# COST-SHARE AGREEMENT

## FOR BIRD ABATEMENT SERVICES AT MONARCH BEACH

This COST SHARE AGREEMENT (AGREEMENT) for the purpose of identification numbered MA-080-18010044, is by and between the Orange County Flood Control District and the County of Orange (collectively referenced to as "County"), a political subdivision of the State of California, through OC Public Works and OC Parks; the City of Dana Point ("City"); and MBR Operating Co., Inc., d/b/a Monarch Beach Resort ("Monarch Beach Resort"). County, City and Monarch Beach Resort may be collectively referred to as PARTIES and individually as PARTY.

RECITALS

WHEREAS, Monarch Beach is located up coast of the mouth of the Salt Creek Watershed in the City; the area of land above the mean high tide mark at Monarch Beach is under the ownership of Monarch Beach Homeowners Association, a private entity; the area of beach downcoast of the mouth of Salt Creek Watershed is part of Salt Creek Beach Park, a County park; and beach access is provided to patrons of the Monarch Beach Resort; and

WHEREAS, an Orange County Flood Control District Facility, known as Salt Creek Channel, accepts runoff from Salt Creek Watershed, Monarch Beach Resort and neighboring residences then discharges onto Monarch Beach; and

WHEREAS the City and County have mechanisms in place such as the Salt Creek Urban Runoff Ozone Treatment Facility; and best management practices such as inlet filters designed to minimize pollutants found in the Salt Creek watershed; and

WHEREAS, the PARTIES recognize that a growth in bird population foraging in the discharge pond of Salt Creek Channel on Monarch Beach may contribute to bacteria at Monarch Beach and/or Salt Creek Beach and falconry-based bird abatement can be an effective, economical and sustainable solution to assist in minimizing and deterring the pest bird population to improve water quality at the beach; and

WHEREAS, in July 2016 a falconry-based bird abatement pilot project was conducted on Monarch Beach to evaluate whether a natural predator can act as a deterrent to gulls and reduce the bacteria levels; and

WHEREAS, the results of the pilot project proved to be successful and reduced the bacteria levels at Monarch Beach; and

WHEREAS, the PARTIES desire to employ falconry-based bird abatement services ("SERVICES") at Monarch Beach on an ongoing basis and further desire to enter into this AGREEMENT to equitably share the costs of such SERVICES, including the costs associated with SERVICES provided in 2017, as well as the costs of future SERVICES;

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the Recitals and for valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

**1. TERM**

Upon execution by all PARTIES, this AGREEMENT shall become effective as of May 1, 2017 and shall continue in effect until November 4, 2018. If any PARTY terminates its participation in this AGREEMENT prior to expiration of the AGREEMENT term, the AGREEMENT shall remain in effect as to the non-terminating PARTIES.

This AGREEMENT may be subsequently renewed for one-year terms, for up to three additional years, subject to mutual consent of all PARTIES. Should any PARTY elect to not renew this AGREEMENT, notice of intent not to renew shall be provided to the other PARTIES, a minimum of 30 days prior to the expiration of the AGREEMENT term.

**2. ROLES AND RESPONSIBILITIES OF PARTIES:**

**A. PROJECT MANAGEMENT**

The County is hereby designated as LEAD PARTY for obtaining and managing the SERVICES (hereinafter, County may also be referred to as LEAD PARTY). As such, the County will assume the responsibility for overall SERVICES management, administration of related consultant contracts, and communication of updates to the PARTIES.

**B. RESPONSIBILITIES OF ALL PARTIES**

(1) Each PARTY agrees to assign one person to serve as the PARTY's liaison with respect to matters relating to this AGREEMENT, to facilitate the provision of SERVICES hereunder.

(2) Each PARTY agrees to comply with the Western Snowy Plover Avoidance Plan Best Management Practices included as Exhibit A.

(3) The PARTIES ACKNOWLEDGE that other entities may desire to participate in this AGREEMENT and therefore agree that additional parties may be added to the AGREEMENT with approval of existing PARTIES. Cost share allocations shall be divided equally among all participating parties.

