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This Contract Number MA-299-19010028 to provide Bird Abatement Services for North, Central & South Region Landfills ("**Contract**") is made and entered into upon execution of all necessary signatures between the County of Orange, a political subdivision of the State of California, by its OC Waste & Recycling Department ("**County**") and **Airstrike Bird Control, Inc. ("Contractor")**, with a principal office located at **7343 El Camino Real, #325, Atascadero, CA 93422-4697**. County and Contractor are collectively referred to as "Parties."

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (RFP) to provide Bird Abatement Services for North, Central & South Region Landfills ("Services"); and

WHEREAS, the County Board of Supervisors has authorized the County Procurement Officer or authorized Deputy to enter into this Contract with Contractor to provide the Services for a three-year period, effective **September 20, 2018** through **September 19, 2021**, in an amount not to exceed **\$840,000**; and

WHEREAS, County desires to form Contracts with three (3) Contractors, one of which is Airstrike Bird Control, Inc. and the others of which are Adam's Falconry Service, LLC and Avian Entertainment, LLC, with each separate Contract containing identical terms, to perform services consistent with these Contract terms and conditions; and

WHEREAS, Contractor agrees to provide Services as more specifically described in 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 Cost/Compensation for Contractor Services, attached hereto as Attachment C and incorporated herein; and

WHEREAS, County ~~now desires to~~ amended the Additional Term and Condition, Number One, Titled Term; and

WHEREAS, County ~~now desires to~~ amended Article Q of the County General Terms and Conditions, in its entirety, as follows and incorporated herein:

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; and

WHEREAS, Contractor ~~has~~ confirmed in writing that they understand and are in compliance with the County's Conflict of Interest Policy as stated in Article Q herein; and

WHEREAS, County ~~now desires to~~ renewed the Contract for one year, effective September 20, 2021 through September 19, 2022 in an amount not to exceed \$280,000 for a cumulative Contract amount not to exceed \$1,120,000; and

WHEREAS, County now desires to renew the Contract for one year, effective September 20, 2022 through September 19, 2023 in an amount not to exceed \$300,000 for a cumulative Contract amount not to exceed \$1,420,000;

NOW, THEREFORE, for and in consideration of the professional services and mutual promises to be performed for the County by the Contractor in connection with the Services and the compensation to be paid for such Services and mutual promises by the County, the Parties 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 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 immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material 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 obligation.

- L. Consent to Breach Not Waiver:** No term or provision of this Contractor 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:** 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 Provision:** 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 and independent contractors 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 and independent contractors 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 or independent contractors to work if they 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 independent contractors and to receive proof of insurance prior to allowing any subcontractor or independent contractor 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:

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	\$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 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 20 26 04 13 or a form at least as broad naming the **County of Orange its elected and appointed officials, officers, agents and employees** as Additional Insureds, or provided blanket coverage, which will state **AS REQUIRES 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 by the County of Orange shall be excess and non-contributing.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees 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 0001 policy).

Insurance certificates should be forwarded to the department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the 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:~~** ~~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 terms of sale or other 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.~~

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 Contract 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. Term

~~The anticipated effective date of this Contract is September 20, 2018, and shall continue for three (3) consecutive years through September 19, 2021, in an amount not to exceed \$840,000, with an option to renew the Contract for two additional one year periods. Any renewal of this Contract may require approval by the County's Board of Supervisors.~~

The effective date of this Contract shall be September 20, 2018 through September 19, 2020, with an option to renew annually for two (2) additional years in one (1) year increments, with unused funds to be carried over from year to year, not to exceed the revised cumulative Contract total. Any renewal after the initial three-year term may require approval of the Orange County Board of Supervisors.

2. Project Manager-County

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 (County PM) shall coordinate the activities of the County staff assigned to work with the Contractor.

The County PM shall have the right to require the removal and replacement of the Contractor's Project Manager and key personnel. The County PM shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County PM. The County PM 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.

3. 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 written consent of the County PM, which consent shall not be unreasonably withheld.

