standards; and

(e) the terms of this Contract.

The standards articulated in (a) through (e) hereinafter collectively shall be referred to as "Standards."

Section 5.2. Obligations of the State. The State agrees to perform its obligations as described herein.

Section 5.3. Conflicts.

(a) In the event of a conflict among the Standards, Hardeman County is required to follow the Standard as determined by the Liaison(s).

(b) In the event of disagreement between Hardeman County and the Liaison(s) regarding which item provides the standard of service, the Commissioner or his designee shall make the final, binding decision.

Section 5.4. Policy and Procedures Manual and Operations Plan. At least 20 days before the Service Commencement Date, Hardeman County shall provide the State with a written Policy and Procedures Manual which shall contain policies and procedures for all services to be rendered by Hardeman County in accordance with the Standards. At least 20 days before the Service Commencement Date, Hardeman County shall also submit an Operations Plan relating to all areas covered by the contract, subject to the written approval of the State, including but not limited to a staffing pattern, security and post assignments, post orders for all security positions by post and shift, and designation of critical posts. Said manual and plan shall establish the policies and procedures Hardeman County shall follow in all areas covered by this Contract. Said manual and plan shall be subject to the written approval of the State and shall not be altered, amended, modified, revised or supplemented without the prior written approval by the State. Hardeman County shall implement the provisions of said manual and plan throughout the term of this Contract.

Section 5.5 Assignment and Transfer of Inmates.

(a) Hardeman County expressly recognizes that it is required to begin accepting inmates under the terms of this contract beginning on the Service Commencement Date, and that time is of the essence.

(b) Beginning on the Service Commencement Date, Inmates will be assigned to the Facility in accordance with Departmental policies. Hardeman County will be provided an opportunity to review the records and comment to the State on the first 350 inmates proposed to be assigned to the Facility prior to transfer. Hardeman County may not refuse to accept any inmates proposed to be assigned to the Facility, but if Hardeman County believes that an Inmate has been erroneously assigned to the Facility or is presenting a discipline problem sufficient to require higher custody status which cannot be provided adequately or safely in the Facility, it may request his transfer in writing, through the Liaison(s), citing the appropriate sections of Departmental policy.

(c) Hardeman County's requests for reassignment of Inmates from the Facility to another institution for medical, psychiatric, disciplinary or administrative reasons or for Inmate furloughs will be made in writing through the Liaison(s) and evaluated by the Department. Any decision by the Department on such requests shall be final.

(d) The State may transfer Inmates from the Facility with said decision to transfer being within the State's sole discretion.

Section 5.6 Safety and Emergency Procedures.

(a) Hardeman County shall submit written (1) riot and disturbance control and contingency plans, and (2) disaster preparedness plans to the State at least 20 days before the Service Commencement Date. Hardeman County shall cooperate with the State in preparing contingent Inmate relocation plans.

(b) Hardeman County shall develop and submit to the State at least 20 days before the Service Commencement Date, written guidelines for the prevention of fire, safety inspections, maintenance of fire alarm and smoke detection systems, fire evacuation drills, evacuation plans, a procedure to report job-related injuries, and provisions for testing equipment to maintain essential lighting, power and communications.

(c) Hardeman County shall develop and submit to the State plans for the search and apprehension of any escaped Inmate at least 20 days before the Service Commencement Date. Said plans shall address Hardeman County searching for any escapee off the grounds of the Facility and coordination with local and State authorities. Hardeman County shall implement said plans regarding any search off the grounds of the Facility only if so requested by the Commissioner.

(d) During the term of this Contract, Hardeman County shall develop and submit to the State in writing any other emergency and control plans as may be requested in writing by the Department within thirty (30) days of receipt of said request.

(e) All plans required under this Section must be submitted to the State and approved by the State in writing. Hardeman County agrees to make any revisions, deletions or additions requested by the Commissioner or his designee. Upon written approval by the State, Hardeman County shall begin immediate implementation of the plans or in the case of contingency plans, certify that Hardeman County has the ability and shall implement the plan if the contingency occurs. Said plans may not be revised, amended, altered, or supplemented without prior written consent of the State.

(f) All plans must be in conformance with the Standards.

Section 5.7. Medical and Mental Health Services.

(a) Hardeman County shall provide, in compliance with the Standards, all physical health services, mental health services and dental services as specified in this Section, utilizing the TDOC Health Services medical records forms, as said forms may be revised or supplemented during the term of this Contract.

(b) The physical health, mental health, and dental services shall include but not be limited to:

(1) 24 hour-a-day, 7 day-a-week on-call emergency medical health and

- mental health care;
- (2) 24 hour-a-day, 7 day-a-week on-site nursing care;
 - (3) initial health screening;
 - (4) health appraisal examination;
 - (5) daily triaging of complaints;
 - (6) daily sick call per normal workday schedule;
 - (7) Infirmary operation with at least supervision by an RN 24 hours per day, 7 days per week;
 - (8) maintenance of health records;
 - (9) special medical programs and services for, but not limited to, Inmates with chronic needs or requiring convalescent care;
 - (10) mental health, mental illness and substance abuse services to include a sex offender aftercare program and a substance abuse program that emphasizes relapse prevention and provides for after-care and self-help treatment services;
 - (11) health care specialists;
 - (12) ancillary services - radiology, laboratory, etc.;
 - (13) dental services - routine to include dentures;
 - (14) pharmaceutical services and supplies;
 - (15) optometry services to include eyeglasses;
 - (16) hearing aids;
 - (17) prosthesis, if it is the opinion of the Facility's Medical Director that an Inmate's health or well being would suffer or be damaged if a prosthesis is denied the Inmate;
 - (18) health education; and

(19) inpatient and outpatient hospitalization services.

(c) Except as set out herein, Hardeman County shall be responsible for the cost of providing all physical health, mental health, and dental services, including but not limited to inpatient and outpatient treatment, any surgery and specialty services, medications, specialty clinics, medically related transportation, medically related security services, and the costs associated with the provision of services described above.

(d) Hardeman County shall be responsible for providing security services for inpatient care during a confinement period for which Hardeman County is financially responsible. Hardeman County shall provide security at an off-site medical facility after the Department assumes responsibility, if requested to do so by the Department, and shall be reimbursed by the Department at the following rates:

Year 1	\$15.84 per officer/ per hour
Year 2	\$15.84 per officer/ per hour
Year 3	\$15.84 per officer/ per hour

On each July 1 during any renewal period, such reimbursement rate shall be increased by an inflator of 2.8%; provided, however, the reimbursement rate shall remain the same and shall not be increased if the Consumer Price Index (all cities/all services) for the immediately preceding Fiscal Year was 0% or less.

(e) Exclusions and Limitations.

(1.) If an Inmate is hospitalized at a non-departmental facility, Hardeman County shall not be responsible for inpatient hospital costs which exceed \$4,000 per Inmate per admission. Hardeman County shall provide advance notice to the Department's Primary Health Care Contractor when an Inmate is to be admitted to a hospital and shall coordinate care through the Primary Health Care Contractor's utilization management process. In emergency circumstances where advance notice is not possible, Hardeman County shall provide notice immediately, and in no event more than 8 hours after admission. The Department in consultation with its Primary Health Care Contractor will decide on the location of care and confinement following this initial period and may, in consultation with Hardeman County's representative, decide to utilize a facility selected by the Primary Health Care Contractor during the initial period of inpatient care. Hardeman County shall not have access to the Department's facilities without the Department's approval. If an Inmate is housed and treated at a Departmental facility, the Department will assume financial responsibility for expenses incurred within its facilities. Provided, however, notwithstanding any provision contained herein to the contrary, any inmate medical expenses resulting from the negligence or willful wrongdoing of Hardeman County, its officers, agents or employees, shall be fully paid for by Hardeman County.

(2.) Hardeman County shall not be responsible for any inpatient hospital costs, including any surgery or specialty services, associated with the treatment of persons with Acquired Immune Deficiency Syndrome (AIDS), as defined by the Centers for Disease Control. Hardeman County shall be responsible for hospitalization costs associated with other HIV infected patients.

(3.) Hardeman County shall not be responsible for the cost of providing AZT or other medications therapeutically indicated for the treatment of Inmates with AIDS or HIV infection. Such treatment will be at the Department's discretion and expense.

Section 5.8 Food Service.

(a) Hardeman County will provide food service for the Inmates and volunteers in accordance with the Standards including but not limited to the provision of special diets for medical or religious requirements.

(b) Hardeman County shall not be required to follow the Department's master menu, but the food service area must comply with State health regulations. At a minimum the amount of daily calories must conform with the recommended dietary allowances published by the National Academy of Sciences. Menus shall be approved by a registered dietician. Menus and Dietary allowances shall be filed with the TDOC Director of Food Services.

Section 5.9. Transportation. Hardeman County will be responsible for the following inmate transportation: (a) all within the Local Area; and (b) outside the Local Area, as necessary when the Department's central transportation is unavailable or time constraints restrict inter-institutional transfer; provided, however, in the event said transportation outside the Local Area occurs more than ten (10) times in any twelve (12) months period, Hardeman County shall provide said transportation if requested by the Liaison(s) and will be reimbursed for labor in accordance with the following:

Year 1	\$15.84 per officer/ per hour
Year 2	\$15.84 per officer/ per hour
Year 3	\$15.84 per officer/ per hour

Plus expenses and mileage determined in accordance with the rules set forth in the State Comprehensive Travel Regulations.

On each July 1 during any renewal period, such reimbursement rate shall be increased by an inflator of 2.8%; provided, however, the reimbursement rate shall remain the same and shall not be increased if the Consumer Price Index (all cities/all services) for the immediately preceding Fiscal Year was 0% or less.

Section 5.10. Inmate Commissary.

(a) Hardeman County will provide a commissary for Inmates which shall supply those items approved by the Department in writing.

(b) Hardeman County may not offer for sale to Tennessee Inmates Commissary items which are prohibited by Departmental policy.

(c) Commissary items shall be sold at a reasonable price subject to the prior written approval of the Commissioner or his/her designee. Price mark-ups shall be no more than allowed in the TDOC institutions. All profits derived from the Commissary operation shall be retained by Hardeman County. Hardeman County shall utilize the statewide Inmate Trust Fund System for all Commissary transactions.

Section 5.11. Mail. Hardeman County will provide pick up and delivery of Inmate mail in compliance with the Standards. Hardeman County will furnish first class postage to Indigent Inmates for the mailing of legal documents to courts or legal counsel and otherwise as required by the Standards.

Section 5.12. Religion. Hardeman County will designate adequate space within the Facility for religious services and provide religious programs and/or religious services in compliance with the Standards.

Section 5.13. Inmate Grievance Procedure. Hardeman County will utilize Departmental policies regarding Inmate grievance procedure and the Department's system for maintaining grievance related records, as said policies and/or system may be revised during the term of this Contract.

Section 5.14. Security.

(a) Hardeman County shall provide Inmate security in accordance with the Standards at all times in the Facility, and while Hardeman County is transporting Inmates and all other times unless relieved of said obligation by the Commissioner in writing.

(b) At a minimum, Hardeman County shall provide security, perimeter control, Facility control, control center function, post orders, security patrols, security inspections, counting procedures, key control, procedures for search and control of contraband, tool control, escape plan detection, appropriate use of security equipment, use of restraints, use of firearms and chemical agents, tactical unit procedures, inspections, housing unit assignment plans, and internal and external movement control procedures and periodic shakedowns.

Section 5.15. Visitation. Hardeman County shall designate physical space and provide appropriate security and supervision for indoor and outdoor visitation in accordance with applicable Standards, no less frequently than at comparable Department facilities.

Section 5.16. Access to Courts. Hardeman County shall provide Inmates with

constitutionally required access to the courts by use of a law library, persons trained in the law or any combination thereof.

Section 5.17. Inmate Discipline.

(a) Hardeman County shall implement and strictly adhere to Department Inmate disciplinary rules and procedures as they may be amended by the Department.

