



**FEMA**

**FEMA-STATE AGREEMENT – 2022  
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), Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5187; executed in accordance with Title 44 of the Code of Federal Regulations (44 C.F.R.) § 204.25 (*FEMA-State Agreement for fire management assistance grant program*)). The State must have a standing FEMA-State Agreement and approved Administrative Plan before FEMA will obligate federal funds for grant assistance under approved requests for Fire Management Assistance Declarations. This Agreement between the Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS), and the State of Montana, through the Governor governs all federal assistance FEMA provides the State for all Fire Management Assistance Declarations approved pursuant to 44 C.F.R. Part 204 (*Fire Management Assistance Grant Program*) throughout the calendar year 2022 which will be incorporated by amendment to this Agreement.

**II. GENERAL PROVISIONS**

**A. GRANT AWARD PACKAGE.**

Any federal grant (which includes a cooperative agreement for purposes of this Agreement) 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), and Assurances-Construction Programs (SF 424D), when applicable, submitted by the State for each approved Fire Management Assistance Declaration.

**B. FEMA RESPONSIBILITIES.**

FEMA may provide federal assistance to the State in the form of federal grant assistance to support FMAG Program activity as authorized under Section

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420 of the Stafford Act (42 U.S.C. § 5187), and Fire Management Assistance 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 Fire Management Assistance Declarations and this Agreement.
2. The State legislative authority for firefighting is found in Montana Code 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 Fire Management Assistance Declaration(s), and this Agreement.
  - a. The State is accountable for the use of the funds provided.
  - b. The Montana Department of Natural Resources and Conservation (DNRC) will serve as the Recipient for the FMAG. The Montana Disaster and Emergency Services (DES) will serve as the Recipient for the HMGP Post Fire.
  - 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 subrecipients.
  - a. Recipient has 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 C.F.R. 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.

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- b. A subrecipient is also a “non-Federal entity” for grants administration purposes.
  - c. A subrecipient may also serve as a pass-through entity under certain circumstances in the Hazard Mitigation Grant Program (HMGP).
6. The State must meet the individual or cumulative fire cost threshold pursuant to 44 C.F.R. § 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, Application for Federal Assistance). The State must also have a current Administrative Plan and a FEMA-approved State Mitigation Plan (SMP) pursuant to 44 C.F.R. Part 201 (*Mitigation Planning*) and § 204.51(d) (*Application and approval procedures for a fire management assistance grant – Obligation of the grant*) before FEMA will approve the State’s grant application and obligate funds.
- 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 C.F.R. § 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 Fire Management Assistance 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, then FEMA will deny the State’s application for assistance under the Fire Management Assistance Declaration.
  - d. If the State’s FEMA-approved SMP lapses after the Declaration, then the State must submit its approvable SMP within 30 days of the lapse for FEMA review and approval. FEMA will cease obligating funds until the SMP is approved. FEMA will cease obligating funds for open Fire Management Assistance Declarations during any lapse period between expiration of the current SMP and approval of an updated SMP.
7. The State agrees to make the non-federal cost share available.

**D. CERTIFICATIONS AND WAIVERS**

- 1. Attachment 1 to this Agreement lists the State officials named by the Governor as authorized to execute certifications and otherwise to act on behalf of the State.

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2. Attachment 2 to this Agreement is the State's Certification Regarding Lobbying. This certification complies with the lobbying prohibitions in the DHS Standard Terms and Conditions and with the FEMA regulations found at 44 C.F.R. 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 C.F.R. Part 4 (*Intergovernmental Review of Federal Emergency Management Agency (FEMA) Programs and Activities*), for grants or other assistance under the Stafford Act for the FMAG Program, HMGP Post Fire, and any Fire Management Assistance Declarations approved under this Agreement.
4. The State must 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 and HMGP Post Fire assistance to ensure that subrecipients 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 subrecipient projects.

**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 Fire Management Assistance Declaration under an **Attachment C Amendment** to this Agreement in accordance with 44 C.F.R. Part 204 (*Fire Management Assistance Grant Program*) and for assistance under the HMGP Post Fire 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, then 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 commenced.

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3. 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.
4. 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.
5. Pursuant to Executive Order 13858 “Strengthening Buy-American Preferences for Infrastructure Projects,” FEMA encourages recipients to use, to the greatest extent practicable and consistent with the law, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States, in Public Assistance and Hazard Mitigation Grant Program eligible public infrastructure repair and construction projects affecting surface transportation, ports, water resources including sewer and drinking water, and power. Such preference must be consistent with the law, including cost and contracting requirements at 2 C.F.R. Part 200.

