FEMA-STATE AGREEMENT – 2019
FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM
STATE OF MONTANA

I. PURPOSE AND BACKGROUND

This is the annual FEMA-State Agreement for the Fire Management Assistance Grant (FMAG) Program (the Agreement) under Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. § 5187; in accordance with Title 44 of the Code of Federal Regulations (44 CFR) § 204.25 (*FEMA-State Agreement for fire management assistance grant program*). The State must have a signed and up-to-date FEMA-State Agreement before receiving federal funding for grant assistance under approved requests for FMAG Declarations. This Agreement between the United States of America through the Regional Administrator, Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS), and the State of Montana (State or Recipient) through the Governor governs all federal assistance FEMA provides the State for all FMAG Declarations approved pursuant to 44 CFR Part 204 (*Fire Management Assistance Grant Program)* throughout the calendar year 2019 which will be incorporated by amendment to this Agreement.

II. GENERAL PROVISIONS

A. GRANT AWARD PACKAGE.

Any federal grant award package issued under this Agreement will consist of this Agreement, the incorporated FMAG Declarations, and the Application for Federal Assistance (Standard Form (SF) 424), including Assurances- Non-Construction Programs (SF-424B) submitted by the State for each approved FMAG Declaration.

B. FEMA RESPONSIBILITIES.

FEMA may provide to the State funds in the form of federal grant assistance to support FMAG Program activity as authorized under Section 420 of the Stafford Act (42 U.S.C. § 5187), and FMAG Declarations approved under this Agreement.

C. STATE RESPONSIBILITIES.

1. The State agrees to comply with the Federal grant award terms and conditions set forth in the FMAG Declarations and this Agreement.

2. The State legislative authority for firefighting is found in MCA-Title 76 Chapter 13.

3. The State agrees to be the Recipient for all federal financial assistance provided under Section 420 of the Stafford Act (42 U.S.C. § 5187), the FMAG Declarations, and this Agreement.
   a. The State is accountable for the use of the funds provided.

b. The State of Montana will serve as the Recipient.

c. All other State Agencies applying for federal assistance will be designated as subrecipients.

4. The State agrees to serve as the "pass-through entity" with respect to the State's role in providing subawards and administering grant assistance provided to sub-recipients.

a. Recipient and pass-through entity have the same meaning as "Grantee," as used in governing statutes, regulations, and FEMA guidance.

b. A recipient is also a "non-federal entity" for grants administration purposes.

5. The State agrees to comply with, and will require all subrecipients to comply with, the requirements of all applicable laws and regulations, including the Stafford Act, Title 44 of the Code of Federal Regulations (C.F.R.) (*Emergency Management and Assistance*), 2 C.F.R. Part 3002 (implementing 2 CFR Part 200 (*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*)), and applicable FEMA policies and guidance.

a. The term "subrecipient" has the same meaning as "subgrantee," as used in governing statutes, regulations, and FEMA guidance.

b. A subrecipient is also a "non-federal entity" for grants administration purposes.

6. The State is required to maintain a FEMA-approved State Mitigation Plan (SMP) in accordance with 44 CFR Part 201(*Mitigation Planning*) as a condition of receiving certain forms of Stafford Act assistance.

a. The State must update its SMP every five years.

b. The State must have a FEMA-approved SMP that addresses wildfire risks and mitigation as required by 44 CFR §204.51(d)(2) to receive FMAG Assistance.

c. If the State does not have a FEMA-approved SMP as of the date of declaration of the FMAG Declaration, the State will submit its approvable SMP for FEMA review and approval within 30 days of the date of declaration. If the State fails to do so, FEMA will deny the State's application for assistance under the FMAG Declaration.

d. FEMA will not obligate funds until the SMP is approved. FEMA will cease obligating funds for open FMAG Declarations during any lapse period between expiration of the current SMP and approval of an updated SMP.

D. CERTIFICATIONS AND WAIVERS

1. The State officials named by the Governor as authorized to execute certifications and otherwise to act on behalf of the State are listed on **Attachment A** to this Agreement.

