

DVHA Routing Form

Revision Date 5/1/12

Type of Agreement: Contract Agreement #: 21471 Form of Agreement: Amendment Amendment #: 1

Name of Recipient: Dr. Marietta Scholten dba Northwest Medical Surgical Associates Vendor #: 110579

Program Manager: Daljit Clark Phone #: 879-5915

Agreement Manager: Sawyer Joecks Phone #: 879-5922

Brief Explanation of Agreement: Adds funding to accommodate Medical Director transition

Start Date: 03/05/2012 End Date: 03/04/2013 Maximum Amount: \$18,145.00

Amendments Only: Maximum Prior Amount: \$8,645.00 Percentage of Change: 109.89%

Bid Process (Contracts Only): Standard Simplified Sole Source Statutory Master Contract SOW

Funding Source

Global Commitment 93.778	\$18,145.00		

Contents of Attached Packet

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> AA-14 | <input checked="" type="checkbox"/> Attachments A, B, C & F | <input type="checkbox"/> Attachment G - Academic Research |
| <input checked="" type="checkbox"/> Sole Source Memo | <input type="checkbox"/> Attachment D - Modifications to C & F | <input type="checkbox"/> MOU |
| <input type="checkbox"/> Qualitative/Justification Memo | <input type="checkbox"/> Attachment E - Business Associate Agreement | <input checked="" type="checkbox"/> Other: Base |

Reviewer	Reviewer Initials	Date In	Date Out
DVHA Grant & Contract Administrator	Kate Jones	KJ	10/10
DVHA BO	Jill Gould <i>Carrie Hathaway</i>	JG	10/11/12
DVHA Commissioner or Designee	Vicki Loner, Deputy Mark Larson, Commissioner	VL	10/11/12
AHS Attorney General	Seth Steinzor, AAG	SS	10/18/12
Following Approvals for Contracts Only:			
AHS CIO			
AHS Central Office	Martha Giglio	MG	10/24/12
AHS Secretary	Doug Racine, Sec		

Vision Account Codes: 341001 - 20405 - 507600 - 41490

MEMORANDUM

TO: Doug Racine, Secretary, AHS

FROM: Vicki Loner, Deputy Commissioner, DVHA 

DATE: October 10, 2012

RE: Request to extend our sole-source Contract with Marietta Scholten, Contract # 21471

Duration: 03/05/12 – 03/04/13 New Amount: \$18,145.00

DVHA seeks to extend our sole-source agreement with Dr. Marietta Scholten to perform physician reviews for our Medicaid claims, as well as other consulting services as needed. We initially contracted with Dr. Scholten due to high volume of prior authorizations and reviews that existing DVHA staff struggled to keep up with.

Just before renewing our contract with the University of Vermont to manage our Medical Director, our current Medical Director Dr. Michael Farber submitted his resignation. In between the time of our Medical Director's last day and the time it takes UVM to recruit and hire a new candidate, we are in urgent need of qualified physicians to fill in during this gap in service. Dr. Scholten has been very proficient with serving as a backup for our Medical Director and has always submitted competent decisions by state and federal deadlines. We have been very pleased with the quality of her work and response time in coming into our office to complete reviews during the aforementioned absences.

Dr. Scholten is very experienced with the facets of the Medicaid physician review process, and we are in urgent need of her services during this gap in service in order to be compliant with Medicaid review policy. We must add contract funding not only to satisfy hours worked during the period of absence, but for the remainder of the contract year.

Performance measures are included in the agreement. DVHA's funding for this contract will be covered by the Global Commitment to Health Appropriations and complies with all mandatory provisions of AOA Bulletin 3.5. DVHA looks forward to approval of this amendment.

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION ----- Form AA-14 (8/22/11)

Note: All sections are required. Incomplete forms will be returned to department.

I. CONTRACT INFORMATION:

Agency/Department: AHS/ DVHA Contract #: 21471 Amendment #: 1
 Vendor Name: Dr. Marietta Scholten dba Northwest Medical Surgical Associates VISION Vendor No: 110579
 Vendor Address: 148 Fairfield Street, St. Albans, VT 05478
 Starting Date: 3/5/2012 Ending Date: 3/4/2013 Amendment Date: 11/15/2012
 Summary of agreement or amendment: Agreement adds funding to accommodate Medical Director transition

II. FINANCIAL INFORMATION

Maximum Payable: \$18,145.00 Prior Maximum: \$ 8,645.00 Prior Contract # (If Renewal): 18935
 Current Amendment: \$9,500.00 Cumulative amendments: \$ 9,500.00 % Cumulative Change: 109.89 %
 Business Unit(s): 03410; ; - [notes:] VISION Account(s): 507600;

III. PERFORMANCE INFORMATION

Does this Agreement include Performance Measures tied to Outcomes and/or financial reward/penalties? Yes No
 Estimated Funding Split: G-Fund % S-Fund % F-Fund % GC-Fund 100.00 % Other %

IV. PUBLIC COMPETITION

The agency has taken reasonable steps to control the price of the contract or procurement grant and to allow qualified organizations to compete for the work authorized by this contract. The agency has done this through:
 Standard bid or RFP Simplified Bid Sole Sourced Qualification Based Selection Statutory

V. TYPE OF AGREEMENT & PERFORMANCE INFORMATION

Check all that apply: Service Personal Service Architect/Engineer Construction Marketing
 Information Technology Other, describe:

VI. SUITABILITY FOR CONTRACT FOR SERVICE

Yes No n/a If this is a Personal Service contract, does this agreement meet all 3 parts of the "ABC" definition of independent contractor? (See Bulletin 3.5) If NO, then contractor must be paid through Payroll

VII. CONTRACTING PLAN APPLICABLE:

Are one or more contract or terms & conditions provisions waived under a pre-approved Contracting Plan? Yes No

VIII. CONFLICT OF INTEREST

By signing below, I certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.

