

**CONTRACT AMENDMENT NO. 4  
OPTOMETRY SERVICES MWP  
DR. TOM FELSTET  
CONTRACT NO. COR-SVCS-2020-0263-MWP**

This CONTRACT AMENDMENT No. 4 amends the above-referenced contract between the **State of Montana, Department of Corrections** (State), whose address and phone number are P.O. Box 201301, 5 South Last Chance Gulch, Helena, MT 59620-1301, 406-444-3930 and **Dr. Tom Felstet O.D. PLLC**, (Contractor), whose address and phone number are 4515 Rimrock Road, Billings, MT 59101, (406) 698-5428. This Contract is amended for the following purpose(s) (**New language underlined, deleted language interlined**):

- 1) In accordance with Section 1, of the above-referenced contract, entitled Effective Date, Duration, and Renewal, parties mutually agree to extend this Contract for the period July 1, 2023, through June 30, 2024, per the terms, conditions, and prices agreed upon. This is the 4<sup>th</sup> renewal, 5<sup>th</sup> year of the Contract. This Contract, including any renewals, may not exceed a total of seven (7) years.
- 2) In accordance with Section 7, of the above-referenced contract, entitled Defense, Indemnification/Hold Harmless, parties mutually agree to replace the previously agreed-upon language with the language as shown below:

**7. DEFENSE, INDEMNIFICATION / HOLD HARMLESS**

Contractor shall protect, defend, indemnify, and save harmless the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Contractor's employees and agents, its subcontractors, its subcontractor's employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.

~~Contractor waives all claims, demands, causes of action, and recourse against the State, including claims of contribution or indemnity, arising in favor of Contractor on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.~~

- 3) In accordance with Section 12, of the above-referenced contract, entitled Compliance with Laws, parties mutually agree to replace the previously agreed-upon language with the language as shown below:

**12. COMPLIANCE WITH LAWS**

**12.1 Applicable 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 42 U.S.C. § 18001 et seq. Contractor will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, and MDOC Policy 1.1.17, Prison Rape Elimination Act ~~and ACCD1.3-1400 PREA~~ to include incident reporting. State has a zero-tolerance policy as to incidents of sexual assault/rape or sexual misconduct in its correctional facilities or premises. Contractor is referred to § 45-5-501 MCA. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and State of Montana 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.

**12.2 Affordable Care Act.** The Affordable Care Act requires a Contractor, if Contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980H (ACA).

- 4) In accordance with Section 14, of the above-referenced contract, entitled Registration with the Secretary of State, parties mutually agree to replace the previously agreed-upon language with the language as shown below:

**14. 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 §§ 35-14-1505, 35-8-1001, and 35-12-1309 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. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sosmt.gov>.

- 5) In accordance with Section 20, of the above-referenced contract, entitled Liaisons and Service of Notices, parties mutually agree to replace the previously agreed-upon language with the language as shown below:

**20.1 Contract Liaisons.** All project management and coordination shall be performed by the Department's point of contact designated below. Contractor shall designate a liaison that will provide project management and coordination of Contractor's work. All work performed under this Contract must be coordinated between the Department's Liaison and Contractor's Liaison.

**Current**

Benjamin Fry is the Department's Liaison  
701 S. 27<sup>th</sup> Street  
Billings, MT 59601  
406-247-5105  
[Benjamin.Fry@mt.gov](mailto:Benjamin.Fry@mt.gov)

**New**


Carly May is the Department's Liaison  
701 S. 27<sup>th</sup> Street  
Billings, MT 59601  
406-247-5105  
[Carly.May@mt.gov](mailto:Carly.May@mt.gov)

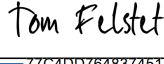
No changes made to 20.2 or 20.3.

Except as modified above, all other terms and conditions of Contract No. **COR-SVCS-2020-0263-MWP, including Amendments #1 through #3**, remain unchanged.

