
VOLUNTEER FIRE CAPACITY PROGRAM SUBAWARD AGREEMENT

F-215

File: 383.71

DNRC Subaward Number: **VFC-25-560** USDA FS GRANT #24-DG-11010013-037,

Federal Assistance Listing # 10.664, "Cooperative Forestry Program." County: Yellowstone
Agency: Yellowstone County

This subaward agreement (subaward) is made and entered into between Yellowstone County, hereinafter called the "Subrecipient", Federal ID No. 81-6001449, UEI #FNVKTJD3B7C1, and the Montana Department of Natural Resources and Conservation, Forestry Division, hereinafter called the "DNRC".

The parties to this subaward, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

SECTION 1: This subaward is effective on the date of the last signature and shall continue in force until the DNRC determines that the scope of the work described in Section 2 has been achieved, no later than May 1, 2025. Expenses may be incurred between July 1, 2024, to May 1, 2025.

SECTION 2: The Subrecipient agrees to complete the project subject to the Subrecipient's application and the terms and specifications set forth in Appendix A, attached hereto and incorporated herein by reference.

SECTION 3: Payment to the Subrecipient by the DNRC shall be made as claims for reimbursement are submitted by the Subrecipient and approved by DNRC. Each claim for reimbursement shall be supported by proper documentation to establish the costs incurred and paid. Costs incurred prior to this subaward are not eligible for reimbursement but may be counted as match funds upon prior written approval by DNRC. The Subrecipient shall maintain financial records in accordance with standard accounting methods to document all claims under this subaward until May 1, 2028, three (3) years after the date of expiration of this subaward.

The amount payable on each claim shall be ninety percent (90%) of the total amount billed by the Subrecipient and approved by the DNRC, with ten percent (10%) withheld until final payment. Final payment, including the amount withheld by the DNRC, shall be made when the project has been completed, approved, and accepted by the DNRC.

SECTION 4: The federal funds obligated to the project shall not exceed \$21,000.00. This subaward requires a match of 90:10 of federal to non-federal funds.

SECTION 5: The Subrecipient agrees to utilize trainers whose names appear on the Montana Office of Public Instruction certification roster in the structural training programs, and to utilize trainers approved by the DNRC in wildland fire training programs.

SECTION 6: Upon completion of all activities identified in Appendix A the Subrecipient agrees to furnish the DNRC with completed organizational plans, maps, and all other documents and papers prepared for the project along with a list of all trainees satisfactorily completing training and the total course hours by subject matter certified by the trainers involved for each trainee.

SECTION 7: For purposes of valuing match contributions, the Subrecipient agrees to a fixed rate per hour of \$30.84 or all contributed labor, and all volunteer training which is not a direct cost to the Subrecipient.

SECTION 8: The Subrecipient agrees that the Montana Legislative Audit Division, the Montana Legislative Fiscal Division, or the DNRC may audit all records which it keeps or has reason to maintain under the terms of this subaward. During the period of performance and extending after this subaward is terminated and closed, the DNRC reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit or other review.

SECTION 9: The Subrecipient is bound by the provisions set forth in the Cooperative Forestry Assistance Act of 1978, Public Law 95-313, as amended, and those provisions are herein incorporated by reference.

These grant funds are made available as a subaward under a federal award made by the U.S. Forest Service to DNRC. The Subrecipient must comply with the requirements of the Federal Office of Management and Budget (OMB) guidance in subparts A through F of 2 CFR Part 200 *Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards*. as adopted and supplemented by the USDA in 2 CFR Part 400. These regulations are available online at the following website: www.ecfr.gov

SECTION 10: It is understood between the parties hereto that the Subrecipient or its employees are not employees of the DNRC and are not covered by the DNRC's Workers' Compensation insurance. The Subrecipient is responsible for ensuring that it and its employees are covered by Workers' Compensation Insurance and that its contractors are in compliance with the coverage provisions of the Workers' Compensation Act.

SECTION 11-The Subrecipient agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Subrecipients' employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the the recipient and/or its agents, employees, representatives, assigns, subcontractors under this Subaward.

