

COPY 6

**TWO RIVERS DETENTION CENTER OPERATION AND
MANAGEMENT AGREEMENT**

This Facility Operation and Management Agreement (hereinafter "**Agreement**") is entered into by and between the Two Rivers Authority, Inc. (hereinafter "**TRA**"), a lawfully established local port authority created by the City of Hardin, a municipal corporation of the State of Montana ("**City**"), and American Private Police Force Org., Inc., a California corporation whose principal address is 1202 E. 17th Suite 200, Santa Ana, California, 92701, (hereinafter called "**Operator**") to become effective on the date of signature by the parties ("**Effective Date**").

WHEREAS, TRA is the owner or equitable owner of that certain detention facility known as the Two Rivers Detention Center, located in Hardin, Montana (hereinafter "**Facility**"); and

WHEREAS, pursuant to its authority under Mont. Code Ann § 7-14-1111(3), the Two Rivers Authority has the authority to execute contracts and other instruments and take other actions that may be necessary to carry out the purpose of a local port authority; and

WHEREAS, the parties hereto desire to enter into an agreement for the operation and management of the Facility; and

WHEREAS, entering into this Agreement is found to be in the best interests of the parties, the efficient and safe operation of the Facility, and the public as it will serve the public purpose of providing space for incarceration of law violators and will provide economic development and economic benefits to the local economy; and

WHEREAS, TRA has entered into a Trust Indenture (the "**Indenture**"), dated as of April 1, 2006, with U.S. Bank National Association as Trustee in order (among other things) to finance the Facility. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Indenture.

NOW, THEREFORE, in consideration of the mutual rights, benefits and obligations herein exchanged, the parties do covenant, agree and bind themselves as follows:

I. PURPOSES

- 1.01 Operator agrees to operate, manage and supervise the Facility for TRA, and to receive, detain and care for all properly classified prisoners for which the Facility is approved that may be assigned to the Facility from:
- (a) The Chief of Police of the City (the "**Police Chief**");
 - (b) The United States Government or any agency thereof, pursuant to an agreement between TRA and the United States or any agency thereof, subject to the limitations hereinafter set forth in this section;

- (c) The Montana Department of Corrections (“MDOC”), pursuant to an agreement between MDOC and TRA; or
 - (d) Any other state, local, county, or federal jurisdiction.
- 1.02 Operation and management of the Facility must be in accordance with the applicable standards of the American Correctional Association and the requirements set forth in agreements with entities contracting with TRA to house prisoners at the Facility (“**Sending Jurisdictions**”).
- 1.03 Operator is an independent contractor engaged for the public purpose of operating a detention center on behalf of TRA. No property interest or right in the Facility or grounds is granted to the Operator by this Agreement.
- 1.04 The Operator shall operate the Facility in compliance with the terms of the Indenture and this signed Agreement. The Operator shall provide or cause to be provided all insurance, maintenance, certifications and other matters required of or made the obligation of TRA under the Indenture and this Agreement. This includes, without limitation, preparation of all reports or disclosures required under the Indenture and this Agreement and under the Continuing Disclosure Undertaking made by TRA in connection with the issuance of the Bonds.
- 1.05 Pursuant to the Memorandum of Understanding signed between the parties on August 18, 2009 (“MOU”), attached hereto and incorporated herein by reference, Operator shall have the option to enter into a separate agreement with TRA for the purpose of constructing a law enforcement training center on the premises of the Two Rivers Detention Center and/or to provide additional law enforcement services to the TRA and/or the City of Hardin.

II. TERM

- 2.01 The Initial Term of this Agreement shall be ten (10) years, beginning on the date of execution of this Agreement, and terminating at midnight on September 3, 2019.
- 2.02 Operator is further granted an option for an additional ten (10) year under the same terms and condition.
- 2.03 Upon expiration of the Terms of this Agreement and any option that may have been exercised, the parties may mutually agree to renew this Agreement in writing.

III. DUTIES OF OPERATOR

- 3.01 Operator shall manage, operate and provide at its sole cost and expense:
- (a) Installation and/or replacement of all necessary furniture, fixtures and equipment required at the Facility, including, but not limited to, computers, fax and copy equipment, radios, televisions, uniforms and linens and basic office furniture and administrative phone systems, which are necessary or prudent for operation and

management of the Facility and the housing of prisoners.