Yes No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

IX. PRIOR APPROVALS REQUIRED OR REQUESTED

Yes No Agreement must be approved by the Attorney General under 3 VSA §311(a)(10) (personal service)
 Yes No I request the Attorney General review this agreement as to form
 No, already performed by in-house AAG or counsel: _____ (initial)
 Yes No Agreement must be approved by the Comm. of DII; for IT hardware, software or services and
 Telecommunications over \$100,000
 Yes No Agreement must be approved by the CMO; for Marketing services over \$15,000
 Yes No Agreement must be approved by Comm. Human Resources (privatization and retiree contracts)
 Yes No Agreement must be approved by the Secretary of Administration

X. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

I have made reasonable inquiry as to the accuracy of the above information:

Date: 10/11/12 Agency / Department Head: *Nigbiana E...* Date: 10/26/12 Agency Secretary or Other Department Head (if required): *Douglas A. J. P...*

Date: 10/18/12 Approval by Attorney General: _____ Date: _____ Approved by Commissioner of Human Resources

Date: _____ CIO: _____ Date: _____ CMO: _____ Date: _____ Secretary of Administration

AMENDMENT

It is agreed by and between the State of Vermont, Department of Vermont Health Access (hereafter called the "State") and Northwest Medical Surgical Associates, Inc. (hereafter called the "Contractor") that the contract on the subject of Medicaid physician review services, effective March 5, 2012 is hereby amended effective November 15, 2012 as follows:

1. By deleting on page 1 of 19, Section 3 (Maximum Amount) and substituting in lieu thereof the following Section 3:

3. Maximum Amount. In consideration of the services to be performed by Contract, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed **\$18,145**.

2. By deleting the following phrase on page 3 of 19 in the first paragraph of Attachment A (Specifications of Work to be Performed):

"not to exceed three (3) hours per week,"

3. By adding the following language to Section 6 of Attachment A on page 3 of 19:

"If the request to render a medical opinion is a Medicaid Appeal, the Contractor shall submit her medical opinion within 59 days."

4. By deleting on page 4 of 19 in Attachment A (Specifications of Work to be Performed) the "Performance Measures" section in its entirety, and substituting in lieu thereof the following language:

Per the deadlines dictated in the scope of work, in the event the Contractor fails to submit her medical opinion on Prior Authorization review within 5 days or Medicaid Appeal within 59 days, the Contractor's hourly rate for any hours worked on the appeal will be reduced, as specified in Attachment B. This reduced rate will only apply to hours expended on the review or appeal in question.

Such assessment shall not be made to the extent that the failure can be attributed to:

- Unforeseeable catastrophic events experienced at the Contractor local and corporate facilities,
- Unforeseeable catastrophic events experienced by State which has a material effect on the Contractor, or
- Complying with any directions of the State or its employees regarding changes to Scope of Work.

5. By deleting on page 5 of 19 in Attachment B, Section 3 in its entirety, and substituting in lieu thereof the following Section 3:

3. The State shall pay the Contractor at a rate of \$95.00 per hour. The total maximum amount payable under this contract shall not exceed \$18,145.00. The Contractor's hourly rate shall drop

to \$75.00 per hour for any hours worked on an assigned physician review where a written medical opinion was submitted in excess of the timeframes specified in Section 6 of Attachment A.

6. By deleting on pages 6-9 of 19, Attachment C (Customary Provisions for Contracts and Grants) in its entirety, and substituting in lieu thereof the following Attachment C:

**ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS**

1. **Entire Agreement.** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law.** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of **\$1,000,000** per occurrence, and **\$1,000,000** aggregate.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will

be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.

9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://finance.vermont.gov/forms>

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

12. **Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

13. **Taxes Due to the State:**

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is

signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

14. Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

16. No Gifts or Gratuities: Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

17. Copies: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.

19. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

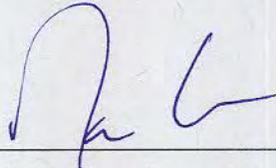
**STATE OF VERMONT
AMENDMENT TO PERSONAL SERVICES CONTRACT
NORTHWEST MEDICAL SURGICAL ASSOCIATES**

**PAGE 6 OF 6
CONTRACT 21471
AMENDMENT #1**

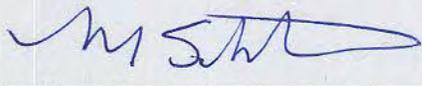
This amendment consists of 6 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract, (#21471) dated March 5, 2012 shall remain unchanged and in full force and effect.

**STATE OF VERMONT
DEPARTMENT OF VERMONT HEALTH ACCESS**

**CONTRACTOR
NORTHWEST MEDICAL SURGICAL ASSOCIATES**



MARK LARSON, COMMISSIONER DATE 11.7.12



MARIETTA SCHOLTEN, VICE PRESIDENT DATE 11/5/12