

CONTRACT

This Contract Number MA-299-14010260 to provide Bird Abatement Services for North, Central, and South Region Landfills, (hereinafter referred to as "Contract") is effective September 20, 2013 by and between the County of Orange, a political subdivision of the State of California (the "County") and **Avian Entertainment** ("Contractor"), with a place of business at ~~30568 Yucca Place~~ *30420 Romero Canyon Road*, Castaic, CA 91384, County and Contractor are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

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

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into this Contract with Contractor to provide Bird Abatement Services for North, Central, and South Region Landfills as defined in this Contract; and,

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

WHEREAS, the County and Contractor entered into *aggregate* Contract Number MA-299-14010260 effective **September 20, 2013** through **September 19, 2014**, shared among three (3) Contractors, in an aggregate amount not to exceed \$380,000, renewable for four (4) additional one-year periods; and

WHEREAS, the Parties renewed Contract MA-299-14010260 for one (1) year, effective September 20, 2014 through September 19, 2015, shared among three (3) Contractors, in an aggregate amount not to exceed \$380,000; and

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

WHEREAS, the County now desires to renew Contract MA-299-14010260 for one (1) year, effective September 20, 2015 through September 19, 2016, shared among three (3) Contractors, in an aggregate amount not to exceed \$380,000;

NOW, THEREFORE, 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, its Attachments and Exhibits, 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. 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 County's Purchasing Agent or his designee, hereinafter "Purchasing Agent".

- 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 or to cancel all or any part of the services not conforming to applicable specifications, reports, samples or description, or services that do not conform to the prescribed statement of work. Acceptance of any part of the services shall not bind County to accept future services, nor deprive it of the right to return documentation already accepted, at Contractor's expense. 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 to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods/services 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 indemnities as identified in Article HH below, and as more fully described in Article HH, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Article HH below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or subcontract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract. Notwithstanding the foregoing, the County hereby authorizes Contractor to use the services of subcontractors with County written approval.

- A. **Licensed Subcontractor:** Each subcontractor selected for the work shall be licensed in the State of California in the subcontractor's particular field.
 - B. **Transactions:** Transactions with subcontractor shall be made through Contractor except when in emergency situations Contractor is not readily available, in which case detailed instructions shall be transmitted to subcontractors directly.
 - C. **Responsibility:** Contractor shall be fully responsible to County for the acts and omissions of subcontractors and all persons directly or indirectly employed by them as Contractor is for Contractor's acts and omissions and of persons directly or indirectly employed by Contractor. Contractor shall pay each subcontractor promptly the amount allowed Contractor on account of such subcontractor's work to the extent of such subcontractor's interest therein.
 - D. **Contractual Relations:** Nothing contained in this Contract shall create any contractual relations between County and a subcontractor.
- 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 sub-Contractors 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 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 as set forth in paragraphs 21-23, County or Contractor 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 or Contractor of its right to terminate the Contract shall relieve County or Contractor of all further obligations. See termination clauses listed within Additional Terms and Conditions, paragraphs 21-23.
- 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. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees, nor anyone working 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.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps 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 including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to subcontract, shall be fully responsible for all services performed by subcontractors.
- P. **Insurance Provision:** 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.

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 an amount 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

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

The policy or policies of insurance shall be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form Property damage and contractual liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation Employers' Liability Insurance	Statutory \$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 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's.

- 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.

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 day-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 forwarded to the OC Waste & Recycling address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by the OC Waste & Recycling 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 which shall be mutually agreed upon. 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 professional services and material used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Article HH, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of

God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 (thirty-six) hours of the start of the delay and Contractor avails himself of any available remedies.

- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Article HH, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** The Contract pricing shall include full compensation for providing all required services in accordance with required specifications, or services as specified herein or when applicable, in the scope of work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. ~~**Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage. 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. **Attorney 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 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.
- HH. **Indemnification Provisions:** Contractor agrees to indemnify, defend with counsel approved in writing by County, such approval not to be unreasonably withheld, 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.

Additional Terms and Conditions

1. Term

The effective date of this Contract is **September 20, 2013 2015** through **September 19, 2014-2016**, with an option to renew annually for up to ~~four (4)~~ **two (2) additional years** in one (1) year increments. The County of Orange Board of Supervisors, at its discretion, may require approval of the annual renewal of this Contract.

2. Project Manager-County

The County shall appoint a Site Project Manager to act as liaison between the County and the Contractor during the term of this Contract. The County's Site Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor at their respective Landfill Site.

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

approve the appointment of the replacement for the Contractor's Project Manager and key personnel. Said approval shall not be unreasonably withheld.

