

PROFESSIONAL CONSULTANT SERVICES AGREEMENT
Emission Reduction Credits Brokerage Services
Specification No. CS-2023-1379BD-R

This PROFESSIONAL CONSULTANT SERVICES AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into as of the date fully executed below, by and between Orange County Sanitation District (hereinafter referred to as “OC San”) and AQC Environmental Brokerage Services, Inc. (hereinafter referred to as “Consultant”), and collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, OC San desires to obtain emission reduction credits brokerage services as described in Exhibit “A” attached hereto and incorporated herein by this reference (“Services”); and

WHEREAS, Consultant is qualified to provide the Services by virtue of experience, training, and expertise; and

WHEREAS, OC San desires to engage Consultant to render the Services as provided herein; and

WHEREAS, OC San selected Consultant to provide the Services in accordance with Ordinance No. OC SAN-56; and

WHEREAS, on July 12, 2023, OC San’s Administration Committee, by minute order, authorized execution of this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and benefits specified below, the Parties agree as follows:

1. General.

1.1 This Agreement and all exhibits hereto are made by OC San and the Consultant.

1.2 The following exhibits, in order of precedence, are incorporated by reference and made part of this Agreement.

Exhibit “A” – Scope of Work

Exhibit “B” – Proposal and Fee Proposal

Exhibit “C” – Determined Insurance Requirement Form

Exhibit “D” – Contractor Safety Standards

Exhibit “E” – Human Resources Policies

1.3 In the event of any conflict or inconsistency between the provisions of this Agreement and any of the provisions of the exhibits hereto, the provisions in the Agreement shall control and thereafter the provisions in the document highest in precedence shall be controlling.

1.4 Except as expressly provided otherwise, OC San accepts no liability for any expenses, losses, or actions incurred or undertaken by Consultant as a result of work performed in anticipation of purchases of the Services by OC San.

- 1.5 Work Hours: The work required under the Agreement may include normal business hours, evenings, and weekends. OC San will not pay for travel time.
- 1.6 Scheduled Work Hours: All work or meetings with OC San staff shall be scheduled Monday through Thursday, between the hours of 7:30 a.m. and 3:30 p.m.
- 1.7 Days: Shall mean calendar days, unless otherwise noted.
- 1.8 OC San holidays (non-working days) are as follows: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.
- 1.9 The provisions of this Agreement may be amended or waived only by an amendment executed by authorized representatives of both Parties.
- 1.10 The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any paragraph or provision hereof.

2. Scope of Work.

- 2.1 Consultant shall provide the Services identified in Exhibit "A" in a competent, professional, and satisfactory manner in accordance with generally accepted industry and professional standards, including fiduciary standards, ethical practices, and standards of care and competence for its trade/profession.
- 2.2 Modifications to Scope of Work. OC San shall have the right to modify the Scope of Work at any time. All modifications must be made by an amendment signed by both Parties.
- 2.3 Familiarity with Work. By executing this Agreement, Consultant warrants that: (a) it has investigated the work to be performed; and (b) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Consultant discover any latent or unknown condition materially differing from those inherent in the work or as represented by OC San, it shall immediately inform OC San of this and shall not proceed, except at Consultant's risk, until written instructions are received from OC San.
- 2.4 Performance. Time is of the essence in the performance of the provisions hereof.

3. Agreement Term.

- 3.1 The Services shall be completed within one (1) year from the effective date of the Notice to Proceed.
- 3.2 Renewals. At its sole discretion, OC San may exercise the option to renew this Agreement for up to four (4) one-year periods. This Agreement may be renewed by an OC San Purchase Order. OC San shall have no obligation to renew the Agreement nor to give a reason if it elects not to renew it.
- 3.3 Extensions. The term of this Agreement may be extended only by an amendment signed by both Parties.

4. Emission Reduction Credits (ERC) Transfer and Transaction.

- 4.1 Consultant shall administer the execution of a purchase and sale agreement between OC San and its counterparty/buyer. Upon the execution of a purchase and sale agreement, counterparty/buyer shall deposit the total purchase price into Consultant's escrow account. Consultant's escrow account operates as a non-interest bearing holding account to safeguard OC San as the seller by ensuring the availability of funds during the transfer process and to protect the counterparty/buyer from releasing funds prior to the ERC transfer being completed. In the event that any issues arise during the ERC transfer, Consultant as the escrow agent will facilitate the return of funds to counterparty/buyer.
- 4.2 Consultant shall submit the ERC transfer to South Coast Air Quality Management District (SCAQMD) and the transfer process may take approximately four (4) weeks. Upon completion of ERC transfer, SCAQMD will issue a written confirmation via email to OC San, its counterparty/Buyer, and Consultant. Within five (5) business days of OC San's receipt of written confirmation from SCAQMD of the ERC transfer, the escrowed funds excluding the Consultant's Commission (Payment) shall be released to OC San via wire transfer.

