

Example Nonpoint Source Grant Contract Boilerplate Language

The following template is intended for reference only. It is subject to change, but should provide a reasonable representation of what an applicant could expect to see if awarded a nonpoint source grant contract.

Information highlighted in yellow would be addressed by NPSW Section. Items highlighted in blue would be provided by Water Quality Division Fiscal. Items in red are a placeholder for the federal pass-through requirements that will need to be incorporated once the grant award from EPA is received by DEQ. RED text are instructions for the person filling out the template and should be deleted when no longer necessary.

THIS CONTRACT is entered into by and between the State of Montana, Department of Environmental Quality (State), and **insert name of contractor** (Contractor), collectively the Parties, to **insert purpose**. This Contract is entered into in accordance with pertinent sections of Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, chapter 5.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1. Contract Term. The Contract's initial term is the date of contract final execution through [insert date], (e.g., December 15, 2026), unless terminated earlier as provided in this Contract. In no event is this Contract binding on the State unless the State's authorized representative has signed it. The State's authorized signatory for this Contract is the Contracts Officer for the Department of Environmental Quality, or their designee.

1.2. Contract Renewal. The State may renew this Contract under its then-existing terms and conditions, subject to potential cost adjustments described below in **Section 2**, in one-year intervals, or any interval that is advantageous to the State. The term of this Contract, including any renewals, may not exceed a total of 4.5 years.

2. COST ADJUSTMENTS

2.1. Cost Increase by Mutual Agreement. After the Contract's initial term and if the State agrees to a renewal, the parties may agree to a cost increase. The State is not obligated to agree to a renewal or a cost increase. Any cost increases must be necessary to complete or continue work within the scope of this Contract and cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

3. SERVICES

3.1. Contractor shall provide the State the services described in Attachment A – Scope of Work, attached hereto and incorporated herein by reference.

3.2. As part of the reporting requirements under the Federal Grant Award, Contractor and any subcontractors must have a unique entity identification number (UEI) and maintain active and current contractor profiles in the System for Award Management (SAM <https://sam.gov/content/home>) for the duration of this Contract.

3.3. Contractor must comply with reporting and billing requirements outlined in Attachment B – Billing Statement attached hereto and incorporated herein by reference.

4. WARRANTIES

Contractor warrants that the services provided will conform to the Contract requirements, including all descriptions, specifications, and attachments made a part of this Contract. The State's acceptance of services provided by Contractor shall not relieve Contractor of its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, the State may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

5. CONSIDERATION/PAYMENT

5.1. In consideration of services rendered pursuant to the Contract, the State agrees to reimburse Contractor up to a maximum of **\$xxx,xxx.xx** for the actual, reasonable, and necessary expenditures allowed in Attachment A – Scope of Work.

5.2. Contractor shall bill the State no more frequently than monthly and no less frequently than semi-annually, using the format and documentation detail required on Attachment B – Billing Statement, attached hereto and incorporated herein by reference, or in a mutually agreed upon format for the actual time and expenses incurred in the performance of the Contract. All invoices shall be submitted as an email attachment; the email itself is not an invoice and will not be treated as one.

5.3. Contractor shall include the Contract number on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, the State is not obligated to pay the invoice.

5.4. In accordance with §17-8-242, MCA, the State has 30 days to pay invoices. Contractor may, upon execution of this Contract, provide the State with its banking information in order to facilitate the State's electronic transfer of payments. The State shall reimburse Contractor within 30 days after receipt of each billing statement, contingent upon the following:

5.4.1. Payment for questioned costs may be withheld pending resolution and may require rebilling by Contractor or submittal of additional documentation, including any records required to be kept by Contractor;

5.4.2. For any period in which a progress report may be due, the payment for that period may be withheld pending receipt of the progress report, and acceptance and approval of any such report by the State;

5.4.3. 10 percent of total Contract amount may be withheld until final payment to ensure match requirements are met and all deliverables are received and accepted by DEQ;

5.4.4. The state may withhold payment if Contractor has not performed in accordance with the Contract; and

5.4.5. The State may request invoices be submitted at the beginning of June and September to allow for payment processing at fiscal year end (State and Federal, respectively). Failure to provide invoices early in these months may result in delayed payments. In such cases, Contractor shall not apply late fees or interest.

5.5. Contractor may not use the funds received under this Contract to supplant other Contractor budgeted expenses or funds.

5.6. This Contract is funded by Federal Grant No. C9 - 99833622 (Federal Catalog No. 66.460), from the U.S. Environmental Protection Agency (EPA) and by non-federal matching funds.

