

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

December 22, 1986

Honorable John L. Martin
Speaker, Maine House of Representatives
State House
Augusta, Maine 04333

Dear Speaker Martin:

You have asked, by letter dated December 18, 1986, whether the county commissioners and sheriff of Aroostook County may enter into a contract with a private corporation for the operation and management of the Aroostook County Jail for a period of five years beginning February 1, 1987, without additional legislative authority. Representative Edward A. McHenry has also made an informal inquiry. For the reasons which follow, it is Opinion of this Department that, under current Maine law, neither the county commissioners nor the sheriff may validly contract with a private corporation for the operation and management of a county jail.^{1/}

It is apparent from the existing statutory scheme that the Legislature did not intend to permit such private operation and management. Accordingly, the Aroostook contract is ultra vires and a legal nullity. The execution of a valid contract would have to be preceded by legislative action to amend existing law.

^{1/} This Opinion is in accord with the advice already tendered to the county commissioners by the District Attorney for Aroostook County.

I. The Aroostook Contract

The contract in view here, entitled "Management Agreement," and attached hereto, was entered into on December 9, 1986 "between the Aroostook County Commission (the 'Contracting Authority') and Pricor Incorporated, a Tennessee corporation (the 'Company')." See Preamble. The contract was signed by Pricor's chairman, by two county commissioners and by the Aroostook County sheriff.^{2/} The preamble to the contract recites that "the Contracting Authority is charged with the responsibility for operation and management of the Aroostook County Jail . . . and . . . desires to have [the jail] operated and managed by a professional correction facilities management company", namely, Pricor. Accordingly, the agreement sets forth the conditions upon which Pricor is to operate and manage the jail. See Article 1.

The conditions governing Pricor's operation and management of the jail are enumerated in Article 2.2, and in various other provisions of the agreement. Among other things, Pricor is generally required to accept detainees presented by 'the Contracting Authority', but may in its discretion refuse detainees on various medical grounds, where the accompanying documentation is not "acceptable to the Company", or where the admission would result in a population exceeding the jail's 'design capacity'. Article 2.2(a).. Pricor is further required to provide "security and supervision" (Article 2.2(c)); to maintain property used in operating the jail (Article 5.4); to provide adequate staff (Article 5.7.1); to appoint a Facility Administrator to manage day-by-day operations (Article 5.7.4); and to provide food service and health care (Articles 5.10 and 5.11). Pricor is also responsible for the issuance of a comprehensive and detailed outline of the programs, policies and procedures in accordance with which it proposes to operate and manage the jail (Article 2.1), and for the adoption of written policies and procedures governing a detainee record system (Article 5.2).^{3/}

^{2/} Although the sheriff's signature appears on the instrument, neither he nor his office receive any mention in the body of the agreement.

^{3/} It should perhaps be noted that, quite apart from the legal questions discussed below, the contract appears to have been entered into in violation of 30 M.R.S.A. § 304, requiring that contracts for services in excess of \$1,000 be put out to competitive bid.

II. The Statutory Structure

Maine law requires that counties provide detention facilities. 30 M.R.S.A. § 1124. To discharge this responsibility, the commissioners of each county may elect to provide a jail building in the county's shire town, and where they do, they are required to keep the building in proper repair. 30 M.R.S.A. § 301.^{4/} The commissioners are further directly responsible for procuring all necessary supplies for county jails, "to be furnished and purchased under their direction and at the expense of the [county]." 30 M.R.S.A. § 1854. Moreover, the commissioners are invested with supervisory authority with regard to certain jail personnel matters. All appointments and dismissals of subordinate assistants and employees at county jails are subject to the prior approval of the commissioners or the county personnel board, if any. 30 M.R.S.A. §§ 64-A, 1701, 1854. In cases of suspension or disciplinary action, the commissioners or personnel board may, at the request of the affected subordinate, investigate the circumstances, and are empowered to reinstate him with no loss of pay, rights or benefits where they find the action to have been unwarranted. 30 M.R.S.A. §§ 64-A, 1701. Finally, the commissioners are called upon to fix the pay of the jailer (i.e. the sheriff's deputy) and all his subordinates. 30 M.R.S.A. § 1701.

But the commissioners are not entrusted with the operation and management of the county jail. Where a county provides a jail within its own territorial confines, as does Aroostook County, the county sheriff, by law, has custody and charge of that jail. 30 M.R.S.A. § 1701. The provision cited further requires that the sheriff "shall keep [the jail] himself, or by his deputy as jailer, master or keeper." Id. The keeper (whether the sheriff or his deputy) is responsible for appointing all subordinate assistants and employees at the jail. Both the keeper and his subordinates may be deputy sheriffs; all subordinates are appointed for the same service periods as those prescribed by law for deputy sheriffs. Id.; and see 30 M.R.S.A. § 951.

^{4/} Counties are required to provide detention facilities in one of three ways --

- (1) "within the county";
 - (2) "by contract with another county, outside the county";
- or
- (3) pursuant to an intercounty agreement to provide consolidated detention facilities.