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's Project Manager, 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 Exhibits 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 Exhibit B, 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 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 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 Exhibit 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 (Attachment 1)

In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract, but prior to official award of Contract, the selected Contractor hereby agrees to furnish OC Waste & Recycling/Purchasing with the required Contractor data and certifications, Attachment 1, Child Support Enforcement Certification Requirements.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of this 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;
- 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 OC Waste & Recycling 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. EDD Independent Contractor Reporting Requirements (Attachment 2)

Effective January 1, 2001 The County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a Contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

To comply with the reporting requirements, County procedures for contracting with independent Contractors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial and last name
- Social Security Number
- Address
- Start and expiration dates of Contract
- Amount of Contract

25. Health and Safety Plan (Attachment 3)

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 calendar days of receipt of the Notice of 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 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.

26. 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.

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/Purchasing
300 N. Flower Street, Ste. 400
Santa Ana, CA 92703
Attn: Purchasing Manager

TO: CONTRACTOR
Avian Entertainment
30568 Yucca Place
Castaic, CA 91384
Attn: Joe Suffredini

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

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 La Pata Avenue
San Juan Capistrano, CA 92675
Attn: Project Manager

Contract Signature Page

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

Avian Entertainment*

By _____

Print
Name _____

Title _____
Corporate Officer

Date _____

By _____

Print
Name _____

Title _____
Corporate Officer

Date _____

COUNTY OF ORANGE

a political subdivision of the State of California

By _____

Print
Name _____

Title _____

Date _____

APPROVED AS TO FORM:

County Counsel

By _____
Deputy

Date _____

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

Attachment 1
County of Orange Child Support Enforcement
Certification Requirements

“I certify that _____ is in full compliance with all applicable federal, state, and local 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 Contract _____ with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contact.”

Signature *Name (Please Print)*

Title *Date*

Company Name

Contract Number

*Signature** *Name (Please Print)*

Title *Date*

Company Name

Contract Number

***Two signatures required if a corporation.**

Attachment 2
EDD Independent Contractor Reporting Requirements

Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a “service provider” to whom the County pays \$600 or more or with whom the County enters into a Contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a Contract for services performed for that service recipient within or without the state.” The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as “an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a Contract for services performed for that ... government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies. Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

To comply with the reporting requirements, County procedures for contracting with independent Contractors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial and last name
- Social Security Number
- Address
- Start and expiration dates of Contract
- Amount of Contract

First Name _____	Middle Initial _____	Last Name _____
SSN _____		
Contract Number _____		Dollar value of Contract _____
Start Date _____		
Expiration Date _____		

Attachment 3 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. Upon Contract award, 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.

**EXHIBIT A
SCOPE OF WORK**

Scope of Service

Contractor shall provide qualified master level falconry/bird abatement services to assist the County in its ongoing practice of abating birds (specifically Gulls) at its solid waste landfills. Contractor shall be Licensed Master level Falconers* employing appropriate 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. *Subject to County Site Project Manager approval, Contractor may use licensed falconers below the Master level with sufficient proof of qualifications.

Contractor shall establish and maintain a territory at the assigned 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 on the Migratory Bird Treaty. Depending upon 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 5,000 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 8000 tons of trash per day currently averaging approximately 6000 tons per day.

The **Prima Deshecha Landfill** is located at 32250 La Pata Avenue, 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 4000 tons of trash per day currently averaging approximately 1150 tons per day.

Each Contractor shall be assigned to a specific landfill. The County reserves the right to re-assign the Contractor to another landfill if determined to be in the best interest of the County.

Contractor	Landfill
Avian Entertainment	Frank R. Bowerman Landfill
Airstrike Bird Control, LLC Inc.	Olinda Alpha Landfill
Adam's Falconry Service	Prima Deshecha Landfill

Contractor Responsibilities

The Contractor shall provide gull abatement services which substantially reduces the existing gull population at the landfill site to the County's satisfaction. The ultimate 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 by 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.

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 shall be performed approximately 40-60 hours per week or as directed by the County Site Project Manager. The specific hours and workdays will be based upon site conditions and are subject to change by mutual agreement 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 shall not be billed without prior written authorization by the County Site Project Manager. Contractor's hourly rate for services shall only be attributed to the time a licensed falconer is on-site in the actual performance of bird abatement 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 shall be required to assure safe working conditions. 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 are compatible with and do not interfere with landfill operations. All operations shall be controlled by County right-of-way. The Contractor shall not enter 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.

County Site Project Manager will provide Contractor a radio set on the same frequency as the landfill staff. The radio will be made available on a daily basis, to be charged and ready for daily operation for Contractor to pick up when arriving at the landfill.

Safety

The Contractor shall 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 County and its employees against injury or damage to their person or 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 shall 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 shall 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 County 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 County Site Project Manager with Contractor's invoice. The Contractor shall provide 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.

