THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE MONTANA UNIFORM ARBITRATION ACT

1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **W. Scott Albrecht, O.D. (CONTRACTOR)** enter into this Contract **(03-024-MSP)**. The parties names, addresses, telephone numbers, and Federal Employee Identification Number (Contractor only) is as follows:

Montana Department of Corrections
Montana State Prison
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

W. Scott Albrecht, O.D.
2110 Oxford Street
Missoula MT 59808-1830
(406) 549-2541
FEI# 81-0534098

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

2. DUTIES/RESPONSIBILITIES OF THE CONTRACTOR

Under the terms of this Contract, CONTRACTOR hereby agrees to provide optometric services to inmates under control or supervision of DEPARTMENT. Services will be provided at Montana State Prison (MSP), located near Deer Lodge, MT. Contractor will provide optometric services a minimum of 32 hours per month, conducting clinics not less than one day every two weeks. Contractor will provide services sufficient to maintain the waiting list for routine appointments to no more than 60 days.

A. Optometric services shall include, but are not limited to, the following:

1. Routine eye examinations of each inmate every two years, or more frequently if necessary because of special vision deficits.

2. The dispensing and fitting of prescription eyeglasses with plastic lenses, according to DEPARTMENT Policies and Procedures.

3. Notifying the Department Medical Director or the MSP physician when an inmate requires treatment or services extending beyond the scope of CONTRACTOR'S specialty or the scope of this Contract.

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

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

1. CONTRACTOR must clearly substantiate and document all medically necessary add-ons, such as photo chromatic lens prescription, in the inmate medical charts and on the Walman order form.

2. Repair or replacement of eyeglasses within a two-year time limit must be preauthorized by DEPARTMENT and will be at the inmate's expense. However, eyeglasses lost or broken in a substantiated work related incident, or replacement based upon substantiated medical necessity, will be replaced at DEPARTMENT expense. (* EXCEPTION – Frames/lenses still under warranty.)

3. If an initial lens prescription is not appropriate for correct vision needs and a second lens prescription is required, the cost of the second set of lenses will be at DEPARTMENT expense.

3. COMPENSATION/BILLING

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

A. Optometric services, which include vision examination and fitting/dispensing, will be billed to 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
Box 5004
Great Falls MT 59403

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

4. AGENCY ASSISTANCE

The parties recognize that services provided to DEPARTMENT will 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, workspace within the correctional facility, and telephone service.

5. TIME OF PERFORMANCE

This Contract shall take effect on December 9, 2002 and shall terminate on December 8, 2004, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of five (5) additional years.

6. LIAISONS AND NOTICE

A. Cathy Redfern, MSP Health Services Manager, 500 Conley Lake Road, Deer Lodge MT 59722 (846-1320 x2448) or successor serves as DEPARTMENT liaison.

B. W. Scott Albrecht, O.D. 2110 Oxford Street, Missoula MT 59808-1830 (549-2541) or successor serves as CONTRACTOR liaison.

C. The Managed Care Coordinator for DEPARTMENT (406) 444-9894 or successor serves at liaison to CONTRACTOR concerning issues between CONTRACTOR, Walman Optical Company, and Blue Cross Blue Shield of Montana.

D. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A), (B), or (C) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

A. Neither CONTRACTOR nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Fiscal Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. HOLD HARMLESS AND INDEMNIFICATION

A. CONTRACTOR agrees that they are financially responsible (liable) for any audit exceptions or other financial loss to DEPARTMENT due to the negligence, intentional acts, or failure for any reason to comply with terms of this Contract.

B. CONTRACTOR agrees to protect, defend, and save DEPARTMENT, its elected and appointed officials, agents and employees, while acting with the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of CONTRACTOR and/or its agents, employees, subcontractors, or representatives. Nothing herein shall be construed as an agreement by CONTRACTOR to release, indemnify and hold harmless DEPARTMENT, its officials, agents, or employees from liability for damage or injury to persons or property caused by the negligence, carelessness, or intentional acts of DEPARTMENT, its officials, agents, or employees, unless said officials, agents, or employees are acting under the direction or control of CONTRACTOR.

