

ATTACHMENT D – EXAMPLE FEDERAL PASS-THROUGH REQUIREMENTS

1. FEDERAL REQUIREMENTS

Contractor agrees to comply with the following terms and conditions as defined by the United States Code (<http://uscode.house.gov/search/criteria.shtml>), the Code of Federal Regulations (<http://www.ecfr.gov/>) applicable to the U.S. Environmental Protection Agency (EPA), and Presidential Executive Orders (<https://www.federalregister.gov/presidential-documents/executive-orders>) as they apply to the federal grant from the United States Environmental Protection Agency for Montana Nonpoint Source SFY23 Project Grant. Citations to the relevant portions of the U.S. Code, Code of Federal Regulations, and Executive Orders may be obtained at <https://sam.gov/content/home> by doing a keyword search for the CFDA number(s) referenced in Section **Error! Reference source not found.** The following provisions are incorporated into this Contract and shall be included by the Contractor in each subcontract or sub-tiered agreement under any subcontract it enters into in connection with this Contract:

1.1. Supersession (CFR). The provisions of this Section apply to contracted services funded by a federal grant award, and the provisions within it supersede any conflicting provisions of this Contract.

1.2. Drug Free Workplace (CFR). Contractor agrees to maintain a drug-free workplace. Contractor certifies, by signing this Contract that its employees and subcontractors will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this Contract.

1.3. Lobbying and Litigation (CFR). Contractor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence Congress or any federal agency in connection with the awarding of any federal/state contract, the making of any federal/state grant, the making of any federal/state loan, the entering into of any cooperative agreement, the extension, continuation, renewal, amendment, or modification of any federal/state contract, grant, loan or cooperative agreement, or any litigation against the United States, unless authorized under existing law. If any funds other than federal or state appropriated funds have been paid or will be paid to any person for influencing or attempting to influence Congress or any federal agency in connection with this Contract, grant, loan or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

1.4. Quality Assurance Project Plan (CFR). Contractor agrees to comply with any Quality Assurance Project Plan (QAPP) or Sampling and Analysis Plan (SA) as specified in Attachment A. These plans outline the procedures Contractor must follow to ensure the collection of samples, storage of data and writing of reports is of the highest quality to meet the needs of the project.

1.5. Debarment, Suspension, Ineligibility and Voluntary Exclusion (CFR). Contractor certifies that it and its principals: (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by any federal department or agency; (2) have not within a 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract;

been in violation of federal or state antitrust statutes, or been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in (2) above; and, (3) have not within a 3-year period preceding this Contract, had one or more contracts terminated for cause or default by any federal or state agency.

1.6. Procurement of Recycled Good (USC). In accordance with Section 6002 of the Resource Conservation and Recovery Act, when the purchase of an item exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more, Contractor and subcontractors shall give preference to the purchase of specific products containing recycled materials.

1.7. Use of Recycled Paper (EO). Contractor certifies that recycled paper will be used for all reports, documents, or other submittals prepared by Contractor under the terms of this Contract. This requirement does not apply to reports that are prepared on forms supplied by the federal awarding agency.

1.8. Equipment, Supplies and Materials

1.8.1. Any purchase of equipment required under this Contract must be approved in advance and in writing by the State prior to purchase by Contractor.

1.8.2. The title of equipment, defined as having a purchase price of over \$5,000 and a useful life of more than one year, acquired under this Contract, shall vest with the State or EPA if required. Contractor agrees to maintain the equipment in good working condition and provide accountability of the equipment per state law and rule concerning Asset Management.

1.8.3. At the conclusion of this Contract, equipment shall be returned in good working condition to the State or EPA at the conclusion of the contract. unless otherwise authorized in writing by the State and the Surplus Property Program of the Property and Supply Bureau of the General Services Division of the Montana Department of Administration. or EPA at the conclusion of the contract. Supplies and materials with a value of less than \$5,000, purchased for and used in completing the terms of this Contract shall be the property of Contractor.

1.9. Copyright And Right To Use (CFR)

1.9.1. The federal awarding agency has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed through sub-tier agreements for Federal purposes.

1.9.2. Examples of a Federal purpose include but are not limited to: (1) Use by a Federal agency and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in Federal agency documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as “co-regulators” or act as official partners with a Federal agency to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of the Federal agency’s authorization to the other grantee to use the copyrighted works or other data.

1.9.3. In accordance with item 6 of paragraph 1.9.2, contractor acknowledges that the Federal agency may authorize the use of copyrighted works or other data developed under this Contract as a result of:

1.9.3.1. The selection of another contractor to perform a project that will involve the use of the copyrighted works or other data or;

1.9.3.2. Termination or expiration of this Contract.

1.9.4. In addition, the Federal agency may authorize another contractor to use copyrighted works or other data developed with Agency funds to perform another service when such use promotes efficient and effective use of Federal funds.