6. ACCOUNTING, AUDIT AND RETENTION OF RECORDS

6.1. Contractor shall maintain books, records, documents, other evidence directly pertinent to performance of work under this Contract and current accounting for all funds received and expended pursuant to this Contract in accordance with generally accepted accounting principles. Contractor's accounting system must be able to allocate costs associated with this Contract in a manner that keeps these costs separate from the costs of other contracts.

6.2. The State, the Legislative Auditor, the Legislative Fiscal Analyst, United States Environmental Protection Agency, and the Comptroller General of the United States, or their authorized representatives, have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to this Contract. Contractor shall maintain the records at the address of its contract manager in Section 24 and allow the entities in the preceding sentence to have access to them for review and copying during normal business hours for as long as the Contractor

retains the records under Section 6.5. This Contract may be terminated by the State upon any refusal of Contractor to allow access to such records.

6.3. Contractor shall disclose all information and reports resulting from access to the records maintained in Section 6.1 to any of the agencies referred to in Section 6.2.

6.4. Audits conducted under this section must be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing agency.

6.5. All books, records, reports, accounting, and other documents maintained by Contractor under this Contract must be retained for a period of eight years after either the completion date of this Contract, or the conclusion of any litigation, claim, audit or exception relating to this Contract taken by the State or a third party, whichever is later.

6.6. If an audit shows that Contractor has not complied with federal or state laws and rules concerning the handling and expenditure of the funds received under this Contract, including any grant-related income, Contractor must correct the areas of non-compliance within six months after DEQ receives the audit report.

7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

In accordance with §18-4-141, MCA, Contractor may not assign, transfer, or subcontract any portion of this Contract without the State's prior written consent; and the State may declare void any unapproved transfer, assignment, or subcontract. Any subcontracting of services under this Contract must be done in a competitive manner and ensure that subcontractor rates are justified and documented. Contractor is responsible for reporting subawards and executive compensation in accordance with 2 CFR §§ 170.100 – 170.330. Contractor is responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the State under this Contract.

8. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of defense thereof, to the extent caused by or arising out of Contractor's negligent acts, errors, or omissions in work or services performed under this Contract, including but not limited to, the negligent acts, errors, or omissions of any Subcontractor or anyone directly or indirectly employed by any Subcontractor for whose acts Subcontractor may be liable.

Use the following 3 clauses in place of the preceding clause when contracting with other state agencies, university systems, and an entity that is self-insured. Change the title of clause to HOLD HARMLESS, INDEMNIFICATION, AND INSURANCE REQUIREMENTS

8.1. Each party shall be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent required by law, and shall indemnify and hold the other party harmless from any such liability.

8.2. Each party shall maintain reasonable coverage for such liabilities, either through commercial insurance or a reasonable self-insurance mechanism under the provisions of Title 2, Chapter 9, MCA, at the minimums prescribed by law.

8.3. Each party shall provide the other party with a certificate of insurance upon request.

9. PREVAILING WAGE REQUIREMENTS

9.1. Montana Resident Preference. Should the nature of the work performed, or services provided, under this Contract meet the statutory definition of a "public works contract" under §18-2-401, MCA, Contractor and their subcontractors shall, unless superseded by federal law, give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or non-construction services in accordance with §18-2-401 through §18-2-432, MCA, and comply with all administrative rules adopted under these statutes.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with §18-2-403 and §18-2-409, MCA. If uncertain of legal requirements or applicable rates for this project or certain categories of workers, Contractor should seek clarification from the Montana Department of Labor and Industry (406-444-5600 / <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>) or the federal prevailing wage rate decisions in Montana at <https://sam.gov/content/wage-determinations>.

9.2. Standard Prevailing Rate of Wages. Unless superseded by federal law, all employees working on a public works contract must be paid prevailing wage rates in accordance with §18-2-401 through §18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in §18-2-401, MCA, in which the total cost of the Contract is greater than \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the Contractors, subcontractors, and employers shall pay during the public works contract. The rates applicable to this project will generally be the rates specified for heavy and highway construction or non-construction. The rates specified are minimum rates, and where the federal rate differs from the state rate, the higher of the two will be the required minimum.

Section §18-2-423, MCA, requires that employees receiving an hourly wage be paid on a weekly basis. Each contractor, subcontractor, and employer shall maintain payroll records in a manner readily capable of being certified for submission under §18-2-422 and §18-2-423, MCA, for not less than three years after the Contractor's, subcontractor's, or employer's completion of work on the public works contract.

For a public works contract calling for more than 30 months to perform, the standard prevailing rate of wages paid to workers must be adjusted 12 months after the date of the award of the public works contract per §18-2-417, MCA. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the Contract. This adjustment is the sole responsibility of Contractor and no cost adjustment in this Contract will be allowed to fulfill this requirement.

