

Exhibit A

STANDARD FORM OF CONTRACT FOR LIMITED CONSTRUCTION WORK DEQ Contract No. 414012

This CONTRACT is between the CONTRACTOR (as stated herein below) and the STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY ("DEQ"). Contractor may also be referred to as the Revegetation Contractor to distinguish Contractor from other contractors working on the site.

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

ARTICLE 1. SCOPE OF WORK. Contractor shall perform the following revegetation work procured by Informal Solicitation and described as follows:

This Work is to establish revegetation of the floodplain after remedial construction in Subarea 4, Streamside Tailings Operable Unit ("SSTOU") along Silver Bow Creek near Opportunity, Montana. Contractor will Mobilize twice to the work site; once in the fall of 2013, and again in the spring of 2014. A portion of the Work will be performed in the fall of 2013, and the remainder of the Work will be performed in the spring of 2014. Mobilization shall consist of the preparatory work and operations necessary for the movement of personnel, equipment, supplies and incidentals to the work site. Each Mobilization shall include demobilization and all incidentals required for site cleanup and foreign debris removal. Contractor's cost for administration, insurance and site documents shall be included in the lump sums bid for Mobilization and will not be paid as separate items.

The Fall and Spring Work consists of three Parts. Part A consists of Compost and Fertilizer application and incorporation and preparing a seedbed. Part B consists of fertilizer application and incorporation and preparing a seedbed, and Part C, which shall follow completion of Parts A and B, consists of Seeding of the prepared ground surface.

Materials. Contractor shall supply the specified fertilizer. DEQ has procured compost for the work. Compost has been stockpiled throughout the site in areas on or requiring compost amendment. Contractor will use only the compost provided on site. DEQ has also procured light and heavy seed mixes for the Contractor's use in seeding the areas described under this Contract.

Part A. Contractor shall apply and incorporate compost and fertilizer on approximately 90 acres of floodplain and reclaimed roadways, as shown in Exhibit B to IFB 414012, of which this document is a part. Work shall include supplying and applying the specified fertilizer; loading compost from stockpiles throughout the site, hauling to the floodplain, applying compost at the specified rate; and incorporating fertilizer/compost into the soil at the specified depth while preparing a receptive seedbed for seeding. Acceptable compost/fertilizer incorporation methods shall include disking, mixing with a "Terragator", or other method approved by DEQ. Ripping is not an acceptable form of compost/fertilizer incorporation. Table 1 defines specific application, mixing and disking plowing requirements of this contract.

Part B. Contractor shall apply and incorporate fertilizer on approximately 162 acres of floodplain as shown in Exhibit B to IFB 414012, of which this document is a part. Work shall include supplying and applying the specified fertilizer and incorporating fertilizer into the soil at the specified depth while preparing a receptive seedbed for seeding. Acceptable fertilizer incorporation methods may include disking or other methods approved by DEQ. Ripping is not an acceptable form of fertilizer incorporation. Table 1 defines specific application, mixing and disking plowing requirements of this contract.

Part C. Contractor shall apply the DEQ-furnished seed to the prepared composted areas as set forth in IFB 414012, of which this document is a part.

Table 1 Compost Application, Mixing and Incorporation and Seeding Requirements for Reaches P, Q, R, S, & T Subarea 4, and the B2.12 Cell within the Opportunity Waste Management Area, Streamside Tailings Operable Unit	
	Floodplain, Reclaimed roads, & B2.12 Cell
Approximate area (acres)	252
Compost application rate at 1.5% Organic Matter (cubic yards per acre)	60
Compost application rate at 1.0% Organic Matter (cubic yards per acre)	40
Fertilizer A application (acres)	40
Fertilizer B application (acres)	212
Compost/Fertilizer mixing depth (inches)	4 to 6
Area to be seeded (acres)	252

The acreage specified in Table 1 is estimated only and subject to change. DEQ will identify for Contractor the specific area on which the work will be conducted. Work under this Contract will depend in part upon the number of acres properly backfilled and contoured by the Remedial Action Contractor. All estimated quantities provided in the Contract Documents are approximate and are to be used only (a) as a basis for estimating the probable cost of the Work and (b) for the purpose of comparing the bids submitted for the Work. Actual quantities may differ from estimated quantities. The basis of payment for Unit Price Work will be the actual quantity of unit price items supplied. Contractor agrees to make no claim for damages, anticipated profits, or otherwise on account of any difference between the amounts of Work actually performed and materials actually furnished and the estimated amounts herein. The Unit Price of an item of Unit Price Work will be subject to re-evaluation and upward or downward adjustment.

