

Special Conditions

***Applies to all Subrecipient Agreements and Grant Awards (herein referred to as "Award")
initiated by Montana Fish, Wildlife & Parks (herein referred to as "State")***

1. **SAM/UEI.** Subrecipient agrees to comply with applicable requirements regarding registration with the System for Award Management (SAM) (or with a successor government-wide system officially designated by OMB). Subrecipient agrees to obtain a Unique Entity Identifier (UEI) number and to maintain a current registration. The details and processes for registration are available at <https://sam.gov/entity-registration>. Subrecipient further provides that it shall not enter into any subaward, contract or other agreement using funds provided hereunder with any party listed on the SAM Exclusions in accordance with Executive Orders 12549 and 12689. The SAM Exclusions can be found at <https://sam.gov/content/exclusions>.

2. **Suspension/Debarment.** Subrecipient confirms it is not debarred, suspended, or otherwise listed on the System for Award Management (SAM) Excluded Parties List. 2 CFR 200 Appendix II (h).

3. **Single Audit Requirement.** Subrecipients are required to allow the State of Montana (State) access to Subrecipients' records and financial statements as required under the Uniform Guidance. Subrecipients who receive less than \$750,000 in federal funds during the fiscal year are exempt from audit but are required to have available records for review or audit by the State. Subrecipients who expend \$750,000 or more in federal funds during its fiscal year are required to have a single audit conducted in accordance with 2 CFR 200.514 or undergo a program-specific audit.

4. **Risk Assessment.** A risk assessment of the Subrecipient will be conducted before an Award is made. Subrecipients who are deemed "high-risk" may have additional monitoring requirements that may be imposed as per 2 CFR 200.332(e). Additional Risk Assessments may be completed on the Subrecipient if deemed necessary throughout the life of the Award.

5. **Subrecipient Monitoring.** As a condition of the Award, the Subrecipient understands the progress of this agreement will be monitored throughout the life of the Award. Additional requirements may be imposed throughout the life of the agreement if necessary to ensure the Subrecipient is able to fulfill its financial and performance responsibilities.

a. Additionally, onsite monitoring may be conducted by the State as requested. State may conduct onsite monitoring visit(s) with Subrecipient during this Agreement to ensure project goals and objectives as outlined in the SOW are on track. State will schedule the monitoring visit(s) with Subrecipient. Subrecipient's failure to participate in any monitoring visits, missing or rescheduling two consecutive monitoring visits, or Subrecipient's failure to make a good faith effort to resolve problems may result in termination of the Agreement.

6. **Federal Funding Accountability and Transparency Act of 2006.** 44 U.S.C. § 3501 ("FFATA"). As of October 1, 2015, recipients of federal awards and contracts, including the State, must comply with subrecipient reporting requirements under FFATA. Under FFATA, the State is required to report on newly issued first tier subawards of \$30,000 or more. The information reported will be made available to the public on the USASpending.gov website.

7. **Requirement to Report Potentially Duplicative Funding.** The Subrecipient agrees that if it currently has an open award of federal funds or if it receives a federal award other than this award, and those award funds have been, are being used, in whole or in part, for one or more of the identical cost items for which funds are being provided under this award, the Subrecipient will promptly notify, in writing, the State Project and Administrative Liaison listed on the Subrecipient Agreement Cover Form to eliminate any inappropriate duplication of funding.

8. **Rights to Inventions Made Under a Contract or Agreement.** Any discovery or invention that arises during the course of the contract shall be reported to the State. Subrecipient must comply with the

requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding federal agency.

9. **Copyright and Right to Use.** Any discovery or invention made, or data or text developed, or under development, as a result of work conducted under this Award, is subject to FEDERAL AGENCY requirements and regulations pertaining to reporting and patent rights and copyrights and rights in data. In any event, STATE and FEDERAL AGENCY shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, any patented or copyrightable property developed under this Contract.

10. **Program Income.** No projects administered by the State and funded through Federal funding sources should produce an income stream. See 2 CFR 200.1 Program Income definition for definition of what is considered program income. If there is a possibility that the project will produce income, the subrecipient must confer with the State's Project and Administrative Liaison listed on the Subrecipient Agreement Cover Form prior to commencement of project.

11. **Records Retention.** Subrecipient agrees to maintain financial (including personnel records) records, receipts, supporting documents and other records pertaining to all costs and expenditures incurred under this Award for a period of three (3) years following the submission of the final invoice. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings have been resolved. Award records shall be available for inspection by authorized representatives of the State. (2 C.F.R. 200.334).

12. **Access to Records.** Subrecipient agrees to provide State, Legislative Auditor or their authorized agents access to any records necessary to determine Award compliance. State may terminate this Award without incurring liability, for Subrecipient's refusal to allow access as required by this section. (18-1-118, MCA)

13. **Drug Free Work Place.** Subrecipient agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

14. **Reduce Text Messaging While Driving.** Pursuant to Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, 74 Fed. Reg. 51225 (October 1, 2009), the State encourages Subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this Award and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

15. **Seat Belt Provision.** The Subrecipient is encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

16. **Trafficking in Persons.** This Award is pursuant to paragraph (g) of section 106 of the Trafficking Victims Protections Act of 2000, as amendment (2 CFR §175.15).

