

**CONTRACT AMENDMENT NO. 5  
CONTRACT FOR: MILES CITY VISION CLINIC  
CONTRACT NO: 15-044-CSD**

This CONTRACT AMENDMENT No. 5 is to amend the above-referenced contract between the State of Montana, Department of Corrections (STATE), whose address and phone number are 5 South Last Chance Gulch, Helena, MT 59601, 406-444-3930 and Miles City Vision Clinic, (CONTRACTOR), whose address and phone number are 1909 Main Street, Miles City, MT 59301 and (406)-234-7426. This Contract is amended for the following purpose(s):

- 1) In accordance with Section 5, of the above referenced contract, entitled Effective Date, Duration, and Renewal, parties mutually agree to extend this Contract for the period May 1, 2020, through April 30, 2021 per the terms, conditions, and prices agreed upon. This is the 5<sup>th</sup> renewal, 6<sup>th</sup> year of the Contract.
- 2) In accordance with Section 22, of the above referenced contract, entitled Liaisons and Service of Notices, Sub-Section 22.1, Contract Liaisons, parties mutually agree to a change in the Department's Contract Liaison:

Previous Liaison: Sandy Fogle  
4 North Haynes  
Miles City, MT 59301

Current Liaison: Heidi Obie  
4 North Haynes  
Miles City, MT 59301  
(406) 233-2205  
[Heidi.Obie@mt.gov](mailto:Heidi.Obie@mt.gov)

Except as modified above, all other terms and conditions of Contract No **15-044-CSD**, including Amendments #1-4, remain unchanged.

**STATE OF MONTANA  
Department of Corrections  
5 South Last Chance Gulch  
Helena, MT 59601**

**Miles City Vision Clinic  
1909 Main Street  
Miles City, MT 59301**

BY: Connie Winner, Administrator CSD

BY: R.D. Lunde, OD

(Name/Title)  
DocuSigned by:  
SIGNATURE: Connie Winner  
ABDE2DF1207948A...

(Name/Title)  
DocuSigned by:  
SIGNATURE: R. D. Lunde  
272C995FF19E44F...

DATE: 6/8/2020

DATE: 6/8/2020

Approved as to Legal Content:  
DocuSigned by:  
Lorraine Schneider 5/28/2020  
Legal Counsel (Date)  
Department of Corrections

Approved as to Form:  
DocuSigned by:  
Kristi Hernandez 5/28/2020  
Contract Officer (Date)  
Department of Corrections

**CONTRACT AMENDMENT NO.: 4**  
**Miles City Vision Clinic**  
**CONTRACT NO: 15-044-CSD**

This CONTRACT AMENDMENT No. 4 is to amend the above-referenced contract between the State of Montana, Department of Corrections (STATE), whose address and phone number are 5 South Last Chance Gulch, Helena, MT 59601, 406-444-3930 and **Miles City Vision Clinic**, (CONTRACTOR), whose address and phone number are 1909 Main Street, Miles City, MT 59301 and (406)-234-7426. This Contract is amended for the following purpose(s):

- 1) In accordance with Section 5, of the above referenced contract, entitled Time of Performance, both parties mutually agree to extend this Contract for the period May 1, 2019, through April 30, 2020 per the terms, conditions, and prices agreed upon. This is the 4 renewal, 5 year of the Contract.

Except as modified above, all other terms and conditions of Contract No **15-044-CSD**. remain unchanged.

**STATE OF MONTANA**  
**Department of Corrections**  
**5 South Last Chance Gulch**  
**Helena, MT 59601**

**Miles City Vision Clinic**  
**1909 Main Street**  
**Miles City, MT 59301**

DocuSigned by:  
*Connie Winner*  
BY: \_\_\_\_\_  
ABDE2DF1207948A  
Connie Winner, Administrator  
Clinical Services Division

DocuSigned by:  
*R. D. Lunde*  
BY: \_\_\_\_\_  
272C985FF19E44F  
R. D. Lunde, OD  
Miles City Vision Clinic

DATE 6/17/2019

DATE 6/7/2019

Approved as to Legal Content:

DocuSigned by:  
*Colleen E Ambrose* 5/20/2019  
\_\_\_\_\_  
EEF888078013447  
Legal Counsel (Date)

Approved as to Form:

DocuSigned by:  
*Kristi Hernandez* 5/17/2019  
\_\_\_\_\_  
3C5C59C707644B2  
Procurement Officer (Date)  
Department of Corrections

**Optometric Services PHYCF  
15-044-CSD**

**THIS CONTRACT** is entered into by and between the State of Montana, **Montana Department of Corrections** (Department), whose address and phone number are **5 S. Last Chance Gulch, Helena, MT 59601, (406) 444-3930** and **Miles City Vision Clinic** (Contractor), whose address and phone number are **1909 Main Street, Miles City, MT 59301 and (406)-234-7426**.