5. Compensation.

- 5.1 As compensation for the Services provided under this Agreement, Consultant will receive through an Escrow Account, a seller's fee equal to 3.5% of the "gross sales price" of ERC sale that is administered and completed by Consultant (Commission). Such Commission shall be payable to the Consultant at the time OC San execute a purchase and sale agreement with its counterparty/buyer, and upon OC San's receipt of Payment. The term "gross sales price", as used herein, shall mean the total purchase price, excluding the commission or any other fees that the Consultant may receive from counterparty/buyer, to be paid to OC San for the sales of applicable quantity of ERC during the term of the Agreement.
- 5.2 In no event shall Consultant receive Commission prior to: (1) the execution of a purchase and sale agreement between OC San and its counterparty/buyer; and (2) OC San's receipt of Payment.
- 5.3 Consultant shall provide OC San with: (1) all required work under this Agreement, in accordance with Exhibit "A" and consistent with Exhibit "B"; and (2) all required premiums and/or overtime work, at no charge beyond the fee specified above.

6. California Department of Industrial Relations Registration and Record of Wages.

- 6.1 To the extent Consultant's employees and/or its subconsultants perform work related to this Agreement for which Prevailing Wage Determinations have been issued by the California Department of Industrial Relations (DIR) as more specifically defined under Labor Code section 1720 et seq., prevailing wages are required to be paid for applicable work under this Agreement. It is Consultant's responsibility to interpret and implement any prevailing wage requirements and Consultant agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws.
- 6.2 Consultant and its subconsultants shall comply with the registration requirements of Labor Code section 1725.5. Pursuant to Labor Code section 1771.4(a)(1), the work is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR).

- 6.3 Pursuant to Labor Code section 1773.2, a copy of the prevailing rate of per diem wages is available upon request at OC San's principal office. The prevailing rate of per diem wages may also be found at the DIR website for prevailing wage determinations at <http://www.dir.ca.gov/DLSR/PWD>.
- 6.4 Consultant and its subconsultants shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulations section 16461(e). Pursuant to Labor Code sections 1773.2 and 1771.4(a)(2), Consultant shall post a copy of the prevailing rate of per diem wages at the job site.
- 6.5 Consultant and its subconsultants shall maintain accurate payroll records and shall comply with all the provisions of Labor Code section 1776. Consultant and its subconsultants shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3). Pursuant to Labor Code section 1776, the Consultant and its subconsultants shall furnish a copy of all certified payroll records to OC San and/or the general public upon request, provided the public request is made through OC San, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement of the Department of Industrial Relations. Pursuant to Labor Code section 1776(h), penalties for non-compliance with a request for payroll records may be deducted from progress payments.
- 6.5.1 As a condition to receiving payments, Consultant agrees to present to OC San, along with any request for payment, all applicable and necessary certified payrolls and other required documents for the period covering such payment request. Pursuant to Title 8, California Code of Regulations section 16463, OC San shall withhold any portion of a payment, up to and including the entire payment amount, until certified payroll forms and any other required documents are properly submitted. In the event certified payroll forms do not comply with the requirements of Labor Code section 1776, OC San may continue to withhold sufficient funds to cover estimated wages and penalties under the Agreement.
- 6.6 The Consultant and its subconsultants shall comply with Labor Code section 1774 and section 1775. Pursuant to Labor Code section 1775, the Consultant and any of its subconsultants shall forfeit to OC San a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any work.
- 6.6.1 In addition to the penalty and pursuant to Labor Code section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant or its subconsultant.
- 6.7 Consultant and its subconsultants shall comply with Labor Code sections 1810 through 1815. Consultant and its subconsultants shall restrict working hours to eight (8) hours per day and forty (40) hours per week, except that work performed in excess of those limits shall be permitted upon compensation for all excess hours worked at not less than one and one-half (1.5) times the basic rate of pay, as provided in Labor Code section 1815. The Consultant shall forfeit, as a penalty to OC San, twenty-five dollars (\$25) per worker per calendar day during which such worker is required or

permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of Labor Code sections 1810 through 1815.