30 M.R.S.A. § 1124.

The provision and operation of county jails are thus closely regulated by statute, with the county commissioners generally charged with the decision as to whether to provide a building within the county, as well as certain duties with regard to supply and personnel matters, and the sheriff being made responsible for operation and management of the jail, if established within the county.

III. The Legality of the Aroostook Contract

As indicated above, the Aroostook contract provides that the operation of the jail be conducted by a private corporation, and contemplates "the deputization . . . of the Company's employees." See Articles 5.8, 6.3.3. These so-called deputies, however, would not be answerable to the sheriff, but rather, first, to the corporation and, ultimately (in some areas), to the county commissioners. Thus, the effect of the entire contract is to exclude the sheriff altogether from his statutory position as the final authority in matters affecting operation and management of the jail.^{5/}

The county sheriff is an elected constitutional officer who is entrusted by law with the custody of the jail and the prisoners confined there, whether in his own person, or in the person of a deputy subject to his direction. Me.Const.Art. IX § 10; Sawyer v. County Commissioners,^{6/} 116 Me. 408, 411-412, 102 A. 226 (1917); 30 M.R.S.A. § 1701. The county commissioners do not have custody of the jail or prisoners. Sawyer, 116 Me. at 412. They are, essentially, the county's financial officers. Id. at 411. Nowhere are they empowered as such to enter upon a contract which necessarily results in the impairment of the sheriff's statutory functions. The commissioners can no more contract for the operation of the jail by a private corporation than they could contract for the

^{5/} It is true that the contract does provide that the corporation's "authority shall be limited by applicable law." See Article 2.2(b). It cannot be seriously contended, however, that this phrase, by itself, operates to confer operating authority on the sheriff.

^{6/} "The office of sheriff is one of the oldest known to the common law. It is inseparably associated with the county. He is the chief executive officer of the state in his county. The office of sheriff is recognized in the earliest annals of English law. It is much older than Magna Charta In this state the sheriff is a constitutional officer." Sawyer, 116 Me. at 411.

employment of a jail physician in Sawyer. Id. at 413. "The exercise of such authority is in utter conflict with the responsibility which is placed upon the sheriff by [30 M.R.S.A. § 1701] It establishes a divided authority . . ." Id.

Thus, the Aroostook County Commissioners had no legal authority to enter into the contract at issue here. Moreover, even if the contract were between the sheriff himself and the private corporation, the difficulty would not be resolved. As noted above, the sheriff is required to "keep [the jail] himself, or by his deputy" (emphasis added). 30 M.R.S.A. § 1701. Without specific authority, a sheriff cannot validly contract to renounce any portion of the functions which he fulfills pursuant to this provision in favor of a private corporation.^{1/}

Finally, the Aroostook contract is inconsistent with the statutory scheme in other areas. Where the statute gives the jailer (i.e. the sheriff or his deputy) the authority to appoint "all subordinate assistants and employees", there can be no doubt that the Legislature intended these subordinates to be employees of the county, not of an independent contractor. See 30 M.R.S.A. § 1701. Any other reading puts an intolerable strain on the statutory language. The Legislature clearly did not intend, for example, to require the county commissioners to fix the pay of employees of a private corporation. See id., and see 30 M.R.S.A. § 64-A.

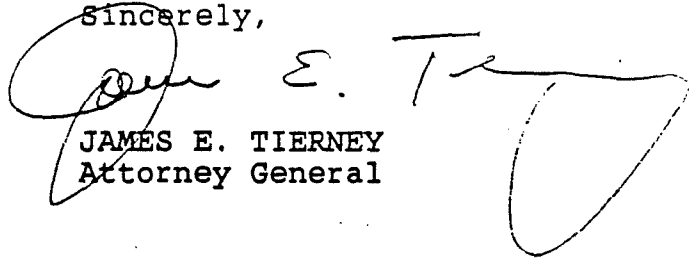
It is thus apparent from the overall statutory configuration that the Legislature did not contemplate the possibility that a county might contract out the operation and management of its jail to a private corporation, and did not intend to permit a county to take that course. Therefore,

^{1/}The legislative history of 30 M.R.S.A. § 1701 is instructive in this regard. Formerly codified at 34 M.R.S.A. § 401, this provision was reenacted in modified form by P.L. 1977, ch. 431, § 18. The accompanying Statement of Fact describes the purpose of the bill as the implementation of recommendations put forward by the Joint Select Committee on County Government. L.D. 224, Statement of Fact (108th Legis. 1977). The committee considered and rejected the option of removing the sheriff from his constitutional niche. See Report of the Joint Select Committee on County Government: Study on County Government 14-15. Instead, the committee recommended that the sheriff retain the general administrative authority traditionally vested in him with respect to county law enforcement. Id. at 30-31.

under current Maine law, neither the county commissioners nor the sheriff of a county may validly contract with a private corporation for the operation of a county jail. Accordingly, the Aroostook contract is ultra vires, and a legal nullity. The execution of a valid contract would have to be preceded by legislative action.

