

## **AGREEMENT FOR TAX CONSULTING AND ADVOCACY SERVICES**

This Agreement for Tax Consulting and Advocacy Services (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between the Orange County Sanitation District (the “District”), a County Sanitation District organized and existing pursuant to California Health & Safety Code Section 4700 *et seq.*, and Equity Recovery Solutions (ERS). The District and ERS are sometimes referred to herein as each “Party,” and collectively referred to as the “Parties.”

### **RECITALS**

A. The District regularly procures chemicals, equipment, and other capital items that are used during the process of treating wastewater at the District’s two treatment plants. The District currently pays sales and use taxes on the purchase of these goods and consumables.

B. A portion of the District’s treated effluent is discharged to the Pacific Ocean. The balance of the District’s treated effluent is provided to the Orange County Water District (“OCWD”) for further treatment through the Groundwater Replenishment System (“GWRS”). The GWRS purifies the District’s effluent, transforming it into near-distilled quality water that exceeds all state and federal drinking water standards. OCWD uses the treated water, along with other sources, to replenish the large groundwater basin underlying northern and central Orange County. Ultimately, cities and water districts pump the basin’s groundwater and sell it to consumers within their jurisdiction.

C. The District desires to retain ERS on the terms and conditions set forth in this Agreement.

### **AGREEMENT**

In consideration of the foregoing recitals and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Scope of Services. On the District’s behalf, ERS shall, at ERS’s sole expense, seek to secure sales/use tax exemptions/refunds on the purchase of chemicals, equipment, and other capital expenditures used during the treatment of wastewater either (a): on a prospective basis such that the District is not obligated to pay sales/use tax on the purchases used to treat wastewater going forward; and/or (b) on a retrospective basis such that the District is entitled to a refund of sales/use taxes it has already paid on purchases used to treat wastewater by filing refund claims with the CDTFA covering all past years within the applicable statute of limitations period.

The scope of the services does not include any litigation, which may be brought if CDTFA denies the administrative claim for a refund. If the parties seek to pursue litigation to secure the sales/use tax exemptions that are the subject of this Agreement, that will be discussed in the future and the parties will address fees, scope of services, and other relevant terms at that later date.

2. Contingency Fees. ERS will only be compensated under this Agreement if (a) ERS successfully secures an exemption from sales or use tax on purchases in future tax years, and/or (2) ERS obtains a refund of taxes paid by the District in the past. ERS will receive 19.5% of any taxes that are either refunded by the CDTFA or avoided in future years through the efforts of ERS (including as described in Paragraph 1), up to a maximum of five (5) years total. If, for example, ERS recovers \$1,000 per year for each of the two past years, and the District avoids future taxes on purchases and capital expenditures into the future indefinitely, ERS shall receive 19.5% of \$5,000 (\$2,000 for two past years + \$3,000 for three future years). If the exemption is secured for greater than a five-year period (either prospectively, retrospectively or a combination of both), then the five years with the greatest benefit to the District will be used as the basis for computing the fee. Despite the increase in the scope of services in this Agreement in comparison to the previous agreement, this percentage shall remain at 19.5%.

3. No Other Fees or Costs. ERS shall not receive any compensation under this Agreement other than the contingency fees described above in paragraph 2, except in the case of termination by the District in Paragraph 4.4. ERS shall not receive reimbursement for any costs incurred in performing services under this Agreement, including but not limited to travel expenses, except in the case of termination by the District in Paragraph 4.4.

4. Commencement, Term, and Termination.

4.1 The term of this Agreement shall commence on the Effective Date and continue until all matters are resolved with the CDTFA, up to a maximum of 5 years.

4.2 ERS may terminate this Agreement at any time for convenience or any other reason, by written notice to the District.

4.3 The District may terminate this Agreement at any time for convenience or any other reason, by written notice to ERS. Upon receipt of a termination notice, ERS shall immediately discontinue all work under this Agreement (unless the notice directs otherwise).