- 6.8 Consultant and its subconsultants shall comply with Labor Code sections 1777.5, 1777.6, and 1777.7 concerning the employment of apprentices by Consultant or any subconsultant.
- 6.9 Consultant shall include, at a minimum, a copy of the following provisions in any contract it enters into with any subconsultant: Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.
- 6.10 Pursuant to Labor Code sections 1860 and 3700, the Consultant and its subconsultants will be required to secure the payment of compensation to employees. Pursuant to Labor Code section 1861, Consultant, by accepting this Agreement, certifies that:

“I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

Consultant shall ensure that all its contracts with its subconsultants provide the provision above.

7. **Key Personnel.** Personnel, as provided in Exhibit “B,” are considered “key” to the work under this Agreement and will be available for the term of the Agreement. No person designated as key under this Agreement shall be removed or replaced without prior written consent of OC San. If OC San asks Consultant to remove a person designated as key under this Agreement, Consultant agrees to do so immediately regardless of the reason, or the lack of reason, for OC San’s request. Consultant shall assign only competent personnel to perform Services under this Agreement.
8. **Ownership of Documents.** All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subconsultants, and agents in the performance of this Agreement shall be the property of OC San and shall be promptly delivered to OC San upon request of OC San’s Project Manager or designee or upon the termination of this Agreement and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by OC San of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at OC San’s sole risk and without liability to Consultant. Consultant shall ensure that all its contracts with its subconsultants provide for assignment to OC San of any documents or materials prepared by them.
9. **Ownership of Intellectual Property.**
 - 9.1 Consultant agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions, and all other information and items made during the course of this Agreement and arising from the Services (hereinafter referred to as “New Developments”) shall be and are assigned to OC San as its sole and exclusive property.

- 9.2 Consultant agrees to promptly disclose to OC San all such New Developments. Upon OC San's request, Consultant agrees to assist OC San, at OC San's expense, to obtain patents or copyrights for such New Developments, including the disclosure of all pertinent information and data with respect thereto, the execution of all applications, specifications, assignments, and all other instruments and papers which OC San shall deem necessary to apply for and to assign or convey to OC San, its successors and assigns, the sole and exclusive right, title, and interest in such New Developments. Consultant agrees to obtain or has obtained written assurances from its employees and contract personnel of their agreement to the terms hereof regarding New Developments and confidential information.
- 9.3 Consultant warrants that Consultant will have good title to any New Developments and the right to assign New Developments to OC San free of any proprietary rights of any other party or any other encumbrance whatever.
- 9.4 The originals of all computations, drawings, designs, graphics, studies, reports, manuals, photographs, videotapes, data, computer files, and other documents prepared or caused to be prepared by Consultant or its subconsultants in connection with the Services hereunder shall be delivered to and shall become the exclusive property of OC San. OC San may utilize such documents, at its own risk, for OC San's applications on other projects or extensions of this project.

10. Right to Review Services, Facilities, and Records.

- 10.1 OC San reserves the right to review any portion of the Services performed by Consultant under this Agreement and Consultant agrees to cooperate to the fullest extent possible in such endeavor.
- 10.2 Consultant shall furnish to OC San such reports, statistical data, and other information pertaining to Consultant's Services as shall be reasonably required by OC San to carry out its rights and responsibilities under its agreements with its bondholders or noteholders and any other agreement relating to the development of the project(s) and in connection with the issuance of its official statements and other prospectuses with respect to the offering, sale, and issuance of its bonds and other obligations.
- 10.3 The right of OC San to review or approve drawings, specifications, procedures, instructions, reports, test results, calculations, schedules, or other data that are developed by Consultant shall not relieve Consultant of any obligation set forth herein.

11. Conflict of Interest and Reporting.

- 11.1 Consultant shall, at all times, avoid conflicts of interest or appearance of conflicts of interest in performance of this Agreement.
- 11.2 Consultant affirms that, to the best of its knowledge, there exists no actual or potential conflict between Consultant's families, business, or financial interest and the Services under this Agreement and in the event of change in either its private interests or Services under this Agreement, it shall raise with OC San any question regarding possible conflict of interest which may arise as a result of such change.

- 12. Damage to OC San's Property.** Any of OC San's property damaged by Consultant, any subconsultant, subcontractor, or by the personnel of either will be subject to repair or replacement by Consultant at no cost to OC San.

