



**CONTRACT NUMBER
MA-299-20010242
FOR
HYDROSEEDING SERVICES**

THIS Contract Number **MA-299-20010242** for Hydroseeding Services (“**Contract**”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, through its OC Waste & Recycling Department (“**County**”) and **Ron Dietz, Inc., dba Dietz Hydroseeding Company**, with a place of business located at 15745 Kadota Street, Sylmar, CA 91342 (“**Contractor**”). County and Contractor are collectively referred to as “**Parties.**”

RECITALS

WHEREAS, Contractor and County are entering into Contract Number MA-299-20010242, for Hydroseeding Services (“**Services**”) under a firm-fixed price Contract for three (3) years, effective November 23, 2019 through November 22, 2022, in an amount not to exceed \$1,050,000; and

WHEREAS, Contractor agrees to provide Services as specifically described in Attachment A, Scope of Work and Pricing, attached hereto and incorporated herein; and

WHEREAS, County agrees to pay Contractor the fees as further set forth in Attachment A, Scope of Work and Pricing, attached hereto and incorporated herein;

ARTICLES

NOW, THEREFORE, the Parties mutually agree as follows:

- 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 the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. Entire Contract:** This Contract contains the entire Contract between the 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 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:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

- E. Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods 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 the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) 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 indemnitees as identified in paragraph "Z" below, and as more fully described in paragraph "Z," 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 paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnitees 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, costs and expenses but not including attorney's fees.
- I. Assignment:** 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 by Contractor without the express written consent of County. Any attempt by Contractor to assign 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 the 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 penalties pursuant to Section 1741 of the California Labor Code.
- K. Termination:** In addition to any other remedies or rights it may have by law, 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 the 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. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance Warranty:** Contractor shall warrant 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 the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, 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. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the 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.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 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 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees and agents*** as Additional Insureds, or provide blanket coverage, which will state ***As Required By Written Contract***.
- 2) A primary non-contributing endorsement using ISO Form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain the following endorsement, which shall accompany the Certificate of Insurance:

- 1) A waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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 shall list Certificate Holder as County of Orange including the agency/department address listed on the solicitation. Insurance certificates and required endorsements shall be forwarded to the agency/department address.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, 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 and endorsements with County incorporating such changes within thirty (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.

- P. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's

status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. 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.
- S. 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.
- T. 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 paragraph "Z" below, 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.
- U. Freight:** Prior to the County's express acceptance of delivery of products, 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.
- V. 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.
- W. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. 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 had 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 or 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.

- Y. Employee Eligibility Verification:** The 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. The 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. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the 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.
- Z. 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.
- AA. 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 County's Project Manager.

- BB. Contingency of Funds:** Contractor acknowledges that funding or portions of 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.
- CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS

- 1. Scope of Services:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor shall provide Hydroseeding Services to the County under a firm-fixed price Contract, as set forth herein.
- 2. Contract Term:** This Contract is for a three (3) year term, effective November 23, 2019 through November 22, 2022. This Contract may be renewed for two (2) additional one-year terms upon written agreement by both Parties. Renewal amendments may require approval of the County Board of Supervisors. The County does not have to give reason if it decides not to renew.
- 3. Contractor's License Requirements:** Contracts that include requirements for installation or state "furnish and install" require that the Contractors possess a valid California State Contractor's License at the time of contract award. If sub-contractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if total cost, including labor and materials, of the project is \$300.00 or more. Failure to be licensed or to keep the license current and in good standing during the term of the contract with the County shall be grounds for contract revocation.
- 4. Prevailing Wage (Labor Code §1773):** Pursuant to the provisions of Section 1773 et seq. of the California Labor Code, the 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. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.
- 5. Adjustments-Scope of Work:** No adjustments made to the Scope of Work will be authorized without the prior written approval of the County assigned Deputy Purchasing Agent.
- 6. Authorization Warranty:** The Contractor represents and warrants that the person executing this Contract on behalf of and for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition and obligation of this agreement and that all requirements of the Contractor have been fulfilled to provide such actual authority.
- 7. Precedence:** The Contract documents consist of this Contract and its 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.

8. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to perform services requested, as needed by the County of Orange, at rates listed in the Contract, regardless of quantity requested.
9. **Price Increase/Decrease:** No price increases will be permitted during the first term of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
10. **Substitutions:** The Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without County written approval.
11. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this contract. The County will not provide free parking for any service in the County Civic Center.
12. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.
13. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
14. **Data- Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
15. **Contractor Personnel:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
16. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the

written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines.

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

The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and key personnel. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's Project Manager. The County's Project Manager 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. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

- 18. Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

- 19. Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

- 20. Default:** In case of default by Contractor, the County of Orange may procure the goods and services from other sources. If the cost for those goods and services are higher than under the terms of the existing Contract, Contractor shall be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

- 21. Disputes- Contract:**

- A. The 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 the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:

1. The Contractor shall submit to the agency/department assigned Deputy

Purchasing Agent 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 the County, on its own initiative, has already rendered such a final decision.

2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the 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 the Contractor believes the County is liable.

- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

22. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - A. Terminate the Contract immediately, pursuant to Section K herein;
 - B. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - C. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - D. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
23. **Termination-Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.
24. **County of Orange Child Support Enforcement:** Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be

in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

- 25. Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA) listed below, except through the course of the Parties' Project Managers' 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 (4) 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.

COUNTY

County of Orange
OC Waste & Recycling HQ
300 N. Flower Street, Ste. 400
Santa Ana, CA 92703
Attn: Nikki Aragon
Phone: 714-834-3712
Email: nikki.aragon@ocwr.ocgov.com

VENDOR

Ron Dietz, Inc. dba Dietz
Hydroseeding Company
15745 Kadota Street
Sylmar, CA 91342
Attn: Ron Dietz
Phone: 818-364-7333
Email: rd@dietzhydroseeding.com

[Signature Page Follows]

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

RON DIETZ, INC. DBA DIETZ HYDROSEEDING COMPANY*:

RONALD DIETZ PRESIDENT
Print Name Title

[Signature] 8/8/2019
Signature Date

COLLEEN DOHERTY VICE PRESIDENT / SECRETARY
Print Name* Title*

[Signature] 8/8/19
Signature* Date*

* If the contracting party is a corporation, two (2) 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 signee to bind the corporation.

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

Print Name Title

Signature Date

APPROVED AS TO FORM:

County Counsel

By [Signature]
Paul Albarjan, Senior Deputy

Date 8/15/2019

ATTACHMENT A SCOPE OF WORK and PRICING

TASKS

There are three (3) types of tasks associated with this Contract:

1. 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 County, 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.
2. 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.
3. 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%.

SCHEDULING

Hydroseeding shall be applied during the fall/winter season between October 1 and January 15, or as so required and directed by County. Contractor shall limit work to standard landfill operational hours (7:00 am – 5:00 pm Monday through Friday except the 6 major Federal holidays), unless special arrangements are made to complete emergency work outside of the normal business day.

- Contractor shall schedule and begin work within five (5) working days after receipt of a task is issued by County.
- Contractor shall not hold County liable for payment, including any pre-ordered material costs, until a task is issued.
- Contractor shall confirm with County at least twenty-four (24) hours in advance of starting work; work shall be carried out in a due and diligent manner.

APPLICATION

Hydroseeding shall be applied as directed in § 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.

MATERIALS

Hydroseeding 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 County 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 County.

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 County 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 County if specified minimum is not available. The seed may be commercially grown unless locally collected seed is requested by the County. "Locally collected seed" is defined as having originated in the coastal southern California ecological region, and west of the Santa Ana Mountains. The County 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 powdered 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 County. A one-ounce sample of the specified seed mix may be requested by the County.

Commercial fertilizer shall be as required in the order.

Organic soil stabilant shall be Ecology Control M-Binder, Ecotack, Terra Tack III, or an approved equal.

Proportion and seed mix may be changed by the County 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 County, 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.

WATER

Water sufficient to emulsify the requested amount of hydroseeding mix shall be provided or arranged for by the County at the project site.

TRAVEL

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. Prima Deshecha Landfill
32250 Avenida La Pata
San Juan Capistrano, CA 92675
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. Santiago Canyon Landfill
3099 Santiago Canyon Road
Orange, CA 92869
5. Olinda Alpha Landfill
1942 N. Valencia Avenue
Brea, CA 92823
6. Gothard Landfill
18131 Gothard Street
Huntington Beach, CA 92648
Between Goldenwest and Gothard Streets and a ¼ mile south of Talbert

[Price Sheet Follows]

PRICING

Prices shall be all-inclusive of any fees associated with materials/services. No additional fees or charges of any kind will be paid; ONLY prices, as listed below, shall be paid.

SEED LIST

BOTANICAL NAME	COMMON NAME	Commercially Sourced	Locally Sourced
		\$/lb	\$/lb
Aristida purpurea	Purple Three Awn	\$50.00	
Achillea millefolium	California Yarrow	\$27.00	\$85.00
Artemisia californica	California Sagebrush	\$29.00	\$34.00
Atriplex brewerii	Brewer's Saltbush	\$18.00	\$40.00
Atriplex lentiformis	Giant Saltbush	\$17.00	\$42.00
Baccharis pilularis	Coyotebush	\$28.00	\$40.00
Bromus arizonicus	Cucamonga Brome	\$6.85	
Bromus carinatus	California Brome	\$6.00	\$35.00
Convolvulus simulans	Small-flowered morning glory		\$102.00
Deinandra paniculata	San Diego Tarplant		\$90.00
Deschampsia elongatum	Aira	\$30.00	
Diplicus longiflorus	Southern Monkey Flower	\$23.00	\$34.50
Encelia californica	Encelia	\$26.50	\$27.00
Erigonum fasciculatum	California Buckwheat	\$7.00	\$7.00
Eriophyllum confertiflorum	Golden Yarrow	\$32.00	\$32.00
Eschscholzia californica	California Poppy	\$19.00	\$40.00
Frankenia salina	Alkali Heath	\$56.00	\$210.00
Galium angustifolium	Bedstraw	\$35.00	\$58.00
Gnaphalium californicum	California Everlasting	\$35.00	\$63.00
Heliotropium curassavicum	Salt Heliotrope	\$69.00	
Hordeum brachyantherum	Meadows Barley	\$17.50	

