

**CONTRACT CT-012-17010525
BETWEEN
THE COUNTY OF ORANGE
AND
HABITAT RESTORATION SCIENCES INC.
FOR
WEED ABATEMENT SERVICES**

THIS Contract CT-012-17010525 for Weed Abatement Services, hereinafter referred to as “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 on behalf of OC Community Resources, hereinafter referred to as “County” and Habitat Restoration Sciences Inc., hereinafter referred to as “Contractor”, with County and Contractor sometimes individually referred to as “Party”, or collectively referred to as “Parties”.

RECITALS

WHEREAS, Contractor responded to an Invitation For Bids (IFB) for Weed Abatement Services for the County of Orange; and

WHEREAS, the Contractor responded and represented that its proposed products shall meet or exceed the requirements and specifications of the Scope of Work, attached hereto as Attachment A and incorporated herein; and

WHEREAS, County agrees to pay Contractor the fees as further set forth in Pricing and Payment, attached hereto as Attachment B and incorporated herein; and

NOW, THEREFORE, the parties mutually agree as follows:

ARTICLES

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 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 trial to another County.
- B. **Entire Contract:** This Contract, including its Attachments, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, 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.
- 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.

- 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 services that do not conform to the prescribed Scope of Work. Delivery shall not be deemed to be complete until all 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 services have actually been received, and 2) payment shall be made in arrears after satisfactory acceptance and within 30 calendar days upon the Auditor-Controller's receipt of an approved invoice submitted in accordance with the terms set forth herein, unless otherwise stated. The invoice must be verified and approved by the County's Project Manager and is subject to routine processing requirements of the County.

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

- G. **Warranty:** Contractor expressly warrants that the 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 paragraph "HH" below, and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services due to 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 "HH" 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, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-contracting:** 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 sub-contracted by the Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract 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 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 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. **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 the Contractor, employees nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the 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 services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; 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 provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the 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 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) 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 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 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:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles (Not required if a third party carrier is making deliveries)	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Employee Dishonesty	\$100,000 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 0012, CA 00 20, or a substitute form providing coverage at least 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 Insured.
- 2) A primary non-contributing endorsement 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 County Of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County Of Orange is a Loss Payee shall accompany the Certificate of Insurance.

All insurance policies required by this contract shall waive 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 when acting within the scope of their appointment or employment.

The Workers' 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 the County of Orange 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 insured" clause (standard in the ISO CG 0001 policy).

*Insurance certificates should be emailed to agency buyer "Sapreena.leoso@ocparks.com"

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 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 paragraph "HH" below, 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 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 paragraph "HH" 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.
- 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:** Quoted pricing shall include full compensation for providing all services as specified herein or when applicable, in the scope of services attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** *Intentionally left blank*
- 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 affect the purpose of the Parties and this Contract.

- FF. **Authority:** The 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:** 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, consultants and subcontractors 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 employee, consultants and subcontractors 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.
- HH. **Indemnification Provisions:** 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 manager.

ADDITIONAL TERMS AND CONDITIONS

- 1) **Scope of Work:** This Contract specifies the contractual terms and conditions by which the County will procure goods and services from Contractor as further detailed in Scope of Work, identified and incorporated herein by this reference as Attachment A.
- 2) **Term:** Unless County's Project Manager authorizes an extension of time in writing, the Contractor agrees to provide weed abatement services and complete the initial installation within **120 calendar days** from upon receipt of items. Contractor shall also provide the removal of lights upon County project manager request.
- 3) **Compensation and Payment:** The Contractor agrees to accept the specified compensation, as set forth in Attachment B, Pricing and Payment, as full remuneration for performing all services and materials called for. The Contractor assumes responsibility for performance of all its duties and obligations hereunder.
- 4) **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. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - c. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - d. County may terminate the Contract immediately without penalty.

Nothing in this section shall limit the County's right to terminate this Contract pursuant to Section K herein.

- 5) **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the Contract will be terminated without penalty to the County.
- 6) **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.
- 7) **Debarment:** Contractor shall certify that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where Contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, Contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible.
- 8) **Termination-Default:** If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract,

including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this Contract.

