

**STANDARD FORM OF CONTRACT BETWEEN OWNER AND CONTRACTOR
FOR SUPPLY AND DELIVERY OF MATERIALS – DEQ Contract No. 415004**

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 following Work procured by Informal Solicitation and described as follows:

This is a contract for supply of approximately 28,000 cubic yards of compost materials. No Construction Services (as defined by Section 18-2-401 MCA) are provided under this Contract. Contractor shall supply compost of the specified quality and deliver the compost FOB destination to three locations within the Clark Fork Site described in the overview map (Exhibit C) and in the attached Figures on or before the dates set forth below:

1. 8,500 cubic yards of compost to Location 1 - Eastside Road Pasture Area (Figure 1) by November 15, 2014.
2. 10,000 cubic yards of compost to Location 2 - Phases 5 & 6 Project Area (Figure 2) by June 30, 2015.
3. 10,000 cubic yards of compost to Location 3 – Phase 2 Project Area (Figure 3) by August 31, 2015.

This Contract consists of the Invitation for Bid, the Bid Form and any other attachments or information supplied in this Informal Solicitation and any amendments thereto.

ARTICLE 2. TIME OF COMPLETION. The Work shall commence on the Effective Date of this Contract, which shall be the latter of the dates of signature. The Work will be completed by August 31, 2015. The term of this Contract may be extended by written agreement signed by DEQ and Contractor.

ARTICLE 3. CONTRACT SUM. DEQ shall pay Contractor for the actual number of cubic yards of compost supplied and delivered to the Clark Fork Site in accordance with the terms of this Contract based upon the unit price bid as shown on the Bid Form.

DEQ shall pay Contractor the unit price bid per cubic yard. Area measurements will be made by DEQ. The unit price bid shall include supplying and delivering compost (including mobilization to and from the site).

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

ARTICLE 4. PROGRESS PAYMENTS. (see above).

ARTICLE 5. FINAL PAYMENT. Final payment shall be made by DEQ to Contractor in accordance with the time periods specified by state law, when: 1) the Work has been completed to DEQ’s satisfaction and, 2) the Contract is fully performed.

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 or 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 of

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: \$100,000 per occurrence; aggregate limit of \$300,000.

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.

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 its contractors. 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: \$100,000 per occurrence; aggregate limit of \$300,000. 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. Construction Contractor Registration. (if applicable). 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 Contractor registration certificate must be provided DEQ.

5. Gross Receipts Tax. This is not a public construction contract as defined by Section 15-50-101(3) and as applicable to Section 15-50-206, MCA. No gross receipts tax will apply.

6. 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.

7. 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.

8. Montana Prevailing Wage Rate Requirements. This materials supply contract is not a contract for Construction Services as defined by Section 18-2-401 MCA, therefore Montana Prevailing Wage Rates do not apply.

CONTRACTOR:

Company

Date

OWNER:

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

VICKI WOODROW
Contracts Officer
Financial Services
Metcalf Building
1520 East Sixth Avenue
PO Box 200901
Helena, Montana 59620-0901

Date

Taxpayer's I.D. No. _____

Contractor's Registration Certificate No. _____

Approved for Legal Content:

DEQ Legal Counsel

Date