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

**81.1 Contract Term.** The contract's initial term is upon contract execution through **April 30, 2019**, 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. This contract, including any renewals, may not exceed a total of seven (7) years.

**2. COST ADJUSTMENTS**

**2.1 Cost Increase by Mutual Agreement.** After the contract's initial term and if the Department agrees to a renewal, the parties may agree upon a cost increase. The Department is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

**3. SERVICES AND/OR SUPPLIES**

Contractor shall provide the Department the following:

Contractor agrees to provide Optometric services to youth and adult offenders assigned to Pine Hills Youth Correctional Facility (PHYCF). Services will be provided at Contractor's designated place of business.

- A. Optometric services to be provided under this contract will include, but not be limited to, the following:
- 1) Routine eye examinations on each youth every year, and each adult 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 the Clinical Services Division (CSD) Administrator, contracted primary care physician(s), or PHYCF staff, as requested.
  - 3) Notify the CSD Administrator and the appropriate primary care physician when a youth or adult requires treatment or services extending beyond the scope of the Contractor's specialty or the scope of this Contract.

- 4) Maintain accurate records of each patient contact in accordance with generally accepted optometric standards. These records must then be given to the PHYCF medical unit for retention in the youth or adult's official medical record.
  - 5) When requested by Department, Contractor shall participate in meetings concerning cost containment and medical management agendas and cooperate with Conduent involving medical necessity reviews and provider reimbursements for youth and adult services.
- B. Contractor is required to order all corrective lenses, frames, and replacement parts, through a designated Classic Optical Laboratories. Contractor must use preprinted, provider specific, Medicaid order forms, designating youth "JO" number or adult "AO" number, "DOC Liability", or "Youth/Adult Liability" on the form. The Montana Medicaid listing of Classic Optical Laboratories approved frames and optics, with supporting procedure/service codes, must be used exclusively by Contractor.
- 1) In addition to lenses and complete frames, the Medicaid Fee Schedule includes all materials and services listed in the plan of benefits. These items include replacement of frames and specialized lens services that could be prescribed by the providers and authorized by the State. Additional items are identified as requiring State Prior Authorization and described as lens add-ons. Payment for add-on items are the responsibility of the provider unless prior authorized by the Department. Provider is responsible for paying Contractor for any add-on item that is not prior authorized by the Department.
    - a) Costs for non-medically necessary add-ons and additional glasses must be paid directly to Contractor, by the youth, prior to receipt. Youths and adults will be billed for these services at the current Medicaid fee schedules and limits. If the glasses are willfully broken and/or destroyed during a disturbance caused by youth or adult and are not under warranty, the youth/adult will be charged restitution.
    - b) Contact lenses are not available under this Contract unless medically necessary and approved by the MDOC 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 medical chart and on the Classic Optical Laboratories order form.
  - 3) If, within one year after delivery, an article that includes all original ordered features or add-ons furnished under this Contract is found to be unsatisfactory due to Contractor error, defective workmanship or defective materials, the Contractor must correct, adjust, or replace the article as necessary at Contractor's expense, without cost to the Department or the member. Unsatisfactory articles will be mailed to the Contractor with a service request signed by the provider. The Contractor must correct, adjust, or replace the article within 10 working days of the Contractor's receipt of the unsatisfactory materials

- 4) Errors on orders made by the prescribing or dispensing providers regarding a prescription are the responsibility of the prescribing or dispensing provider at no additional cost to the Department. The error cost transaction will be worked out between the Contractor and the providers. Errors made by the Contractor regarding a prescription are the responsibility of the Contractor at no additional cost to the Department.
- 5) For all orders that require repair and/or replacement of parts and/or frames, there will be a \$16.00 handling fee per incident. Department will reimburse Contractor for expenses related to on-site minor repair. Prior authorization must be obtained by Department Liaison before repair is initiated.
- 6) Additional eyeglasses lost or broken in a justifiable incident, or replacement based on substantiated medical necessity, will be replaced at Department expense.  
(\*EXCEPTION - Frames/lenses still under warranty.)

#### 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. 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 the Department 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. The Department'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, the Department may, at Contractor's expense, require prompt correction of 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 and services to be provided, the Department shall pay Contractor according to the following schedule:

- A. Optometric services, which include vision examination and fitting/dispensing, provided on or after January 1, 2016, will be billed to Conduent on a HCFA-1500 claim form. Billing information shall include, but not be limited to: the Medicaid 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

- B. 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.

**5.2 Payment Terms.** Unless otherwise noted in the solicitation document, 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.