- (b) Intake facilities and prisoner accounting which shall encompass booking, record-keeping, billing, system of controls, identification systems and records, computerized communication interface with law enforcement agencies, and such statistical records as may be required by law, Sending Jurisdictions, or as generally accepted prisoner-locator practices;
- (c) Attendants to control ingress and egress at the Facility, in addition to attendants necessary for the requisite level of security internally within the Facility and those required to monitor the activities of prisoners confined within the Facility. The Operator shall provide to TRA a complete staffing plan. This plan will include a suitable relief factor which takes into account training, vacation and other matters required to staff a correctional facility of this size and mission. The Operator will make every effort to maintain staffing at a level equal to not less than ninety percent (90%) of the staffing plan;
- (d) Food and beverage services;
- (e) Clothing and uniforms;
- (f) Engineering and maintenance;
- (g) Procurement and purchasing;
- (h) Recreational, vocational, counseling, education and exercise programs, and other program requirements required by law or prisoner housing contracts;
- (i) Bookkeeping and financial accounting;
- (j) Basic medical care, over-the-counter medications, and miscellaneous medical supplies as required by Sending Jurisdictions;
- (k) Training of jailers to be employed at the Facility and all start up costs of operations;
- (l) Repair, upkeep and maintenance for the Facility. This will include (without limitation) establishment of a periodic maintenance program with applicable equipment maintenance records;
- (m) Necessary utilities and refuse services; and
- (n) All other services necessary or proper for the efficient and safe operation of the Facility, and secure custody, care and housing of inmates, in compliance with all applicable federal, state and local laws and regulations and in compliance with all signed housing agreements.

In regard to 4.01(l) above, the TRA agrees to assign to Operator, when necessary and appropriate, any warranties or guarantees it might have or be entitled to with regard to the Facility, Furniture, Fixtures, and Equipment (FF&E) in order to effect repairs on the Facility, and FF&E, or to give Operator the right to pursue the manufacturer, builder, or other supplier who gave such warranties or guaranties, to seek reimbursement for monies expended by Operator to meet its repair, upkeep and maintenance obligations under this Agreement to the extent that those expenditures relate specifically to work covered by the subject warranty or guaranty. With respect to any warranties, TRA agrees to cooperate and use its best efforts to assist Operator to recover under such warranties. Extraordinary repairs shall generally be paid or reimbursed out of the Operating Reserve Repair Contingency Fund established under the Trust Indenture where funds are available in that account therefor, unless such is due to the negligence or intentional acts of Operator's employees, or by inmates or is covered by insurance or warranty. Operator's responsibility for extraordinary repairs, where funds are not available in a sufficient amount in the Operating Reserve/Repair/Contingency Fund to pay for the same, is limited to the proceeds of applicable insurance, unless the need for such repairs was created by the negligence or intentional act of its employees, or by inmates.

- 3.02 Operator shall prepare and furnish such reports as may be required by law to be submitted to the City of Hardin and the Police Chief with respect to the operation of the Facility or the prisoners detained therein and, in addition, such other reports as may be required by an Montana state agency or any agency of the United States Government, or by any state or political subdivision thereof from which prisoners have been assigned to the Facility.
- 3.03 Operator shall obtain, and thereafter maintain, the proper certification(s) necessary for the Facility to incarcerate federal, state and local prisoners, and shall maintain such certification(s) at all times. After such certifications have been obtained, if required by the laws of the State of Montana, the Operator shall provide copies to TRA.
- 3.04 Operator will properly incarcerate all prisoners assigned to the Facility for whom there is space available at the Facility within the statutory and regulatory limits of the Sending Jurisdiction and in accordance with all federal, state, and local laws, ordinances, regulations, and other legal requirements.
- 3.05 Notwithstanding anything contained herein to the contrary, TRA and/or the Trustee shall have no liability whatsoever for any employees of Operator. Operator hereby agrees to indemnify, defend and hold TRA and/or the Trustee harmless from all costs, claims, expenses, and liabilities (including attorneys' fees) whatsoever which may be incurred by TRA and/or the Trustee arising from any and all acts done or omitted to be done by Operator, or the employees, agents and assigns of Operator, in connection with services performed or to be performed under this Agreement.
- 3.06 The interviewing, hiring, training, assignment, control, management, compensation, promotion and termination of all members of the Facility's administration and staff shall be the responsibility and obligation of Operator. Operator will use its best efforts to hire and train local personnel and will report on the status of local hiring on a quarterly basis.

