

**FIRE CONTROL OPERATING PLAN
COR-RGINTGV-2023-0523-MCE**

THIS MOU is entered into by and between the State of Montana, **Montana Department of Corrections**, (COR), whose address and phone number are P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301 and (406) 444-3930, and **Department of Natural Resources and Conservation, Southwestern Land Office** (DNRC), whose address and phone number are 27th Ave, Missoula, MT, 59804, (406) 542-4263.

MONTANA DEPARTMENT OF CORRECTIONS HEREINAFTER REFERRED TO AS “COR” AND DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, SOUTHWESTERN LAND OFFICE HEREINAFTER REFERRED TO AS (DNRC), AS PARTIES TO THIS MEMORANDUM OF UNDERSTANDING (MOU) AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

1. EFFECTIVE DATE, DURATION, AND RENEWAL

This Memorandum of Understanding (MOU) shall take effect May 1, 2023 through April 30, 2026, unless terminated earlier in accordance with the terms of this MOU. This MOU may, upon mutual agreement and according to the terms of the existing MOU, be renewed in one (1)-year intervals, or any interval that is advantageous to Corrections. The MOU, including any renewals, may not exceed a total of seven (7) years.

2. PURPOSE

2.1 . This operating plan is to establish and define the specifics of an agreement for COR to provide an offender fire crew, herein referred to as Deer Lodge Crew (DLC), through their Montana Correctional Enterprises (MCE) and Montana State Prison (MSP) facilities, to be utilized only in Montana (MT).

2.2 . DNRC, as needed, will utilize COR DLC for fighting wildfires in MT and other non-wildfire duties such as prescribed burns, pre-commercial thinning, fuels management, fencing, range management and other land management projects. Non-wildfire duties will be called “special projects” throughout the remainder of the agreement.

2.3 . Use of the DLC achieves the goal of utilizing state funds in a wise and prudent manner and provides the DLC 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. The use of the crew helps DNRC accomplish needed work at a reasonable cost.

3. DUTIES/RESPONSIBILITIES OF PARTIES

3.1 COR Responsibilities. One (1) crew consisting of ten (10) to fifteen (15) offenders to fight wildfires in MT. MCE/MSP will begin screening offenders for the DLC in January of each year, to work towards alleviating an offender DLC shortage due to prison releases throughout the fire season. The DLC will be dispatched for a maximum of fourteen (14) days per dispatch, excluding travel time. The dispatch may entail assignments to different locations in MT, subject to the prior approval of the MCE Administrator and, in the MCE Administrator’s absence, the MSP Shift Commander.

3.1.1 . The number of MCE/MSP staff required to supervise the offenders for a twenty-four (24) hour period during a wildfire assignment will be dependent on the number of offenders available to be dispatched and the number of trained DNRC staff available.

3.1.2 . With the exception of when offenders are assigned to special projects, a minimum of two (2) staff will be assigned, one for dayshift and one for nightshift. A roster of five (5) to ten (10) trained COR staff is needed to assure an adequate number are available at any given time.

3.1.3 . COR staff will also be responsible for operating two (2) of the three (3) vehicles normally used to transport the DLC to a wildfire. Offenders will not be authorized to drive vehicles while on assignment under this Operations Plan.

3.1.4 . For special projects, without overnight stays, the DLC supervisor and up to ten (10) offenders may be dispatched.

3.1.5 . The DNRC staff receive COR offender supervision specific training. Training will take approximately four (4) hours to complete and must be received prior to assignment with the DLC.

3.1.6 . The DLC coordinator hereinafter referred to as a Fire Crew Supervisor. The Fire Crew Supervisor or designee shall:

- a) Screen offenders for acceptability on the inmate crew in accordance with Department of Corrections Policy 5.11.3 – Adult Offender Participation in a Community Work Program. Screening shall include a physical assessment and medical clearance. Offenders convicted of arson, kidnapping, or a sexual offense are not eligible for the DLC. COR will make every effort to have a minimum of twenty-five (25) offenders screened and available for training by April 15th of each year;
- b) Coordinate training efforts with DNRC to ensure successful completion of all DNRC training;
- c) Ensure preparedness of the DLC for dispatch, upon request, with a goal of being dispatched within two (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 DLC, 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 upon return;
- g) Scheduling general and routine maintenance (i.e., chassis lubrication, oil changes, tire alignment and rotation, etc.) of fire project vehicles provided by DNRC.
 1. The DNRC vehicles normally stationed at MCE/MSP year-round as described in subsection 3.2.5 will be maintained and routine repairs undertaken by COR at COR expense. A regular preventative maintenance schedule shall be followed.
 2. Maintenance to vehicles assigned by DNRC to the DLC 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.
- h) Perform further tasks as set forth in this Operating Plan.

3.2 DNRC Responsibilities. DNRC shall provide COR staff training in fire suppression and will perform as squad bosses for suppression activities as well as performing their security function.