**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, the Department is not obligated to pay the invoice.

## **6. 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).

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

**7.1 Access to Records.** Contractor shall provide the Department, Legislative Auditor, or their authorized agent's access to any records necessary to determine contract compliance. The Department may terminate this contract under section 17 without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

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

## **8. 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.

## **9. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, indemnify, and hold harmless the Department, its elected and appointed officials, agents and employees from and against all legal, equitable or administrative claims, causes of action, damages, losses and expenses, of any kind or character, including but not limited to attorneys' fees and the costs of defense, arising in favor of Contractor's employees or third parties on account of bodily injury, sickness, disease, death, personal injury, violation of an offender's constitutional or statutory rights, or to injury to or destruction of tangible property except for such claims, causes of action, damages, losses or expenses which are solely due to the fault or negligence of the party seeking indemnity.

## **10. REQUIRED INSURANCE**

**10.1 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 excess of Contractor's insurance and shall not contribute with it.

**10.2 Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of **\$1,000,000.00** per occurrence and **\$2,000,000.00** 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.

**10.3 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.

**10.4 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. 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.

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

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the Department 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.

## **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 [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.

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 § 4980 H (ACA) if provided by the State.

**Additional Indemnification.** Claims under this provision also include those arising out of or in any way connected with Contractor's breach of this contract, including any Claims asserting that any of Contractor's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to, excise taxes or penalties imposed on the State under the Code §§ 4980H, 6055 or 6056.

**Reporting Requirements.** Contractor, if contractor is an applicable large employer under the ACA, further states that it shall satisfy all reporting requirements under the Code §§ 6055 and 6056 (ACA) with respect to individuals who perform services for the State.

**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 this 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 incorporated 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>.

### **16. INTELLECTUAL PROPERTY/OWNERSHIP**

**16.1 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.

**16.2 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 16.2** (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.

## **17. CONTRACT TERMINATION**

**17.1 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.

**17.2 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.

**17.3 Reduction of Funding.** The Department must by law terminate 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 terminate this contract as required by law. The Department shall provide Contractor the date the Department's termination shall take effect. The Department 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, 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 termination takes effect. This is Contractor's sole remedy. The Department 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.

## **18. EVENT OF BREACH – REMEDIES**

**18.1 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.

**18.2 Event of Breach by Department.** The Department's failure to perform any material terms or conditions of this contract constitutes an event of breach.

### **18.3 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.

### **19. 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.

### **20. 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.

### **21. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the Department's Contracts Management 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.

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

**22.1 Contract Liaisons.** All project management and coordination on the Department's behalf must be through a single point of contact designated as the Department'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 the Department's liaison and Contractor's liaison.

Sandra Fogle is the Department's liaison.  
(Address): 4 North Haynes  
(City, Department, ZIP): Miles City, MT 59301  
Telephone: (406)-233-2205  
E-mail: sfogle@mt.gov

R.D. Lunde, OD is Contractor's liaison.  
(Address): 1909 Main Street  
(City, Department, ZIP): Miles City, MT 59301  
Telephone: (406)-234-7426

**22.2 Notifications.** The Department'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.

## **23. MEETINGS**

**23.1 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.

**23.2 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.

**23.3 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.

## **24. 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 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 a project or 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.

**25. 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.

**26. TAX EXEMPTION**

The Department of Montana is exempt from Federal Excise Taxes (#81-0302402).

**27. AUTHORITY**

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

**28. 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.

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

**29.1 Contract.** This contract consists of 11 numbered pages and any Attachments as required, In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**29.2 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.

**30. 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.

DocuSign Envelope ID: 39869D1B-D0FD-49EF-B692-9CCAE11703A1

**31. EXECUTION**

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

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

**Miles City Vision Clinic**  
1909 Main Street  
Miles City, MT 59301

BY: \_\_\_\_\_  
Connie Winner, Administrator  
Clinical Services Division

BY: \_\_\_\_\_  
R.D. Lunde, OD

DocuSigned by:  
*Connie Winner*  
ADPE2DF1207840A...  
\_\_\_\_\_  
(Signature)

*R.D. Lunde OD*  
\_\_\_\_\_  
(Signature)

DATE: 5/7/2018

DATE: 08-07-2018

Approved as to Legal Content:

DocuSigned by:  
*Colleen Ambrose* 5/6/2018  
\_\_\_\_\_  
Legal Counsel (Date)

Approved as to Form:

**Optometric Services PHYCF  
15-044-CSD**

**THIS CONTRACT** is entered into by and between the State of Montana, **Montana Department of Corrections** (Department), whose address and phone number are **5 S. Last Chance Gulch, Helena, MT 59601, (406) 444-3930** and **Miles City Vision Clinic** (Contractor), whose address and phone number are **1909 Main Street, Miles City, MT 59301 and (406)-234-7426**.

