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

1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **Powell County Memorial Hospital (CONTRACTOR)** enter into this Contract **(04-044-MSP)**. The parties names, addresses, telephone numbers, and Federal Employee Identification Number (Contractor only) is as follows:

Montana Department of Corrections
Montana State Prison (MSP)
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

Powell County Memorial Hospital
1101 Texas Avenue

Deer Lodge MT 59722
406-846-2212
FEIN – 81-0469886

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

2. DEFINITIONS

A. DESIGNATED AGENT means Blue Cross and Blue Shield of Montana.

B. HEALTH CARE SERVICES means receiving an inmate into CONTRACTOR'S facility and furnishing such patient with the services, supplies, products, and accommodations as an inpatient including "swing bed" designation, outpatient, or emergency case.

C. INMATE means for purposes of this contract means an adult male under custody and control of DEPARTMENT, incarcerated at Montana State Prison in Deer Lodge, MT.

D. NECESSARY means a service or supply provided by CONTRACTOR and determined by DEPARTMENT'S designated agent on behalf of DEPARTMENT to be:

- appropriate for the symptoms and diagnosis or treatment of the inmate's condition, illness, or injury; and
- provided for the diagnosis or the direct care and treatment of the inmate's condition, illness, or injury; and
- in accordance with standards of good medical practice; and
- not for the convenience of the inmate or CONTRACTOR; and
- the most appropriate supply or level of service that can safely be provided to the inmate.

When applied to inpatient care, "necessary" further means that the inmate requires acute care as a bed patient due to the nature of the services rendered or the inmate's condition, and the inmate cannot receive safe or adequate care as an outpatient or upon early discharge to the MSP Infirmary.

E. PATIENT means an inmate referred to CONTRACTOR by DEPARTMENT for medical services.

3. DUTIES/RESPONSIBILITIES OF CONTRACTOR AND DEPARTMENT

A. CONTRACTOR DUTIES/RESPONSIBILITIES

1. SERVICES

CONTRACTOR shall provide health care services which are referred by DEPARTMENT and which CONTRACTOR is medically and therapeutically able to provide. If, in CONTRACTOR'S judgment, it is not able to provide the appropriate level of health care services to an inmate referred to CONTRACTOR by DEPARTMENT, CONTRACTOR shall immediately notify and consult with the Department Medical Director. The Medical Director shall be responsible for approving and/or determining the appropriate provider to render the necessary services to the inmate. However, in the case of medical emergency, CONTRACTOR may provide necessary health care services without consultation with DEPARTMENT or Medical Director, but CONTRACTOR must notify the Medical Director as soon as practicable following the provision of emergency medical care.

CONTRACTOR shall provide Department inmates with suitable facilities and health care services. The provision of health care services include, but are not limited to, accommodations, physician services, diagnosis, X-ray/imaging, laboratory, treatment, surgery, therapy, prescription of medicine and drugs, and maintenance of records.

2. RECORDS

Inmate medical records will remain the property of CONTRACTOR. However, CONTRACTOR agrees to promptly provide, at no charge, copies of any records related to the care rendered to inmates, including medical and patient records, to DEPARTMENT or its designated agent upon the written request of DEPARTMENT. This contract requirement is explicit to DEPARTMENT, which has legal custody and control of the inmate and to DEPARTMENT'S designate agent, which has claims adjudication/management responsibility and payment authority. It is further understood that the requirements of this section neither diminishes nor interferes with CONTRACTOR'S legal obligation of complying with state and federal guidelines, statutes, ordinances, rules and regulations applicable to the confidentiality of medical records.

3. EMERGENCY SERVICES

CONTRACTOR shall provide 24-hour emergency services to DEPARTMENT. Admissions resulting from an emergency must be approved by DEPARTMENT'S managed care company, Managed Care Montana, within 24 hours of admission, or the next business day, whichever is sooner.

4. COST MANAGEMENT PROGRAMS

DEPARTMENT'S managed care provider, Managed Care Montana, 800-635-5271(ext. 8797), must be notified within 24 hours of an inmate's admission to CONTRACTOR'S facility. Continued stay approval beyond the initial certified stay must also be obtained from Managed Care Montana.

CONTRACTOR shall cooperate with DEPARTMENT and its designated agent in cost management programs approved by DEPARTMENT. DEPARTMENT may amend an existing cost management program or implement a new cost management program within 30 days

advance notice and CONTRACTOR will not unreasonably withhold participation with its term and conditions upon receipt of required notice of such program.

B. DEPARTMENT DUTIES/RESPONSIBILITIES

1. PATIENT REFERRAL

DEPARTMENT shall, at its discretion, refer inmates to CONTRACTOR for health care and related services.