3.2.1 . Fire suppression and safety training to the offenders and COR staff prior to any request for dispatch: The training will be held at least annually, ideally prior to May 1st and will require a minimum of three (3) days to complete. DNRC will conduct the majority of the training at MCE/MSP, however, there may be the need to also train off-site due to the type of training needed or extenuating circumstances. Completion of

the required National Wildfire Coordinating Group (NWCG) training will qualify an individual offender as a Firefighter. The Fire Crew Supervisor and COR staff will complete the required training and task book to qualify as an Advanced Firefighter (FF1) under the guidelines of the NWCG. Further, DNRC shall determine the necessity of conducting additional training session, requested by MCE/MSP, based on projected fire suppression needs.

3.2.2 . An appropriately trained and qualified Crew Boss to supervise all fire suppression activities of the DLC.

- a) The Crew Boss shall travel with the DLC from the time of dispatch until the crew is returned to the prison facility; and
- b) The Crew Boss shall act as the official spokesperson for the DLC while on a fire assignment in all matters pertaining to the fire assignment and will assist the Fire Crew Supervisor and COR staff to ensure the safety and security of offenders and maintenance of public safety. Matters concerning MCE/MSP shall be directed to the Fire Crew Supervisor (see subsection 3.3.1).

3.2.3 . All personal protective equipment (hardhats, Normex clothing, gloves, goggles, etc.) and fire suppression tools (shovels, Pulaskis, etc.) necessary to properly equip the DLC and COR 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 DLC with uniquely colored hardhats that will specifically identify them as a member of the DLC. The DLC members will wear prison issued clothing while in camp.

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

3.2.5 . Vehicles and one driver (Crew Boss) for transportation of the DLC to and from the assigned fire location: The Crew Boss and the Fire Crew Supervisor or other COR Staff 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 fire crew will be borne by DNRC.

3.2.6 . A vehicle on loan to MCE/MSP for use by the DLC when working on non-fire suppression projects: The vehicle will normally be stationed at MCE/MSP, but DNRC may move it to another location for DNRC use with prior notification.

- a) The vehicle may be used for DLC project work on MCE/MSP property or for other project work requested or authorized by DNRC. Incidental use to support DLC project works, such as traveling to Deer Lodge for supplies, is allowed.
- b) Operating costs will be paid by MCE/MSP for COR projects or by DNRC for fire use or DNRC projects. Only the Fire Crew Supervisor or designated COR staff or DNRC employees may operate the vehicle.

3.2.7 . DNRC will provide all meals for the DLC members while on a fire assignment.

3.2.8 . Perform further tasks as set forth in this Operating Plan.

3.3 COR and DNRC Mutual Responsibilities.

3.3.1 Security.

- a) The Fire Crew Supervisor or designated COR staff will make all security decisions concerning the DLC. When a decision impacts security, it is within the sole discretion of the Fire Crew Supervisor in his/her absence, COR staff. The Fire Crew Supervisor and COR staff reserve the right to order the return of the DLC to the facility 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 offenders to the facility.
- b) The Fire Crew Supervisor and designated COR staff will provide supervision of the offenders at all times.
- c) DNRC will provide adequate segregation of the DLC and their belongings from 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 designated COR staff.
- d) Limited contact, within reason, is allowed between offenders and members of the public, including other fire crews or staff members at the discretion of the Fire Crew Supervisor or designated COR staff. This includes travel to and from the fire location and while at the fire location and in camp.
- e) The DLC 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. The Crew Boss, Fire crew Supervisor or designated COR staff will account for all personal protective equipment and fire suppression tools upon return to the prison and prior to the offender's return to the Work and Reentry Center.

3.3.2 Training/Physical/Screening Requirements.

- a) MCE/MSP will appropriately screen offenders and COR staff prior to consideration for inclusion on the DLC.
- b) As a prerequisite to receiving fire suppression and safety training, all offenders and COR staff 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 offender and DOC staff must successfully complete NWCG training and the DNRC Pack Test to become eligible for the DLC.
- d) All DNRC personnel assigned as Crew Boss shall receive appropriate training by MCE/MPS relative to working with inmates.

3.3.3 Fire Dispatch and Notification Procedures.

- a) All requests to dispatch the offender crew shall initiate from the Missoula Interagency Dispatch Center (MDC) to Anaconda Unit, DNRC, Fire Duty Officer. The Fire Duty Officer will in turn contact the Fire Crew Supervisor or designee. The Fire Crew Supervisor will notify the Shift commander at MSP that the crew is being dispatched. If the Fire Crew Supervisor or designee cannot be reached, the Shift Commander will contact the Agriculture Director or other designated COR Staff, who will then make the calls to the Shift Commander and Work and Reentry Center to dispatch the DLC.
- b) The request to dispatch will include the approximate pick-up time of the DLC, subject to modification by the MSP Shift Commander.

4. BILLING AND COMPENSATION

4.1, DNRC shall compensate COR in accordance with Attachment A. Updates to Attachment A may be made upon approval of Southwestern Land Office (SWLO) area manager and MCE Administrator, and

at a minimum annually. COR will charge DNRC for COR staff hours worked, including eight (8) base hours, overtime, and shift differential and for each offender's working hours. Offender's hours will be paid straight without overtime. Billable hours will include travel time to and from the assignment location, meals, and breaks.