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

**81.1 Contract Term.** The contract's initial term is upon contract execution through **April 30, 2018**, 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. This contract, including any renewals, may not exceed a total of seven (7) years.

**2. COST ADJUSTMENTS**

**2.1 Cost Increase by Mutual Agreement.** After the contract's initial term and if the Department agrees to a renewal, the parties may agree upon a cost increase. The Department is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

**3. SERVICES AND/OR SUPPLIES**

Contractor shall provide the Department the following:

Contractor agrees to provide Optometric services to youth and adult offenders assigned to Pine Hills Youth Correctional Facility (PHYCF). Services will be provided at Contractor's designated place of business.

- A. Optometric services to be provided under this contract will include, but not be limited to, the following:
- 1) Routine eye examinations on each youth every year, and each adult 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 the Clinical Services Division (CSD) Administrator, contracted primary care physician(s), or PHYCF staff, as requested.
  - 3) Notify the CSD Administrator and the appropriate primary care physician when a youth or adult requires treatment or services extending beyond the scope of the Contractor's specialty or the scope of this Contract.

- 4) Maintain accurate records of each patient contact in accordance with generally accepted optometric standards. These records must then be given to the PHYCF medical unit for retention in the youth or adult's official medical record.
  - 5) When requested by Department, Contractor shall participate in meetings concerning cost containment and medical management agendas and cooperate with Conduent involving medical necessity reviews and provider reimbursements for youth and adult services.
- B. Contractor is required to order all corrective lenses, frames, and replacement parts, through a designated Classic Optical Laboratories. Contractor must use preprinted, provider specific, Medicaid order forms, designating youth "JO" number or adult "AO" number, "DOC Liability", or "Youth/Adult Liability" on the form. The Montana Medicaid listing of Classic Optical Laboratories approved frames and optics, with supporting procedure/service codes, must be used exclusively by Contractor.
- 1) In addition to lenses and complete frames, the Medicaid Fee Schedule includes all materials and services listed in the plan of benefits. These items include replacement of frames and specialized lens services that could be prescribed by the providers and authorized by the State. Additional items are identified as requiring State Prior Authorization and described as lens add-ons. Payment for add-on items are the responsibility of the provider unless prior authorized by the Department. Provider is responsible for paying Contractor for any add-on item that is not prior authorized by the Department.
    - a) Costs for non-medically necessary add-ons and additional glasses must be paid directly to Contractor, by the youth, prior to receipt. Youths and adults will be billed for these services at the current Medicaid fee schedules and limits. If the glasses are willfully broken and/or destroyed during a disturbance caused by youth or adult and are not under warranty, the youth/adult will be charged restitution.
    - b) Contact lenses are not available under this Contract unless medically necessary and approved by the MDOC 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 medical chart and on the Classic Optical Laboratories order form.
  - 3) If, within one year after delivery, an article that includes all original ordered features or add-ons furnished under this Contract is found to be unsatisfactory due to Contractor error, defective workmanship or defective materials, the Contractor must correct, adjust, or replace the article as necessary at Contractor's expense, without cost to the Department or the member. Unsatisfactory articles will be mailed to the Contractor with a service request signed by the provider. The Contractor must correct, adjust, or replace the article within 10 working days of the Contractor's receipt of the unsatisfactory materials

- 4) Errors on orders made by the prescribing or dispensing providers regarding a prescription are the responsibility of the prescribing or dispensing provider at no additional cost to the Department. The error cost transaction will be worked out between the Contractor and the providers. Errors made by the Contractor regarding a prescription are the responsibility of the Contractor at no additional cost to the Department.
- 5) For all orders that require repair and/or replacement of parts and/or frames, there will be a \$16.00 handling fee per incident. Department will reimburse Contractor for expenses related to on-site minor repair. Prior authorization must be obtained by Department Liaison before repair is initiated.
- 6) Additional eyeglasses lost or broken in a justifiable incident, or replacement based on substantiated medical necessity, will be replaced at Department expense. (\*EXCEPTION - Frames/lenses still under warranty.)

#### 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. 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 the Department 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. The Department'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, the Department may, at Contractor's expense, require prompt correction of 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 and services to be provided, the Department shall pay Contractor according to the following schedule:

- A. Optometric services, which include vision examination and fitting/dispensing, provided on or after January 1, 2016, will be billed to Conduent on a HCFA-1500 claim form. Billing information shall include, but not be limited to: the Medicaid 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

- B. 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.

**5.2 Payment Terms.** Unless otherwise noted in the solicitation document, 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.

