

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
Federal Prison Camp
Yankton, South Dakota**

AND

**DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
Omaha District
Gavins Point Project
Yankton, South Dakota**

for the provision of inmate labor on public work projects

Pursuant to authority contained in 18 U.S.C. § 4125(a), this Memorandum of Understanding (“MOU “ or “Agreement”), is entered into by and between the United States Department of Justice Federal Bureau of Prisons (“BOP”), Federal Prison Camp, Yankton, South Dakota (“FPC”), and the Department of The Army , U.S. Army Corps of Engineers, Yankton, South Dakota (“CORPS”, also known as Host Agency) who hereby agree as follows:

A. PURPOSE AND SCOPE:

1. This Agreement is intended to establish responsibilities and procedures for BOP inmates from “FPC” to provide labor to the “CORPS” for public work projects that may include, but are not limited to, the following: repair and maintenance work such as mowing lawns, painting, carpentry, cutting trees, maintaining flowerbeds, planting, and other custodial duties or similar work.
2. Nothing contained herein shall be construed to abrogate, impair, alter, or amend any other agreement now in effect between the parties on any other subject.
3. This Agreement supersedes any previously executed agreement between the parties on this same subject.

B. HOST AGENCY RESPONSIBILITIES. “CORPS” shall:

1. Designate Host Agency contact person(s) with primary responsibility for implementing this Agreement. The “CORPS” shall provide to “FPC” a written list of the name(s), title(s) and telephone number(s) for the Host Agency contact person(s), and

update it as necessary.

2. Identify specific work assignments to be approved jointly with the Warden, "FPC", consistent with the following conditions:

- a. Inmates shall work ONLY on the property of Host Agency.
- b. Hours of inmate employment, normally being 7:30 a.m to 3:00 p.m.
- c. The Commander, "CORPS" and the Warden, "FPC" shall identify sensitive areas on Host Agency property where inmates will not be employed.
- d. Inmates shall not be permitted to enter any area or building other than their assigned work area, including common use areas; e.g. Convenience Store, Post Office, etc., unless accompanied by the Host Agency supervisor.

3. Provide the following:

- a. All materials, tools and supplies necessary for the work assignment, and any special protective and/or safety equipment, as well as safety talks to the BOP inmates at least monthly.
- b. A safe and humane work environment.
- c. Fuel for the vehicle that transports the inmate between "FPC" and the "Corps".
- d. Emergency medical care and first aid to inmates, as well as immediate notice to "FPC" of a medical emergency or need for non-emergency medical care.
 - 1) For emergency medical care requiring immediate attention, transport the inmate(s) to the nearest available hospital or medical facility, as appropriate.
 - 2) For non-emergency medical care, transport the inmate(s) to "FPC".
- e. Technical supervision to the inmate workers.
 - 1) Host Agency supervisors shall be selected only after National Crime Information Center (NCIC) clearance and approval by BOP. In addition, Host Agency will ensure that Host Agency staff involved with BOP inmate-workers have no questionable background or history, and no prior or present social or other relationship with the BOP inmate-workers. FPC will provide a list of inmate-workers from which Host Agency supervisors will verify that no relationships exist.
 - 2) Host Agency supervisors, who will be trained by BOP staff, shall comply with relevant BOP policies, including the BOP Program Statement

on Standards of Employee Conduct as it relates to inmates, and shall ensure that:

a) inmate accountability is maintained through inmate detail cards furnished by the BOP.

b) visual contact with each inmate will be established no less-frequently than every two hours.

c) Host Agency staff do not knowingly provide inmates with money or access to vending machines, soft drinks, food, or any other contraband, which includes, but is not limited to, perfume, jewelry, hair extensions, clothing, watches, cosmetics, radios, firearms, explosives, weapons, ammunition, metal cutting tools, recording equipment, cellular telephones, cameras, computer equipment, tobacco, alcoholic beverages and controlled substances, including narcotics, marijuana, and prescription drugs.

d) Host Agency staff do not knowingly facilitate any visit between an inmate and an unauthorized person, or provide any inmate with access to other inmates at other work sites or use of telephones, facsimile machines, computers, computer terminals, computer systems, internet, or pda..

e) Host Agency staff do not knowingly provide the viewing of or allow the possession of pornographic materials, i.e. magazines, videos, and sexually explicit pictures.

f) at "CORPS" training sites, BOP inmates and Host Agency students are not permitted to ride together or share the Host Agency-provided transportation, or work on any tasks or projects together, for any reason, at any time.

g) Host Agency staff do not become emotionally, physically, or financially involved. Articles, favors, or services may not be exchanged between "CORPS" staff and "FPC" inmates or their families.

4. Submit to "FPC" monthly work reports and time sheets, and documentation of monthly safety briefings to the inmate-workers.

5. Immediately report to "FPC" any work deficiencies or unusual events, such as injuries, escapes or inmate misconduct, and refer to "FPC" any inquiries related to BOP inmates.

6. Ensure that work performed by inmate labor will not displace regular Host Agency employees, supplant employment opportunities ordinarily available within the Host Agency, impair existing contracts for services, or exploit inmate labor.

7. Retain the right to reject any inmate at any time and may return any inmate to "FPC" from the work site at any time, along with documentation of the reason(s) for the inmate's return.

