OPERATING PLAN BETWEEN THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF NATURAL RESOURCES & CONSERVATION, SOUTHWESTERN LAND OFFICE

DNRC Agreement: 165111

I. **Parties:**

Department of Corrections (DOC)
Montana Correctional Enterprises (MCE) and Montana State Prison (MSP)
350 Conley Lake Rd
Deer Lodge, MT 59722
406-846-1320 x 2322

Department of Natural Resources and Conservation, (DNRC)
DNRC Southwestern Land Office
1401 27th Ave
Missoula, MT 59802

II. **Purpose:**

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

B. DNRC, as needed, will utilize DOC Deer Lodge Crew for fighting wildfires in Montana and other duties such as prescribed burns, pre-commercial thinning, fuels management, fencing, range management and other land management projects. Use of the Deer Loge Crew achieves the goal of utilizing state funds in a wise and prudent manner and provides the Deer Lodge 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 fifteen (15) inmates, and at least ten (10) inmates as back up, to fight fires in the state of Montana. The inmate crew will be dispatched for a maximum of fourteen (14) days per dispatch (excluding travel). The dispatch may entail assignments to different locations in Montana, subject to the prior approval of the MCE Administrator and, in the MCE Administrator's absence, the Shift Commander.

2. Three MSP/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 suppression, and will perform as squad bosses for suppression activities as well as performing their security function. A roster of approximately

nine trained DOC staff is needed to assure that three are available at any given time. DOC staff will also be responsible for operating two of the three 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 Deer Lodge Fire Crew coordinator hereinafter referred to as a Fire Crew Supervisor.

The Fire 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. Inmates convicted of arson, kidnapping, or a sexual offense are not eligible for the Deer Lodge Crew. A minimum of twenty-five (25) 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 Deer Lodge 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) Prior to dispatch or repositioning of the Deer Lodge Crew, notify county law enforcement in the county where the crew will be located; and
f) Be responsible for personal gear bag inventory at the prison location before leaving and upon return.

4. General and routine maintenance (i.e., chassis lubrication, oil changes, tire alignment and rotation, etc.) of fire and project vehicles that are provided by DNRC.

5. The DNRC vehicle normally stationed at MSP/MCE year-round as described in paragraph B 7 will be maintained and routine repairs undertaken by DOC at DOC expense. A regular preventive maintenance schedule shall be followed.

6. Maintenance to vehicles assigned by DNRC to the Deer Lodge Crew and dedicated for use only on DNRC fires or projects, and all repairs to those vehicles needed as a result of use on fires or DNRC projects are the responsibility of DNRC. Any alterations or modifications to the vehicles must be first approved by DNRC.

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

B. DNRC agrees to provide:

1. Fire suppression 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, and will require a minimum of three days to complete. DNRC will conduct all training at MSP/MCE. Completion of the required training and task books will qualify an individual inmate as a Firefighter and DOC staff as Advanced Firefighter (Squad Boss) under the guidelines of the

National Wildfire Coordination Group (NWCG). Further, DNRC shall determine the necessity of conducting additional training sessions, requested by MSP/MCE, based on projected fire suppression needs.

2. An appropriately trained and qualified Crew Boss to supervise all fire suppression activities of the Deer Lodge Crew. The Crew Boss shall travel with the crew from the time of dispatch until the crew is returned to the prison facility. The Crew Boss shall act as the official spokesperson for the Deer Lodge Crew while on a fire assignment and will assist DOC staff to ensure the safety and security of inmates and maintenance of public safety.

3. All personal protective equipment (hardhats, Nomex clothing, gloves, goggles, etc.) and fire suppression tools (shovels, Pulaskis, etc.) necessary to properly equip the inmate crew and DOC staff for fire suppression duties. (Work boots will be the responsibility of each crewmember. A leather boot with a lug sole and 8 inch top is required for fire suppression work.) DNRC will provide the Deer Lodge Crew with uniquely colored hardhats that will specifically identify them as members of the Deer Lodge Fire Crew. The inmate crewmembers will wear prison issued clothing while in camp.

4. Personal gear bags for all inmate crewmembers. These bags will be maintained and supplied by MSP/MCE with a fourteen-day supply of the necessary personal items and clothing.

5. Personal gear bags will be stored in a designated secure storage area at MSP/MCE with the Fire Crew Supervisor or designee being responsible for inventory.

6. Vehicles and one driver (Crew Boss) for transportation of the Deer Lodge Crew to and from the assigned fire location: Drivers must possess a valid driver's license necessary for the type of vehicle operated and the number of persons in the vehicle. All costs for transportation of the Deer Lodge Crew will be borne by DNRC.