I remain at your disposal should you have any further questions in regard to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney", is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

JAMES E. TIERNEY
Attorney General

JET/vv

cc: Representative Edward McHenry
David V. Bell, Chairman, Aroos. Co. Comm.
Edgar Wheeler, Sheriff, Aroostook County
John D. McElwee, D.A., Pros. Dist. Number 8
Donald L. Allen, Commissioner, Corrections

MANAGEMENT AGREEMENT

This contract (the "Agreement") is entered into this 9th day of December, 1986, between the Aroostook County Commission (the "Contracting Authority") and Prigor Incorporated, a Tennessee corporation (the "Company").

WITNESSETH:

WHEREAS, the Contracting Authority is charged with the responsibility for operation and management of the Aroostook County Jail in Houlton, Maine, (the "Facility"); and

WHEREAS, the Contracting Authority desires to have the Facility operated and managed by a professional correction facilities management company; and

WHEREAS, the Contracting Authority desires that the Company undertake the operation and management of the Facility, and the Company desires to undertake such operation and management;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to provide for the operation and management of the Facility ~~which has a maximum capacity of 52 detainees~~ on the terms and conditions provided in this Agreement.

2. Actions Contemplated. The Company will operate and maintain the Facility in accordance with the terms of this Agreement.

2.1 Development of Programs, Policies and Procedures. The Company will prepare for approval by the Contracting Authority a comprehensive and detailed outline of its programs, policies and procedures to govern its operation and management of the Facility, all of which will (i) comply in all material respects with policies and procedures of the Contracting Authority, applicable American Correctional Association (the "ACA") standards, requirements of the constitution or laws of the State of Maine or of the United States of America or of any legislative, executive or administrative rules, regulations or orders (whether state or federal) or of any legally binding decree, judgment or order of any court (whether state or federal) and with applicable local ordinances, rules and regulations, all as existing on the date of this Agreement and (ii) comply with applicable building and fire safety codes and regulations and

sanitary and health codes governing like facilities (the requirements set forth in (i) and (ii) are collectively the "Legal Requirements")

2.2 Operation and Management. (a) Admission.

The Company shall accept for admission to the Facility detainees presented by the Contracting Authority to the Company at the admission point for the Facility designated by the Company in writing; provided, that the Company is not obligated to accept (i) detainees presented for admission to the Facility who, in the judgement of the Company, appear to be seriously ill, injured, or otherwise under a serious physical or mental disability without documented medical clearance from a licensed medical authority; (ii) detainees without documentation acceptable to the Company that the detainee is then legally detained and subject to incarceration and that the placement of such detainees to the Facility has been properly authorized; (iii) detainees if the population of the Facility would exceed its design capacity after such acceptance for more than 72 hours.

(b) Nondelegation. The Company's authority shall be limited by applicable law. This Agreement does not constitute a delegation of authority by the Contracting Authority to the Company of the following: (i) the determination of detainee release and parole eligibility dates; (ii) the determination of and awarding of good time credits; (iii) the approval of detainees for work, medical or temporary furloughs or pre-parole transfer; or (iv) unless the Company's classification and disciplinary policies and procedures have been approved in advance by the Contracting Authority, the classification of detainees or placement of detainees in less restrictive custody or more restrictive custody; or (v) unless the Company's classification and disciplinary policies and procedures have been approved in advance by the Contracting Authority, the taking of disciplinary actions against detainees; provided, that the Company may take disciplinary actions subject in all cases to:

(x) when reasonably practicable, the prior written approval of the Contracting Authority; or

(y) in exigent circumstances, the verbal approval of the Contracting Authority or, when necessary, the subsequent review and approval of the Contracting Authority. In either case, such approval shall be reduced to writing as soon as possible.

(c) Security and Inmate Supervision. The Company shall provide such security and supervision as is required by sound correctional practice to maintain the safety, security and order of the Facility and to protect the safety and well-being of

the detainees, staff, visitors and surrounding community. In the event of a disturbance caused by detainees, or if any security threat or peril, including an detainee strike, should occur within the Facility, the Contract Monitor shall be notified immediately. In the event of any such occurrence, the Company will cooperate with the Contract Monitor, the Contracting Authority and any appropriate law enforcement authorities in restoring order to the Facility.

(d) Discharge. The Company shall discharge detainees from the Facility only upon express written direction from the Contracting Authority or an authorized agent. Such direction shall be accompanied by the amount of money or other items due upon discharge, if any, that the detainee is entitled to receive pursuant to the provisions of applicable law.

2.3 Payments. (a) Reimbursement. As compensation for performance by the Company of its duties under the terms of this Agreement, the Contracting Authority shall pay the Company \$680,000.00 per year (the "Operational Fee"). * Payments will be made in monthly installments of \$56,666.67 per month.