(b) Hardeman County agrees that no Inmate will be disciplined except as in accordance with this Section.

(d) Hardeman County shall use the present or any future system established by the Department for recording disciplinary information.

Section 5.18. Use of Force. Notwithstanding any provision contained herein to the contrary, no use of force shall be allowed by Hardeman County except as in accordance with the Standards.

Section 5.19. Sentence Reduction Credits. Hardeman County shall submit sentence credit reports to the Liaison(s) monthly with the decision on awarding or forfeiture of sentence credits remaining solely with the Department.

Section 5.20. Sentence Computation. Hardeman County shall provide the State with essential data and information relating to sentence computation. All sentence computations, including calculation of Inmate release and parole dates, shall be done by the Department and copies furnished to Hardeman County and Inmates. All other record keeping functions (e.g. posting of disciplinary reports, filing, updating Inmate assignments, custody levels, etc.) are the responsibility of Hardeman County.

Section 5.21. Records and Reports.

(a) Hardeman County shall provide for comprehensive operations and Inmate record and reporting systems for the Facility in compliance with the Standards and Department policy including the automated Inmate records and reporting system operated by the Department which shall include but not be limited to the following:

- (1) Inmate institutional records on each Inmate including, but not limited to, personal inventory receipts, disciplinary action reports, incident reports, release information, classification and counseling records, dental, psychiatric and medical records.
- (2) documentation regarding complaints against Hardeman County's staff, the number and nature of violent or other disruptive incidents among Inmates or against staff, the number and nature of disciplinary actions against staff, the rate at which Inmates complete

programs successfully, the number of Inmates productively active and the level of production;

- (3) identification of all Inmates at the Facility and their actual assigned physical location within the Facility;
- (4) identification of Facility staff and other authorized persons who have direct access to Inmate records; and
- (5) provision of all reports requested by the State in writing for monitoring or evaluation of the Contract or any court-ordered compliance.

(b) The system shall adhere to the Standards governing confidentiality.

(c) Hardeman County shall maintain a permanent log in addition to shift reports that record routine and emergency situations. Each shift shall maintain records of pertinent information regarding individual Inmates and groups of Inmates. These records shall be compiled daily and reviewed by appropriate supervisory staff.

(d) All computer equipment and communication lines including upgrades necessary to interface with the Department's Tennessee Offender Management Information System (TOMIS) will be provided by the Department at no cost to Hardeman County.

(e) Hardeman County will be required to incorporate into its operation all new systems developed to report and track Inmate record information designated by the Commissioner.

(f) Upon request, all records, reports and documents will be made available immediately to the Contract Liaison for review. At the conclusion of the Contract, all records shall be turned over to the Department.

(g) Hardeman County shall prepare and submit to the Contract Liaison such reports as are required by the State. Unless otherwise notified in writing by the Contract Liaison, these reports include the following, which must be submitted on a monthly basis:

- (1) Unusual Occurrence Reports
- (2) Incident Reports
- (3) Disciplinary Reports
- (4) Medical Summaries

(5) Program Activity Summaries

(6) Inmate Grievances

(h) Hardeman County shall promptly notify the Contract Liaison whenever an Inmate leaves the Facility on court order.

Section 5.22. Escapes and/or Number of Escapees. Hardeman County shall exercise its best efforts to prevent escapes from the Facility. If the frequency of escapes (an escape is defined as one prisoner vacating the premises, so that five prisoners escaping in a group will be considered five escapes) or nearly successful attempted escapes and/or number of escapes shall be in excess of the frequency from comparable State facilities without good cause or shall exhibit a disregard for the safety of the general public, the State may terminate this Contract for cause. Said determinations shall be within the sole judgment of the Commissioner.

Section 5.23. Policy Audit. Hardeman County shall audit, using personnel approved by the State independent from Hardeman County and its subcontractors identified in this contract, at least yearly, implementation of applicable Department and State policies and procedures. Audit forms showing full, partial and noncompliance with every key area of these policies and procedures shall be developed and copies made available to the Liaison(s) no later than six (6) months after the Effective Date of this Contract. Copies of completed audit forms shall be forwarded to the Liaison(s) for review upon completion of each audit, together with a report outlining the steps to be taken to correct any deficiencies. In the event the audit(s) reveals a Breach (as defined in Section 10.1) by Hardeman County, the State shall have available the remedies set out in Article 10.

Section 5.24. Inmate Work.

(a) Any minimum restricted or higher custody Inmate working outside the secured perimeter must be under armed supervision.

(b) Hardeman County will be allowed to use Inmate labor for Facility operations and maintenance to the same extent Inmate labor is utilized in other State facilities pursuant to State policy and not for the benefit of Hardeman County or its subcontractors. Hardeman County shall submit Inmate job descriptions for State's written approval before assigning jobs to Inmates. Job assignments and re-assignments shall be made by Hardeman County only after the job description has been approved in writing by the State. No Inmate shall ever be placed in a position of authority or control over another.

(c) Inmates shall not perform services or produce goods for use outside the Facility except upon written consent of the Commissioner.

(d) Hardeman County shall be responsible for establishing and administering a compensation program at its expense, which will include Inmate pay based on the Standards. The

Department shall provide Inmates with sentence reduction credit.

Section 5.25. Industries. An industries program may be established at the Facility during the term of the Contract upon the mutual written agreement of the parties. In the event an industry program is established pursuant to this section, unless otherwise agreed Hardeman County shall be responsible for all associated costs, including but not limited to security.

Section 5.26. Vocational and Academic Training. Hardeman County shall furnish vocational and academic training as set forth in the Standards.

Section 5.27. Classification and Case Management.

(a) Hardeman County shall comply with Departmental policies regarding classification and reclassification services.

(b) Hardeman County shall be required to maintain classification information which conforms to the Department's system.

Section 5.28. Inmate Trust Fund. Hardeman County shall maintain an Inmate trust fund according to departmental policies and the Standards.

Section 5.29. Sanitation and Hygiene. Hardeman County shall provide for sanitation and hygiene in accordance with the Standards.

Section 5.30. Computer Software. The State shall retain proprietary rights to all State provided software utilized in connection with this Contract.

Section 5.31. Inmate Drug Testing. Hardeman County will conduct drug tests in accordance with Departmental Policy 506.21 and will be responsible for all costs associated with the testing. Selection of Inmates to be tested at random will be the responsibility of the Department.

Section 5.32. Assumption of Control.

(a) Hardeman County shall review and comment on the Department's plan for assumption of control within fifteen (15) days following its receipt by Hardeman County. The plan will provide for the orderly transfer of inmates from Hardeman County to the Department under conditions of termination. Hardeman County agrees to implement said plan upon written notice from the Commissioner.

(b) Said plan will also provide for emergency assumption of control by the Department of whole or part of the Facility under conditions of natural disaster, in the event of riot or insurrection or other emergency circumstances wherein the Commissioner deems it necessary for the State to assume temporary control of the Facility. The Commissioner shall determine whether and to what extent an emergency circumstance exists in his sole discretion.

The plan shall address Hardeman County's resumption of control after the circumstances causing the emergency assumption has ended. The plan will provide for the transfer of all records to the Department.

Section 5.33. ACA Accreditation. Hardeman County shall maintain, at its expense, ACA accreditation of the Facility unless prevented from doing so by Departmental policies or action or inaction by the State.

Section 5.34. Inmate and Staff Identification. Hardeman County shall comply with the procedures in the Standards for Inmate and staff identification including but not limited to, uniforms, fingerprinting and photographing.

Section 5.35. Inmate Personal Property Space. Hardeman County shall follow Departmental policy on Inmate personal property.

Section 5.36. Library. A general Inmate library will be provided and maintained by Hardeman County in accordance with the Standards.

Section 5.37. Volunteer Services. Hardeman County shall implement a plan to provide for volunteer service programs in accordance with the Standards. At a minimum, Hardeman County shall provide for supervision and monitoring of the program and security background checks for volunteer applicants.

Section 5.38. Release Payments for Inmates. Hardeman County shall follow Departmental policy regarding transportation for discharged Inmates and discharge payments to said Inmates. Hardeman County will be responsible for such payments.

Section 5.39. Space for Board of Probation and Parole/Institutional Parole Officer. Hardeman County shall provide a hearing room for the Board of Probation and Parole two (2) days per month or as otherwise requested by the Board. The hearing room shall be large enough to comfortably accommodate three (3) Board members and fifteen (15) visitors. Hardeman County shall provide local telephone service and furniture for the hearing room. Hardeman County shall also provide furnished office space five (5) days each month, or as otherwise requested by the Board, for the institutional parole officer.

Section 5.40. Post Conviction Actions. The State will defend any post conviction action, including appeals and writs of habeas corpus, by any Inmate challenging the underlying judgment of conviction or the administration of the sentence imposed.

Section 5.41. Legal Actions Against Contractor, Agents and Employees. The State is not obligated to provide legal representation for any non-state-employee or official in any litigation arising from or based on this Contract, including but not limited to post conviction actions, or any actions brought under the United States Constitution or the Federal Civil Rights Act.

Section 5.42. Incorporation by Reference.

(a) All plans, manuals and procedures required by this Contract to be submitted by Hardeman County to the State are made a part of this Contract upon approval by the State and all such plans, manuals and procedures are incorporated herein by this reference.

(b) The absence of this paragraph in any other Contracts between Contractor and State shall not be construed as an indication that plans, manuals and procedures related to those contracts are not incorporated and included in those contracts.

**ARTICLE 6
COMPENSATION AND ADJUSTMENTS**

Section 6.1. Operating Per Diem Payments.

(a) The State shall make Operating Per Diem Rate payments to Hardeman County based on the number of Inmates actually at the Facility for the service period the Service Commencement Date through September 30, 2005, provided however, that after May 31, 2003, the State agrees to pay at least the Operating Per Diem Rate for 90% of State Bed Days, regardless of the number of Inmates actually at the Facility.

Operating Per Diem Rate

Inmate Bed Population	Per Diem Rate
1 - 1536	\$ 36.54

The operating per diem rate shall be recalculated at the beginning of each Fiscal Year during the term of the contract and any renewal periods. On each July 1, the operating per diem shall be increased by an inflator rate of 2.8%; provided, however, the operating per diem rate shall remain the same and not be increased if the percent change in the Consumer Price Index (CPI) (all cities/ all services) in the immediately preceding Fiscal Year was 0% or less; however, regardless of the CPI such inflator rate adjustment of 2.8% shall be granted for any fiscal year within the term of the contract and any renewal periods should the state employee workforce receive a general cost of living increase.

(b) (1) Hardeman County shall make available to the State beginning on the Service Commencement Date, the following bed schedule:

Beds Availability Time-Line

<u>Date</u>	<u>Beds Available</u>	<u>Total Population</u>
Oct. 16 – Nov. 30, 2002	350	350
Dec. 1 – Dec. 31, 2002	218	568
Jan. 1 – Jan. 31, 2003	218	786
Feb. 1 – Feb. 28, 2003	150	936
Mar. 1 – Mar. 31, 2003	200	1,136
Apr. 1 – Apr. 30, 2003	200	1,336
May 1 – May 31, 2003	200	1,536

- (2) The State may change the number of State Bed Days that Hardeman County makes available to it before or after Service Commencement Date from time to time by giving Hardeman County 180 days advance written notice of the change. The State may lower or raise the State Bed Days in its sole discretion, for any reason or no reason including, but not limited to, the State's dissatisfaction with any management subcontract. Notwithstanding any provisions herein to the contrary, Hardeman County shall make available to the State all or part of the Facility's capacity upon notice described herein and shall enter into no agreement to the contrary.
- (3) Any beds not required to be made available to the State by this Contract may be filled with Inmates from other jurisdictions. Such Inmates shall be kept completely separate in all assignments including, but not limited to, housing and programming assignments. Hardeman County shall notify the Commissioner and the Select Oversight Committee on Corrections of the source and nature of inmates from other jurisdictions proposed to be housed at the facility. Said notice shall be provided at least 30 days prior to receipt of such inmates at the institution. Within ten (10) days of receipt of such notice, the Commissioner shall notify Hardeman County of any objection to the proposal. If Hardeman County decides to proceed with the housing of such inmates at the Facility over such objection it shall so notify the Commissioner prior to receipt of the inmates. The State shall have thirty (30) days from receipt of such notice to change, at its discretion, the number of State Bed Days that Hardeman County makes available to it. The State shall provide at least ten (10) days notice of the change in State Bed Days. The notice requirement is an exception to the 180-day notice required by Section 6.1 (b)(2).