7. A vehicle on loan to MSP/MCE for use by the Deer Lodge Crew when working on non-fire suppression projects:

   a) This vehicle will normally be stationed at MSP/MCE but DNRC may move it to another location for DNRC use with prior notification. The vehicle may be used for Deer Lodge Crew project work on MSP/MCE property or for other project work requested or authorized by DNRC. Incidental use to support MSP/MCE project work, such as traveling to Deer Lodge for supplies, is allowed. Operating costs will be paid by MSP/MCE for MSP/MCE projects or by DNRC for fire use or DNRC projects. Only the Fire Crew Supervisor or designee and DOC staff or DNRC employees may operate the vehicle.

8. All meals for the Deer Lodge Crew while on a fire assignment.

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

C. MCE and DNRC mutually agree to:

1. Security

a) The Fire Crew Supervisor or designee and DOC staff will make all security decisions concerning the Deer Lodge Crew. Whether a decision impacts security, it is within the sole discretion of the security staff. The Fire Crew Supervisor or designee and DOC staff reserves the right to order the return of the Deer Lodge Crew to the prison at any time. 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 Fire Crew Supervisor or designee and DOC staff will provide supervision of the inmates at all times.

c) DNRC will provide adequate segregation of the Deer Lodge Crew and their belongings from all other fire fighters on the fire line and in fire camp. Whether segregation is adequate, in any context, is within the sole discretion of the Fire Crew Supervisor or designee and DOC staff.

d) Contact between inmates and members of the public, including other fire crews or staff members, within reason, is prohibited at the discretion of the Fire 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 Deer Lodge Crew shall be kept together in close, physical proximity to each other at all times.

f) The Crew Boss will distribute personal protective equipment and fire suppression tools. All tools and equipment given to inmates will be accounted for at the beginning and end of each day. In addition, the Crew Boss, Fire Crew Supervisor or designee and DOC staff will account for all personal protective equipment and fire suppression tools upon return to the prison and prior to the inmates' return to the Work and Reentry Center.

2. Training/Physical/Screening Requirements

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

b) As a prerequisite to receiving fire suppression and safety training, all inmates and DOC staff must undergo a physical examination and receive medical clearance prior to engagement in any physical testing or training.

c) After receipt of proper medical authorization, each inmate and DOC staff must successfully complete NWCG training and the DNRC Pack Test to become eligible for the Deer Lodge Crew.

d) All DNRC personnel assigned as a Crew Boss shall receive appropriate training by MSP/MCE relative to working with inmates. Training will take

approximately four hours to complete and must be received prior to assignment with the Deer Lodge Crew.

3. **Fire Dispatch and Notification Procedures**

a) All requests to dispatch the inmate crew shall initiate from the Missoula Interagency Dispatch Center (MDC) to the Anaconda Unit, DNRC, Fire Duty Officer. The Fire Duty Officer will in turn contact the Shift Commander at MSP/MCE. The Shift Commander will then notify the Fire Crew Supervisor or designee. If the Fire Crew Supervisor or designee cannot be reached, the Shift Commander will contact the designated DOC Staff and call the WRC to notify them of the fire crew dispatch.

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

4. **Billing and Compensation**

a) DNRC shall compensate DOC for the services of the Deer Lodge Crew provided pursuant to Section 2. The rate for the Deer Lodge 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 and for the Fire Crew Supervisor's and DOC Staff's overtime hours (hours worked in excess of eight hours per day). The Fire Crew Supervisor and DOC staff shall be paid at the overtime rate for overtime hours. There is no overtime rate for inmates' overtime hours. 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 Fire Crew Supervisor and DOC Staff.

c) The DNRC Crew Boss and Fire Crew Supervisor or designee will sign all *fire line paperwork* to allow the Fire Crew Supervisor to turn it in to MCE/MSP upon return to the prison.

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. Ross Wagner, MCE Agriculture Director (846-1320 ext. 2322) or successor serves as DOC liaison. The MSP/MCE Shift Commander can be reached at 846-1320 ext. 2250.

2. Mike Meyer (563-6078) 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

Gayle Lambert Date 4/12/16
Gayle Lambert, Administrator
Montana Correctional Enterprises

Date 04/13/16
Leroy Kirkegard, Warden,
Montana State Prison

DNRC

Michael O'Herron Date 3-24-16
Mike O'Herron, Area Manager
Southwestern Land Office

Attachment #1

Current Personnel Rates for the Montana State Prison Crew

These rates apply to FIRE suppression projects only
Effective July 1st 2016 – June 30th 2017

Personnel Description	Rate Description	Overtime Rate Description
Inmate Fire Crew	$8.50 per inmate hour	N/A
Correctional Officers	No charge for 8 hours per day	$41.50 per hour
Fire Line Officer	$0.50 per hour for 8 hours per day	$1.00 per hour over 8 hours
Fire Camp Officer	$1.00 per hour for 8 hours per day	$2.00 per hour over 8 hours

DOC

Gayle Lambert Date 4/12/16
Gayle Lambert, Administrator
Montana Correctional Enterprises

Date 04/13/16
Leroy Kirkegard, Warden,
Montana State Prison

DNRC

Michael O'Herron Date 3-24-16
Mike O'Herron, Area Manager
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