The Contracting Authority shall also be responsible for detainees hospitalized or institutionalized outside the Facility, including security therefor. The Contracting Authority shall reimburse the Company for the expense of medical care incurred outside of the Facility and for the cost of all prescription drugs. As used herein, "medical care" means all types of health related services, including but not limited to dental, psychological, psychiatric, optical, and chiropractic, as well as the services traditionally rendered by medical doctors.

(b) Annual Adjustments. Effective on February 1, in each year, the Operational Fee shall be adjusted to be equal to the product of the rate then in effect times ~~xxxxxxxxxxxx~~ the quotient of the value of the Consumer Price Index as published by the Bureau of Labor Statistics for the immediately preceding calendar year over the value of such index for the next preceding year.

(c) Billing. The Company will submit invoices to the Contracting Authority on or before the second day of each month for the services performed in the preceding month. The invoice will specify the Operational Fee. Payment for the services invoiced is due and payable upon receipt of the invoice, but in no event later than eight days after the date of such invoice. In the event that the Contracting Authority disputes any items on the invoice, detailed written notice of such disputes shall be sent to the Company as soon as possible, but in no event later than eight days after the Contracting Authority's

*Plus the actual cost of utilities (water, sewer, gas, and electricity paid by the Company.

receipt of such invoice. Portions of invoiced charges not in dispute shall be paid pending resolution of any disputed items. Disputes that cannot be resolved within 90 days of notice of dispute are to be submitted to arbitration. Any such arbitration shall be conducted by a panel consisting of 1 member selected by the Contracting Authority, 1 member selected by the Company, and a third selected by these 2 panel members. Any determination made by this panel shall constitute a final and binding resolution of the dispute.

(d) Right to Pledge Payments. The Company shall have the right to grant a security interest in this Agreement or to pledge to any third party or parties designated by the Company any or all of the payments, reimbursement and fees due to it under the terms of this Agreement, and upon receipt of notice of any such grant or pledge, the Contracting Authority will acknowledge the existence thereof and thereafter make payments in accordance with the terms of the instrument creating such security interest or pledge.

3. Representations and Warranties of the Company. The Company represents and warrants to the Contracting Authority as follows:

3.1 Organization; Existence; Authority. The Company is a corporation duly incorporated, organized and existing in good standing under the laws of the State of Tennessee. The Company is duly qualified to do business as a foreign corporation in good standing in the State of Maine. The Company has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

3.2 Authorization and Enforceability of Agreement. This Agreement has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable in accordance with its terms (except that (i) the enforceability of this Agreement may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application relating to the enforcement of creditors' rights and (ii) certain equitable remedies, including specific performance, may be unavailable).

3.3 Consents. Except as otherwise disclosed in writing to the Contracting Authority, no consents, approvals, authorizations or any other actions by any governmental or regulatory authority that have not been obtained or taken are or will be required for the execution and delivery of this Agreement, the Company's operation and management of the Facility or the consummation of the transactions contemplated by this Agreement.

3.4 No Breach. Neither the execution nor the delivery by the Company of this Agreement, nor the consummation of any of the transactions herein contemplated nor the fulfillment of, or compliance with, the terms and provisions hereof, will contravene the articles of incorporation or by-laws of the Company or will conflict with, or result in a breach of, any of the terms, conditions or provisions of, or constitute a default under, in any way which is materially adverse to the Company, any corporate or limited partnership restriction or any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Company is a party or by which the Company is or may be bound or to which any of the property or assets of the Company is or may be subject, or any Legal Requirements, or will result in the creation or imposition of a prohibited lien, charge or other security interest or encumbrance of any nature upon any property or asset of the Company under the terms of any such restriction, bond, debenture, note, mortgage, indenture, agreement, instrument, law, order, rule or regulation.

3.5 No Default. No event of default or event which, with notice or lapse of time or both, would constitute an event of default or a default under any agreement or instrument to which the Company is a party or by which the Company is or may be bound or to which any of the property or assets of the Company is or may be subject, and which would have a material adverse effect on the Company or which would impair its ability to carry out its obligations under this Agreement has occurred and is continuing.

3.6 No Litigation. Except as set forth herein there is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened, wherein an adverse decision, ruling or finding would materially and adversely affect the transactions contemplated by, or the validity or enforceability of, this Agreement.

4. Representations and Warranties of Contracting Authority. The Contracting Authority represents and warrants to the Company as follows:

4.1 Existence; Authority. The Contracting Authority is duly created and existing pursuant to the provisions of applicable Maine Law; there are no proceedings pending or, to the knowledge of the Contracting Authority, threatened, seeking the dissolution of the Contracting Authority, or the termination of its existence. The Contracting Authority has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to engage in the transactions contemplated by this Agreement.