13. **Freight (F.O.B. Destination)**. Consultant assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Agreement.
14. **Audit Rights**. Consultant agrees that, during the term of this Agreement and for a period of three (3) years after its expiration or termination, OC San shall have access to and the right to examine any directly pertinent books, documents, and records of Consultant relating to the invoices submitted by Consultant pursuant to this Agreement.
15. **Contractor Safety Standards and Human Resources Policies**. OC San requires Consultant, its subconsultants, and its subcontractors to follow and ensure their employees follow all Federal, State, and local regulations as well as Contractor Safety Standards while working at OC San locations. If, during the course of the Agreement, it is discovered that Contractor Safety Standards do not comply with Federal, State, or local regulations, the Consultant is required to follow the most stringent regulatory requirement at no additional cost to OC San. Consultant, its subconsultants, and all of their employees shall adhere to all applicable Contractor Safety Standards in Exhibit "D" and the Human Resources Policies in Exhibit "E."
16. **Insurance**. Consultant and all its subconsultants shall purchase and maintain, throughout the term of this Agreement and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in the signed Exhibit "C" – Determined Insurance Requirement Form. Consultant shall not commence work under this Agreement until all required insurance is obtained in a form acceptable to OC San, nor shall Consultant allow any subconsultant to commence service pursuant to a subcontract until all insurance required of the subconsultant has been obtained. Failure to obtain and maintain the required insurance coverage shall result in termination of this Agreement.
17. **Indemnification and Hold Harmless Provision**. Consultant shall assume all responsibility for damages to property and/or injuries to persons, including accidental death, which may arise out of or may be caused by Consultant's Services under this Agreement, or by its subconsultant(s), or by anyone directly or indirectly employed by Consultant, and whether such damage or injury shall accrue or be discovered before or after the termination of the Agreement. Except as to the sole active negligence of or willful misconduct of OC San, Consultant shall indemnify, protect, defend, and hold harmless OC San, its elected and appointed officials, officers, agents, and employees from and against any and all claims, liabilities, damages, or expenses of any nature, including attorneys' fees: (a) for injury to or death of any person, or damage to property, or interference with the use of property arising out of or in connection with Consultant's performance under the Agreement, and/or (b) on account of use of any copyrighted or uncopyrighted material, composition, or process; or any patented or unpatented invention, article, or appliance furnished or used under the Agreement, and/or (c) on account of any goods and services provided under this Agreement. This indemnification provision shall apply to any acts or omissions, willful misconduct, or negligent misconduct, whether active or passive, on the part of Consultant or anyone employed by or working under Consultant. To the maximum extent permitted by law, Consultant's duty to defend shall apply whether or not such claims, allegations, lawsuits, or proceedings have merit or are meritless, or which involve claims or allegations that any of the parties to be defended were actively, passively, or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage, or injury. Consultant agrees to provide this defense immediately upon written notice from OC San, and with well qualified, adequately insured, and experienced legal counsel acceptable to OC San. This section shall survive the expiration or early termination of the Agreement.

18. Independent Contractor.

- 18.1 The relationship between the Parties hereto is that of an independent contractor and nothing herein shall be construed as creating an employment or agency relationship.
- 18.2 During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as OC San's officers, employees, or agents. OC San assumes no liability for Consultant's action and performance nor assumes responsibility for taxes, funds, payments, or other commitments, expressed or implied, by or for Consultant.
- 18.3 Consultant shall not be considered an agent of OC San for any purpose whatsoever nor shall Consultant have the right to, and shall not, commit OC San to any agreement, contract, or undertaking. Consultant shall not use OC San's name in its promotional material or for any advertising or publicity purposes without prior expressed written consent.
- 18.4 Consultant shall not be entitled to any benefits accorded to those individuals listed on OC San's payroll as regular employees including, without limitation, worker's compensation, disability insurance, vacation, or holiday or sick pay. Consultant shall be responsible for providing, at Consultant's expense, disability, worker's compensation, and other insurance as well as licenses and permits usual or necessary for conducting the Services hereunder.
- 18.5 Consultant shall be obligated to pay any and all applicable Federal, State, and local payroll and other taxes incurred as a result of fees hereunder. Consultant hereby indemnifies OC San for any claims, losses, costs, fees, liabilities, damages, or penalties suffered by OC San arising out of Consultant's breach of this provision.
- 18.6 Consultant shall not be eligible to join or participate in any benefit plans offered to those individuals listed on OC San's payroll as regular employees. Consultant shall remain ineligible for such benefits or participation in such benefit plans even if a court later decides that OC San misclassified Consultant for tax purposes.

19. Subcontracting and Assignment. Consultant shall not delegate any duties nor assign any rights under this Agreement without the prior written consent of OC San. Any such attempted delegation or assignment shall be void.