- 3.07 The point of sale for all purchases made by the Operator in connection with this agreement shall be deemed made at the Facility. Operator shall use its best efforts to purchase goods and services locally when economically feasible. Prior to the initial purchase of any goods (including, without limitation, FF&E), Operator will conduct a local vendor fair. The intent of this fair is to provide local vendors with a listing of facility purchase needs. Special emphasis shall be given to food, office supplies and maintenance products.
- 3.08 Operator shall provide all balance sheets, income statements, inmate rolls, accounting records or reports, audits and other such matters required of TRA and/or the Trustee under the Indenture and this Agreement for the Facility, and all Project operation information necessary to carry out TRA and/or the Trustee's continuing disclosure obligations under the Indenture and this Agreement and under the Continuing Disclosure Undertaking. Provided further that said fiscal information not be disseminated beyond those parties identified in this section without the prior written consent of the Operator.
- 3.09 The Operator will provide to the Trustee, the Underwriters, and each holder of at least \$1,000,000 in principal amount of Bonds Outstanding who has given notice to TRA and the Trustee of its interest in receiving the same, within 45 days after the end of each fiscal quarter of each Fiscal Year of TRA, an unaudited statement of income and expenditures with respect to the operation of the Project for such fiscal quarter, and average prisoner census information for each calendar month in each such fiscal quarter. Provided further that said fiscal information not be disseminated beyond those parties identified in this section without the prior written consent of the Operator.
- 3.10 Pursuant to the MOU, Operator agrees to operate the facility in accordance with Montana law.
- 3.11 Pursuant to the MOU, Operator agrees to pay TRA a sponsor's fee of \$5.00 per day for each inmate that is housed in the Facility.
- 3.12 Pursuant to the MOU, Operator agrees to house a maximum of sixty (60) inmates from the City of Hardin, the Town of Lodge Grass, and Big Horn County at no cost to the sending jurisdiction. Operator further agrees to house inmates from said sending jurisdictions separately from inmates from other state and/or federal agencies.
- 3.13 Pursuant to the MOU, Operator agrees to allow the TRA and/or City of Hardin to occupy the courtroom and adjoining office space for operation of the City Court.
- 3.14 Operator agrees to acquire all necessary federal certifications to perform the duties specified under this Agreement and to provide a copy of said certification to the TRA by December 1, 2009.
- 3.15 Operator agrees to pay any deficiency in debt service payments under the Trust Indenture to the TRA beginning on February 1, 2010, and to continue to make said payments for the entire Term of this Agreement.

IV. MEDICAL CARE

- 4.01 The Operator shall provide access to medical, optical, and emergency health care in accordance with those standards of Sending Jurisdictions. Operator shall provide on-site nurses and medical technicians to handle sick call and medical assessment and care that do not require a physician or specialist. The Operator shall also contract with a medical doctor to serve as medical consultant for the Facility.
- 4.02 It is the understanding of TRA that all healthcare needs in excess of basic triage are to be performed off-site of the Facility. In addition, it is the understanding of TRA that all costs associated with care in excess of basic triage will be borne by the agency having jurisdiction over the inmates. TRA shall have no obligation for such costs.

V. COMPLIANCE WITH STANDARDS

- 5.01 Operator shall prepare and adopt a Procedures Manual for the operation of the Facility so as to assure that the Facility is operated fully in accordance with acceptable correctional practices and in accordance with the requirements of the contracting jurisdictions.
- 5.02 Operator shall assure that all employees at the Facility are adequately trained to perform at standards required by law.
- 5.03 Operator shall comply with all standards and requirements of the prisoner housing contracts entered into with each Sending Jurisdiction by TRA and provide all services to be provided by TRA under such contracts and pursuant to the terms of such contracts.
- 5.04 The Operator shall conform to all regulations and requirements, as well as seek any necessary accreditations set forth in specific housing agreements for the Facility.
- 5.05 The Operator shall satisfy the requirements of the American Correctional Association.

VI. DUTIES RELATING TO THE CITY

- 6.01 The Operator and TRA will attempt to secure the cooperation of the City and local law enforcement agencies in all matters of law enforcement, security and communications. To that end, Operator will immediately inform City as to the possibility of any escape or missing inmate. In addition, the Operator will inform the City as to any unusual/extraordinary event/occurrence within the Facility, which might create a public concern or be of potential embarrassment to the City.
- 6.02 Local law enforcement agencies may assist Operator in the training, at Operator's expense, of Operator employees to operate the Facility.
- 6.03 The Operator will attempt to obtain from the City information needed by Operator in the screening of candidates for employment.

- 6.04 All jailers must be certified by appropriate State of Montana Standards or the Sending Jurisdiction's requirements prior to undertaking permanent jailer duties.