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

4. Entirety

This Contract and all of its Attachments and Attachment s comprise the entire Contract between the Contractor and the County. Additional or new terms contained in this Contract, which vary from the Contractor's proposal, are deemed accepted by the Contractor by execution of this Contract or other commencement of performance hereunder. All previous proposals, offers, discussions, preliminary understandings, and other communications relative to this Contract, oral or written, are hereby superseded, except to the extent that they have incorporated into this Contract. No future waiver of, exception to, addition to, or alteration of any of the terms, conditions and/or provisions of this Contract shall be considered valid unless specifically agreed to in writing by both Parties.

5. Precedence

The documents herein consist of this Contract and its attachments and exhibits. 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 and exhibits.

6. Compensation

This is a fixed ceiling, time and materials Contract. Contractor agrees to accept the specified compensation set forth in Attachment C, Cost/Compensation for Contractor Services, as full remuneration for performing all services and furnishing all staffing and materials called for; and for any reasonably foreseeable difficulties which may arise or be encountered in the execution of the services until acceptance; and for risks connected with the services; and for performance by the Contractor of all of its duties and obligations hereunder.

7. Contractor's Expense

The Contractor will be responsible for all costs related to photocopying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract.

8. Changes/Extra Work/Modifications

The Contractor shall make no changes in this Contract 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 Contract.

If County-initiated changes 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 change was proposed and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract modification before becoming effective. Said modification shall be issued by the Deputy Purchasing Agent or his designee and may be subject to approval by the County Board of Supervisors. Nothing herein shall prohibit the Contractor from proceeding with the work set forth in Attachment A, Scope of Work.

All extra services are by mutual consent of all Parties and may be subject to the approval of the County Board of Supervisors.

9. 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 properties 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.

10. 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, shall be returned to the County at the end of this Contract.

11. Reports/Meetings

The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirement as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract. Meetings held between OC Waste & Recycling staff and Contractor's staff to discuss Contractor's non-performance or lack thereof shall not be billable to the County.

12. Records

Contractor shall keep an accurate record of time expended by Contractor and/or Subcontractors working for Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the County at reasonable times.

13. Conflict of Interest

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

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

14. Child Support Enforcement Requirements

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.

15. 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.

16. Publication

No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.

17. Subject to 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, this Contract will be terminated without penalty to the County.

18. 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; and
- 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.

19. 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 Project Manager. If disagreement exists between the Contractor and the County's Project Manager in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.

20. Disputes

- 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's Purchasing Agent by way of the following process:
 1. The Contractor shall submit to County Project Manager 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's 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. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction.

21. Termination -- Default

If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten (10) 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.

22. Termination -- Convenience of the County

Notwithstanding any other provision of the Contract, County may at any time and without cause terminate in whole or in part, upon not less than thirty (30) days written notice to the Contractor. Such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the effective date of the termination, whether the Contract shall be terminated in whole or in part and if applicable the portion of work to be terminated. The Contractor shall immediately stop work in accordance with the Notice of Termination and comply with any other direction as may be specified in the Notice of Termination or as provided subsequently by County. The County shall pay the Contractor for the work completed and accepted by County prior to the effective date of the termination, and such payment shall be Contractor's sole remedy. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination in whole or in part under this provision. The Contractor shall insert in all subcontracts that the subcontractors shall stop work on the date of and if applicable the portion of work to be terminated in a Notice of Termination, and shall require sub-Contractors to insert the same condition in any lower tier subcontracts.

23. Termination -- Orderly

After receipt of a termination notice from the County of Orange, the Contractor shall submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (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 plus 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 execution of the Contract. In addition, each party will assist the other party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.

24. Health and Safety Plan (Attachment 1)

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 minimum wage laws. Contractor shall implement all proper health and safety precautions to protect its employees, County staff, the public, and the work.

All vehicles used by the Contractor to support this Contract must meet California Motor Vehicle and Cal-OSHA regulations and all other applicable codes required for use on highways in the State of California.

All Contractor employees shall be required to wear uniforms, badges or other acceptable means of identification, to be furnished by the Contractor while the employees are working in any OC Waste & Recycling facilities.