(c) No Operating Per Diem will be paid for Inmates housed and treated at a State departmental Facility. Subject to the subsection (a) above, the Operating Per Diem Rate payment will be made only for Inmates actually incarcerated at the Facility, except the Operating Per Diem Rate payment shall be made for any Inmate hospitalized at a non-State departmental Facility during the period when the contractor is responsible for said hospitalization expense. No Operating Per Diem shall be paid for any Inmate out on court order except as provided in Section 6.1(a).

(d) Inmate Days and billings will be determined by the Midnight count of each day, which count shall be periodically reviewed and signed by the Liaison(s).

Section 6.2. Bed Allocation Per Diem Payments. In addition to the Operating Per Diem Rate payments, the State shall make monthly Bed Allocation Per Diem payments. From the Service Commencement Date until May 31, 2003, the Bed Allocation Per Diem Rate shall be \$5.96 per Inmate Day. Thereafter, the Bed Allocation Per Diem Rate shall be \$5.96 per Bed Day. The Bed Allocation Per Diem Rate shall not be increased during the contract term or any renewal terms.

Section 6.3. Availability of Facility. Should Hardeman County fail to have the Facility prepared to accept Inmates on the Service Commencement Date, the State, in its sole discretion, may terminate the Contract. Said termination shall not be deemed a breach by the State.

Section 6.4. Billings.

(a) Payment on monthly invoices shall be in arrears and shall be due within thirty (30) days from receipt of the invoice and shall be made through the State's automated clearinghouse wire transfer system. Hardeman County shall complete and sign an "Authorization Agreement for Automated Deposits (ACH Credits) Form". All payments to Hardeman County under this or any other contract, shall be made through the State's automated clearinghouse wire transfer system. Hardeman County shall not commence work or invoice the State for services until it has completed this form and submitted it to the State. The debit entries to correct errors authorized by the "Authorization Agreement for Automatic Deposits Form" shall be limited to those errors detected prior to the effective date of the credit entry. The remittance advice shall note that a correcting entry was made. All corrections shall be made within two (2) banking days of the effective date of the original transaction. All other errors detected at a later time shall take the form of a refund or, in some instances, a credit memo if additional payments are to be made.

(b) The payment of an invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the services provided nor as an approval of any of the costs invoiced therein. The County's invoice shall be subject to reduction for amounts included in any invoice or payment made which are determined by the State, on the basis of audits conducted in accordance with this Contract, not to have been made in conformance with this Contract. Any payment shall be reduced for overpayments, or increased for under payments, on subsequent invoices.

(c) With the State's written approval, Hardeman County may designate in writing an entity to receive payment on its behalf.

Section 6.5. Billing Disputes. If the amount to be paid to Hardeman County is disputed by the State, then the State, on or before the date the invoice is payable, shall advise Hardeman County of the basis for the dispute and, in the manner provided above, pay the amount of such invoice which is not in dispute.

Section 6.6. Compensation Adjustment for Change of Services.

(a) The parties recognize that each has entered into this Contract based upon the Standards in effect as of Effective Date of Contract. Hardeman County agrees to be bound by any applicable Standard change and said change shall not affect the validity of this Contract. If a change occurs in the applicable Standard, either party may notify the other in writing if it is believed said change shall affect the services delivered by Hardeman County. The Commissioner shall make the final, binding decision regarding whether a change has occurred in an applicable Standard and whether said change affects the services rendered by Hardeman County. Any adjustment in the Operating Per Diem Rate due Hardeman County shall be determined in accordance with subsection (b). In no event shall the Bed Allocation Per Diem Rate be revised.

(b) Within thirty (30) days of the notice required in subsection (a) above, Hardeman County shall provide the State with the proposed adjustment in the Operating Per Diem Rate and appropriate documentation in support thereof. The Commissioner shall decide whether and to what extent an adjustment in the Operating Per Diem Rate is appropriate. In the event the proposed adjustment decreases the Operating Per Diem Rate, then the Commissioner may agree in writing to reduce said Operating Per Diem Rate; provided, however, in the event the proposed adjustment increases the Operating Per Diem Rate, then the Operating Per Diem Rate may be increased only by amendment to this Contract as described in Section 13.14.

Section 6.7. Failure to Agree on Billing Dispute or for Additional or Reduced Services.

(a) In the event Hardeman County disagrees with the State's failure to pay a disputed amount under Section 6.5, disagrees with the determination of the Commissioner regarding whether and to what extent an adjustment in the Operating Per Diem for change in services is appropriate under Section 6.6, disagrees with the Commissioner's determination under Section 4.9(f), or disagrees with any other aspect or amount of payment made by the State then Hardeman County shall submit a claim and the grounds for said disagreement in writing to the Commissioner within thirty (30) days of the date the State either makes partial payment of the disputed bill or refuses the disputed bill in its entirety. Failure of Hardeman County to submit said claim and grounds to the Commissioner in writing within the time period described herein shall be an absolute waiver of said claim. The State shall be afforded a sixty (60) day period in which to effect a cure or take reasonable steps to effect a cure.

(b) In the event Hardeman County timely provides the notice described in subsection (a), then Hardeman County may file a claim against the State before the appropriate

forum in Tennessee with jurisdiction to hear said claim. Failure by Hardeman County to file a claim before the appropriate forum in Tennessee with jurisdiction to hear said claim within one year of the notice described in subsection (a) shall operate as a waiver of said claim in its entirety. It is agreed by the parties that this provision establishes a contractual period of limitations for any claim brought by Hardeman County. Neither this Section nor any other provision of this Contract creates or expands jurisdiction of any court or commission over the State.

Section 6.8. Failure to Pay Health Care Providers. Hardeman County shall be responsible for making payments to the hospital utilized by the State's Primary Health Care Contractor and to physicians providing services at such hospital within ninety (90) days of the invoice date for services to any Inmate assigned to the Facility for which Hardeman County is financially responsible under the provisions of section 5.7, provided such charges are not being disputed by Hardeman County. When any such undisputed debt is more than ninety (90) days old, the State reserves the right to pay the provider and deduct the amount from payments due from the State to Hardeman County hereunder.

ARTICLE 7 SUBCONTRACTING

Section 7.1. Subcontractors.

(a) It is acknowledged and agreed by the State and Hardeman County that the duties and the obligations of Hardeman County hereunder may be performed in whole and/or in part from time to time by subcontractors. Any performance by a subcontractor shall constitute and be deemed performance by Hardeman County hereunder, provided, however, performance by a subcontractor shall not release Hardeman County of its obligation hereunder. Hardeman County is utilizing HCCFC-Two for the operation of the prison. HCCFC-Two has contracted with Corrections Corporation of America to manage the Facility and a copy of said contract shall be delivered to the State for approval prior to execution of this contract. Hardeman County shall not modify said contracts without the prior written approval of the State; said approval shall not be unreasonably withheld. Said contracts shall include a provision requiring the subcontractor to provide the Commissioner with a copy of its previous fiscal year's audited annual financial statements on or before April 1 of each year during the term of this contract. Hardeman County shall not enter into any other subcontract or modification, for operation and management of the prison without obtaining the prior written approval of the State. Hardeman County agrees to place in its subcontracts, a provision allowing the State of Tennessee access to the Facility, Inmates, personnel and records regarding the performance of any contractor or subcontractor for monitoring purposes. Any such provision shall include, but not be limited to, the same access as provided in Article 4 above.

(b) Hardeman County shall provide that all subcontractors warrant that no part of the total subcontract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant in connection with any work contemplated or performed subject to the subcontract.

(c) Hardeman County shall provide that all subcontractors agree that no person on the grounds of handicap, disability age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance under the subcontract or in the employment practices of the subcontractor. The subcontractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notice of non-discrimination.

(d) Hardeman County shall provide that all subcontracts for the performance in whole and/or part of the duties and obligations of Hardeman County shall contain provisions for the maintenance or documentation and auditing similar to section 13.1 herein.

(e) Hardeman County shall provide that its contracts with HCCFC-Two and Corrections Corporation of America referenced in subsection (a) and their successors and assigns, and any future contract for the management of the facility, include the following provision:

Hold Harmless. The parties acknowledge and agree that the State of Tennessee is a third-party beneficiary under this Contract because the Contractor will be performing services that will benefit the State of Tennessee and on which the State of Tennessee is relying pursuant to its separate contract with Hardeman County. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action, including reasonable attorneys fees, which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, bad faith, negligence, or willful misconduct on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give Hardeman County and the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

ARTICLE 8 INSURANCE AND DEFENSE OF CLAIM

Section 8.1. Types of Insurance. Hardeman County and/or one of its management

subcontractors shall maintain and pay for insurance substantially as described in Exhibit B. The State shall be listed as an additional insured.

Section 8.2. Defense/Immunity. Notwithstanding any provision contained herein to the contrary, the State does not waive any immunity defenses which may exist by operation of law, including, but not limited to, limitations on the amount of damages which may be awarded or paid.

ARTICLE 9 STAFFING/EMPLOYEES

Section 9.1. Personnel. Notwithstanding any provision contained herein to the contrary, Hardeman County shall provide adequate staff to fulfill its obligations under this Contract.

Section 9.2. Staffing Pattern/Security Post Assignment.

(a) Hardeman County shall implement a staffing pattern approved by the State in writing prior to service commencement date.

(b) The approved staffing pattern shall be maintained with the positions filled. Unless otherwise approved in writing by the Commissioner with regard to a particular position, security staff vacancies shall be filled within thirty (30) days and all other vacancies shall be filled in forty-five (45) days; provided, however, that during the period of any vacancy, the services associated with said position shall be provided by Hardeman County unless the Commissioner has agreed in writing to the contrary with a reduction in the per diem rate as defined in Section 6.6. A position shall not be considered vacant if the staff person is absent from the Facility under the FMLA, work comp, USERRA or due to jury duty; provided, however, that during the period of any such absence, the services associated with said position shall be provided by Hardeman County unless the Commissioner has agreed in writing to the contrary with a reduction in the per diem rate as defined in Section 6.6. A pattern of transfers of staff between the Whiteville Facility and the Hardeman County Facility and/or shifting of staff between positions at the Facility for the purpose of satisfying the time period for filling vacancies shall not occur.

(c) Hardeman County shall implement a security post assignment schedule approved in writing by the State. Said schedule shall detail by day and shift the security positions and hours of work. Said security post assignment schedule shall include designation of critical posts. Hardeman County shall also implement a plan regarding the process for managing the security post assignment schedule including but not limited to how the posts may be created and/or eliminated.

(d) Hardeman County shall develop and submit to the Liaison on or before the fifteenth (15th) of each month its written monthly post assignment schedule for the following month.

(e) Any revisions to the staffing pattern and/or security post assignment require the prior written approval of the State. Hardeman County shall submit monthly staffing reports on

or before the fifteenth (15th) of each month describing for the proceeding month whether and to what extent Hardeman County has complied with the staffing pattern, security post assignment, and monthly post assignment. Staffing patterns are determined by security and program requirements and associated workloads. If changed circumstances modify those requirements or workloads Hardeman County and/or the State will review those changed circumstances and the State in its sole discretion will determine whether any changes in staffing requirements are necessary. If the change in staffing requirements is made necessary by a change in an applicable Standard, the provisions of Section 6.6 apply.

Section 9.3. Job Descriptions.

