

**CONTRACT MA-299-15010501**  
**BETWEEN**  
**THE COUNTY OF ORANGE**  
**AND**  
**RON DIETZ, INC., DBA DIETZ HYDROSEEDING COMPANY**  
**FOR HYDROSEEDING SERVICES**

**THIS** Contract **MA-299-15010501** for **Hydroseeding Services** (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, OC Waste & Recycling, a political subdivision of the State of California, (hereinafter referred to as "County") and **Ron Dietz, Inc., dba Dietz Hydroseeding Company**, (hereinafter referred to as "Contractor"), which are sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

**RECITALS**

**WHEREAS**, Contractor responded to an Invitation for Bid (IFB) to provide **Hydroseeding Services** for County; and

**WHEREAS**, Contractor and County are entering into this Contract for **Hydroseeding Services** under a firm fixed price Contract for a period of three years to be effective **November 23, 2014**, through and including **November 22, 2017** in an amount not to exceed **\$940,000**; and,

**WHEREAS**, Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB; and

**WHEREAS**, Contractor agrees to provide services, as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and

**WHEREAS**, County agrees to pay Contractor the fees as more specifically described in Contractor's Pricing, attached hereto as Attachment B and incorporated herein; and

**WHEREAS**, County now desires to delete Article Y, Waiver of Jury Trial, and replace it with "Intentionally left blank"; and

**WHEREAS**, County now desires to renew the Contract for one year, effective November 23, 2017 through November 22, 2018, in an amount not to exceed \$350,000;

**NOW THEREFORE**, Parties mutually agree as follows:

**ARTICLES**

**COUNTY GENERAL TERMS AND CONDITIONS**

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. **Entire Contract:** This Contract, including Attachments which are attached hereto and incorporated herein by this reference, when accepted by Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic

acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee.

- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** All prices shall include any applicable sales taxes.
- E. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the descriptions, or services that do not conform to the prescribed Scope of Work. Delivery shall not be deemed to be complete until all goods and/or services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all services have actually been received to the satisfaction of County and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that services covered by this Contract are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in Article "HH", and as more fully described in Article "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third Party. Contractor agrees that, in accordance with the more specific requirement contained in Article "HH", it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or subcontract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause

or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.

- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither Contractor, employees nor anyone working for Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
- P. **Insurance Provisions:** Prior to the provisions of services under this Contract, Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with County Certificates of Insurance, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, County may terminate this Contract.

**Qualified Insurer:** Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

The policy of policies of insurance must be signed by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

This policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<b>Coverage</b>	<b>Minimum Limits</b>
Commercial General Liability with and Contractual liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

### **Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

### **Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance of self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this Contract shall waive all rights to subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting in the scope of their appointment or employment.

The Worker's Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this Contract shall give County 30 days' notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to OC Waste & Recycling, 300 N. Flower Street, Suite 400, Santa Ana, CA 92703.

If Contractor fails to provide the insurance certificates within seven (7) days of notification by CEO/Purchasing, or designee, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance with County incorporating such changes

within 30 days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Article "HH", indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Article "HH", Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Intentionally left blank. Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or

~~subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and/or any other claim of injury or damage.~~

- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
- EE. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
- FF. **Authority:** Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- HH. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active

negligence of County or County INDEMNITEES, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

- II. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of contractor for the purpose of auditing or inspecting any aspect of performance under this contract. The inspection and/or audit will be confined to those matters connected with the performance of the contract including, but not limited to, the costs of administering the contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this contract.

Should the contractor cease to exist as a legal entity, the contractor's records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Coordinator.

