OPERATING PLAN BETWEEN THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF NATURAL RESOURCES & CONSERVATION, Southern Land Office

DNRC Agreement:####

I. **Parties:**

Department of Corrections (DOC)
Montana Correctional Enterprises (MCE) and Montana Women's Prison (MWP)

350 Conley Lake Rd	701 S. 27th Street
Deer Lodge, MT 59722	Billings, MT 59102
406-846-1320 x 2373	406-247-5112

Department of Natural Resources and Conservation, (DNRC)
PO Box 201603
11627 11th Avenue
Helena, MT 59620-1603
406-444-2074

II. **Purpose:**

A. This operating plan is to establish and define the specifics of an agreement for DOC to provide an inmate wild land fire Kitchen Crew (herein referred to as Kitchen Crew, inmate crew, wild land fire Kitchen Crew, or crew) to be utilized only in Montana.

B. DNRC, as needed, will utilize DOC Kitchen Crew for kitchen work during wildfires and DNRC training events in Montana. Use of the Kitchen Crew achieves the goal of utilizing state funds in a wise and prudent manner and provides the Kitchen Crew members with an opportunity to gain work experience, life skills and income prior to release that will assist them in successful reentry back to Montana communities. Use of the crew helps DNRC accomplish needed work at a reasonable cost.

III. **Terms:**

A. **DOC agrees to provide:**

1. One crew consisting of five (5) inmates. The inmate crew will be dispatched for a maximum of fourteen (14) days per dispatch (excluding travel). The Crew may be a combination of inmates living at Montana Women's Prison (MWP) and Passage Center involved with the Culinary Arts Program.

2. Two MWP/MCE staff members, herein referred to as "DOC staff", to supervise the inmates and provide supervision and 24-hour security while on a fire assignment. The DOC staff shall receive training in fire safety and kitchen operations. A roster of approximately five trained DOC staff is needed to assure that two are available at any given time. DOC staff will also be responsible for operating vehicles normally used to transport the crew to a fire. Inmates will not be authorized to drive vehicles while on assignment under this Operations Plan.

3. A MWP Kitchen coordinator hereinafter referred to as a Kitchen Crew Supervisor.

The Kitchen Crew Supervisor or designee shall:

a) Screen inmates for acceptability on the inmate crew in accordance with Department of Corrections Policy 5.1.3 – Adult Offender Participation in a Community Work Program. Screening shall include a physical assessment and medical clearance to ensure the inmates can stand for long periods of time, work in inclement weather conditions, climb stairs, and lift thirty (30) pounds. Inmates convicted of arson, kidnapping, or a sexual offense are not eligible for the Kitchen Crew. An appropriate pool of inmates should be screened and available for training by April 15th of each year.

b) Coordinate training efforts with DNRC to ensure successful completion of all required DNRC training;

c) Ensure preparedness of the Kitchen Crew for dispatch, upon request, with a goal of being dispatched within 2 hours of a request;

d) Maintain a roster of eligible inmates and staff and request/arrange additional training from DNRC, as needed;

e) Maintain a valid driver's license to transport a portion of the crew to the fire location. The vehicle will be provided by the DNRC;

f) Prior to dispatch or repositioning of the Kitchen Crew, notify county law enforcement in the county where the crew will be located; and

g) Be responsible for personal gear bag inventory at the prison and/or Passages location before leaving and upon return.

4. Personal gear bags for all inmate crew members. These bags will be maintained and supplied by MWP/MCE with a fourteen-day supply of necessary personal items and clothing and personal hygiene. Personal gear bags will be stored in a designated secure storage area in the prison facility with the Kitchen Crew Supervisor responsible for inventory.

5. To perform further tasks as set forth in this Operating Plan.

B. DNRC agrees to provide:

1. Kitchen procedure and safety training to the inmates and DOC staff prior to any request for dispatch: The training will be held at least annually, prior to May 1. DNRC will conduct all training at MWP or Passages location(s), which will be determined in advance. If the training is at the Passages location, it is the responsibility of the DOC staff to transport the inmates to Passages. If the training is located at MWP, it is the responsibility of the Passage staff to transport the inmates to MWP. Further, DNRC shall determine the necessity of conducting additional training sessions based on need.