9.3. Notice of Wages and Benefits. In accordance with §18-2-406, MCA, all contractors, subcontractors, and employers who are performing work or providing services under a public works contract must post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the Contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with §18-2-422, MCA.

10. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with §39-71-401, §39-71-405, and §39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Proof of compliance must be submitted on an ACCORD form, or other similar form, and can be included with the proof of insurance required in **Section 13**. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration of insurance coverage or exemption, a renewal document must be sent to the Montana Department of Environmental Quality, Attn: DEQ Procurement, PO Box 200901, Helena, MT 59620-0901.

11. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, 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. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with §49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

12. NONDISCRIMINATION AGAINST FIREARMS MANUFACTURERS AND FIREARMS ASSOCIATIONS

Contractor shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and Contractor shall not discriminate during the term of the contract against any firearm entity or firearm association. This section shall be construed in accordance with 30-20-301, MCA.

13. REQUIRED INSURANCE

Include:

13.1. General Requirements. Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, Contractor's agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

Include:

13.2. Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

Include in all contracts where work is done *on-site*:

13.3. Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the State's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

Include in all contracts where the contractor is driving State employees or State property to the sites:

13.4. Specific Requirements for Automobile Liability. Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by Contractor.

Include:

13.5. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention is not effective unless it is declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Include:

13.6. Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, must be received by the State. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times. Failure to comply with this requirement may result in termination per Section 20 of this Contract.

*****REPLACE THE ABOVE CLAUSES IF: Contractor's insurance provided is the Montana Association of Counties (MACO) – THESE CLAUSES REPLACE THE FIRST GROUP OF INSURANCE CLAUSES. USE THE STANDARD HOLD HARMLESS/INDEMNIFICATION LANGUAGE. OTHERWISE, DELETE.**

13.7. General Requirements. The Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, and/or its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission by Contractor, and/or its agents, employees, assigns, or subcontractors.

13.8. Primary Insurance. Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

13.9. Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain coverage with combined single limits for bodily injury, personal injury, and property damage of \$750,000 per occurrence and \$1,500,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, representatives, assigns or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the State's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

13.10. Specific Requirements for Automobile Liability. The Contractor shall purchase and maintain coverage for bodily injury and property damage of \$750,000 per claim and \$1,500,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, representatives, assigns or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the State's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

13.11. Certificate of Insurance/Endorsements. A certificate of insurance must be received by the State prior to execution of this Contract. The certificate must indicate compliance with the insurance coverages and

the required limits set forth in this Section of the Contract. The required insurance must be maintained in force and effect by Contractor for the duration of the Contract. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, changes in status of policy, etc. Failure to comply with this requirement may result in termination per Section 20 (CONTRACT TERMINATION) of this Contract.

13.12. Participation by a local government in a risk-sharing pool authorized by § 2-9-211, MCA, that offers the required coverages meet the insurance requirements of this Contract.

REPLACE THE ABOVE CLAUSES IF: Contractor's insurance provider is the Montana Municipal Interlocal Authority (MMIA) – THESE CLAUSES REPLACE THE FIRST GROUP OF INSURANCE CLAUSES. USE THE STANDARD HOLD HARMLESS/INDEMNIFICATION LANGUAGE

13.13. General Requirements. Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work by Contractor, Contractor's agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

13.14. Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain coverage with combined single limits for bodily injury, personal injury, and property damage of \$750,000 per occurrence and \$1,500,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns or subcontractors.

The State, its officers, officials, agents, and employees are to be covered and listed as additional insureds under Contractor's insurance policy for liability arising out of activities performed by or on behalf of Contractor, including any products, completed operations, vehicles used, and premises owned, leased, occupied, or used under the Contract.

13.15. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

13.16. Certificate of Insurance/Endorsements. A certificate of insurance must be received by the State prior to execution of this Contract. The certificate must indicate compliance with the insurance coverages and the required limits set forth in this Section of the Contract. The required insurance must be maintained in force and effect by Contractor for the duration of the Contract. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, changes in status of policy, etc. Failure to comply with this requirement may result in termination per Section 20 (CONTRACT TERMINATION) of this Contract.

14. DISABILITY ACCOMMODATIONS

The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to the State's contract manager, identified herein. Interested parties should provide as much advance notice as possible.

15. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are formed in another state or country that are conducting activity in Montana must determine whether

they are transacting business in Montana in accordance with §35-8-1001, MCA. Such businesses may want to obtain the 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/Business/index.asp>.

