1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **Prickly Pear Cooperative (CONTRACTOR)** enter into this Contract **(08-017-YSD)** for services. The parties name, address, and telephone number are as follows:

Montana Department of Corrections
Youth Services Division
1539 11th Avenue
P.O. Box 201301
Helena, MT 59620-1301
(406) 444-3930

Prickly Pear Cooperative
PO Box 1280
Main Street School
East Helena, MT 59635
(406) 227-7322

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

2. DUTIES/RESPONSIBILITIES OF THE CONTRACTOR

CONTRACTOR agrees to provide the following services at the Riverside Youth Correctional Facility in Boulder, Montana:

A. As requested by DEPARTMENT, CONTRACTOR will provide up to three hours per week of on-site School Psychology services and up to four hours per week of on-site Special Education Teacher services using properly certified staff.

1. School Psychology services shall consist of necessary and appropriate testing and assessment of the educational, behavioral, and intellectual needs of youth in accordance with the requirements under IDEA, including a record review; the interpretation and summarization of data relevant to the educational performance of the student; participation in CST and IEP meetings; the counseling of youth with disabilities, as required by the IEP; and consultation with school personnel, as necessary. The school shall not serve in an administrative capacity.

2. Special Education Teacher services shall consist of instruction to the youth with disabilities in accordance with the requirements of IDEA: the assessment of academic achievement and the interpretation and summarization of data relevant to education performance of the student; the record review and participation of CST and IEP meetings; and consultation with school personnel, as necessary. The resource teacher shall not serve in administrative capacity.

Reporting requirements shall meet the standards set forth in IDEA. The director of PPC shall review special education records at least once a year.

3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of the services provided pursuant to Section 2 in the following manner:

A. DEPARTMENT will pay CONTRACTOR $49.49 per hour for School Psychology services and $44.12 per hour for Special Education Teacher services. In addition, DEPARTMENT will pay CONTRACTOR $44.12 per visit to Riverside for travel time incurred by the Special Education

Teacher, or school psychologist. All services shall be provided and scheduled "as requested" by DEPARTMENT.

B. DEPARTMENT shall pay CONTRACTOR an amount not to exceed six thousand and 00/100 Dollars ($6,000) for the services described in Section 2 above.

C. DEPARTMENT agrees to pay CONTRACTOR within 30 business days following receipt of a correct invoice.

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

E. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., Montana State Prison and Montana Women's Prison do not allow wireless phones within facility).

5. TIME OF PERFORMANCE

This Contract shall take effect on July 1, 2007 and shall terminate on June 30, 2008, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of five (5) additional years.

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

6. LIAISONS AND NOTICE

A. Ron Fuller, Superintendent, (406-225-4505) PO Box 88, 2 Riverside Road, Boulder, MT 59632 or successor serves as DEPARTMENT'S liaison.

B. Vaughn Kauffman, Director, (406-227-7322) PO Box 1280, Main Street School, East Helena, MT 59635 or successor serves as CONTRACTOR'S liaison.

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

7. OWNERSHIP AND PUBLICATION OF MATERIALS

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

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

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

9. HOLD HARMLESS AND INDEMNIFICATION

CONTRACTOR agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of CONTRACTOR and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

10. INSURANCE

A. **PROFESSIONAL LIABILITY:** CONTRACTOR shall purchase and maintain professional liability insurance during the term of this Contract. Coverage shall be at a minimum of $500,000 combined single limit per occurrence with a $1,000,000 annual aggregate single limit per occurrence.

B. **GENERAL LIABILITY:** CONTRACTOR shall be required to maintain general liability occurrence coverage for bodily injury, personal injury, and property damage at a minimum of $300,000 combined single limit per occurrence with a $600,000 annual aggregate single limit per occurrence.

C. CONTRACTOR shall name the State of Montana, its officers, officials, employees and volunteers, as an additional insured and provide appropriate copies of endorsements and certificates of insurance prior to the commencement of services under this Contract. Insurance coverage shall be primary insurance as respects the state, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the state, its officers, officials, employees, or volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf.

D. CONTRACTOR'S insurer must provide DEPARTMENT with 30 days written notice prior to the policy expiration date of insurance's required under this Contract.

11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies

delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

12. PUBLIC INFORMATION

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

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

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

14. AMENDMENTS

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

15. COMPLIANCE WITH LAWS

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

16. TERMINATION AND DEFAULT

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

B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.

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

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

17. CHOICE OF LAW AND VENUE

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

18. LICENSURE

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

19. INTEGRATION

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

20. SEVERABILITY

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

21. COMPLETED CONTRACT

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

SIGNATURE

DEPARTMENT

Steve Gibson, Administrator
Youth Services Division

5-30-07
Date

CONTRACTOR

Vaughn Kauffman, Director
Prickly Pear Cooperative

6-5-07
Date

Approved for Legal Content by:

Legal Counsel
Department of Corrections

5/29/07
Date