

CONTRACT AMENDMENT
CONTRACT 13-011-MWP
Optometrist-MWP

THIS CONTRACT AMENDMENT (**Amendment #6**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 5 S. Last Chance Gulch, Helena, Montana 59620-1301 and **Dr. Tom Felstet OD** (CONTRACTOR) 4515 Rimrock Road, Billings, MT 59106, and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of August 16, 2012, and Section 21 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2018 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. TIME OF PERFORMANCE

This Contract shall take effect upon final contract signature. This Contract shall expire on **June 30, ~~2018~~ 2019**, unless either party provides a written notice of cancelation at least 30 days prior. In the event neither party provides a written notice of cancelation 30 days prior to June 30, 2019, this Contract shall continue on a month-to-month basis until such time as the parties mutually agree to an annual renewal of the contract or either party provides a written 30 day notice of cancellation.

In no event may this Contract continue or be renewed for a period exceeding a total of **seven (7) years**.

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

DEPARTMENT

DocuSigned by:
Cynthia McGillis-Hiner 7/26/2018
E9FD4E82FFD9421...
Cynthia McGillis-Hiner, Acting Administrator
Clinical Services Division
Date

CONTRACTOR

DocuSigned by:
Tom Felstet 8/8/2018
77C4DD764837451...
Dr. Tom Felstet, OD
Date

Reviewed for Legal Content by: Colleen Ambrose 7/26/2018
FFF888078013447...
Legal Counsel
Department of Corrections
Date

**CONTRACT AMENDMENT
CONTRACT 13-011-MWP
Optometrist-MWP**

THIS CONTRACT AMENDMENT (**Amendment #5**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 5 S. Last Chance Gulch, Helena, Montana 59620-1301 and **Dr. Tom Felstet OD (CONTRACTOR)** ~~2003 Elm Street, Billings, MT 59101~~, and is effective upon receipt of all signatures.

4515 Rimrock Rd. Billings, MT 59106

WHEREAS, the parties have entered a Contract with an original effective date of August 16, 2012, and Section 21 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2017 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**):

3. COMPENSATION/BILLING

- A. Optometric services, which include vision examination and fitting/dispensing, provided on or after January 1, 2016, will be billed to ~~Xerox~~ Conduent on a HCFA-1500 claim form. Billing information shall include, but not be limited to: the inmate AO number, valid diagnosis codes, and Montana Medicaid's current procedure/service codes. Claims shall be submitted to:

~~Xerox~~ Conduent-Claims Processing Unit
PO Box 8000
Helena, MT 59604

- B. CONTRACTOR will be compensated by ~~XEROX~~ Conduent according to current fee schedules and limits as contained in Montana Medicaid's Optometric Manual. Only claims submitted by CONTRACTOR within one (1) year of date of service shall be processed.

5. TIME OF PERFORMANCE

This Contract shall take effect upon final contract signature. This Contract shall expire on **June 30, ~~2017~~ 2018**, unless either party provides a written notice of cancelation at least 30 days prior. In the event neither party provides a written notice of cancelation 30 days prior to June 30, 2017, this Contract shall continue on a month-to-month basis until such time as the parties mutually agree to an annual renewal of the contract or either party provides a written 30 day notice of cancellation.

In no event may this Contract continue or be renewed for a period exceeding a total of **seven (7) years**.

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

DEPARTMENT

Connie Winner
Connie Winner, Administrator
Clinical Services Division

7/14/17
Date

CONTRACTOR

Tom Felstet
Dr. Tom Felstet, OD

7-18-17
Date

Reviewed for Legal Content by:

Colleen O'Rourke
Legal Counsel
Department of Corrections

7/13/17
Date

CONTRACT AMENDMENT
CONTRACT 13-011-MWP
Optometrist-MWP

THIS CONTRACT AMENDMENT (**Amendment #4**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 5 S. Last Chance Gulch, Helena, Montana 59620-1301 and **Dr. Tom Felstet OD** (CONTRACTOR) 2003 Elm Street, Billings, MT 59101, and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of August 16, 2012, and Section 21 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2015 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**):

3. COMPENSATION/BILLING

- A. Optometric services, which include vision examination and fitting/dispensing, provided prior to January 1, 2016, will be billed to Blue Cross Blue Shield of Montana (BCBSMT) on a HCFA-1500 claim form. Billing information shall include, but not be limited to: the inmate AO number, valid diagnosis codes, and Montana Medicaid's current procedure/service codes. Claims shall be submitted to:

Blue Cross Blue Shield of Montana
PO Box 4309
Helena, MT 59604

- B. CONTRACTOR will be compensated ~~by BCBSMT~~ according to current fee schedules and limits as contained in Montana Medicaid's Optometric Manual. Only claims submitted by CONTRACTOR within ~~two (2)~~ one (1) years of date of service shall be processed.