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

1. The Stafford Act, implementing regulations contained in 44 C.F.R., and FEMA policy and guidance.
2. The “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards,” 2 C.F.R. Parts 200 and 3002.
3. The DHS Standard Terms and Conditions for grants in effect at the date of this Agreement found at [DHS Standard Terms and Conditions | Homeland Security](#) which are incorporated by reference into this Agreement.

**III. TYPES OF FEDERAL ASSISTANCE**

**A. FIRE MANAGEMENT ASSISTANCE GRANT (FMAG)**

1. Period of Performance - FMAG. The initial period of performance for the FMAG is from the start of the eligible incident period and ends three years from the date of the Declaration.
2. Cost-Share – FMAG. FEMA funding for FMAG project costs will be limited to 75 percent of total eligible costs after appropriate reductions (such as for insurance), except as may be provided for in any subsequent cost share amendments to a Declaration, which will be incorporated into

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this Agreement by amendment. The State agrees to make available the non-Federal share of FMAG project costs.

3. Management Costs. Management costs under Section 324 of the Stafford Act (codified as amended at 42 U.S.C. § 5165b) are not authorized for the FMAG Program.
4. Direct Administrative Costs. The Recipient and all subrecipients may claim direct administrative costs associated with requesting, obtaining, and administering the FMAG award and subawards. Eligible direct costs include contract labor and travel costs and regular and overtime pay and travel expenses for permanent, reassigned, and temporary employees that assist in administering the FMAG award or a subaward. Funding for other direct administrative costs to administer the FMAG award or subaward, such as the purchase of equipment or supplies by a non-Federal entity or its contractor require prior approval by the Regional Administrator.
5. Indirect Costs. Indirect costs are allowable under the FMAG grant as described in 2 C.F.R. Part 200, including 2 C.F.R. § 200.414, except subrecipients may not claim indirect administrative costs. A non-Federal entity with a negotiated indirect cost rate agreement that desires to charge indirect costs to the FMAG grant award or subaward must provide a copy of its negotiated indirect cost rate agreement at the time of application. Applicants which are not required by 2 C.F.R. Part 200 to have a negotiated indirect cost rate agreement but are required by 2 C.F.R. Part 200 to develop an indirect cost rate proposal must provide a copy of their proposal at the time of application. Post-award requests to charge indirect costs will be considered on a case-by-case basis and based upon the submission of an agreement or proposal as discussed above.

**B. HAZARD MITIGATION GRANT PROGRAM (HMGP) POST FIRE**

1. Total Funding
  - a. FEMA will calculate the amount of funding available under HMGP Post Fire for each Declaration based on the 10-year national average of assistance provided under the fire management declarations for States. FEMA will provide two separate calculations: one for recipients that have standard mitigation plans and a higher calculation for recipients that have enhanced mitigation plans.
  - b. FEMA aggregates HMGP Post Fire funding from multiple events occurring in a fiscal year into one grant per recipient the first fire

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management declaration for that fiscal year, October 1 to September 30, unless the Recipient informs FEMA of the reasons for not aggregating. Aggregation will reset at the beginning of each fiscal year.

- c. In some cases, the first fire management declaration of FY 2022 may occur in CY 2022 and all FY 2022 HMGP Post Fire funding would be aggregated under that declaration, such that this Agreement will apply to that HMGP Post Fire award because the declaration occurred at some point between January 1 and September 30, 2022. Similarly, the first fire management declaration for FY 2023 may occur between October 1 and December 31, 2022, and all FY 2022 HMGP Post Fire funding would be aggregated under that declaration, such that this Agreement would then also apply to the HMGP Post Fire award for that declaration as well.
2. Cost-Share. FEMA funding for total HMGP costs, excluding management costs, will be limited to no more than 75 percent of total eligible costs after appropriate reductions. The State agrees to make available the 25 percent non-federal share of HMGP and, at its request, may provide a greater non-federal share of an activity cost.
3. HMGP Post Fire Management Costs
- i. Cost Share. FEMA funding for HMGP Post Fire management costs will be 100 percent of the total eligible management costs, which will be limited to 15 percent of the total award amount. The State may use up to 10 percent of the total award amount and subrecipients may use up to 5 percent of the subrecipient's total award amount. There is no non-federal share of HMGP Post Fire management costs.
  - ii. FEMA will provide management costs under the HMGP Post Fire program in accordance with its implementation of FEMA Policy #104-11-1, Hazard Mitigation Grant Program Management Costs (interim), dated November 14, 2018, except that FEMA will not provide multiple estimates of the amount of management costs available under HMGP Post Fire for the first Section 420-declared event, which will be included in the formal funding notification. The estimate will subsequently be increased as appropriate for each FMAG event that is aggregated. The recipient and subrecipient are eligible to apply for the total management cost award, subject to withholdings set forth in Section D of FEMA Policy #104-11-1 pertaining to closeout.