#### **ADDITIONAL TERMS AND CONDITIONS**

1. **Scope of Services:** This Contract, including Attachments, specifies the contractual terms and conditions by which Contractor shall provide County **Hydroseeding Services** as further detailed in the Scope of Work, under a firm fixed price Contract, as set forth herein.
2. **Contract Term:** This Contract shall commence on **November 23, 2014 2017** and shall continue through and including **November 22, 2017 2018**, upon execution of all necessary signatures, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for ~~two (2) consecutive~~ a one-year period, upon mutual agreement of both Parties. The County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.
3. **Contractor's License:** Contractor acknowledges that funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **Prevailing Wage (Labor Code §1773):** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the general prevailing wage shall be paid for maintenance services performed under this Contract in excess of \$1,000. Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. Rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlrs/DPreWageDetermination.htm>. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.
5. **Breach of Contract:** Failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event County

may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- i. Terminate Contract immediately without penalty, pursuant to Article "K" herein;
  - ii. Afford Contractor written notice of the breach and 10 calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
  - iii. Discontinue payment to Contractor for and during the period in which Contractor is in breach; and
  - iv. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.
6. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of County. Failure of Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from County shall constitute grounds for termination of the Contract.
7. **Conflict of Interest:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third parties associated with accomplishing work and services hereunder. The

Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

8. **Contract Disputes:** Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor's Project Manager and County's Project Coordinator, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:
- i. Contractor shall submit to OC Waste & Recycling assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
  - ii. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the County is liable.
  - iii. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by County's Purchasing Agent or his



designee. If County fails to render a decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. County's final decision shall be conclusive and binding regarding the dispute unless Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of County's final decision or one year following the accrual of the cause of action, whichever is later.

9. **Contract Work Hours and Safety Standards:** Contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with Federal, State and County safety regulations.
10. **Contractor Uniforms/Badges/Identification:** All Contractor's employee shall be required to wear uniforms, badges or other means of identification which are to be issued and provided by Contractor and must be worn at all times while working on County property.
11. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of County, which consent shall not be unreasonably withheld.

Contractor's Project Manager and Key Personnel shall be assigned to this Contract for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Contractor's Key Personnel are those individuals who report directly to the Contractor's Project Manager.

Contractor shall submit a list of personnel assigned to fulfill the tasks of the Contract. Names, telephone numbers, responsibilities and availability schedule shall be maintained during the period of the Contract. Changes to the list shall be verbally communicated in advance of any changes in responsibilities; written confirmation must follow within five (5) working days.

12. **County's Project Coordinator:** The County shall appoint a Project Coordinator to act as a liaison between the County and the Contractor during the term of this Contract. The County's Project Manager shall coordinate activities of the County staff assigned to work with the Contractor.

The County's Project Coordinator shall have the right to require the removal and replacement of the Contractor's Project Manager and Key Personnel under this Contract. The County's Project Coordinator shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's Project Coordinator. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor Project Manager or Key Personnel be removed from performing services under this Contract. The County Project Coordinator shall review and approve the appointment of the replacement for the Contractor's Project Manager and Key Personnel. Said approval shall not be unreasonably withheld.

13. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other political sub-divisions and County agencies/departments. Political sub-divisions and County agencies/departments wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. These entities will hold harmless County from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. County makes no guarantee of usage by other users of this Contract. County may authorize the loading of this agreement into an electronic commerce system.

14. **Expenditure Limit:** Contractor shall notify the County Project Coordinator in writing when the expenditures against the Contract reach **75% of the dollar limit** on the Contract. County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless an amendment to cover those costs has been issued and been approved by the Orange County Board of Supervisors.
15. **News/Information Release:** Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from County through County's Project Coordinator.
16. **Ownership of Documents:** County has permanent ownership of all directly connected and derivative materials produced under this Contract by Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become, and remain, the sole property of County and may be used by County as it may require without additional cost to County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by Contractor without the express written consent of County.
17. **Precedence:** Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.
18. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by County unless otherwise agreed to by both Parties.
19. **Reports/Meetings:** Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. County's Project Coordinator and Contractor's Project Manager will meet on reasonable notice to discuss Contractor's performance and progress under this Contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. Contractor shall provide such information that is requested by County for the purpose of monitoring progress under this Contract.
20. **Title to Data:** All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. All materials, documents, data or information, including copies, must be returned to County at the end of this Contract.
21. **Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Contractor agrees to supply services, as need by the County, at prices listed in the Contract, regardless of quantity requested.
22. **Validity:** The invalidity in whole or in part of any provision of this Contract shall not void or affect the validity of any other provision of the Contract.
23. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Coordinator and Contractor's Project Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery

on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Ron Dietz, Inc. dba Dietz Hydroseeding Company  
Attention: Ron Dietz  
15745 Kadota Street  
Sylmar, CA 91342  
Phone: 818.364.7333  
Fax: 818.364.7337  
E-Mail: [rd@dietzhydroseeding.com](mailto:rd@dietzhydroseeding.com)

County: OC Waste & Recycling / Purchasing  
Attention: Ria Medina, Deputy Purchasing Agent  
300 North Flower Street, Suite 400  
Santa Ana, CA 92703  
Phone: 714.834.4152  
Fax: 714.834.4136  
E-Mail: [ria.medina@ocwr.ocgov.com](mailto:ria.medina@ocwr.ocgov.com)

**CONTRACT SIGNATURE PAGE**

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

**RON DIETZ, INC. DBA DIETZ HYDROSEEDING COMPANY\*:**

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

\* (Pursuant to California Corporations Code Section 313, the signatures of two corporate officials are required to bind the corporation, one from each of the following two groups: If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.

*In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.*

**County of Orange, a political subdivision of the State of California**

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

**APPROVED AS TO FORM**  
Office of the County Counsel  
County of Orange, California

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

**ATTACHMENT A  
SCOPE OF WORK****I. SCOPE OR WORK:**

1. The project consists of three (3) types of work orders:
  - a. Erosion control hydroseeding or hydromulching cut and fill slope areas denuded by construction and landfill areas at County-operated sanitary landfills. Slopes vary and in some areas are steeper than 2:1. Hydro seeding or mulching shall be applied to the areas shown on the plans or as directed by Engineer, and may or may not include plant material (seed and mycorrhizal inoculum and/or fertilizer). The objective shall be to prevent erosion of soils and if applicable, establish plant growth on the slopes and deck areas.
  - b. Hydroseeding habitat mitigation sites using locally sourced seed material and mycorrhizal inoculant, and without added synthetic fertilizers. Slopes vary and in some areas are steeper than 2:1. The objective shall be to initiate the establishment of new habitat for local flora/fauna in compliance with regulatory permits and habitat conservation plans.
  - c. Supplemental hydroseeding in existing habitat mitigation sites containing existing native vegetation. Care shall be taken to neither disturb nor cover such vegetation with excessive amounts of slurry and the mix shall contain locally sourced seed material and mycorrhizal inoculant, and no added synthetic fertilizers. The objective shall be to increase native plant cover and diversity without disturbing existing habitat. A surcharge per acre may be applied to this type of work when existing native cover is determined by recent habitat mitigation monitoring reports or another objective biological survey method to be greater than or equal to 50%.
2. Hydroseeding shall be applied during the fall/winter season between October 1 and January 15, or as so required and directed by Engineer. Contractor shall limit work to standard landfill operational hours (7:00 am – 5:00 pm Monday through Friday excepting the 6 major Federal holidays), unless special arrangements are made to complete emergency work outside of the normal business day.
  - a. Contractor shall schedule and begin work within five (5) working days after receipt of a Notice to Proceed issued by Engineer.
  - b. Contractor shall not hold County liable for payment, including any pre-ordered material costs, until Notice to Proceed is issued.
  - c. Contractor shall confirm with Engineer at least twenty-four (24) hours in advance of starting work; work shall be carried out in a due and diligent manner.
3. Hydroseeding shall be applied as directed in Subsection 308-4.8.2(b) of the Standard Specifications for Public Works Construction, using Method B.