**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, the Department is not obligated to pay the invoice.

**6. 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).

**7. ACCESS AND RETENTION OF RECORDS**

**7.1 Access to Records.** Contractor shall provide the Department, Legislative Auditor, or their authorized agent's access to any records necessary to determine contract compliance. The Department may terminate this contract under section 17 without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

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

**8. 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.

**9. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, indemnify, and hold harmless the Department, its elected and appointed officials, agents and employees from and against all legal, equitable or administrative claims, causes of action, damages, losses and expenses, of any kind or character, including but not limited to attorneys' fees and the costs of defense, arising in favor of Contractor's employees or third parties on account of bodily injury, sickness, disease, death, personal injury, violation of an offender's constitutional or statutory rights, or to injury to or destruction of tangible property except for such claims, causes of action, damages, losses or expenses which are solely due to the fault or negligence of the party seeking indemnity.

**10. REQUIRED INSURANCE**

**10.1 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 excess of Contractor's insurance and shall not contribute with it.

**10.2 Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of **\$1,000,000.00** per occurrence and **\$2,000,000.00** 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.

**10.3 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.

**10.4 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. 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.

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

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the Department 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.

## **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 [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.

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 § 4980 H (ACA) if provided by the State.

**Additional Indemnification.** Claims under this provision also include those arising out of or in any way connected with Contractor's breach of this contract, including any Claims asserting that any of Contractor's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to, excise taxes or penalties imposed on the State under the Code §§ 4980H, 6055 or 6056.

**Reporting Requirements.** Contractor, if contractor is an applicable large employer under the ACA, further states that it shall satisfy all reporting requirements under the Code §§ 6055 and 6056 (ACA) with respect to individuals who perform services for the State.

**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 this 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 incorporated 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>.

### 16. INTELLECTUAL PROPERTY/OWNERSHIP

**16.1 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.

**16.2 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 16.2** (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.

## **17. CONTRACT TERMINATION**

**17.1 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.

**17.2 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.

**17.3 Reduction of Funding.** The Department must by law terminate 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 terminate this contract as required by law. The Department shall provide Contractor the date the Department's termination shall take effect. The Department 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, 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 termination takes effect. This is Contractor's sole remedy. The Department 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.

## **18. EVENT OF BREACH – REMEDIES**

**18.1 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.

**18.2 Event of Breach by Department.** The Department's failure to perform any material terms or conditions of this contract constitutes an event of breach.

### **18.3 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.

### **19. 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.

### **20. 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.

### **21. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the Department's Contracts Management 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.

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

**22.1 Contract Liaisons.** All project management and coordination on the Department's behalf must be through a single point of contact designated as the Department'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 the Department's liaison and Contractor's liaison.

Sandra Fogle is the Department's liaison.

(Address): 4 North Haynes

(City, Department, ZIP): Miles City, MT 59301

Telephone: (406)-233-2205

E-mail: sfogle@mt.gov

R.D. Lunde, OD is Contractor's liaison.  
(Address): 1909 Main Street  
(City, Department, ZIP): Miles City, MT 59301  
Telephone: (406)-234-7426

**22.2 Notifications.** The Department'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.

## **23. MEETINGS**

**23.1 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.

**23.2 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.

**23.3 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.

## **24. 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 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 a project or 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.

**25. 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.

**26. TAX EXEMPTION**

The Department of Montana is exempt from Federal Excise Taxes (#81-0302402).

**27. AUTHORITY**

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

**28. 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.

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

**29.1 Contract.** This contract consists of 11 numbered pages and any Attachments as required, In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**29.2 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.

**30. 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.

**31. EXECUTION**

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

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

**Miles City Vision Clinic  
1909 Main Street  
Miles City, MT 59301**

BY: Connie Winner  
Connie Winner, Administrator  
Clinical Services Division

BY: R.D. Lunde, OD  
R.D. Lunde, OD

Connie Winner  
(Signature)

R.D. Lunde, OD  
(Signature)

DATE: 4.12.17

DATE: \_\_\_\_\_

Approved as to Legal Content:

Collen Lambrose 4/5/17  
Legal Counsel (Date)

Approved as to Form:

**Optometric Services PHYCF  
15-044-CSD**

**THIS CONTRACT** is entered into by and between the State of Montana, **Montana Department of Corrections** (Department), whose address and phone number are **5 S. Last Chance Gulch, Helena, MT 59601, (406) 444-3930** and **Miles City Vision Clinic** (Contractor), whose address and phone number are **1909 Main Street, Miles City, MT 59301 and (406)-234-7426**.

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

**1.1 Contract Term.** The contract's initial term is upon contract execution through **April 30, 2017**, 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. This contract, including any renewals, may not exceed a total of seven (7) years.