A Health & Safety Plan (H&SP) must be submitted within seven (7) calendar days of Contract award and be approved by the County Safety Inspector PRIOR to any Contractor staff entering County owned or operated landfills and other facilities. The H&SP shall address the areas of work to be performed in this SOW. Include a cover letter outlining the purpose and overall contents of the H&SP, referencing the project number and description, and submit to the Site Project Manager.

The contents of each H&SP must meet all regulatory requirements for the specific work that will be conducted at the site. However, the following is a checklist of the minimal elements for a H&SP. Those plan elements which do not apply to the specific Contract, should be noted (such as "this operation does not involve any confined space work", as a note after Item h).

One or more of the following may be required to be included in a Contractor's H&SP:

- a. Site Background and SOW - Site specific with an emphasis on the type(s) of service performed, the hazards associated with such work and the programs in effect to protect the employee against those recognized hazards.
- b. Injury and Illness Prevention Program (C.C.R. Title 8, S 3203) - Required of all employers of ten or more employees.
- c. Code of Safe Practices (C.C.R. Title 8, S 1509) - All employers are required to have a Code of Safe Practices in writing and posted at the work place.
- d. Emergency Medical Services (C.C.R. Title 8, S 1512) - All employers are required to have this program in writing.
- e. Fire Protection Program (C.C.R. Title 8, S 1920) - All employers are required to have this program in writing.
- f. Hazard Communication Program (C.C.R. Title 8, S 5194) - All employers are required to have this program in writing, if there is potential for their employees to come into contact with any products that may be hazardous.
- g. Requirements for Excavations and Shoring (C.C.R. Title 8, S 1541.1) - All employers are required to have this program in writing, if excavating.
- h. Confined Space Procedures (C.C.R. Title 8, S 5156) - All employers are required to have this program in writing, if confined spaces will be entered.
- i. Hearing Conservation Program (C.C.R. Title 8, S 5097) - This program shall be written into the Health and Safety Plan, if employee noise exposures meet or exceed the levels outlined in C.C.R. Title 8, S 5097.
- j. Personal Protective Equipment (C.C.R. Title 8, S 3380 to S 3400) - Requirements must be included in the Health and Safety Plan, if personal protective equipment is required for the contracted work.
- k. Storage, Handling, and Dispensing of Flammable/Combustible Liquids (Uniform Fire Code Article 79) - Requirements must be included in the Health and Safety Plan, if flammable/combustible liquids will be stored, handled, or dispensed.
- l. Welding, Brazing, and Cutting (C.C.R. Title 8, S 1536 and S1537) - Requirements must be included in the Health and Safety Plan, if performing these actions.
- m. Compressed Gas Cylinders (C.C.R. Title 8, S 1740 to S1743) - Requirements must be included in the Health and Safety Plan, if storing or using compressed gas cylinders.

25. County Declared Emergency

In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this contract may be subjected to unusual usage. The Contractor shall service the County during

such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned.

26. County Cooperative Contract

The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/contracts, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

27. 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.

TO: COUNTY

OC Waste & Recycling/Procurement
300 N. Flower Street, Ste. 400
Santa Ana, CA 92703
Attn: Procurement Manager
Phone: 714-834-4000

Copy:

OC Waste & Recycling
Olinda Alpha Landfill
1942 N. Valencia Ave.
Brea, CA 92823
Attn: Project Manager

TO: CONTRACTOR

Airstrike Bird Control, Inc.
7343 El Camino Real, #325
Atascadero, CA 93422-4697
Attn: Brad Felger, President & CEO
Phone: (805) 391-0444
Email: coastfalcons@yahoo.com

*County of Orange, OC Waste & Recycling
Bird Abatement Services for North, Central & South Region Landfills*

*Airstrike Bird Control, Inc.
MA-299-19010028*

Copy:

OC Waste & Recycling
Frank R. Bowerman Landfill
11002 Bee Canyon Access Road
Irvine, CA 92602
Attn: Project Manager

Copy:

OC Waste & Recycling
Prima Deshecha Landfill
32250 Avenida La Pata
San Juan Capistrano, CA 92675
Attn: Project Manager

IN WITNESS WHEREOF, the Parties have executed this Contract #MA-299-19010028 on the dates opposite their respective signatures.