4.2 Authorization and Enforceability of Agreement.

This Agreement has been duly authorized, executed and delivered by the Contracting Authority and constitutes a legal, valid and binding obligation of the Contracting Authority, enforceable in accordance with its terms (except that (i) the enforceability of this Agreement may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application relating to the enforcement of creditors' rights and (ii) certain equitable remedies, including specific performance, may be unavailable).

4.3 Consents. Except as otherwise disclosed in writing to the Company, no consents, approvals, authorizations or any other actions by any governmental or regulatory authority that have not been obtained or taken are or will be required for the execution and delivery of this Agreement, the Company's operation and management of the Facility or the consummation of any other transactions contemplated by this Agreement.

4.4 No Breach. Neither the execution nor the delivery by the Contracting Authority of this Agreement, nor the consummation of any of the transactions herein contemplated nor the fulfillment of, or compliance with, the terms and provisions hereof, will contravene the Contracting Authority's statutory authority or will conflict with, or result in a breach of, any of the Legal Requirements.

4.5 No Default. No event of default or event which, with notice or lapse of time or both, would constitute an event of default or a default under any agreement or instrument to which the Contracting Authority is a party or by which the Contracting Authority is or may be bound or to which any of the property or assets of the Contracting Authority is or may be subject, and which would have a material adverse effect on the Contracting Authority or which would impair its ability to carry out its obligations under this Agreement has occurred and is continuing.

4.6 No Litigation. Except as set forth herein there is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened, wherein an adverse decision, ruling or finding would materially and adversely affect the transactions contemplated by, or the validity or enforceability of, this Agreement.

4.7 Disclosure of Applicable Court Orders. As of the date of this Agreement, the Contracting Authority has disclosed in writing to the Company all of the Legal Requirements and all existing, threatened or pending actions, suits, proceedings,

investigations and court orders, decisions, stipulations, consent orders and consent decrees to which the Contracting Authority is or may be subject that will be applicable to the operation and management of the Facility.

4.8 Legal Incarceration. Each detainee presented to the Company at the admission point will be legally incarcerated by the Contracting Authority. This representation shall be deemed to have been remade at the time any detainee is presented to the Company for admission to the Facility.

5. Covenants of the Company. The Company covenants with the Contracting Authority that:

5.1 Compliance with Law. The Company will use all reasonable efforts to cause its operation of the Facility to conform in all material respects to the Legal Requirements. A permanent employee of the Company will be designated to inspect the Facility regularly for compliance with the Legal Requirements. Records of such inspections and action taken, if any, to comply with inspection findings will be kept on file at the Facility and at the Company's headquarters, and a copy shall be promptly sent to the person designated to receive such records by the Contracting Authority.

5.2 Reports and Records. The Company will adopt and implement written policies and procedures to govern a detainee record system. Information contained in detainee records shall be consistent with that required by applicable ACA standards and the requirements of the Contracting Authority. All detainee information shall be considered confidential and subject to release or disclosure only (i) as required by law, (ii) in compliance with the order of a court having jurisdiction, (iii) in defense of any proceeding to which the Company or its employees or agents are a party, (iv) to the Contracting Authority, (v) to a state or governmental agency expressly authorized in writing by the Contracting Authority to be permitted access to such records or (vi) to physicians or other health care providers for use in treatment.

The Company will maintain records of all significant activities related to operation of the Facility. These Facility records shall be available for review by the Contracting Authority.

The Company will immediately notify the Contract Monitor in the event of an unusual occurrence or incident as such events are defined by the Contract Monitor in writing and will thereafter as soon as practicable furnish written notification of such occurrence or incident.

5.3 Payment of Taxes and Other Claims. The Company will pay or discharge or cause to be paid or discharged before the same shall become delinquent, (1) all taxes, assignments, and governmental charges levied or imposed upon it or upon its income, profits, or property, and (2) all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien upon the Facility; provided, however, that the Company shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, governmental charge, or claim to the extent that the amount, applicability, or validity thereof shall currently be contested in good faith by appropriate proceedings and the Company shall have established and shall maintain adequate reserves on its books for the payment of the same.

5.4 Maintenance of Properties. The Company will cause all its properties used or useful in the operation of the Facility to be maintained and kept in good condition, repair, and working order and supplied with all necessary equipment, ordinary wear and tear, casualty, condemnation, and acts of God excepted; provided, however, that nothing in this Section shall prevent the Company from discontinuing the operation and maintenance of any of its properties if such discontinuance is, in the judgment of the Company, desirable in the operation of the Facility and not disadvantageous in any material respect to the Contracting Authority.

5.5 Legal Existence. Subject to Section 12.4, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence, rights (charter and statutory), and franchises; provided, however, that the Company shall not be required to preserve any right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the operation of the Facility and that the loss thereof is not disadvantageous in any material respect to the Contracting Authority.

5.6 Insurance. The Company will establish and maintain an adequate plan of insurance, which may include self insurance, including insurance against civil rights violations, covering the Company, its officers, employees and agents for all liability claims caused by or arising out of the operation, maintenance and management of the Facility. Such plan of insurance shall in the judgment of the Company be adequate to provide coverage to cover the Contracting Authority for claims caused by or arising out of the Company's operation, and management of the Facility.