**Once hydroseed is applied, to the extent practicable, the area shall be kept moist by the Contractor until the end of the working day. Hydroseeding shall not be applied while raining. Hydroseeding shall not be performed when the wind velocity is detrimental to the uniform distribution of the seed.**

4. Hydro- seeding or mulching shall consist of a mixture of fiber, seed (when applicable), compost or commercial fertilizer (when applicable), mycorrhizal inoculant (when applicable), binder or fiber matrix, and water. The seed mix used may be chosen from pre-selected mixes or comprised of specific species selected from various mixes, or in certain occasions, a unique mix of species

not previously identified on the Contract may be requested by the Engineer and, if accommodated by the Contractor, billed to the County on a Cost Plus Percent markup. The original supplier invoice must be attached to the Contractor invoice in order for the Contractor to be paid for the special mix at this markup.

Organic cellulose shall be produced from wood chips or similar wood materials and shall be of such character that the fiber will disperse into uniform slurry when mixed with water. Fiber produced from selected recycled newsprint or corrugated cardboard may be used or mixed with the wood fiber upon approval and as directed by Engineer.

Fiber shall be colored to contrast with area in which the fiber is to be applied, shall be non-toxic to plant and animal life, and shall not stain concrete or painted surfaces.

Compost, when added, shall be derived from a combination of green material from chipped, shredded, or ground vegetation; clean, processed, recycled wood products; biosolids; manure; and/or mixed food waste. It shall not be derived of municipal solid waste nor contain paint, petroleum products, pesticides, or other harmful chemical residues. Materials should be thoroughly composted to as to reduce the presence of weed seeds, pathogens, metals and other deleterious materials. Moisture content, organic material content, salts, and pH shall all meet the standards referred to in California Department of Transportation Erosion Control specifications.

Before seeding, the Contractor shall furnish written evidence (seed label or letter) to the Engineer that the seed is not required to be labeled under the California Food and Agricultural Code and that it conforms to the purity and germination requirements herein.

Contractor shall supply purity and germination percentage rates upon the assignment of each task order. Pure live seed content is defined as the product of, 1) the percentage of tested purity and 2) the percentage of tested germination of the specified seed (pure live seed content - % purity x % germination = 5-%) unless otherwise stated. The pure live seed content minimum may be reduced by Engineer if specified minimum is not available. The seed may be commercially grown unless locally collected seed is requested by the Engineer. "Locally collected seed" is defined as having originated in the coastal southern California ecological region, and west of the Santa Ana Mountains. The Engineer may accept certain substitutions of "local" seed collected from outside of this region, at the lower "non-local" price per pound, if it can be verified that no more indigenous sources of the subject species were available at the time of the request.

Mycorrhizal inoculant shall be "mycoapply" in powered form, or a product of comparable specifications. All legumes shall be inoculated with a viable bacteria species compatible for use with that species of seed. Contractor shall furnish written statement of inoculation. The application rate for seed shall be the weight exclusive of inoculating materials. Inoculated seed shall be sown within 20 days of inoculation or shall be reinoculated.

Hydroseeding materials shall be mixed at the project site in the presence of Engineer. A one-ounce sample of the specified seed mix may be requested by the Engineer.

5. Commercial fertilizer shall be as required in the order.
6. Organic soil stabilant shall be Ecology Control M-Binder, Ecotack, Terra Tack III, or an approved equal.
7. Proportion and seed mix may be changed by the Engineer to meet field conditions. Mixing of hydroseeding materials shall be performed in a thoroughly clean tank with a built-in continuous

agitation system or sufficient operating capacity to produce a homogeneous slurry, and a discharge system which will apply the slurry to the slopes at a continuous and uniform rate.

A dispersing agent may be added provided the contractor furnishes evidence that the additive is not harmful to the mixture. Any materials considered harmful, as determined by Engineer, shall not be used. The seed, if applicable, shall be the last item added to the slurry. Slurry shall be applied within 30 minutes after seed has been added.

8. Water sufficient to emulsify the requested amount of hydroseeding mix shall be provided or arranged for by the County at the project site.
9. The cost of travel to and from, and around, the project site shall be included in the Contractor's rates. Project sites shall be limited to the following landfills, or in certain cases, the lands directly adjacent, or "off-site" habitat mitigation areas generally located within 20 miles of one of the landfills.

**COUNTY OF ORANGE LANDFILL LOCATIONS:**

1. Olinda Alpha Landfill  
1942 N. Valencia Avenue  
Brea, CA 92823
2. Coyote Canyon Landfill  
20661 Newport Coast Drive  
Irvine, CA 92612
3. Frank R. Bowerman Landfill  
11002 Bee Canyon Access Road  
Irvine, CA 92602
4. Prima Deshecha Landfill  
32250 Avenida La Pata Avenue  
San Juan Capistrano, CA 92675
5. Santiago Canyon Landfill  
3099 Santiago Canyon Road  
Orange, CA 92869

**ATTACHMENT B  
CONTRACTOR'S PRICING****I. PAYMENT**

Invoices are to be submitted in arrears, after services/goods have been provided, to the address specified below. Payment will be net 45 days after receipt of an invoice in a format acceptable to the County of Orange. Invoices shall be verified and approved by the County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Billing shall cover goods and services not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods/services provided do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

The Contractor will provide an invoice on the Contractor's letterhead. Each invoice will have a unique number and will include the following information:

- a. Contractor's name and address
- b. Contractor's remittance address, if different from above
- c. Name of County agency/department
- d. Contract number
- e. Service Location
- f. Service Date
- g. Description of service/materials
- h. Total
- i. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Waste & Recycling  
Attn: Accounts Payable  
300 North Flower Street, Suite 400  
Santa Ana, CA 92703

The County's Site Analyst, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

**II. SEEDS LIST**

<b>BOTANICAL NAME</b>	<b>COMMON NAME</b>	<b>Est. lb*</b>	<b>\$/Lb</b>	<b>Est. lb Local*</b>	<b>\$/Lb Local</b>
Aristida purpurea	Purple Three Awn	20	\$22.00		\$0
Achillea millefolium	California Yarrow	1	\$44.00	1	\$44.00**



BOTANICAL NAME	COMMON NAME	Est. lb*	\$/Lb	Est. lb Local*	\$/Lb Local
Artemisia californica	California Sagebrush	100	\$24.00	120	\$72.00
Atriplex brewerii	Brewer's Saltbush	30	\$29.00	2	\$58.00
Atriplex lentiformis	Giant Saltbush	10	\$10.00	1	\$36.00
Baccharis pilularis	Coyotebush	15	\$29.00	15	\$58.00
Bromus arizonicus	Cucamonga Brome	300	\$5.00		\$0
Bromus carinatus	California Brome	100	\$6.00	20	\$6.00**
Convolvulus simulans	Small-flowered morning glory		\$0	1	\$840.00
Deinandra paniculata	San Diego Tarplant		\$0	1	\$840.00
Deschampsia elongatum	Aira	2	\$48.00		\$0
Diplicus longiflorus	Southern Monkey Flower	40	\$24.00	40	\$72.00
Encelia californica	Encelia	130	\$54.00	130	\$108.00
Erigonum fasciculatum	California Buckwheat	200	\$6.00	355	\$18.00
Eriophyllum confertiflorum	Golden Yarrow	100	\$44.00	30	\$174.00
Eschscholzia californica	California Poppy	55	\$16.00	70	\$16.00**
Frankenia salina	Alkali Heath	1	\$54.00	1	\$108.00
Galium angustifolium	Bedstraw	4	\$108.00	4	\$324.00
Gnaphalium californicum	California Everlasting	6	\$108.00	4	\$324.00
Heliotropium curassavicum	Salt Heliotrope	3	\$54.00		\$0
Hordeum brachyantherum	Meadows Barley	10	\$23.00		\$0
Hordeum californica	California Barley	50	\$38.00	25	\$38.00**
Hordeum intercedens	Vernal Barley	12	\$38.00	1	\$38.00**
Isocoma menziesii	Coast Goldenbush	20	\$30.00	7	\$88.00