**2. COST ADJUSTMENTS**

**2.1 Cost Increase by Mutual Agreement.** After the contract's initial term and if the Department agrees to a renewal, the parties may agree upon a cost increase. The Department is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

**3. SERVICES AND/OR SUPPLIES**

Contractor shall provide the Department the following:

CONTRACTOR agrees to provide Optometric services to youth and young adult offenders assigned to Pine Hills Youth Correctional Facility (PHYCF). Services will be provided at CONTRACTOR'S designated place of business.

- A. Optometric services to be provided under this contract will include, but not be limited to, the following:
- 1) Routine eye examinations on each youth or young adult every year, or more frequently due to special vision deficits, and the dispensing and fitting of prescribed eyeglasses.
  - 2) Consult and/or meet with the Clinical Services Division (CSD) Administrator, contracted primary care physician(s), or PHYCF staff, as requested.
  - 3) Notify the CSD Administrator and the appropriate primary care physician when a youth or young adult requires treatment or services extending beyond the scope of the CONTRACTOR'S specialty or the scope of this Contract.

- 4) Maintain accurate records of each patient contact in accordance with generally accepted optometric standards. These records must then be given to the PHYCF medical unit for retention in the youth or young adult's official medical record.
  - 5) When requested by DEPARTMENT, CONTRACTOR shall participate in meetings concerning cost containment and medical management agendas and cooperate with XEROX involving medical necessity reviews and provider reimbursements for youth and young adult 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 youth "JO" number or young adult "AO" number, "DOC Liability", or "Youth/Young Adult 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) Youths and young adults 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 "Youth/Young Adult Liability" on the Walman order form.
    - a) Costs for non-medically necessary add-ons and additional glasses must be paid directly to CONTRACTOR, by the youth, prior to receipt. Youths and young adults will be billed for these services at the current Medicaid fee schedules and limits, and will be charged restitution if the glasses are not under warranty and are destroyed willfully or during a disturbance caused by the youth or young adult.
    - b) Contact lenses are not available under this Contract unless medically necessary and approved by the MDOC 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 medical chart and on the Walman order form.
  - 3) Repair or replacement of eyeglasses within a one-year time limit must be prior authorized by the contract liaison or his/her designee. CONTRACTOR will provide one free replacement pair of glasses, per patient, per year. For all orders that require replacement of parts and/or frames, there will be a \$12.00 handling fee per incident. The handling fee and any additional repair/replacement will be at the youth's expense. However, additional eyeglasses lost or broken in a justifiable incident, or replacement based on substantiated medical necessity, will be replaced at DEPARTMENT expense. (\*EXCEPTION - Frames/lenses still under warranty.)
  - 4) 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.

- 5) DEPARTMENT will reimburse CONTRACTOR for expenses related to on-site minor repair. Prior authorization must be obtained by DEPARTMENT Liaison before repair is initiated.

#### **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. 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 the Department 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. The Department'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, the Department may, at Contractor's expense, require prompt correction of 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 and services to be provided, the Department shall pay Contractor according to the following schedule:

- 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 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.

- 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.

**5.2 Payment Terms.** Unless otherwise noted in the solicitation document, 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.

**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, the Department is not obligated to pay the invoice.

## **6. 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).

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

**7.1 Access to Records.** Contractor shall provide the Department, Legislative Auditor, or their authorized agent's access to any records necessary to determine contract compliance. The Department may terminate this contract under section 17 without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

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

## **8. 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.

## **9. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, indemnify, and hold harmless the Department, its elected and appointed officials, agents and employees from and against all legal, equitable or administrative claims, causes of action, damages, losses and expenses, of any kind or character, including but not limited to attorneys' fees and the costs of defense, arising in favor of Contractor's employees or third parties on account of bodily injury, sickness, disease, death, personal injury, violation of an offender's constitutional or statutory rights, or to injury to or destruction of tangible property except for such claims, causes of action, damages, losses or expenses which are solely due to the fault or negligence of the party seeking indemnity.

## **10. REQUIRED INSURANCE**

**10.1 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 excess of Contractor's insurance and shall not contribute with it.

**10.2 Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of **\$1,000,000.00** per occurrence and **\$2,000,000.00** 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.

**10.3 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.

**10.4 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. 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.

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

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the Department 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.

## **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 [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.

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 § 4980 H (ACA) if provided by the State.

**Additional Indemnification.** Claims under this provision also include those arising out of or in any way connected with Contractor's breach of this contract, including any Claims asserting that any of Contractor's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to, excise taxes or penalties imposed on the State under the Code §§ 4980H, 6055 or 6056.

**Reporting Requirements.** Contractor, if contractor is an applicable large employer under the ACA, further states that it shall satisfy all reporting requirements under the Code §§ 6055 and 6056 (ACA) with respect to individuals who perform services for the State.

**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 this 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 incorporated 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>.