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4. Period of Performance – HMGP Post Fire
  - i. FY 2022. If FEMA awards the HMGP Post Fire grant for FY2022 under a Declaration occurring between January 1 and September 30, 2022, the initial period of performance is from the date of the Declaration and ends on March 30, 2026, which is 36 months after the close of the application period on March 30, 2023.
  - ii. FY 2023. If FEMA awards the HMGP Post Fire grant for FY 2023 under a Declaration occurring between October 1 and December 31, 2022, the initial period of performance is from the date of the Declaration and ends on March 30, 2027, which is 36 months after the close of the application period on March 30, 2024.
  
5. Period of Performance – HMGP Post Fire Management Costs
  - i. Recipient. The Recipient can claim management costs incurred up to whichever of the following occurs first:
    - a. 180 days after work is completed on the last non-management cost HMGP Post Fire project for the Declaration;
    - b. 180 days after the latest performance period on the last non-management cost HMGP Post Fire project for the Declaration; or
    - c. Eight years from the date of the Declaration.
  - ii. Subrecipient. A subrecipient can claim management costs incurred up to whichever of the following occurs first:
    - a. 180 days after work is completed for the Applicant’s last non-management HMGP Post Fire project for the declaration.
    - b. 180 days after the latest performance period for the Applicant’s last non-management cost HMGP Post Fire project; or
    - c. The recipient management cost project has been closed out.
  
6. Additional Terms and Conditions. Additional terms and conditions regarding implementation of HMGP Post Fire, including performance



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goals, may be included in an attached **HMGP Post Fire Programmatic Addendum**.

**IV. FUNDING**

**A. PAYMENT PROCESS**

1. Payment System. FEMA will pay the State using the U.S. Department of Health and Human Services Payment Management System (HHS/Payment Management System (PMS)).
2. Payments. Payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 (*Rules and Procedures for Efficient Federal-State Funds Transfers*) and Treasury Financial Management Manual, Volume 1, Part 4A-2000.
3. Overpayments. FEMA will use a “single obligation” system to process payments through a subaccount for each subaward. When FEMA identifies an overpayment as a potential debt, the State has 60 days to appeal that initial determination. Upon exhaustion of appeal rights, the State will have 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center (FFC) for collection. The preferred method of repayment is by electronic deposit of the amount owed directly into the applicable subaccount in the HHS/Payment Management System (PMS). Repayment by check to FEMA is also acceptable but less timely in applying the repayment to HHS subaccount for FEMA to deobligate the amount. The State should notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the State may request administrative offset of the amount owed against identifiable, allowable, allocable, and reasonable costs under the same subaward which have not yet been reimbursed by FEMA.
4. No Property Interest. The State and subrecipients have no property interest in the funds contained in the HHS/Smartlink/PMS account. At any time during the lifecycle of the grant, FEMA may adjust the amounts available to the State in HHS/Smartlink/PMS 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.

- i. This Agreement does not comprise an award of any type of assistance authorized for Fire Management Assistance Declarations and this

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Agreement does not obligate any federal funding. Rather, FEMA will separately make such award decisions for the assistance authorized for each Fire Management Assistance Declaration.

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

**V. REPORTING**

**A. FEDERAL FINANCIAL REPORTS**

1. Initial and Subsequent Quarterly Financial Reports. The state must submit a complete and accurate Federal Financial Report, SF-425, to the FEMA Regional Office 30 days after the end of the first Federal quarter following the first Federal award under the FMAG program and HMGP Post Fire. The Regional Administrator or designee may waive the initial report if the Declaration is of such magnitude and complexity that it would place an undue administrative burden on the State. Subsequent reporting requirements will not be waived. The State must submit quarterly financial status reports thereafter until closeout of the Federal grant award for each program funded. All reports are due on January 30, April 30, July 30, and October 30.
2. Quarterly Financial Report Content. If the State has submitted a final expenditure report for a project or subaward as stated in paragraph V.B. below, then the State will note in the remarks section of its next quarterly financial report:
  - a. If it is the last project for a subrecipient, that the report represents the final expenditures for a particular subrecipient;
  - b. The name of that subrecipient;
  - c. The project number; and
  - d. The date on which the recipient submitted to FEMA the project closeout report.
3. Confirmation. FEMA will review the SF-425 reports for accuracy and notification of final PW expenditures of subrecipients. FEMA will verify that

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all subrecipient PWs are complete and that the subrecipient is ready for closure and can be closed for the Fire Management Assistance Declaration.