5.7 Employment Matters. The Company will observe the following policies with respect to its employees:

5.7.1 Staffing. The Company will provide adequate staff for the operation of the Facility in accordance with the Legal Requirements and the programs, policies and procedures governing the operation and management of the Facility by the Company.

5.7.2 Employment Policy. The Company's recruitment, selection and employment of all personnel shall conform to the rules and regulations of the Equal Employment Opportunity Commission. The Company will adopt and implement a non-discriminatory policy with respect to handicap, race, color, religion, sex, age and national origin. A notice evidencing the Company's adoption and commitment to this policy shall be posted in a conspicuous location at the Facility.

5.7.3 Personnel. The Contract Monitor will be provided copies of the applications of all prospective employees. Upon stating reasonable grounds, the Contracting Authority shall have the right to request that any applicant be denied employment or that the employment of any person at the Facility be terminated. The Company will perform a routine reference check on all applicants prior to their employment. Results of the Company's routine reference checks shall be made available to the Contracting Authority. The Company hereby assumes all responsibility for employee benefits, including medical insurance, life insurance, workman's compensation insurance, and other benefits.

5.7.4 Administration. The Company will appoint a Facility Administrator to manage on-site the day-to-day operation of the Facility. The position of Facility Administrator shall be staffed by a professional, experienced and trained in the administration of correctional facilities and programs. Such appointment shall be subject to approval of the Contracting Authority.

5.7.5 Training. The Company will train employees to assure their ability to comply with the programs, policies and procedures for the Facility approved by the Contracting Authority.

5.8 Cooperation with Contracting Authority. In the event that this Agreement or any portion hereof should be found, deemed or judged by a judicial or regulatory body to be illegal or to constitute an improper delegation of the Contracting Authority's authority, the Company will use all reasonable efforts and will cooperate with the Contracting Authority to cure such illegality or impropriety. Such effort shall include, if necessary, the deputization or appointment of the Company's employees or agents as employees or agents of the Contracting Authority.

5.9 Visitation. The Company will permit such employees or agents of the Contracting Authority as the Contracting Authority may designate to visit the Facility and to examine, copy and make extracts from the Company's records relating to the Facility and to discuss its affairs, operations and records with its officers, employees and agents, all at such times and intervals and to such extent as the Contracting Authority may reasonably require. The Company will promptly provide to the Contracting Authority such other information as the Contracting Authority may from time to time reasonably request.

5.10 Food Service. The Company will provide all individuals assigned to the Facility with 3 meals per day. Meal plans will be approved by a registered dietician and will be prepared under sanitary conditions in compliance with Legal requirements.

5.11 Medical Care. The Facility's health care program will be operated by personnel properly trained and licensed pursuant to applicable laws of the State of Maine. Administration of the health care program will comply with Legal Requirements.

6. Covenants of the Contracting Authority. The Contracting Authority covenants with the Company that:

6.1 Appointment of Contract Monitor. The Contracting Authority shall appoint a qualified Contract Monitor (the "Contract Monitor") to monitor the Company's implementation of its duties and obligations under the terms of this Agreement and with full authority to act on behalf of the Contracting Authority in all matters arising under this Agreement to the extent permitted by law.

6.2 Payment of Amounts Due. The Contracting Authority will duly and punctually pay the amounts due and owing in accordance with the terms of this Agreement. The Contracting Authority will effect such payments from amounts appropriated for such purpose by Aroostook County, and payments to the Facility shall be made before such amounts are paid or allocated to any other creditor of the Contracting Authority.

6.3 Cooperation with the Company. The Contracting Authority will cooperate with the Company in the performance of this Agreement and will cause its employees and agents to meet with the Company and its agents to discuss the matters covered by this Agreement.

6.3.1 Approval of Programs, Policies and Procedures. The Contracting Authority will consult with the Company and will designate qualified responsible employees to meet with

7. Conditions Precedent to Obligations of Company. The obligations of the Company under this Agreement shall be subject to the following:

7.1 General. The obligations of the Company hereunder are subject to the following conditions precedent:

7.1.1 Accuracy of Contracting Authority's representations and warranties. The representations and warranties of the Contracting Authority contained in this Agreement, shall be true and correct as of the date of this Agreement.

7.1.2 Performance by The Contracting Authority. The Contracting Authority shall have materially performed and complied with all obligations required to be performed or complied with under the terms of this Agreement prior to the date the Company is required to perform its obligations hereunder.

7.2 Operation. Prior to commencement of management of the Facility, the following conditions precedent shall have been satisfied:

7.2.1 Approval of Programs, Policies and Procedures. The Contracting Authority shall have approved all programs, policies and procedures required for the operation of the Facility.

7.2.2 Permits. All permits and licenses required by any governmental entity having power to control or regulate the operation of the Facility shall have been granted.

