



**AGGREGATE CONTRACT NUMBER
MA-299-23011430
WITH
AVIAN ENTERTAINMENT, LLC
FOR
BIRD ABATEMENT SERVICES**

THIS Aggregate Contract Number MA-299-23011430 for Bird Abatement Services (“**Contract**”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, through its OC Waste & Recycling Department (“**County**”) and Avian Entertainment, LLC, with a place of business at 30420 Romero Canyon Road, Castaic, CA 91384 (“**Contractor**”), with County and Contractor sometimes referred to as “**Party**” or collectively referred to as “**Parties**.”

RECITALS

WHEREAS, Contractor and County are entering into Aggregate Contract Number MA-299-23011430, for Bird Abatement Services, under a firm-fixed price Contract, for three-years, effective September 20, 2023 through September 19, 2026 in an amount not to exceed \$945,000 with unused funds to be carried over year to year; and

WHEREAS, County solicited Contract for Bird Abatement Services, and Contractor represented that it is qualified to provide Bird Abatement Services to the County; and

WHEREAS, Contractor agrees to provide Bird Abatement Services to the County as set forth in the Attachment A, Scope of Work; and

WHEREAS, County agrees to pay Contractor the fees as further set forth in Attachment B, Payment Terms and Invoicing Instructions; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or designee to enter into a Contract for Bird Abatement Services with the Contractor;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.

- C. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

- J. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. Insurance Provisions:** Contractor will need to comply with the following insurance requirements if making the deliveries to the County of Orange.

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with. Contractor agrees to keep such insurance coverage current, provide Certificate(s) of Insurance, and endorsements to the County during the entire term of this contract.

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

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIRs in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from Contractor. If Contractor is self-insured, Contractor will indemnify the County for any and all claims resulting or arising from Contractor's services in accordance with the indemnity provision stated in this Contract.

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**).

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for Owned or scheduled, non owned or hired vehicles	\$1,000,000 combined single limit each accident
Workers Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis utilizing Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers,***

employees and agents as Additional Insureds, or provide blanket coverage, which will state ***As Required By Written Contract***.

- 2) A primary non-contributing endorsement using ISO Form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees and agents***, or provide blanket coverage, which will state ***As Required By Written Contract***.

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

Contractor shall provide thirty (30) days prior written notice to County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the contract, upon which the County may suspend or terminate this contract.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates shall be emailed to OCWRPurchasing@ocwr.ocgov.com.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not provide acceptable Certificates of Insurance and endorsements to County incorporating such changes within thirty (30) days of receipt of such notice, this contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines

Attachment C

that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

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

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

- R. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. Freight:** Prior to the County's express acceptance of delivery of products, Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

- X. Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the

County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's Project Manager.

- BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS

- 1. Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Bird Abatement Services from Contractor as detailed in Attachment A, Scope of Work.
- 2. Term of Contract:** This Contract is for a three-year term, effective September 20, 2023 through September 19, 2026, in amount not to exceed \$945,000 with unused funds to be carried over year to year.
- 3. Renewable Annually with Concurrence:** This Contract may be renewed, by mutual written agreement of both Parties for an additional two (2) year term. The County does not have to give reason if it elects not to renew. Renewals may be contingent to approval of County of Orange Board of Supervisors.
- 4. Aggregate Contract:** This is an Aggregate Contract between Avian Entertainment, LLC, Airstrike Bird Control, Inc. and Adam's Falconry Service, LLC.
- 5. Authorization Warranty:** The Contractor represents and warrants that the person executing this Contract on behalf of and for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition and obligation of this agreement and that all requirements of the Contractor have been fulfilled to provide such actual authority.
- 6. Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
- 7. Compensation:** The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.
- 8. Substitutions:** The Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.

- 9. Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
- 10. Price Increase/Decrease:** No price increases will be permitted during the first period of the price agreement. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
- 11. Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without the prior written approval of the County assigned Deputy Purchasing Agent.
- 12. Default – Equipment, Software, or Service:** In the event any equipment, software or service furnished by the Contractor in the performance of this Contract should fail to conform to the specifications therein, the County may reject same, and it shall become the duty of the Contractor to reclaim and remove the items without expense to the County and to immediately replace all such rejected equipment, software or service with others conforming to such specifications, provided that should the Contractor fail, neglect or refuse to do so, the County shall have the right to purchase on the open market a corresponding quantity of any such equipment, software or service and to deduct from any monies due or that may thereafter become due to the Contractor the difference between the price specified in this Contract and the actual cost to the County.
- In the event the Contractor shall fail to make prompt delivery as specified of any equipment, software or service, the same conditions as to the rights of the County to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this Contract.
- In the event of the cancellation of this Contract, either in whole or in part, by reason of the default or breach by the Contractor, any loss or damage sustained by the County in procuring any equipment, software or service which the Contractor agreed to supply under this Contract shall be borne and paid for by the Contractor.
- The rights and remedies of the County provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- 13. Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.
- 14. Data – Title To:** All materials, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

- 15. Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

- 16. Contractor Personnel:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.