(a) Hardeman County shall provide as part of the operations plan required by Section 5.4, written job descriptions for each position in the staffing pattern including but not limited to job title, responsibility and required minimum experience and education.

(b) Any revisions or modifications of the job descriptions require the prior written approval of the State.

Section 9.4. Personnel Records. On or before the fifteenth (15th) day of each month, Hardeman County shall submit a report to the Liaison(s) providing the following information:

(a) the name of employees hired, indicating position;

(b) the name of each employee whose employment has been terminated for whatever reason whether voluntarily or involuntary (including reason for termination), and position.

Section 9.5. Background Checks.

(a) Prior to completion of pre-service training, applicants shall be subjected to a thorough background investigation, including criminal, employment, and medical histories. The background investigation for applicants for correctional officer positions shall also include psychological history, and such applicants shall be required to be certified by a qualified mental health professional as being free from any disorder as described, in the current edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association the would, in the professional judgement of the examiner, impair the subject's ability to perform any essential function of the job or would cause the applicant to pose a direct threat to safety. Criminal and employment histories must go back a minimum of five (5) years. Said background investigations shall be available to the State upon request.

(b) The Warden shall immediately cause a "Criminal History Request" from the National Crime Information Center (NCIC) to be completed on each individual hired to work at the Facility. The request shall be forwarded to the State and processed in accordance with procedures established by the Commissioner. In no instance may an employee be assigned to a post until the NCIC check has been completed; however, the employee may participate in preservice training while the check is in process. The State shall notify the Warden whether or not

the employee is cleared for further consideration of employment. The criminal history obtained from NCIC or FBI may be used solely for the purpose requested.

(c) A Security Addendum required by Title 28, Code of Federal Regulations Part 20, is appended hereto as Exhibit C and incorporated by reference herein. The security addendum shall be included in any subcontract for management of the facility.

Section 9.6. State Assistance in Training.

(a) During the term of this Contract, Hardeman County shall send a representative to participate in periodic meetings regarding departmental activities and shall send a representative to sessions in which relevant policy modifications are being discussed or presented.

(b) Hardeman County shall receive written notice of the time, place and agenda of the meetings or sessions described in subsection (a) at the same time State employees are provided notice.

(c) Said meetings or sessions shall be held within the State, and Hardeman County shall bear any and all expense associated with its representative being present.

(d) The Department shall supply Hardeman County with technical assistance, consultation and informational support consistent with that provided other comparable institutions in accordance with the Standards; provided, however, said support shall consist solely of advice and consultation.

Section 9.7. Training. Hardeman County shall provide orientation and training programs for all employees in accordance with the Standards. All costs incurred for said orientation and training programs shall be borne by Hardeman County. The Liaison(s) shall be permitted to review training curricula and other training-related records and to audit training classes at any time.

Section 9.8. Drug Free Work Force. Hardeman County shall at all times maintain a drug free work force and shall implement a plan for maintenance of a drug free work force and the employee assistance program.

ARTICLE 10 CONTRACT COMPLIANCE

Section 10.1. Breach.

(a) A party shall be deemed to have breached this Contract if any of the following occurs:

- (1) failure to perform in accordance with any term or provision of this Contract in whole or part;

- (2) any act prohibited or restricted by this Contract.

For purposes of this Article, subsections 1 and 2 shall hereinafter be referred to as "Breach."

(b) In the event of a Breach by Hardeman County, the State shall have available the following remedies as described further herein:

- (1) actual damages and any other remedy available at law or equity; or
- (2) Liquidated damages against the management subcontractor(s); and/or
- (3) Termination of this Contract.

(c) In the event of Breach by Hardeman County, the Commissioner and/or his written designee shall notify Hardeman County in writing and provide a reasonable period to cure. Said cure period shall be forty-five (45) days or such other time period as may be specified by the Commissioner and/or his or her written designee. In the event Hardeman County disagrees with the State's or Department's determination of Breach or period to cure, Hardeman County shall notify the Department in writing; provided, however, any appeal to the Department shall not toll or otherwise affect the period to cure. The decision by the Department shall be final and binding, except this sentence shall not apply to the exercise of the State's option to purchase as defined in Section 10.1(d). In the event Hardeman County fails to cure the Breach within the time period provided, then the State shall have available any and all remedies described herein. This subsection regarding notice and opportunity to cure shall not be applicable in the event of successive or repeated Breaches of the same nature, or in the event the Liaison(s) or Commissioner invokes the immediate compliance provisions of Section 4.9, or in the case of a failure to have the Facility prepared to accept Inmates by the Service Commencement Date. In the event the Breach is not cured within the time period provided, the State may elect to invoke liquidated damages. Said liquidated damages shall commence on the date the cure period expires, provided, however, if the Commissioner determines that the management team of Hardeman County's subcontractors, including but not limited to HCCFC-Two and CCA, has concealed or misled the State concerning the Breach, the liquidated damages shall commence on the date of the Breach and notice shall not be required. For purposes stated herein, management team is defined as consisting of persons in the rank of shift supervisor or above.

(d) Hardeman County shall provide that its management subcontract(s) with Corrections Corporation of America (CCA) include the following:

- (1) The parties acknowledge and agree that the State of Tennessee is a third-party beneficiary under this Contract because CCA will be performing services that will benefit the State of Tennessee and on which the State of Tennessee is relying pursuant to its separate contract with Hardeman County. The State shall have the

conditional right to exercise in writing an option to purchase from CCA the Facility and personal property used in connection with the Facility for the book value purchase price based on the methodology described below at any time during the term of this Agreement.

- (2) The conditions under which the State can exercise its option to purchase are as follows. (a) If the management subcontractor(s) files bankruptcy, is put into bankruptcy by its creditors, or gives 30 days notice that it intends to file bankruptcy (hereinafter "Financial Breach"). Notwithstanding anything to the contrary contained herein, the parties also agree that the option to purchase is activated immediately and there is no opportunity to cure for a Financial Breach. (b) If the management subcontractor(s) fails to provide for the basic nutritional, medical, security and safety needs of inmates such that the inmates are neglected, abused or deprived of their constitutional rights and the management subcontractor(s) has demonstrated the inability to perform its obligations under this agreement (hereinafter "Operational Breach").

In the event of an Operational Breach, the State shall provide written notice to the Management Subcontractor of a thirty-day period to cure. If the Operator fails to correct the Operational Breach identified in the notice within the thirty-day period (or a longer period if such is prescribed by the State), the State shall have the right to exercise the purchase option in accordance with this Section. If the breach cannot be cured within thirty (30) days after notice but such breach can be cured within an additional thirty days, and Management Subcontractor has been working in good faith to cure the breach during the first thirty days, the State shall extend the cure period for an additional thirty days.

The cure period is only applicable to the option to purchase. The cure period in this provision is not cumulative to any other cure period provided in this Agreement. Any and all other remedies and cure periods in this Agreement, however, may be exercised by the State for the occurrence of any breach that may also constitute an Operational Breach at the same time the cure period for the option to purchase is in effect.

In the event a notice of termination for any breach and a separate notice of exercise of the option to purchase (activating a 30-day period to cure) occur simultaneously or contemporaneously, the option to purchase will survive any termination of the Agreement.

- (3) Upon the activation of the option to purchase, the parties agree that the State shall have the right to inspect the Facility and personal property during reasonable business hours at a time and date mutually acceptable to the parties for the purpose of determining whether to exercise the option.

The book value purchase price for the option to purchase shall be equal to the depreciated book value of all real and personal property of the Facility as of the end of the most recent calendar month immediately prior to the closing date the State's purchase. The depreciated book value shall be calculated by the subcontractor (Corrections Corporation of America) in accordance with generally accepted accounting principles. The State shall have the right to audit the depreciated book value as calculated by the subcontractor. The depreciated book value shall include all future expenditures made for real or personal property of the Facility, capitalized and depreciated in accordance with generally accepted accounting principles. As of June 30, 2002, the depreciated book value of the Facility's real and personal property, as reported in the subcontractor's accounting records, was \$48,895,552. The subcontractor is depreciating the cost of real and personal property on a straight-line basis using a fifty year life for buildings and useful lives ranging from five to twenty years for all other real and personal property.

The purchase price shall be applied to pay off any encumbrances or debt against the Facility and personal property, if necessary.

- (5) Upon the exercise of such option, CCA shall deliver or cause to be delivered, at its own expense, marketable, unencumbered title to the Facility and personal property, as built drawings of the Facility together with plans and specifications, an assignment of all warranties on the Facility and personal property, and a title insurance policy in form and substance acceptable to the State.

If not terminated previously, this Agreement shall terminate upon transfer of title to the State. At the State's request, all subcontracts required to be approved under Article 7 of this Contract in effect at the time the option is exercised shall be assignable to the State, but the State is not obligated to accept assignment of any such contracts.

- (6) The parties acknowledge and agree that the intent of these provisions is to protect the State regarding its responsibility to house

State prisoners in the event Hardeman County and/or its management subcontractor(s) are unable to perform their obligations under this Agreement. Further, it is the intent of the parties that should the management subcontractor(s) file bankruptcy, be put into bankruptcy by its creditors or give 30 days notice that it intends to file bankruptcy, the parties intend that this Agreement continue and be assumed as an executory contract because it would benefit the debtor-subcontractor's estate as the continuation of an income producing contract, and such assumption would be the exercise of reasonable business judgment.

Section 10.2. State Breach.

(a) In the event of a Breach by the State, Hardeman County shall notify the State in writing within thirty (30) days of any Breach by the State. Said notice shall contain a description of the Breach. The State shall be afforded a forty-five (45) day period in which to effect a cure or in which to take reasonable steps to effect a cure; provided, however, that if the alleged Breach concerns the State's failure to make payment under this Contract, the State shall have sixty (60) days after the notice to effect a cure unless the payment is the subject of a dispute between the parties.

(b) Failure by Hardeman County to provide the written notice described in subsection (a) shall operate as an absolute waiver by Hardeman County of the State's Breach.

(c) With the exception of the provisions contained in subsection (f) herein, in no event shall any Breach on the part of the State excuse Hardeman County from full performance under this Contract.

(d) In the event of Breach by the State, Hardeman County may bring an action in the forum with appropriate jurisdiction provided, however, failure by Hardeman County to give the State timely written notice and opportunity to cure as described in this Section operates as a waiver of the State's Breach.

(e) Failure by Hardeman County to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one year of the date the timely notice described in subsection (a) shall operate as a waiver of said claim in its entirety. It is agreed by the parties that this provision establishes a contractual period of limitations for any claim brought by Hardeman County.

(f) In the event the State fails to make payment due under this Contract within the cure period specified herein and the amount due exceeds one hundred thousand dollars (\$100,000), Hardeman County may terminate the Contract upon ninety (90) days prior written notice to the Commissioner, provided, however, Hardeman County may terminate this contract only upon the State's failure to pay an amount which is not in dispute.

(g) In the event the provisions of this Article are in conflict with the provisions of Section 6.7, Section 6.7 shall control.

Section 10.3. Liquidated Damages.

(a) Consistent with the provisions of Section 10.1(c) in the event of a Breach described in Exhibit D, the State may direct Hardeman County to withhold from its subcontractors, including but not limited to HCCFC-Two and CCA as liquidated damages the amounts designated on Exhibit D. In the event the State directs a withhold of liquidated damages from a subcontractor(s), the State shall not owe Hardeman County a corresponding amount. Hardeman County agrees that it shall cause all subcontracts to contain provisions whereby the liquidated damages may be assessed against said subcontractor(s) in accordance with this Article.

(b) The State shall notify Hardeman County in writing of the Breach and the amounts to be withheld as liquidated damages.

(c) Liquidated damages shall be assessed in conformance with Section 10.1(c).

(d) The parties agree that due to the complicated nature of the obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach designated in Exhibit D as said amounts are likely to be uncertain and not easily proven. Hardeman County hereby represents and covenants that it has carefully reviewed the amounts contained in Exhibit D and agrees that said amounts are the liquidated damages resulting from negotiation between the parties, represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach by subcontractor, and are a reasonable estimate of the damages that would occur from a Breach by subcontractor.