SITE SPECIFIC HEALTH AND SAFETY PLAN

The Contractor shall provide a Health and Safety Plan within seven (7) days of Contract award. The Contractor shall not proceed with service until the required insurance and Health and Safety Plan have been received and approved by the County.

1. Health and Safety Laws and Regulations

The Contractor shall provide site specific Health and Safety Plan in accordance with the following instructions.

The Contractor shall prepare a Health and Safety Plan (H&SP) in compliance with all local, municipal, state, and federal health and safety laws, orders, and regulations applicable to Contractor's operations in the performance of the Scope of Services. While on the premises of OC Waste & Recycling, the Contractor and Contractor's employees, subcontractors, and agents shall comply with the requirements of the Occupational Safety and Health Act and any State approved plan, and the regulations there under, to the extent applicable and shall ensure that all Contractor's employees, subcontractors, and agents have a safe place of work on the premises of OC Waste & Recycling.

Any claims by Contractor for adjustments in time and/or cost for delays in the start of work due to contractor's failure to deliver an H&SP acceptable to the County will not be considered. The Contractor shall be solely and completely responsible for conditions on the job site, including safety of all persons and property during the performance of the work. The County's acceptance of Contractor's H&SP does not, in any way, relieve or transfer any such responsibilities to the County.

2. Health and Safety Plan Checklist

The contents of the Health and Safety Plan shall meet all regulatory requirements for the specific work to be provided. However, the following is a checklist for the minimum elements for a Health and Safety Plan. Those plan elements which will not apply to the specific contract should be noted (such as "this construction 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 the Contractor's Health and Safety Plan (H&SP):

Mandatory:

- A. Site Background and Scope of Work: Site specific with an emphasis on the type(s) of service(s) 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 (Title 8, California Code of Regulations, section 3203): Required of all employers of 10 or more employees.**
- C. Code of Safe Practices (Cal. Code Regulations, Title 8 § 1509): All employers are required to have a Code of Safe Practices in writing and posted at the work place.**
- D. Emergency Medical Services (Cal. Code Regulations, Title 8, § 1512): All employers are required to have this program in writing.**
- E. Fire Protection Program (Cal. Code Regulations, Title 8, § 1920): All employers are required to have this program in writing.**

Required by Scope of Work:

- F. Hazard Communication Program (Cal. Code Regs., Title 8, § 5194): All employers are required to have this program in writing if there is a potential for their employees to come in contact with any products that may be hazardous.**
- G. Requirements for Excavations and Shoring (Cal. Code Regs., Title 8, § 1541.1): All employers are required to have this program in writing if excavating.**
- H. Confined Space Procedures (Cal. Code Regs., Title 8, § 5156): All employers are required to have this program in writing if confined spaces will be entered.**
- I. Hearing Conservation Program (Cal. Code Regs., Title 8, § 5097): This program shall be written into the H&SP if employee noise exposures meet or exceed the levels outline in Cal. Code Regs., Title 8 § 5097.**
- J. Personal Protective Equipment (Cal. Code Regs., Title 8, §§ 3380-3400): Requirements must be included in the H&SP if personal protective equipment is required for the contracted work. Hard hats, safety goggles, orange vests, and audiometric (hearing) protection are required for work to be performed under this contract.**
- K. Storage, Handling, and Dispensing of Flammable/Combustible Liquids (Uniform Fire Code Article 79): Requirements must be included in the H&SP if flammable/combustible liquids will be stored, handled, or dispensed.**
- L. Welding, Brazing, and Cutting (Cal. Code Regs., Title 8, §§ 1536, 1537): Requirements must be included in the H&SP if performing these actions.**
- M. Compressed Gas Cylinders) Cal. Code Regs., Title 8, §§ 1740-1743): Requirements must be included in the H&SP if storing or using compressed gas cylinders.**

EXHIBIT B
COST/COMPENSATION FOR CONTRACTOR SERVICES

Section I: Compensation

A. General

This is a fixed ceiling, time and materials aggregate Contract shared among three (3) Contractors for Bird Abatement Services for North, Central, and South Region Landfills as provided in Exhibit 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 prosecution 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 objectives as set forth in Exhibit A, Scope of Work.

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 \$55/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.

Invoicing and Payment Terms:

The cost for the work including the fees and reimbursable items will be billed **bi-monthly** (twice a month) 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 **thirty (30)** 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 goods delivered and / or 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-299-14010260
- 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
- Materials, if applicable
- Sales tax, if applicable
- 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 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-299-14010260

Labor Requirements:

The hourly rate(s) 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 SOW 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.

The Contractor shall have the responsibility to verify that all work is included within Exhibit A, Scope of Work.

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)