

**SERVICE CONTRACT**  
**Biosolids Thermal Conversion Facility Service**  
**SSJ# 1212BD**

**THIS CONTRACT** is made and entered into as of the date fully executed below, by and between Orange County Sanitation District, with a principal place of business at 10844 Ellis Avenue, Fountain Valley, CA 92708 (hereinafter referred to as "OC San") and Rialto Bioenergy Facility, LLC with a principal place of business at 705 Palomar Airport Road, Suite 200, Carlsbad, CA 92011 (hereinafter referred to as "Contractor") collectively referred to as the "Parties".

**WITNESSETH**

**WHEREAS**, OC San desires to temporarily retain the services of Contractor for Biosolids Thermal Conversion Facility Service, "Services" as described in Exhibit "A"; and

**WHEREAS**, OC San has chosen Contractor to conduct Services in accordance with Ordinance No. OC SAN-56; and

**WHEREAS**, on July 28, 2021, the Board of Directors of OC San, by minute order, authorized execution of this Contract between OC San and Contractor; and

**WHEREAS**, Contractor is qualified by virtue of experience, training, and expertise to accomplish such Services,

**NOW, THEREFORE**, in consideration of the mutual promises and mutual benefits exchanged between the Parties, the Parties mutually agree as follows:

**1. Introduction**

1.1 This Contract and all exhibits hereto (called the "Contract") is made by OC San and the Contractor. The terms and conditions herein exclusively govern the purchase of Services as described in Exhibit "A".

1.2 Exhibits to this Contract are incorporated by reference and made a part of this Contract as though fully set forth at length herein.

Exhibit "A" Scope of Work  
Exhibit "B" Proposal  
Exhibit "C" Determined Insurance Requirement Form  
Exhibit "D" OC San Contractor Safety Standards  
Exhibit "E" Human Resources Policies

1.3 In the event of any conflict or inconsistency between the provisions of this Contract and any of the provisions of the exhibits hereto, the provisions of this Contract shall in all respects govern and control.

1.4 The provisions of this Contract may be amended or waived only by a writing executed by authorized representatives of both Parties hereto.

1.5 The various headings in this Contract are inserted for convenience only and shall not affect the meaning or interpretation of this Contract or any paragraph or provision hereof.

1.6 The term "days", when used in the Contract, shall mean calendar days, unless otherwise noted as business days.

- 1.7 OC San holidays (non-working days) are as follows: New Year's Day, Lincoln's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.
- 1.8 The term "hours", when used in this Contract, shall be as defined in Exhibit "A".
- 1.9 Contractor shall provide OC San with all required premiums and/or overtime work at no charge beyond the price provided under "Compensation" below.
- 1.10 Except as expressly provided otherwise, OC San accepts no liability for any expenses, losses, or action incurred or undertaken by Contractor as a result of work performed in anticipation of purchases of said services by OC San.

**2. Compensation** Compensation to be paid by OC San to Contractor for the Services provided under this Contract on a per-ton basis as outlined below:

- 2.1 \$94/wet ton
- 2.2 If Contractor fails to meet the commissioning deadline by month 9 as stated under Commissioning below, the rate will be reduced by \$1 for each month that commissioning has not completed.
- 2.3 Wet ton rate will revert back to \$94 once Contractor is back on schedule.
- 2.4 \$87/wet ton (deliveries for drying services only)

**3. Commissioning and Proof of Performance**

- 3.1 Commissioning is considered complete when a successful 24-hour test is performed which must be accepted by both OC San and Contractor.

The proof of performance stage shall commence upon the successful completion of commissioning. Contractor will have 30 cumulative days to prove their system is successful. However, if Contractor does not perform successfully after 7 months from the effective date of Notice to Proceed, OC San may elect to continue deliveries for drying services only.

