

Respiratory Equipment, Supplies, and Oxygen
COR-SVCS-2017-0026N

THIS CONTRACT is entered into by and between the State of Montana, **Department of Corrections**, (State), whose address and phone number are **400 Conley Lake Rd., Deer Lodge, Montana 59722, (406) 846-1320** and, **Air Exchange Oxygen** (Contractor), whose address and phone number are **35 South Main Street, Butte, MT 59701** and **(406) 782-6708**.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The Contract's initial term is **upon contract execution**, through **September 30, 2018**, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

1.2 Contract Renewal. State may renew this Contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in two-year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed a total of six years

2. COST ADJUSTMENTS

2.1 Cost Adjustments Negotiated Based on Changes in Contractor's Costs. *After the Contract's initial term and if State agrees to a renewal*, the parties may negotiate cost adjustments at the time of Contract renewal. Any cost increases must be based on demonstrated industrywide or regional increases in Contractor's costs. State is not obligated to agree upon a renewal or a cost increase.

3. SERVICES AND/OR SUPPLIES

Contractor shall provide State respiratory equipment, supplies, CPAP/BiPAP equipment and oxygen cylinders for the Montana State Prison (MSP) located at 400 Conley Lake Rd., Deer Lodge, Montana 59722.

Education and Service. Verbal and written education and training will address the following topics at a minimum:

- (a) The importance of adhering to prescribed liter flow;
- (b) Proper use of equipment and supplies, including basic operating instructions;
- (c) Descriptions, assembly procedures and precautions for all accessories;
- (d) Safety precautions and hazards related to oxygen use;
- (e) Selecting the proper location for equipment;
- (f) Routine care and daily maintenance of all equipment, including cleaning and disinfecting procedures;
- (g) Routine follow-up service procedures;
- (h) Emergency response procedures to prevent interruption of service.

Continuity of Service. Contractor will follow-up as needed to ensure continued safe and proper use of equipment. Follow-up includes the following services at a minimum:

- (a) Perform scheduled quality control checks such as operational tests for safety;
- (b) Provide preventive maintenance at defined intervals based on the manufacturer's guidelines;
- (c) Replenish supplies as necessary and authorized by MSP.

Emergency Response. Emergency response services will be available at all times to prevent interruption of oxygen therapy in the event of a power outage or mechanical failure.

- (a) Provide enough back up oxygen to last for a period of time equal to three times the supplier's average delivery time;
- (b) Replace equipment and supplies within a time frame that does not allow the Facility to exhaust its back-up supply of oxygen;

Handling. Contractor will handle, transport, repackage or otherwise dispense gaseous or liquid oxygen in complete compliance with U.S. Food and Drug Administration (FDA), U.S. Department of Transportation, Occupational Safety and Health Administration and Compressed Gas Association rules, regulations, guidelines and recommendations.

Transfilling. Contractor will meet FDA purity and labeling regulations if used for transfilling.

Oxygen Equipment. Contractor will comply with the following requirement for specific types of oxygen equipment:

- (a) Oxygen containers must:
 - 1. Deliver the liter flow as prescribed;
 - 2. Meet the manufacturer's standards or at least 85 percent at each liter flow level, whichever is greater;
 - 3. Have a working audible alarm to alert in the event of a power outage or mechanical failure; and
 - 4. Be double insulated or otherwise comply with Underwriter Lab grounding standards.
- (b) Liquid oxygen reservoirs must:
 - 1. Deliver the amount of oxygen as prescribed;
 - 2. Include a contents indicator to determine remaining volume; and
 - 3. Meet current FDA purity and labeling regulations if used for transfilling.
- (c) High pressure oxygen cylinders must:
 - 1. Deliver the liter flow ordered as prescribed;
 - 2. Test and record current hydrostatic function. Vendor must ensure at the time of transfilling that the expiration date stamped on the cylinder has not expired or will not expire before a member uses it; and
 - 3. Be safely secured with an appropriate stand or acceptable alternative.
- (d) Portable oxygen systems must:
 - 1. Deliver the liter flow ordered as prescribed;
 - 2. Be stand-alone systems or condiments to stationary systems that allows users to ambulate; and
 - 3. Not be used as a back-up system.
- (e) Oxygen accessories must:
 - 1. Have quality and design features appropriate to the user's need as prescribed and authorized by the Department.
- (f) Oxygen conserving devices (passive or electric) must meet the user's therapeutic needs, as prescribed and authorized by the Department.

Equipment to be Provided.

Equipment and supplies that Contractor will supply to MSP are:

- (a) Concentrators- portable and bed side
- (b) Oximeters
- (c) "A", "E" and "S" cylinders (tanks)
- (d) Conserving Devices
- (e) O2 Oximeters
- (f) Rolling Racks to Hold 6 "E" & 20 "A" Cylinders.

- (g) C-PAP, APAP, and Bi-PAP Equipment- tubing and masks (one style of a nasal and a full face)
- (h) Humidifiers and Tubing as Needed
- (i) Nebulizers and tubing
- (j) Sleep study in home device(s) and CPAP titration
- (k) SD card and ability to read card to monitor compliance

Professional Staffing. Contractor will provide a Licensed Respiratory Care Practitioner licensed by the State of Montana, employed by the Contractor, who will see each individual utilizing the respiratory and oxygen equipment weekly. Each visit will include a complete mechanical check of equipment, equipment maintenance, change nasal cannulas and ear wraps.

