

**STANDARD FORM OF CONTRACT BETWEEN DEQ AND CONTRACTOR
FOR LIMITED CONTRUCTION
BECK BORROW AREA REVEGETATION**

DEQ CONTRACT NO. 414013

This CONTRACT is between the CONTRACTOR (as stated herein below) and the STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY ("DEQ").

WITNESSETH, that Contractor and DEQ for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK. Contractor shall perform the Beck Borrow Area Revegetation in accordance with the Contract Documents: Invitation for Bid, this Contract, the Drawings and the completed Bid Form.

Contractor will drill seed a nearly level field using seed provided by DEQ without seedbed preparation. The field comprises approximately 325 acres of the Beck Borrow Area, located in Powell County, MT.

Contractor shall also provide the required mobilization, insurance required herein, together with all labor, materials, equipment, and incidentals necessary to complete the Work as specified in the Contract Documents.

ARTICLE 2. THE CONTRACT TERM. Contractor shall not commence work under this Contract before the Effective Date of this Contract, which shall be the latter of the two dates of signature. All work shall be completed no later than November 30, 2013.

ARTICLE 3. THE CONTRACT SUM. DEQ shall pay Contractor in accordance with the Lump Sum (Bid Item 1.0. Mobilization and Insurance) and Unit Price (Bid Item 2.0, Seeding) bid, as shown on the Bid Form of the Contract Documents.

All costs in connection with the Work, including, but not limited to, the furnishing of materials, equipment, tools, supplies, securing necessary insurance and licenses, and providing all necessary labor and supervision to fully complete the Work, shall be included in the lump sum and unit prices bid. No item that is required for the proper and successful completion of the work will be paid for outside or in addition to these lump sums and unit prices bid.

ARTICLE 4. PROGRESS PAYMENTS. Payment to be made based on the unit prices bid as set forth in Article 3.

ARTICLE 5. FINAL PAYMENT. Final payment shall be made by DEQ to Contractor under DEQ purchase order in accordance with the time periods specified by state law, when: 1) the work has been completed to DEQ's satisfaction; 2) the Contract is fully performed, and 3) DEQ has measured the actual number of acres to which compost and fertilizer have been applied, mixed and incorporated and the actual number of floodplain acres ripped and chisel plowed.

ARTICLE 6. JURISDICTION AND VENUE. The laws of Montana govern this Contract. The parties agree that any litigation concerning this contract, unless the parties agree to arbitration or mediation, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and the parties consent to personal jurisdiction, subject matter jurisdiction, and venue in that court. Each party shall pay its own costs and attorney fees.

ARTICLE 7. MISCELLANEOUS.

1. Taxes/Permits/Fees. Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees and comply with all laws, ordinances, rules, regulations and lawful orders bearing on the performance of the work.

2. Labor/Materials Equipment. Unless otherwise specified, Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction and services for the proper execution and completion of the work. Unless otherwise specified, all material and equipment provided shall be new and in good condition. All workmanship shall be of good quality and in keeping with the standard of the respective trades.

3. Indemnification and Insurance. Contractor shall maintain for the duration of the contract, at its cost and expense, insurance at the limits and types required by DEQ for this Contract, against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, its agents, employees, representatives, assigns, or subcontractors.

a. **Hold Harmless and Indemnification:** Contractor agrees to protect, defend, and save the state, its elected and appointed officials, agents, and employees harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, on account of bodily or personal injuries, death, or damage to property arising out of services or work performed or omissions or work or in any way resulting from the acts, negligent or otherwise, or omissions of Contractor, its agents, employees, assigns, and/or subcontractors under this Contract.

b. **Contractor's Insurance:** **Insurance required under all sections herein shall be in effect for the duration of the contract.** Insurance required herein shall be provided by insurance policies issued only by companies currently authorized to do business in the state of Montana. No Contractor or Subcontractor shall commence work under this Contract until all required insurance has been obtained and proof of insurance, in the form of certificates of insurance satisfactory to DEQ, have been delivered to DEQ.

c. Contractor shall carry **Workers' Compensation Insurance**, maintained at the limits required by statute. Such Workers' Compensation Insurance shall protect Contractor from claims made by his own employees, the employees of any Subcontractor, and also claims made by anyone directly or indirectly employed by Contractor or Subcontractor. Contractor shall require each Subcontractor similarly to provide Workers' Compensation Insurance.

d. Contractor shall carry occurrence coverage **Commercial General Liability Insurance** including coverage for premises, operations, independent contractor's protective, products and completed operations, broad form property damage, and comprehensive automobile liability insurance with not less than the following limits of liability: \$250,000 per occurrence; aggregate limit of \$500,000.