**4. California Department of Industrial Relations (DIR) Registration and Record of Wages**

- 4.1 To the extent Contractor's employees and/or its subcontractors who will perform Work during the design and preconstruction phases of a construction contract or perform work under a maintenance contract for which Prevailing Wage Determinations have been issued by the DIR and as more specifically defined under Labor Code Section 1720 et seq, Contractor and its subcontractors shall comply with the registration requirements of Labor Code Section 1725.5. Pursuant to Labor Code Section 1771.4, the work is subject to compliance monitoring and enforcement by the DIR.
- 4.2 The Contractor and its subcontractors shall maintain accurate payroll records and shall comply with all the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code 1771.4(a)(3). Penalties for non-compliance with the requirements of Section 1776 may be deducted from progress payments per Section 1776.
- 4.3 Pursuant to Labor Code Section 1776, the Contractor and its subcontractors shall furnish a copy of all certified payroll records to OC San and/or 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.

4.4 The Contractor and its subcontractors shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(e).

**5. Payments and Invoicing**

5.1 OC San shall pay, net thirty (30) days, upon receipt and approval, by OC San's Project Manager or designee, of itemized invoices submitted monthly for Services rendered in accordance with Exhibit "A". OC San, at its sole discretion, shall be the determining party as to whether the Services have been satisfactorily completed. OC San shall review invoices and provide any written comments to Contractor within fifteen (15) days of receipt, and if no comments the invoice shall be deemed approved.

5.2 Invoices shall be emailed by Contractor to OC San Accounts Payable at APStaff@OCSan.gov and "INVOICE" with the Purchase Order Number and SSJ# 1212BD shall be referenced in the subject line.

**6. Audit Rights** Contractor agrees that, during the term of this Contract and for a period of three (3) years after its termination, OC San shall have access to and the right to examine any directly pertinent books, documents, and records of Contractor relating to the invoices submitted by Contractor pursuant to this Contract.

**7. Scope of Work** Subject to the terms of this Contract, Contractor shall perform the Services identified in Exhibit "A". Contractor shall perform said Services in accordance with generally accepted industry and professional standards.

**8. Modifications to Scope of Work** Requests for modifications to the Scope of Work hereunder can be made by OC San at any time. All modifications must be made in writing and signed by both Parties.

**9. Contract Term** The Services provided under this Contract shall commence on the effective date of the Notice to Proceed and continue for the period of three (3) years.

**10. Renewals**

10.1 OC San may exercise the option to renew this Contract for up to two (2) one-year periods, under the terms and conditions contained herein. OC San shall make no obligation to renew nor give reason if it elects not to renew.