The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

- 9) **California Public Records Act:** This Contract, the Contractor's response and the purchasing file are subject to public disclosure as permitted by the California Public Records Act. Regardless of any identification otherwise, including marking of pages in the Contractor's response, this Contract, or the purchasing file as "confidential" or "proprietary," all such information shall become a part of the public record. The County shall not in any way be liable or responsible for the disclosure of any such records.
- 10) **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
- 11) **Contractor Bankruptcy/Insolvency:** If the Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the Contractor's insolvency, the County may terminate this Contract.
- 12) **Contractor Personnel - Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:
 1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 2. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
 3. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
 2. The Contractor violates the certification by failing to carry out the requirements as noted above.
- 13) **Personnel Warranty:** The Contractor warrants that all persons employed have satisfactory past records indicating their ability to accept the kind of responsibility anticipated in this type of work. All employees shall be required to wear uniforms, badges or other means of identification which are to be furnished by the Contractor and must be worn at all times while working on County property. OCPL/Purchasing must be notified in writing, within seven (7) days upon notice of award, of the procedure to be used prior to beginning work and be notified seven (7) days prior to any changes in the procedure.
- 14) **Prevailing Wage (Labor Code Section 1773):** Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in the locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the County's Clerk of the Board Office, and from the Director of the Department of Industrial Relations (DIR) 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.
- 15) **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 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 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.

For Contractor: Habitat Restoration Sciences Inc.
 Attention: Pete Trotta
 4901 El Camino Real Suite D
 Carlsbad, CA 92008
 Email: cthompson@hrs.dudek.com
 Phone: 760-479-4210
 Fax: 760-479-4190

For County: County of Orange
 OC Community Resources
 Attn: Bill Reiter/Project Manager
 13042 Old Myford Road
 Irvine, CA 92602
 Email: Bill.Reiter@ocparks.com

OC Community Resources
Purchasing & Contract Services/OC Parks
Attn: Sapreena Leoso/Deputy Purchasing Agent
13042 Old Myford Road
Irvine, CA 92602
Phone: 949-923-3724
Email: Sapreena.Leoso@ocparks.com

- 16) **Contractor Work Hours and Safety Standards:** The Contractor shall ensure compliance with all safety

and hourly requirements for employees, in accordance with Federal, State, and County safety and health regulations and laws.

- 17) **Material Safety Data Sheets (MSDS):** The Contractor is required to provide a completed Material Safety Data Sheet (MSDS) for each hazardous substance provided to the County under the Contractor's Contract with the County. This includes hazardous substances that are not directly included in the Contract, but are included in the goods or services provided by the Contractor to the County. The provision of the MSDS's must be in accordance with the requirements of California Code of Regulations. The MSDS for each substance must be sent to the place of shipment or provision of goods/services and must also be sent to:

County of Orange
CEO/Risk Management
Attn: Safety and Loss Prevention Program
PO Box 327
Santa Ana, CA 92702

- 18) **Chemicals:** Contractor shall have a listing of proposed chemicals prepared by a licensed California Pest Control Advisor to include commercial name, chemical components, concentration rates and usage and provide Material Safety Data Sheets (MSDS) for all chemicals. Chemicals shall only be applied by those persons possessing a valid California Pest Control Advisor's License. Contractor shall have a listing of proposed chemicals prepared by a licensed California Pest Control Advisor to include commercial name, chemical components, concentration rates and usage and provide Material Safety Data Sheets (MSDS) for all chemicals. Chemicals shall only be applied by those persons possessing a valid California Pest Control Advisor's License. All applications shall be in strict accordance with all governing regulations and to limit drift to a maximum of six (6) inches. Records of the original proposed listing and all operations starting dates, time, methods of application, chemical formulations, applicators names and weather conditions shall be made and retained in an active file for a minimum of one (1) year after completion of this Contract. All organic or inorganic fertilizers listing dates, times, quantity, names of applicators, weather conditions, and method of application must be maintained and submitted monthly to Inspector for NPDES reporting.
- 19) **Conflict with Existing Law:** The Contractor and the County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with interests of both parties to the maximum extent reasonable.
- 20) **Contract Disputes:** 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 and the County's Project Manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
- a) The Contractor shall submit to the agency/department 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 the County, on its own initiative, has already rendered such a final decision.
 - b) 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.

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 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.