**C. PROGRAM BUDGET AND COSTS**

(1) The proposal and scope of work for SERVICES to be obtained and cost-shared hereunder is attached as Exhibit B hereto and incorporated by reference

(2) The total cost of SERVICES shall be shared equally amongst the PARTIES. The funding shares under this AGREEMENT shall be 33 $\frac{1}{3}$ percent for the County, 33 $\frac{1}{3}$ percent for the City, and 33 $\frac{1}{3}$ percent for Monarch Beach Resort. Should any PARTY inform of its intent to terminate participation in this AGREEMENT prior to expiration of the AGREEMENT'S term (as determined under Paragraph 1 above), the non-terminating PARTIES shall make all reasonable efforts to meet and discuss whether to continue to obtain SERVICES under this AGREEMENT, and the terms upon which the cost thereof are to be shared amongst the non-terminating PARTIES. In the event the non-terminating PARTIES cannot reach agreement, the LEAD PARTY shall make all reasonable effort to cease the incurrence of costs under this AGREEMENT.

(3) The total budget for SERVICES under this AGREEMENT is $126,000 to be allocated as reflected in Table 1. Each PARTY'S share of the costs of SERVICES may not exceed the Cumulative Limits specified for each PARTY in Table 1.

**Table 1: NOT-TO-EXCEED LIMITS BY PARTY**

| PARTY | Service period: May 1, 2017 through October 31, 2017 | Service period: April 1, 2018 through November 4, 2018 | Cumulative Limit |
|---|---|---|---|
| County of Orange | $20,000 | $22,000 | $42,000 |
| City of Dana Point | $20,000 | $22,000 | $42,000 |
| Monarch Beach Resort | $20,000 | $22,000 | $42,000 |

## D. INVOICES AND FISCAL MANAGEMENT

The LEAD PARTY shall serve as budget manager for this AGREEMENT. The LEAD PARTY shall invoice each PARTY for the PARTY's share of the total budget, as specified in subparagraph 2.C.(3), above, within 60 days of the last PARTY'S execution of this AGREEMENT. Funds collected and not spent will be rolled over into the next AGREEMENT term. Any funds remaining at the expiration of the AGREEMENT or termination of SERVICES will be reimbursed to the PARTIES in amounts consistent with the cost-sharing proportions specified in Paragraph C.

## 3. COMMUNICATION AND DISPUTE RESOLUTION

The PARTIES agree to employ ongoing, timely, and open communications to identify issues and problems that may arise during the term of this AGREEMENT. In the event that a dispute arises regarding any aspect of this AGREEMENT, the PARTIES agree to assign appropriate individuals to negotiate an acceptable resolution of the dispute.

## 4. MODIFICATION OR RECISSION

No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by all of the PARTIES.

## 5. RESERVATION OF AUTHORITY

Nothing in this AGREEMENT is intended to constrain or limit, nor shall have the effect of constraining or limiting, the authority of the PARTIES in carrying out their legal responsibilities and exercising their discretion in management, regulation, coordination, and control of water quality or land use affecting water quality.

## 6. AVAILABILITY OF FUNDS

The obligations of County and City are subject to the availability of funds for this purpose, and nothing herein shall be construed as obligating the County and City to expend money in excess of appropriations authorized by law.

## 7. TERMINATION/WITHDRAWAL OF PARTY

Any PARTY may terminate its involvement in this AGREEMENT with 30 days advance written notice to the other PARTIES, provided in accordance with Paragraph 13 below. Termination will not be effective until the 30th day after the effective date of notice, as determined under Paragraph 13. Exercise by a PARTY of the right to terminate this AGREEMENT shall not relieve the remaining PARTIES of their obligations under this AGREEMENT.

## 8. ATTORNEY FEES AND COSTS

Each PARTY agrees to bear its own attorney fees, costs, and all other legal expenses in connection with any action seeking to enforce, construe, challenge, or interpret the terms of this AGREEMENT.

## 9. JOINT DRAFT

Each PARTY has had the opportunity to participate in the drafting and preparation of this AGREEMENT. Any construction to be made of this AGREEMENT or any of its terms or provisions shall not be construed against any one PARTY.

## 10. WARRANTY OF AUTHORITY TO EXECUTE AGREEMENT

Each person executing this AGREEMENT on behalf of any PARTY hereto hereby warrants that he or she has authority to so execute this AGREEMENT in that capacity, that no other approval or consent other than that of the person executing this AGREEMENT is necessary for the due and legal execution of this AGREEMENT and that the PARTY on whose behalf the AGREEMENT is signed, including that PARTY's agents, officers and employees, is legally bound thereby as of the EFFECTIVE DATE of this AGREEMENT.