**STATE OF MONTANA  
Montana Department of Corrections  
5 S. Last Chance Gulch  
Helena, MT 59601**

**Tom Felstet O.D. PLLC  
4515 Rimrock Road  
Billings, MT 59101**

DocuSigned by:  
  
7/6/2023  
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Cynthia McGillis-Hiner (Date)  
Bureau Chief  
Health Services Bureau

DocuSigned by:  
  
6/30/2023  
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Dr. Tom Felstet, OD (Date)

Approved as to Form:

DocuSigned by:  
  
6/29/2023  
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Ashley Salmon, Contracts Officer (Date)  
Financial Services Bureau

Approved as to Legal Content:

DocuSigned by:  
  
6/29/2023  
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Iryna O'Connor, Legal Counsel (Date)  
Legal Services Bureau

**CONTRACT AMENDMENT NO. 3  
OPTOMETRY SERVICES-MWP  
CONTRACT NO. COR-SVCS-2020-0263-MWP**

This CONTRACT AMENDMENT No.3 amends the above-referenced contract between the **State of Montana, Department of Corrections** (State), whose address and phone number are P.O. Box 201301, 5 South Last Chance Gulch, Helena, MT 59620-1301, 406-444-3930 and **Dr. Tom Felstet O.D. PLLC**, (Contractor), whose address and phone number are 4515 Rimrock Road, Billings, MT 59101, (406) 698-5428. This Contract is amended for the following purpose(s):


WHEREAS, the State of Montana, Department of Corrections is hereinafter referred to as “State” rather than “Department”, in the opening paragraph, all references in the original contract, and all previous amendments.

- 1) In accordance with Section 1, of the above referenced contract, entitled Effective Date, Duration, and Renewal, parties mutually agree to extend this Contract for the period July 1, 2022, through June 30, 2023, per the terms, conditions, and prices agreed upon. This is the 3<sup>rd</sup> renewal, 4<sup>th</sup> year of the Contract. This Contract, including any renewals, may not exceed a total of seven (7) years.

Except as modified above, all other terms and conditions of Contract No. **COR-SVCS-2020-0263-MWP** including **Amendments #1 through Amendment #2**, remain unchanged.

**STATE OF MONTANA  
Montana Department of Corrections  
5 S. Last Chance Gulch  
Helena, MT 59601**

**Tom Felstet O.D. PLLC  
4515 Rimrock Road  
Billings, MT 59101  
FEDERAL ID # 46-0743996**

DocuSigned by:  
  
8/1/2022  
E9FD4E82FFD9421  
Cynthia McGillis-Hiner (Date)  
Bureau Chief  
Health Services Bureau

DocuSigned by:  
  
7/25/2022  
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Dr. Tom Felstet, OD (Date)

Approved as to Form:

DocuSigned by:  
  
7/18/2022  
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Ashley Salmon, Contracts Officer (Date)  
Financial Services Bureau

Approved as to Legal Content:

DocuSigned by:  
  
7/18/2022  
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Molenda McCarty, Legal Counsel (Date)  
Legal Services Bureau

**CONTRACT AMENDMENT NO. 2**  
**CONTRACT FOR: OPTOMETRY SERVICES-MWP**  
**CONTRACT NO. COR-SVCS-2020-0263-MWP**

This CONTRACT AMENDMENT No. 2 amends the above-referenced contract between the **State of Montana, Department of Corrections** (Department), whose address and phone number are P.O. Box 201301, 5 South Last Chance Gulch, Helena, MT 59620-1301, 406-444-3930 and **Dr. Tom Felstet O.D. PLLC**, (Contractor), whose address and phone number are 4515 Rimrock Road, Billings, MT 59101, (406) 698-5428. This Contract is amended for the following purpose(s):