**B. FINAL EXPENDITURE REPORT FOR PROJECT COMPLETION**

1. FMAG Project Final Expenditure Report

- a. The State must submit one or more FMAG Project Worksheets for each applicant as required by FEMA regulations and guidance, including 44 C.F.R. § 204.52.
- b. The State may submit a Project Worksheet where the applicant has completed all work and incurred all costs under that project and the State, as part of its submission, must certify that all costs on the Project Worksheet were incurred for work that was performed in compliance with FEMA laws, regulations, policy and guidance applicable to the FMAG Program as well as the terms and conditions set forth in this Agreement as required by 44 C.F.R. § 204.53. This submission would comprise the final payment of claim for the project.
- c. The State may also submit a Project Worksheet where the applicant has not completed all work and FEMA approves and awards the project based on an estimate of costs. In this case, the State must later submit a final reconciliation report within 180 days from the earlier of the end of the period of performance for project or completion of the project that identifies the total project cost and certifies that all costs on the Project Worksheet were incurred for work that was performed in compliance with FEMA laws, regulations, policy and guidance applicable to the FMAG Program as well as the terms and conditions set forth in this Agreement as required by 44 C.F.R. § 204.53. Such a final reconciliation report comprises the final payment of claim for the project.

2. HMGP Project Final Expenditure Report

- a. The State must submit a payment of claim to FEMA for each HMGP Post Fire project as required by FEMA regulations and guidance, including 44 C.F.R. § 206.438(d).
- b. The State must submit the final payment of claim within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.

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3. HMGP Management Cost Project Final Expenditure Report
- a. The State must submit a payment of claim to FEMA for each subrecipient's HMGP management cost project within 180 days after the earlier to occur of the following:
    - i. 180 days after work is completed on the subrecipient's last non-management cost HMGP project for the Declaration;
    - ii. 180 days after the latest project completion deadline of a subrecipient's non-management cost HMGP project for the Declaration; or
    - iii. Eight years from the date of the Declaration
  - b. The State must submit a payment of claim to FEMA for the State's HMGP management cost project within 180 days after the earlier to occur of the following:
    - i. 180 days after work is completed on the last non-management cost HMGP project for the Declaration;
    - ii. 180 days after the latest performance period of a non-management cost HMGP project for the Declaration; or
    - iii. Eight years from the date of the Declaration
  - c. Notwithstanding the deadlines in subsection (a) or (b), per 2 C.F.R. § 200.344, the state must submit final expenditure reports and payment claims within 120 days of the end of the period of performance for the Declaration.
  - d. Section 705(a) of the Stafford Act
    - i. FEMA will confirm the final project report in paragraphs 1, 2, and 3 as the final expenditure report only if the State has submitted all outstanding information and certifications required by applicable regulations and FEMA policy and guidance and the report is complete and accurate.

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- ii. The confirmed, complete, and accurate project closeout report is the “final expenditure report for project completion as certified by the grantee” for the purposes of applying Section 705(a) of the Stafford Act (codified as amended at 42 U.S.C. § 5205(a)).

**C. PERFORMANCE REPORTS**

1. Period of Performance: The initial period of performance of fire management assistance declarations will be from the start of the eligible incident period and end three years from the date of declaration.
2. Initial and Quarterly Reports. The State must submit quarterly progress reports commencing with the first calendar quarter following the initial obligation of Federal funds and continuing quarterly until the declaration is closed. The Regional Administrator or designee may waive the initial report if the Declaration is of such magnitude and complexity that it would place and undue administrative burden on the State. Subsequent reporting requirements will not be waived.
3. Performance/Progress Report Content. The State must include in its quarterly performance/ progress reports (OMB Form 1660-0017 PA and OMB Form 1660-0076 HMGP for FMAG and HMGP Post Fire, respectively) a status of project/subaward completion, amount of expenditures, and amount of payment for advancement or reimbursement of costs for each project/subaward funded under each of the programs authorized under this Agreement.
4. Project Cost Overruns. The State must submit project cost overruns requiring additional obligations to FEMA for review and approval. Where review and approval are not sought before incurring the costs of an overrun, there is no assurance that FEMA will reimburse such costs. In compliance with 44 C.F.R. § 206.438, the State must submit project cost overruns requiring additional HMGP Post Fire obligations to FEMA for review and approval before incurring costs.
5. Final Performance Report. The State must submit a final performance/ progress report 120 days from each program’s grant award performance period expiration date that addresses all approved activities and the performance goals outlined in the federal award.

