

**STANDARD FORM OF CONTRACT BETWEEN DEQ AND CONTRACTOR
FOR LIMITED CONTRUCTION
EASTSIDE ROAD PASTURES ADDITIONAL REMEDIAL REVEGETATION PROJECT**

DEQ CONTRACT NO. 415013

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 Eastside Road Pastures Additional Remedial Revegetation Project in accordance with the Invitation for Bid, this Contract, Special Provisions (including the Bid Items, Work Descriptions and Measurement and Payment provisions), Drawings, Technical Specifications and the completed Bid Form.

The Eastside Road Pastures Additional Remedial Revegetation Project addresses areas within the previous Eastside Road Pastures Remedial Action Project that still have little and/or undesirable plant cover after the implementation of the Eastside Road Pastures Remedial Action Project (DEQ Contract No. 413010). The Project is located south of Deer Lodge in designated pastures between the Clark Fork River and Eastside Road in Powell County.

The purpose of the Eastside Road Pastures Additional Revegetation Project is to amend soils that have low pH and high metals so these soils can support long-term establishment of perennial vegetation. These soils do not currently support adequate plant growth.

The Work includes transporting and mixing-in lime, transporting and mixing-in cover soil, mixing-in compost that will be on site (DEQ provided), careful planting of a seed mix, and stabilizing the seeded soils. While the ability to haul materials and till soil is important, the Project Special Provisions emphasize the need to thoroughly mix soil amendments into the soil to form a consistent, hospitable seedbed and plant-friendly rooting zone. The seed mix includes a diverse mix of grasses, forbs, sub-shrubs and shrubs requiring different placement depths, so specialized seeding equipment is necessary to make sure seeds are planted to appropriate depths. Once seeded, these amended soils need to be stabilized through a combination of straw crimping and hydromulch.

Contractor shall also control the spread of weeds and dust while performing this Contract applying water as necessary (and at locations requested by DEQ's Revegetation Consultant) in accordance with the Drawings, Special Provisions and Technical Specifications.

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

The Contract Documents shall include the Invitation for Bid, this Contract, Drawings, Special Provisions, Technical Specifications and the completed Bid Form.

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. The Contract Time shall be one hundred and fifty (150) consecutive calendar days from the Effective Date. All Work shall be completed no later than May 15, 2015.

Contractor will pay DEQ liquidated damages in the amount of five hundred (\$500) dollars per day for each day beyond May 15, 2015, that the Work is not substantially complete.

ARTICLE 3. THE CONTRACT SUM. DEQ shall pay Contractor the Lump Sums and Unit Prices 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 shall be made in accordance with the Special Provisions, Measurement and Payment provisions.

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.

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.

Contractor assumes all responsibility for ensuring and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of its own employees, the employees of its subcontractors, and the public. This responsibility and the duty to indemnify the State and DEQ above is expressly intended by the parties to include claims, liabilities, demands, caused of action, judgments (including costs and reasonable attorneys fees), and losses that are, or are alleged or held to be, based upon a breach by the State or DEQ of duties that are, or alleged to be, based upon an exercise of "retained control," a "non-delegable duty" or any particular activity that is or is alleged to be "abnormally dangerous," "inherently dangerous" or "inherently hazardous" to which a claim of strict liability could apply, relating to workplace safety for the Contractor's employees, the employees of any subcontractor's employees, or the public (including claims of Contractor's employees, and employees of any subcontractor).

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 the State of Montana and DEQ as an additional insured. Should Contractor not be able to list the State of Montana and 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. 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.** Contractor shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under this Contract. These Bonds shall remain in effect at least until one year after the date of final payment.

All Bonds shall be obtained from surety or insurance companies that are duly licensed or authorized to issue Bonds in the State of Montana.

All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Montana, Contractor shall within 20 days thereafter substitute another Bond and surety, satisfactory to DEQ, both of which shall comply with the above requirements.

DEQ shall also 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. This \$1,000 shall be retained by DEQ until final payment.

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 securing 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 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 and all on-site personnel, including all Subcontractors and their employees under Contractor's supervision shall comply with all Occupational Safety and Health Administration (OSHA) Regulations including 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response (HAZWOPER). Contractor shall ensure and provide documentation to DEQ's Revegetation Consultant that all site workers have completed the 40-hour HAZWOPER course and are current with the annual eight (8)-hour refresher course.

Contractor is responsible for ensuring and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of its own employees, the employees of its subcontractors and the public (including DEQ, its employees and contractors). Contractor shall adopt and comply with a site-health and safety plan. Contractor shall provide DEQ and DEQ's Revegetation Consultant with a copy of the Health and Safety Plan.

At a minimum, Contractor shall comply with the following general safety requirements at all times during the Work:

- Contractor's employees shall wear hard hat, high-visibility safety vests, safety toe shoes, leather gloves, long-sleeved shirts, and safety glasses with side shields. Leather gloves must be on your person at all times.
- Contractor's employees shall not operate cell phones while driving.
- Contractor's employees shall observe and comply with all posted speed limits.
- Contractor's employees shall wear safety belts at all times when driving a vehicle or operating equipment.
- First aid kits and fire extinguishers are required in all field vehicles and equipment.
- No drugs, alcohol, or firearms are allowed on-site or in employees' vehicles.
- No eating or drinking is allowed in the active portion of the work area where contaminants are present.

Safety is of paramount concern to DEQ, the landowners, to the Counties and the general public. Failure of Contractor to comply with the terms of its approved Health and Safety Plan, federal and state health and safety statutes and regulations and/or the safety related requirements of these Contract Documents is cause for immediate Work stoppage and/or grounds for termination of the Contract.

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:

DEQ:

Company

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date

VICKI J. WOODROW
Contracts Officer
Financial Services
Metcalf Building
1520 E. Sixth Avenue, P.O. Box 200901
Helena, MT 59620-0901
Date

Taxpayer's I.D. No. _____

Approved for Legal Content:

Contractor's Registration Certificate No. _____

DEQ Legal Counsel

Date