2. The State's Certification Regarding Lobbying is included as **Attachment B** to this Agreement. This certification complies with the Lobbying Prohibitions in the DHS Standard Terms and Conditions and with the FEMA regulations found at 44 CFR Part 18 (*New Restrictions on Lobbying*).

3. The State hereby waives any consultation process under Executive Order 12372 (*Intergovernmental review of Federal programs*) and 44 CFR Part 4 (*Intergovernmental Review of Federal Emergency Management Agency (FEMA) Programs and Activities*), for grants or other financial assistance under the Stafford Act for the FMAG Program and any FMAG Declarations approved under this Agreement.

4. The State will certify that all costs reported on an applicant's Project Worksheet for work performed are in compliance with the terms and conditions in this Agreement.

5. The State agrees on behalf of its political subdivisions and other recipients of FMAG Program assistance to ensure that subgrantees certify compliance, in accordance with required federal grant assurances and certifications, with the Clean Water Act, Endangered Species Act, National Historic Preservation Act, and other applicable environmental laws that apply to those subrecipients.

E. FEDERAL ASSISTANCE.

1. Federal assistance may be provided only for eligible costs incurred in the mitigation, management and control of a declared fire approved by FEMA for assistance and identified in a FMAG Declaration under an **Attachment C Amendment** to this Agreement in accordance with 44 CFR Part 204 (*Fire Management Assistance Grant Program*).

2. The Regional Administrator, in consultation with the Governor's Authorized Representative and the Principal Advisor (as appointed by the Forest Service, U.S. Department of Agriculture or the Bureau of Land Management, Department of the Interior), will establish the incident period for a declared fire. If the incident period for a declared fire extends into the next calendar year, federal assistance with respect to that fire is governed by the fire threshold and the FEMA-State Agreement in effect for the calendar year in which the incident period for the declared fire begins.

3. The State must meet the individual or cumulative fire cost threshold pursuant to 44 CFR § 204.51(b) (*Application and approval procedures for a fire*

management assistance grant - Fire cost threshold) prior to approval of the State's grant application (Standard Form (SF) 424, Request for Federal Assistance). The State must also have a current Administrative Plan and a FEMA-approved State Mitigation Plan (SMP) pursuant to 44 CFR Part 201 (*Mitigation Planning*) and § 204.51(d) (*Application and approval procedures for a fire management assistance grant – Obligation of the grant*) before FEMA approves the State's grant application.

4. Federal funding may be provided under the Stafford Act on a 75 percent Federal/25 percent non-Federal cost-sharing basis once the fire cost threshold is met.

5. The State agrees to make the non-federal cost share available.

6. All scopes of work and costs approved as a result of this Agreement, whether as estimates or final costs approved through subawards, project worksheets, or otherwise, will incorporate by reference the terms of this Agreement and must comply with applicable laws, regulations, policy and guidance in accordance with this Agreement.

F. CONTROLLING AUTHORITIES. This agreement is subject to the following governing authorities:

1. The Stafford Act, implementing regulations contained in 44 CFR, and FEMA policy and guidance.

2. "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards", 2 CFR Parts 200 and 3002.

3. The DHS Standard Terms and Conditions for grants in effect at the date of this Agreement found at https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions, which are hereby incorporated by reference.

III. FUNDING

A. PAYMENT PROCESS

1. FEMA will pay the State using the U.S. Department of Health and Human Services Payment Management System (HHS/Smartlink).

2. Payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR Part 205 (*Rules and Procedures for Efficient Federal-State Funds Transfers*) and Treasury Financial Management Manual, Volume 1, Part 4A-2000.

3. FEMA will use a "single obligation" system to process payments through a subaccount for each subaward. When FEMA identifies an overpayment, subject to the exhaustion of appeals, FEMA will deobligate the funds from the

subaccount. If there are insufficient funds in the subaccount, the State will have 30 days to reimburse FEMA. At that time, if there are still insufficient funds in the subaccount, FEMA will refer the amount to the FEMA Finance Center (FFC) for collection.