### **16. INTELLECTUAL PROPERTY/OWNERSHIP**

**16.1 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.

**16.2 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 16.2** (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.

## **17. CONTRACT TERMINATION**

**17.1 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.

**17.2 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.

**17.3 Reduction of Funding.** The Department must by law terminate 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 terminate this contract as required by law. The Department shall provide Contractor the date the Department's termination shall take effect. The Department 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, 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 termination takes effect. This is Contractor's sole remedy. The Department 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.

## **18. EVENT OF BREACH – REMEDIES**

**18.1 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.

**18.2 Event of Breach by Department.** The Department's failure to perform any material terms or conditions of this contract constitutes an event of breach.

**18.3 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.

**19. 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.

**20. 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.

**21. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the Department's Contracts Management 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.

**22. LIAISONS AND SERVICE OF NOTICES**

**22.1 Contract Liaisons.** All project management and coordination on the Department's behalf must be through a single point of contact designated as the Department'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 the Department's liaison and Contractor's liaison.

Sandra Fogle is the Department's liaison.  
(Address): 4 North Haynes  
(City, Department, ZIP): Miles City, MT 59301  
Telephone: (406)-233-2205  
E-mail: sfogle@mt.gov

R.D. Lunde, OD is Contractor's liaison.  
(Address): 1909 Main Street  
(City, Department, ZIP): Miles City, MT 59301  
Telephone: (406)-234-7426

**22.2 Notifications.** The Department'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.

## **23. MEETINGS**

**23.1 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.

**23.2 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.

**23.3 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.

## **24. 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 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 a project or 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.

**25. 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.

**26. TAX EXEMPTION**

The Department of Montana is exempt from Federal Excise Taxes (#81-0302402).

**27. AUTHORITY**

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

**28. 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.

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

**29.1 Contract.** This contract consists of 11 numbered pages and any Attachments as required, In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**29.2 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.

**30. 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.

**31. EXECUTION**

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

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

**Miles City Vision Clinic  
1909 Main Street  
Miles City, MT 59301**

BY: Connie Winner  
Connie Winner, Administrator  
Clinical Services Division

BY: R.D. Lunde  
R.D. Lunde, OD

Connie Winner  
(Signature)

R.D. Lunde OD  
(Signature)

DATE: 4-13-16

DATE: 4-20-16

Approved as to Legal Content:

Colleen Ambrose 4-5-16  
Legal Counsel (Date)

Approved as to Form:

**Optometric Services PHYCF  
15-044-CSD**

**THIS CONTRACT** is entered into by and between the State of Montana, **Montana Department of Corrections** (Department), whose address and phone number are **5 S. Last Chance Gulch, Helena, MT 59601, (406) 444-3930** and **Miles City Vision Clinic** (Contractor), whose address and phone number are **1909 Main Street, Miles City, MT 59301 and (406)-234-7426**.

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

**1.1 Contract Term.** The contract's initial term is upon contract execution through **April 30, 2016**, 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. This contract, including any renewals, may not exceed a total of seven (7) years.

**2. COST ADJUSTMENTS**

**2.1 Cost Increase by Mutual Agreement.** After the contract's initial term and if the Department agrees to a renewal, the parties may agree upon a cost increase. The Department is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

**3. SERVICES AND/OR SUPPLIES**

Contractor shall provide the Department the following:

CONTRACTOR agrees to provide Optometric services to youth assigned to Pine Hills Youth Correctional Facility (PHYCF). Services will be provided at CONTRACTOR'S designated place of business.

- A. Optometric services to be provided under this contract will include, but not be limited to, the following:
- 1) Routine eye examinations on each youth every year, or more frequently due to special vision deficits, and the dispensing and fitting of prescribed eyeglasses.
  - 2) Consult and/or meet with the Clinical Services Division (CSD) Administrator, contracted primary care physician(s), or PHYCF staff, as requested.
  - 3) Notify the CSD Administrator and the appropriate primary care physician when a youth requires treatment or services extending beyond the scope of the CONTRACTOR'S specialty or the scope of this Contract.