- 1) In accordance with Section 1, of the above referenced contract, entitled Effective Date, Duration, and Renewal, parties mutually agree to extend this Contract for the period July 1, 2021, through June 30, 2022, per the terms, conditions, and prices agreed upon. This is the 2<sup>nd</sup> renewal, 3<sup>rd</sup> year of the Contract. This Contract, including any renewals, may not exceed a total of seven (7) years.
- 2) In accordance with Section 11, entitled Complying with Dark Money Spending Disclosure Requirements, parties mutually agree to delete the section in its entirety in accordance with State of Montana Executive Order 3-2021. For clarity, subsequent sections will not be renumbered.
- 3) In accordance with Section 12, of the above referenced contract, entitled Compliance with Laws, parties mutually agree to update the previously agreed upon language to the State's current language as shown below:

**12. 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 42 U.S.C. § 18001 et seq. Contractor will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, MDOC Policy 1.1.17, Prison Rape Elimination Act, and ACCD 1.3.1400 PREA to include incident reporting. State has a zero-tolerance policy as to incidents of sexual assault/rape or sexual misconduct in its correctional facilities or premises. Contractor is referred to § 45-5-501 MCA. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and State of Montana 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.

**12.1 Affordable Care Act.** The Affordable Care Act requires a Contractor, if Contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the

minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980H (ACA) if provided by the State.

- 4) In accordance with Section 14, of the above referenced contract, entitled Registration with the Secretary of State, parties mutually agree to replace the previously agreed upon language with the State’s current language as shown below:

**14. 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 §§ 35-14-1505, 35-8-1001, and 35-12-1309 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. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. 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>.

Except as modified above, all other terms and conditions of Contract No. **COR-SVCS-2020-0263-MWP including Amendment #1**, remain unchanged.

**STATE OF MONTANA  
Montana Department of Corrections  
5 S. Last Chance Gulch  
Helena, MT 59601**

**TOM FELSTET O.D. PLLC  
4515 Rimrock Road  
Billings, MT 59101**


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8/9/2021  
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Connie Winner, Administrator (Date)  
Clinical Services Division

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8/6/2021  
\_\_\_\_\_  
Dr. Tom Felstet, OD (Date)

Approved as to Form:

DocuSigned by:  
  
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7/16/2021  
\_\_\_\_\_  
Contracts Officer (Date)  
Department of Corrections

Approved as to Legal Content:

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7/16/2021  
\_\_\_\_\_  
Legal Counsel (Date)  
Department of Corrections

**CONTRACT AMENDMENT NO. 1**  
**CONTRACT FOR: OPTOMETRY SERVICES-MWP**  
**CONTRACT NO: COR-SVCS-2020-0263-MWP**

This CONTRACT AMENDMENT No. 1 amends the above-referenced contract between the **State of Montana, Department of Corrections (DEPARTMENT)**, whose address and phone number are P.O. Box 201301, 5 South Last Chance Gulch, Helena, MT 59620-1301, 406-444-3930 and **Dr. Tom Felstet, OD, PLLC, (CONTRACTOR)**, whose address and phone number are 4515 Rimrock Road, Billings, MT 59106 and 406-698-5428. This Contract is amended for the following purpose(s):

WHEREAS, the CONTRACTOR's name in the preceding paragraph has been corrected to reconcile the Dr. Felstet's name and the name of the legal entity under which he does business and is insured.

- 1) In accordance with Section 1, of the above referenced contract, entitled Effective Date, Duration, and Renewal, parties mutually agree to extend this Contract for the period July 1, 2020 through June 30, 2021 per the terms, conditions, and prices agreed upon. This is the 1<sup>st</sup> renewal, 2<sup>nd</sup> year of the Contract.
- 2) In accordance with Section 2, of the above referenced contract, entitled Services, subsection 2.1, entitled Optometric Services, parties mutually agree to a language change for additional employees of contractor to perform services.