(e) It is hereby agreed between the parties that the liquidated damages assessed against subcontractors represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Hardeman County and do not include:

- (1) any injury or damage sustained by a third party and
- (2) any damage sustained to the Facility or property located therein as a result of Hardeman County's Breach.

(f) The State may continue to direct a withhold of liquidated damages or a portion thereof until Hardeman County cures the Breach or the State terminates the Contract.

(g) The State is not obligated to assess liquidated damages before availing itself of any other remedy.

(h) In the event Hardeman County disagrees with the State's assessment of liquidated damages, it may file a claim against the State before the appropriate forum in Tennessee with jurisdiction to hear the claim. In the event Hardeman County prevails on such a claim,

Hardeman County shall have an option to terminate for convenience by giving written notice to the State three (3) years in advance.

(i) The State may choose to discontinue liquidated damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Hardeman County shall receive a credit for said liquidated damages previously withheld for the same incident of Breach.

Section 10.4. Termination.

(a) In the event of a Breach by Hardeman County which is not cured as provided in Section 10.1(c) hereof, the State may terminate the Contract immediately or in stages.

(b) Hardeman County shall be notified of the termination in writing signed by the Commissioner. Said notice shall hereinafter be referred to as Termination Notice.

(c) The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that Hardeman County shall cease operations under this Contract in stages.

(d) Hardeman County agrees to cooperate with the State in the event of a termination.

Section 10.5. Termination Due to Unavailability of Funds.

(a) This Contract is subject to the appropriation and availability of State funds. The Department intends to include in its budget request to the Legislature for each Fiscal Year the payments to become due thereunder in such Fiscal Year and will use reasonable and lawful means at its disposal to secure the appropriation of money for such Fiscal Year sufficient to pay the payments thereunder coming due therein.

(b) In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to Hardeman County. Said termination shall not be deemed a breach by the State. Upon receipt of the written notice, Hardeman County shall cease all work associated with the Contract. Should such an event occur, Hardeman County shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, Hardeman County shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. The State presently intends to continue this Contract for the entire term and to pay all payments due thereunder.

Section 10.6. Termination for Convenience.

(a) The State may terminate this Contract without cause for any reason with ninety (90) days advance written notice; provided, however, the notice requirement shall not apply when the provisions of (d) hereunder are applicable. Said termination shall not be deemed a Breach.

(b) Hardeman County shall be entitled to receive compensation for satisfactory authorized services completed as of the termination date, but in no event shall the State be liable to Hardeman County for compensation for any service which has not been rendered.

(c) Upon such termination, Hardeman County shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount, except that the State shall pay for all supplies and equipment on order and not yet delivered to the Facility as of the date of termination.

(d) This Contract requires Hardeman County to submit to the State certain policies, documents and information, including, but not limited to, a written Policy and Procedures Manual pursuant to Section 5.4 and written Safety and Emergency Procedures pursuant to Section 5.6 (collectively the "Required Information"), which Required Information is subject to the State's written approval. If the State does not approve the submitted Required Information and is unable to approve any re-submitted Required Information, the State may terminate this Contract immediately without notice, penalty or cost. Said termination shall not be deemed a Breach but shall be deemed a termination of convenience. Any such approval shall be in the sole discretion of the State.

Section 10.7. Performance Bond. If the State determines a performance bond is necessary, then Hardeman County will obtain, at the State's expense, such bond acceptable to the State in form and substance.

ARTICLE 11 PROHIBITIONS

Notwithstanding any other provision of this Contract to the contrary, nothing contained herein shall be interpreted to authorize, allow or imply authority of Hardeman County to do the following:

- (a) develop or implement procedures for calculating Inmate release and parole eligibility dates;
- (b) develop and implement procedures for calculating and awarding sentence credits;
- (c) approve Inmates for furlough and work release;
- (d) approve the type of work an Inmate may perform, and the wages or sentence credits which may be given to Inmates engaged in such work; and
- (e) grant, deny or revoke sentence credits; place an Inmate under less restrictive custody or more restrictive custody; or take any disciplinary actions; provided, however, that this Section shall not prevent Hardeman County from making recommendations to the State with

respect to any of the above in conformance with State policy.

The Commissioner shall determine whether any action or proposed action violates the provisions of this Article.

ARTICLE 12 HARDEMAN COUNTY'S REPRESENTATIONS AND WARRANTIES

Section 12.1. Authorization. This Contract has been duly authorized, executed, and delivered by Hardeman County and, assuming due execution by the appropriate State officials as indicated on the signature page of this Contract and delivery by State, constitutes a legal, valid, and binding agreement enforceable against Hardeman County in accordance with its terms.

Section 12.2. No Defaults under Agreements. Hardeman County is not in default, nor is there any event in existence which, with notice or the passage of time or both, would constitute a default by Hardeman County, under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit, or other agreement or instrument to which it is a party or by which any of its properties are bound and which default would materially and adversely affect Hardeman County's ability to perform its obligations under this Contract.

Section 12.3. Compliance with Laws. Hardeman County and its appointed officials are acting in compliance with all applicable laws, rules, and regulations.

Section 12.4. No Violation of Contract. Articles of Incorporation by Bylaws. The consummation of the transactions contemplated by this Contract and its fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provision of, or constitute a default under any indenture, mortgage, deed or trust, lease, loan agreement, license, security agreement, contract, governmental license or permit, or other agreement or instrument to which Hardeman County is a party or by which its properties are bound, or any order, rule, or regulation of any court or any regulatory body, administrative agency, or their governmental body applicable to Hardeman County or any of its properties, except any such conflict, breach, or default which would not materially and adversely affect Hardeman County's ability to perform its obligation under this Contract.

Section 12.5. No Litigation. There is not now pending or, to the knowledge of Hardeman County, threatened, any action, suit or proceeding to which Hardeman County is or may be a party, before or by any court or governmental agency or body, which might result in any material adverse change in Hardeman County's ability to perform its obligations under this Contract, or any such action, suit, or proceeding related to environmental or civil rights matters; and no labor disturbance by the employees of Contractor exists or is imminent which might materially and adversely affect Hardeman County's ability to perform its obligations under this contract.

Section 12.6. Disclosure. There is no material fact which materially and adversely affects or in the future will (so far as Hardeman County can reasonably foresee) materially and adversely affect Hardeman County's ability to perform its obligations under this Contract which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to State by Hardeman County prior to the date hereof.

Section 12.7. Opinion of Contractor's Counsel. Hardeman County shall furnish to State an opinion of counsel in connection with this Contract dated as of the date of the Contract. Such opinion shall address Hardeman County's compliance with applicable law, affirm its authority to enter into this Contract, indicate that Hardeman County is not currently in litigation or have notice of litigation that could cause the Contractor not to perform the terms of this Contract except as noted expressly herein and affirm the enforceability of this Contract in accordance with its terms.

ARTICLE 13 MISCELLANEOUS

Section 13.1. Audits. Hardeman County shall maintain documentation of all charges against the State under this Contract. The books, records, and documents of Hardeman County, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit at any reasonable time and upon reasonable notice, by the State or the Comptroller of the Treasury or their duly appointed representatives. These records shall be maintained in accordance with generally accepted accounting principles. This provision shall be placed in all management subcontracts.

Section 13.2. Non-Discrimination. No person on the grounds of handicap, disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits for, or be otherwise subjected to discrimination in the performance under this Contract or in the employment practices of Hardeman County. Hardeman County shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination.

Section 13.3. Binding Nature. The State may, but shall not be obligated under this agreement to make payments hereunder until the State has received satisfactory evidence of insurance required herein and has received a Payment and Performance Bond to the extent required herein.

Section 13.4. Invalidity and Severability.

(a) In the event that any provision of this Contract shall be held to be unlawful, invalid or unenforceable, all parties agree that all other terms and conditions of this Contract shall remain in full force and effect except as specifically provided in this section.

(b) With the exception of the provisions contained in Article 10, in the event

any or all provisions of this Contract are found to be unlawful, invalid or unenforceable by the commission or court of competent jurisdiction, both parties agree that neither shall be in Breach or liable in any manner to the other for damages, costs, or expenses of any nature which the other might sustain due to said finding; provided, however, in the event said finding reduces the services rendered by Hardeman County, the State may reduce the Operating Per Diem Rate paid Hardeman County pursuant to Section 6.6 and said finding shall not excuse any other Breach.

(c) In the event a court of competent jurisdiction finds a provision(s) of this Contract to be unenforceable the Commissioner may terminate this Contract upon thirty (30) days prior written notice without penalty or liability to the State.

Section 13.5. Headings. The headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract.

Section 13.6. Terminology and Definitions. All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

Section 13.7. Interpretation and Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. Any legal proceedings against the State regarding the Contract shall be brought in the State of Tennessee administrative or judicial forum with appropriate jurisdiction. Venue shall be in Davidson County, Tennessee.

Section 13.8. Duration of Services. Hardeman County agrees that the services and programs set forth in this Contract will be maintained for the duration of the Contract period.

Section 13.9. Release. Hardeman County, upon final payment of the amount due under this Contract, releases the State, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Contract. Hardeman County agrees not to purport to bind the State to any obligation not expressly assumed herein by the State.

Section 13.10. Assignment. Hardeman County shall not assign this Contract without obtaining the prior written approval of the State. Any such assignment shall contain, at a minimum, Sections 13.1 and 13.2 of this contract.

Section 13.11. Research Projects. Hardeman County and/or its subcontractors shall not publish or disseminate any findings based on data obtained from the operation of this Contract or engage in any research projects without the prior written consent of the State.

Section 13.12. Prohibited Payment. Hardeman County warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or an official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Hardeman County in connection with any work contemplated or performed relative to this Contract.

Section 13.13. Notices. All notices shall be hand-delivered to Hardeman County or the State's Liaison(s) or sent certified mail, return receipt requested to:

State:
Commissioner
Department of Correction
4th Floor, Rachel Jackson Bldg.
320 6th Avenue North
Nashville, Tennessee 37243-0465

Hardeman County:
Hardeman County Correctional Facilities Corporation
c/o Weed, Hubbard, Berry & Doughty, PLLC
Suite 1420, 201 Fourth Avenue, North
Nashville, Tennessee 37219

The notice shall be deemed to be received on the date of the hand delivery or on the third day after mailing.

Section 13.14. Amendments. The terms and provisions of this Contract may be waived, altered, modified, amended, supplemented or revised only by written amendment which has been executed and approved by the appropriate parties as indicated on the signature page of the Contract. Neither the Liaison(s) nor any other employee or official of the State is authorized to modify, amend or waive the terms and provisions of this Contract except as provided in this Section.

Section 13.15. Waiver. No consent, waiver or excuse of any Breach of any of the terms or conditions of this Contract shall be held to be a consent, waiver, or excuse of any other or subsequent Breach, nor shall any such waiver or excuse be valid or binding unless the same shall be in writing and approved and executed by the party alleged to have granted the waiver as indicated on the signature page of this Contract.

Section 13.16. Third Party Beneficiary. Neither Hardeman County nor the State intends to create rights for any third party of the Contract and no third party beneficiary rights are created hereby. Third parties shall mean all persons except the State and Hardeman County, including but not limited to employees of Hardeman County, subcontractors of Hardeman County and Inmates located at the Facility.

Section 13.17. Laws. Hardeman County shall comply with all applicable federal, state, and local constitutions, laws, and regulations, court decisions, Court Orders, and any applicable state and federal orders in the performance of the Contract.

Section 13.18. Attorneys Fees. Hardeman County agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract and in the event the State prevails, Hardeman County shall pay all expenses of such action, including but not limited to the State's attorneys' fees and costs of all stages of the litigation.