2. A minimum of one training drill to allow a practice run for the DNRC personnel, Kitchen Crew, DOC staff, and Passages Staff.

3. An appropriately trained and qualified Kitchen Boss, herein after referred to a Kitchen Operator and at least one additional staff member to supervise all kitchen activities of the

Crew. The Kitchen Operator will assist DOC staff when the Kitchen Crew is activated to ensure the security of the inmates and maintenance of public safety.

4. One or more vehicles for transportation of the Kitchen Crew and DOC staff to and from assigned fire location. All costs for transportation for the Kitchen Crew will be paid by DNRC.

5. Separate restroom/shower quarters that will be segregated from male firefighters.

6. The following equipment and supplies: one canvas tent with floor for sleeping quarters, a first aid personal care box that includes sun screen, bug spray, chap stick, ointment ,and band –aids; and fire shelters, cots, sleeping bags, and a red fire bag for each member of the Kitchen Crew and staff.

7. To perform further duties as set forth in this Operating Plan.

C. MCE and DNRC mutually agree to:

1. <u>Security</u>

a) The Kitchen Crew Supervisor and DOC staff will make all security decisions concerning the Kitchen Crew and whether a decision impacts security, it is within the sole discretion of the security staff. The Kitchen Crew Supervisor or designee and DOC staff reserves the right to order the return of the Kitchen Crew to the prison and/or Passages Center at any time if they determine there is a public safety risk with multiple inmates involved. Serious disciplinary infractions or security issues will result in the immediate termination of the fire assignment and the immediate return of the inmates to the prison.

b) The Kitchen Crew Supervisor or designee and DOC staff will provide supervision of the inmates at all times.

c) DNRC will provide adequate segregation of the Kitchen Crew and their belongings from all other fire fighters on the fire line and in fire camp, except during meals when the Crew will be working and serving other crews. Whether segregation is adequate, in any context, is within the sole discretion of the Kitchen Crew Supervisor and DOC staff.

d) Contact between inmates and members of the public, including other wild land fire crews or staff members, within reason, is prohibited at the discretion of the Kitchen Crew Supervisor or designee and DOC staff. This includes travel to and from the fire location and while at the fire location and in camp.

e) The Kitchen Crew shall be kept together in close, physical proximity to each other at all times.

f) The Kitchen Operator will distribute personal protective equipment and supplies necessary for the Kitchen Crew. All tools and equipment given to inmates will be accounted for at the beginning and end of each day. In addition, the Kitchen Operator, the Kitchen Crew Supervisor and DOC staff will account for all tools, equipment, and supplies upon return to the prison and prior to the inmates' return to the prison or Passages Center.

2. Training/Physical/Screening Requirements

a) MWP/MCE will appropriately screen inmates and DOC staff prior to consideration for inclusion on the Kitchen Crew.

b) MWP will determine the method for choosing staff to accompany the Kitchen Crew and will work with the union to ensure that there is an agreement on pay.

c) All DNRC personnel assigned to the Kitchen operation shall receive appropriate training by MWP/MCE relative to working with inmates. Training will take approximately four hours to complete and must be received prior to assignment with the Kitchen Crew.

3. Fire Dispatch and Notification Procedures

a) All requests to dispatch the inmate crew shall initiate from the Southern Area Fire Duty Officer. The Fire Duty Officer will in turn contact the Shift Commander at MWP. The Shift Commander will then notify the Kitchen Crew Supervisor. If the Kitchen Crew Supervisor or designee cannot be reached, the Shift Commander will contact the designated DOC Staff and notify the inmates of the dispatch. The Kitchen Crew Supervisor or designee will contact the Passages Center to notify them of the dispatch.

b) The request to dispatch will include the approximate pick-up time of the Kitchen Crew, subject to modification by the Shift Commander.