CPAP/BiPAP. Contractor will provide CPAP with humidifier and BIPAP with humidifier units and related accessories, i.e. masks, headgear, tubing, and filters.

4. WARRANTIES

4.1 Warranty of Products. Contractor warrants that the products supplied conform to the specifications requested, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defect for a period of **30** days from the date of shipment. The length of warranty may vary by product. Contractor further warrants that the products are new and unused and of the latest model or manufacture, unless State specifies otherwise. Contractor acknowledges that exceptions will be rejected.

4.2 Warranty of Services. Contractor warrants that the services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a part of this Contract. State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration of the **supplies/services** to be provided, State shall pay Contractor according to the following schedule: Contractor shall be compensated by Conduent according to current fee schedules and limits as contained in Montana Medicaid's Manual. Only claims submitted by Air Exchange Oxygen within one (1) year of the date of service shall be processed.

5.2 Payment Terms. Contractor shall bill services provided to 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:

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

All Contractor claims must be submitted within one (1) calendar year of date of service. The State will accept no adjustments, including coding and late-charge adjustments, later than 30 days after payment of the original claim. Claims submitted after one calendar year, or adjustments or late charges submitted 30 days after payment of the original claim, which would have resulted in an increased payment, will be forfeited. The State shall have no liability for claims, when said claims are not submitted in accordance with this requirement.

5.3 Reference to Contract. The Contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, State is not obligated to pay the invoice.

6. ACCESS AND RETENTION OF RECORDS

6.1 Access to Records. Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under section 14, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

6.2 Retention Period. Contractor shall create and retain all records supporting the services/ supplies provided for a period of eight years after either the completion date of this Contract or termination of the Contract.

7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (18-4-141, MCA) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

8. HOLD HARMLESS/INDEMNIFICATION

Contractor agrees to protect, defend, and save 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, subcontractors, except the sole negligence of State, under this Contract.

9. REQUIRED INSURANCE

9.1 General Requirements. Contractor shall maintain for the duration of this 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.

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

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

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general

supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

9.4 Specific Requirements for Automobile Liability. Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

9.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

9.6 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 has been uploaded to the Contractor's vendor profile in eMACS, (www.vendorportal.mt.gov). *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

10. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be uploaded to the Contractor's vendor profile in eMACS, (www.vendorportal.mt.gov).

11. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

12. DISABILITY ACCOMMODATIONS

State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to

make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

13. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

14. CONTRACT TERMINATION

14.1 Termination for Cause with Notice to Cure Requirement. State may terminate this Contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30** days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

14.2 Termination for Cause with Notice to Cure Requirement. Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30** days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

14.3 Reduction of Funding. State must by law terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

15. EVENT OF BREACH – REMEDIES

15.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval or breaching section 20.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

15.2 Event of Breach by State. State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

15.3 Actions in Event of Breach. Upon Contractor's material breach, State may:

- Terminate this Contract under Section 14.1, Termination for **Cause** and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- Terminate this Contract under section 14.2, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

16. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

17. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

18. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

19 LIAISONS AND SERVICE OF NOTICES

19.1 Contract Liaisons. All project management and coordination on State's behalf must be through a single point of contact designated as State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between State's liaison and Contractor's liaison.

Melissa Scharf is State's liaison
500 Conley Lake Road
Deer Lodge, MT 59722
Telephone: (406) 846-1320 ext.2401
Cell Phone:
Fax:
E-mail: mesharf@mt.gov

Cathy Goodwin is Contractor's liaison
35 South Main Street
Butte, MT 59701
Telephone: (406) 782-6708
Cell Phone:
Fax: (406) 782-1224
E-mail: airexchange1@bresnan.net

19.2 Notifications. State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

19.3 Identification/Substitution of Personnel. The personnel identified or described in Contractor's proposal shall perform the services provided for State under this Contract. Contractor agrees that any personnel substituted during the term of this Contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. State reserves the right to approve Contractor personnel assigned to work under this Contract and any changes or substitutions to such personnel. State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this Contract. State reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

20. MEETINGS

20.1 Technical or Contractual Problems. Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor 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. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

21. TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then

State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

22. CHOICE OF LAW AND VENUE

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or 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.

23. TAX EXEMPTION

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

24. PERSONAL PROPERTY TAX

All personal property taxes will be paid by the Contractor.

25. AUTHORITY

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

26. SEVERABILITY

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

27. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

27.1 Contract. This Contract consists of 10 numbered pages, any Attachments as required, Solicitation # **COR-RFP-2017-0062N**, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

27.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

28. WAIVER

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

29. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

STATE OF MONTANA
Department of Corrections
5 S. Last Chance Gulch
PO Box 201301
Helena, MT 59620-1301

Air Exchange Oxygen
35 South Main Street
Butte, MT 59701

FEDERAL ID #

BY: Connie Winner Division Administrator Cathy Goodwin Manager/COO
(Name/Title) (Name/Title)

DocuSigned by:
Connie Winner
ABDE2DF1207948A...
(Signature)

DocuSigned by:
Cathy Goodwin
8A88AAB65F2C450...
(Signature)

DATE: 8/2/2017

DATE: 8/2/2017

Approved as to Legal Content:

DocuSigned by:
Colleen Ambrose 7/17/2017
FF988078013447...
Legal Counsel (Date)

Approved as to Form:

DocuSigned by:
Nicole Orta 7/17/2017
6407350C31CE4E8...
Procurement Officer (Date)
State Procurement Bureau