- C. Optometric services, which include vision examination and fitting/dispensing, provided on or after January 1, 2016, will be billed to Xerox on a HCFA-1500 claim form. Billing information shall include, but not be limited to: the inmate AO number, valid diagnosis codes, and Montana Medicaid's current procedure/service codes. Claims shall be submitted to:

Xerox-Claims Processing Unit
PO Box 8000
Helena, MT 59604

- D. CONTRACTOR will be compensated by XEROX according to current fee schedules and limits as contained in Montana Medicaid's Optometric Manual. Only claims submitted by CONTRACTOR within one (1) year of date of service shall be processed.

5. TIME OF PERFORMANCE

This Contract shall take effect upon final contract signature. This Contract shall expire on **June 30, 2016 2017**, unless either party provides a written notice of cancellation at least 30 days prior. In the event neither party provides a written notice of cancellation 30 days prior to June 30, 2017, this Contract shall continue on a month-to-month basis until such time as the parties mutually agree to an annual renewal of the contract or either party provides a written 30 day notice of cancellation.

In no event may this Contract continue or be renewed for a period exceeding a total of **seven (7) years**.

6. LIAISONS AND NOTICE

A. ~~MWP's Health Services Director Holly Adams (247-5100, ext. 135)~~ Tonya Dempster, Medical Nurse Manager (406-247-5105), or her designee, will be the liaison for the DEPARTMENT. to CONTRACTOR concerning inmate service scheduling and dispensing issues. Laura Janes RN, the Departments Managed Care Coordinator, (406-846-3363), will be the liaison to CONTRACTOR concerning contract issues and issues between CONTRACTOR, Walman Optical Company, and Blue Cross/Blue Shield of Montana.

B. No changes.

C. No changes.

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 ADA Amendments Act of 2008, and Section 504 of the Rehabilitation Act of 1973.

CONTRACTOR will comply with the Prison Rape Elimination Act 42 U.S.C.A. § 15601ff, the Prison Rape Elimination Act final rule 28 CFR Part 115, MDOC Policy 1.3.14, Prison Rape Elimination Act, and ACCD 1.3.1400 PREA to include incident reporting. CONTRACTOR shall establish a zero tolerance policy to incidents of sexual assault/rape or sexual misconduct. 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.

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

DEPARTMENT

Connie Winner, Administrator
Clinical Services Division

Date

CONTRACTOR

Dr. Tom Felstet, OD

Date

Reviewed for Legal Content by:

Legal Counsel
Department of Corrections

Date

CONTRACT AMENDMENT
CONTRACT 13-011-MWP
Optometrist-MWP

THIS CONTRACT AMENDMENT (**Amendment #3**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 5 S. Last Chance Gulch, Helena, Montana 59620-1301 and **Dr. Tom Felstet OD** (CONTRACTOR) 2003 Elm Street, Billings, MT 59101, and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of August 16, 2012, and Section 21 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2015 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. TIME OF PERFORMANCE

~~This Contract shall take effect upon final contract signature and shall terminate on June 30, 2015 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 seven (7) years.~~

~~Upon expiration of this Contract, and in the absence of a 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 Contract shall take effect upon final contract signature. This Contract shall expire on **June 30, 2016**, unless either party provides a written notice of cancellation at least 30 days prior. In the event neither party provides a written notice of cancellation 30 days prior to June 30, 2016, this Contract shall continue on a month-to-month basis until such time as the parties mutually agree to an annual renewal of the contract or either party provides a written 30 day notice of cancellation.

In no event may this Contract continue or be renewed for a period exceeding a total of **seven (7) years**.

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

DEPARTMENT

Connie Winner

Connie Winner, Administrator
Clinical Services Division

6-11-15

Date

CONTRACTOR

Tom Felstet

Dr. Tom Felstet, OD

6-25-15

Date

Reviewed for Legal Content by:

Colleen Ambrose

Legal Counsel
Department of Corrections

6-9-15

Date

CONTRACT AMENDMENT
CONTRACT 13-011-MWP
Optometrist-MWP

THIS CONTRACT AMENDMENT (**Amendment #2**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 5 S. Last Chance Gulch, Helena, Montana 59620-1301 and **Dr. Tom Felstet OD** (CONTRACTOR) 2003 Elm Street, Billings, MT 59101, and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of August 16, 2012, and Section 21 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2014 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**):

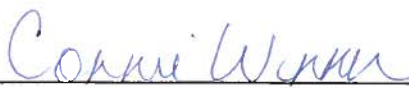
5. TIME OF PERFORMANCE

This Contract shall take effect upon final contract signature and shall terminate on June 30, ~~2014~~ 2015 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 seven (7) years.