BOTANICAL NAME	COMMON NAME	Commercially Sourced	Locally Sourced
		\$/lb	\$/lb
Hordeum californica	California Barley	\$36.00	\$66.00
Hordeum intercedens	Vernal Barley	\$22.00	\$63.00
Isocoma menziesii	Coast Goldenbush	\$26.00	\$40.00
Isocoma veneta	Mission Red	\$26.00	\$40.00
Isomeris arborea	Bladderpod	\$21.00	\$40.00
Lasthenia californica	Dwarf Goldfields	\$58.00	\$74.75
Lasthenia glabrata	Goldfields	\$58.00	\$86.00
Leymus condensatus	Giant Wild Rye	\$40.00	\$54.00
Leymus glaucus	Blue Wild Rye	\$12.50	\$29.00
Leymus tricoides	Creeping Wild Rye	\$47.00	\$64.00
Lotus scoparius	Deerweed	\$23.00	\$28.75
Lupinus bicolor	Pigmy Leafed Lupine	\$40.00	\$86.00
Lupinus hirsutissimus	Hairy Lupine	\$69.00	\$143.00
Lupinus succulentus	Arroyo Lupine	\$22.50	\$52.00
Melica californica	California Melic	\$46.00	\$98.00
Melica imperfecta	Coast Range Melic	\$69.00	\$137.00
Mimulus aurantiacus	Sticky Monkey Flower	\$27.00	\$48.00
Muhlenbergia rigens	Deergrass	\$129.00	\$275.00
Nassella cernua	Nodding Needlegrass	\$69.00	\$150.00
Nassella coronata	Giant Needlegrass	\$88.00	\$150.00
Nassella lepida	Foothill Needlegrass	\$96.00	\$220.00
Nassella pulchra	Purple Needlegrass	\$45.50	\$69.00
Oenothera hookerii	Evening Primrose	\$44.00	\$64.00

BOTANICAL NAME	COMMON NAME	Commercially Sourced	Locally Sourced
		\$/lb	\$/lb
Penstemon spectabilis	Penstemon	\$41.00	\$66.00
Plantago erecta	California Plantain	\$25.00	\$70.00
Poa secunda	Malpais Bluegrass	\$18.00	
Salvia apiana	White Sage	\$31.00	\$31.00
Salvia mellifera	Black Sage	\$35.00	\$39.00
Sisyrinchium bellum	Blue Eyed Grass	\$86.50	\$107.00
Suaeda taxifolia	Woolly seablite	\$54.00	
Vulpia microstachys	Small Fescue	\$21.00	\$55.00

MISCELLANEOUS [indicate markup]

Cost + 25 % markup**SLURRY LIST**

ITEM	Application rate (/acre)	Unit	Slurry
			\$/lb
Fiber Mulch	2000	lb	\$0.61
Tackifier (Soil Stabilant)	80 to 140	lb	\$1.10
Flexterra Bonded Fiber Matrix	4000	lb	\$1.40
Formulated Hydroblend by Land Tech	3000	lb	\$0.36
Earthguard Fiber Matrix	10 to 60	gallon	\$122.00
Earthguard Organix	3500 to 5000	lb	\$0.58
Earthguard Fusion	2000 to 4500	lb	\$1.10
Fertilizer 16-20-0	150-300	lb	\$0.60
Fertilizer 12-12-12	250	lb	\$0.60
Fertilizer 15.5-0-0	150	lb	\$0.50
Fertilizer 6-20-20	160	lb	\$0.60
Compost	1725	lb	\$0.30
Mycorrhizal Inoculant	60	lb	\$5.60
Surcharge - existing vegetation avoidance	1	acre	\$450.00

ATTACHMENT B PAYMENT TERMS AND INVOICING

PAYMENT TERMS

Invoices are to be submitted in *arrears* for materials/services provided. Contractor shall follow the Invoicing Instructions below. Payment will be net 45 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the County Project Manager and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor. In the event of a lost or misdirected invoice, the Contractor shall re-issue the invoice at no additional charge.

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

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

INVOICING INSTRUCTIONS

Contractor shall use company's letterhead to submit all invoices for materials/services rendered. Proper references must be made to the Scope of Work. Each invoice shall have a unique invoice number and include the following information:

- a. Contractor's Name and Address Including Email Address
- b. Contractor's Remittance Address, If Different from Above
- c. Name of County Agency/Department
- d. Contract Number (MA-299-20010242)
- e. Address Services Performed
- f. Itemized Materials
- g. Sales Tax, If Applicable
- h. Total Invoice Amount

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.

Invoices shall be submitted electronically, via email to ocwrinvoice@ocwr.ocgov.com; or via mail to:

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

Payment (Electronic Funds Transfer EFT): The County of Orange offers contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County of Orange via an EFT Authorization Form. To request a form, please contact the department representative listed in the bid. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.