- 4) Maintain accurate records of each patient contact in accordance with generally accepted optometric standards. These records must then be given to the PHYCF medical unit for retention in the youth's official medical record.
  - 5) When requested by DEPARTMENT, CONTRACTOR shall 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 youth 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 youth "JO" number, "DOC Liability", or "Youth 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) Youths 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 "Youth Liability" on the Walman order form.
    - a) Costs for non-medically necessary add-ons and additional glasses must be paid directly to CONTRACTOR, by the youth, prior to receipt. Youths will be billed for these services at the current Medicaid fee schedules and limits. Youth will be charged restitution if the glasses are not under warranty and are destroyed willfully or during a disturbance caused by the youth.
    - b) Contact lenses are not available under this Contract unless medically necessary and approved by the MDOC 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 youth medical chart and on the Walman order form.
  - 3) Repair or replacement of eyeglasses within a one-year time limit must be prior authorized by the contract liaison or his/her designee. CONTRACTOR will provide one free replacement pair of glasses, per youth, per year. For all orders that require replacement of parts and/or frames, there will be a \$12.00 handling fee per incident. The handling fee and any additional repair/replacement will be at the youth's expense. However, additional eyeglasses lost or broken in a justifiable incident, or replacement based on substantiated medical necessity, will be replaced at DEPARTMENT expense. (\*EXCEPTION - Frames/lenses still under warranty.)
  - 4) 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.
  - 5) DEPARTMENT will reimburse CONTRACTOR for expenses related to on-site minor repair. Prior authorization must be obtained by DEPARTMENT Liaison before repair is initiated.

**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. 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 the Department 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. The Department'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, the Department may, at Contractor's expense, require prompt correction of 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 and services to be provided, the Department shall pay Contractor according to the following schedule:

- 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 youth "JO" 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. 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.

**5.2 Payment Terms.** Unless otherwise noted in the solicitation document, 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.

**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, the Department is not obligated to pay the invoice.

**6. 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).

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

**7.1 Access to Records.** Contractor shall provide the Department, Legislative Auditor, or their authorized agent's access to any records necessary to determine contract compliance. The Department may terminate this contract under section 17 without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

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

## **8. 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.

## **9. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, indemnify, and hold harmless the Department, its elected and appointed officials, agents and employees from and against all legal, equitable or administrative claims, causes of action, damages, losses and expenses, of any kind or character, including but not limited to attorneys' fees and the costs of defense, arising in favor of Contractor's employees or third parties on account of bodily injury, sickness, disease, death, personal injury, violation of an offender's constitutional or statutory rights, or to injury to or destruction of tangible property except for such claims, causes of action, damages, losses or expenses which are solely due to the fault or negligence of the party seeking indemnity.

## **10. REQUIRED INSURANCE**

**10.1 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 excess of Contractor's insurance and shall not contribute with it.

**10.2 Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of **\$1,000,000.00** per occurrence and **\$2,000,000.00** 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.

**10.3 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.

**10.4 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. 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.

**11. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the Department 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.

**12. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, 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 Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, 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 upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

**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 this 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 incorporated 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>.

**16. INTELLECTUAL PROPERTY/OWNERSHIP**

**16.1 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.

**16.2 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 16.2** (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.

## **17. CONTRACT TERMINATION**

**17.1 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.

**17.2 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.

**17.3 Reduction of Funding.** The Department must by law terminate 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 terminate this contract as required by law. The Department shall provide Contractor the date the Department's termination shall take effect. The Department 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, 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 termination takes effect. This is Contractor's sole remedy. The Department 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.

## **18. EVENT OF BREACH – REMEDIES**

**18.1 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.

**18.2 Event of Breach by Department.** The Department's failure to perform any material terms or conditions of this contract constitutes an event of breach.

### **18.3 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.

## **19. 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.

## **20. 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.

## **21. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the Department's Contracts Management 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.

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

**22.1 Contract Liaisons.** All project management and coordination on the Department's behalf must be through a single point of contact designated as the Department'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 the Department's liaison and Contractor's liaison.

Sandra Fogle is the Department's liaison.  
(Address): 4 North Haynes  
(City, Department, ZIP): Miles City, MT 59301  
Telephone: (406)-233-2205  
E-mail: sfogle@mt.gov

R.D. Lunde, OD is Contractor's liaison.  
(Address): 1909 Main Street  
(City, Department, ZIP): Miles City, MT 59301  
Telephone: (406)-234-7426

**22.2 Notifications.** The Department'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.

## **23. MEETINGS**

**23.1 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.

**23.2 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.

**23.3 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.

**24. 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 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 a project or 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.

**25. 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.

**26. TAX EXEMPTION**

The Department of Montana is exempt from Federal Excise Taxes (#81-0302402).

**27. AUTHORITY**

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

**28. 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.

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

**29.1 Contract.** This contract consists of 10 numbered pages and any Attachments as required, In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**29.2 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.

**30. 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.

**31. EXECUTION**

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

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

**Miles City Vision Clinic  
1909 Main Street  
Miles City, MT 59301**

BY: \_\_\_\_\_  
Connie Winner, Administrator

BY: R.D. Lunde OD  
R.D. Lunde, OD

Connie Winner  
(Signature)

R.D. Lunde OD  
(Signature)

DATE: 4-16-15

DATE: 04-30-2015

Approved as to Legal Content:

Colleen Ambrose 4-16-15  
Legal Counsel (Date)

Approved as to Form: