To provide medically necessary eyeglasses, including lenses and frames, for individuals who are eligible for the Montana Medicaid program, the Montana HMK program, PRTF clients and incarcerated prisoners at the Montana State Prison.

A CONTRACT having been made and entered into between the Montana Department of Public Health and Human Services and Walman Optical Company now appears to be in need of amending. The DEPARTMENT and the CONTRACTOR now agree, for good consideration, to hereby amend Section(s) 3, 4.15, 4.24 and 5 of the contract as follows:

SECTION 3: TERM OF CONTRACT

A. The term of this contract for the purpose of delivery of services is for a period of an additional two years beginning December 1, 2009 and ending November 30, 2014 2016.

SECTION 4.15: PERFORMANCE REPORTS

The Contractor must provide the Department with the following information on a monthly basis from the effective date of the contract to document Contractor activities. Information will be broken out by benefit plan: Medicaid; Chip; and Dept. of Corrections; and each of the three PRTF facilities. This information must be in a standardized, easily read report format, a sample report format must be included in the proposal response. Final report formats and report requirements will be negotiated with the successful Offeror.

SECTION 4.24: BILLING

Contractor is responsible for separately billing Medicaid, Healthy Montana Kids (formerly known as CHIP), and Dept. of Corrections and each PRTF electronically or on the CMS-1500 claim form or a form of an invoice for paper submissions. Claims must be submitted within 12 months of the date of service, which is the date the properly completed order is received by the Contractor.
SECTION 5: CONSIDERATION/PAYMENT

B. The Contractor must submit claims electronically on a CMS 1500 claim form to the Medicaid Fiscal Agent or to the Healthy Montana Kids (formerly known as CHIP) or Dept. of Corrections Fiscal Agent or to the applicable PRTF as applicable, itemizing all services and expenses in accordance with the Department’s covered HCPCS codes (Appendix D). Fee schedule reimbursement rate is set based on the Contractor’s proposal approved by the Department.

F. Reimbursement for services provided to PRTF’s are the responsibility of the individual PRTF. The contractor must bill the PRTF.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK
All terms and conditions of the agreement not specifically amended herein remain in full force and effect for the duration of the agreement.

IN WITNESS THEREOF, the parties have executed this amendment on the dates set out below:

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

By: Duane Preshinger, Administrator
    Health Resource Division
    1400 Broadway/PO Box 202951
    Helena, MT 59620-2951
    (406) 444-4458
    Date: 12/9/14

By: Robert Gustin, Vice President, Walman Optical
    801 12th Avenue North
    Minneapolis, MN 55411
    (612) 520-6104
    Federal ID: 41-0598170
    Date: 11/25/2014

By: Rhonda Grandy, State Procurement Officer
    DOA Purchasing
    406-444-3313
    Date: 12/4/14

Contract Number: 10-11-1-01-002-0
Amendment Number Three

Printed Date: 11/14/2014
To provide medically necessary eyeglasses, including lenses and frames, for individuals who are eligible for the Montana Medicaid program, the Montana HMK program, PRTF clients and incarcerated prisoners at the Montana State Prison.

A CONTRACT having been made and entered into between the Montana Department of Public Health and Human Services and Walman Optical Company now appears to be in need of amending. The DEPARTMENT and the CONTRACTOR now agree, for good consideration, to hereby amend Section(s) 3 of the contract as follows:

SECTION 3: TERM OF CONTRACT

A. The term of this contract for the purpose of delivery of services is for a period of an additional two years beginning December 1, 2009 and ending November 30, 2014.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK
All terms and conditions of the agreement not specifically amended herein remain in full force and effect for the duration of the agreement.

IN WITNESS THEREOF, the parties have executed this amendment on the dates set out below:

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

By: Duane Preshinger, Administrator  
Health Resource Division  
1400 Broadway/PO Box 202951  
Helena, MT 59620-2951  
(406) 444-4458

Date: 11/30/2012

By: Robert Gustin, Vice President, Walman Optical  
801 12th Avenue North  
Minneapolis, MN 55411  
(612) 520-6104  
Federal ID: 41-0598170

Date: 11/28/12

By: Rhonda Grandy, State Procurement Officer  
DOA Purchasing  
406-444-3313

Date: 12/3/12
CONTRACT NUMBER: 10-11-1-01-002-0
AMENDMENT NUMBER ONE

BETWEEN

MONTANA STATE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
HEALTH RESOURCES DIVISION
ACUTE SERVICES BUREAU

AND

WALMAN OPTICAL COMPANY

FOR

To provide medically necessary eyeglasses, including lenses and frames, for individuals who are eligible for the Montana Medicaid program, the Montana HMK program and incarcerated prisoners at the Montana State Prison.

A CONTRACT having been made and entered into between the Montana Department of Public Health and Human Services and Walman Optical Company now appears to be in need of amending. The DEPARTMENT and the CONTRACTOR now agree, for good consideration, to hereby amend Section(s) 3 of the contract as follows:

SECTION 3: TERM OF CONTRACT

A. The term of this contract for the purpose of delivery of services is for a period of an additional two years beginning December 1, 2009 and ending November 30, 2012.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.
All terms and conditions of the agreement not specifically amended herein remain in full force and effect for the duration of the agreement.

IN WITNESS THEREOF, the parties have executed this amendment on the dates set out below:

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

By: ___________________________ Date: 12/14/10

Terry Krantz, Administrator
Health Resource Division
1400 Broadway/PO Box 202951
Helena, MT 59620-2951
(406) 444-4458

By: ___________________________ Date 12/07/2010

Robert Gustin, Vice President, Walman Optical
801 12th Avenue North
Minneapolis, MN 55411
(612) 520-6104
Federal ID: 41-0598170

By: ___________________________ Date 12/08/2010

Rhonda Grandy, State Procurement Officer
DOA Purchasing
406-444-3313
CONTRACT FROM THE MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

CONTRACT NUMBER 10-11-1-01-002-0

SECTION 1: PARTIES

This contract is entered into between the Montana Department of Public Health and Human Services (hereinafter referred to as the "Department"), whose address and phone number are 1400 Broadway, P.O. Box 202951, Helena MT 59620-2951 and (406) 444-4066 and Walman Optical (hereinafter referred to as the "Contractor"), whose federal ID number, mailing address, and phone number are 41-0898170, 801 12th Ave North Minneapolis, MN 55411, and (800) 873-9256.

THE PARTIES AGREE AS FOLLOWS:

SECTION 2: PURPOSE

The purpose of this contract is to provide for medically necessary eyeglasses, including lenses and frames for Medicaid eligible clients, children eligible under Montana's CHIP program, and incarcerated prisoners at the Montana State Prison.

SECTION 3: TERM OF CONTRACT

A. The term of this contract for the purpose of delivery of services is from December 1, 2009 through November 30, 2010 unless terminated otherwise in accordance with the provisions of this contract. This contract may be extended no more than three two year periods, or any interval that is advantageous to the Department. This contract, including any renewals, may not exceed a total of seven years, at the option of the Department.

B. An extension must be amended into the contract prior to the end of the term of the contract extension of a contract that involves a significant increase in consideration, a change in the formula for determination of consideration, or a substantial change or addition to the performance that was not anticipated at the time the contract was first entered into may not be permissible and therefore must be reviewed and approved by the division administrator and legal counsel.

C. The completion date of performance for purposes of issuance of final payment for services is the date upon which the Contractor submits to the Department such final reports as are required under this contract and are satisfactory in form and contents as determined by the Department.

D. The Contractor, after termination of this contract, remains subject to and obligated to comply with all legal and continuing contractual obligations arising in relation to its duties and responsibilities that may arise under the contract including, but not limited to, record retention, audits, indemnification, insurance, the protection of confidential information, recipient grievances and appeals and property ownership and use.
SECTION 4: SERVICES AND/OR SUPPLIES

4.0 Contractor agrees to provide to the State the following

4.1 Lenses

Contractor must provide lenses of first quality impact-resistant glass, plastic, or polycarbonate single vision, bifocal or trifocal lenses. Lenses must conform to the American National Standards Institute Recommendation for Prescription Ophthalmic Lenses, ANSI Z80.1-2005 Standards and the FDA requirements for resistant lenses. All lenses must be finished (hardened and edged) and assembled in contracted frames or frames provided as acceptable. Lenses which have been broken or damaged by the Contractor during processing or shipping or which contain the wrong prescription due to a Contractor error must be replaced by the Contractor at no cost to the Department.

3.1.1 LENSES ORDERED WITHOUT FRAMES: When contracted lenses alone are ordered for mounting in the client's existing frames and these frames are not covered under the contract, the Contractor must mount these lenses at no additional charge providing the cost of the lenses alone is reasonable (i.e. not faceted, oversized, etc.). If the Contractor can show that mounting these lenses may reasonably be expected to damage the frames, the Contractor must return the frames to the dispenser with an explanation as to why they were not mounted.

4.2 Frames

Contractor must bear all costs to comply with provider's specifications for eye size and temple length combinations. Available frames must be supplied by at least four different manufacturers.

4.2.1 A frame selection chart identifying those frames the Offeror intends to furnish must accompany each proposal response. This chart must include pictures and information about each frame in the format shown on Appendix E. The proposal response must specify all frames the Offeror proposes to furnish under the contract. For each frame, the name of manufacturer, frame style name, country of origin, material, sizes, colors, category (men's, women's, etc.), hinge type, and bridge type must be furnished. No discontinued models or special "Medicaid" frames may be included. Availability of a wide variety of moderately priced frames will be a factor in the selection of an Offeror.

4.2.2 Frames for infants, children, men and women that will fit a wide range of persons, including the hard to fit, must be included. Frames with spring hinges, various bridge sizes and styles (saddle bridge, keyhole bridge, silicon nose pads), plus different temple lengths must be included.

4.2.3 Suggested selection of frames include: four infant (one female, one male, two unisex); six toddler (two female, two male, two unisex); 13 younger child (five female, five male, three unisex); 15 older child (five female, five male, five unisex); 30 adult frames (ten female, ten male, ten unisex).
4.2.4 Offeror must submit frame styles to be presented to a selection committee which will include experienced optometrists, opticians and Department representatives. An offeror can use the suggested selection of frames as a guide or present a selection of frames that meets the needs of a variety of persons.

4.3 Existing Stock/Frames

The Department requests offerors to define a procedure for working with the existing stock under the current volume purchase contract for the provision of repairing frames or replacing frames. The timeline for working with the existing stock is six months. See Appendix F for the list of frames dispensed under the current contract.

4.4 Frame Substitution

If during any time during the period of the contract, any frame is discontinued by the manufacturer, the Contractor must substitute another frame of equal quality at the same contracted price as the discontinued frame, subject to approval by the Department. The Contractor must notify the Department in writing at least 30 days in advance of the discontinuance or no later than three working days after the Contractor has been advised that the contracted frame has been discontinued by the manufacturer. Contractor must notify providers of substitutions of all discontinued frames prior to the change. Cost of notification will be borne by the Contractor and not charged to the Department.

4.5 Sample Frames For Providers

The Contractor must make frame samples available for sale to providers at the contracted price per frame.

4.6 Eyeglass Case

Cases must be new and free of defects in material or workmanship. Offerors must include samples of the eyeglass cases to be provided under the contract with the proposal response. The Contractor must supply eyeglass cases with all orders for a complete new appliance and will not be separately paid for those cases by the Department.

4.7 Other Materials

In addition to lenses and complete frames, a proposal must include cost proposals for all materials and services listed in Statement of Cost, Appendix D. These items include replacement for portions of frames and specialized lens services that could be prescribed by the providers and authorized by the Department.

4.8 Quantities

The exact quantity of items to be purchased is unknown. Historical data provided in Appendix F is intended to be used by the offeror for the purpose of responding to the RFP and does not constitute a guaranteed volume for fixed purchasing obligation on behalf of the Department.
4.9 Guarantee

If, within one year after delivery, an article furnished under this contract is found to be unsatisfactory due to Contractor error, defective workmanship or defective materials, the same shall be corrected, adjusted or replaced by the Contractor as necessary at Contractor’s expense, without cost to the Department or the client. Unsatisfactory articles will be mailed to the Contractor with a service request signed by the provider. Article will be corrected, adjusted or replaced and returned by the Contractor within 10 working days of the Contractor’s receipt of the unsatisfactory materials.

4.10 Provider Errors

Errors made by the prescribing or dispensing providers regarding a prescription are the responsibility of the Contractor at no additional cost to the Department.

4.11 Contractor Errors

Errors made by the Contractor regarding a prescription are the responsibility of the Contractor at no additional cost to the Department.

4.12 Timely Processing of Orders

The Contractor is responsible for the timely processing and fulfillment of all orders for lenses, frames and associated items provided as a benefit under Medicaid, CHIP or Dept of Corrections plans. The Contractor must process to completion and transmit for delivery, 95% of all properly submitted orders within 10 working days of the Contractor’s receipt and 99% of all properly submitted orders within 15 working days of Contractor’s receipt. All orders must be date stamped by the Contractor on the date the order is received and on the date the completed order is transmitted for delivery. Contractor will accept orders via mail and facsimile.

4.12.1 In instances where a prescription will require more than 10 working days for completion, the Contractor must notify the submitting provider within three working days of receipt of an order or upon discovery of a problem which will delay timely completion of the order.

4.12.2 Contractor may deliver ordered materials by first class mail, a recognized commercial delivery services, or Contractor’s own delivery service. Excepting unforeseen or unusual circumstances, the delivery of the ordered materials, in an undamaged condition, shall be within five calendar days of the date of the shipment.

4.12.3 For purposes of this section, the first working day is defined as the first working day which falls after the date the order is documented as received. The last working day is the day an order is transmitted for delivery or a submitted provider is notified of a delay.

4.12.4 The Department retains the right to terminate the contract for the Contractor’s failure to meet the timely processing of orders as specified herein.
4.13 Incomplete Or Illegible Orders

Materials shall be furnished by the Contractor to the Provider upon receipt of a properly completed order form from the provider. The Contractor must attempt to contact providers by telephone to obtain information to fulfill orders which are incomplete or illegible. If the information necessary to fulfill an order cannot reasonably be obtained by telephone, the contractor must return the provider’s improperly completed forms within three working days of receipt of the order. A written explanation of all reasons for the return must accompany the order form.

4.14 Special Management of Orders Not Completed Within Ten Working Days

The Contractor must have special procedures for giving priority to completing those orders identified in Timely Processing of Orders (Section 3.12) as requiring more than 10 working days for completion to assure that all orders will be completed within 15 working days.

4.14.1 For any order not completed in 15 working days, or any order identified prior to the 15th working day as requiring more than 15 days to complete, the Contractor shall provide the Department and the provider a written explanation of why the order is late, what steps will be or have been taken to complete the order, when the order will be completed, and a copy of the properly completed order form. The Contractor must transmit the written justification, via facsimile, to the Department within one working day of identifying an order that will take the Contractor more than 15 working days to complete.

4.14.2 Company management and key production personnel for the Contractor must perform a monthly internal review of: 1) orders that required more than 15 working days to complete; and 2) complaints from providers and clients for purposes of identifying problems and implementing improvements in the processing of orders. A written report of this Quality Control/Complaint Review shall be sent to the Department along with the monthly report specified in Subsection 3.15, Performance Reports. This monthly report must summarize the internal review activities performed including the problems identified and the corrective action taken.

4.15 Performance Reports

The Contractor must provide the Department with the following information on a monthly basis from the effective date of the contract to document Contractor activities. Information will be broken out by benefit plan: Medicaid; Chip; and Dept. of Corrections. This information must be in a standardized, easily read report format, a sample report format must be included in the proposal response. Final report formats and report requirements will be negotiated with the successful Offeror.

Required Information:

- Reporting period dates;
- Date report generated;
• Materials provided (by Department assigned codes for lenses and other materials, listing of frames by name), monthly and contract to date;
• Dollars billed for reporting month;
• Dollars billed from contract inception;
• Dollars paid to date;
• Number of orders filled as a result of provider errors;
• Number of orders filled within 3, 5, 10 and 15 working days (broken out) of receipt of order and percentage of total monthly orders;
• Number of orders filled after 10 and 15 working days (broken out) of receipt of order and percentage of total monthly orders;
• A Quality Control Report, as required in this RFP; and
• A Complaints Report, as required in this RFP.

4.16 Informational Notices

Contractor must prepare, print and distribute Informational Notices to all providers. Informational Notices must be approved by the Department prior to distribution. These Informational Notices should address frequently asked questions and provide information on how to avoid problems with orders. The Contractor will bear all costs associated with the preparation, printing and distribution of the Informational Notices.

4.17 Toll Free Telephone

Contractor shall maintain and staff one toll free line for complaints and/or provider interaction from 8:00 a.m. to 5:00 p.m. Mountain time every working day (Monday through Friday, excluding holidays recognized by the Department).

4.18 Mail Cost

Contractor shall bear the cost of and provide pre-printed postage-paid envelopes and other pre-printed postage-paid mailing containers, including envelopes and mailing boxes, and pre-printed gummed mailing labels to all Montana Medicaid enrolled vision care providers. Contractor shall ensure that said items contain the appropriately metered postage. The cost of handling and mailing shall be included in the price of materials, and shall not be separately reimbursed. The Department will provide a listing of all providers to the successful offeror.

4.19 Order Forms And Processing

Contractor shall be required to develop order forms for vision care materials. The forms and any instructions must be approved by the Department. The Contractor shall bear all costs associated with development, printing and distribution of the order forms. This cost related to the forms shall be included in the price of materials and shall not be separately reimbursed.

4.19.1 Materials shall be furnished by the Contractor to the provider upon receipt of a properly completed order form from the provider. Contractor will accept written
orders on the approved form, either via the mail or facsimile. If the order form is incomplete or illegible, the information cannot be reasonably obtained within three working days, the Contractor shall return by mail, the provider's order form with a letter explaining the return.

4.20 Computerized System To Track Orders

Contractor must have a computerized system to provide information regarding the status of an order and where in the manufacturing process it is.

4.21 Complaint Handling System

Contractor shall complete a Department approved form on each complaint received. The Contractor is required to take appropriate corrective action and respond in writing to the complainant within 10 calendar days with a copy to the Department.

4.22 Quality Control System

Contractor shall perform a monthly internal quality review to include but not limited to: orders that required more than 10 working days to complete; complaints from providers and clients. The purpose is to identify problems and implement improvements in the processing of orders. A written report of this monthly review shall be sent to the Department. This monthly report shall summarize the internal review activities performed including problems identified and the corrective action taken.

4.23 Provider Relations

At provider's or Department's request, Contractor shall meet with providers at provider association meetings or other training sessions at least once a year. Costs associated with meetings are not billable to Department.

4.24 Billing

Contractor is responsible for separately billing Medicaid, CHIP and Dept. of Corrections electronically or on the CMS-1500 claim form for paper submissions. Claims must be submitted within 12 months of the date of service, which is the date the properly completed order is received by the Contractor.

4.25 Special Requests

Offeror must indicate how they will handle situations in which a frame and/or lenses fall outside the scope of the contract (i.e. frame size is outside the contract, frame itself outside scope of contract; progressive lenses, etc.). Also include price that would be charged to the Department when these situations arise.

4.26 Eligibility Check
Offeror must establish eligibility of a Medicaid or Chip client through the Department’s web portal or must establish an individual is an inmate at a Montana Dept. of Corrections facility through the Department’s eligibility check system.

5. CONSIDERATION/PAYMENT

A. In consideration of the services to be provided through this contract, the Contractor is to receive from the Department reimbursement for services rendered in accordance with the following reimbursement fees. The Contractor may only bill for services that have been performed.

B. The Contractor must submit claims electronically on a CMS 1500 claim form to the Medicaid Fiscal Agent or to the Chip and Dept. of Corrections Fiscal Agent as applicable, itemizing all services and expenses in accordance with the Department’s covered HCPCS codes (Appendix D). Fee schedule reimbursement rate is set based on the Contractor’s proposal approved by the Department.

C. The Department may withhold payment at any time during the term of the contract, if the Contractor is failing to perform its duties and responsibilities in accordance with the terms of this contract.

D. The sources of the funding for this contract are 50% from the state general fund and, for the balance, federal matching funds from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services) for Medicaid claims; 22.7% from the state funds and, for the balance, federal matching funds from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services) for Chip claims; and 100% from the state general fund for Department of Corrections claims.

E. The Contractor may not receive monies provided through this contract as reimbursement for the costs of services that are reimbursed from other sources.

6. RELATED PARTY TRANSACTIONS

The Contractor may not enter into any contract or other arrangement for the use, purchase, sale, lease or rental of real property, personal property or services funded with monies of this contract if an employee, administrator, officer or director of the Contractor may receive a financial or other valuable benefit as a result.

The Department may grant exceptions to this prohibition where it determines that the particular circumstances warrant the granting of an exception.

7. CREATION AND RETENTION OF RECORDS

A. The Contractor must create and maintain records of the services covered by this contract, including financial records, supporting documents and such other records as are required by law or other authority.
B. The Contractor agrees to provide the Department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (section 18-1-118, MCA).

C. The Contractor must provide the Department and its authorized agents with reasonable access to records the Contractor maintains for purposes of this contract. The Contractor must make the records available at all reasonable times at the Contractor's general offices.

D. Records developed for the purposes of delivery of services to recipients under this contract are the property of the Department and must be developed, maintained, and disposed of as provided in this contract or as otherwise directed by the Department.

8. **ACCOUNTING, COST PRINCIPLES AND AUDIT**

A. The Contractor, in accordance with 18-4-311, MCA and other authorities, must maintain for the purposes of this contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (GAAP), as interpreted by the Department, and to any other accounting requirements the Department may require.

B. The Department or any other legally authorized governmental entity or their authorized agents may at any time during or after the term of this contract conduct, in accordance with 5-13-304 and 18-1-118, MCA and other authorities, audits for the purposes of assuring the appropriate administration and expenditure of the monies provided to the Contract or through this contract and assuring the appropriate administration and delivery of services provided through this contract.

C. The Contractor, for purposes of audit and other administrative activities, in accordance with 18-1-118, MCA and other authorities, must provide the Department and any other legally authorized governmental entity or their authorized agents access at any time to all the Contractor's records, materials and information, including any and all audit reports with supporting materials and work documents, pertinent to the services provided under this contract until the expiration of three years from the completion date of this contract.

The State and any other legally authorized governmental entity or their authorized agents may record any information and make copies of any materials necessary for the conduct of an audit or other necessary administrative activity.

9. **ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

A. The Contractor may not assign, transfer, delegate or subcontract, in whole or part, this contract or any right or duty arising under this contract unless the Department in writing approves the assignment, transfer, delegation or subcontract.

B. An assignment, transfer, delegation or subcontract entered into by the Contractor must be in writing, must be subject to the terms and conditions of this contract and must contain any further conditions as may be required by the Department.
C. The Department's approval of any assignment, transfer, delegation or subcontract neither makes the Department a party to that agreement nor creates any right, claim or interest in favor of any party to that agreement against the Department.

D. The Contractor must immediately notify the Department of any litigation concerning any assignment, transfer, delegation or subcontract.

E. The Contractor must indemnify and hold the Department harmless, in accordance with the provisions of this contract, regarding indemnification, with respect to any suit or action by any party to an assignment, transfer, delegation or subcontract.

10. INDEMNIFICATION

A. The Contractor must indemnify, defend, and hold harmless the State of Montana, its officials, agents, and employees from any breach of this contract by the Contractor, from any matters arising from the performance of this contract, or from the Contractor's failure to comply with any federal, state, and local laws, regulations and ordinances applicable to the services or work to be provided under this contract.

B. This indemnification applies to all claims, obligations, liabilities, costs, attorney's fees, losses or suits resulting from any acts, errors, omissions or negligence, whether willful or not, of the Contractor, its employees, agents, subcontractors, or assignees and any other person, firm, or corporation performing work, services or providing materials under this contract.

11. INSURANCE COVERAGE

A. GENERAL LIABILITY INSURANCE

1. The Contractor must maintain, at its cost, primary standard general liability insurance coverage. The general liability coverage must include claims arising out of contractual liability, the delivery of services, omissions in the delivery of services, injuries to persons, damages to property, the provision of goods or rights to intellectual property or any other liabilities which may arise in the provision of services under this contract. The insurance must cover claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, employees, representatives, assigns or subcontractors.

2. The Contractor must provide general liability insurance coverage inclusive of bodily injury, personal injury and property damage. The general liability insurance coverage must be obtained with combined single limits of $1,000,000 per occurrence and $2,000,000 aggregate per year, from an insurer with a Best's Rating of no less than A- or through a qualified self-insurer plan, implemented in accordance with Montana law and subject to the approval of the Department.
3. The state, its officers, officials, agents, employees, and volunteers, are to be covered as additional insureds for liability arising out of activities performed by or on behalf of the Contractor, inclusive of the insured's general supervision of the Contractor, products and completed operations; and arising in relation to the premises owned, leased, occupied or used by the Contractor.

B. PROFESSIONAL LIABILITY INSURANCE

1. The Contractor must maintain, at its cost, professional liability insurance coverage against claims for harm to persons which may arise from the professional services provided through this contract. The insurance must cover claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, employees, representatives, assigns or subcontractors, assigns or employees.

2. The Contractor must provide occurrence coverage professional liability insurance with combined single limits of $1,000,000 per occurrence and $2,000,000 aggregate per year, from an insurer with a Best's Rating of no less than A-.

3. In lieu of occurrence coverage, the Contractor may provide claims made coverage with three years of additional tail coverage at the discretion of the Department and with prior approval of the Risk Management and Tort Defense Division of the Department of Administration.

C. GENERAL REQUIREMENTS

1. The Contractor must provide to the Department a copy of the certificate of insurance showing compliance with the requisite coverage. All insurance required under this contract must remain in effect for the entire contract period. The Contractor must provide to the Department copies of any new certificate or of any revisions to the existing certificate issued during the term of this contract.

2. The Department may require the Contractor to provide copies of any insurance policies pertinent to these requirements, any endorsements to those policies, and any subsequent modifications of those policies.

3. The Contractor's insurance coverage is the primary insurance in respect to the state, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the state and its officers, officials, agents, employees, and volunteers is in excess of the Contractor's insurance and does not contribute with it.

4. Any deductible or self-insured retention must be declared to and approved by the Department. At the request of the Department, the insurer must:
   a. reduce or eliminate such deductibles or self-insured retentions in relation to the state, its officials, employees and volunteers; or
b. the Contractor must procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

12. **COMPLIANCE WITH LABOR LAWS**

A. The Contractor assures the Department that the Contractor is an independent contractor providing services for the Department and that neither the Contractor nor any of the Contractor's employees are employees of the Department under this contract or any subsequent amendment.

B. The Contractor, at all times during the term of this contract, must maintain coverage for the Contractor and the Contractor's employees through workers' compensation, occupational disease, and any similar or related statutorily required insurance program. The Contractor must provide the Department with proof of necessary insurance coverage.

C. If the Contractor has received, for workers' compensation purposes, an independent contractor exemption as to the Contractor, the Contractor must provide the Department with a copy of the exemption.

D. The Contractor is solely responsible for and must meet all labor, health, safety, and other legal requirements, including payment of all applicable taxes, premiums, deductions, withholdings, overtime and other amounts, which may be legally required with respect to the Contractor and any persons providing services on behalf of the Contractor under this contract.

E. The provision of this contract regarding indemnification applies with respect to any and all claims, obligations, liabilities, costs, attorney fees, losses or suits accruing or resulting from the Contractor's failure to comply with this section, or from any finding by any legal authority that any person providing services on behalf of the Contractor under this contract is an employee of the Department.

13. **COMPLIANCE WITH APPLICABLE LAWS, RULES AND POLICIES**

The Contractor must comply with all applicable federal and state laws, executive orders, regulations and written policies, including those pertaining to licensing.

14. **FEDERAL REQUIREMENTS**

A. Generally

1. The Contractor, in addition to the federal requirements specified in this contract and any attachments to this contract, must comply with the applicable federal requirements and assurances for recipients of federal grants provided in the federal OMB 424B (Rev. 7-97) form, known as "ASSURANCES - NON-
CONSTRUCTION PROGRAMS", and in the Department's "CERTIFICATION OF COMPLIANCE WITH CERTAIN REQUIREMENTS FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES (12-06)". Those assurance documents must be signed by the Contractor and submitted to the Department prior to the signing of this contract.

THE OMB FORM REFERENCED ABOVE MAY BE OBTAINED THROUGH THE WEBSITE FOR THE OFFICE OF MANAGEMENT OF THE BUDGET AT WWW.WHITEHOUSE.GOV/OMB. AT THAT WEBSITE CLICK ON "GRANTS MANAGEMENT" TO ACCESS THE PAGE WHEREIN THE CIRCULARS MAY BE CALLED UP AND OBTAINED BY PRINTING. THE DEPARTMENT FORM REFERENCED ABOVE MAY BE OBTAINED FROM THE PROCUREMENT OFFICIAL.

The Contractor is responsible for determining which requirements and assurances are applicable to the Contractor.

2. The Contractor must ensure compliance of its subcontractors with the applicable federal requirements and assurances.

B. Political and Lobbying Activities

1. Federal monies received by the Contractor under the terms of this contract may not be used for any political activities by the Contractor, its employees or agents except as expressly permitted by state and federal law.