**Subsection 2.1**

**Current:** Contractor shall provide the Department the following Optometric services to inmates under control or supervision of the Department. Services will be provided at Montana Women's Prison (MWP), located in Billings, MT. Contractor shall provide services as needed and sufficient to maintain a waiting list for routine appointments to no more than 60 days. The services shall include but are not limited to which shall include but not be limited to:

**New:** Contractor and/or contractor's employee shall provide the Department the following Optometric services to inmates under control or supervision of the Department. Services will be provided at Montana Women's Prison (MWP), located in Billings, MT. Contractor shall provide services as needed and sufficient to maintain a waiting list for routine appointments to no more than 60 days. The services shall include but are not limited to which shall include but not be limited to:

- 3) In accordance with Section 20, of the above referenced contract, entitled Liaisons and Service of Notices, subsection 20.1 entitled Contract Liaisons, parties mutually agree to a change in the Department's Contract Liaison:

**Current:** Cynthia McGillis-Hiner  
5 South Last Chance Gulch  
Helena, MT 59601

**New:** Benjamin Fry  
701 South 27<sup>th</sup> Street  
Billings, MT 59101  
(406) 247-5105  
[Benjamin.Fry@mt.gov](mailto:Benjamin.Fry@mt.gov)

Except as modified above, all other terms and conditions of Contract No. **COR-SVCS-2020-0263-MWP**, remain unchanged.

**STATE OF MONTANA**  
**Montana Department of Corrections**  
**5 S. Last Chance Gulch**  
**Helena, MT 59601**

**Dr. Tom Felstet, OD, PLLC**  
**4515 Rimrock Road**  
**Billings, MT 59106**

BY: Connie Winner, CSD Administrator  
(Name/Title)

DocuSigned by:  
Connie Winner  
SIGNATURE: ABDE2DF1207948A...

DATE: 7/6/2020

Approved as to Form:

DocuSigned by:  
Kristi Hernandez 7/2/2020  
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Contract Officer (Date)  
Department of Corrections

BY: Dr. Tom Felstet, OD, Owner  
(Name/Title)

DocuSigned by:  
Tom Felstet  
SIGNATURE: 77C4DD764037451...

DATE: 7/2/2020

Approved as to Legal Content:

DocuSigned by:  
Lorraine Schneider 7/2/2020  
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Legal Counsel (Date)  
Department of Corrections



**Optometry Services-MWP  
COR-SVCS-2020-0263-MWP**

**THIS CONTRACT** is entered into by and between the State of Montana, **Montana Department of Corrections** (Department), whose address and phone number are P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301, (406) 444-3930 and **Dr. Tom Felstet, OD**, (Contractor), whose address and phone number are 4515 Rimrock Road, Billings, MT 59106 and 406-698-5428.

**1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1 Contract Term.** The Contract's initial term is upon contract execution through June 30, 2020, unless terminated earlier as provided in this Contract. In no event is this Contract binding on the Department unless the Department's authorized representative has signed it. The legal counsel signature approving legal content of the Contract does not constitute an authorized signature.

**1.2 Contract Renewal.** The Department may renew this Contract under its then-existing terms and conditions (subject to potential cost adjustments described below in Section 2) in one-year intervals, or any interval that is advantageous to the Department, unless either party provides a written notice of cancellation at least 30 days prior. This Contract, including any renewals, may not exceed a total of seven (7) years.

**2. SERVICES**

**2.1 Optometric Services.** Contractor shall provide the Department the following Optometric services to inmates under control or supervision of the Department. Services will be provided at Montana Women's Prison (MWP), located in Billings, MT. Contractor shall provide services as needed and sufficient to maintain a waiting list for routine appointments to no more than 60 days. The services shall include but are not limited to which shall include but not be limited to:

**2.1.1.** Perform routine eye examinations of each inmate every two years, or more frequently if necessary due to special vision deficits.

**2.1.2.** The dispensing, and fitting of prescription eyeglasses with only plastic lenses.

**2.1.3.** Notify Department's Medical Director or the MWP physician when an inmate requires treatment or services extending beyond the scope of Contractor's specialty or the scope of this Contract.

**2.1.4.** Maintain accurate records of each patient contact in accordance with generally accepted optometric standards and practices. These records will be housed at the MWP Medical Unit for retention in the inmates' official medical record.