## 11. COUNTERPARTS

This AGREEMENT may be executed in counterparts, with the same force and effect as if executed in a single, complete document. For purposes of this AGREEMENT, a facsimile or Portable Document Format ("PDF") execution shall be considered as the equivalent of a wet ink signature, shall be deemed good and valid acceptance of this AGREEMENT, and shall be reasonably relied upon by all PARTIES.

## 12. NOTICES

All notices required or desired to be given under this AGREEMENT shall be in writing and (a) delivered personally, or (b) sent by certified mail, return receipt requested or (c) sent by email communication followed by a mailed copy, to the addresses specified below, provided each PARTY may change the address for notices by giving the other PARTIES at least ten (10) days written notice of the new address. Notices shall be deemed effective when actually received in the office of the addressee or when delivery is refused, as shown on the receipt of the U.S. Postal service, or other person making the delivery, except that notices sent by email communication shall be deemed received on the first business day following delivery.

Shane Silsby, Director, OC Public Works
County of Orange
P.O. Box 4048
Santa Ana, CA 92702-4048

Stacy Blackwood, Director, OC Parks
County of Orange
13042 Old Myford Rd.
Irvine, CA 92602

Mark Denny, City Manager
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Ian Pullan, General Manager
1 Monarch Beach Resort
Dana Point, CA 92629

## 13. ENTIRE AGREEMENT

This AGREEMENT constitutes the entire AGREEMENT between the PARTIES.

## COST-SHARE AGREEMENT

### Bird Abatement Services at Monarch Beach

**Orange County Flood Control District**, a body corporate and politic:

By:_____

Director of OC Public Works

Date:_____

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

By:_____

Director of OC Public Works

Date:_____

By:_____

Director of OC Parks

Date:_____

APPROVED AS TO FORM
COUNTY COUNSEL

By:_____

Deputy

Date: 9/19/18

**COST-SHARE AGREEMENT**

**Bird Abatement Services at Monarch Beach**

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

For the City of Dana Point

Date: 8/2/18

Signature

Mark Denny

Printed Name

City Manager

Title

Approved to as Form
City Attorney

Date: 8/2/18

Signature

A. Patrick Munoz

Printed Name

City Attorney

Title

Agreement No. MA-080-18010044

**COST-SHARE AGREEMENT**

**Bird Abatement Services at Monarch Beach**

**MBR Operating Co., Inc., d/b/a Monarch Beach Resort**
**BY: KSL MBR Management, LLC, its authorized agent**

Date: 9/2/18 By: _____

Monarch Beach Resort
Dana Point, California

APPROVED AS TO FORM & LEGALITY

By: _____

# EXHIBIT A

# Bird Abatement Services Proposal

3/20/218

Adam's Falconry Service is pleased to submit the enclosed proposal to provide the County of Orange for bird abatement services at Monarch Beach with a Nuisance Bird Abatement Program to minimize and deter the pest bird population on the beach to help improve water quality.

**Adam's Falconry Service Methodology:**

Adam's Falconry Service will use a combination of methods to change the bird's current habits of loitering and being a public nuisance by congregating in large numbers. We will primarily rely on birds of prey to help patrol the grounds as well as establish a predatory presence to help reduce the pest bird population at the beach. The goal is to reduce the seagull population which will lower the bacteria count in the water and this will also allow for a more enjoyable experience for home owners and visitors while at the beach.

For this particular job we have a number of birds at our disposal depending on what we deem necessary such as: a Eurasian Eagle Owl, a Gyr falcon, two female Gyr/Peregrines, five Peregrines, two Aplomado Falcons, a male Gyr/Saker, four Harris Hawks, and a female European Goshawk. Services shall be performed in accordance with the Department of Fish and Wildlife Services and all applicable regulatory requirements in a simulated no kill controlled predator/prey scenario.

"Falconry based bird abatement" is the use of trained falcons and hawks to intimidate and scare off nuisance birds which can be a cause of an unpleasant experience at beaches, parks, hotels, and a loss of revenue for crop growers, health hazards in landfills, and safety concerns in airfields.

Very often the presence of the raptor is enough to deter and intimidate the prey species. It's a natural predator and prey relationship that evolution has programmed them to avoid.