- 17. Contractor Personnel – Drug Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

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

1. The Contractor has made false certification, or

2. The Contractor violates the certification by failing to carry out the requirements as noted above.

- 18. Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
- 19. Emergency/Declared Disaster Requirements:** 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. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
- 20. Contractor Safety:** Contractor shall comply with County's Safety and Loss Prevention Policy and Procedure #306 ("**Contractor Safety Responsibilities**") and submit a copy of its Injury and Illness Prevention Program (IIPP) and Contractor Safety-Activity Checklist to the designated County Procurement staff as part of the solicitation and/or contract process. Contractor will notify County Project Manager of any revisions to the SafetyActivity Checklist and will provide a new Safety-Activity Checklist upon County request. The IIPP shall comply with California Code of Regulations, Title 8, Section 1509 or 3203 (whichever applies). Contractor shall submit other safety programs that pertain to the type of job that will be performed on site. County reserves the right to conduct inspections and audits as necessary for the purpose of evaluating any aspect of safety performance under this Contract.
- 21. County Cooperative Contract:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

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

Attachment C

22. Notices: Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA) listed below, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor

Name: Avian Entertainment, LLC
Address: 30420 Romero Canyon Road
Castaic, CA 91384
Attn: Joe Suffredini
Phone: 805-794-6246
Email: birdmansuffredini@gmail.com

County

Name: County of Orange, OC Waste & Recycling
Address: 601 N. Ross St. 5th Floor
Santa Ana, CA 92701
Attn: Alan Araujo
Phone: 714-834-4140
Email: Alan.araujo@ocwr.ocgov.com

[Signature Page Follow]

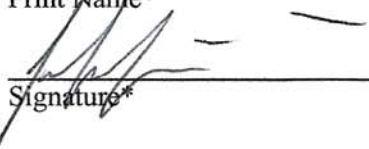
Attachment C

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

AVIAN ENTERTAINMENT LLC*:

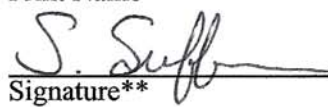
**If Contracting party is a corporation the following signature requirement applies: First (1st) signature by the Chairman of the Board, the President or any Vice President.*

Joseph Suffredini President
 Print Name* Title*

 7/3/23
 Signature* Date*

***If Contracting party is a corporation the following signature requirement applies: Second (2nd) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.*

Shawna Suffredini CFO
 Print Name** Title**

 7/3/23
 Signature** Date**

***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. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee to bind the corporation.

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

Print Name Title

Signature Date

APPROVED AS TO FORM

County Counsel

By Paul Albarian
 Paul Albarian, Senior Deputy

07/11/2023
 Date

Attachment C

**ATTACHMENT A
SCOPE OF WORK**

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

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

SERVICE LOCATIONS

Prima Deshecha Landfill 32250 Avenida La Pata San Juan Capistrano, CA 92675	Frank R. Bowerman Landfill 11002 Bee Canyon Access Rd. Irvine, CA 92602	Olinda Alpha Landfill 1942 Valencia Ave. Brea, CA 92823
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CONTRACTOR RESPONSIBILITIES

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

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

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

HOURS OF OPERATION

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

This program is anticipated to be performed approximately 40-60 hours per week during the cooler months. The specific hours and workdays will be based upon site conditions and will be subject to change by mutual concurrence of the County and Contractor. An example of standard hours of operations would be Monday through Saturday, approximately 6 a.m. – 5 p.m. Contractor shall propose effective work schedules for

gull abatement services. Contractor's hourly rate for services shall only be attributed to the time a licensed falconer is on-site in the actual performance of gulls abating services. Start-up costs, incremental and operations costs, travel time, feeding, searching for lost raptors, training expenses, and on-site transportation shall be the responsibility of the Contractor and are not to be billable to the County.

WORKSITE LIMITS

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

SAFETY

The Contractor agrees to perform all work outlined in this Contract in such a manner as to meet all accepted standards for safe practices during operations and to maintain safe conditions of premises and ways at all times, including safely stored equipment, machines, and 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 OCWR staff against injury or damage to their property.

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

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

PERMITS, LICENSES, AND CERTIFICATIONS

Contractor shall be responsible for obtaining and maintaining all required permits and certifications for the bird abatement services and shall comply with all applicable laws and state regulations. Only federally and state-approved species of raptors may be used for these services. Copies of all licenses and bird registries shall be submitted to County and shall be maintained on file with the 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 to the appropriate County Site Project Manager and with the Contractor's invoice. The Contractor shall provide each County Site Project Manager with a monthly report with pictures and any other relevant documents necessary to support performance of the service.