Subrecipient agrees to be financially responsible for any audit exception or other financial loss to the DNRC and the State of Montana which occurs due to the negligence, intentional acts, or failure by Subrecipient and/or its agents, employees, subcontractors, or representatives to comply with the terms of this Subaward.

INSURANCE REQUIREMENTS. (a.) General Requirements. Subrecipient shall maintain and shall assure that its representatives, assigns, and subcontractors maintain for the duration of the Subaward, at their own cost and expense, primary liability insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the duties and obligations in the Subaward by Subrecipient, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission. The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for all claims arising out of the use of subaward proceeds provided by the State of Montana.

(b.) Primary Insurance. Subrecipient's insurance coverage shall be primary insurance with respect to the State of Montana, its elected or appointed officers, officials, employees, or volunteers and shall not contribute with it.

(c.) General Liability Insurance. At its sole cost and expense, the Subrecipient shall purchase occurrence coverage with minimum combined single limits of \$1 million per occurrence and \$2 million aggregate per year, or when provided by statutory Tort limits of \$750,000 per claim and \$1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities, or towns, as authorized under Section 2-9-211, MCA.

(d.) Professional Liability Insurance. Subrecipient shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of \$750,000 per occurrence and \$1,500,000 aggregate per year. Note: if "occurrence" coverage is unavailable or cost-prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims-made policy must have a three (3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

(e.) Property Insurance. At its sole cost and expense, the Subrecipient shall maintain property and hazard insurance, including course of construction coverage, and earthquake insurance in areas where there is a shaking level above 10g. The shaking level for Subrecipient location can be determined at:
<http://rmt.d.mt.gov/Portals/62/aboutus/publications/files/NEHRP.pdf> for loss or damage for any building and all related improvements and contents therein on the premises on a replacement cost basis throughout the term of the Subaward.

(f.) General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana or by a domiciliary state and with a Best's rating of at least A-, or by a public entity self-insured program either individually or on a pool basis as provided by Title 2, MCA. All certificates and endorsements are to be received by the DNRC prior to beginning any activity provided for under the Subaward. The subrecipient shall notify the DNRC immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The DNRC reserves the right to request complete copies of Subrecipient's insurance policy at any time, including endorsements.

SECTION 12: The parties mutually agree that there will be no assignment or transfer of this subaward, nor of any interest in this subaward unless agreed to by both parties.

SECTION 13: The expenditure of any money or the performance of any work done by the Subrecipient is contingent upon the DNRC receiving funds under the Cooperative Forestry Assistance Act of 1978, Public Law 95-313, as amended. DNRC may, at its sole discretion, terminate or reduce the scope of this subaward if available funding is reduced for any reason. DNRC will provide Subrecipient at least 30 days' notice if termination of this subaward is determined to be necessary due to unavailability of funds. Until DNRC notifies Subrecipient that obligated funds are unavailable, DNRC will continue to comply with the terms of this subaward, including the disbursement of funds for eligible expenses incurred by Subrecipient up to the specified date and time of termination.

SECTION 14: Upon the failure of the Subrecipient to perform any of its obligations under this subaward, the DNRC may give notice to the Subrecipient in writing of the nature of its default and require the Subrecipient within a period specified in such notice, but not less than ninety (90) days, to correct its failure in compliance, and upon the Subrecipient's failure to do so, may terminate this subaward.

SECTION 15: During the performance of this subaward, the Subrecipient agrees as follows:

(a) The Subrecipient will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. The Subrecipient shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(b) The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) In the event of the Subrecipient's non-compliance with the non-discrimination clauses of this subaward or with any of such rules, regulations, or order, this subaward may, under Section 14, be canceled, terminated, or suspended in whole or in part and the Subrecipient may be declared ineligible for further DNRC subawards.

(d) NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The Subrecipient shall include the following statement, in full, in any printed audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

“In accordance with Federal law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, disability, and reprisal or retaliation for prior civil rights activity. (Not all prohibited bases apply to all programs.)

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, and American Sign Language) should contact the responsible State or local Agency that administers the program or USDA’s TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant’s name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

- (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, D.C. 20250-9410; o*
- (2) Fax: (833) 256-1665 or (202) 690-7442; or*
- (3) Email: program.intake@usda.gov.”*

If the material is too small to permit the full statement to be included, the material must at minimum, include the following statement, in print size no smaller than the text:

“This institution is an equal opportunity provider.”