17. **Equal Employment Opportunity.** Compliance with Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in U.S. Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by Subrecipients and their contractors or subrecipients.) Compliance with equal opportunity to participate in and benefit from programs described is available to all individuals without regard to their race, color, religion, national origin or ancestry, sex, age, handicap, disability, sexual

orientation, gender identity, military or veteran status or political affiliation. Complaints of discrimination should be sent to the Office of Human Resources, Montana Department of Fish, Wildlife & Parks, 1420 E. Sixth Avenue, Helena, Montana 59601.

18. **Copeland "Anti-Kickback"**. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in U.S. Department of Labor regulations (29 CFR Part 3). (All contracts and subawards for construction or repair.

19. **Historic Preservation Act**. Subrecipient shall review the Award to determine whether there is a need for approval under the Historic Preservation Act and, if so determined, will work with the State Historical Preservation Office to get that approval. This approval must be provided to the State before any ground disturbing activities proceed.

20. **Federal Prevailing Wage and other Requirement-Davis Bacon**. In all construction contracts and subcontracts in excess of \$2,000 the Contractor and all Subcontractors shall be subject to the federal Davis-Bacon Act (40 USC 276) as supplemented by the U.S. Department of Labor regulations (29 CFR Part 5).

21. **Procurement of recovered materials**. Subrecipients must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

22. **Prohibition of certain telecommunication/Video Surveillance**. The Subrecipient agrees it will not provide or use covered telecommunications equipment or services in the performance of this contract in compliance with 2 CFR 200.216. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, section 889.

23. **Clean Air and Water Act**. Compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, the Federal Water Pollution Control Act, Executive Order 11738, and Environmental Protection Agency regulations (406 CFR Part 15). Compliance with Montana Environmental Policy Act, § 75-1-101, et seq, MCA.

24. **Contract Work Hours and Safety**. Compliance with §§ 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by U.S. Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by awardees and subrecipients more than \$2,000, and more than \$2,500 for other contracts which involve the employment of mechanics or laborers.)

25. **Protection of Whistleblowers**. Compliance with 41 U.S.C. § 4712, Enhancement of Recipient and Subrecipient Employee Whistle Protection: (a) This Award, related subawards and related contracts over the simplified acquisition threshold and all employees working on this Award, related subawards and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 USC § 4712; (b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this Award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712; (c) The recipient shall insert this clause, including this paragraph, in all subawards and in contracts over the simplified acquisition threshold related to this Award.

26. **Lobbying**. Subrecipient agrees that it will not expend any award funds to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection

with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

27. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

28. Register to do Business in Montana. If required by law, Subrecipient agrees to register with the Montana Secretary of State. Business that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain guidance of their attorney or accountant to determine whether their activity is considered transacting business. If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665 or visit their website at <http://sos.mt.gov>.

29. Travel Costs. Travel and associated costs are only eligible if they are necessary for accomplishing the objectives in the Award and have been included in the approved budget. A Subrecipient may utilize its own travel policy and rates provided those rates do not exceed the State's or Federal GSA rates. Subrecipient must provide State with copy of their travel policy with signed Award.

- a. If the Subrecipient does not have a written travel policy, they must use the State's travel rates for personal vehicle mileage, per diem, and lodging. These can be found at <https://doa.mt.gov/employee-travel> under "Travel Resources - State Employee Travel Information."

1. **Vehicle Usage Rate.** Programs utilizing motor pool vehicles must utilize the State's motor pool rate (<https://mdt.mt.gov/business/wex-fuel.aspx>). The rate must be tracked per project and reported accordingly.

- b. Award funds may not be used to pay for out-of-state travel without prior approval from the State.
- c. Award funds cannot be used for costs and fees associated with cancelation or changes to travel, (i.e., airline, hotels, registration, etc.) unless approved by State.

30. Indirect Costs:

- a. A Subrecipient that has an established Federally Approved Indirect Cost Rate in place may request reimbursement for indirect costs. Some federal funding sources may limit the amount of indirect that may be assessed to funding awards. Subrecipients must provide a copy of the organization's Federal Indirect Cost Negotiation Agreement with the signed Award. The Subrecipient must provide the State a new Federal Indirect Cost Negotiation Agreement as applicable.
- b. **De Minimis Indirect Cost Rate.** If eligible, a Subrecipient may elect to use the "de minimis" indirect cost rate described in 2 CFR 200.414(f). The Subrecipient must advise the State in writing of both its eligibility and its election and must comply with all associated requirements of 2 CFR 200. The "de minimis" rate may be applied only to modified total direct costs.

31. **Buy America Build America Act.** As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program. Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- all manufactured products used in the project are produced in the United States this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and all construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

"**Construction materials**" includes an article, material, or supply that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall. "**Construction Materials**" does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

"**Domestic content procurement preference**" means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States. "**Infrastructure**" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

"**Project**" means the construction, alteration, maintenance, or repair of infrastructure in the United States.