4. The State and subrecipients have no property interest in the funds contained in the HHS/Smartlink account. At any time during the lifecycle of the grant, FEMA may adjust the amounts available to the State in HHS/Smartlink due to grant amendments, partial and/or full grant terminations, closeouts, or other reasons.

B. **AVAILABILITY OF FUNDING.** FEMA and the State agree to take measures to deliver assistance as expeditiously as possible, consistent with federal laws and regulations. To that end, the following terms and conditions apply:

1. This Agreement does not comprise an award of any type of assistance authorized for FMAG Declarations and this Agreement does not obligate any federal funding. Rather, FEMA will separately make such award decisions for the assistance authorized for each FMAG Declaration.

2. If FEMA decides to make an award of federal assistance, such assistance will be made available within the limits of funds available from Congressional appropriations for such purposes.

3. FEMA may, in its sole discretion, if necessary because of limited funds, give first priority to emergency work for protection of public health and safety, and administrative costs for managing the disaster program.

IV. REPORTING

A. FEDERAL FINANCIAL AND PERFORMANCE REPORTS

1. Period of Performance of one year or less: The State will submit a complete and accurate Federal Financial Report, SF-425 and applicable performance information, 90 days from each FMAG Declaration's grant award performance period expiration date. These reports will constitute both the annual and final financial and performance reports for declarations with a period of performance of one year or less. This report is the final expenditure report reflecting the State's final expenditures and each governmental subrecipient's final expenditures under the federal award for the FMAG Declaration for purposes of Section 705(a) of the Stafford Act (42 U.S.C. § 5205(a)).

2. Period of Performance over one year: In the event that a declaration's period of performance exceeds one year, the State will submit interim, annual financial and performance reports, 90 days from expiration of the one year reporting period and final financial and performance reports, 90 days after expiration of the period of performance.

a. If the State has submitted all completed PWs approved for a particular subrecipient, the State will note in the remarks section of its next interim financial report:

i. That the report represents the final expenditures for a particular subrecipient;

ii. The name of that subrecipient; and

iii. The date on which the recipient submitted to FEMA a PW for each of that subrecipient's approved projects.

b. Confirmation. FEMA will confirm the annual SF 425 as the final expenditure report for that subrecipient only if the State has submitted all approved PWs for the subrecipient for the FMAG Declaration.

c. Governmental Subrecipients. This complete and accurate interim report is the final expenditure report for a governmental subrecipient's final expenditures for the FMAG Declaration for the purposes of Section 705(a) of the Stafford Act (42 U.S.C. § 5205(a)).

B. **PROJECT CLOSEOUT**

Project Closeout Report: In each instance where an FMAG application is not also a closeout request, the State will submit a final reconciliation report/subrecipient closeout request to FEMA as required by FEMA regulations and guidance within 180 days from the date the State or a subrecipient completes each project.

C. **ENFORCEMENT** FEMA may suspend drawdowns, provide other special conditions or take other authorized action pursuant to 2 CFR. § 200.338 (*Remedies for Noncompliance*) if the State does not submit accurate and timely reports.

D. **RECORDS RETENTION**

1. State Requirement. The State will retain records for 3 years, except in certain rare circumstances described in 2 CFR § 200.333 (*Retention requirements for records*), from the date it submits the final financial report, SF 425, to FEMA in compliance with 2 CFR § 200.333, notwithstanding the time period prescribed for subrecipients in subsection 2 below.

2. Subrecipient Requirement. The State will require subrecipients to retain records for 3 years from the date that the State submits to FEMA the final expenditure report for a FMAG Declaration, as described in Part IV, Reporting, Section A, Federal Financial And Performance Reports.