20. No Solicitation of Employees.

- 20.1 Consultant agrees that it shall not, during the term of this Agreement and for a period of one (1) year immediately following expiration or termination of this Agreement or any extension hereof, call on, solicit, or take away any of the employees whom Consultant became aware of as a result of Consultant's Services to OC San.
- 20.2 Consultant acknowledges that OC San's employees are critical to its business and OC San expends significant resources to hire, employ, and train employees. Should Consultant employ or otherwise engage OC San's employees during the term of this Agreement and for a period of one (1) year following expiration or termination of this Agreement, Consultant shall pay OC San fifty percent (50%) of the former employee's most recent annual salary earned at OC San to accurately reflect the reasonable value of OC San's time and costs. This payment is in addition to any other rights and remedies OC San may have at law.

21. Confidentiality and Non-Disclosure.

21.1 Consultant acknowledges that, in performing the Services hereunder, OC San may have to disclose to Consultant, orally and in writing, certain confidential information that OC San considers proprietary and has developed at great expense and effort.

21.2 Consultant agrees to maintain in confidence and not disclose to any person, firm, or corporation, without OC San's prior written consent, any trade secret, confidential information, knowledge, or data relating to the products, process, or operation of OC San.

21.3 Consultant further agrees to maintain in confidence and not to disclose to any person, firm, or corporation any data, information, technology, or material developed or obtained by Consultant during the term of this Agreement.

21.4 Consultant agrees as follows:

21.4.1 To use the confidential information only for the purposes described herein; to not reproduce the confidential information; to hold in confidence and protect the confidential information from dissemination to and use by anyone not a party to this Agreement; and to not use the confidential information to benefit itself or others.

21.4.2 To restrict access to the confidential information to its subconsultant or personnel of Consultant who (1) have a need to have such access and (2) have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement.

21.4.3 To return all confidential information in Consultant's possession upon termination of this Agreement or upon OC San's request, whichever occurs first.

21.4.4 To hold in confidence information and materials, if any, developed pursuant to the Services hereunder.

21.4.5 The provisions of this section shall survive termination or expiration of this Agreement and shall continue for so long as the material remains confidential.

22. Non-Liability of OC San Officers and Employees. No officer or employee of OC San shall be personally liable to Consultant, or any successor-in-interest, in the event of any default or breach by OC San or for any amount which may become due to Consultant or to its successor, or for breach of any obligation under the terms of this Agreement.

23. Third-Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OC San and Consultant.

24. Applicable Laws and Regulations. Consultant shall comply with all applicable Federal, State, and local laws, rules, and regulations. Consultant also agrees to indemnify and hold OC San harmless from any and all damages and liabilities assessed against OC San as a result of Consultant's noncompliance therewith. Any provision required by law to be included herein shall be deemed included as a part of this Agreement whether or not specifically included or referenced.

25. **Licenses, Permits, Ordinances, and Regulations.** Consultant represents and warrants to OC San that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to provide the Services. Any and all fees required by Federal, State, County, City, and/or municipal laws, codes, and/or tariffs that pertain to the work performed under this Agreement will be paid by Consultant.
26. **Regulatory Requirements.** Consultant shall perform all work under this Agreement in strict conformance with applicable Federal, State, and local regulatory requirements including, but not limited to, 40 CFR 122, 123, 124, 257, 258, 260, 261, and 503, Title 22, 23, and Water Codes Division 2.
27. **Environmental Compliance.** Consultant shall, at its own cost and expense, comply with all Federal, State, and local environmental laws, regulations, and policies which apply to the Consultant, its subconsultants, subcontractors, and the Services, including, but not limited to, all applicable Federal, State, and local air pollution control laws and regulations.
28. **Dispute Resolution.**
- 28.1 In the event of a dispute as to the construction or interpretation of this Agreement, or any rights or obligations hereunder, the Parties shall first attempt, in good faith, to resolve the dispute by mediation. The Parties shall mutually select a mediator to facilitate the resolution of the dispute. If the Parties are unable to agree on a mediator, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Agreement, through the alternate dispute resolution procedures of Judicial Arbitration through Mediation Services of Orange County ("JAMS"), or any similar organization or entity conducting an alternate dispute resolution process.
- 28.2 In the event the Parties are unable to timely resolve the dispute through mediation, the issues in dispute shall be submitted to arbitration pursuant to Code of Civil Procedure, Part 3, Title 9, sections 1280 et seq. For such purpose, an agreed arbitrator shall be selected, or in the absence of agreement, each party shall select an arbitrator, and those two (2) arbitrators shall select a third. Discovery may be conducted in connection with the arbitration proceeding pursuant to Code of Civil Procedure section 1283.05. The arbitrator, or three (3) arbitrators acting as a board, shall take such evidence and make such investigation as deemed appropriate and shall render a written decision on the matter in question. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California. The arbitrator's decision and award shall be subject to review for errors of fact or law in the Superior Court for the County of Orange, with a right of appeal from any judgment issued therein.
29. **Remedies.** In addition to other remedies available in law or equity, if the Consultant fails to make delivery of the goods or Services or repudiates its obligations under this Agreement, or if OC San rejects the goods or Services or revokes acceptance of the goods or Services, OC San may (a) cancel the Agreement; (b) recover whatever amount of the purchase price OC San has paid, and/or (c) "cover" by purchasing, or contracting to purchase, substitute goods or services for those due from Consultant. In the event OC San elects to "cover" as described in (c), OC San shall be entitled to recover from Consultant as damages the difference between the cost of the substitute goods or services and the Agreement price, together with any incidental or consequential damages.
30. **Force Majeure.** Neither party shall be liable for delays caused by accident, flood, acts of God, fire, labor trouble, war, acts of government, or any other cause beyond its control, but the affected party shall use reasonable efforts to minimize the extent of the delay. Work affected by a force majeure condition may be rescheduled by mutual consent of the Parties.