Historically, everything from Mylar tape, spikes, netting, scarecrows, horns, propane cannons, flares, screamers, bird bombs, shotguns and poisons have been used, but yet the birds find ways to adapt to these inferior methods. Falconry based bird abatement is quiet, discrete, organic, eco-friendly and very sustainable. The objective is not killing the nuisance birds, but scaring them off the premises.

**Scope of Work:**

Adam's Falconry Service specializes in cutting edge environmental bird control techniques. Our main objective and ambition is to provide environmentally friendly effective alternative to reduce the pest bird population at Monarch Beach. We use trained raptors to flush, haze, or take birds (or other wildlife where allowed) to mitigate depredation problems, including threats to human health and safety.

**Background and Qualification Data:**

Adam's Falconry Service has recently proven itself to be effective at the Montage Laguna Beach, Rancho Mission Viejo (HOA-Escencia and Sendero), Five Pointe Irvine HOA, Prima Deshecha Landfill, Laguna Cliffs Marriott, and Poche Beach. Prima had 5000 gulls when I started now we see maybe 50 a day. Poche Beach had 1000 gulls when we started with poor water quality. There are very few seagulls there now and the water quality at the beach has tremendously improved and they have been removed from the beach bummer list. At Rancho Mission Viejo I have been successful at reducing the crow population in the valley from 1000 birds when I started to a much more manageable 50 birds. On a normal day I will chase 50 or so birds out of the valley when I start and then patrol the grounds chasing out the stragglers after that. It has become very effective for there is now much less plant damage as well as it is a nicer place to live without 100's of crows constantly making noise and being a general nuisance in the neighborhood. The mere sight of my car or bird will get most of the crows to depart the valley. Keeping a constant predator's presence in the neighborhood does not allow the crows to get to comfortable. It is easier for them to find food elsewhere.

I have been a falconer for over 30 years. In the past 15 years most of my experience has been around bird abatement at golf courses pushing coots, ducks, and geese out. I am the current President of the California Hawking Club as well as the Director-at-Large for our national organization North America Falconer's Association. I compete in sky trials (trained racing homers flown under the best falcons in the country) with my falcons or judge this event on a yearly basis. I have also placed first in the falcon races prelims and 2nd in the finals here in California. I have trained 13 Fish and Wildlife Wardens on the state falconry regulations this year. Over the course of my career as a falconer I have sponsored and trained 19 apprentice falconers.

**Work Plan and Time Schedule:**

Based on what I know about the property I would propose an initial two week Predator Territory Establishment Period. This would be followed up by a 5 day a week program dropping to a 4 day maintenance program as soon as the seagulls where under control. Adam's Falconry Service is the only documented falconry service proven to reduce the bacteria level in the water. I would recommend we start ahead of the influx of birds to better control the problem.

**Recommendation**

**Initial 2 weeks:** 7 days a week, 8 hours a day (8am-4pm) April 1st-14th

**Week 3-8:** 5 days a week, 8 hours a day (8am-4pm) Mon, Thur, Fri, Sat, Sun Apr 15th-May 20th

**Maintenance-Week 9- the end of October (week 9 – 30.5 weeks):** 4 days per week, 8 hours a day (8am-4pm) Mon, Fri, Sat, Sun.

Adding or subtracting more days a week of coverage is only done based upon agreement of both parties but will never fall below 3 days a week during the season.

Start Date: April 1, 2018
End Date: Oct 31, 2018
This is a seasonal contract which can be renegotiated upon completion. If both parties agree upon renewal the contract can be for a three year time frame.

**Budget Proposal:**
$55.00 per hour. Billed on the 15th and the last day of the month payment due upon receipt.
Adam's Falconry Service appreciates the opportunity to provide County of Orange for bird abatement services at Monarch Beach with the above proposal. We look forward to working with you to provide you with a cost effective and high-quality service you need to minimize the bird loitering problem.

**Contract Terms:**
The contract between the County of Orange for bird abatement services at Monarch Beach and Adam's Falconry Service, LLC. for pest bird abatement services is a seasonal contract.

I, _____ approve the above contract for the County of Orange for bird abatement services at Monarch Beach
Title: _____
On _____, 2018

I, _____ approve the above contract for Adam's Falconry Service, LLC.
Title: Owner
On March 8, 2018
Sincerely,

Adam R. Chavez