1. PARTIES

The Montana Department of Corrections (DEPARTMENT or MDOC) and **R.D. Lunde, OD (CONTRACTOR)** enter into this Contract **(08-061-PHYCF)**. The parties names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Pine Hills Youth Correctional Facility
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

R.D. Lunde, OD
1909 Main Street

Miles City, MT 59301
406-234-9426

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

2. DUTIES/RESPONSIBILITIES OF THE CONTRACTOR

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 MDOC Medical Director, contracted primary care physician(s), or PHYCF staff, as requested.

3) Notify the MDOC Medical Director 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 youths' 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 and obtain confirmation (signature/initials) from the youth that these features have been requested and that he will accept financial responsibility for the additional costs.we don't do this

   a) Costs for non-medically necessary add-on's 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 warrantee and they 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 two-year time limit must be prior authorized by the contract liaison or his/her designee. Repair/Replacement will be at the youth's expense. However, 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.

3. COMPENSATION/BILLING

In consideration for 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 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. CONTRACTOR will be compensated by BCBSMT according to current fee schedules and limits as contained in MT Medicaid's Optometric Services Manual.

C. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. 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 youth records, work space within a correctional facility, and telephone service (e.g., MDOC Correctional Facilities do not allow wireless phones within the facility).

5. TIME OF PERFORMANCE

This Contract shall take effect upon receipt of final contract signature and shall terminate on June 30, 2009, 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.

Upon expiration of this Contract, and in the absence of a 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.

6. LIAISONS AND NOTICE

A. Teri Young (233-2266), Director of Care and Custody, 4 North Haynes, Miles City MT 59301 or successor serves as DEPARTMENT'S liaison.

B. R.D. Lunde, OD (234-9426), 1909 Main Street, Miles City MT 59301 or successor serves as CONTRACTOR'S liaison.

C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, and 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

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, Contracts and Facilities Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. HOLD HARMLESS AND INDEMNIFICATION

CONTRACTOR agrees to protect, defend, and save the DEPARTMENT, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, 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 omission of CONTRACTOR and/or its agents, employees, representatives, assigns, and subcontractors.

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 coverages 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, coverages, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

B. **Specific Requirements for Professional Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of $500,000 per occurrence and $1,000,000 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 30 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, without 30 days notice, 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. 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.

20. 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.

21. COMPLETED CONTRACT

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

SIGNATURE

DEPARTMENT

Steve Gibson, Administrator
Youth Services Division

4-23-08
Date

CONTRACTOR

R.D. Lunde, OD

04-25-08
Date

Approved for Legal Content by:

Legal Counsel
Department of Corrections

4/21/08
Date

CONTRACT AMENDMENT
CONTRACT #08-061-PHYCF

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and **R.D. Lunde, OD** (CONTRACTOR) 1909 Main Street, Miles City, Montana 59301 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of April 25, 2008 and Section 19 provides that the parties may modify their agreement in writing.

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

1. <u>PARTIES</u>

The Montana Department of Corrections (DEPARTMENT or MDOC) and ~~**R.D. Lunde, OD**~~ **<u>Miles City Vision Clinic</u>** **(CONTRACTOR)** enter into this Contract **(08-061-PHYCF)**. The parties names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Pine Hills Youth Correctional Facility
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

~~***R.D. Lunde, OD***~~ ***<u>Miles City Vision Clinic</u>***
1909 Main Street

Miles City, MT 59301
406-234-7426

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

DEPARTMENT

Steve Gibson, Administrator
Youth Services Division

9-30-08
Date

CONTRACTOR

R.D. Lunde, OD

10-08-08
Date

Reviewed for Legal Content by:

Legal Counsel
Department of Corrections

9/29/08
Date