31. Termination.

31.1 OC San reserves the right to terminate this Agreement for its convenience, with or without cause, in whole or in part, at any time, by written notice from OC San. Upon receipt of a termination notice, Consultant shall immediately discontinue all work under this Agreement (unless the notice directs otherwise). OC San shall thereafter, within thirty (30) days, pay Consultant for work performed (cost and fee) through the date of termination. Consultant expressly waives any claim to receive anticipated profits to be earned during the uncompleted portion of this Agreement. Such notice of termination shall terminate this Agreement and release OC San from any further fee, cost, or claim hereunder by Consultant other than for work performed through the date of termination.

31.2 OC San reserves the right to terminate this Agreement immediately upon OC San's determination that Consultant is not complying with the Scope of Work requirements, if the level of service is inadequate, or for any other default of this Agreement.

31.3 OC San may also immediately terminate this Agreement for default, in whole or in part, by written notice to Consultant:

- if Consultant becomes insolvent or files a petition under the Bankruptcy Act; or
- if Consultant sells its business; or
- if Consultant breaches any of the terms of this Agreement; or
- if the total amount of compensation exceeds the amount authorized under this Agreement.

31.4 All OC San's property in the possession or control of Consultant shall be returned by Consultant to OC San on demand or at the expiration or termination of this Agreement, whichever occurs first.

32. Attorney's Fees. If any action at law or in equity or if any proceeding in the form of an Alternative Dispute Resolution (ADR) is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which the prevailing party may be entitled.

33. Waiver. The waiver by 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 Consultant to which OC San does not object shall not operate as a waiver of OC San's rights to seek remedies available to it for any subsequent breach.

34. Severability. If any section, subsection, or provision of this Agreement, or any agreement or instrument contemplated hereby, or the application of such section, subsection, or provision is held invalid, the remainder of this Agreement or instrument in the application of such section, subsection, or provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, unless the effect of such invalidity shall be to substantially frustrate the expectations of the Parties.

35. Survival. The provisions of this Agreement dealing with payment, warranty, indemnity, and forum for enforcement shall survive expiration or early termination of this Agreement.

36. **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 the County of Orange in the event any action is brought in connection with this Agreement or the performance thereof.

37. **Notices.**

37.1 All notices under this Agreement must be in writing. Written notice shall be delivered by personal service, by electronic telecommunication, or sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand, or request sent. All notices shall be effective when first received at the following addresses:

OC San: Donald Herrera
Senior Buyer
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708
DHerrera@OCSan.gov

Consultant: Jaclyn Ferlita
President
AQC Environmental Brokerage Services, Inc.
5881 Engineer Dr.
Huntington Beach, CA 92649
jferlita@aqc-inc.com

37.2 Each party shall provide the other party written notice of any change in address as soon as practicable.

38. **Read and Understood.** By signing this Agreement, Consultant represents that it has read and understood the terms and conditions of the Agreement.

39. **Authority to Execute.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the Parties are formally bound.

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

[Intentionally left blank. Signatures follow on the next page.]

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives.