C. BOP RESPONSIBILITIES. "FPC" shall provide:

1. A maximum of 10 BOP inmates approved by the Warden to participate in the jointly determined "CORPS" work assignments.

a. Inmates shall be selected on the basis of their institution history, their mental and physical competence, and suitability for the specific work assignment. To be eligible for a "CORPS" work assignment, the BOP inmate must have a community custody classification, demonstrated good behavior, a positive attitude, and represent a low risk to work supervisors and the general public.

b. Inmates will NOT be assigned to Host Agency work projects if they:

- 1) are formerly from the local area or have a prior personal or contractual relationship with the Host Agency;
- 2) have a history of serious violence, escape or sexual offenses;
- 3) refuse to participate in the Inmate Financial Responsibility Program;
- 4) are incarcerated for immigration violations or have any detainer;
- 5) have recent drug or alcohol abuse violations, refused to participate in a mandatory or court-recommended drug or alcohol program, or if current offense indicated a managerial role in a drug operation;
- 6) have a Central Inmate Monitoring category of broad publicity or sophisticated criminal for drug or white-collar crime, or if there are concerns the inmate may cause undue public attention.

c. The number of inmates selected for work assignments will be based upon the number of suitable inmates available and the number requested for each Host Agency work project.

2. Routine medical care, regular clothing, and safety shoes.

3. Designated contact person(s) with primary responsibility for implementing this Agreement and who will visit the work sites regularly to substantiate attendance and discuss any problems or concerns. "FPC" shall provide to the Host Agency a written list of the name(s), title(s) and telephone number(s) for the "FPC" contact person(s), and update it as necessary.

4. Training for Host Agency staff in such areas as staff conduct, inmate accountability and supervision, inmate security, and any other training which would be beneficial to the supervision of work performed by BOP inmates.

a. This training shall be provided at no cost to the Host Agency;

b. Each Host Agency supervisor shall be given a copy of the BOP Program Statement on Standards of Employee Conduct.

5. Transport inmates to and from the "Corps" work site.

6. Meals during work hours.

7. Appropriate compensation to inmate workers in accordance with BOP regulations and policy.

D. ADDITIONAL EMPLOYMENT RULES, REGULATIONS, RESTRICTIONS. All BOP inmate workers provided under this Agreement shall:

1. be considered as employed pursuant to 18 U.S.C. § 4126, and covered for any injury under the provisions of the Inmate Accident Compensation System, 28 C.F.R. 301.

2. not be considered federal employees for the purpose of laws administered by the Office of Personnel Management and do not have title to any federal benefits such as insurance, retirement, and leave.

3. not be paid from Host Agency funds or receive any type of personal or private gratuity for work accomplished or services rendered.

4. continue to be subject to all laws of the United States and BOP regulations and policy relating to inmates, including but not limited to, custody, transfer, control, discipline, escape, and release.

5. not operate "CORPS" vehicles and equipment unless the inmate possesses a South Dakota State operator's license and has been given proper training in vehicle operation.

E. FINANCIAL RESPONSIBILITIES:

1. Any costs incurred by either party in implementing this Agreement are the

responsibility of that party.

2. Nothing contained herein shall be construed to violate the Anti-Deficiency Act, 31 U.S.C. § 1341, by obligating the parties to any expenditure or obligation of funds in excess of or in advance of appropriations.

F. GENERAL PROVISIONS.

1. PERIOD OF AGREEMENT. This Agreement shall become effective upon the date of final execution, defined as the date of the last signature below, and shall remain in effect indefinitely unless modified/terminated. This Agreement shall remain in effect during the term in office of any succeeding leadership of either party unless modified/terminated.

2. MODIFICATION. Either party may propose to modify this Agreement at any time. All proposed modifications shall become effective only upon the written concurrence of both parties. Operational details for specific work projects may be determined by consultation between the parties without requiring execution of a formal modification if both parties concur that the details are not substantive changes to this Agreement.

3. TERMINATION.

a. This Agreement may be terminated at any time by the mutual written concurrence of both parties or by either party giving 30 days advanced written notice to the other party.

b. Neither party shall be responsible for delays or failures in performance from acts beyond the reasonable control of such party, e.g., natural disasters; institution events or emergencies requiring lock-down, evacuation, or removal of inmates; or national security or terrorist events affecting the orderly operations of either party.

4. LIABILITY.

a. Other than BOP processing of inmate injuries covered under the Inmate Accident Compensation System, as provided above, each party shall be responsible for any liability arising from its own conduct and retain immunity and all defenses available to them pursuant to Federal law. Neither party agrees to insure, defend, or indemnify the other party.

b. Each party shall cooperate with the other party in the investigation and resolution of administrative actions and/or litigation arising from conduct related to the responsibilities and procedures addressed herein.

c. This Agreement is for the sole and exclusive benefit of the signatory parties and shall not be construed to bestow any legal right or benefit upon any other persons or entities.

5. DISPUTE RESOLUTION: In the event of a dispute between the parties, the parties shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

6. SURVIVAL AND SEVERABILITY:

a. The provisions of this Agreement which require performance after termination of this Agreement shall remain in force notwithstanding termination of this Agreement.

b. If any provisions of this Agreement are determined to be invalid or unenforceable, the remaining provisions shall continue in force and unaffected to the fullest extent permitted by law and regulation.

IN WITNESS WHEREOF, the undersigned, duly authorized officials have subscribed their names on behalf of the parties:

For the Federal Bureau of Prisons
Federal Prison Camp,
Yankton, South Dakota

For the U.S. Army Corps of Engineers
Omaha District

Archie B. Longley
Warden

Colonel David C. Press
Commander

DATE

DATE