4.2 . The DNRC Crew Boss and Fire Crew Supervisor or designated COR staff will sign all fire line paperwork to allow the Fire Crew Supervisor to turn it in to MCE/MSP upon return to the prison.

4.3 . DNRC agrees to pay COR within 30 business days after receiving all the proper documentation from COR.

4.4 . The MOU number must be referenced on all invoices and correspondence pertaining to this MOU. (i.e. Operating Plan)

5. HOLD HARMLESS AND INDEMNIFICATION

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

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 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.

6. LIAISONS AND NOTICE

6.1 MOU Liaisons. All project management and coordination on COR's behalf must be through a single point of contact designated as COR's liaison. DNRC shall designate a liaison that will provide the single point of contact for management and coordination of DNRC's work. All work performed under this MOU must be coordinated between COR's liaison and DNRC's liaison.

Ross Wagner is COR's liaison
350 Conley Lake Road
Deer Lodge, MT 59722
(406) 415-6322
RWagner2@mt.gov

Jonathan Clark is DNRC's liaison
7916 HWY 1 W
Anaconda, MT 59711
(406) 563-6078
jclark2@mt.gov

Tyler Wolter MSP Fire Crew Supervisor
500 Conley Lake Road
Deer Lodge, MT 59722
(406) 560-1213
Tyler.Wolter@mt.gov

6.2 MOU Manager. COR's MOU Manager identified below is COR's single point of contact and shall perform all MOU management, on COR's behalf. Written notices, requests, complaints, or any other issues regarding this MOU should be directed to COR's MOU Manager.

Ashley Salmon is COR's MOU Manager
5 S. Last Chance Gulch
Helena, MT 59601
(406) 444-9649
Ashley.Salmon@mt.gov

6.3 Notifications. COR's and DNRC's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, email, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective on the third business day after mailing.

7. ACCESS AND RETENTION OF RECORDS

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

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

7.3 . The parties agree to create and retain all records supporting the services rendered for a period of three (3) 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.

7. PUBLIC INFORMATION

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.

8. AMENDMENTS

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

9. COMPLIANCE WITH LAWS

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 American with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, and MDOC Policy 1.1.17, Prison Rape Elimination Act to include incident reporting. COR has a zero-tolerance policy as to incidents of sexual assault/rape or sexual misconduct in its correctional facilities or premises.

10. TERMINATION AND DEFAULT

Either party may terminate this MOU without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the MOU shall provide written notice to the other, which notice will establish a termination date not less than thirty (30) days from the date of such notice.

11. INTEGRATION

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

12. SEVERABILITY

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

13. CHOICE OF LAW AND VENUE

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

14. FREEDOM FROM DISCRIMINATION

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.

15. LICENSURE

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

17. SEVERABILITY

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

18. NON-WAIVER

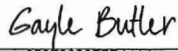
The waiver of failure to enforce any provision of the Operating Plan shall not operate as a waiver of any future breach of any such provision or any other provision.

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SIGNATURE

**STATE OF MONTANA
Montana Department of Corrections
5 S. Last Chance Gulch
Helena, MT 59601**

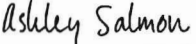
**Department of Natural Resources
DNRC Southwestern Land Office 1401
27th Ave
Missoula, MT 59804**

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Gayle Butler, Administrator Date
Montana Correctional Enterprises


 6-7-23
Mike O'Herron, Manager Date
Southwestern Land Office

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Jim Salmonsen, Warden Date
Montana State Prison

Approved as to Form by:

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Ashley Salmon, Contracts Officer Date
Financial Services Bureau

Approved as to Legal Content by:

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Iryna O'Connor, Legal Counsel Date
Legal Services Bureau

ATTACHMENT A

**Current Personnel Rates Charged DNRC for the MCE/MSP Deer Lodge Fire Crew (DLC)
 These Rates Apply to
 Fire suppression Projects effective 5/1/2023
 and
 Special Projects effective 5/1/2023**

Fire Suppression Project Charges		
Personnel Description	Rate Description	Overtime Description
Inmate Fire Crew	\$15.00 per inmate hour	N/A
Fire Line Staff	\$25.50 per hour for base eight hours (\$25 wage, plus \$.50 differential) for base eight hours worked	\$38.50 for overtime hours worked (\$37.50 wage, plus \$1.00 differential) for overtime daytime hours worked.
Fire Camp Staff	\$26.00 per hour for base eight hours (\$25 wage plus \$1.00 differential) for base eight hours worked.	\$39.50 for overtime hours worked (\$37.50 wage, plus \$2.00 differential) for overtime nighttime hours worked.

Special Project Charges		
Personnel Description	Rate Description	Overtime Description
Inmate Fire Crew	\$15.00 per day	N/A
Fire Crew Supervisor	No Charge	\$37.50 for overtime hours worked. (over 8 hours per day)