2. SECURITY

DEPARTMENT shall provide security, appropriate to the inmates custody classification, while they are at CONTRACTOR'S facility. CONTRACTOR shall bear no responsibility for providing security of inmates.

3. TRANSPORTATION

Transportation of inmates, to and from CONTRACTOR'S facility, shall be the sole responsibility of DEPARTMENT.

4. FINAL AUTHORITY

DEPARTMENT shall have final authority in all cases concerning authorization of health care services to be provided and therefore compensable under the terms of this contract - except in the case of emergency services as described in Section 3(A).

4. COMPENSATION/BILLING

A. DISCOUNT

CONTRACTOR agrees to discount all inmate health care service(s) claims by 15% of CONTRACTOR'S usual and customary charges.

CONTRACTOR further agrees to discount all other services and supplies provided to inmates by 15% of CONTRACTOR'S usual and customary charges in which the parties may agree to from time to time. Other services and supplies which are provided at other than the said discount will be set forth in writing by an Addendum to this Contract and signed by both parties.

The discount for health care services, other services and supplies will be applied to the gross charge for said services, other services and supplies.

B. SUBMITTAL OF CLAIMS

CONTRACTOR shall submit appropriately completed HCFA 1500 claims to DEPARTMENT'S designated agent and Claims Administrator, as listed below:

Blue Cross & Blue Shield of Montana
C/O Corrections Medical Program
Box 5019
Great Falls, MT 59403

Neither DEPARTMENT nor its designated agent shall be under any obligation to process any claims until CONTRACTOR has submitted its claim on standard billing forms, presently known as the UB-92, or HCFA 1500, in a complete, approved, and appropriate format, along with the documentation required to process the claim. All claims must carry the inmate's name and "AO" identity number, which shall be provided by DEPARTMENT at the time of the inmate's service referral. The designated agent will process the claim within 30 days of the date all documents necessary to process the claim have been received. Claims may be submitted to Blue Cross/Blue Shield of Montana electronically.

Contractor claims shall be submitted within 120 days of hospital discharge or date of service. DEPARTMENT will accept no adjustments, including coding and late-charge adjustments, later than 30 days after payment of the original claim. Claims submitted after 120 days or adjustments or late charges submitted 30 days after payment of the original claim, which would have resulted in an increased payment, will be forfeited. DEPARTMENT shall have no liability for claims when said claims are not submitted in accordance with these paragraphs.

CONTRACTOR agrees that services provided by hospital employees, such as physicians and certified registered nurse anesthetists, be submitted separately from other hospital charges, on HCFA 1500 claim forms. These charges will be reimbursed at BCBSMT "usual and customary" provider rates.

C. ERRONEOUS PAYMENTS

If DEPARTMENT or its designated agent makes payment to CONTRACTOR in error, either party shall put the other on notice of such erroneous payment. DEPARTMENT may recoup such erroneous payment from CONTRACTOR or offset the amount of such erroneous payment against the amount DEPARTMENT otherwise owes to CONTRACTOR.

D. NON-BILLABLE SERVICES

CONTRACTOR shall not provide health care services nor bill DEPARTMENT or its designated agent for any health care services that are not necessary or not authorized by DEPARTMENT.

5. TIME OF PERFORMANCE

This Contract shall take effect on July 1, 2003 and shall terminate on June 30, 2004, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of five (5) additional years.

6. LIAISONS AND NOTICE

A. Cathy Redfern (846-1320 ext 2448), 500 Conley Lake Road, Deer Lodge MT 59722 or successor serves as DEPARTMENT'S liaison.

B. The Chief Executive Officer of Powell County Memorial Hospital (846-2212), 1101 Texas Avenue, Deer Lodge MT 59722 or successor serves as CONTRACTOR'S liaison.

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

7. OWNERSHIP AND PUBLICATION OF MATERIALS

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

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

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

9. HOLD HARMLESS AND INDEMNIFICATION

A. CONTRACTOR agrees that he is financially responsible (liable) for any audit exception or other financial loss to DEPARTMENT which occurs due to the negligence, intentional acts, or failure for any reason to comply with the terms of this Contract.

A. DEPARTMENT indemnifies and holds CONTRACTOR harmless with respect to any or all claims, suits, actions, liabilities and costs of any kind, including attorney's fees, arising from DEPARTMENT'S negligence or willful misconduct in the performance of DEPARTMENT'S services hereunder unless it is determined that such claim, suit, action, liability or cost was caused by or resulted from the negligence or willful misconduct of CONTRACTOR. CONTRACTOR indemnifies and holds DEPARTMENT harmless with respect to any or all claims, suits, actions, liabilities, and costs of any kind, including attorney's fees, arising from CONTRACTOR'S negligence or willful misconduct in the performance of CONTRACTOR'S activities under this Contract; unless it is determined that such claim, suit, action, liability or cost was caused by or resulted from the negligence or willful misconduct of DEPARTMENT.