(e) Subrecipient certifies that it will abide by all certifications and assurances set forth in USDA Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility & Voluntary Exclusion Lower Tier Covered Transactions," this form having been signed, attached hereto, and incorporated herein by reference. Per the terms of the federal award, the Subrecipient shall also require all second-tier subrecipients and contractors who will be paid with subaward funds to sign form AD-1048, and subrecipient shall keep completed forms on file.

(f) All work performed under this subaward must fully comply with all applicable federal, state, and local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, 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. Any subletting or subcontracting by the Subrecipient subjects subcontractors to the same provision. It shall be the Subrecipient's responsibility to obtain all permits, licenses, or authorizations that might be required from government authorities for completion of the project. Procurement of labor, services, supplies, materials, and equipment shall be conducted according to applicable federal, state, and local statutes. The DNRC's signature on this Subaward does not guarantee the approval or issuance of any permits, licenses, or any other form of authorization to take action for which Subrecipient must apply with the DNRC or any other government entity and submit to the DNRC to fulfill the terms of this Subaward.

(g) If the Subaward includes funds for Contracted expenses, the Subrecipient must comply with the requirements of Appendix II to Part 200 - *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards* of 2 CFR Part 200. Items of note include: Equal Employment Opportunity; Clean Air Act; Davis-Bacon Act; Contract Work Hours and Safety Standards Act; Rights to Inventions; Debarment and Suspension; Byrd Anti-Lobbying Amendment; Prohibition On Certain Telecommunications And Video Surveillance Services Or Equipment; and Domestic Preferences for Procurements.

(h) PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. The subrecipient is responsible for compliance with the prohibition on certain telecommunications and video surveillance services or equipment identified in 2 CFR 200.216. See Public Law 115-232, Section 889 for additional information.

In accordance with 2 CFR 200.216, the Subrecipient is prohibited from obligating or expending loan or grant funds for covered telecommunications equipment or services to: (1) procure or obtain, extend, or renew a contract to procure or obtain; (2) enter into a contract (or extend or renew a contract) to procure; or (3) obtain the equipment, services or systems.

(i) PROHIBITION AGAINST CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS. The Subrecipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department, an agency authorized to receive such information, the federal Office of Inspector General, or the DNRC.

Due to these requirements, prohibitions, and restrictions of any internal confidentiality agreements inconsistent with paragraph one of subsection (i) of this award provision are no longer in effect.

(j) WHISTLEBLOWER NOTICE. Per 41 U.S.Code § 4712, it is illegal an employee of the Subrecipient to be discharged, demoted, or otherwise discriminated against for making a protected whistleblower disclosure. In this context, these categories of individuals are whistleblowers who disclose information that the individual reasonably believes is evidence

of one of the following: gross mismanagement of a Federal contract or grant; a gross waste of Federal funds; an abuse of authority relating to a Federal contract or grant; a substantial and specific danger to public health or safety; or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

See 41 U.S.Code § 4712, regarding the disclosure requirements, procedure, remedial actions and remedies.

(k) TRAFFICKING IN PERSONS. The Subrecipient under this award and the Subrecipient's employees may not: (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect; (2) Procure a commercial sex act during the period of time that the award is in effect; or (3) Use forced labor in performance of the award or subawards under the award. The Subrecipient must inform the DNRC immediately of any information received from any source alleging a violation of a prohibition listed here.

SECTION 16: This subaward consists of six (6) numbered pages, Form AD-1048 ("Certification Regarding Debarment, Suspension, Ineligibility & Voluntary Exclusion – Lower Tier Covered Transactions"), to be signed by the Subrecipient and incorporated herein by reference, and Appendix A as noted. These documents are the entire agreement of the parties. Any amendment or modification must be in a written agreement signed by all parties and attached as an integral component of this subaward.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year written below.

Subrecipient

DNRC

By: John Ostlund

By: Dave Hamilton

Dave Hamilton, State/County Co-Op Fire Program Manager
Fire Protection Bureau
Forestry Division, Montana DNRC

Title: Commissioner

Agency: Yellowstone County

Date: 8/29/2024

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