

HEALTH AND HUMAN SERVICES COMMISSION
HHSC CONTRACT NO. HHS001192200001

The **HEALTH AND HUMAN SERVICES COMMISSION** (“HHSC” or “System Agency”), an administrative agency within the executive branch of the state of Texas, on behalf of **BIG SPRING STATE HOSPITAL** (“Facility”), and **JOHN H MARSHALL**, (“Contractor”), having his principal office at 3 Highland Cove, Big Spring, Texas 79720, each a “Party” and collectively the “Parties”, enter into the following agreement to provide Optometry services to patients of Facility (“Contract”).

I. LEGAL AUTHORITY

This Contract is entered into pursuant to the “Professional Services Procurement Act,” Chapter 2254, Subchapter A, of the Texas Government Code, and Chapter 531 of the Texas Government Code, to the extent applicable.

II. DURATION

The Contract is effective on the date of the last signature below and terminates on **August 31, 2026**, unless sooner terminated or renewed or extended. In no event may the Contract term, including all renewals and extensions, exceed five (5) years cumulatively.

III. STATEMENT OF WORK

The Statement of Work to which Contractor is bound is incorporated into and made a part of this Contract for all purposes and included as **ATTACHMENT A, STATEMENT OF WORK**.

IV. BUDGET

The total amount of this Contract will not exceed **\$75,000.00**. By executing this Contract, Contractor agrees to the contracted rates and budget for the Contract term, including the initial term, and all renewals and extensions exercised. However, at HHSC’s sole discretion or by mutual agreement of the Parties as authorized under the Contract, the budget or contract amounts may be amended. All expenditures under the Contract shall be in accordance with **ATTACHMENT D, RATE AND BILLING GUIDELINES**.

V. CONTRACT REPRESENTATIVES

The following persons will act as the representative authorized to administer activities under this Contract on behalf of its respective Party.

HHSC

Donna Lee
Texas Health and Human Services Commission

Contractor

John H. Marshall, OD
3 Highland Cove

HHS Health and Specialty Care System
Big Spring State Hospital
1901 N. Hwy 87
Big Spring, Texas 79720
E-mail: donna.lee@hhs.texas.gov

Big Spring, Texas 79720
E-mail: eyeassociatesofbigspring@gmail.com

VI. NOTICE REQUIREMENTS

- A. All notices given by Contractor shall be in writing, include the Contract number, comply with all terms and conditions of the Contract, and be delivered to the HHSC's Contract Representative identified above.
- B. Contractor shall send legal notices to HHSC at the address below and provide a copy to the HHSC's Contract Representative:
 - Health and Human Services Commission
 - Attention: Office of Chief Counsel
 - 4601 W. Guadalupe Street, Mail Code 1100
 - Austin, TX 78751
- C. Notices given by HHSC to Contractor may be emailed, mailed or sent by common carrier. Email notices shall be deemed delivered when sent by HHSC. Notices sent by mail shall be deemed delivered when deposited by HHSC in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by HHSC with a common carrier, overnight, signature required.
- D. Notices given by Contractor to HHSC shall be deemed delivered when received by HHSC.
- E. Either Party may change its Contract Representative or Legal Notice contact by providing written notice to the other Party.

VII. COVERED ENTITY PRIVACY, SECURITY, AND BREACH NOTIFICATION TERMS

Contractor will comply with the following Health and Human Services (HHS) Covered Entity Privacy, Security and Breach Notification terms:

- A. Definitions:
 - 1. **"Breach"** means the acquisition, access, use, or disclosure of Confidential Information in an unauthorized manner which compromises the security or privacy of the Confidential Information.
 - 2. **"HHS Confidential Information"** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to the Contractor electronically or through any other means that consists of or includes any or all of the following:

- (a) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information (as these terms are defined in 45 C.F.R. §160.103);
- (b) Sensitive Personal Information defined by Texas Business and Commerce Code Chapter 521;
- (c) Federal Tax Information (as defined in Internal Revenue Service Publication 1075);
- (d) Personal Identifying Information (as defined in Texas Business and Commerce Code Chapter 521);
- (e) Social Security Administration Data (defined as information received from a Social Security Administration federal agency system of records), including, without limitation, Medicare or Medicaid information (defined as information relating to an applicant or recipient of Medicare or Medicaid benefits);
- (f) Substance Use Disorder Treatment Records (as defined in 42 C.F.R. Part 2);
- (g) Education Records (as defined in the Family Educational Rights and Privacy Act (*FERPA*) (20 U.S.C. § 1232g; 34 CFR Part 99);
- (h) Privileged work product; and
- (i) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