AIRSTRIKE BIRD CONTROL*

_____	_____
Print Name	Title
_____	_____
Signature	Date
_____	_____
Print Name	Title
_____	_____
Signature	Date

*If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President. The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

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

Diane Dodson	Administrative Manager I
_____	_____
Print Name	Title
_____	_____
Signature	Date

APPROVED AS TO FORM:

County Counsel

By _____
Paul Albarian, Senior Deputy

Attachment 1 Health & Safety Plan Requirements

As of 1991, the Department of Occupational Safety and Health (DOSH) - commonly referred to as Cal/OSHA - requires a written and effective ***Injury and Illness Prevention Program*** (IIPP). This is mandated in T8 CCR §3203, *General Industry* Safety Orders, and T8 CCR §1509, *Construction* Safety Orders. The IIPP is the primary component of a comprehensive Health & Safety Plan (HSP), and one that is closely evaluated by DOSH Compliance Officers. The OC Waste & Recycling Safety Inspector will review the corporate HSP according to these IIPP requirements:

- **Responsibility** - 3203(a)(1): Identify the person(s) with authority and responsibility for implementing the Program. [NOTE: This is overall authority for the program – field and office]
- **Compliance** – 3203(a) (2): Include a system for ensuring that employees comply with safety and healthy work practices. This includes employee recognition, i.e. safety incentives, disciplinary actions, remedial training or other means to ensure compliance.
- **Communication** – 3203(a)(3): Implement a system to communicate safety and health matters to all affected employees, including provisions whereby the employee can inform the employer of worksite hazards without fear of reprisal. This includes safety or “tailgate” meetings, written communications and/or postings, anonymous hazard reporting by employees, labor/management safety and health committees, or other means to ensure communication with employees.
- **Inspections** – 3203(a) (4): Include procedures for identifying and evaluating work place hazards, i.e. unsafe conditions and/or work practices. Also to be included in the inspection process is the addition of a new or previously unrecognized occupational safety and health hazard (substance, process, procedure or equipment).
- **Accident Investigations** – 3203(a) (5): The Program must include a procedure(s) to investigate injury or occupational illness.
- **Hazard Correction** – 3203(a) (6): Include methods and/or procedures for correcting unsafe and unhealthy work conditions, or practices, in a timely manner.
- **Safety Training & Instruction** – 3203(a)(7): Provide safety training and relevant instruction to employees:
 - New hires, re-classified employees and supervisors.
 - Upon discovery of new or previously unrecognized hazards, or introduction of new materials, policy or equipment.
- **Record Keeping & Documentation:** Records taken to implement and maintain the Program shall include:
 - Safety Inspections – 3203(b) (1): Inspection records, as required by subsection (a) (4), shall include person(s) conducting inspection, identified hazards and corrective actions taken. Retain records for at least one (1) year.
 - Training - 3203(b) (2): Employee training records, as required by subsection (a) (7), shall include employee name or other identifier, dates, type of training, and instructor(s). Retain records for at least one (1) year.

The IIPP is one of a handful of programs that may be required by DOSH. Depending on your operations, your work as a Contractor may require other written programs such as those defined below. It is your responsibility as a Contractor to maintain compliance with applicable standards beyond the basic IIPP requirements, and to submit for review any programs requested by the Safety Inspector should the need arise. The Safety Inspector can be contacted at (714) 834-4117 for additional guidance.

- Emergency Action Plan - T8 CCR 3220; Fire Prevention Plan - T8 CCR 3221; Hazard Communication Program - T8 CCR 5194; Confined Space Entry - T8 CCR 5156-5159; Respiratory Protection - T8 CCR 5144; Lockout/Tagout - T8 CCR 3314, 6003 & 2320; Chemical Hygiene - T8 CCR 5191 & Article 110; Bloodborne Pathogens - T8 CCR 5193; and Hearing Conservation - T8 CCR 5096 – 5100.

ATTACHMENT A SCOPE OF WORK

Scope of Service

County of Orange, OC Waste & Recycling requires Contractors qualified to provide master level falconry/bird abatement services to assist the County in its ongoing practice of abating birds (specifically Gulls) at its solid waste landfills. Qualified Contractors include Licensed Master level Falconers employing appropriate non-migratory falcon species i.e. Lanner falcons, Saker falcons, and Harris Hawks. Services shall be performed in accordance with the Department of Fish and Wildlife Services and all applicable regulatory agencies.