4. Billing and Compensation

a) DNRC shall compensate DOC for the services of the Kitchen Crew provided pursuant to Section 2. The rate for the Kitchen Crew will be per Attachment 1 of this Operating Plan and will be updated annually.

b) DNRC shall pay DOC in accordance with the Attachment 1 compensation table. DOC will charge DNRC for each inmate's hours (there is no overtime rate) and for the Kitchen Crew Supervisors and DOC Staff's overtime hours and hourly differential. Billable hours will include travel time to and from the assignment location, meals, and breaks. DOC will be responsible for payment of regular time (work hours up to eight hours per day) wages of the Kitchen Crew Supervisor and DOC Staff. In the event that the dispatch of the Kitchen Crew causes overtime at the facility, overtime for the substitute staff will be billed to DNRC.

c) Crew Time Reports (CTR) will be completed prior to the Kitchen Crew departure from the fire location and given to the Kitchen Crew Supervisor.

d) DNRC agrees to pay DOC within 30 business days after receiving all proper documentation from DOC.

e) The Agreement Number must be referenced on all invoices and correspondence pertaining to this Agreement (i.e., Operating Plan).

D. LIAISON AND NOTICE

1. Joan Daly, MWP warden (406-241-5112) and Gayle Lambert, MCE Administrator (406-560-2217) or successor serve as DOC liaisons.

2. Matt Wolcott, Southern Area Manager (406-247-4400) or successor serves as DNRC liaison.

3. All notices and invoices required in this Operating Plan shall be in writing, properly addressed to the liaison in (1) and (2) above.

E. HOLD HARMLESS AND INDEMNIFICATION

1. Each party agrees that it is financially responsible (liable) for its own respective audit exceptions, if any or other financial loss due to the negligence, intentional acts, or failure for any reason to comply with the terms of this Operating Plan.

2. Each party agrees to protect, defend, indemnify, and hold harmless the other party, its elected and appointed officials, agents and employees, from and against all legal, equitable or administrative claims, causes of action, damages, losses and expenses of any kind or character including but not limited to attorneys' fees and the cost of defense arising in favor of the other's employees or third parties on account of bodily injury, sickness, disease, death, personal injury, violation of inmates' constitutional or statutory rights or injury to or destruction of tangible property except for such claims, causes of action, damages, losses or expenses which are solely due to the fault or negligence of the party seeking indemnity unless said officials, agents, or employees are acting under the direction or control of the other party.

F. ACCESS AND RETENTION OF RECORDS

1. The parties are required to maintain reasonable records of performance of duties pursuant to this Operating Plan.

2. The parties agree to provide the other party, the Legislative Auditor, or their authorized agent with access to records concerning this Operating Plan.

3. The parties agree to create and retain all records supporting the services rendered for a period of three years after completion of this Operating Plan or the conclusion of any claim, litigation, or exception relating to this Operating Plan taken by the State of Montana or a third party.

G. PUBLIC INFORMATION

1. The parties recognize that this Operating Plan may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. The parties have a limited ability to assert a privacy interest in the subject matter of the Operating Plan. Each party agrees to hold the other 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.

H. AMENDMENTS

1. All amendments to this Operating Plan shall be in writing and signed by the parties.

I. COMPLIANCE WITH LAWS

1. The parties shall comply with all applicable federal and state laws including, but not limited to the prevailing wage laws, as applicable; 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.

J. CHOICE OF LAW AND VENUE

1. This Operating Plan is governed by the laws of Montana. The parties agree that any mediation, arbitration, or litigation concerning this Agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

K. FREEDOM FROM DISCRIMINATION

1. The parties to this Operating Plan agree that all hiring shall be done on the basis of merit and qualifications. The parties shall not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person or persons performing the Operating Plan.

L. LICENSURE

1. Each party agrees to be financially responsible for licenses, permits, and certifications necessary for the party to perform its duties under this Operating Plan.

M. INTEGRATION

1. This Agreement shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the agreement.

N. SEVERABILITY

1. If any part or parts of this Operating Plan are determined void, the remaining parts remain valid and operative.

O. NON-WAIVER

1. The waiver of failure to enforce any provision of this Operating Plan shall not operate as a waiver of any future breach of any such provision or any other provision.

IN WITNESS THEREOF, the parties have entered into and executed this Operating Plan:

SIGNATURES

The authority and format of this agreement has been reviewed and approved. This agreement will be effective as of the date of the last signature. This agreement will expire five (5) years from the last signature date. This Operating Plan may be terminated with 30 days written notice from either party to the other.

DOC

Date 5/11/16

Gayle Lambert, Administrator
Montana Correctional Enterprises

Date 5/13/16

Joan Daly, Warden,
Montana Women's Prison

DNRC

Date May 04 2016

Matt Wolcott
Southern Area Manager