10. INSURANCE

A. **General Requirements:** CONTRACTOR shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by CONTRACTOR, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

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

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by DEPARTMENT. At the request of DEPARTMENT either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State,

its officers, officials, employees, and volunteers; or (2) CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

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

B. **Specific Requirements for Commercial General Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000.00 per occurrence and $2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

~~**Additional Insured Status:** The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations; premises owned, leased, occupied, or used.~~

C. **Specific Requirements for Professional Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of $1,000,000.00 per occurrence and $2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, CONTRACTOR may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

11. ACCESS AND RETENTION OF RECORDS

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

12. PUBLIC INFORMATION

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

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

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

14. AMENDMENTS

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

15. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

16. TERMINATION AND DEFAULT

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

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

C. DEPARTMENT, at its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.

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

17. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

18. LICENSURE

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

19. ARBITRATION

Any Claim arising out of, or related to, this Contract shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

20. INTEGRATION

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

21. SEVERABILITY

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

22. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Fiscal Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE

DEPARTMENT

Mike Mahoney, Warden
Montana State Prison

7/7/03
Date

CONTRACTOR

Tony Pfaff, Chief Executive Officer
Powell County Memorial Hospital

7-24-03
Date

Approved for Legal Content by: Colleen A. White
Legal Counsel
Department of Corrections

7/1/03
Date

CONTRACT AMENDMENT
CONTRACT #04-044-MSP

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) PO Box 201301, 1539 11th Avenue, Helena MT 59620-1301 and **Powell County Memorial Hospital** (CONTRACTOR) 1101 Texas Avenue, Deer Lodge, Montana 59722 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of July1, 2003 and Section 20 provides that the parties may modify their agreement in writing: and

WHEREAS, the Contract expires on June 30, 2004 and Section 5 provides that the parties may extend the expiration date of the Contract.

NOW THEREFORE, the parties agree to amend the Contract as follows:

Section 5 is amended to read (new language underlined, old language interlined):

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

This Contract shall take effect on July 1, 2003 and shall terminate on June 30, ~~2004~~ <u>2005</u>, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of ~~five (5)~~ <u>four (4)</u> additional years.

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

DEPARTMENT

Mike Mahoney, Warden
Montana State Prison

6/10/04
Date

CONTRACTOR

Tony Pfaff, Chief Executive Officer
Powell County Memorial Hospital

6/21/04
Date

Reviewed for Legal Content by:

Colleen A. White
Legal Counsel
Department of Corrections

6/8/04
Date

CONTRACT AMENDMENT
CONTRACT #04-044-MSP

THIS CONTRACT AMENDMENT (**Amendment #2**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and **Powell County Memorial Hospital** (CONTRACTOR) 1101 Texas Avenue, Deer Lodge, Montana 59722 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of July 1, 2003 and Section 20 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2005 and Section 5 provides that the parties may extend the expiration date of the Contract.

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

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

This Contract shall take effect on July 1, 2003 and shall terminate on June 30, ~~2005~~ <u>2006</u>, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of ~~four (4)~~ <u>three (3)</u> additional years.

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

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

DEPARTMENT

Mike Mahoney, Warden
Montana State Prison

5/11/05
Date

CONTRACTOR

Tony Pfaff, Chief Executive Officer
Powell County Memorial Hospital

5/25/05
Date

Reviewed for Legal Content by:

Legal Counsel
Department of Corrections

5/10/05
Date

CONTRACT AMENDMENT
CONTRACT #04-044-MSP

THIS CONTRACT AMENDMENT (**Amendment #3**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and **Powell County Memorial Hospital** (CONTRACTOR) 1101 Texas Avenue, Deer Lodge, Montana 59722 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of July 1, 2003 and Section 20 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2006 and Section 5 provides that the parties may extend the expiration date of the Contract.

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

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

This Contract shall take effect on July 1, 2003 and shall terminate on June 30, ~~2006~~ <u>2007</u>, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of ~~three (3)~~ <u>two (2)</u> additional years.

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

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

DEPARTMENT

Mike Mahoney, Warden
Montana State Prison

6/14/06
Date

CONTRACTOR

Tony Pfaff, Chief Executive Officer
Powell County Memorial Hospital

6/19/06
Date

Reviewed for Legal Content by: Colleen A. White
Legal Counsel
Department of Corrections

6/12/06
Date