Section 13.19. Approvals. Any policies, procedures or other documents contained or referenced in this Contract subject to the State's approval under the terms of this Contract shall remain subject to State prior written approval whenever they are revised, amended, replaced or supplemented. Hardeman County agrees to accept and implement any revisions, alterations or supplements suggested by the State to any document, plan, policy or procedure which requires State approval.

Section 13.20. Set-off. The State reserves the right to deduct from amounts which are or shall become due and payable to Hardeman County under this or any Contract between the parties any amounts which are or shall become due and payable to the State by Hardeman County. The State may withhold any amounts which may otherwise be due Hardeman County without waiver of any other remedy or damages available to the State under this Contract or at law or at equity.

Section 13.21. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

Section 13.22. Implied Covenants or Agreements. The state shall be bound only by the express, written terms contained herein and shall not be bound by any implied covenants or agreements.

Section 13.23. Notices. Failure of the State to provide any notice to Hardeman County described in this Contract whether or not the State had knowledge of the appropriateness of said notice shall not relieve Hardeman County of its obligation to perform in accordance with this Contract and shall not be a waiver or excuse for any failure to perform.

Section 13.24. Maximum Liability. Notwithstanding any provision contained herein to the contrary, in no event shall the maximum liability to the State exceed:

Year 1	<u>9,884,000</u>
Year 2	<u>24,718,000</u>
Year 3	<u>25,241,000</u>
Year 4	<u>6,515,000</u>

In the event that the State exercises its option to renew, the annual maximum liability for each year during any renewal period shall be calculated unilaterally by the State in the manner shown on Exhibit E.

Section 13.25. Independent Contractor. Hardeman County is an independent contractor for the purpose of this agreement.

Section 13.26. HIPAA Compliance. Contractor warrants to the State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both parties will be in compliance with HIPAA, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to business associate agreements.

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused their authorized representatives to execute this Contract as of the 23rd day of October, 2002

STATE OF TENNESSEE
DEPARTMENT OF CORRECTION

By: Donal Campbell
Donal Campbell, Commissioner

HARDEMAN COUNTY

By: Don Clifft

Name: DON CLIFFT

Title: COUNTY EXECUTIVE

STATE OF TENNESSEE)
COUNTY OF Davidson)ss:
)

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared Donal Campbell, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Commissioner of the Department of Correction for the State of Tennessee, the within named bargainer, and that he, as such Commissioner, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the State of Tennessee by himself as Commissioner of the Department of Correction.

WITNESS my hand, at office this the 23rd day of October, 2002.

Angela M. Moore
Notary Public

My Commission expires:
My Commission Expires SEP. 25, 2004

STATE OF TENNESSEE)
COUNTY OF HARDEMAN)ss:
)

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared Don Clifft, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the County Exe. of Hardeman County, Tennessee, the within named bargainer, a Count of Tennessee, and that he, as such County Exe., being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Hardeman County, Tennessee by himself as County Executive.

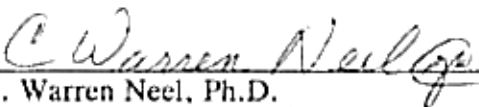
WITNESS my hand, at office this the 7th day of October, 2002.

Mary W. Soufer
Notary Public

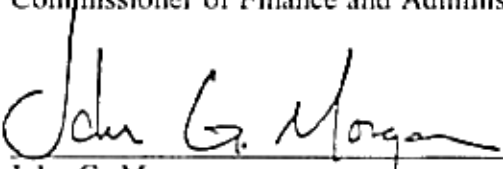
My Commission expires:
4/23/03

APPROVED:

STATE OF TENNESSEE


C. Warren Neel, Ph.D.
Commissioner of Finance and Administration

10-23-02
Date


John G. Morgan
Comptroller of the Treasury

10|23|02
Date

LIST OF EXHIBITS

Exhibit A	Descriptions of Facility and Real Property
Exhibit B	Description of Insurance
Exhibit C	Security Addendum
Exhibit D	Daily Liquidated Damages Schedule
Exhibit E	State's Maximum Liability

Exhibit A

Descriptions of Facility and Real Property

EXHIBIT A

[Whiteville]

LAND lying in 3rd Civil District of Hardeman County, Tennessee, being more particularly described as follows:

Beginning at a stake at north wall of bridge where two ditches meet on west side of the Whiteville and New Castle Road, a S.E. corner of Terry Parker, a N.E. corner of Jimmy Williams now the owner of the Sam Gates land, and ran with road

- (1) S 4-1/2° W 313.5 feet or 19 poles;
- (2) S 24-1/2° W 200 feet;
- (3) S 27-1/2° W 200 feet;
- (4) S 34° W 200 feet;
- (5) S 43° W 700 feet;
- (6) S 3° W 400 feet;
- (7) S 33° W 100 feet;
- (8) S 22° W 100 feet;
- (9) S 2° W 700 feet to a point at crest of hill;
- (10) S 1/2° W 10.9 poles to a point in road set stake S 60-43/60°. On high bank three oaks, a SE corner of the north part kept by Jimmy Williams, also the NE corner of the 56.6 acres conveyed by Jimmy Williams to Joe Keller; thence with the division line of the north part and south part S 60-43/60° W 97.65 poles to a large R.C. corner tree and old line tree, this point is 2.64 poles north of the SE corner of Joe Keller, a NW corner of the 56.6 acres, a SW corner of the 160.6 acres held by Jimmy Williams; thence with east S line of Joe Keller west E line of Williams north very low angle 202.38 poles to a large post, a NW corner of the Sam Gates land, a SW corner of the 45 acres conveyed to J.T. Taylor, now Mary Timmons; thence with fence east 56.6 poles to a stake, a SE corner of Terry Parker; thence north 12.12 poles or to SW corner of Williams; thence north 12.12 poles or to SW corner of Terry Parker; thence with same S 76° E 610 feet or 36.96 poles; thence S 69-1/2° E 28 poles; thence S 66° E 52.96 poles to the point of beginning, containing 160.6 acres, more or less.

BEING a portion of the same property conveyed to Corrections Corporation of America by Deed of Record in Book M-16, page 395, Register's Office for Hardeman County, Tennessee.

WHITEVILLE CORRECTIONAL FACILITY

The Whiteville Correctional Facility is located at 1440 Union Springs Road in Whiteville, Tennessee. It has a capacity of 1,536 beds, comprised of all double cells.

Facility Description

The facility was built in 1998. With the exception of an armory and gymnasium building, the entire facility is under one roof. The facility is a permanent single-story structure consisting of approximately 338,000 square feet with a mezzanine level in the cell housing areas only. The main structure is constructed of pre-cast concrete exterior walls and finished concrete masonry unit and drywall interior walls.

The entire facility is fully sprinkled, with electronically controlled and monitored security and safety systems. Heating, ventilation and air conditioning systems provide year-round environmental control for all inmates and staff.

WCF has six housing units comprised of either four or six pods of double occupancy cells. Additionally, WCF has a separate segregation unit for punitive and administrative segregation populations consisting of 82 beds in double cells. Each general population cell is furnished with a toilet, wash basin with hot and cold running water, above floor sleeping surface(s), clothes hook(s), writing surface/seat, natural light and storage space for personal belongings. All inmates have access to showers with thermostatically-controlled hot and cold water.

Adjacent to each inmate sleeping area is a central dayroom that contains tables, chairs, television(s) and telephones for use by the inmates.

Specifically, the Whiteville Facility provides a physical plant that is in compliance with the following:

- ACA Standards for Adult Correctional Facilities;
- Life Safety Codes, National Fire Protection Agency, current edition;

- Americans with Disabilities Act; and
- Applicable building codes.

Security Features

Whiteville's perimeter is protected by double 12' high fences which are topped with 45-degree arm and rolls of 30" diameter Super Maze razor ribbon at the top and at the mid-rail and bottom. In addition, the perimeter fence is equipped with a passive infrared fence detection system and CCTV cameras to enhance detection of movement. Fencing is placed along the secure perimeter of the site and at strategic areas inside the secure perimeter to further define allowable areas of activity.

Closed circuit television cameras are strategically placed to best monitor the fence line, the exterior of the building, sally port entries and key entry and exit points. Perimeter lighting of at least two foot-candles is provided to accommodate nighttime security. A roving patrol along the perimeter road is also provided.

The 24-hour-a-day manned control center is the heart of the security system. It is located for direct visual observation of major circulation paths and corridors as well as the segregation unit. From this central point, exterior and interior security systems and various safety systems can be monitored and controlled. These systems include an intercommunication system, CCTV monitors, a zoned fire alarm system and electrically locked and released entry/exit doors. The focal point of the control center is a graphically displayed integrated control panel with light and sound annunciation. In addition to the visual annunciation on the control panel of system status, any alarm condition activates the audio annunciation that remains activated until the condition is acknowledged and silenced.

From this central control point, the access and egress at each living unit, as well as the facility entry/exit doors, is controlled by means of electrically operated locks. As a backup to the electronic locks, the control center has a complete key system for manually controlling the movement into, out of and within the facility.

In addition to this centrally located control center, auxiliary control stations are located adjacent to each set of living units and are manned 24 hours a day. Activity at the living units, such as control of doors within the adjacent living units, is controlled from these auxiliary locations.

Other Space Functions

- A fully-equipped kitchen with the appropriate appliances and systems is available, including walk-in freezers, coolers, food warehouse and dry storage;
- A central dining room;
- Large multi-purpose rooms throughout the facility for counseling, religious and leisure-time activities, etc.;
- A medical area with space for medical and dental exams and patient rooms for those inmates requiring treatment or isolation away from the general population;
- Separate areas for inmate academic and vocational education programs and other program services, including office space for staff and instructors and a library;
- A large visitation room that can accommodate both contact and non-contact visitation;
- A large gymnasium for indoor recreation and outdoor recreation areas for basketball, weight-lifting, etc.; and for occasional multi-purpose use.
- A separate reception/intake area with adjacent personal property storage and uniform issue where inmates arriving or leaving the facility are processed;
- A centrally-located commissary;
- An administrative area that includes space for CCA staff, conference room, employee lounge, and locker rooms;

- Public lobby with access to toilet facilities;
- A centrally-located laundry facility;
- A maintenance and warehouse area;
- Janitor, supply and storage closets located throughout the facility; and
- Separate, secure mechanical, electrical and security electronics rooms.