2. As required by 31 U.S.C. 1352 and 45 CFR 93.100 et seq., federally appropriated monies may not be used to influence or attempt to influence an officer or employee of any agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress or an employee of a member of the U.S. Congress, in connection with the awarding of any federal contract, grant or loan, the making of any cooperative agreement or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

3. If any funds other than federally appropriated funds are paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress or an employee of a member of the U.S. Congress in connection with this contract, the Contractor must complete and submit to the Department the federally required form, "STANDARD FORM LLL".

THE FEDERAL STANDARD FORM REFERENCED ABOVE MAY BE OBTAINED THROUGH THE WEBSITE FOR THE OFFICE OF MANAGEMENT OF THE BUDGET AT WWW.WHITEHOUSE.GOV/OMB. AT THAT WEBSITE CLICK ON "GRANTS MANAGEMENT" TO ACCESS THE PAGE WHEREIN THE CIRCULARS MAY BE CALLED UP AND OBTAINED BY PRINTING.

4. Federally appropriated monies received through the programs of the federal Departments of Health & Human Services, Education or Labor, as provided in Section 503 of H.R. 3424, appropriating monies for the Departments of Labor,
Health and Human Services, and Education, as enacted through Division B of H.R. 3194, "The Consolidated Appropriations Act of 1999", Pub. L. No. 106-113, and as may be provided by congressional continuing resolutions or further budgetary enactments, may not be used:

a. to fund publicity or propaganda, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or a state legislature, except for presentations to the U.S. Congress or a state legislative body or one or more of its members as an aspect of normal and recognized executive-legislative relationships.

b. to pay the salary or expenses of any grant or contract recipient, or agent acting for the recipient, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or a state or local legislative body.

5. The Contractor must cooperate with any investigation undertaken regarding the expenditure of funds for political or lobbying activities.

6. The Contractor must ensure the compliance of any subcontractors with these restrictions and any related reporting requirements.

C. Federal Debarment Prohibition

1. The Department, in accordance with The Federal Acquisition Streamlining Act of 1994, P.L. 103-355, and Executive Orders #12549 and #12689, is prohibited from contracting with any entity that is debarred, suspended, or otherwise excluded from participating in procurement activities funded with federal monies. This prohibition also extends to contracting with an entity that has a director, officer, partner, person with beneficial ownership of more than 5 percent of the entity’s equity, employee, consultant, or person otherwise providing items and services that are significant and material to the entity’s obligations under its contract with the Department if that person has been debarred, suspended or otherwise excluded from participating in procurement activities funded with federal monies.

2. If the Department finds that the Contractor is not in compliance with subsection (1), the Department;

a. must notify the federal government;

b. may continue this contract unless the Secretary of the federal Department of Health and Human Services directs otherwise; and

c. may only renew or otherwise extend the duration of the existing contract with the Contractor if the federal government provides to the Department and to Congress a written statement describing compelling reasons that exist for renewing or extending this contract.

15. CIVIL RIGHTS
A. Federal and State Authorities


B. Discrimination

The Contractor, as provided at 49-3-207, MCA and other relevant authorities, may not discriminate in any manner against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin.

C. Employment

The Contractor, as provided at 49-3-207, MCA, must hire persons on the basis of merit and qualifications directly related to the requirements of the particular position being filled.

The Contractor, in accordance with federal Executive Orders 11246 and 11375 and 41 CFR Part 60, must provide for equal employment opportunities in its employment practices.

16. CONFIDENTIALITY AND HIPPA REQUIREMENTS

A. The Contractor must, during and after the term of this Contract, protect confidential consumer and recipient information obtained and used in the performance of contractual duties and responsibilities under this Contract in accordance with applicable legal and policy authorities.

B. All material and information containing consumer and recipient personal information provided to the Contractor by the Department or acquired by the Contractor on behalf of the Department, whether verbal, written, magnetic media, or in other forms, is to be regarded as confidential information and may only be used or disseminated by the Contractor, its subcontractors, or agents for the purposes allowed for under this Contract and any governing legal and policy authorities.

C. The Contractor, in relation to individually identifiable health information, must comply with the privacy and security requirements of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the regulations implementing those requirements at 45 CFR Part 160 and Subparts A, C, and E of Part 164 as they may be applicable to the Contractor and the services provided through this Contract. Attachment E to this contract provides information as to where the Contractor may access the relevant HIPAA legal authorities and the interpretative direction provided by the federal government. The Department's Certification Form, signed by the Contractor and incorporated as an attachment to this Contract provides for the Contractor's certification of its determination as to whether it is legally subject to the HIPAA privacy
requirements and, if subject to the HIPAA, certification of its determination that it is fully in compliance with HIPAA.

D. The Contractor must notify the Department in writing within five work days in the event that 1) a complaint is lodged with the Office of Civil Rights (OCR) of the Department of Health and Human Services alleging that determines that the Contractor is not in compliance with HIPAA, 2) the Office of Civil Rights (OCR) of the Department of Health and Human Services determines that the Contractor is not in compliance with HIPAA, or 3) an administrative action or litigation is initiated against the Contractor based on any legal authority pertaining to the protection of confidential information. The Contractor must provide with any notice a copy of the relevant administrative complaint, determination or legal complaint.

E. Failure of the Contractor to be in compliance with this provision, the Department's policies protecting confidential information, or federal and state legal authorities, inclusive of HIPAA, governing the protection of confidential information is cause for termination of this Contract by the Department.

17. BUSINESS ASSOCIATE PROVISIONS TO COMPLY WITH HIPAA

A. Definitions that apply to this section

Terms used, but not otherwise defined, in this section have the same meaning as those terms in the Privacy Rule and the Security Rule (45 CFR Part 160 et seq.) implementing the Health Insurance Portability and Accountability Act (HIPAA).

B. Obligations and Activities of Business Associate.

Walman Optical agrees it is a Business Associate (as that term is defined at 45 CFR 160.103) of the Department and agrees to comply with the requirements of HIPAA, including the Privacy and Security Rules. Contractor agrees to not use or disclose Protected Health Information other than as permitted or required by this Contract or as Required By Law. Contractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Contract.

C. Permitted Uses and Disclosures by Contractor

Except as otherwise limited in this Section, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Department as specified in (Insert number of purpose section), provided that such use or disclosure would not violate the Privacy Rule if done by the Department or the minimum necessary policies and procedures of the Department.

D. Specific Use and Disclosure Provisions

1. Except as otherwise limited in this Section, Contractor may use Protected Health Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor.
2. Except as otherwise limited in this Section, Contractor may disclose Protected Health Information for the proper management and administration of the Contractor, provided that disclosures are Required By Law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

3. Except as otherwise limited in this Section, Contractor may use Protected Health Information to provide Data Aggregation services to the Department as permitted by 42 CFR 164.504(e)(2)(i)(B).

4. Contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 164.502(j)(1).

E. Obligations of the Department

1. The Department shall notify Contractor of any limitation(s) in its notice of privacy practices of the Department in accordance with 45 CFR 164.520, to the extent that such limitation may affect Contractor's use or disclosure of Protected Health Information. A copy of the Department's Notice of privacy practice is attached to this contract and incorporated herein.

2. The Department shall notify Contractor of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect Contractor's use or disclosure of Protected Health Information.

3. The Department shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that the Department has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

F. Permissible Requests by the Department

The Department shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Department.

G. Term and Termination

1. Term. The Term of this Section shall be effective as of the effective date of the Contract, and shall terminate when all of the Protected Health Information provided by the Department to Contractor, or created or received by Contractor on behalf of the Department, is destroyed or returned to the Department, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this subsection.
2. Termination for Cause. Upon the Department's knowledge of a material breach by Contractor, the Department shall, at its sole discretion, either:

   i. Provide an opportunity for Contractor to:

   - cure the breach; or
   - end the violation and terminate this Contract if Contractor does not cure the breach; or
   - end the violation within the time specified by the Department; or

   ii. Or, immediately terminate this Contract if Contractor has breached a material term of this Section and cure is not possible; or

   iii. Or, if neither termination nor cure are feasible, the Department shall report the violation to the Secretary.

3. Effect of Termination.

   i. Except as provided in paragraph (ii) of this subsection, upon termination of this contract, for any reason, Contractor shall at the Department's sole discretion return or destroy all Protected Health Information received from the Department, or created or received by Contractor on behalf of the Department. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.

   ii. In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the Department notification of the conditions that make return or destruction infeasible. Upon written agreement by the Department that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Section to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

H. Miscellaneous

1. Regulatory References. A reference in this Section to a section in the Privacy Rule means the section as in effect or as amended.

2. Amendment. The Parties agree to take such action as is necessary to amend this Section from time to time as is necessary for the Department to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

3. Survival. The respective rights and obligations of Contractor under Section [Insert Section Number Related to "Effect of Termination"] of this Section shall survive the termination of this Section.
4. Interpretation. Any ambiguity in this Section shall be resolved to permit the Department to comply with the Privacy Rule.

18. DEPARTMENTAL GUIDANCE

The Contractor may request from the Department guidance in administrative and programmatic matters that are necessary to Contractor's performance. The Department may provide such guidance as it determines is appropriate. Guidance may include providing copies of regulations, statutes, standards and policies that are to be complied with under this contract. The Department may supply essential interpretations of such materials and this contract to assist with contract compliance by the Contractor. The Contractor is not relieved by a request for guidance of any obligation to meet the requirements of this contract. Legal services will not be provided by the Department to the Contractor in any matters relating to this contract.

19. RECIPIENT GRIEVANCE AND APPEALS

A. The Contractor must inform applicants for and recipients of services provided through this contract of any right there maybe to present grievances to the Contractor and the Department or to receive a fair hearing.

B. If an appeal for a fair hearing is filed, the Contractor must appear, if requested by the Department, to present evidence in any hearing that may be held.

C. The Contractor, as directed by the Department, must provide services in accordance with the decision in a fair hearing concerning services provided by the Contractor to a recipient of services.

20. PUBLICITY

A. All public notices, information pamphlets, press releases, research reports, posters, public service announcements, web sites and similar modes of presenting public information pertaining to the services and activities funded with this contract prepared and released by the Contractor must include the statement:

"This project is funded (in part) under a contract with the Montana Department of Public Health and Human Services. The statements herein do not necessarily reflect the opinion of the Department."

B. As provided in Section 507 of H.R. 3424, appropriating monies for the Departments of Labor, Health and Human Services, and Education, as enacted through Division B of H.R. 3194, "The Consolidated Appropriations Act of 1999", Pub. L. No. 106-113, and as may be provided by congressional continuing resolutions or further budgetary enactments, all statements, press releases, and other documents or media pieces made available to the public describing the services provided through this contract, funded in part or in whole with federally appropriated monies received through the programs of the federal Departments of Health & Human Services, Education or Labor, must state the percentage and the monetary amount of the total program or project costs funded with
federal monies and the percentage and the monetary amount of the total costs funded
with nongovernmental monies.

C. All statements, press releases, and other documents or media pieces made available to
the public describing the services provided with monies received through this contract
must be reviewed and approved by the Department prior to use, publication or release.

21. PROPERTY

A. For purposes of this provision the following definitions based on the pertinent federal
regulations apply:

"Equipment" means tangible nonexpendable personal property, including exempt
property, charged directly to the contract having a useful life of more than one year and
an acquisition cost of $5,000 or more per unit unless lower limits are otherwise
established.

"Intangible property" means, but is not limited to, trademarks, copyrights, patents, and
patent applications and such property as loans, notes and other instruments of property
ownership, whether considered tangible or intangible.

"Personal property" means property of any kind of property except real property. It may
be tangible, having physical existence, such as equipment and supplies, or intangible,
having no physical existence, such as data, copyrights, patents, or securities.

"Property" means, unless otherwise stated, real property, equipment, and intangible
property.

"Real property" means land, including land improvements, structures, and
appurtenances thereto, but excludes movable machinery and equipment.

B. Property to be used for the purposes of carrying out the duties and responsibilities
provided for in this contract may be purchased with funds from this contract only if
authorized by the Department through the terms of this contract.

C. Property purchased with federal funding must be purchased, managed, and disposed of
in accordance with the pertinent provisions at 74 CFR § 74.32, 74.34, 74.35, 74.36, and
74.37 and 92 CFR § 92.31, 92.32, 92.33 and 92.34.

D. At such time as the Contractor no longer contracts to deliver services to the Department
or as directed by the Department during the term of the contract, the Contractor agrees
to deliver, as may be required by law or as may be directed by the Department, title to
and possession of any property purchased with contractual monies to the Department or
to any entity designated by the Department.

E. All patent and other legal rights in and to inventions arising out of activities assisted by
funds from this contract must be available, in accordance with 37 CFR Part 401 and any
other applicable legal authority, to the public for royalty-free and nonexclusive licensing.
The Contractor must notify the Department promptly in writing of any invention
conceived or actually reduced to practice in the course of performance of this contract.
F. The Department and any federal agency from which funds for this contract are derived have, in accordance with 45 CFR §74.36 and 45 CFR §92.34, a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use for Department and agency purposes any written, audio or video material developed under this contract.

22. ACCESS TO PREMISES

The Contractor must provide the State of Montana and any other legally authorized governmental entity, or their authorized representatives, the right to enter at all reasonable times the Contractor's premises or other places where contractual performance occurs to inspect, monitor or otherwise evaluate contractual performance. The Contractor must provide reasonable facilities and assistance for the safety and convenience of the persons performing those duties. All inspection, monitoring and evaluation must be performed in such a manner as not to unduly interfere with contractual performance.

23. CONTRACT TERMINATION

A. The Department may immediately terminate the whole or any part of this contract for failure to perform the contract in accordance with the terms of the contract and other governing authorities.

1. If there is no exigency or risk of harm to persons from continued performance, the Department, in its discretion, may impose penalties and/or provide notice to the Contractor of the failure to perform and allow the Contractor 30 days during which to cure the failure.

2. Failure to perform includes, but is not limited to, failure to:
   a. perform the services within the time limits specified in this contract;
   b. perform any of the requirements of this contract;
   c. perform its contractual duties or responsibilities in accordance with the terms of the contract or any other authority, including statute, rules, or policy that govern the standards for performance; or
   d. comply with any law, regulation or licensure and certification requirement.

B. The Department may terminate the whole or any part of this contract when federal or state funding for this contract becomes unavailable for any reason. The Department must give notice to the Contractor at least thirty (30) days prior to the effective date of termination.

C. The Department may terminate this contract without cause and without damages to either party. The Department must give notice of termination to the Contractor at least thirty (30) days prior to the effective date of termination.
D. Notice of termination must be given in writing.

E. Notice of termination given to the Department by the Contractor may only be revoked with the consent of the Department.

F. Upon contract termination or nonrenewal of this contract, the Contractor must allow the Department, its agents and representatives full access to the Contractor's facilities and records to arrange the orderly transfer of the contracted activities.

24. **LIAISON AND SERVICE OF NOTICES**

A. *Rena Steyaert (406)-444-4066 FAX (406)-444-3846 rsteyaert@mt.gov* is the liaison for the Department. Robert Gustin, (800) 873-8256 rfgustin@walman.com is the liaison for the Contractor. These persons serve as the primary contacts between the parties regarding the performance of this contract.