ORANGE COUNTY SANITATION DISTRICT

Dated: _____

By: _____
Christine Marick
Chair, Administration Committee

Dated: _____

By: _____
Kelly A. Lore
Clerk of the Board

Dated: _____

By: _____
Ruth Zintzun
Finance & Procurement Manager

AQC Environmental Brokerage Services, Inc

Dated: _____

By: _____

Print Name and Title of Officer

CMM:LL

Exhibit “A”

SCOPE OF WORK

EXHIBIT A
SCOPE OF WORK
Emission Reduction Credits Brokerage Services
SPECIFICATION NO. CS-2023-1379BD-R

EXECUTIVE SUMMARY/OVERVIEW

The Orange County Sanitation District (OC San) is responsible for safely collecting and treating the wastewater generated by 2.6 million people in North and Central Orange County. OC San serves the residential, commercial, and industrial wastewater needs of 20 cities, four special districts, and portions of unincorporated Orange County in its 479 square mile service area. Continuous and effective operation of the OC San facilities is critical to the health and safety of these Orange County citizens and protection of the local environment.

OC San operates and maintains two Title V permitted wastewater treatment plants: Reclamation Plant No. 1, and Treatment Plant No. 2. Over 180 million gallons per day of wastewater from residential, commercial, and industrial sources are treated at those two facilities. At those sites and others, OC San has equipment permitted by the South Coast Air Quality Management District (SCAQMD).

In addition to its existing infrastructure, OC San is committed to an extensive capital improvement program (CIP) to support the growing needs of the community while achieving clean water goals and continued compliance with increasingly stringent air quality regulations. Many of these CIP projects will ultimately require their own SCAQMD permits.

Emission reduction credits (ERCs) are required to offset new emissions from projects requiring a permit from the SCAQMD. OC San's ERCs can be used either for its permitting or can be sold in the ERC open market.

1 Purpose

Consultant shall provide ERC brokerage services to identify and secure buyer(s) for the sale of OC San's surplus Reactive Organic Gases (ROG) ERCs in the amount up to 360 lbs./day (pounds per day) and handle all market evaluation of ERCs, negotiations and financial transactions with all appropriate parties.

2 Description

OC San holds a limited portfolio of Air Quality ERC certificates issued by the SCAQMD for ROG's.

3 Project/Work Elements

OC San will work closely with the Consultant to assess future project plans and credit demands, manage OC San's portfolio, and coordinate at various times throughout the contract term to structure a financial transaction to sell ERC credits on OC San's behalf and in accordance with OC San's directions.

3.1 General Responsibilities

The Consultant responsibilities include, but are not limited to:

- 3.1.1 Assess the market trend, fair market value, and make timely notifications and practical recommendations to OC San on ERC sale opportunities;
- 3.1.2 Facilitate ERC sales with third parties, on such terms and conditions as OC San may determine in its sole discretion;
- 3.1.3 Inventory, optimize, maintain, and manage OC San ERC bank;

- 3.1.4 Adherence to market rules; and
- 3.1.5 Keep and maintain records of all sales terms and documentation related to the emission credit transactions.

3.2 Professional Services

Services include:

- 3.2.1 Brokerage Services: Facilitate and execute sale of ERC and all relevant transactions.
- 3.2.2 Consulting: Provide recommendations on market trends and suggest market risk reduction strategies in relation to OC San's held ERCs.
- 3.2.3 Asset Management: Provide market analysis, position modeling, strategy development, and execution of transactions.
- 3.2.4 Portfolio Optimization: Propose recommendation on optimizing the full value of the ERC portfolio.
- 3.2.5 Valuation Services: Provide quarterly valuation services of OC San's ERC portfolio.

4 Resources Available from OC San

The Consultant will be assigned a single point of contact on this contract. In close coordination with assigned OC San staff, the Consultant is responsible for requesting from OC San the needed information necessary for performing their contractual obligation. OC San will provide all available information to assist the Consultant in performing the work elements as described above.

5 Project Schedule

Consultant shall adhere to the following deadlines in creating its schedule and work breakdown structure for accomplishing the SOW. Consultant shall coordinate all meetings and presentations with the assigned OC San representative. All in-person meetings and presentations will be held at OC San Plant 1 Administrative Offices located in the City of Fountain Valley or other means not limited to virtual meetings.

MILESTONES	DEADLINE
Notice to Proceed (NTP)	NTP = Effective Date
Kick-Off Meeting	NTP plus 15 Calendar Days
Quarterly Reports	Submit within 15 Days following end of each calendar quarter (Jan. 15, Apr. 15, Jul. 15, Oct. 15)
Summary Report of all Financial Sales	Submit updated report within 30 Days of any sale closure.

6 Project Management

Consultant shall be responsible for coordinating and facilitating all necessary meetings, submittals, and portfolio management activities. The Consultant shall manage all support services as dictated by OC San staff and shall keep OC San apprised of progress.

Consultant shall provide the key management and supervisory personnel and shall not reassign the Key Personnel without prior approval of OC San. OC San may request re-assignment of any of the Consultant's (or sub-consultant's) personnel. Consultant shall be responsible for the supervision and management of all sub-consultants.

6.1 Contract Kick-Off Meeting

Within fifteen (15) calendar days of receiving the Notice to Proceed, the Consultant shall schedule and execute a virtual project kick-off meeting to discuss project strategy.

7 Deliverables

Consultant shall supply the following to OC San for review, comments, and approval. Following receipt and inclusion of OC San comments on all draft submittals, the Consultant shall submit originals in hardcopy and electronically (i.e., on USB storage drive) to OC San *no later than* ten (10) calendar days from receipt of OC San's comments.

7.1 Submittals

- Work Element 1: Provide quarterly reports dictating:
 - Market trend assessments including 6-, 12-, 18-, and 24-month outlook/forecasts,
 - Financial valuation of OC San's ERC credit portfolio commensurate with known and anticipated risks,
 - Proposed market risk reduction strategies in relation to OC San's held assets, and
 - Recommendation on optimizing the full value of the ERC credit portfolio.
- Work Element 2: Regulatory Management
 - Manage all regulatory requirements including regulatory filings, and
 - Comply with reporting requirements, where applicable.
- Work Element 3: Remit purchase proposals received for OC San review, evaluation, and consideration within 15 calendar days of their receipt.
- Work Element 4: Provide summary report of all financial sale transactions within thirty (30) calendar days of sale closure and completion of all/any regulatory notifications (*as deemed applicable*). This report shall include, at a minimum, the following information:
 - Amount (lbs./day) of each ROG ERC sold,
 - Final sales price of each transaction,
 - Date of the transaction,
 - Amount of remaining ERCs held by OC San,
 - Fees related to the transaction(s), and
 - Final gross and net proceeds of all transactions.

7.2 QA/ QC

General quality measures as set forth below shall be applied to each work product received from the Consultant.

- Accuracy – Technical content for all work products shall be accurate and presented in a logical format. The work shall contain all the information needed to either understand the flow of logic or confirm calculations and results.
- Clarity – Work products shall be clear and concise. All diagrams shall be easy to understand and be relevant to the supporting narrative. Presentation of all technical content shall adhere to accepted elements of style.

- Consistency to Requirements – All work products must satisfy the requirements of this Scope of Work and focus on the project assignments.
- File Editing – All text and diagrammatic files shall be editable by OC San.
- Format – Final submittals shall be submitted in hard copy(ies) and electronically in media mutually agreed upon prior to submission.
- Timeliness – Submittals, including drafts, shall be submitted on or before the due date specified in Section 5 or submitted in accordance with a later scheduled date determined by or approved by the OC San Project Manager.

The assigned OC San staff shall review, for completeness, preliminary or draft documentation that the Consultant submits and may return it to the Consultant for correction. As deemed applicable, OC San shall participate in the review and evaluation of any bid proposals received by the Consultant for purchase of ERC's. Absence of any comments by the assigned OC San staff shall not relieve the Consultant of the responsibility for complying with the requirements of the task associated with the work assignment.

Final approval and acceptance of documentation required herein shall be by letter of approval and acceptance by the OC San. The Consultant is responsible for any follow-up inquiries and/or changes requested by SCAQMD, CARB, or other regulatory agencies following their review as expeditiously as possible. Such responses must be prepared in sufficient time for prior review and approval by the OC San Project Manager. The Consultant shall not construe any letter of acknowledgement of receipt material as a waiver of review, nor as an acknowledgment that the material is in conformance with the work assignment. Any approval given during preparation of the documentation, or approval for shipment shall not guarantee the final acceptance of the completed documentation.

8 Safety & Hazardous Materials

If a facilities tour is deemed necessary, the Consultant shall receive the appropriate safety instructions from OC San designated Risk Management staff. Participation in this instruction is mandatory. This instruction doesn't replace any safety measures described in the OC San Safety Standards.

9 Staff Assistance

The Consultant will be assigned a single point of contact on this project ("Project Manager"). Any meetings and/or correspondence related to this project shall be scheduled and approved by the Project Manager.

10 Safety and Health Requirements

The Consultant and any Subconsultants shall comply with all applicable provisions of the OC San Consultant Safety Standards, Federal OSHA, California OSHA, and Local regulations, whichever is most stringent.