Exhibit B

Description of Insurance

EXHIBIT B

ACORD. CERTIFICATE OF LIABILITY INSURANCE		Page 1 of 2	DATE 04/02/2002
PRODUCER Willis North America, Inc. - Regional Cert Center 24 Century Blvd. P. O. Box 305232 Nashville, TN 37205192	877-945-7378	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Corrections Corporation of America 26 Purdon Mills Blvd. Nashville, TN 37215		INSURERS AFFORDING COVERAGE	
		INSURER: Standard Insurance Company	26317-001
		INSURER: American Home Assurance Company	19280-003
		INSURER: American International Specialty Lines Co	26883-005
		INSURER: Affiliated TX Insurance Company	10014-001

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSURANCE TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS		
A	GENERAL LIABILITY	800377042302	4/1/2002	4/1/2003	EACH OCCURRENCE \$ 5,000,000		
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> INC <input type="checkbox"/> LOC				FIRE DAMAGE (Per one fire) \$ 2,000,000 MEDICAL (Per one person) \$ PERSONAL & ADMINSRVY \$ 5,000,000 GENERAL AGGREGATE \$ 20,000,000 PRODUCTS-COMP/OP AGG \$ 5,000,000		
B	AUTOMOBILE LIABILITY	5345204 Texas 5345205 VA 5345206	4/1/2002	4/1/2003	EDW/REG SINGLE LIMIT (Per accident) \$ 1,000,000		
	<input checked="" type="checkbox"/> ANY AUTO				4/1/2002	4/1/2003	SOCLY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				4/1/2002	4/1/2003	BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						
<input type="checkbox"/> NON-OWNED AUTOS							
C	DAMAGE LIABILITY	7413936	4/1/2002	4/1/2003	AUTO ONLY - EA ACCIDENT \$		
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY - EA ACC \$		
D	EXCESS LIABILITY	7413936	4/1/2002	4/1/2003	EACH OCCURRENCE \$ 25,000,000		
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000				AGGREGATE \$ 25,000,000 \$ \$		
E	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	5278229	4/1/2002	4/1/2003	<input checked="" type="checkbox"/> 100% BENEFIT 100% E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000		
		CA 5278230	4/1/2002	4/1/2003	E.L. DISEASE - POLICY LIMIT \$ 1,000,000		
F	OTHER Commercial Property Per Loss/Location	625715	4/1/2002	4/1/2003	\$128,000,000. Blanket Limit \$ 175,000. Deductible		

DESCRIPTION OF OPERATIONAL LOCATION AND VEHICLE EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER	ADDITIONAL INSURED, INSURER LETTER	CANCELLATION (except 30 Days For Non-Payment)
To Whom It May Concern:		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE: <i>[Signature]</i>

Willis CERTIFICATE OF LIABILITY INSURANCE		Page 2 of 3	DATE 04/02/2002
PRODUCER	877-945-7378 Willis North America, Inc. - Regional East Center 24 Century Blvd. P. O. Box 382291 Nashville, TN 37205191	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
		INSURERS AFFORDING COVERAGE	
INSURED	Corrections Corporation of America 10 Burton Hills Blvd. Nashville, TN 37203	INSURER: Steadfast Insurance Company	25387-000
		INSURER: American Home Assurance Company	25386-001
		INSURER: American International Specialty Lines Co.	26883-003
		INSURER: Associated FM Insurance Company	30034-001
DESCRIPTION OF OPERATIONS, LOCATION, AND SPECIAL CLauses ADDED BY ENDORSEMENT(S) OR SPECIAL PROVISIONS			
<p>Property Policy provides "Special" form coverage on Real and Personal Property, Business Income and NDP, including flood and quake, subject to policy terms, conditions and exclusions.</p> <p>Blanket Policy Limit: \$125,000,000 Blanket per Loss Per Location</p> <p>Earthquake Sublimit: \$50,000,000 except, \$5,000,000 in California and Puerto Rico.</p> <p>Flood Sublimit: \$50,000,000 (excluding locations in 500 year Flood plain as determined by FEMA).</p> <p>Boiler & Machinery Sublimit: \$100,000,000</p> <p>Deductible: \$175,000 all losses except: 12 hour deductible for B&M Business Interruption \$500,000 for Real & Personal Property and \$100,000 for Business Interruption at flood zones designated by FEMA.</p>			

Page 3 of 3

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Exhibit C

Security Addendum

EXHIBIT C

FEDERAL BUREAU OF INVESTIGATION CRIMINAL JUSTICE INFORMATION SERVICES

SECURITY ADDENDUM

The goal of this document is to provide adequate security for criminal justice systems while under the control or management of a private entity, the Contractor. Adequate security is defined in Office of Management and Budget Circular A-120 as "security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information."

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security and data security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

1.00 Definitions

1.01 Administration of criminal justice - the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It also includes criminal identification activities; the collection, storage, and dissemination of criminal history record information; and criminal justice employment.

1.02 Agency Coordinator (AC) - a staff member of the Contracting Government Agency, who manages the agreement between the Contractor and agency.

1.03 Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.

1.04 Contractor - a private business, organization or individual

which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

1.05 Control Terminal Agency (CTA)- a duly authorized state or federal criminal justice agency with direct access to the National Crime Information Center (NCIC) telecommunications network providing statewide (or equivalent) service to its criminal justice users with respect to the various systems managed by the FBI CJIS Division.

1.06 Control Terminal Officer (CTO)- an individual located within the CTA responsible for the administration of the CJIS network for the CTA.

1.07 Criminal Justice Agency (CJA)- The courts, a governmental agency, or any subunit of a governmental agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice. State and federal Inspectors General Offices are included.

1.08 Noncriminal Justice Agency (NCJA) - a governmental agency or any subunit thereof that provides services primarily for purposes other than the administration of criminal justice.

1.09 Noncriminal justice purpose - the uses of criminal history records for purposes authorized by federal or state law other than purposes relating to the administration of criminal justice, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

1.10 Security Addendum - a uniform addendum to an agreement between the government agency and a private contractor, approved by the Attorney General of the United States, which specifically authorizes access to criminal history record information, limits the use of the information to the purposes for which it is provided, ensures the security and confidentiality of the information consistent with existing regulations, provides for sanctions, and contains such other provisions as the Attorney General may require.

2.00 Responsibilities of the Contracting Government Agency

2.01 The CGA entering into an agreement with a Contractor is to appoint an AC.

2.02 In instances in which responsibility for a criminal justice system has been delegated by a CJA to a NCJA, which has in turn entered into an agreement with a Contractor, the CJA is to appoint an Agency Liaison to coordinate activities between the

CJA and the NCJA and Contractor. The Agency Liaison shall, inter alia, monitor compliance with system security requirements. In instances in which the NCJA's authority is directly from the CTA, there is no requirement for the appointment of an Agency Liaison.

2.03 The AC will be responsible for the supervision and integrity of the system, training and continuing education of employees and operators, scheduling of certification testing and all required reports by NCIC.

2.04 The AC has the following responsibilities:

- a. Understand the communications and records capabilities and needs of the Contractor which is accessing federal and state records through or because of its relationship with the CGA;
- b. Participate in related meetings and provide input and comments for system improvement;
- c. Receive information from the CGA (e.g., system updates) and disseminate it to appropriate Contractor employees;
- d. Maintain and update manuals applicable to the effectuation of the agreement, and provide them to the Contractor;
- e. Maintain up-to-date records of employees of the Contractor who access the system, including name, date of birth, social security number, date fingerprint card(s) submitted, date security clearance issued, and date certified or recertified (if applicable);
- f. Train or ensure the training of Contractor personnel. If Contractor personnel access NCIC, schedule the operators for a certification exam with the CTA staff. Schedule new operators for the certification exam within six (6) months of employment. Schedule certified operators for re-certification testing within thirty (30) days prior to the expiration of certification. Schedule operators for any other mandated class;
- g. The AC will not permit an un-certified employee of the Contractor to access an NCIC terminal;
- h. Where appropriate, ensure compliance by the Contractor with NCIC validation requirements;
- i. Provide completed Applicant Fingerprint Cards on each person within the Contractor who accesses the System to the CJA (or, where appropriate, CTA) for criminal

background investigation prior to such employee accessing the system; and

- j. Any other responsibility for the AC promulgated by the FBI.

2.05 The CTA shall ensure that all NCIC hot file transactions and Interstate Identification Index (III) transactions be maintained on an automated log for a minimum of six months. This automated log must identify the operator on III transactions, the agency authorizing the transactions, the requester, and any secondary recipient. This information can be captured at log on and can be a name, badge number, serial number, or other unique number.

3.00 Responsibilities of the Contractor

3.01 The Contractor shall maintain a security program which complies with this Security Addendum.

3.02 The Contractor shall assign a Security Officer accountable for the management of this security program. This person shall coordinate with the CGA to establish the security program.

3.03 The Contractor shall document the security program in a Security Plan. The Security Plan shall describe the implementation of the security requirements described in this Security Addendum, the associated training program, and the reporting guidelines for documenting and communicating security violations to the CGA. The Security Plan shall be subject to the approval of the CJA, even in instances in which the CGA is the NCJA.

3.04 The Contractor shall provide for a Security Training Program for all Contractor personnel engaged in the management, development, operation, and/or maintenance of criminal justice systems and facilities. Annual refresher training shall also be provided.

3.05 The Contractor shall establish a security violation response and reporting procedure to discover, investigate, document, and report on all security violations. Violations which endanger the security or integrity of the criminal justice system or records located therein must be communicated to the CGA immediately. Minor violations shall be reported to the CGA on a periodic basis, but in no instance less than quarterly. See Section 8.01.

3.06 The Contractor's facilities will be subject to unannounced security inspections performed by the CGA. These facilities are also subject to periodic FBI and state audits.

3.07 The security plan is subject to annual review by the CJA and the Contractor. During this review, provision will be made to

update the program in response to security violations, changes in policies and standards, and/or changes in federal and state law and technology.

3.08 The Contractor and its employees will comply with all federal and state laws, rules, procedures and policies formally adopted by the FBI and the CJIS APB, including those governing criminal history record information.

4.00 Site Security

4.01 The Contractor shall dedicate and maintain control of the facilities, or areas of facilities, that support the CGA.

4.02 All terminals physically or logically connected to the computer system accessing NCIC and the criminal justice files must be segregated and screened against unauthorized use or observation.

5.00 System Integrity

5.01 Only employees of the Contractor, employees of CGA, the Agency Liaison, and such other persons as may be granted authorization by the CGA shall be permitted access to the system.

5.02 The Contractor shall maintain appropriate and reasonable quality assurance procedures.

5.03 Access to the system shall be available only for official purposes consistent with the appended Agreement. Any dissemination of NCIC data to authorized employees of the Contractor is to be for their official purposes.

5.04 Information contained in or about the system will not be provided to agencies other than the CGA or another entity which is specifically designated in the contract.

5.05 All criminal history record information requests must be envisioned and authorized by the appended Agreement. A current up-to-date log concerning access and dissemination of criminal history record information shall be maintained at all times by the Contractor.

5.06 The Contractor will ensure that its inquiries of NCIC and any subsequent dissemination conforms with applicable FBI/NCIC policies and regulations, as set forth in the NCIC Operating Manual, NCIC and CJIS APB meeting minutes, and all relevant CJIS security documents. All disseminations will be considered as "Unclassified, For Official Use Only."

5.07 The Contractor shall protect against any unauthorized persons gaining access to the equipment, any of the data, or the

operational documentation for the criminal justice information system. In no event shall copies of messages or criminal history record information be disseminated other than as envisioned and governed by the appended Agreement.

6.00 Personnel Security

6.01 Appropriate background investigations must be conducted on all Contractor employees and the Contractor's vendors which provide system maintenance support.

6.02 Thorough background screening by the CGA is required. This investigation includes submission of a completed applicant fingerprint card to the FBI through the state identification bureau. State and national record checks by fingerprint identification must be conducted for all personnel who manage, operate, develop, access and maintain criminal justice systems and facilities. Record checks must be completed prior to employment.

6.03 When a request is received by the CTA before system access is granted:

- a. The CGA on whose behalf the Contractor is retained must check state and national arrest and fugitive files. These checks are to be no less stringent than those performed on CJA personnel with access to NCIC.
- b. If a record of any kind is found, the CGA will be formally notified, and system access will be delayed pending review of the criminal history record information. The CGA will in turn notify the Contractor-appointed Security Officer.
- c. When identification of the applicant with a criminal history has been established by fingerprint comparison, the CGA's designee will review the matter. A Contractor employee found to have a criminal record consisting of any felony convictions or of misdemeanor offenses which constitute a general disregard for the law is disqualified. Applicants shall also be disqualified on the basis on confirmations that arrest warrants are outstanding for such applicants.
- d. If an adverse employment determination is made, access will be denied and the Contractor-appointed Security Officer will be notified in writing of the access denial. This applicant will not be permitted to work on the contract with the CGA. Disqualified employees and applicants for employment shall be notified of the adverse decisions and the impact that such records had on

decisions and the impact that such records had on such decisions.

6.04 The investigation of the applicant's background shall also include contacting of employers (past or present) and personal references.

6.05 The Security Officer shall maintain a list of personnel who successfully completed the background investigation.

6.06 The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes.

6.07 The CGA shall ensure that each Contractor employee authorized to access CJIS network terminals or information provided therefrom is specially trained in the state and federal laws and rules governing the security and integrity of criminal justice information.

6.08 All visitors to sensitive areas of Contractor facilities must be escorted at all times by a Contractor employee with clearance. Names of all visitors shall be recorded in a visitor log, to include date and time of visit, name of visitor, purpose of visit, name of person visiting, and date and time of departure. The visitor logs shall be maintained for five years following the termination of the contract.