BOTANICAL NAME	COMMON NAME	Est. lb*	\$/Lb	Est. lb Local*	\$/Lb Local
Isomeris arborea	Bladderpod	20	\$22.00	20	\$86.00
Lasthenia californica	Dwarf Goldfields	20	\$72.00	18	\$72.00**
Lasthenia glabrata	Goldfields	40	\$44.00	40	\$44.00**
Leymus condensatus	Giant Wild Rye	30	\$54.00	30	\$162.00
Leymus glaucus	Blue Wild Rye	10	\$24.00	10	\$24.00**
Leymus tricoides	Creeping Wild Rye	10	\$96.00	10	\$96.00**
Lotus scoparius	Deerweed	140	\$24.00	90	\$60.00
Lupinus bicolor	Pigmy Leafed Lupine	15	\$51.00	20	\$51.00**
Lupinus hirsutissimus	Hairy Lupine	4	\$108.00	4	\$108.00**
Lupinus succulentus	Arroyo Lupine	200	\$15.00	25	\$15.00**
Melica californica	California Melic	60	\$36.00	60	\$36.00**
Melica imperfecta	Coast Range Melic	100	\$85.00	115	\$85.00**
Mimulus aurantiacus	Sticky Monkey Flower	6	\$36.00	6	\$72.00
Muhlenbergia rigens	Deergrass	15	\$144.00	5	\$144.00**
Nassella cernua	Nodding Needlegrass	1	\$60.00	1	\$60.00**
Nassella coronata	Giant Needlegrass	1	\$144.00	1	\$432.00
Nassella lepida	Foothill Needlegrass	1	\$80.00	1	\$80.00**
Nassella pulchra	Purple Needlegrass	100	\$48.00	125	\$48.00**
Oenothera hookerii	Evening Primrose	20	\$72.00	4	\$72.00**
Penstemon spectabilis	Penstemon	12	\$44.00	4	\$144.00
Plantago erecta	California Plantain	130	\$7.00	20	\$7.00**
Poa secunda	Malpais Bluegrass	10	\$19.00		\$0

BOTANICAL NAME	COMMON NAME	Est. lb*	\$/Lb	Est. lb Local*	\$/Lb Local
Salvia apiana	White Sage	65	\$54.00	100	\$108.00
Salvia mellifera	Black Sage	65	\$44.00	100	\$88.00
Sisyrinchium bellum	Blue Eyed Grass	25	\$114.00	25	\$114.00**
Suaeda taxifolia	Woolly seablite	1.5	\$90.00		\$0
Vulpia microstachys	Small Fescue	290	\$19.00	18	\$19.00**
MISCELLANEOUS	_18%_ markup				

**III. SLURRY LIST**

ITEM	Application rate (/acre)	Unit	Est. Usage*	\$/unit
Fiber Mulch	2000	LB	190000	\$0.46
Tackifier (Soil Stabilant)	80 to 140	LB	880	\$0.80
Flexterra Bonded Fiber Matrix	4000	LB	40000	\$1.20
Formulated Hydroblend by Land Tech	3000	LB	24000	\$0.44
Earthguard Fiber Matrix	10 to 60	gallon	100	\$104.00
Earthguard Organix	3500 to 5000	LB	21250	\$0.50
Earthguard Fusion	2000 to 4500	LB	16250	\$0.94
Fertilizer 16-20-0	150-300	LB	1800	\$0.40
Fertilizer 12-12-12	250	LB	2000	\$0.45
Fertilizer 15.5-0-0	150	LB	1200	\$0.30
Fertilizer 6-20-20	160	LB	1280	\$0.52
Compost	1725	LB	8625	\$0.16
Mycorrhizal Inoculant	60	LB	500	\$4.80
Surcharge - <i>existing vegetation avoidance</i>	1	acre	30	\$200.00

\* Estimated usages are per year. County does not guarantee annual usage will be within or at least of these quantities.

\*\*Commercial Sources Only.