B. HHS Confidential Information Applicable Laws and Regulations

Any HHS Confidential Information received by the Contractor under this Contract may be disclosed only in accordance with applicable law and as authorized in this Contract. By signing this Contract, the Contractor certifies that the Contractor is, and intends to remain for the term of this Contract, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including without limitation the following:

1. Title 5 United States Code (USC) Part I, Chapter 5, Subchapter II, Section 552a, Records Maintained on Individuals, The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988;
2. Title 26 USC, Internal Revenue Code;
3. Title 42 USC Chapter 7, Subchapter XI, Part C, Administrative Simplification, the relevant portions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Pub Law 111-5, Title XIII, the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009;
4. Title 42 USC Chapter 7, the relevant portions of the Social Security Act;
5. Title 42 USC Chapter I, Subchapter A, Part 2, Confidentiality of Substance Use Disorder Patient Records;

6. (Title 45 Code of Federal Regulations (CFR) Chapter A, Subchapter C, Part 160, General Administrative Requirements
7. Title 45 CFR Chapter A Subchapter C, Parts 160, 162 and 164, Security and Privacy;
8. Title 45 CFR Subtitle A, Subchapter D, Parts 170 (Health Information Technology Standards) and 171 (Information Blocking);
9. 20 U.S.C. § 1232g; 34 CFR Part 99, Family Educational Rights and Privacy Act (*FERPA*);
10. Internal Revenue Service Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information;
11. Office of Management and Budget Memorandum 17-12, Preparing for and Responding to a Breach of Personally Identifiable Information;
12. Texas Business and Commerce Code Title 11, Subtitle B, Chapter 521 Unauthorized Use of Identifying Information;
13. Texas Government Code, Title, 5, Subtitle A, Chapter 552, Public Information, as applicable;
14. Texas Health and Safety Code, Title 2, Subtitle D, Chapter 81,, Communicable Diseases, Public Health Disasters and Emergencies;
15. Texas Health and Safety Code, Title 2, Subchapter H, Chapter 161, Public Health Provisions, Subchapter A, Immunizations;
16. Texas Health and Safety Code Title 2, Subtitle I, Chapter 181, Medical Records Privacy;
17. Texas Health and Safety Code Title 7, Subtitle E, Chapter 611, Mental Health Records;
18. Texas Human Resources Code, Title 2, Subtitle A, Chapter 12, Section 12.003, Disclosure of Information Prohibited;
19. Texas Occupations Code, Title 3, Health Professions, as applicable;
20. Constitutional and common law privacy; and
21. Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this Contract.

The Contractor further certifies that the Contractor will comply with all amendments, regulations, and guidance relating to those laws, to the extent applicable.

C. Cybersecurity Training

All of Contractor's authorized users, workforce and subcontractors with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code, Title 10, Subtitle B, Chapter 2054, Section 2054.5192, Cybersecurity Training Required: Certain State Contractors, by the Texas Department of Information Resources.

D. Business Associate Agreement

Contractor will ensure that any subcontractor of Contractor who has access to HHS Confidential Information will sign a HIPAA-compliant Business Associate Agreement with Contractor, and Contractor will submit a copy of that Business Associate Agreement to HHS upon request.

E. Contractor's Incident Notice, Reporting and Mitigation

The Contractor's obligation begins at discovery of any unauthorized disclosure of Confidential Information or any privacy or security incident that may compromise Confidential Information. "Incident" is defined as an attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. The Contractor's obligation continues until all effects of the Incident are resolved to HHS's satisfaction, hereafter referred to as the "Incident Response Period".

F. Notification to HHS

1. The Contractor must notify HHS within the timeframes set forth in Section (c) below.
2. The Contractor must require that its subcontractors and contractors take the necessary steps to assure that the Contractor can comply with all of the following Incident notice requirements.
3. Incident Notice:

(a) Initial Notice.

Within twenty-four (24) hours of discovery, or in a timeframe otherwise approved by HHS in writing, the Contractor must preliminarily report on the occurrence of an Incident to the HHS Privacy and Security Officers via email at: privacy@HHS.state.tx.us and infosecurity@HHS.state.tx.us.