- 21) **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.
- 22) **Interpretation of Contract:** In the event of a conflict or question involving the provisions of any part of this Contract, interpretation and clarification as necessary shall be determined by the County's assigned buyer. If disagreement exists between the Contractor and the County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.
- 23) **Limitations of Actions:** No action, regardless of form, arising out of this contract may be brought by either party more than two years after the cause of the action has arisen, or, in the case of nonpayment, more than two years from the date of the last payment, except where either party, within two years after a cause of action has arisen, provides the other party in writing a notice of a potential cause of action, disclosing all material facts then known by the notifying party concerning such cause of action, then the notifying party may bring an action based on the matter so disclosed at any time prior to the expiration of four years from the time the cause of action arose.
- 24) **Precedence:** The Contract documents consist of this Contract and its attachments. In the event of a conflict between the Contract documents, the order of precedence shall be the provisions of the main body of this Contract (such as those provisions set forth in the recitals and articles of this Contract), then the attachments.
- 25) **Price Increase/Decrease:** No price increases will be permitted during the first period of the Contract Agreement. All price decreases will automatically be extended to the County of Orange. The County requires bona fide 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. The County may enforce, adjust, 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.
- 26) **Amendments-Changes/Extra Work:** The Contractor shall make no changes to this agreement without the County's written consent. In the event that there are new or unforeseen requirements, the County with the contractor's concurrence has the discretion to request official changes at any time without changing the intent of this agreement.

If County-initiated changes or changes in laws or government regulations affect price, the contractor's ability to deliver services, or the project schedule, the contractor shall give the County written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a contract amendment. Said amendment shall be issued by the County-assigned buyer, shall require the mutual consent of all parties, and may be subject to approval by the County



Board of Supervisors. Nothing herein shall prohibit the contractor from proceeding with the work as set forth in this contract.

- 27) **Adjustments-Scope of Work:** No adjustments made to the scope of work will be authorized or paid for without prior written approval of the County assigned buyer.
- 28) **Waivers-Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
- 29) **Validity:** The invalidity in whole or in part of any article or provision of this Contract shall not void or affect validity of any other article or provision of this Contract.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

CONTRACTOR: HABITAT RESTORATION SCIENCES INC.

Mark Girard	President
Print Name	Title
	12/7/2016
Signature	Date
Robert Kyle Matthews	Secretary
Print Name	Title
	12/7/2017
Signature	Date

* Pursuant to California Corporations Code Section 313, 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 of any Assistant Treasurer. *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
Orange County, California

Michael A. Haubert	Deputy County Counsel
Print Name	Title
	12/7/16
Signature	Date

ATTACHMENT A SCOPE OF WORK

- I. SCOPE:** This is a contract for weed abatement services at the Talbert Park Facility. Good and Services shall be provided in accordance with County Terms, Conditions and this Scope of Work. Contractor shall provide and furnish all the labor, materials, tools, equipment, the disposal of removed materials, all utility and transportation services in adequate quantity and quality to accomplish completion of the work as specified and all work inferred as necessary within the time period set forth. The work shall conform to the Contract Documents and all codes, regulations, laws, etc. referenced in the Contract Documents or by industry standard.
- II. LOCATION:** Talbert Regional Park
1298 Victoria Avenue
Costa Mesa, CA 92627
- III. GENERAL REQUIREMENTS:**
- A.** Contractor shall provide goods and services that include, but not limited to;
1. Providing both mechanical and hand removal and spray treatment of pampas grass from the areas designated by County in the map provided. Hand crews will be required where equipment cannot reach or access the removal site. Plants too large to be removed by a hand crew are required to be flush cut and spot sprayed. The contractor is required to consult with County staff before any native vegetation is disturbed or removed for this purpose.
 2. The removal of all vegetation is to be hauled off-site within 72 hours. Target herbicide spray is to be applied to any remaining non-native vegetation within mapped area.
 3. Contractor must also provide a safety spotter to monitor each site where equipment is working to help ensure public safety.
 4. Contractor is responsible for setting up barricades to close off public access to that area of the facility. Project should be set up in phases to minimize impact to the public and maximize safety.
 5. Contractor is to provide County with a work schedule and corresponding map.
 6. Contractor foreman is required to be on site during the performance of work and contact information shall be provided to County staff.
 7. County will provide a biological and cultural resource monitor for the project. The contractor is required to notify County staff each day of the proposed work area. The contractor is not to proceed with work in any area until approval has been given by the monitors or by County.
 8. In the event of rain, Contractor must consult with County staff before accessing site with vehicles and other equipment as this area is prone to flooding conditions which are unsafe to work in until area has sufficiently dried out.
 9. Ingress and egress to work site is off of Victoria St. and Contractor is responsible for providing the traffic control for safety.