Contractor shall establish and maintain a territory at each landfill site to discourage corvids (crows/ravens), gulls, pigeons, etc. from living and foraging in the defined territory. Falconry/bird abatement needs to avoid harassment of all nesting bird species listed under the Migratory Bird Treaty Act. Depending on the bird activity levels, Contractor shall have sufficient qualified staff, falcons and hawks available to be flown to perform required services at the landfill site(s) each day of the program operation. The falcons shall be flown enough times throughout the predetermined workday to discourage targeted birds from flying around or landing on or next to the landfill trash unloading area.

Site Locations

The **Frank R Bowerman Landfill** is located at 11002 Bee Canyon Access Road, Irvine, CA 92602. The Frank R Bowerman Landfill is approximately 725 acres with 534 acres permitted for refuse disposal. The Landfill is permitted to accept 11,500 tons of trash per day currently averaging approximately 7,500 tons per day.

The **Olinda Alpha Landfill** is located at 1942 North Valencia Avenue, Brea, CA 92823. The Olinda Alpha Landfill is 565 acres with 420 acres permitted for refuse disposal. The Landfill is permitted to accept 8,000 tons of trash per day currently averaging approximately 6,900 tons per day.

The **Prima Deshecha Landfill** is located at 32250 Avenida La Pata, San Juan Capistrano, CA 92675. The Prima Deshecha Landfill is 1,530 acres with 699 acres permitted for refuse disposal. The Landfill is permitted to accept 4,000 tons of trash per day currently averaging approximately 1,700 tons per day.

Background

In the past, the County has used a combination of methods to deter birds from the landfill sites, including such methods as shooting cracker shells intermittently and firing pyrotechnics (whistlers) recurrently as gull deterrents. Since 2013, OC Waste & Recycling has used falconers to perform bird abatement services, with relatively successful results.

Contractor Responsibilities

Contractor(s) shall provide gull abatement services which substantially reduces the existing gull population at the landfill site to the County's satisfaction. The goal is to reduce the gull population so there are no gulls landing and feeding at the landfill dumping area for the daily trash. The service shall be provided through use of raptors and a trainer/handler. The service shall include all materials, equipment, supplies, travel, labor, facilities, and supervision to perform the requested service.

Contractor shall request permission from the Landfill Management Staff (Landfill Operations Site Superintendent, Site Analyst, or Site Project Manager) to use any other means besides raptors. No additional fees or charges shall be incurred to the County for these other deterrents, and no supplies will be provided by County to Contractor for the purpose of using any deterrent other than raptors.

From time to time, Contractor may be requested by OC Waste & Recycling to attend events promoting the landfill falconry services programs by providing demonstrations and/or meeting with tour groups visiting the landfill(s). Contractor's regular hourly rates shall apply to time worked on any such event.

Contract working hours

The hours of service are anticipated to be reduced or eliminated during warm weather months (May through September) and increased during the cooler months (October through April). The past history of bird activities at the sites has typically indicated dramatically increased bird activities during the winter season and has required an elevated level of bird abatement services.

This program is anticipated to be performed approximately 40-60 hours per week during the cooler months. The specific hours and workdays will be based upon site conditions and will be subject to change by mutual concurrence of the County and Contractor. An example of standard hours of operations would be Monday through Saturday, approximately 6 a.m. – 5 p.m. Overtime will not be authorized by the County. Contractor shall propose effective work schedules for gull abatement services. Contractor's hourly rate for services shall only be attributed to the time a licensed falconer is on-site in the actual performance of gulls abating services. Start-up costs, incremental and operations costs, travel time, feeding, searching for lost raptors, training expenses, and on-site transportation shall be the responsibility of the Contractor and are not to be billable to the County.