**2.1.5.** Contractor is required to order all corrective lenses, frames, and replacement parts through a designated Classic Optical Laboratory. Contractor must use pre-printed, provider specific, Medicaid order forms, designating the inmates' DOC ID number and responsible party (i.e., DOC Liability or Inmate Liability) on the form. The Montana Medicaid listing of Classic Optical Laboratories, approved frames and optics, with supporting procedure/service codes, will be used exclusively by Contractor.

**2.1.6.** Contractor must clearly substantiate and document all medically necessary add-ons, such as photo chromatic lens prescription, in the inmate medical charts and on the Classic Optical Laboratories order form.

**2.1.7.** Repair or replacement of eyeglasses within a two-year time limit must be preauthorized by Department and will be at the inmate's expense. However, replacement based upon substantiated medical necessity, will be replaced at Department expense. (Exception—Frames/lenses still under warranty)

**2.1.8.** 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. CONSIDERATION/PAYMENT**

**3.1 Payment Schedule.** In consideration of the services to be provided, the Department shall pay Contractor according to the following schedule:

**3.1.1** Optometric services, which include vision examination and fitting/dispensing, will be billed to Conduent on an HCA-1500 claim form. Billing information shall include, but not limited to: inmate DOC ID 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

**3.1.2** Contractor will be compensated by 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.

**3.1.2** This rate is inclusive of all travel and per diem. Department will not compensate Contractor for travel or travel time, lodging, meals, supplies, or any other expense incurred by Contractor while performing services identified within this Contract.

**3.2 Invoices.** Invoices must clearly show services performed by date and location, list the offender's name, and the appropriate Medicaid reimbursement code(s).

**3.3 Payment Terms.** The Department has 30 days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of Contract execution in order to facilitate the Department's electronic funds transfer payments.

**3.4 Reference to Contract.** The Contract number MUST appear on all invoices and correspondence pertaining to the Contract. If the number is not provided, the Department is not obligated to pay the invoice.

### **4. AGENCY ASSISTANCE**

To the extent possible, Contractor shall use its own equipment in providing the goods/services set forth in Section 3. 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 phone service (e.g., Montana State Prison does not allow cellular or digital phones within the facility).

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## **5. ACCESS AND RETENTION OF RECORDS**

**5.1 Access to Records.** Contractor shall provide the Department, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. The Department may terminate this Contract under Section 18, without incurring liability, for the Contractor's refusal to allow access as required by this Section. (18-1-118, MCA.) Offender's protected health information (PHI) shall not be made accessible to Legislative Auditor Division without a HIPAA-compliant release and if applicable, a 42 CFR Pat-2 compliant release signed by the offender.

**5.2 Retention Period.** Contractor shall create and retain all records supporting the optical services for a period of eight years after either the completion date of this Contract or termination of the Contract.

## **6. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this Contract without the Department's prior written consent. (18-4-141, MCA) Contractor is responsible to the Department 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 the Department under this Contract.

## **7. 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.

## **8. REQUIRED INSURANCE**

**8.1 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.

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

**8.3 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 \$300,000 per occurrence and \$600,000 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.

The Department, 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.

**8.4 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.

The State, its officers, officials, employees, and volunteers are to be covered as additional insured's for automobiles owned, leased, hired, or borrowed by the contractor.

**8.5 Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act 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, 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 this 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.

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

**8.7 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 received by the Department's Contracts Management Bureau, P.O. Box 201301, Helena, MT 59620-1301. Contractor must notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The Department reserves the right to require complete copies of insurance policies at all times.

**8.8 Recommended Cyber/Data Information Security Insurance.** The Contractor acknowledges responsibility for loss or unauthorized acquisition of personal information it holds such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. In absence of insurance coverage specific to this type of coverage, Contractor assumes personal liability for any such information breaches.

## **9. LICENSURE**

Contractor agrees to provide the State with copies of appropriate current Montana licenses issued under Title 37 of the Montana Code Annotated for all persons performing services under this Contract prior to the services herein being provided.

## **10. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the 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 Department employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the Department's Contracts Management Bureau, P.O. Box 201301, Helena, MT 59620-1301.