Upon expiration of this Contract, and in the absence of a 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




Connie Winner, Administrator
Clinical Services Division

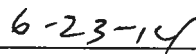


Date

CONTRACTOR




Dr. Tom Felstet, OD

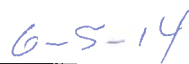


Date

Reviewed for Legal Content by:



Legal Counsel
Department of Corrections



Date

**CONTRACT AMENDMENT
CONTRACT 13-011-MWP**

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 5 S. Last Chance Gulch, Helena, Montana 59620-1301 and **Dr. Tom Felstet OD** (CONTRACTOR) 2003 Elm Street, Billings, MT 59101 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of August 16, 2012, and Section 21 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2013, 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. TIME OF PERFORMANCE

This Contract shall take effect upon final contract signature and shall terminate on June 30, ~~2013~~ 2014, 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 **seven (7)** years.

Upon expiration of this Contract, and in the absence of a 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.

6. LIAISONS AND NOTICE

- A. MWP's Health Services Director ~~Elizabeth (Betty) Hanson~~ Holly Adams (247-5100, ext. 135), or her designee, will be the liaison to CONTRACTOR concerning inmate service scheduling and dispensing issues. Laura Janes RN, the Department's Managed Care Coordinator, (406-846-3363), will be the liaison to CONTRACTOR concerning contract issues and issues between CONTRACTOR, Walman Optical Company, and Blue Cross/Blue Shield of Montana.
- B. No changes.
- C. No changes.

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

SIGNATURES

DEPARTMENT

Joan Daly
Joan Daly, Warden
Montana Women's Prison

12/30/13
Date

CONTRACTOR

Tom Felstet 01-16-13
Dr. Tom Felstet OD

01-16-13
Date

Reviewed for Legal Content by:

Colleen Embrown
Legal Counsel
Department of Corrections

12-23-13
Date

1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **Tom Felstet, OD (CONTRACTOR)** enter into this Contract (**13-011-MWP**). The parties names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Montana Women's Prison
5 S. Last Chance Gulch
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

Tom Felstet, OD
2003 Elm Street

Billings, MT 59101
(406)698-3476

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

2. DUTIES/RESPONSIBILITIES OF CONTRACTOR

CONTRACTOR agrees to provide Optometric services to Montana Women's Prison inmates at the Contractors designated place of business.

A. CONTRACTOR agrees to do the following:

- 1) Perform routine eye examinations of each inmate every two years, or more frequently due to special vision deficits, and the dispensing and fitting of prescribed eyeglasses.
- 2) Consult and/or meet with Department's Medical Director, contracted primary care physician(s), or MWP staff, as requested.
- 3) Notify Department's Medical Director and the appropriate primary care physician when an inmate requires treatment or services extending beyond the scope of CONTRACTOR'S specialty or the scope of this Contract.
- 4) Maintain accurate records of each patient (inmate) contact in accordance with generally accepted optometric standards. These records must then be given to the MWP medical unit for retention in the inmates' official medical record.
- 5) When requested by DEPARTMENT, participate in meetings concerning cost containment and medical management agendas and cooperate with Blue Cross and Blue Shield of Montana (BCBSMT) involving medical necessity reviews and provider reimbursements for inmate services.

B. CONTRACTOR is required to order all corrective lenses, frames, and replacement parts, through a designated Walman Optical laboratory. CONTRACTOR must use preprinted, provider specific, Medicaid order forms, designating inmates' "AO" number, "DOC Liability", or "Inmate Liability" on the form. The Montana Medicaid listing of Walman approved frames and optics, with supporting procedure/service codes, must be used exclusively by CONTRACTOR.