10. INSURANCE

A. **General Requirements**: CONTRACTOR shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by CONTRACTOR, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

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

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

Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverage's must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverage's, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

B. **Specific Requirements for Commercial General Liability**: CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations; premises owned, leased, occupied, or used.

C. **Specific Requirements for Professional Liability**: CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) aggregate per year to cover such claims as may be caused by any act, omission, negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, CONTRACTOR may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

12. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

14. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

15. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

16. TERMINATION AND DEFAULT

A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.

B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 60 days from the

date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.

C. DEPARTMENT, at its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.

D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

17. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

18. LICENSURE

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

19. ARBITRATION

Any Claim arising out of, or related to, this Contract shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

20. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

21. SEVERABILITY

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

22. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Fiscal Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE

DEPARTMENT

Mike Mahoney, Warden
Montana State Prison

11/27/02
Date

CONTRACTOR

W. Scott Albrecht, O.D.

12/6/02
Date

Approved for Legal Content by:

Legal Counsel
Department of Corrections

11/22/02
Date

CONTRACT AMENDMENT
CONTRACT #03-024-MSP

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Avenue, Helena MT 59620-1301 and **W. Scott Albrecht, O.D.** (CONTRACTOR) 2110 Oxford Street, Missoula, MT 59808-1830 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of December 9, 2002 and Section 20 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on December 8, 2004 and Section 5 provides that the parties may extend the expiration date of the Contract.

NOW THEREFORE, the parties agree to amend the Contract as follows **(new language underlined, old language interlined)**:

5. <u>TIME OF PERFORMANCE</u>

This Contract shall take effect on December 9, 2002 and shall terminate on December 8, ~~2004~~ <u>2006</u>, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of ~~five (5)~~ ~~three (3)~~ additional years.

<u>Upon expiration of this Contract, and in the absence of new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.</u>

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

DEPARTMENT

Mike Mahoney, Warden
Montana State Prison

Date 10/8/04

CONTRACTOR

W. Scott Albrecht, O.D.

Date 10/31/04

Reviewed for Legal Content by:

Legal Counsel
Department of Corrections

Date 10/04/04

CONTRACT AMENDMENT
CONTRACT #03-024-MSP

THIS CONTRACT AMENDMENT (**Amendment #2**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and **W. Scott Albrecht, O.D.** (CONTRACTOR) 2106 Oxford Street, Missoula, MT 59808-1830 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of December 9, 2002 and Section 20 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on December 8, 2006 and Section 5 provides that the parties may extend the expiration date of the Contract.

NOW THEREFORE, the parties agree to amend the Contract as follows **(new language underlined, old language interlined)**:

5. <u>TIME OF PERFORMANCE</u>

This Contract shall take effect on December 9, 2002 and shall terminate on December 8, ~~2006~~ <u>2007</u>, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of ~~three (3)~~ <u>two (2)</u> additional years.

Upon expiration of this Contract, and in the absence of new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

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

DEPARTMENT

Mike Mahoney, Warden
Montana State Prison

Date: 9/27/06

CONTRACTOR

W. Scott Albrecht, O.D.

Date: 10/2/06

Reviewed for Legal Content by: Colleen A. White
Legal Counsel
Department of Corrections

Date: 9/22/06

CONTRACT AMENDMENT
CONTRACT #03-024-MSP

THIS CONTRACT AMENDMENT (**Amendment #3**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and **W. Scott Albrecht, O.D.** (CONTRACTOR) 2106 Oxford Street, Missoula, MT 59808-1830 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of December 9, 2002 and Section 20 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on December 8, 2007 and Section 5 provides that the parties may extend the expiration date of the Contract.

NOW THEREFORE, the parties agree to amend the Contract as follows **(new language underlined, old language interlined)**:

5. <u>TIME OF PERFORMANCE</u>

This Contract shall take effect on December 9, 2002 and shall terminate on December 8, ~~2007~~ <u>2008</u>, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of ~~two (2)~~ <u>one (1)</u> additional year~~s~~.

Upon expiration of this Contract, and in the absence of new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

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

DEPARTMENT

Mike Mahoney, Warden
Montana State Prison

11-8-07
Date

CONTRACTOR

W. Scott Albrecht, O.D.

11/15/07
Date

Reviewed for Legal Content by:

Legal Counsel
Department of Corrections

11/5/07
Date