## **11. COMPLIANCE WITH DARK MONEY SPENDING DISCLOSURE REQUIREMENTS**

Contractor shall comply with the provisions of the State of Montana Executive Order No. 15-2018. Contractor shall annually submit a declaration form to the Contract Management Bureau, P.O. Box 201301, Helena, MT 59620-1301. Declaration forms can be found at: [https://vendorresources.mt.gov/Portals/121/vendor\\_resources/EO\\_DECLARATION%20FORM.pdf?ver=2018-09-13-100259-243](https://vendorresources.mt.gov/Portals/121/vendor_resources/EO_DECLARATION%20FORM.pdf?ver=2018-09-13-100259-243) .

All disclosures must be submitted to Contract Management Bureau, P.O. Box 201301, Helena, MT 59620-1301, for reporting on <https://transparency.mt.gov/>. Failure to comply with these requirements may result in Contract termination. Contractor agrees that such a failure is a material breach of this Contract.

## **12. COMPLIANCE WITH LAWS**

**12.1 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] Code. 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 1.1.17, Prison Rape Elimination Act, and ACCD 1.1.1700 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 its 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.

**12.5 Auditing.** The State may audit Contractor's operations to ensure that the Contractor has complied with the statements made above.

## **13. DISABILITY ACCOMMODATIONS**

The Department 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 Department's office. Interested parties should provide as much advance notice as possible.

## **14. 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>.

## **15. INTELLECTUAL PROPERTY/OWNERSHIP**

**15.1 Ownership of Work Product.** Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as the Department may reasonably request, to perfect the Department's ownership of any Work Product.

**15.2 Ownership of Contractor Pre-Existing Materials.** Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to the Department (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to the Department before its use and to prove its ownership. If, however, Contractor fails to disclose to the Department such Contractor Pre-Existing Materials, Contractor shall grant the Department a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the Department to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 18.1 (Ownership of Work Product) or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

## **16. CONTRACT TERMINATION**

**16.1 Termination for Cause with Notice to Cure Requirement.** The Department 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.

**16.2 Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this Contract for the Department's failure to perform any of its duties under this Contract after giving the Department 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.

**16.3 Reduction of Funding.** The Department must, by law, cancel this contract if funds are not appropriated or otherwise made available to support the Department'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 Department 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, the Department shall cancel this Contract as required by law. The

Department shall provide Contractor the date the Department's cancellation shall take effect. The Department shall not be liable to Contractor for any payment that would have been payable had the Contract not been cancelled under this provision. As stated above, the Department shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the Department's cancellation takes effect. This is Contractor's sole remedy. The Department shall not be liable to Contractor for any other payments or damages arising from cancellation under this Section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

## **17. EVENT OF BREACH – REMEDIES**

**17.1 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 Department approval; or
- ⌚ Voluntary or involuntary bankruptcy or receivership.

**17.2 Event of Breach by Department.** The Department's failure to perform any material term or condition of this Contract constitutes an event of breach.

### **17.3 Actions in Event of Breach.**

Upon Contractor's material breach, the Department may:

- ⌚ Terminate this Contract under Section 17.1 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 the Department's material breach, Contractor may:

- ⌚ Terminate this Contract under Section 17.2 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.

## **18. 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.

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## **19. WAIVER OF BREACH**

Contractor Dr. Tom Felstet  
Contract #COR-SVCS-2020-0263-CSD  
Contracting Authority: 18-4-132 MCA

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.

## **20. LIAISONS AND SERVICE OF NOTICES**

**20.1 Contract Liaisons.** All project management and coordination shall be performed by the Department's point of contact designated below. Contractor shall designate a liaison that will provide project management and coordination of Contractor's work. All work performed under this Contract must be coordinated between the Department's Liaison and Contractor's Liaison.