Attachment C

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.

COUNTY SUPPLIED ITEMS & RESOURCES

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

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

CONTRACTOR PRICING

Services shall be provided at an hourly rate of: **\$70.00**

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

ATTACHMENT B
PAYMENT TERMS AND INVOICING INSTRUCTIONS

TERMS

Contractor shall submit a **monthly** invoice in **arrears** for the materials provided in the amounts listed which shall become effective and billable upon delivery and acceptance of said materials as outlined in Attachment A, Scope of Work. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor.

Payment due to the Contractor will be made within NET 45 days after receipt of a correctly submitted invoice. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods/services not provided.

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

INVOICING INSTRUCTIONS

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

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

- a. Contractor's Name and Address
- b. Contractor's Remittance Address, if different from above
- c. Name of County Department
- d. MA Number MA-299-23011430
- e. Date, Location, Completion, Description and Duration of Services.
- f. Supporting Approval Documents, as applicable
- g. Daily Service Logs
- h. Total

Invoices and supporting documents shall be submitted electronically, to ocwrinvoice@ocwr.ocgov.com or by mail to:

OC Waste & Recycling
Attn: Accounts Payable
601 N. Ross St. 5th Floor
Santa Ana, CA 92701

Payment (Electronic Funds Transfer EFT): The County of Orange offers contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. To request a form, please contact the department's procurement representative. Completed form and required documentation must be submitted by mail to the physical address listed on the EFT form. Forms submitted electronically will not be accepted.

Attachment C

**ATTACHMENT C
HIGH-RISK CONTRACT REQUIREMENTS (COUNTY)**

The County of Orange has designated this Contract for Bird Abatement Services for OCWR as a High-Risk Contract. This Safety Packet specifies the requirements expected from the Contractor performing Bird Abatement Services for OCWR. The Contractor shall be liable for any action or inaction resulting in a fine imposed by regulatory agencies on incidents of noncompliance within the Contractor's area of responsibility. The Contractor shall be responsible for ensuring that the Contractor's Subcontractor(s) comply with these Safety provisions.

A. CONTRACTOR SAFETY

Contractor shall conduct all operations and perform all services in a safe manner. Contractor shall implement and maintain all proper health and safety precautions to protect its employees, subcontractors, County staff, the public, and the environment. Contractor shall conform to the OC Waste & Recycling Code of Safe Practices (Exhibit 4), the County of Orange Safety and Loss Prevention Program #306 and CAL/OSHA standards (Exhibit 1), as well as all other applicable laws, codes and regulations.

Contractor shall submit Contractor's Injury and Illness Prevention Program (IIPP) - *reference Exhibits 1 and 2*. Contractor's IIPP shall meet the minimum requirements of California Code of Regulation (CCR), Title 8, Section 1509 and 3203 and maintain compliance with all local, municipal, state and federal safety and health laws, orders, and regulations applicable to Contractor operations in performance of this Scope of Work. At a minimum, the IIPP must comply with the minimum site-specific standards as set by OCWR - *reference Exhibit 4*.

Contractor shall submit the following to OCWR's Safety Manager Mario Almaraz at mario.almaraz@ocwr.ocgov.com

- **Exhibit 1, County's Safety and Loss Prevention Policy and Procedure #306, signed;**
- **Exhibit 2, Contractor Safety Activity Checklist, completed; and**
- **Contractor's IIPP.**

Note: Exhibits 1 - 4 are included for reference only.

The IIPP along with the completed Exhibits 1 and 2 will be approved by OCWR's Safety Culture Manager **PRIOR** to any Contractor staff entering County owned or operated landfills and facilities.

EXHIBIT 1
COUNTY'S SAFETY AND LOSS PREVENTION POLICY AND PROCEDURE #306

**** This Exhibit 1 signed, Exhibit 2 completed, and Contractor's H&SP/IILP shall be submitted and approved before any work shall begin.***

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Exhibits attached separately as OC Waste & Recycling Safety Packet

Attachment C

EXHIBIT 2
CONTRACTOR SAFETY – ACTIVITY CHECKLIST

**** This Exhibit 2 completed, Exhibit 1 signed, and Contractor's H&SP/IILP shall be submitted and approved before any work shall begin.***

Exhibits attached separately as OC Waste & Recycling Safety Packet

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Attachment C

EXHIBIT 3
JOBSITE SAFETY CHECKLIST

****This Exhibit 3 is for reference. During this Contract term, the Project Manager will utilize the most current Jobsite Safety Inspection checklist when conducting regular inspections of the Contractor's jobsite.***

Exhibits attached separately as OC Waste & Recycling Safety Packet

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EXHIBIT 4
OC WASTE & RECYCLING CODE OF SAFE PRACTICES

Exhibits attached separately as OC Waste & Recycling Safety Packet

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