16. 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 5.6**. 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:

16.1. 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.

16.2. 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.

16.3. 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.

16.4. Quality Assurance Project Plan (CFR). Contractor agrees to comply with any Quality Assurance Project Plan (QAPP) or Sampling and Analysis Plan (SAP) 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.

16.5. 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.

16.6. 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.

16.7. 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.

16.8. Equipment, Supplies and Materials

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

16.8.2. 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.

16.8.3. 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.

16.9. Copyright And Right To Use (CFR)

16.9.1. 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.

16.9.2. 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.

16.9.3. In accordance with item 6 of Section 16.9.2, contractor acknowledges that the Federal agency may authorize the use of copyrighted works or other data developed under this Contract as a result of:

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

16.9.3.2. Termination or expiration of this Contract.

16.9.4. 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.

16.10. 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.

16.11. Acknowledgement Requirements

16.11.1. 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 agreement C9 - 99833622 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."

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

16.12.1. 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:

16.12.1.1. 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.

16.12.1.2. 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.

16.12.1.3. 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.

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

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

16.12.1.6. If the Contractor awards subcontracts, require the subcontractor to take the steps in Section **16.12.1.1** through **16.12.1.5** of this Section.

16.12.2. Contractor shall employ the Six Good Faith Efforts regardless of whether Contractor has achieved its “fair share” objectives as described in Section 16.12.1.

16.12.3. 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.

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

16.12.5. 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.

16.13. 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.

16.14. 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:

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

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

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

16.15. 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.

16.16. 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.

16.17. 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.

16.18. 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 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.

16.19. 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.

16.20. Additional federal terms and conditions. As applicable, additional federal terms and conditions are published on EPA's website http://www.epa.gov/sites/default/files/2020-11/documents/epa_subaward_cross_cutter_requirements.pdf

17. CONFLICT OF INTEREST

17.1. For the purposes of the Montana Code of Ethics, Contractor and each of its employees and subcontractors, is a "public employee" for the purposes of this Section. As such, Contractor and each of its employees and subcontractors is subject to the requirements of Title 2, Chapter 2, MCA, regarding conflicts of interest, including but not limited to sections §2-2-104, §2-2-105, §2-2-121, and §2-2-201, MCA.

17.2. If the State discovers that an employee of Contractor or subcontractor is in violation of this Section, the State may, after consulting with Contractor, terminate this Contract or take other appropriate measures to address the conflict and Contractor shall reimburse the State for any services the State requires be performed by another Contractor that duplicate the services performed by the employee who violated this Section.

18. DISCLOSURE

18.1. Contractor shall notify the State of any actual, apparent, or potential conflict of interest with regard to any individual working on a work assignment or having access to information regarding a subcontract. Notification of any conflict of interest shall include both organizational conflicts of interest and personal conflicts of interest (which are defined as the same types of relationships as organizational conflicts of interest, but applicable to an individual). If a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict-of-interest situation.

18.2. Contractor certifies that it has identified all current employees and proposed subcontractor's employees that will perform work under this Contract and that have worked for the State in the last two years prior to submitting the solicitation request which resulted in the award of this Contract. Contractor further certifies that no former employee of the State of Montana or local government may work under this Contract for a period of twelve months after voluntary termination of public employment, if by working under the Contract the employee will take direct advantage, unavailable to others, of matters with which the employee was directly involved during the employee's public employment. Pursuant to §2-2-201, MCA, a former employee of state or local government may not, within 6 months following the termination of public employment, contract or be employed by an employer who contracts with the State of Montana or any of its subdivisions involving matters with which the former public employee was "directly involved", as defined in §2-2-201, MCA, during employment. Contractor further certifies it shall identify any new employees hired during this Contract that will perform work under this Contract and that have worked for the State of Montana in the last two years

prior to the submission of the solicitation request which resulted in the award of this Contract. Disclosure in all cases shall include the name of the agency and the nature of work performed by the employee.

19. CONTRACT TERMINATION

19.1. Termination for Cause with Notice to Cure Requirement. Either party may terminate this Contract in whole or in part for failure of the other party to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving the other party written notice identifying items not performed. The written notice must demand performance of the items not performed within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

19.2. Reduction of Funding. In accordance with §18-4-313(4), MCA, the State must terminate this Contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this Contract in a subsequent fiscal period. If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this Contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

19.3. Stop Work Order. The State may, at any time by written order to Contractor, require Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by the State after the order is delivered to Contractor. The order must be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of the order or any extension expires, Contractor shall resume work. The State Contract Manager shall make the necessary adjustment in the delivery schedule or contract price or both, and this Contract shall be amended in writing accordingly.