- 1) Inmates requesting an extra pair of glasses, non-medically necessary lens coatings, photo chromatic lenses, will be personally responsible for these costs. In these instances, CONTRACTOR must note "Inmate Liability" on the Walman order form and obtain confirmation (signature/initials) from the inmate that these features have been requested and that she will accept financial responsibility for the additional costs.
 - a) Costs for non-medically necessary add-on's and additional glasses must be paid directly to CONTRACTOR, by the inmate, prior to receipt. Inmates will be billed for these services at the current Medicaid fee schedules and limits.
 - b) Contact lenses are **not** available under this contract **unless** medically necessary and approved by the Departments' Medical Director or Health Services Manager.
- 2) CONTRACTOR must clearly substantiate and document any medically necessary add-ons - such as photo chromatic lens prescription - in the inmate medical chart and on the Walman order form.
- 3) Inmates may receive an eye exam and, if medically necessary, new lenses (frames not included) every year if they develop significant menopausal symptoms with vision changes.
- 4) Repair or replacement of eyeglasses within a two-year time limit must be prior authorized by the Prison's Registered Nurse. Repair/Replacement will be at the inmate's expense. However, eyeglasses lost or broken in a substantiated work related incident, or replacement based on substantiated medical necessity, will be replaced at DEPARTMENT expense. (* EXCEPTION - Frames/lenses still under warranty.)
- 5) If an initial lens prescription is not appropriate for correct vision needs, and a second lens prescription is required, the cost of the second set of lenses will be at DEPARTMENT expense.

3. COMPENSATION/BILLING

In consideration for the services provided under this contract, CONTRACTOR will be responsible for his own billing and will be compensated according to the following criteria:

- A. Optometric services, which include vision examination and fitting/dispensing, will be billed to BCBSMT on the HCFA-1500 claim form. Billing information will include, but not be limited to, the inmate "AO" number, valid diagnosis codes and Montana Medicaid's current procedure/service codes. The BCBSMT address is:

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

- B. CONTRACTOR will be compensated by BCBSMT according to current fee schedules and limits as contained in MT Medicaid's Optometric Services Manual.
- C. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., Montana State Prison and Montana Women's Prison do not allow wireless phones within facility).

5. TIME OF PERFORMANCE

This Contract shall take effect upon final contract signature and shall terminate on June 30, 2013, 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 **seven (7)** years.

Upon expiration of this Contract, and in the absence of a 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.

6. LIAISONS AND NOTICE

- A. MWP's Health Services Director Elizabeth (Betty) Hanson (247-5100, ext. 135), or her designee, will be the liaison to CONTRACTOR concerning inmate service scheduling and dispensing issues. Laura Janes RN, the Department's Managed Care Coordinator, (406-846-3363), will be the liaison to CONTRACTOR concerning contract issues and issues between CONTRACTOR, Walman Optical Company, and Blue Cross/ Blue Shield of Montana.
- B. Tom Felstet, OD (406-698-3476) 2003 Elm Street, Billings, MT 59101 or successor serves as CONTRACTOR 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, Contracts Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. HOLD HARMLESS AND INDEMNIFICATION

CONTRACTOR agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of CONTRACTOR and/or its agents, employees, representatives, assigns, or subcontractors - except the sole negligence of the State under this agreement.

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 Professional Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$500,000 per occurrence and \$1,000,000 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. CONTRACTOR 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 ADA Amendments Act of 2008, 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. MEETINGS

CONTRACTOR is required to meet with DEPARTMENT liaison, or designated representatives, to resolve technical or contractual problems that may occur during the term of the Contract or to discuss the progress made by CONTRACTOR and DEPARTMENT in the performance of their respective obligations, at no additional cost to DEPARTMENT. Meetings will occur as problems arise and will be coordinated by DEPARTMENT. CONTRACTOR will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at CONTRACTOR'S option and expense, a conference call meeting may be substituted.

Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination.

17. CONTRACTOR PERFORMANCE EVALUATION

During the term of this Contract, DEPARTMENT may evaluate CONTRACTOR'S performance. Prior to completion of the evaluation, CONTRACTOR will be given an opportunity to review the evaluation and provide additional information and/or clarification. CONTRACTOR will also be asked to sign the evaluation document to acknowledge receipt of the document and an opportunity to respond. This Contract may be terminated by DEPARTMENT as a result of said evaluation and documented non-performance. CONTRACTOR Performance Evaluations may be considered in future solicitations and contracts.

18. 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, without 30 days notice, terminate or reduce the scope of this Contract if available funding is reduced for any reason. If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled. (Ref. 18-4-313(4), MCA).
- 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.

19. 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).

20. LICENSURE

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

21. 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.

22. 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.

23. COMPLETED CONTRACT

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

SIGNATURE

DEPARTMENT



Jo Acton, Warden
Montana Women's Prison

CONTRACTOR



Dr. Tom Felstet, O.D.

8-16-2012
Date

8-16-12
Date

Approved for Legal Content by:



Legal Counsel
Department of Corrections

8-16-2012
Date