10.2 This Contract may be renewed by OC San Purchase Order.

**11. Extensions** The term of this Contract may be extended only by written instrument signed by both Parties.

**12. Performance** Time is of the essence in the performance of the provisions hereof.

**13. Termination**

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

- 13.2 OC San reserves the right to terminate this Contract immediately upon OC San's determination that Contractor is not complying with the Scope of Work requirements, if the level of service is inadequate, or any other default of this Contract.
- 13.3 OC San may also immediately cancel for default of this Contract in whole or in part by written notice to Contractor:
- if Contractor becomes insolvent or files a petition under the Bankruptcy Act; or
  - if Contractor sells its business; or
  - if Contractor breaches any of the terms of this Contract; or
  - if total amount of compensation exceeds the amount authorized under this Contract.
- 13.4 All OC San property in the possession or control of Contractor shall be returned by Contractor to OC San upon demand, or at the termination of this Contract, whichever occurs first.
14. **Insurance** Contractor and all subcontractors shall purchase and maintain, throughout the life of this Contract and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in the signed Determined Insurance Requirement Form (attached hereto and incorporated herein as Exhibit "C"). Contractor shall not commence work under this Contract until all required insurance is obtained in a form acceptable to OC San, nor shall Contractor allow any subcontractor to commence service pursuant to a subcontract until all insurance required of the subcontractor has been obtained. Failure to maintain required insurance coverage shall result in termination of this Contract.
15. **Indemnification and Hold Harmless Provision** Contractor shall assume all responsibility for damages to property and/or injuries to persons, including accidental death, which may arise out of or be caused by Contractor's services under this Contract, or by its subcontractor(s) or by anyone directly or indirectly employed by Contractor, and whether such damage or injury shall accrue or be discovered before or after the termination of the Contract. Except as to the sole active negligence of or willful misconduct of OC San, Contractor shall indemnify, protect, defend and hold harmless OC San, its elected and appointed officials, officers, agents and employees, from and against any and all third party claims, liabilities, damages or expenses of any nature, including attorneys' fees: (a) for injury to or death of any person or damage to tangible property or interference with the use of property, arising out of or in connection with Contractor's performance under the Contract, and/or (b) on account of use of any copyrighted or uncopied material, composition, or process, or any patented or unpatented invention, article or appliance, furnished or used under the Contract, and/or (c) on account of any goods and services provided under this Contract. This indemnification provision shall apply to any willful misconduct or negligence, whether active or passive, on the part of Contractor or anyone employed by or working under Contractor. To the maximum extent permitted by law, Contractor'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. Contractor agrees to provide this defense promptly upon written notice from OC San, and with well qualified, adequately insured, and experienced legal counsel acceptable to OC San.
16. **OC San Contractor Safety Standards** OC San requires Contractor and its subcontractor(s) to follow and ensure their employees follow all Federal, State, and local regulations as well as OC San Contractor Safety Standards while working at OC San locations. If during the course of the Contract it is discovered that OC San Contractor Safety

Standards do not comply with Federal, State, or local regulations, then the Contractor is required to follow the most stringent regulatory requirement at no additional cost to OC San. Contractor and all of its employees and subcontractors, shall adhere to all applicable OC San Contractor Safety Standards attached hereto in Exhibit "D" and the Human Resources Policies in Exhibit "E".

- 17. Warranties** In addition to the warranties stated in Exhibit "A", the following shall apply:
- 17.1 Manufacturer's standard warranty shall apply. All manufacturer warranties shall commence on the date of acceptance by the OC San Project Manager or designee of the work as complete.
- 17.2 Contractor's Warranty (Guarantee): If within a one (1) year period of completion of all work as specified in Exhibit "A", OC San informs Contractor that any portion of the Services provided fails to meet the standards required under this Contract, Contractor shall, within the time agreed to by OC San and Contractor, take all such actions as are necessary to correct or complete the noted deficiency(ies) at Contractor's sole expense.
- 18. Force Majeure** Neither party shall be liable for delays caused by accident, flood, acts of God, fire, labor trouble, war, pandemic, acts of government or any other cause beyond its control, but said 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 or may be eliminated from the Contract.
- 19. Freight (F.O.B. Destination)** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- 20. Familiarity with Work** By executing this Contract, Contractor warrants that: 1) it has investigated the work to be performed; and 2) it understands the facilities, difficulties and restrictions of the work under this Contract. Should Contractor discover any latent or unknown conditions 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 Contractor's risk, until written instructions are received from OC San.
- 21. Regulatory Requirements** Contractor shall perform all work under this Contract 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 California Water Codes Division 2.
- 22. Environmental Compliance** Contractor shall, at its own cost and expense, comply with all Federal, State, and local environmental laws, regulations, and policies which apply to the Contractor, its subcontractors, and the Services, including, but not limited to, all applicable Federal, State, and local air pollution control laws and regulations.
- 23. Licenses, Permits, Ordinances and Regulations** Contractor represents and warrants to OC San that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to engage in this work. 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 the terms of this Contract will be paid by Contractor.
- 24. Applicable Laws and Regulations** Contractor shall comply with all applicable Federal, State, and local laws, rules, and regulations. Contractor also agrees to indemnify and hold harmless from any and all damages and liabilities assessed against OC San as a result of

Contractor's noncompliance therewith. Any permission required by law to be included herein shall be deemed included as a part of this Contract whether or not specifically referenced.