4.4 In the event that the District terminates this Agreement pursuant to Section **Error! Reference source not found.**, then ERS shall be entitled to a reasonable fee based on market rates and hours as well as recovery of any out-of-pocket costs.

5. Approval Necessary for Settlement. ERS shall not settle or compromise the District's claim for refund of taxes paid without the District's prior approval. The District shall seriously consider any offer recommended by ERS, but the District reserves the right to accept or reject any settlement in the District's sole and absolute discretion.

6. Standards. In performing its obligations under this Agreement, ERS shall adhere to the highest fiduciary standards, ethical practices, and standards of care and competence for its profession.

7. Compliance with Laws. In performing its obligations under this Agreement, ERS shall comply with all applicable Federal, State, and local laws and regulations.

8. No Delegation or Assignment. ERS shall not delegate any obligations under this Agreement, nor assign any rights under this Agreement, without the prior written consent of the District. Any such attempted delegation or assignment shall be void.

9. Client. The District is ERS's sole client in this matter. ERS does not represent any affiliated persons or entities.

10. Execution and Acknowledgment of Documents. Each Party shall execute and, if appropriate, acknowledge all additional documents, instruments, and writings which may be reasonably requested by the other Party in order to fully carry out the intent and purpose of this Agreement.

11. Independent Contractor. The relationship of ERS to the District is that of an independent contractor. Nothing herein shall be construed as creating an employment or agency relationship. ERS shall act independently and not as an officer or employee of the District.

12. No Benefits. ERS shall not be entitled to any benefits accorded to those individuals listed on the District's payroll as regular employees including, without limitation, worker's compensation, disability insurance, vacation, holiday, or sick pay. ERS shall be responsible for providing, at ERS's expense, disability, worker's compensation, or other insurance as well as licenses and permits usual or necessary for conducting the Services hereunder.

13. All Modifications in Writing. This Agreement may not be modified, changed, or supplemented, nor may any obligations hereunder be waived or extensions of time for performance granted, except by a written instrument signed by both Parties.

14. Waiver. The waiver of either Party of any breach or violation of, or default under, any provision of this Agreement, shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Agreement or default thereunder. Any breach by ERS to which the District does not object shall not operate as a waiver of the District's rights to seek remedies available to it for any subsequent breach.

15. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California and the Parties submit to jurisdiction in Orange County, in the event any action is brought in connection with this Agreement or the performance thereof.

16. Conflicts of Interest. ERS shall at all times avoid conflicts of interest or the appearance of any conflict of interest in the performance of this Agreement. ERS affirms that, to the best of its knowledge, there exists no actual or potential conflict between ERS's business or financial interests and the performance of its Services under this Agreement. In the event any such conflict arises, ERS shall inform the District and take all appropriate action.

17. No Third-Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the District and ERS.

18. Agreement Not Construed Against Either Party. The language appearing in all parts of this Agreement shall not be strictly construed for or against either Party. This Agreement has been prepared jointly by the Parties after arms-length negotiations. Any uncertainty or ambiguity contained in this Agreement shall not be interpreted or construed against either Party, but according to its fair meaning applying the applicable rules of interpretation and construction of contracts. Each Party hereby waives the benefit of any statute or rule of law or judicial decision, including without limitation California Civil Code § 1654, which would otherwise require that the provisions of this Agreement be construed or interpreted most strongly against the Party responsible for the drafting thereof.

19. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations between the Parties with respect to the subject matter hereof.

*IN WITNESS WHEREOF*, the Parties hereto have hereunto set their hands the day and year indicated below.

**ORANGE COUNTY SANITATION DISTRICT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Chair Board of Directors

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Clerk of the Board

Approved as to Form

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
General Counsel

**Equity Recovery Solutions, Inc**

Dated: \_\_\_\_\_

Jacob Bholat

By: \_\_\_\_\_