19.4. Terrorism, Suspension or Debarment, or Otherwise Ineligible. State has the absolute right to terminate the Contract, with three (3) day's written notice and without recourse in the following circumstances:

19.4.1. Contractor is listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control;

19.4.2. Contractor is suspended or debarred from doing business with the federal government as listed in the System for Award Management maintained by the General Services Administration;

19.4.3. Contractor violates a state or federal law or local ordinance applicable to Contractor's duties in this Contract;

19.4.4. Contractor is the subject of voluntary or involuntary bankruptcy or receivership proceedings; or

19.4.5. Contractor is found to be ineligible to hold the Contract under the laws of State.

19.5. Any termination of this Contract is subject to the exception that **Section 6**, relating to retention of and access to records, remain in effect.

20. EVENT OF BREACH – REMEDIES

20.1. Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- 20.1.1.** products or services furnished fail to conform to any requirement;
- 20.1.2.** failure to submit any report required by this Contract;
- 20.1.3.** failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval and breaching **Section 25.1** obligations; or
- 20.1.4.** financial inability to perform its obligations under this Contract.

20.2. Event of Breach by State. The State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

20.3. Actions in Event of Breach. Upon a material breach by either party, the non-breaching party may:

- 20.3.1.** terminate this Contract in accordance with **Section 19**, and pursue any of its remedies under this Contract, at law or in equity; or
- 20.3.2.** treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law or in equity.

21. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than 5 working days after the onset. If the notice is not provided within the 5-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

22. WAIVER OF BREACH

Either party's failure to enforce any Contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

23. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State's prior written consent. Products or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

24. CONTRACT MANAGER AND SERVICE OF NOTICES

24.1. Contract Manager. All project management and coordination on the State's behalf must be through a single point of contact designated as the State's contract manager. Contractor shall designate a contract

manager who will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between the State's contract manager and Contractor's contract manager.

insert name, or their designee or successor, is the State's contract manager.

Department of Environmental Quality

PO Box 200901

Helena, MT 59620-0901

Telephone:

Cell Phone:

E-mail:

insert name, or their designee or successor, is Contractor's contract manager.

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

E-mail:

24.2. Notifications. The State's contract manager and Contractor's contract manager may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the contract manager. Notice may be provided by personal service, 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 within three (3) business days of mailing. The party receiving a notice shall sign and date an acknowledgement of the notice and mail it to the sending party.

24.3. Identification/Substitution of Personnel. The personnel identified or described in Contractor's proposal shall perform the services provided for the State under this Contract. Contractor agrees that any personnel substituted during the term of this Contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under this Contract and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this Contract. The State reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

25. MEETINGS

25.1. Technical or Contractual Problems. Contractor shall meet with the State's contract manager, or other personnel to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise; such meetings will be coordinated by the State. The State shall provide Contractor a minimum of three full working-day's-notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

25.2. Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by

Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

25.3. State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

26. TRANSITION ASSISTANCE

If this Contract is not renewed at the end of the original term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor must provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If there are no established Contract rates, then the rate must be mutually agreed upon. If the State terminates a project, or this Contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the State may have sustained as a result of Contractor's breach.

27. CHOICE OF LAW AND VENUE

In accordance with §18-1-401, MCA, Montana law governs this Contract. If there is a dispute under this Contract the Parties will meet in person and attempt to resolve the dispute. If the dispute cannot be settled through negotiation, the parties agree that prior to resorting to litigation they will attempt to settle the dispute by nonbinding mediation administered by a neutral mediator agreed to by the parties.

Both parties waive objection to personal jurisdiction in the First Judicial District in and for the County of Lewis and Clark, State of Montana. Any litigation concerning this bid, proposal, or contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in **Section 8**.

28. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

29. PERSONAL PROPERTY TAX

All personal property taxes will be paid by Contractor.

30. SEVERABILITY CLAUSE

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

31. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

31.1. Contract. This Contract consists of [insert number] numbered pages, any Attachments as required, Solicitation #[enter the call for proposals], as amended, and Contractor's proposal, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is: (1) the Contract, (2) Attachments to the Contract, (3) Solicitation #[enter the call for proposals] as amended, and (4) Contractor's proposal as amended.

31.2. Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

32. WAIVER

The State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

33. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

NAME OF CONTRACTOR

DATE _____

BY: _____

NAME, Title

Address

DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE _____

BY: _____

REBECCA GREGG, Contracts Officer

Operations, Financial Services

PO Box 200901
Helena, MT 59620-0901

Approved as to Legal Content:

DATE _____

BY: _____

DEQ Attorney