10. Storage of equipment to be in area designated by County.
11. County is not responsible for stolen, damaged or vandalized equipment while left at work site.
12. Contractor is to monitor spray effectiveness quarterly, with up to five additional years of treatment and monitoring if Pampas grass persists. Contractor to use dye in all herbicide applications and will not spray if rain is in forecast for 72 hours prior to, or after a rain event(s).
13. Contractor shall comply with all County and local sound control and noise level rules, regulations, and ordinance, which apply to any work performed pursuant to the Contract, and will make every effort to control any undue noise resulting from its operation.
14. Debris Removal: All trash and debris will be removed from work area by the end of each working day.
 - During the progress of work, when required, Contractor shall remove all rubbish and debris resulting from the work.
 - Work area will be left in a neat, clean and acceptable condition as approved by County's Project Manager.
 - No stockpile of debris will be allowed at the site.
 - Any debris dropped on the public street during entrance or exit of the site will be removed immediately by Contractor.
15. Traffic Control: Contractor shall conduct its operations in a manner which will minimize traffic congestion during A. M. and P. M. peak-hour traffic. This may require beginning work after the A. M. peak-hour traffic and ending work before the P. M. peak-hour traffic.
16. Spillage resulting from hauling operations along or across any public traveled way will be removed immediately by Contractor, at his expense.
17. When entering or leaving roadways carrying public traffic, Contractor's equipment, whether empty or loaded, will in all cases yield to public traffic.
18. Street Closures, Detours, Barricades", of the Standard Specifications the following:
 - Special emphasis will be placed on the use of construction zone ahead (C18R) signs at the beginning, end and all access and/or intersecting streets with roads under construction. In addition to construction zone signs, rough road signs (W33) will be used on all roads with a posted or marked bicycle trail.
 - Contractor shall provide and maintain all signs, barricades, pedestals, flashers, delineators and other necessary facilities for the protection of the motoring public within the limits of the construction area and all its approaches, including advanced signing and barricades. Contractor shall also post proper signs to notify public regarding condition of roadway, all in accordance with provisions of the Vehicle Code and "Manual of Traffic Controls", as published by the State of California, Department of Transportation, most current edition.
19. Flashing arrow signs, of the appropriate type per the "Manual of Traffic of Traffic Controls", latest edition, will be provided for all lane closures on all arterial highways and collector streets.

20. Portable delineators, either conical (traffic cone) or tubular shaped plastic devices, with a minimum height of 28 inches will be used for delineation of the travel way.
21. If the traffic cones or portable delineators are damaged, displaced or unacceptable for any reason by County's Project Manager or are not in an upright position from any cause, said cones or portable delineators will immediately be replaced or restored to their original location, in an upright position, by Contractor.
22. Should Contractor appear to be neglectful or negligent in furnishing warning and protective measures as provided, County's Project Manager may direct attention to the existence of a hazard and necessary warning and protective measures will be furnished and installed by Contractor, at its expense. Should County's Project Manager point out the inadequacy of warning and protective measures, such action on the part of County's Project Manager will not relieve Contractor from responsibility for public safety or abrogate its obligation to furnish and pay for these devices.
23. Safety: Contractor agrees to perform all work outlined in this Contract in such a manner as to meet all accepted standards for safe practices during operations and to maintain safe conditions or premises and ways at all times, including safely stored equipment, machines and materials. This includes compliance with local County, State or other legal intents and terms of the applicable Occupational Safety and Health Administration (OSHA) and CAL/OSHA Safety orders at all times so as to protect all persons, including Contractor's employees and Agency against injury or damage to their property.
24. Working hours will be scheduled and coordinated by County Project Manager.
25. Contractor must ensure all precautions for safety are taken.
26. All Contractor vehicles parked on site shall be secure at all times.
27. Contractor shall furnish, install, and maintain all signage, warning devices, barricades, cones, etc. to protect the public, County Staff, and its workers during the performance of this Contract.
28. All tools and materials shall remain in Contractor's possession at all times.
29. All material that could inflict injury shall continuously be cleaned as work progresses.
30. All work areas shall be secured prior to the end of each work day.
31. Contractor shall dispose all removed material in accordance with Local, State and Federal regulations.
32. Additional services required beyond this scope of work must negotiated and approved by County.
33. Work must be complete prior to the start of nesting season.
34. Contractor is required to remove root masses and dispose of material offsite.
35. Contractor is required to remove Pampas grass plants by hand if a native plant is identified in close proximity.