8. Conditions Precedent to Obligations of Contracting Authority. The obligations of the Contracting Authority under this Agreement are subject to the following condition precedent:

8.1 Accuracy of Company's Representations and Warranties. The representations and warranties of the Company contained in this Agreement shall be true and correct as of the date of this Agreement.

9. Defaults; Remedies.

9.1 Events of Default. An "Event of Default" means the occurrence of any one of the following events:

(a) payment of reimbursement, compensation or fee to the Company by the Contracting Authority is not made when due; or

(b) default in the due and punctual observance and performance of any covenant, term, condition or agreement of the Contracting Authority or the Company contained in this Agreement, shall have occurred and be continuing for a period of 30 days after there has been given to the other party notice specifying such default and requiring it to be remedied, and the Company and the Contracting Authority shall not have agreed in writing to an extension of such period prior to its expiration; provided, however, that such period shall be extended if corrective action is instituted within the applicable period and so long as such action is diligently pursued until such default is corrected.

9.2 Remedies Against Company. If an Event of Default for which the Company is responsible occurs and is the Contracting Authority shall be entitled to specific performance of this Agreement.

9.3 Remedies Against Contracting Authority. If an Event of Default for which the Contracting Authority is responsible shall have occurred and be continuing at any time during the term of this Agreement, the Company may (i) terminate this Agreement and (ii) pursue any available remedy at law or suit in equity to enforce the payment of reimbursement, compensation and fees due to the Company hereunder and to enforce the performance of any other term, covenant or condition hereof.

10. Indemnification.

10.1 Indemnity by Company. The Company agrees that it will at all times indemnify and hold harmless the Contracting Authority against losses caused or arising out of the Company's operation and management of the Facility; provided, however, the Company shall not be obligated to indemnify the Contracting Authority against losses resulting from negligence, fraud, willful misconduct or theft on the part of the Contracting Authority.

10.1.1 Defense. The Company shall have the right to assume the investigation and defense of all litigation arising out of the Company's operation and management of the Facility, including the employment, fees and expenses of counsel. The Contracting Authority shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by the Contracting Authority unless the employment of such counsel has been specifically authorized by the Company, in writing.

10.1.2 Cooperation; Settlement. The Contracting Authority shall cooperate with the Company in the defense of all actions or litigation. The Company shall not be liable for any settlement of any action or litigation without the Company's consent but, if any such action or litigation is settled with the consent of the Company or there be final judgment for the plaintiff in any such action or with respect to any such action or litigation, the Company shall indemnify and hold harmless the Contracting Authority from and against any loss by reason of such settlement or judgment as provided in this Section.

10.1.3 Survival; Right to Enforce. The provisions of this Section shall survive the termination of this Agreement, and the obligations of the Company hereunder shall apply to losses or claims whether asserted prior to or after the termination of this Agreement. In the event of failure by the Company to observe the covenants, conditions and agreements contained in this Section, the Contracting Authority may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Section.

10.2 Indemnity by Contracting Authority. The Contracting Authority agrees that it will at all times indemnify and hold harmless the Company against any and all liability caused by or arising out of the Contracting Authority's failure to comply with the provisions of this Agreement.

11. Term of Agreement; Termination of Agreement

11.1 Term. The initial term of this Agreement shall be for a period of 5 years beginning February 1, 1987, and terminating January 31, 1992. ~~The Contracting Authority at its option may renew this Agreement for successive xxxxx year terms.~~

11.2 Termination. This Agreement may be terminated in advance of the stated termination date in the event that Aroostook County fails to appropriate funds for the operation ~~or purchase~~ of the Facility for any contract year.

11.3 Changes in Legal Requirements.

11.3.1 Burden of Increased Costs. If there is a change in the Legal Requirements that requires the Company to purchase additional equipment, modify construction, revise or add to the completed Facility, or which increases the Facility's operation or maintenance cost, or reduces the Company's revenues from the Facility, (the cost of such activities, increased costs being hereinafter collectively referred to as "Increased Costs"), the Contracting Authority shall be responsible for these Increased Costs.

~~(i) the Contracting Authority shall be responsible for~~
~~the increased costs~~

~~(ii) the Company shall be responsible for~~
~~such increased costs~~

11.3.2 Arbitration. In the event that any change in the Legal Requirements requires modification of the Facility, the parties shall mutually agree on the modifications, revisions or additions to be made. If the parties do not agree, the matter shall be immediately referred to arbitration pursuant to the arbitration procedures set forth in Section 2.3(c) hereof.