B. Written notices, reports and other information required to be exchanged between the parties must be directed to the liaison at the parties' addresses set out in this contract.

25. **CHOICE OF LAW, REMEDIES AND VENUE**

A. This contract is governed by the laws of the State of Montana.

B. Any remedies provided by this contract are not exclusive and are in addition to any other remedies provided by law.

C. In the event of litigation concerning this contract, venue must be in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

D. In the event of a contractual dispute, the Contractor agrees to continue performance under this contract unless the Department explicitly waives performance in writing.

26. **SCOPE, AMENDMENT AND INTERPRETATION OF CONTRACT**

A. This contract consists of 24 numbered pages and;

1. Attachment A (ASSURANCES - NON-CONSTRUCTION PROGRAMS)

2. Attachment B (CERTIFICATION OF COMPLIANCE WITH CERTAIN REQUIREMENTS FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES (6-99); aka: Department Certification Form);

3. Attachment C (STANDARD FORM LLL (Disclosure of Lobbying Activities));

4. Attachment D (The Department's Notice of Privacy Practices);

5. Attachment E (Sources of Information on HIPAA)

This is the entire Contract between the parties.
B. No statements, promises, or inducements made by either party or their agents are valid or binding if not contained herein.

C. The headings to the sections of this contract are for convenience of reference and do not modify, the terms and language of the provisions to which they are headings.

D. No contractual provisions from a prior contract of the parties are valid or binding in this contractual agreement.

E. This contract, except as may be otherwise provided by the terms of this contract, may not be enlarged, modified or altered except by written amendment signed by the parties to this contract.

F. In the event of a dispute as to the duties and responsibilities of the parties under this contract, the contract along with any attachments prepared by the Department, inclusive of request for proposal, if any, govern over the Contractor's proposal if any.

G. If any provision of this contract is determined by a court of law to be invalid legally, all other provisions of this contract remain in effect and are valid and binding on the parties.

H. If any provision of this contract, per se or as applied, is determined by the Department to be in conflict with any federal or state law or regulation then the provision is inoperative to the extent that the Department determines it is in conflict with that authority and the provision is to be considered modified to the extent the Department determines necessary to conform with that authority.

I. Waiver of any default, breach or failure to perform under this contract is not deemed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of any default, breach or failure to perform is not construed to be a modification of the terms of this contract unless reduced to writing as an amendment to this contract.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK
The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

By: _______________________________ Date 12/18/09

Terry Krantz, Administrator

Department of Public Health & Human Services
Health Resources Division
1400 Broadway P.O. Box 202951
Helena, MT 59620-2951
(406) 444-4146

Walman Optical

By: _______________________________ Date 12/17/09

Robert F. Gustin

Typed/Printed Name

801 12th Avenue North
Minneapolis, MN 55411
(800) 873-9256
41-0898170

By: _______________________________ Date 12/17/09

Rhonda Grandy, State Procurement Officer
Attachment A
ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
Attachment B
CERTIFICATION OF COMPLIANCE WITH CERTAIN REQUIREMENTS
FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES
CONTRACTORS
(DECEMBER 2006)

The Contractor, Walman Optical Company, for the purpose of contracting with the Montana Department of Public Health & Human Services, certifies to the Department its compliance, as may be applicable to it, with the following:

A. That the Contractor does not act in collusion with other contractors for the purpose of gaining unfair advantages for it or other contractors or for the purpose of providing the services at a noncompetitive price or otherwise in a noncompetitive manner.

B. That the Contractor is an independent contractor; that it maintains necessary and appropriate workers compensation and unemployment insurance coverage; that it is solely responsible for and must meet all labor and tax law requirements pertaining to its employment and contracting activities, inclusive of insurance premiums, tax deductions, tax withholding, overtime wages and other employment obligations that may be legally required with respect to it.

C. That the Contractor, any employee of the Contractor, or any significant subcontractor in the performance of the duties and responsibilities of the proposed contract, are not currently suspended, debarred, or otherwise prohibited from entering into a federally funded contract or participating in the performance of a federally funded contract.

D. That the Contractor is in compliance with all of the privacy, security, electronic transmission, coding and other requirements of the Health Insurance Portability And Accountability Act of 1996 and its implementing rules as may be applicable to the Contractor.

E. That the Contractor, if receiving federal monies, does not expend federal monies in violation of federal legal authorities prohibiting expenditure of federal funds on lobbying federal and state legislative bodies or for any effort to persuade the public to support or oppose legislation.

F. That the Contractor, if receiving federal monies, prohibits smoking at any site of federally funded activities that serves youth under the age of 18. This is not applicable to sites funded with Medicaid monies only or to sites used for inpatient drug or alcohol treatment.
G. That the Contractor, if receiving federal monies, maintains drug free environments at its work sites, providing required notices, undertaking affirmative reporting, et al., as required by federal legal authorities.

H. That the Contractor manages any real, personal, or intangible property purchased or developed with federal monies in accordance with federal legal authorities.

I. That the Contractor, if receiving federal monies, is not delinquent in the repayment of any debt owed to a federal entity.

J. That the Contractor, if expending federal monies for construction purposes or otherwise for property development, complies with federal legal authorities relating to flood insurance, historic properties, relocation assistance for displaced persons, elimination of architectural barriers, metric conversion and environmental impacts.

K. That the Contractor, if expending federal monies for research purposes, complies with federal legal authorities relating to use of human subjects, animal welfare, biosafety, misconduct in science and metric conversion.

L. That the Contractor, if receiving $100,000 or more in federal monies, complies with all applicable standards and policies relating to energy efficiency which are contained in the state energy plan issued in compliance with the federal Energy Policy and Conservation Act.

The Contractor is obligated during the duration of the contractual relationship to abide by those requirements pertinent to it in accordance with the governing legal authorities.

Not all of these assurances may be pertinent to the Contractor's circumstances. This certification form, however, is standardized for general use and signing it is intended to encompass only provisions applicable to the circumstances of the Contractor in relation to the federal and state monies that are being received.

These assurances are in addition to those stated in the federal OMB 424B (Rev. 7-97) form, known as "ASSURANCES - NON-CONSTRUCTION PROGRAMS", issued by the federal Office of Management of the Budget (OMB). Standard Form 424B is an assurances form that must be signed by the Contractor if the Contractor is to be in receipt of federal monies.

There may be program specific assurances, not appearing either in this form or in the OMB Standard Form 424B, that the Contractor may have to provide by certification.
This form, along with OMB Standard Form 424B, are to be provided with original signature to the Department's contract liaison. The completed forms are maintained by the Department in the pertinent purchase and contract files.

Further explanation of several of the requirements certified through this form may be found in the Department's standard Request For Proposal (RFP) format document, standard contracting requirements document, and set of standard contract provisions. In addition, detailed explanations of federal requirements may be obtained through the Internet at sites for the federal departments and programs and for Office for Management of the Budget (OMB) and the General Services Administration (GSA).