This initial notice must, at a minimum, contain:

(i) all information reasonably available to Contractor about the Incident, (ii) confirmation that the Contractor has met any applicable federal Breach notification requirements, and (iii) a single point of contact for the Contractor for HHS communications both during and outside of business hours during the Incident Response Period.

(b) Formal Notice.

No later than three (3) Business Days after discovery of an Incident, or when the Contractor should have reasonably discovered the Incident, the Contractor must provide written formal notification to HHS using the Potential Privacy/Security Incident Form which is available on the HHS website at <https://HHSonnection.hhs.texas.gov/rights-responsibilities/office-chief-counsel/privacy>. The formal notification must include all available information about the Incident, and the Contractor's investigation of the Incident.

G. Contractor Investigation, Response, and Mitigation

The Contractor must fully investigate and mitigate, to the extent practicable and as soon as possible or as indicated below, any Incident. At a minimum, the Contractor will:

1. Immediately commence a full and complete investigation;
2. Cooperate fully with HHS in its response to the Incident;
3. Complete or participate in an initial risk assessment;
4. Provide a final risk assessment;
5. Submit proposed corrective actions to HHS for review and approval;
6. Commit necessary and appropriate staff and resources to expeditiously respond;
7. Report to HHS as required by HHS and all applicable federal and state laws for Incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS;
8. Fully cooperate with HHS to respond to inquiries and/or proceedings by federal and state authorities about the Incident;
9. Fully cooperate with HHS's efforts to seek appropriate injunctive relief or to otherwise prevent or curtail such Incidents;
10. Recover, or assure destruction of, any Confidential Information impermissibly disclosed during or as a result of the Incident; and
11. Provide HHS with a final report on the Incident explaining the Incident's resolution.

H. Breach Notification to Individuals and Reporting to Authorities

1. In addition to the notices required in this section, the Contractor must comply with all applicable legal and regulatory requirements in the time, manner, and content of any notification to individuals, regulators, or third-parties, or any notice required by other state or federal authorities, including without limitation, notifications required in Title 45 CFR Chapter A, Subchapter C Part 164, Subpart D Notification in the Case of Breach of Unsecured Protected Health Information and Texas Business and Commerce Code, Title 11, Subtitle B, Chapter 521, Section 521.053(b), Notification Required Following Breach of Security of Computerized Data, or as specified by HHS following an Incident.
2. The Contractor must assure that the time, manner, and content of any Breach notification required by this section meets all federal and state regulatory requirements.

3. Breach notice letters must be in the Contractor's name and on the Contractor's letterhead and must contain contact information to obtain additional information, including the name and title of the Contractor's representative, an email address, and a toll-free telephone number.
4. The Contractor must provide HHS with copies of all distributed communications related to the Breach notification at the same time the Contractor distributes the communications.
5. The Contractor must demonstrate to the satisfaction of HHS that any Breach notification required by applicable law was timely made. If there are delays outside of the Contractor's control, the Contractor must provide written documentation to HHS of the reasons for the delay.

VIII. NOTICE OF A LICENSE ACTION

- A.** Contractor shall notify its assigned HHSC Contract manager of any action impacting Contractor's license to provide Services under this Contract within five days of becoming aware of the action and include the following:
- i. Reason for such action;
 - ii. Name and contact information of the local, state or federal department or agency or entity;
 - iii. Date of the license action; and
 - iv. License or case reference number.

IX. CONTRACT DOCUMENTS

The following documents are incorporated by reference and made a part of this Contract for all purposes. Unless expressly stated otherwise in this Contract, in the event of conflict, ambiguity or inconsistency between or among any documents, the controlling document shall be this document, then the remaining documents in the following list in the order stated:

- ATTACHMENT A STATEMENT OF WORK**
- ATTACHMENT B HHS CONTRACT AFFIRMATIONS, VERSION 2.2**
- ATTACHMENT C HHS UNIFORM TERMS AND CONDITIONS—
VENDOR, VERSION 3.2**
- ATTACHMENT D RATE AND BILLING GUIDELINES**

X. SIGNATURE AUTHORITY

Each Party represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Contractor

before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR
HHSC CONTRACT NO. HHS001192200001

HEALTH AND HUMAN SERVICES COMMISSION

JOHN H MARSHALL

By: Traci Phillips Digitally signed by Traci Phillips
Date: 2022.06.23 15:23:24
-05'00'

Name: Traci Phillips

Title: Superintendent

06/23/2022

Date

By: John H Marshall, MD

Name: John H Marshall

Title: Owner

6/21/22

Date