- D. ENFORCEMENT.** FEMA may suspend drawdowns, impose other special conditions or take other authorized action pursuant to 2 C.F.R. § 200.339 (*Remedies for Noncompliance*) and 2 C.F.R. § 200.344 if the State does not submit accurate and timely reports. If the State does not submit all reports in accordance with

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section C above, then FEMA must proceed to close out with the information available within one year of the period of performance end date and must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system. This can require FEMA to make cash or cost adjustments and ineligible cost determinations, which may result in identifying a debt owed to FEMA.

**E. RECORDS RETENTION**

1. State Requirement. The State will retain records for 3 years, except in certain rare circumstances described in 2 C.F.R. § 200.334 (*Retention requirements for records*), from the date it submits the final financial report, SF-425, to FEMA in compliance with 2 C.F.R. § 200.334, notwithstanding the time period prescribed for subrecipients in subsection 2 below. If FEMA administratively closes the grant where no final SF-425 was submitted, then FEMA uses the date the grant was administratively closed as the start date for the 3-year record retention period.
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 project or subaward as described in Part V. B. above.

**VI. RECOVERY OF FUNDS**

- A. GENERAL. FEMA may disallow costs and recover funds based on the results of 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 IV, Funding, Section A, Payment Process.
- B. DUPLICATION OF BENEFITS.
  1. General. The State must take all actions necessary and reasonable to ensure that all who receive federal assistance are aware of their

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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, irrespective of whether they are actually received.

2. Insurance. Within his/her authorities, the Governor must 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 must 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 (codified as amended at 42 U.S.C. § 5155).

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

1. The State must adjust its expenditures as it recovers funding and will report these adjustments quarterly on the Federal Financial Report, SF-425, also referred to as the final expenditure report.
2. The State must 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 must notify FEMA of any potential debt as a result of federal funds expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.

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

1. General. The three year statute of limitations limiting FEMA's ability to initiate an administrative action to recover funds paid as provided for in Section 705(a) of the Stafford Act (codified as amended at 42 U.S.C. § 5205(a)) begins with the State's submission of the "final expenditure report" as stated in paragraph V.B. 1-3 above.
2. Initiation of an Administrative Action to Recover Payment. The initiation of an administrative action to recover payment includes FEMA's written notice to the State or a subrecipient of a questioned or disallowed cost or improper payment (including a request for information concerning such cost or payment) and written notice to the State or a subrecipient of a FEMA or third party review or audit.

- F. REFUNDS, REBATES AND CREDITS.** The State must 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 must 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.

**VII. PERFORMANCE PERIODS**

- A. PROGRAM/GRAND AWARD.** 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 this Agreement, FEMA regulations, program guidance and the award documents.
- B. Extensions.** The State must include with any written request for an extension the information and documentation to support the amendment and a schedule for completion as described in Federal regulations and FEMA guidance and policies. FEMA may approve subsequent work, monetary increase amendments, or activity time extension amendments only if the State submits all financial and performance reports to the Regional Office. FEMA will only approve extensions to the Federal grant award period of performance or project completion timelines (if applicable) that comply with program regulatory timeframes. FEMA will not approve extensions for delays caused by lack of non-federal share funding.



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**VIII. 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 subrecipient fails to comply with applicable Federal statutes, regulations or the terms of this Agreement pursuant to 2 C.F.R. § 200.339 (*Remedies for Noncompliance*).

**IX. ATTACHMENTS, PROGRAMMATIC ADDENDUMS, AND AMENDMENTS.**

**A. ATTACHMENTS.** Attached and made part of this Agreement are the following Attachments which contain terms and conditions applicable to all assistance provided under this Agreement:

- i. Attachment A: List of State Certification Officers
- ii. Attachment B: Certification Regarding Lobbying
- iii. Attachment C: Amendment adding Fire Management Assistance Declarations to the FEMA-State Agreement for the Fire Management Assistance Grant Program; and
- iv. Attachment D: Programmatic Addendums.