VII. DUTIES OF TRA

- 7.01 TRA and the Operator agree it shall be to their mutual benefit and interest that the Facility be fully utilized by maintaining the maximum prisoner population within statutory or regulatory limits. To this end, and throughout the term of this Agreement, TRA and the Operator agree to cooperate in efforts to obtain maximum prisoner population from the sources set forth in Section 1.01 of this Agreement (e.g., TRA will enter into reasonable and advisable prisoner housing contracts or related agreements; Operator will actively seek to identify potential prisoner sources, etc.). It shall be the responsibility of Operator to assist TRA in seeking out sources of prisoners for incarceration at the Facility, and to assist in negotiation and presentation for acceptance by TRA contracts for the incarceration of prisoners from sources listed in Section 1.01 of this Agreement.

VIII. LIABILITY AND INDEMNITY

- 8.01 Operator hereby agrees to defend, hold harmless and indemnify TRA, the City and/or the Trustee, their officers, directors, employees, agents, and representatives, from and against any and all claims, damages, demands, losses, costs and expenses, including attorney's fees, incurred or suffered by TRA, the City and/or the Trustee, their officers, directors, employees, agents, or representatives, arising out of or resulting from any acts done or omitted to be done by Operator or the employees, agents or assigns of Operator pursuant to the provisions of this Agreement.

X. INSURANCE

- 9.01 Operator shall obtain and maintain in force, at its sole cost, risk and expense during the term of this Agreement, a policy or policies of liability insurance in an amount of no less than Five Million Dollars (\$5,000,000.00) in coverage per occurrence, and Five Million Dollars (\$5,000,000) aggregate. Such insurance shall insure against all claims, [including claims based on violations of civil rights up to a maximum of One Million Dollars (\$1,000,000.00)], arising from services performed by Operator pursuant to this Agreement.
- 9.02 Said policy or policies of insurance shall name the TRA, the City and the Trustee as "additional named insureds".
- 9.03 Operator shall provide and continue in force property insurance coverage in the name of the TRA, and the Trustee as loss payees in amounts equal to the cost of replacement, and shall maintain and continue fire, boiler and machinery coverage on the Facility. Operator agrees that its negotiated per diem, per prisoner fee with each Sending Jurisdiction has taken this operational expense into account.
- 9.04 Operator shall provide to TRA insurance certificates as proof of the insurance policies obtained in accordance with this Article. All policies shall provide that coverage shall not be

cancelled without thirty (30) days prior written notice to the Certificate Holder and all additional named insureds and loss payees. Operator shall obtain, as soon as possible (and before cancellation) and at its sole cost, replacement insurance policies.

- 9.05 Operator shall provide workers compensation insurance for its employees at the Facility, which provides the statutorily required coverage, except that employer's liability coverage shall not be in an amount of less than \$1,000,000.
- 9.06 Operator shall carry auto liability insurance coverage in the amount of at least \$1,000,000 per single limit for bodily injury and property damage, with umbrella coverage in an amount not less than \$3,000,000, covering any vehicles used in its operations.
- 9.07 Notwithstanding anything to the contrary in the foregoing sections, Operator shall provide all insurance required of the Operator under the Indenture or this Agreement in the form and naming the insureds and loss payees as required in the Indenture. Operator agrees that the negotiated per diem, per prisoner fee with each Sending Jurisdiction has taken this operational expense into account. This includes business interruption insurance in accordance with Section 6.02(f) of the Indenture. Section 6.02(f) of the Indenture provides as follows:

It will procure and maintain, or cause to be procured and maintained, continuously in effect with respect to the Project all-risk insurance, including coverage for riots, subject only to the standard exclusions contained in the policy. It will apply the Net Proceeds of such insurance to the prompt repair, restoration or replacement of the Project or to the redemption of the Bonds. It will also obtain business interruption insurance protecting the Issuer against the loss of Project Revenues sufficient to pay Operation and Maintenance Costs and principal and interest on the Bonds due hereunder for a period of one year. The proceeds of such business interruption insurance shall be paid to the Project Fund and applied as provided therein if and to the extent that other moneys (other than moneys held in the Reserve Fund) are not available to pay Operation and Maintenance Costs and principal and interest on the Bonds. All policies (or endorsements or riders) evidencing this insurance shall be carried in the names of the Issuer and the Trustee as their respective interests may appear and shall name Trustee as mortgagee and loss payee. It will also procure and maintain, or cause to be procured and maintained, continuously in effect with respect to the Project, (i) insurance against any liability for injuries to or death of any person or injury to or loss of property arising out of or in any way relating to the maintenance, use or operation of the Project or any part thereof in a minimum amount of \$5,000,000, and (ii) workers' compensation insurance, or lawful alternative, covering all employees on, in, near or about the Project. All insurance will be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States, qualified to do business in the State and having a rating from A. M. Best of A- or higher; shall contain a provision that the insurer shall not cancel or

revise coverage thereunder without giving written notice to the Issuer and the Trustee at least thirty (30) days before the cancellation or revision becomes effective; and (except for worker's compensation insurance) shall name the Issuer and the Trustee as insured parties and name Trustee as mortgagee and loss payee.