V. RECOVERY OF FUNDS

A. **IN GENERAL.** This agreement does not limit FEMA's right to disallow costs and recover funds based on a later audit or review during or after performance of the award to ensure compliance with the terms of the Agreement and award document, or the obligation of the recipient to return such funds, including funds paid to any subrecipient. Pursuant to the Debt Collection Improvement Act, as amended, and subject to section 705 of the Stafford Act (42 U.S.C. § 5205(a)), the recipient is liable to repay funds to FEMA if the recipient or subrecipient has ineligible underruns (for example, actual costs are less than the amount FEMA awarded based on initial estimates), knowingly or negligently withholds or misrepresents material information, or fails to complete work and comply with the terms of this Agreement or the approved award; or as a result of federal funds expended in error; or for costs that are unreasonable or otherwise disallowed. Upon adjudication of any other aforementioned conditions, a debt is established. FEMA and the State will follow the reimbursement procedures provided above in Part III, Funding, Section A, Payments.

B. **DUPLICATION OF BENEFITS.**

1. General. The State shall take all actions necessary and reasonable to ensure that all who receive federal assistance are aware of their responsibility to repay federal assistance that is duplicated by amounts available from insurance or any other source for the same purpose. FEMA may at any time pre-award or post-award adjust the level of funding provided to account for financial assistance provided from any other source for the same purpose as the federal assistance, or to account for benefits available for the same purpose from another source.

2. Insurance. Within his/her authorities, the Governor shall ensure, through the state agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster survivors and others who receive federal assistance. The State shall also take all reasonable steps to ensure that disaster survivors are aware of procedures for filing insurance claims, and are informed of any state procedures instituted for assisting insured disaster survivors.

C. **COOPERATION.** The State agrees, on its behalf and on behalf of its political subdivisions and other recipients of FMAGs to cooperate with the Federal Government in seeking recovery of funds that are expended in the mitigation, management and control of a declared fire identified in this Agreement against any party or parties whose intentional acts or omissions or whose negligence or other tortious conduct may have caused or contributed to the damage or hardship for which federal assistance is provided pursuant to the FMAG Program under Section 420 of the Stafford Act (42 U.S.C. § 5187). If applicable, FEMA will treat recovered funds as duplicated benefits available to the State in accordance with Section 312 of the Stafford Act (42 U.S.C. § 5155).

D. **STATE RESPONSIBILITIES.** The State is responsible for the recovery of federal assistance expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.

1. The State will adjust its expenditures as it recovers funding and will report these adjustments quarterly on the Federal Financial Report, SF 425.

2. The State will submit on its quarterly progress report a list of subrecipients from which they have not processed recoveries but from which recoveries are due FEMA.

3. The State is responsible for notifying FEMA of any potential debt as a result of federal funds expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.

4. The State shall report all cases of suspected fraud to the DHS Office of Inspector General. The State agrees to cooperate with any investigation conducted by the DHS Office of Inspector General.

5. The State shall cooperate with FEMA regarding any and all lawsuits that may result from the State or FEMA's attempt to recover funds or disallow costs.

E. **STATUTE OF LIMITATIONS.** The three-year statute of limitations limiting FEMA's ability to recover funds paid as provided for in Section 705(a) of the Stafford Act (42 U.S.C. § 5205(a)) begins with the State's submission of the "final expenditure report" as follows:

1. The statute of limitations for recovering funds directly from the State as the recipient (that is, funds not passed through to a subrecipient) begins to run on the date that the State submits to FEMA the last complete and accurate SF 425 (Federal Financial Report) for the relevant FEMA program, as required in Part IV, Reporting, Section A, Federal Financial and Performance Reports.

2. The statute of limitations for recovering funds the State passed through to a governmental subrecipient begins to run on the date the State submits to FEMA the final expenditure report for the governmental subrecipient for the relevant FMAG Declaration as follows:

   a. Period of performance of more than one year: The final expenditure report is the complete and accurate annual SF 425 in which the State indicates it reflects the final expenditures for the governmental subrecipient as required in Part IV, Reporting, Section A, Federal Financial and Performance Reports; and

   b. Period of performance of one year or less: The final expenditure report is the last complete and accurate SF 425.