Attached and also made part of this Agreement are the following Programmatic Addendums, which unless indicated otherwise in Attachment 1, may be signed or agreed to on behalf of the State by the Governor's Authorized Representative (GAR) listed in Attachment 1, and are included on a case-by-case basis depending on the assistance designated and whether additional terms and conditions for implementation of specific assistance programs are needed:

- Hazard Mitigation Program Postfire Agreement for states

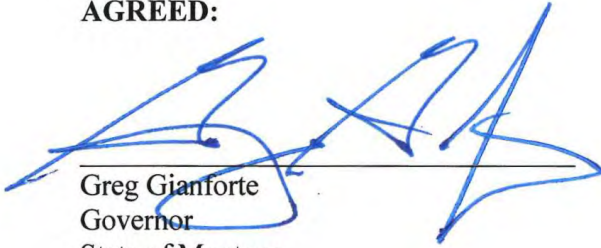
**X. SIGNATURES AND EFFECTIVE DATE.**

**A. COUNTERPART SIGNATURES.** This Agreement may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will 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 will 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.

**FMAG FEMA-STATE AGREEMENT-2022  
STATE OF MONTANA**

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

**AGREED:**



\_\_\_\_\_  
Greg Gianforte  
Governor  
State of Montana

5/2/22

\_\_\_\_\_  
Date

\_\_\_\_\_  
Nancy J. Dragani  
Regional Administrator  
FEMA Region 8

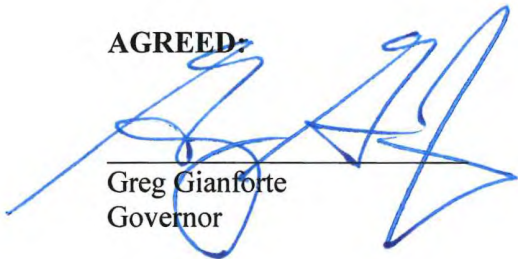
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Date

**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. Delila Bruno, Jake Ganieany, Matt Hall, John Monzie, Joanne Marceau, and Cory Calnan are the Alternate Governor's Authorized Representatives, and they are similarly empowered. FEMA accepts both stamped and electronic signatures documents if those forms are sufficient to bind the state under state law.
2. The Governor hereby certifies that Sonya Germann, Delila Bruno, Jake Ganieany, Matt Hall, John Monzie, and Joanne Marceau 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 C.F.R. Part 7, *Nondiscrimination in Federally-Assisted Programs*).
3. The Governor hereby certifies that Sonya Germann, Delila Bruno, Jake Ganieany, Matt Hall, John Monzie, and Joanne Marceau 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 Non-procurement Programs.
4. The GAR or Alternate GAR will submit a signed memo to the FEMA Regional Office stating any change in State officials.

Restrictions on approval authority of the above-named officials: None

**AGREED:**

  
\_\_\_\_\_  
Greg Gianforte  
Governor

5/2/22  
Date

**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 C.F.R. 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.
4. 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

04/18/2022

\_\_\_\_\_  
Date

**ATTACHMENT C  
DECLARATION AMENDMENTS**

**AMENDMENT NO. C-XX TO THE 2022  
FEMA-STATE AGREEMENT FOR THE  
FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM**

Placeholder for potential Fire Management Assistance Declarations

## ATTACHMENT D

### HAZARD MITIGATION PROGRAMMATIC ADDENDUM

#### Subpart A: Hazard Mitigation Grant Program Post Fire Agreement FM

#### 1. PURPOSE

The purpose of this HMGP Post Fire Agreement between the Federal Emergency Management Agency (FEMA) and Montana is to provide funding for hazard mitigation assistance under the Hazard Mitigation Grant Program (HMGP), Section 404 of the Stafford Relief and Emergency Assistance Act (“Stafford Act,” 42 U.S.C. 5121), CDFR No. 97.039, in any area affected by wildfire that received assistance under a fire management assistance declaration (Stafford Act, Section 420, 42 U.S.C. 5187), even if the President did not declare a major disaster.