Cindy McGillis-Hiner is the Department's Liaison.  
5 South Last Chance Gulch  
Helena, MT 59601  
Telephone: 1(406) 444-5439  
E-mail: [CMcGillis@mt.gov](mailto:CMcGillis@mt.gov)

Dr. Tom Felstet is Contractor's Liaison.  
4515 Rimrock Road  
Billings, MT 59106  
Telephone: 1(559) 698-5428  
E-mail: [drfelstet@outlook.com](mailto:drfelstet@outlook.com)

**20.2 Contract Manager.** Department's Contract Manager identified below shall perform all Contract management duties on Department's behalf. Written notices and requests or any issues, not related to project management and coordination, regarding this Contract should be directed to Department's Contract Manager.

Kristi Hernandez is Department's Contract Manager  
5 S. Last Chance Gulch  
Helena, MT 59620-1301  
Telephone: 1(406) 444-9649  
E-mail: [kristi.hernandez@mt.gov](mailto:kristi.hernandez@mt.gov)

Dr. Tom Felstet is Contractor's Manager.  
4515 Rimrock Road  
Billings, MT 59106  
Telephone: 1(406) 698-5428  
E-mail: [drfelstet@outlook.com](mailto:drfelstet@outlook.com)

**20.3 Notifications.** The Department's and Contractor's Liaisons and Contract Managers may be changed by written notice to the other party. Written notices, requests, or complaints must be directed to the Liaison or Contract Manager. Notice may be provided by email, personal service, mail, or facsimile. If notice is provided by email, personal service, or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective three business days after date of mailing.

## **21. MEETINGS**

**21.1 Technical or Contractual Problems.** Contractor shall meet with the Department'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 the Department in the performance of their respective obligations, at no additional cost to the Department. The Department may request the meetings as problems arise and will be coordinated by the Department. The Department 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.

**21.2 Failure to Notify.** If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the Department, about which Contractor knew or reasonably should have known with respect to the period during



the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

**21.3 Department's Failure or Delay.** For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the Department's failure or delay in discharging any Department obligation, the Department shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the Department agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the Department does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

**22. TRANSITION ASSISTANCE**

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before the end of its term, before services rendered, or if particular work 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 the Department 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. The Department shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If the Department terminates this Contract for cause, then the Department may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the Department may have sustained as a result of Contractor's breach.

**23. CHOICE OF LAW AND VENUE**

Montana law governs this Contract. The parties agree that any 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.

**24. TAX EXEMPTION**

The 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].

**25. PERSONAL PROPERTY TAX**

All personal property taxes will be paid by the Contractor.

**26. AUTHORITY**

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

**27. SEVERABILITY CLAUSE**

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.

**28. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**28.1 Contract.** This Contract consists of 11 numbered pages plus any Attachments referred to within the numbered pages of the Contract provided they have been expressly incorporated herein by reference.

**28.2 Entire Agreement.** These documents are the entire agreement of the parties. All prior negotiations, representations, and understandings between the parties are superseded by the Contract. Any amendment or modification must be in a written agreement signed by the parties.

**29. WAIVER**

The Department'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.

**30. EXECUTION**

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

**STATE OF MONTANA  
Montana Department of Corrections  
5 S. Last Chance Gulch  
Helena, MT 59601**

**DR. TOM FELSTET, OD  
4515 Rimrock Road  
Billings, MT 59106**

BY: Connie Winner, Administrator  
Clinical Services Division

BY: Dr. Tom Felstet, OD

DocuSigned by:  
*Connie Winner*  
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\_\_\_\_\_  
(Signature)

DocuSigned by:  
*Tom Felstet*  
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\_\_\_\_\_  
(Signature)

DATE: 10/29/2019

DATE: 10/28/2019

Approved as to Legal Content:

DocuSigned by:  
*Colleen J. Ambrose* 9/27/2019  
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\_\_\_\_\_  
Legal Counsel (Date)

Approved as to Form:

DocuSigned by:  
*Kristi Hernandez* 9/27/2019  
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\_\_\_\_\_  
Procurement Officer (Date)  
Department of Corrections

Contractor Dr. Tom Felstet  
Contract #COR-SVCS-2020-0263-CSD  
Contracting Authority: 18-4-132 MCA