Worksite Limits

Contractor will be advised when the daily trash disposal area location is moved within the active acreage footprint area to accommodate landfill operations as may be deemed necessary by County Staff. The Contractor activities shall not impede or interrupt daily landfill operations. Full cooperation of the Contractor and all employees is required to assure safe working conditions. Therefore, it is necessary to emphasize that the County will have full authority to evict any of the Contractors' employees who do not immediately abide by the landfill site safety rules. Contractor shall conduct Contractor's operations so that all work and services performed is compatible with and does not interfere with Landfill operations. All operations shall be restricted to County right-of-way. The Contractor shall not enter upon any adjacent property for the purpose of conducting any operations required under this contract unless the Contractor has obtained written permission from the affected property owner.

Safety

The 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 of premises and ways at all times, including safely stored equipment, machines, materials. This includes compliance with local County, State, AQMD, or other legal intents and terms of the applicable OSHA and Cal/OSHA Safety orders at all times so as to protect all persons, including Contractor's employees and OC Waste & Recycling staff against injury or damage to their property.

The Contractor shall provide all personnel required to perform all services. Each worker shall perform the duties in accordance with these specifications and in a manner that will not endanger the safety of others at the landfill site. Contractor and all employees shall wear appropriate protective clothing and footwear. The Contractor shall furnish a vehicle, gloves, safety glasses and vest, hearing protection, steel-toed boots (required by County), and any other safety equipment that is necessary for this type of work.

Contractor shall assume all liability and responsibility for themselves, their employees, their raptors and any other property or animals they use in their business.

Permits, License and Certifications

Contractor shall be responsible for obtaining and maintaining all required permits and certifications for the bird abatement services and shall comply with all applicable laws and state regulations. Only federally and state approved species of raptors may be used for these services. Copies of all licenses and bird registries shall be submitted to County and shall be maintained on file with the Site Project Manager throughout the term of the Contract.

Reporting

Daily work activities shall be documented and recorded by Contractor. Contractor shall provide notification to County Site Project Manager or designee upon arrival and departure of site. A monthly report shall be submitted to the appropriate County Site Project Manager and with the Contractor's invoice. The Contractor shall provide each County Site Project Manager a monthly report with pictures and any other relevant documents necessary to support performance of the service.

The County Site Project Manager or designee and the Contractor shall meet as required to discuss the Contractor's performance and progress under the Contract. If required, the Contractor shall provide meeting minutes and information requested by the County.

**ATTACHMENT B
COUNTY SUPPLIED ITEMS & RESOURCES**

Contractor shall be responsible for all costs related to telephone usage, internet communications, fax communications, tools, equipment, materials and office supplies (computers, printers, copiers, etc.) necessary to conduct daily business, and parking while on County sites during performance of work and services.

The County will provide Contractor staff a radio on a daily basis to be used for emergency purposes. Additionally, the County will indicate a staging area for bird abatement activities.

ATTACHMENT C COST/COMPENSATION FOR CONTRACTOR SERVICES

Compensation

This is a fixed ceiling, time and materials Contract for Bird Abatement Services for North, Central & South Region Landfills as provided in Attachment A, Scope of Work, for the County of Orange, OC Waste & Recycling.

The Contractor agrees to accept the compensation specified herein as full remuneration for performing all services and furnishing all staffing and materials called for; and for any reasonably foreseeable difficulties, which may arise or be encountered in the execution of the services; and for performance by the Contractor of all its duties and obligations hereunder.

The ceiling amount of this Contract shall include all expenses related to the performance of work and services required to meet the tasks and deliverables as set forth in Attachment A, Scope of Work. The County shall have no obligation to pay any sum in excess of said ceiling price, unless authorized by a written modification issued in accordance with Article 8 of this Contract. Labor hours and other costs incurred to complete the services and materials as set forth in this Contract, which exceed the total ceiling amount of this Contract, shall be borne by Contractor.

All extra work resulting in an increase in the Contract total ceiling amount shall be authorized by written modification to this Contract. Said modification shall be issued by the County of Orange, Purchasing Agent or his designee and may be subject to approval by the County Board of Supervisors.

Services shall be provided at a rate of \$60/hour

Overtime shall be billed at time and a half – PRIOR WRITTEN APPROVAL SHALL BE SECURED FROM THE COUNTY SITE PROJECT MANAGER TO AUTHORIZE OVERTIME.