7.00 System Security

7.01 Transmission, processing, and storage of CJA information shall be conducted on dedicated systems. Increased reliance should be placed on technical measures to support the ability to identify and account for all activities on a system and to preserve system integrity.

7.02 The system shall include the following technical security measures

- a unique identification and authentication for all interactive sessions;
- b if warranted by the nature of the contract, advanced authentication techniques in the form of digital signatures and certificates, biometric or encryption for remote communications;
- c security audit capability for interactive sessions and transaction based logging for message-based sessions;

this audit shall be enabled at the system application level;

- d access control mechanisms to enable access to be restricted by object (e.g., data set, volumes, files, records) to include the ability to read, write, or delete the objects;
- e ORI identification and access control restrictions for message based access;
- f system and data integrity controls;
- g. access controls on communications devices
- h. confidentiality controls (e.g., partitioned drives encryption, and object reuse).

7.03 Data encryption shall be required throughout the network passing through a shared public carrier network.

7.04 The Contractor shall provide for the secure storage and disposal of all hard copy and media associated with the system to prevent access by unauthorized personnel.

7.05 The Contractor shall establish a procedure for sanitizing all fixed storage media (e.g., disks, drives) at the completion of the contract and/or before it is returned for maintenance, disposal or reuse. Sanitization procedures include overwriting the media and/or degaussing the media. If media cannot be successfully sanitized it must be returned to the CGA or destroyed.

8.00 Security violations

8.01 Consistent with Section 3.05, the Contractor agrees to inform the CGA of system violations. The Contractor further agrees to immediately remove any employee from assignments covered by this contract for security violations pending investigation. Any violation of system discipline or operational policies related to system discipline are grounds for termination, which shall be immediately reported to the AC in writing.

8.02 The CGA must report security violations to the CTO and the Director, FBI, along with indications of actions taken by the CGA and Contractor.

8.03 Security violations can justify termination of the appended agreement.

8.04 Upon notification, the FBI reserves the right

- a. Investigate or decline to investigate any report of unauthorized use;
- b. Suspend or terminate access and services, including the actual NCIC telecommunications link. The FBI will provide the CTO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CJA and Contractor. Upon termination, the Contractor's records containing criminal history record information must be deleted or returned to the CGA.

8.05 The FBI reserves the right to audit the Contractor's operations and procedures at scheduled or unscheduled times. The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

9.00 Miscellaneous provisions

9.01 This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CTA, and FBI.

9.02 The following documents are incorporated by reference and made part of this agreement: (a) The III, NCIC, and Uniform Crime Reporting Operating Manuals; (b) The Minutes of the CJIS APB; (c) The Bylaws for the CJIS APB and CJIS Working Groups; (d) Title 28, Code of Federal Regulations, Part 20; (e) The NCIC Security Policy (including all concepts of NCIC Computerized Criminal History Program Background, Concept and Policy); (f) The Recommended Voluntary Standards for Improving the Quality of Criminal History Record Information, NCIC Standards, and UCR Standards, as recommended by the CJIS APB; and (g) Applicable federal and state laws and regulations.

9.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they provide a minimum basis for the security of the system and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.

9.04 This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.

9.05 All notices and correspondence shall be forwarded by First Class mail to :

FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM

CERTIFICATION

I hereby certify that I have read and am familiar with the contents of this Security Addendum, including relevant portions of the underlying documents, including but not limited to the III, NCIC, and UCR Operating Manuals; relevant Minutes of the CJIS Advisory Policy Board; Bylaws for the CJIS Advisory Board and CJIS Working Groups; Title 28, Code of Federal Regulations, Part 20; NCIC Security Policy; Recommended Voluntary Standards For Improving the Quality and Criminal History Record Information; NCIC and UCR Standards; as well as applicable federal or state laws and regulations regarding dissemination of criminal history records for criminal and noncriminal justice purposes.

Signature of Contractor Representative

Organization and Title

Date

I acknowledge that I have read this Security Addendum and understand its contents.

Signature of Contractor Employee

Date

Assistant Director
Criminal Justice Information Services Division, FBI
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

Exhibit D

Daily Liquidated Damages Schedule

EXHIBIT D

Liquidated Damages Schedule

Liquidated damages will be calculated in accordance with the following formula:

$V \times B \times \$25.00$ where

V = Relative value of Service Area

B = Relative value of the Breach

Service Area 1 - Value = 5: Inmate Classification, Custody and Movement, Access to Courts, Disciplinary Procedures, Inmate Relations, Sentence Reduction Credits, Sentence Computation, Inmate Records:

Contractor Breach:	B
Failure of Staff	5
Failure to Document	4
Failure to Report	3
Failure to Comply with Other Applicable Standards	5

Service Area 2 - Value = 4: General Administration, Personnel and Training, Security and Control, Use of Force, Health/Medical/Mental Health/Dental, Inmate Work and Education, Transportation, Inmate Drug Testing:

Contractor Breach:	B
Failure of Staff	5
Failure to Document	3
Failure to Report	2
Failure to Comply with Other Applicable Standards	5

Service Area 3 - Value = 3: Equipment, Supplies and Perishables, Sanitation and Hygiene, Facility Management, Maintenance, and Utilities:

Contractor Breach:	B
Failure of Staff	4
Failure to Document	2
Failure to Report	1
Failure to Comply with Other Applicable Standards	4

Service Area 4 - Value = 2: Personal Property, Visitation, Food Service, Laundry and Clothing, Recreation, Library, Commissary, Religious Services, Volunteer Services, Released Inmates, Telephone and Correspondence, Inmate Trust Fund, Community Relations, and other requirements of the Standards:0

Contractor Breach:	B
Failure of Staff	4
Failure to Document	1
Failure to Report	1
Failure to Comply with Other Applicable Standards	4

Exhibit E

State's Maximum Liability

Whiteville Correctional Facility - Contract effective 10-16-02
 State's Maximum Liability

FY 02-03

	Beds Available	Total Population	Days	Inmate Days Available	Actual Days Used	Per Diem@	Rent@
Oct. 16 to Oct. 31, 2002	175	175	16	2800	1400	\$36.54	\$5.96
Nov. 1 to Nov.30, 2002	175	350	30	10500	7675	51,156.00	8,344.00
Dec. 1 to Dec. 31, 2002	218	568	31	17608	14229	287,752.50	46,935.00
Jan. 1 to Jan. 31, 2003	175	786	31	24366	20397	519,927.66	84,804.84
Feb. 1 to Feb. 28, 2003	150	936	28	26208	24108	766,854.96	125,082.52
Mar. 1 to Mar. 31, 2003	200	1136	31	35216	32116	880,906.32	143,683.68
Apr. 1 to Apr. 30, 2003	200	1336	30	40080	37080	1,173,518.64	191,411.36
May 1 to May 31, 2003	200	1536	31	47616	44516	1,354,903.20	220,996.00
June 1 to June 30, 2003	200	1536	30	46080	45080	1,626,614.64	265,315.36
			258		228391	1,683,763.20	274,636.80
Per Diem Payment	8,345,407.14					8,345,407.14	1,351,210.36
Rent	1,361,210.36						
Misc. Medical (@ \$200,000.00 / yr.)	141,400.00						
Misc. Travel (@ \$50,000.00 / yr.)	35,400.00						
Total FY 02-03	9,883,417.50						

EXHIBIT E

FY 03-04

Per Diem Payment	21,117,084.55
Rent 365 days	3,350,568.96
Misc. Medical (@ \$200,000.00 / yr.)	200,000.00
Misc. Travel (@ \$50,000.00 / yr.)	50,000.00
Total FY 03-04	24,717,653.51

FY 04-05

Per Diem Payment 36.54+2.8%+2.8%	21,649,050.45
Rent 365 days	3,341,414.40
Misc. Medical (@ \$200,000.00 / yr.)	200,000.00
Misc. Travel (@ \$50,000.00 / yr.)	50,000.00
Total FY 04-05	25,240,464.85

FY 05-06 (9-30-06)

Per Diem Payment 36.54+2.8%+2.8%+2.8%	5,609,535.88
Rent 92 days	842,219.52
Misc. Medical (@ \$200,000.00 / yr.)	49,900.00
Misc. Travel (@ \$50,000.00 / yr.)	12,500.00
Total FY 05-06	6,514,155.40

**AMENDMENT ONE
TO CONTRACT GU-03-03018-00**

This CONTRACT, by and between the State of Tennessee, DEPARTMENT OF CORRECTION, hereinafter referred to as the State, and HARDEMAN COUNTY, hereinafter referred to as the CONTRACTOR, is hereby amended as follows:

- 1. Delete Section 2.1 in its entirety and insert the following in its place:

Section 2.1. Term. This Contract is effective October 1, 2002 and continues until September 30, 2006.

- 2. Delete Section 13.24 in its entirety and insert the following in its place:

Section 13.24. Maximum Liability. Notwithstanding any provision contained herein to the contrary, in no event shall the maximum liability to the State exceed:

Year 1	<u>9,884,000</u>
Year 2	<u>24,718,000</u>
Year 3	<u>25,241,000</u>
Year 4	<u>25,543,500</u>
Year 5	<u>6,672,100</u>

The other terms and conditions of this CONTRACT not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

HARDEMAN COUNTY:


Willie S. Spencer 3-16-05
 Don Cliff, County Executive Pro-Tem. Date
 WILLIE SPENCER

DEPARTMENT OF CORRECTION:

Quenton I. White 3/23/05
 Quenton I. White, Commissioner Date

APPROVED:

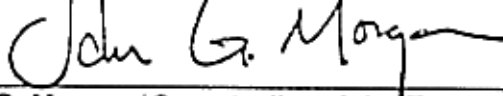
DEPARTMENT OF FINANCE AND ADMINISTRATION:


M. D. Goetz, Jr., Commissioner

MAR 30 2005

Date

COMPTROLLER OF THE TREASURY:


John G. Morgan, Comptroller of the Treasury

3/31/05

Date

AMENDMENT TWO
TO CONTRACT GU-03-03018-00

This CONTRACT, by and between the State of Tennessee, DEPARTMENT OF CORRECTION, hereinafter referred to as the State, and HARDEMAN COUNTY, hereinafter referred to as the CONTRACTOR, is hereby amended as follows:

- 1 Delete Section 2.1 in its entirety and insert the following in its place:

Section 2.1. Term. This Contract is effective October 1, 2002 and continues until September 30, 2007

- 2. Delete Section 13.24 in its entirety and insert the following in its place:

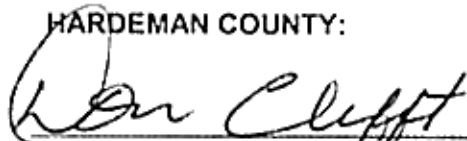
Section 13.24. Maximum Liability. Notwithstanding any provision contained herein to the contrary, in no event shall the maximum liability to the State exceed:

Year 1	<u>9,884,000</u>
Year 2	<u>24,718,000</u>
Year 3	<u>25,241,000</u>
Year 4	<u>25,543,500</u>
Year 5	<u>33,304,362</u>

The other terms and conditions of this CONTRACT not amended hereby shall remain in full force and effect.

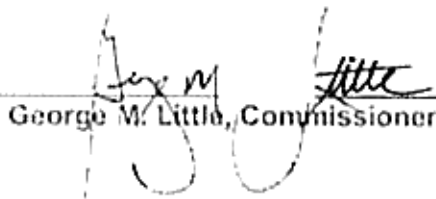
IN WITNESS WHEREOF:

HARDEMAN COUNTY:


Don Clift, County Executive

7-10-06


DEPARTMENT OF CORRECTION


George M. Little, Commissioner


13 July 06
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

 7/26/06
M. D. Goetz, Jr., Commissioner Date

COMPTROLLER OF THE TREASURY:

 7/28/06
John G. Morgan, Comptroller of the Treasury Date