1.10. Operation and Maintenance (EPA's § 319 Award). Contractor will assure continued proper operation and maintenance of all nonpoint source management practices that have been implemented for projects funded under this Contract. Such practices shall be operated and maintained for the expected lifespan of the specific practice, in accordance with commonly accepted standards, and as further set forth in any attachments to this Contract. Contractor shall include a provision in every applicable subcontract awarded under this Contract requiring that the management practices for the project be properly operated and maintained. Likewise, similar provisions shall be included in any sub-tiered agreements under any subcontracts.

1.11. Acknowledgement Requirements

1.11.1. Any reports, documents, publications or other materials developed for public distribution supported by this Contract shall contain the following statement:

"This project has been funded wholly or in part by the EPA under assistance agreements C9-99833619 and C9-99833621 to the Montana Department of Environmental Quality. The contents of this document do not necessarily reflect the views and policies of the EPA, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

1.12. Subcontracting Under Disadvantaged Business Enterprise (DBE) Program (CFR)

1.12.1. Contractor shall assure compliance with the DBE Program when subcontracting, which includes, along with disadvantaged business enterprises, minority and women's business enterprise (MBE/WBE). Contractor shall ensure that DBEs have the opportunity to compete for procurements subcontracted under this Contract by following the Six Good Faith Efforts noted below:

1.12.1.1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

1.12.1.2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

1.12.1.3. Consider in the Contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

1.12.1.4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

1.12.1.5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

1.12.1.6. If the Contractor awards subcontracts, require the subcontractor to take the steps in paragraph 1.12.1.1 through 1.12.1.5 of this Section.

1.12.2. Contractor shall employ the Six Good Faith Efforts regardless of whether Contractor has achieved its "fair share" objectives as described in Section 1.12.1.

1.12.3. Contractor shall ensure payment to a DBE subcontractor for satisfactory performance is no more than 30 days from the date Contractor receives payment from DEQ.

1.12.4. Contractor shall notify the State in writing prior to termination of a DBE subcontractor for convenience.

1.12.5. If a DBE subcontractor fails to complete work under the subcontract for any reason, Contractor shall employ the Six Good Faith Efforts when soliciting for a replacement subcontractor.

1.13. Buy American - Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. EPA will apply this provision in a manner consistent with United States obligations under international agreements. This term and condition shall not apply in any case or category of cases in which the Administrator of EPA or a designated Agency official finds that (1) applying the term and condition (a) would be inconsistent with the public interest ; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality ; or (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent. If the Contractor believes that this term and condition does not apply to a transaction financed with funds from this Contract either (1) because a waiver is appropriate or (2) the requirement is inapplicable to the transaction, the Contractor must submit, in writing, a detailed explanation for its position to EPA's project officer prior to entering into the transaction. The Contractor may not proceed with the transaction until it receives written approval from the Administrator or other designated Agency official.

1.14. Use of Funds for Refreshments or Meals. Contractor and any subcontractor must obtain prior approval from EPA through the State prior to using these funds for the purchase of light refreshments or meals served at meetings, conferences, training workshops, and outreach activities (events) unless the event has been specified in the approved work plan. Requests for approval must include:

1.14.1. An estimated budget and description for the light refreshments, meals, and beverages to be served at the event(s);

1.14.2. A description of the purpose, agenda, location, length and timing for the event;

1.14.3. An estimated number of participants in the event and a description of their roles.

1.15. Hotel-Motel Fire Safety. Contractor agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). The Hotel-Motel National Master List (<https://apps.usfa.fema.gov/hotel/>) may be used to determine if a property is in compliance, or to find other information about the Act.

1.16. Trafficking Victim Protection Act of 2000. The Contractor, Contractor's employees, and any subcontractor and subcontractor's employees, must not engage in any form of trafficking in persons, procure a commercial sex act, or use forced labor in the performance of services under this Contract or subcontract at any time during the period the Contract or subcontract is in effect.

1.17. Limit on Funds. Contractor and any subcontractor shall not use these funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

1.18. Protection Of Whistleblowers. In accordance with the [Whistleblower Protection Enhancement Act of 2012](#) (WPA) and the [Whistleblower Protection Act of 1989 Enhanced by the Act of 2012](#), and 41 U.S.C. § 4712, it is illegal for a Contractor's employee or an employee of Contractor's Subcontractor, to be discharged, demoted, or otherwise discriminated against for making a protected whistleblower disclosure. Any employee under this contract or any subcontractor, who believes they have been retaliated against for making a protected whistleblower disclosure may submit a retaliation complaint to the [OIG Hotline](#). Information regarding whistleblower protections is available from the [Whistleblower Protection Informational Brochure](#). Contractor is required to make this information available to its employees and any subcontractors, who are required to make the information available to their employees.

1.19. False Claim. Contractor and subcontractors agree to promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract or subcontracts awarded by the Contractor.