#### 2. APPLICABILITY

**The Disaster Recovery Reform Act of 2018:** On Oct. 5, 2018, President Trump signed the Disaster Recovery Reform Act of 2018 (DRRA) into law as part of the [Federal Aviation Administration Reauthorization Act of 2018](#). The DRRA significantly amended the Stafford Act, with at least 50 provisions that require change to FEMA’s policy and regulations for full implementation. The DRRA reforms acknowledge the shared responsibility of disaster response and recovery, aim to reduce the complexity of FEMA and build the nation’s capacity for the next catastrophic event.

**Wildfire Prevention (Section 1204):** Section 1204 of the DRRA amended Section 404 and Section 420 of the Stafford Act (42 U.S.C. 5187) to provide hazard mitigation assistance under HMGP, whether or not a major disaster is declared, in areas affected by wildfire that received assistance under a fire management assistance declaration per Section 420. FEMA Policy #207-088-2: Hazard Mitigation Grant Program (HMGP) Post Fire (FEMA Policy) to implement the HMGP Post Fire program, as authorized by Section 1204. This assistance applies to FMAG declarations issued on or after October 5, 2018.

Except where otherwise indicated in the FEMA Policy, all statutory, regulatory, and programmatic requirements applicable to HMGP also apply to HMGP Post Fire. This includes, but is not limited to, the regulations at Title 44 of the Code of Federal Regulations (C.F.R.) Sections 206.430-440, 44 C.F.R. Part 80, and FEMA’s *Hazard Mitigation Assistance Guidance*,<sup>1</sup> substituting the term “FMAG event” for “disaster” or “major disaster,” where appropriate.

#### 3. GENERAL PROVISIONS

When a fire management assistance declaration is made under Section 420 of the Stafford Act triggering the availability of HMGP Post Fire assistance, the following provisions apply:

- a) The HMGP Post Fire federal contribution for each declaration is based on a national aggregate calculation of the average cost of fire management assistance declarations

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<sup>1</sup> FEMA’s Hazard Mitigation Assistance Guidance (February 27, 2015) is located at <https://www.fema.gov/media-library/assets/documents/103279>.

in the last ten years. States with a FEMA approved Standard Mitigation Plan receive a federal amount of 15% of the 10-year national average. States with a FEMA approved Enhanced Mitigation Plan receive a federal amount of 20% of the 10-year national average. Awards are subject to a cost share.

- b) Federally recognized Tribes with burned land as a result of the Fire Management Assistance Declaration have the option to apply for HMGP Post Fire funding as a direct applicant. If FEMA approves funding for the Tribal Applicant as well as the State, FEMA will apportion the amount of funding between the recipients based on the amount of burned acreage. Therefore, the funding amounts above are subject to change if apportionment occurs. FEMA Regional Administrators will have final authority on apportionment determinations.
- c) For multiple declarations made during the fiscal year, funding will be aggregated under the first declaration, and administered as one grant unless the Recipient informs FEMA of reasons for not aggregating. If the Recipient will not aggregate for this fiscal year, they must notify FEMA within 14 days of receipt of the first funding letter.
- d) The mitigation assistance will first be made available in the declared county or counties, including to Indian tribal governments with lands burned by the declared wildfires.
- e) Recipients will prioritize HMGP Post Fire projects in the following manner:
  - Activities that benefit the declared county, counties or burned tribal lands, with wildfire hazard mitigation projects such as defensible space measures, ignition resistant construction, hazardous fuels reduction, erosion control measures, slope failure prevention measures, or flash flood reduction measures.
  - Activities unrelated to wildfire hazard mitigation, such as generally allowable HMGP projects within the declared county or counties or burned tribal lands.
  - Activities related to wildfire hazard mitigation, such as generally allowable HMGP projects, outside of the declared county or counties or burned tribal lands.
  - Activities unrelated to wildfire hazard mitigation, such as generally allowable HMGP projects outside of the declared county or counties or burned tribal lands.
- f) For Statewide or tribal applications for projects outside of the declared or burned area(s), the recipient or subrecipient must explain in the project application why the funding will not be used in the declared or burned area(s).
- g) Applicants must detail their respective process, with deadlines, for implementing HMGP Post Fire in their HMGP Administrative Plan.