X. MAINTENANCE, UPKEEP AND REPAIR

- 10.01 All ordinary maintenance, upkeep and repair costs for the Facility shall be paid by Operator pursuant to subsection 3.01(I) of this Agreement except as otherwise provided therein. Operator agrees that the negotiated per diem, per prisoner fee with each Sending Jurisdiction has taken this operational expense into account.

XI. TAXES AND GOVERNMENTAL CHARGES

- 11.01 Operator shall be responsible for any taxes or governmental charges of any kind assessed or incurred after the effective date of this Agreement which are levied or imposed on the Facility and related property. To the extent that such taxes are chargeable against the Facility and found by a final non-appealable judgment of a court of competent jurisdiction to be due and owing, they shall be paid out of the Operating Account or any reserve accounts available for payment thereof as amounts due or payable under the Indenture or this Agreement. Such amounts are not a responsibility or debt of TRA. This Facility is intended to be, and under current law, should be exempt from property taxation. TRA is the owner of taxable title to the Facility based on current interpretations and decisions.

XII. ADDITIONAL PROVISIONS

- 12.01 Notwithstanding anything to the contrary contained herein, in the event any bankruptcy, reorganization debt arrangement, moratorium, proceeding under any bankruptcy or insolvency law or dissolution or liquidation proceeding is instituted by Operator, or if instituted against Operator, is consented to or acquiesced in by Operator and is not dismissed within sixty (60) days, this Agreement shall be immediately terminated and canceled, and the TRA shall immediately assume responsibility for the operation, management and supervision of the Facility.
- 12.02 If either party is found in material breach of this Agreement, said party shall have ninety (90) days, from notification of said breach, to correct or rectify said matter. In the event breaching party makes a good faith effort to correct or rectify said matter, however, more time is required due to unforeseen or uncontrollable circumstances, both parties shall negotiate in good faith as to an appropriate time frame to correct or rectify said matter. If material breach is not corrected or rectified in accordance with above, said contract shall terminate in thirty (30) days.

- 12.03 Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Big Horn County to assign a mediator from a list of mediators maintained by the Montana Consensus Council.
- 12.04 Inmate telephone revenues are not Project Revenues, and shall be payable to, and belong to, the Operator.
- 12.05 Commissary services procurement shall be made utilizing sound and acceptable business and accounting practices, and shall be payable to, and belong to, the Operator.

XIII. APPLICABLE LAW AND VENUE; LEGAL CONSTRUCTION

- 13.01 This Agreement shall be construed under and in accordance with the laws of the State of Montana, and all obligations of the parties created hereunder are performable in Hardin, Montana, and venue of any action or dispute shall be in a court of competent jurisdiction in Big Horn County, Montana.
- 13.02 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 13.03 If for any reason this Agreement shall be held void or voidable, or otherwise be held unlawful, this Agreement shall immediately terminate, and Operator shall have no claim or right of action against TRA, its officials, its employees, its agents or its attorneys for any such termination or alleged act or omission related to the same.

XIV. NOTICES

- 14.01 Notices required to be given hereunder by any party to the other shall be in writing and shall be valid if actually received by the party to whom such notice is given or if deposited in the United States Mail, postage prepaid and addressed to the party as herein below specified. The effective date for noticing shall be the date actually received by the party to whom notice is being given. Notices to the TRA shall be delivered or sent as follows:

Notices to Operator shall be delivered or sent as follows:

Notices to the Trustee shall be delivered or sent as follows:

Lawrence J. Bell
Vice President
U.S. Bank National Association
Corporate Trust Services
555 SW Oak Street, PL-6
Portland, OR 97204

XV. EXECUTION AUTHORITY

15.01 By his or her signature below, each signatory individual certifies that he or she is the properly authorized agent or officer of the applicable party hereto, and has the necessary authority to execute this Agreement on behalf of such party, and each party hereby certifies to the other that any resolutions necessary to create such authority have been duly passed and are now in full force and effect.

XVI. AMENDMENT

16.01 This Agreement may be amended only by a written instrument specifically purporting to amend this Agreement and executed by all parties hereto.

XVII. ENTIRE AGREEMENT

17.01 This Agreement constitutes the sole and only Operation and Management Agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.