- i. The Commercial General Liability Insurance shall provide coverage for both bodily injury, including accidental death and property damage which may arise out of the work under this Contract, or operations incidental thereto, whether such work and operations be by Contractor or by Subcontractor or by anyone directly or indirectly employed by Contractor or Subcontractor, or by anyone for whose acts any of them may be liable.
- ii. Contractor's liability insurance policies shall list DEQ as an additional insured. Should Contractor not be able to list DEQ as an additional insured, Contractor shall purchase a per occurrence Owner's / Contractor's Protective Policy (OCP) with DEQ as the insured party in the same occurrence and aggregate limited as indicated above for the Contractor's Commercial General Liability Policy.
- iii. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising or demolition of any building or structure or structural support thereof.
- iv. Contractor's insurance coverage shall be PRIMARY insurance as respects DEQ, its officers, elected and appointed officials, employees and volunteers. Any insurance or self insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not be attributable to it.
- e. Contractor shall also carry **Automobile Liability Insurance** with not less than the following limits of liability: \$250,000 per occurrence; aggregate limit of \$500,000. DEQ shall be listed as an additional insured.
- f. The insurance required under this Contract shall not be cancelled or materially changed unless Contractor provides at least thirty (30) days prior written notice to DEQ.
4. **Bonding Requirements.** No performance or payment bonds will be required for this Contract. However, DEQ may withhold \$1,000 from amounts due and owing Contractor per Section 18-2-404(2) to secure the faithful performance of the work and payment of all of Contractor's obligations under this Contract. DEQ may use any monies retained, due, or to become due under this Contract for the purpose of securing the faithful performance of the Work and the Contractor's obligation to pay for labor and materials used in the Work.
5. **Construction Contractor Registration.** Contractor must register with the Department of Labor & Industry under 39-9-201 and 39-9-204, MCA, **PRIOR** to the Contract being executed by the State of Montana for all projects greater than \$2,500.00 and a copy of the registration certificate must be provided DEQ.
6. **Gross Receipts Tax.** In compliance with 15-50-206, MCA, Contractor will have 1% of his gross receipts withheld by DEQ from all payments due for Contracts over \$5,000. Each subcontractor who performs work greater than \$5,000 shall have 1% of its gross receipts withheld by Contractor. Contractor shall notify the Department of Revenue on the department's prescribed forms.
7. **Equal Employment Opportunity.** All hiring and other employment practices shall be non-discriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.
8. **Record Keeping.** Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient times. Contractor shall keep accounting records for a period of three years after completion and acceptance of the project by the Owner.
9. **Federal Davis-Bacon Act.** Contractor shall be required to comply with all applicable provisions of this Act, 40 U.S.C. §§ 276a to 276a-7, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. Contractor and all Subcontractors shall pay to all laborers and mechanics employed for the construction covered by this Agreement the minimum rates of pay as determined by the Secretary of Labor in accordance with this Act. Except as may be otherwise required by law, all claims and disputes pertaining to the classification of labor employed on the project under this Agreement shall be decided by the governing body having jurisdiction.
10. **Montana Prevailing Wage Rate Requirements.** Contractor must comply with the requirements for payment of wages set out in Title 18, Chapter 2, Part 4, MCA. The rates applicable to this project will generally be the rates specified for heavy construction. Contractor agrees to pay required wage rates and comply with all other legal requirements for fringe benefits, hours and working conditions. The rates specified are minimum rates, and where the federal rate differs from the state rate, the higher of the two will be the required minimum. Bidder should, if uncertain of legal requirements or applicable rates for this project or certain categories of workers, seek clarification from the Montana Department of Labor and Industry. (Phone 406-444-5600)(<http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-information.html>) For federal prevailing wage rate decisions in Montana, see <http://www.gpo.gov/davisbacon/MT.html>.
- If Contractor employs any person in a trade or occupation not classified in the wage determinations, such person shall be paid at not less than such rates as shall be determined by the Montana Department of Labor and Industry. Such approved minimum rate shall be retroactive to the time of the initial employment of such person in such trade or occupation. Contractor shall notify DEQ of its intention to employ persons in trades or occupations not classified in sufficient time to obtain approved rates for such trades or occupations.
- Under 18-2-406, MCA, Contractor must post in a prominent and accessible location at the site, not later than the first day of work, a legible statement of all wages to be paid to employees employed at the site. Under 18-2-423, MCA, any employees receiving an hourly wage are to be paid on a weekly basis.
- Under 18-2-422, MCA, Contractor must maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for a period of not less than 3 years after the Contractor's completion of work on the project.
11. **Health and Safety.** **Contractor is responsible for establishing the standards of safety for its employees, landowners, agency representatives, and invitees.** In performing services under this Contract, Contractor agrees to comply with all applicable federal or state health or safety laws and regulations, including without limitation, the Montana Safety Act, including § 50-71-201, 202 and 203, MCA.
12. **Independent Contractor.** Contractor shall have the status of an independent contractor for this project. As such, Contractor is responsible for the means, methods, techniques, sequences and procedures of construction to meet the project specifications, including the safety precautions incident thereto. Contractor is also responsible for establishing the standards of safety for its employees, subcontractors, and invitees.

IN WITNESS WHEREOF, the parties hereto have executed this Contract. The Contract shall be effective only after signature by both parties. The Effective Date of this Contract shall be the later of the dates of signature.

CONTRACTOR:

Company

Date

Taxpayer's I.D. No. _____

Contractor's Registration Certificate No. _____

DEQ:

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

VICKI J. WOODROW
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Financial Services
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Date

Approved for Legal Content:

DEQ Legal Counsel

Date