11.4 Special Termination Rights. The Company shall have the option, with 60 days notice, to terminate this Agreement upon the occurrence of any of the following events:

11.4.1 Failure of Appropriation. Aroostook County shall fail to appropriate funds to pay the amounts payable hereunder.

~~(i) Damage to or Destruction of Facility. The Facility shall have been damaged or destroyed to such an extent that in the opinion of the Company (i) the required restoration and repair could not reasonably be expected to be completed within a period of xxxxxxxx months after commencement of restoration or repair (ii) the Company is prevented or would likely be prevented from using the Facility for its normal purposes for a period of xxxxxxxx months or more (iii) the cost of restoration and repair would exceed xxx% of the original cost of constructing the Facility~~

11.4.3 Economic Changes. Changes, which the Company cannot reasonably control or overcome, in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Facility for the purposes contemplated by the Agreement shall have occurred, or technological or other changes shall have occurred which, in the opinion of the Company, render uneconomic for such purposes the continued operation of the Facility.

11.4.4 Unreasonable Burden. Unreasonable burdens or excessive liabilities shall, in the opinion of the Company, have been imposed upon the Company with respect to the Facility or the operation of the Facility.

11.4.5 Change in Law. If as a result of changes in the Legal Requirements, the obligations of the Company or the Contracting Authority under this Agreement shall have become, in the opinion of counsel to the Company, void, unenforceable or impracticable to perform, in each case in any material respect in accordance with the intent and purpose of the parties as expressed in this Agreement.

12. Miscellaneous.

12.1 Complete Agreement; Amendment; Waiver. This Agreement and the exhibits set forth hereto represent the entire understanding of the parties with respect to the transactions contemplated hereby. This Agreement may be amended only upon the written consent of both parties. No party may take any action herein prohibited or omit to take any action herein required to be performed by it, nor shall any breach of any covenant, agreement, warranty or representation contained herein may be waived, unless both parties shall have so agreed in a writing signed by both parties.

12.2 Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement.

12.3 Force Majeure. If by reason of Force Majeure either the Contracting Authority or the Company shall be rendered unable wholly or in part to carry out its obligations under this Agreement, and if such party gives notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after the occurrence of such event of Force Majeure, such obligations of the party giving such notice, so far as they are affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, including a reasonable time for removal of the effect thereof. The requirement that any Force Majeure shall be reasonably beyond the control of the party shall be deemed to be fulfilled even though any existing or impending strike, lockout or other industrial disturbance may not be settled but could have been settled by acceding to the demand of the opposing person or persons. The occurrence of any Force Majeure shall not suspend or otherwise abate, and the Contracting Authority shall not be relieved from, the obligation to pay any and all fees and payments required to be made by it under this Agreement at the times required.

As used herein, "Force Majeure" means acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America, or of any state thereof, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, storms, floods,

washouts, droughts, restraining of government and people, civil disturbances, explosions, nuclear accidents, wars, breakage or accidents to machinery, transmission pipes or canals, entire failure of utilities, shortages of labor, material, supplies or transportation, or any other cause not reasonably within the control of the party claiming such inability.

12.4 Assignment; Successors. This Agreement is a continuing obligation and shall be binding upon the parties and their respective successors and assigns and shall inure to the benefit of their respective successors and assigns; provided, the Company may not assign its duties and obligations under this Agreement without the express written consent of the Contracting Authority except in connection with a merger into or consolidation of the Company or a transfer of substantially all of the assets of the Company as an entirety if in any such case the successor, resulting or transferee corporation assumes in writing delivered to the Contracting Authority, the Company's obligations under this Agreement.

12.5 Notices. All notices and other communications under this Agreement shall be in writing and shall be effective on the third business day after deposit in the mails with first class postage prepaid addressed as follows:

If to the Company:

Pricor Incorporated
Suite 226, 446 Metroplex Drive
Nashville, Tennessee 37211
Attention: Travis A. Snellings

If to the Contracting Authority:

Aroostook County Commissioners
P.O. Box 846
Caribou, Maine 04736
Attention: Chairman

or as otherwise specified by notice from the appropriate party to the other.

12.6 Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Tennessee.

12.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

12.8 Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provisions in any other jurisdiction. It is contemplated by the parties that legal review of this Agreement will be undertaken by the Contracting Authority. If this review indicates a substantial legal impediment to the Agreement, the parties contemplate further negotiations to amend the Agreement to eliminate the impediment.

12.9 Interpretations. The table of contents and section headings of this Agreement are for reference purposes only and shall not affect its interpretation in any respect.

IN WITNESS WHEREOF, the Contracting Authority and the Company have caused this Agreement to be signed in their behalf by their duly authorized representatives as of the date set forth above.

PRICOR INCORPORATED

By Herbert L. McCord
Title: CHAIRMAN

ATTEST:

Susan Pelletier
Title: Notary Public

AROOSTOOK COUNTY COMMISSION

By Daniel Bell
Title: County Commissioner, Chair

ATTEST:

Susan Pelletier
Title: Notary Public

By Keith H. Lamoureux
Title: County Commissioner

ATTEST:

Susan Pelletier
Title: Notary Public

By _____
Title: _____

ATTEST:

Susan Pelletier
Title: Notary Public

By Edgar W. Hedder
Title: Sheriff