**INSERT NAME OF CONTRACTOR**

By: Robert F. Gustin VP

Typed/Printed Name
Walman Optical Company
801 12th Avenue North

Address
Minneapolis, MN 55411

(612) 520-6000

Phone Number
41-0598170

Federal I.D. Number

.Date 12/17/09

as Vice President

Title
### DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

<table>
<thead>
<tr>
<th>1. Type of Federal Action:</th>
<th>2. Status of Federal Action:</th>
<th>3. Report Type:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. contract</td>
<td>a. bid/offer/application</td>
<td>a. initial filing</td>
</tr>
<tr>
<td>b. grant</td>
<td>b. initial award</td>
<td>b. material change</td>
</tr>
<tr>
<td>c. cooperative agreement</td>
<td>c. post-award</td>
<td>For Material Change Only:</td>
</tr>
<tr>
<td>d. loan</td>
<td></td>
<td>year _______ quarter _______</td>
</tr>
<tr>
<td>e. loan guarantee</td>
<td></td>
<td>date of last report _______</td>
</tr>
<tr>
<td>f. loan insurance</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. Name and Address of Reporting Entity:

- **Prime:**
  - Walman Optical Company
  - 801 12th Avenue North
  - Minneapolis, MN 55411

5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:

6. Federal Department/Agency:

7. Federal Program Name/Description:

- CFDA Number, if applicable: __________

8. Federal Action Number, if known:

9. Award Amount, if known:

- $_____

10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):

   NONE

   b. Individuals Performing Services (including address if different from No. 10a)

   (last name, first name, MI):

11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: ____________________________
Print Name: Robert F. Gustin
Title: Vice President
Telephone No.: (612) 520-6000
Date: 12/17/09
Attachment D
Health Insurance Portability and Accountability Act ("HIPAA") Privacy Policy

John Chappuis, Deputy Director

Date: February 27, 2003
Revised Date:

Policy Title: Notice of Privacy Practices
Policy Number: 006 1
Version: 1.0
Approved By: John Chappuis
Date Approved: February 27, 2003

Purpose:

This policy addresses the information that must be contained in the official Notice of Privacy Practices.

Policy:

1. A client has the right to adequate notice of the uses and disclosures of Protected Health Information ("PHI") that may be made by DPHHS, and the legal duties of the Department with respect to PHI. The right to a Notice of Privacy Practices does not apply to inmates of correctional institutions.

2. DPHHS must provide a notice that is written in layman's language and that contains the following details:

a. A header statement, "THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."

b. A description, including an example, of the types of uses and disclosures that DPHHS is permitted to make for treatment, payment and operations, as well as any other purposes for which disclosure is permitted without the client’s written authorization.

c. A statement that other uses and disclosures will be made only with the client’s written authorization and that the client may revoke such authorization.

d. If DPHHS intends to engage in any of the following activities, the description must include a separate statement, as applicable, that:
i. DPHHS may contact the client to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to the client; and

ii. DPHHS may contact the client to conduct fund raising activities for the covered entity.

e. A statement of the client’s rights and a brief description of how the client may exercise these rights as follows:

i. The right to request restrictions on certain uses and disclosures, including a statement that the covered entity is not required to agree to a requested restriction;

ii. The right to receive confidential communications by alternative means and at alternative locations;

iii. The right to inspect and copy PHI;

iv. The right to amend PHI;

v. The right to receive an accounting of disclosures of PHI; and

vi. The right to obtain a paper copy of this notice.

f. A statement of DPHHS duties:

i. A statement that DPHHS is required by law to maintain the privacy of PHI and to provide clients with notice of its legal duties and privacy practices;

ii. A statement that DPHHS is required to abide by the terms of the notice currently in effect; and

iii. A statement that DPHHS reserves the right to change the terms of its notice and how it will provide clients with a revised notice.

g. A statement that the client may complain to DPHHS and to HHS if they believe their privacy rights have been violated, a brief description of how a complaint may be filed, and a statement that the client will not be retaliated against for filing a complaint.

h. A contact person for receiving complaints.

i. An effective date of the notice.

3. DPHHS must notify all clients at least once every three years that the Notice of Privacy Practices is available and how the client can receive a copy of it.

4. Whenever possible, DPHHS employees should attempt to get the client to sign an acknowledgement of receipt of the Notice of Privacy Practices. If the client refuses to sign, documentation to that effect should be kept in the client file. The Notice can be mailed to clients with the expectation that it has been received if it is not returned.
Attachment E
SOURCES OF INFORMATION
ON THE PRIVACY, TRANSACTIONS AND SECURITY REQUIREMENTS
PERTAINING TO HEALTH CARE INFORMATION OF THE FEDERAL
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
(HIPAA)

The following are sources of information concerning the applicability of and implementation of
the privacy, transactions and security requirements of HIPAA. The Department Of Public
Health & Human Services requires that contractors generating, maintaining, and using health
care information in relation to recipients of State administered and funded services be compliant
with the requirements of HIPAA.

There can be difficulty in interpreting the applicability of HIPAA to an entity. It is advisable to
retain knowledgeable consultants or attorneys to advise concerning determinations of
applicability.

Websites specified here may be changed without notice by those parties maintaining them.

FEDERAL RESOURCES

The following are official federal resources in relation to HIPAA requirements. These are
public sites.

1) U.S. Department Of Health & Human Services / Centers For Medicare & Medicaid Services

   www.cms.gov/hipaa

The federal Department Of Health & Human Services / Centers For Medicare & Medicaid
Services (CMS) provides information pertaining to transactions, security and privacy
requirements under HIPAA including the adopted regulations and various official interpretative
materials. CMS is responsible for the implementation nationally of the transactions and security
aspects of HIPAA.

2) U.S. Department Of Health & Human Services / Office Of Civil Rights

   www.hhs.gov/ocr/hipaa

The federal Department Of Health & Human Services / Office Of Civil Rights (OCR) provides
information pertaining to privacy requirements under HIPAA including the adopted regulations and various official interpretative materials. This site includes an inquiry service. OCR is responsible for the implementation of the privacy aspects of HIPAA and serves as both the official interpreter for and enforcer of the privacy requirements.

3) U.S. Department Of Health & Human Services / Centers For Disease Control & Prevention

   www.cdc.gov/privacyrule

The federal Department Of Health & Human Services / Centers For Disease Control & Prevention (CDC) provides information pertaining to the application of privacy requirements under HIPAA to public health activities and programs.

OTHER NATIONAL PUBLIC RESOURCES

WEDI/SNIP

   www.wedi.org/snip

The Workgroup For Electronic Data Interchange is a collaborative national effort, inclusive of the federal entities, that has undertaken a broad effort at the implementation of HIPAA, in particular the electronic transactions and security aspects, known as the Strategic National Implementation Process. There are several regional and state based WEDI/SNIP efforts. There is not one, however, that covers Montana.

STATE RESOURCES

1) Montana Collaborative Website

   www.hipaamontana.com

This site is a collaborative website of several entities, including the Department Of Public Health & Human Services, that provides information to the public on HIPAA as it relates to entities in Montana. The Department’s policies and forms, pertaining to implementation of HIPAA, appear at this site. This site also provides an analysis as to the interplay of HIPAA with Montana laws on confidentiality.

2) Department Website For Medicaid Providers

   www.mtmedicaid.org

This site provides information for providers of services funded with Medicaid monies. HIPAA requirements in relation to Medicaid state plan services are described at this site.
PROVIDER ASSOCIATIONS

Many national and state provider associations have developed extensive resources for their memberships concerning HIPAA requirements. Those are important resources in making determinations as to the applicability and implementation of HIPAA.

CONSULTANT RESOURCES

There are innumerable consulting resources available nationally. The Department does not make recommendations or referrals as to such resources. It is advisable to pursue references before retaining any consulting resource. Some consulting resources have proven to be inappropriate for certain types of entities and circumstances and some may lack the necessary knowledge concerning the applicability and implementation of HIPAA.

Walman Optical Company

Name of Organization

Robert F. Gustin, V.P. December 17, 2009

Agency Director Date