ARTICLE 2. TIME OF COMPLETION. The Work to be performed shall commence on the Effective Date of this Contract, which shall be the latter of the two dates of signature. The work will require Contractor to Mobilize twice to the work site, once in the Fall 2013, and again in the Spring 2014. The Fall 2013 work will be completed by November 30, 2013. All Spring 2014 work must be completed by May 15, 2014. Contractor shall not perform the Work when wet or frozen soils prevent proper mixing and site preparation.

ARTICLE 3. THE CONTRACT SUM. DEQ shall pay Contractor for the actual quantities of Work performed based upon the Lump Sum and Unit Prices Bid, as shown on the Bid Form attached to this Informal Solicitation. DEQ will make all measurements for payment.

All costs in connection with the Work, including, but not limited to, mobilization in the Fall 2013 and Spring 2014, the furnishing of materials, loading, hauling and placement of materials, equipment, tools, supplies, 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 the Lump Sum and Unit Prices bid.

ARTICLE 4. PROGRESS PAYMENTS. One progress payment will be made upon completion of the Work in the Fall 2013. For each payment, Contractor shall prepare and submit to DEQ for approval a properly documented invoice for the Work performed.

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;

- 2) The Contract is fully performed, and
- 3) Contractor has paid all laborers, mechanics, subcontractors and all persons who supplied provisions, provender, materials or supplies for performing the Work.

ARTICLE 6. JURISDICTION VENUE AND CHOICE OF LAW. The laws of the State of Montana govern this Contract. The parties agree that any dispute arising in any way from 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 its 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. 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. 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 Owner that all site workers have completed the 40-hour HAZWOPER course and are current with the annual eight (8)-hour refresher course. **Failure to comply with all applicable safety requirements is cause for immediate work stoppage and/or grounds for termination of the Contract.**

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. 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 and highway construction.

The current Montana Prevailing Wage Book can be downloaded from the State's website at http://erd.dli.mt.gov/images/stories/pdf/labor_standards/prevailing_wage/2012_highway_final.pdf. Additional guidance is available in ARM 24.17.501 Public Works Contracts for Construction Services Subject to Prevailing Rates. Davis-Bacon (federal wage rates) information can be obtained from <http://www.wdol.gov>. 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).

Pursuant to 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.

Pursuant to 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.

10. Weed Control. To prevent the spread of noxious weeds into the project area, all equipment and vehicles including wheels, tracks, undercarriages, fenders, blades and buckets shall be cleaned with high-pressure water before mobilizing to the site. Driving equipment through weedy areas on or near the site is forbidden, and a penalty of five hundred dollars (\$500) per occurrence will be charged to Contractor.

11. 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.

12. Bonding Requirements. No performance or payment bonds will be required for this Contract. However, in lieu of performance or payment bonds, 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 also use any monies retained, due, or to become due under this Contract for the purpose of paying for both labor and materials for the Work.

ARTICLE 8. MODIFICATIONS. This Contract may not be enlarged, modified, or altered except by a written modification (Change Order) signed by DEQ and Contractor and attached to the original of this Contract. No handwritten change, addition or erasure of any printed portion of this Contract shall be valid or binding upon either party.

ARTICLE 9. TERMINATION. This Contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) calendar days' actual written notice of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

Upon termination for default, the parties shall have such rights and remedies as each would have against the other at law or in equity under the statutes, rules, and case law of the State of Montana. DEQ and Contractor agree that in the event either of them incurs any legal costs or attorneys' fees whatsoever, each party shall pay its own legal costs and attorneys' fees.

This Contract may be terminated in whole or in part in writing, by the DEQ for its convenience, provided that the Contractor is given: (1) not less than ten (10) calendar days' actual written notice of intent to terminate, and (2) an opportunity for consultation with DEQ prior to termination.

Upon termination for DEQ's convenience, Contractor shall be entitled to payment in accordance with this Contract for work performed by Contractor during the period prior to the effective date of termination. Partial payment on account of unit price work will be based on the number of units completed. Payment on account of lump sum work will be based on DEQ's determination of the percentage of lump sum work completed. In the absence of an express written agreement, DEQ shall not pay Contractor on account of materials delivered and suitably stored on the site, but not yet incorporated into the work.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement. The Agreement shall be effective only after signature of both parties and the effective date of this agreement shall be the later of the dates of signature.

OWNER:
Montana Department of Environmental Quality

By: _____ Date: _____
Vicki Woodrow
Contracts Officer
Financial Services
Metcalf Building
1520 E. Sixth Avenue
PO Box 200901
Helena, MT 59620-0901

Approved for legal content by:

_____ Date: _____
Thad Adkins
DEQ Legal Counsel

CONTRACTOR:

By: _____
Name:
Title:
Address:

(CORPORATE SEAL)(If Applicable)

Note: If Contractor is a corporation, a certificate evidencing the principal's authority to sign on behalf of the corporation must accompany the executed Agreement