Payment and Invoicing

The cost for the work including the fees and reimbursable items will be billed **bi-monthly** by the Contractor to the County. The Contractor shall submit an invoice **bi-monthly** in arrears. Billing shall cover services and/or goods not previously invoiced. Payment due to the Contractor will be made within **forty-five (45)** days after receipt of a correctly submitted 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.

Payments made by the County of Orange 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 services.

In the event of a lost or misdirected invoice, the Contractor shall re-issue at no additional charge and County Site Project Manager will certify it as an original.

Contractor shall use company's letterhead to submit all invoices for services rendered. Proper references must be made to the Contract number, as well as to the Contractor's Federal I.D. or Taxation Number. Each invoice will have a unique invoice number and will include the following information:

- Contract Number MA-299-19010028
- Contractor's name and address including email address
- Contractor's remittance address, if different from above
- Name of County agency/department

- Site location of services
- Date(s) of service
- Services description
- Quantity, unit of measure and unit price that match those specified by the order and daily service logs
- Total amount

Contractor shall submit separate invoices for each Landfill Site for work completed. Contractor shall not combine orders when invoicing the County. Each invoice shall only reference one and only one Landfill Site. Invoices that reference multiple Landfill Sites shall be rejected and returned to Contractor. Invoicing and payment related questions shall be directed to Auditor-Controller/Accounts Payable at the address shown above.

For each emergency and non-emergency visit, Contractor shall include back-up consisting of:

- Personnel name(s)
- Date of visit, time spent, and the time of day
- Reason(s) for the visit
- Sub-Contractor's invoice(s)

All the costs on each invoice will be separate and itemized with reference to the Contract and Site Location. Invoice documentation shall include, but is not limited to the following:

- Daily Services Logs
- Description of Services
- Date of Service, Completion of Service, and duration
- Labor Cost per Hour, job title and hourly rate
- Subcontractor Costs, if applicable
- Total Invoice Amount

All emergency and non-emergency services will have a backup sheet describing the name of the person; log sheets, time spent, the time of the day, and charges for each visit. Include any supporting documentation as required herein, such as County Site Project Manager's authorization.

Invoicing and payment related questions shall be directed to Auditor-Controller/Accounts Payable. An original and one copy of all invoices and support documentation are to be submitted for approval and payment to:

OC Waste & Recycling
Attn: Auditor-Controller/Accounts Payable
300 N. Flower St., Ste. 400
Santa Ana, CA 92703-5000
Contract: Bird Abatement Services Contract No. MA-299-19010028

To submit invoices electronically via email, use the following email address:

ocwrinvoice@ocwr.ocgov.com

Payment (Electronic Funds Transfer EFT): The County offers Contractor 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 via an EFT Authorization Form. To request a form, please contact the Deputy Purchasing Agent. Upon completion of the form, please mail, fax or email to the Deputy Purchasing Agent.

Labor Requirements:

The hourly and/or per call rate(s) quoted herein, shall include direct and indirect labor charges, truck, all necessary equipment, tools, overhead, travel, other expenses, and all profit applicable to services identified by Contractor. Overtime will not be paid on non-emergency response requests, unless specifically authorized by County Site Project Manager at the time the request for service is initiated.

Straight time is eight hours a day. The start time and the lunchtime are flexible depending upon the nature of the work. Overtime is any time after the straight time hours on weekdays, all day Saturday and Sunday, and will only be paid for emergency or time and materials work. The Contractor must obtain prior written approval from OC Waste & Recycling before working overtime except on emergency calls. Holiday time may be charged on the County of Orange declared holidays only.

Unauthorized visits by Contractor and staff to coordinate other business not directly related to the projects described, and required in the Scope of Work will not be compensated for by County for time spent at the sites.

No Contractor personnel shall be allowed to assume a title other than what was agreed upon prior to the start of the Contract term and shall adhere to the experience requirements established by County stated under Contractor Requirements.

Subcontractor Costs:

When pre-approved by the County Site Project Manager, the use of subcontractors or specialized services shall be reimbursed as follows:

Labor and equipment shall be at the actual cost. No markup for subcontractor labor and equipment shall be allowed in this contract.

Material Costs:

Not applicable