- h) The application period for the State, Territory or Federally recognized Tribe opens with the first FMAG declaration for the State or Territory of the current fiscal year and ends at 11:59 PM on March 31 of the next fiscal year.
- i) Under this Agreement, all applicable laws, Executive Orders, regulations, OMB Circulars and FEMA policies and guidance remain in effect except as modified by this Agreement.
- j) Unless modified by this agreement, the applicable hazard mitigation eligibility requirements under Section 404 of the Stafford Act, the regulations at 44 C.F.R. Part 80 and §§ 206.430-440, FEMA Policy #207-088-2, and the *Hazard Mitigation Assistance Guidance*, February 27, 2015, apply for the receipt of HMGP Post Fire assistance.
- k) If the State requests inclusion in the Program Administration by States (PAS) Pilot Program, and FEMA approves the State's request, an Operating Agreement will be executed and incorporated into this Hazard Mitigation Programmatic Addendum as Subpart B.

#### **4. CERTIFICATION**

- a) The Governor's Authorized Representative (GAR) hereby certifies that Sara Hartley is the State Hazard Mitigation Officer (SHMO) and is empowered to execute on behalf of the State all necessary documents for HMGP Post Fire.
- b) Montana DES will serve as the Recipient for HMGP Post Fire.

#### **5. STATE RESPONSIBILITY**

- a) The State agrees to comply with the federal grant award terms and conditions set forth in the FMAG, FEMA Policy #207-088-2, the applicable provisions of Sections 404 and 420 of the Stafford Act, the applicable regulations at 44 C.F.R. Part 80 and §§ 206.430-206.440, this Agreement and all provisions of the State Administrative Plan in place for each grant award.
- b) The State is required to develop a plan for the administration of HMGP Post Fire. FEMA will not obligate funds for HMGP Post Fire until a State Administrative Plan that incorporates the process for addressing HMGP Post Fire is approved by FEMA, in accordance with 44 C.F.R. § 206.437.
- c) The State is required to maintain a FEMA-approved State Mitigation Plan (SMP) in accordance with 44 C.F.R. Part 201 as a condition of receiving non-emergency Stafford Act assistance, which includes HMGP Post Fire assistance. FEMA will not obligate funds for HMGP Post Fire projects unless or until an SMP is approved by FEMA. FEMA will cease obligating funds during any lapse period between expiration of the current SMP and approval of an updated SMP.



- d) The State agrees to lead, manage and drive the overall post-wildfire recovery process and coordinate recovery activities and technical support by setting appropriate State policies. The State will coordinate with local governments, Tribal governments, and other federal agencies as appropriate, to lead and coordinate post-wildfire recovery planning and assistance to impacted communities.

## **6. AVAILABILITY OF FUNDING**

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

- a) If necessary, because of limited funds, FEMA may, in its sole discretion, give first priority to emergency work for the protection of public health and safety, and related administrative costs for managing the disaster program. FEMA will pay HMGP Post Fire funds when, and if, funds become available and will provide them in the order the applications are received.

## **7. CONSTRUCTION REQUIREMENTS**

Prior to the start of any construction activity, the State will ensure that all applicable federal, state, and local permits and approvals are obtained and all permit conditions are addressed including FEMA and recipient/subrecipient compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other applicable environmental laws and executive orders. All construction should be in accordance with approved permits, projects plans and specifications, applicable building codes and program guidance. Construction includes but is not limited to work that disturbs land or vegetation; work in or near water, including wetlands and floodplains; repair, renovation, retrofitting, relocation, demolition or other modification of buildings, structures or infrastructure; and new construction.

## **8. HMGP POST FIRE EXTENSIONS**

The State will include with any written request for an extension to the federal grant award period of performance information and documentation to support the extension and a schedule for completion. FEMA may approve subsequent work, monetary increase amendments, or activity time extension amendments only if the State submits all financial and performance reports to the appropriate Regional Office. FEMA will only approve extensions to the grant period of performance or project completion timelines (if applicable) that comply with program regulatory timeframes. FEMA will not approve extensions for delays caused by lack of non-federal share funding.

## **9. STATE HMGP POST FIRE AWARD PERFORMANCE METRIC**

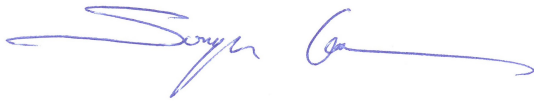
The following metrics will be used to measure performance:

- a) All performance reports must be complete and submitted on time. Information in reports must accurately describe award and subaward activities, including data related to the completion of individual property acquisitions. Incomplete performance reports which do

not provide information on all open awards and subawards or include all information required by the program guidance are not considered on-time.

b) All Federal Financial Reports (FFR), SF425 are complete and submitted on time.

**AGREED:**



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Sonya Germann  
Governor's Authorized Representative

04/18/2022

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Date

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Nancy J. Dragani  
Regional Administrator

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Date