36. Utilization of front loaders with clamshell/grabber buckets
37. A person(s) possessing a valid California Qualified Applicators License/Certificate shall be on site and remain during all chemical application activities.
38. Contractor shall use non-restricted chemicals only to perform chemical edging/application. Chemicals shall be recommended and approved by the Inspector prior to use. A Notice of Intent to apply non-restricted/restricted materials form shall be completed and submitted to the Inspector a minimum of fourteen (14) days prior to intended use. Notice of Intent form shall be provided by County. No work shall begin until Inspector's approval is obtained.
39. Prior to the application of chemicals a Notice of Pesticide Application will be posted to warn the public of spraying per the California State Department of Pesticide Regulation requirement (see Appendix 8 Inspection Forms) and posted in prominent locations in areas to be treated or sprayed a minimum of 24 hours prior to spraying per Orange County Department of Agriculture regulations and the California State Department of Pesticide Regulations. All regulations issued by the California State Department of Pesticide Regulation regarding herbicide safety, transport, application and clean up shall be followed by Contractor.
40. Chemicals shall be applied to limit drift to six inches (6"). All precautionary measures necessary to ensure public and worker safety shall be employed since all areas will be open for public access during application.
41. All damages resulting from Contractor's operations shall be repaired or replaced at Contractor's expense.
42. Spraying of channels or water shed areas to eliminate unwanted vegetation in selected areas shall be determined by Inspector. When authorized, Aqua Master or comparable chemicals shall be used in these water way channel areas strictly following label directions to prevent harm to fish or other aquatic life.
43. No backfill required.
44. The County will not be supplying water for chemical mixes, dust control, and any other required uses.
45. Contractor must not use any the existing water sources on Balboa Blvd or near the entrance on Victoria.
46. Contractor must thoroughly clean all equipment prior to every entrance of work location to prevent introduction of additional invasive species.
47. All herbicide use must be reported to County Project Manager by the last day of each month.

IV. FREIGHT/DELIVERY (F.O.B. DESTINATION): Contractor assumes full responsibility for all transportation, scheduling, packaging, handling, insurance, and other services associated with the delivery of all products deemed necessary under this Contract. County will not pay for separate transportation/delivery charges.

V. CONTACT INFORMATION:

A. County
Attn: William Fegley (Scott)/Project Manager
Email: William.Fegley@ocparks.com
Phone: 949-923-2289

Or

Attn: Brian Beach/Project Manager
Email: Brian.Beach@ocparks.com
Phone: (949)923-3771

B. Contractor
Attn: Jon Stafford
1217 Distribution Way
Vista, CA 92081
Email: jstafford@hrs.dudek.com
Phone: 760 310-5266

**ATTACHMENT B
PRICING AND PAYMENT**

1. **Compensation:** This is an all-inclusive, firm fixed price contract between County and Contractor for goods and services listed in Attachment "A", Scope of Work.

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, tax, shipping, freight, insurance requirements, and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of total contract amount specified herein unless authorized by amendment in accordance with Paragraphs "C", "R" and "26" of Contract Terms and Conditions.

2. **Fees and Charges:** Payment shall be made in accordance with the provisions of this Contract.

A. Total Contract amount shall not exceed: \$389,000.00

The County will provide the Contractor with written notification of deficient performance. County reserves the right to deduct from the payments due or to become due to the Contractor for deficient performance. The following Liquidated Damages shall be applied to deficient performance and/or late completion. The parties hereto agree that it is impracticable or extremely difficult to determine the actual damages to the purchaser from failure to maintain the building according to the established schedule.

3. **Payment Terms:** Invoices are to be submitted in arrears to the user Agency/Department to the ship-to address, unless otherwise directed in this contract. Vendor must reference Contract number on all invoices. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the Agency/Department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the contractor.

Billing shall cover services and/or goods 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 or services do not meet the contract requirements.

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

4. **Invoicing Instructions:** The Contractor shall provide an invoice on the Contractor's letterhead. Each invoice shall have a unique number and shall include the following information:

- A. Contractor's name and address
- B. Contractor's remittance address, if different from (1), above
- C. Contractor's Tax Identification Number (TIN) or Employer's Identification Number (EIN)
- D. Name of County Agency/Department
- E. Delivery/service address
- F. Contract number "CT-012-17010525"
- G. Service Date(s)
- H. Product/service description, quantity, and prices
- I. Sales tax, if applicable

- J. Freight/delivery charges, if applicable
- K. Total

Invoices and supporting documentation are to be forwarded to:

**OC Community Resources
Attn: Accounts Payable
1770 N. Broadway, 4th floor
Santa Ana, CA 92706**

The responsibility for providing an acceptable invoice to the County of payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

- 5. 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 Deputy Purchasing Agent representative listed in this contract. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.*

**EXHIBIT I
MAP**

DRAWING OF PROJECT WORK AREA