F. **REFUNDS, REBATES AND CREDITS**. The State shall transfer to FEMA the appropriate share, based on the federal support percentage, of any refund, rebate, credit or other amounts arising from the performance of this agreement. The State shall take necessary action to effect prompt collection of all monies due or which may become due

and if applicable, to cooperate with the Federal Government in any claim or suit in connection with amounts due.

VI. PERFORMANCE PERIODS

The State will complete all grant awards activities, including all projects and/or activities approved under each grant award, within the time period prescribed in FEMA regulations, program guidance and on the award documents.

VII. REMEDIES FOR NONCOMPLIANCE

FEMA may take action as it determines appropriate under the circumstances including but not limited to withholding of payments, disallowance of costs, suspension or termination of the award if the State or sub-recipient fails to comply with applicable Federal statutes, regulations or the terms of this Agreement pursuant to 2 CFR § 200.338 (*Remedies for Noncompliance*).

VIII. ATTACHMENTS. Attached and also made a part of this Agreement are:

A. Attachment A, State officials authorized to execute certification and otherwise to act on behalf of the State;

B. Attachment B, Certification Regarding Lobbying and

C. Attachment C, Amendment adding FMAG Declarations to the FEMA-State Agreement for the Fire Management Assistance Grant Program.

IX. AMENDMENTS. This Agreement may be amended at any time by written approval of both parties.

X. SIGNATURES AND EFFECTIVE DATE.

A. COUNTERPART SIGNATURES. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

B. EFFECTIVE DATE. This FEMA-State Agreement becomes effective on the date of signature by the last Party.

Agreed:

Steve Bullock, Governor

3/19/19
Date

Lee K. dePalo, Regional Administrator

4/9/19
Date

FMAG FEMA-STATE AGREEMENT-2019
STATE OF MONTANA

ATTACHMENT A
STATE CERTIFICATION OFFICERS

1. The Governor hereby certifies that Sonya Germann is the Governor's Authorized Representative (GAR) empowered to execute on behalf of the State all necessary documents for the Fire Management Assistance Grant Program, including, submitting requests for fire management assistance declarations, applying for the initial grant award, approving and submitting subgrants and certification of claims to the Regional Administrator. Sue Clark, Mike DeGrosky, John Monzie, Delila Bruno and Jake Ganieany are the Alternate Governor's Authorized Representatives, and they are similarly empowered. Their specimen signatures follow:

GAR

Sonya Germann
Montana Department of Natural Resources & Conservation

Alternate GAR

Sue Clark
Montana Department of Natural Resources & Conservation

Alternate GAR

Mike DeGrosky
Montana Department of Natural Resources & Conservation

Alternate GAR

John Monzie
Montana Department of Natural Resources & Conservation

Alternate GAR

Delila Bruno
Montana Department of Military Affairs
Department of Emergency Services Division

Alternate GAR

Jake Ganieany
Montana Department of Military Affairs
Department of Emergency Services Division

2. The Governor hereby certifies that Sonya Germann, Sue Clark, Mike DeGrosky, John Monzie, Delila Bruno and Jake Ganieany are the officials of the State, authorized to execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all entities who receive Federal disaster assistance are in full compliance with FEMA nondiscrimination regulations (located at 44 CFR Part 7).

3. The Governor hereby certifies that Sonya Germann, Sue Clark, Mike DeGrosky, John Monzie, Delila Bruno and Jake Ganieany are the officials of the State who will execute compliance reports, carry out compliance reviews, and distribute information material as required by FEMA to ensure

that all entities who receive Federal disaster assistance are in compliance with the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Agreed:

Steve Bullock, Governor

3/19/19
Date

FMAG FEMA-STATE AGREEMENT-2019
STATE OF MONTANA

ATTACHMENT B
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

This certification is required by the regulations implementing the New Restrictions on Lobbying, 44 CFR Part 18. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Sonya Germann
Division Administrator, Forestry Division

Signature _____ Date 2-28-19