**25. California Department of Industrial Relations (DIR) Registration and Record of Wages**

- 25.1 To the extent Contractor's employees and/or subcontractors who will perform work for which Prevailing Wage Determinations have been issued by the DIR and as more specifically defined under Labor Code Section 1720 et seq, Contractor and subcontractors shall comply with the registration requirements of Labor Code Section 1725.5. Pursuant to Labor Code Section 1771.4, the work is subject to compliance monitoring and enforcement by the DIR.
- 25.2 Contractor and subcontractors shall maintain accurate payroll records and shall comply with all the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code 1771.4(a)(3). Penalties for non-compliance with the requirements of Section 1776 may be deducted from progress payments per Section 1776.
- 25.3 Pursuant to Labor Code Section 1776, Contractor and subcontractors shall furnish a copy of all certified payroll records to OC San and/or 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.
- 25.4 Contractor and subcontractors shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(e).

**26. South Coast Air Quality Management District's (SCAQMD) Requirements** It is Contractor's responsibility that all equipment furnished and installed be in accordance with the latest rules and regulations of the South Coast Air Quality Management District (SCAQMD). All Contract work practices, which may have associated emissions such as sandblasting, open field spray painting or demolition of asbestos containing components or structures, shall comply with the appropriate rules and regulations of the SCAQMD.

**27. Governing Law** This Contract 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 Contract or the performance thereof.

**28. Breach** The waiver of either party of any breach or violation of, or default under, any provision of this Contract, shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Contract or default thereunder. Any breach by Contractor 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.

**29. Remedies** In addition to other remedies available in law or equity, if the Contractor fails to make delivery of the goods or Services or repudiates its obligations under this Contract, or if OC San rejects the goods or Services or revokes acceptance of the goods or Services, OC San may (1) cancel the Contract; (2) recover whatever amount of the purchase price OC San has paid, and/or (3) "cover" by purchasing, or contracting to purchase, substitute goods or Services for those due from Contractor. In the event OC San elects to "cover" as described in (3), OC San shall be entitled to recover from Contractor as damages the difference between the cost of the substitute goods or Services and the Contract price, together with any incidental or consequential damages. In the event of breach by OC San, Contractor shall be entitled to the remedies available under applicable laws.

**30. Dispute Resolution**

30.1 In the event of a dispute as to the construction or interpretation of this Contract, 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.

30.2 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 California 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 California 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.

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

**32. Survival** The provisions of this Contract dealing with Payment, Warranty, Indemnity, and Forum for Enforcement, shall survive termination or expiration of this Contract.

**33. Severability** If any section, subsection, or provision of this Contract, or any agreement or instrument contemplated hereby, or the application of such section, subsection, or provision is held invalid, the remainder of this Contract 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.

**34. Damage to OC San's Property** Any of OC San's property damaged by Contractor and not caused by OC San, any subcontractors or by the personnel of either will be subject to repair or replacement by Contractor at no cost to OC San.

**35. Disclosure** To the extent possible under public records laws, OC San shall not disclose any of Contractor's confidential information, such as trade secrets, without providing Contractor an opportunity to protect the information in advance.

**36. Independent Contractor** The legal relationship between the parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Contractor an OC San employee. During the performance of this Contract, Contractor and its officers, employees, and agents shall act in an independent capacity and shall not act as OC San's officers, employees, or agents. Contractor and its officers, employees, and agents shall obtain no rights to any benefits which accrue to OC San's employees.

37. **Limitations upon Subcontracting and Assignment** Contractor shall not assign any rights under this Contract without the prior written consent of OC San, provided that Contractor may assign or delegate all or any portion of its rights and obligations under this Contract at any time so long as such assignee or delegee is an entity that directly controls, is controlled by, or is under common control with Contractor. Any such attempted delegation or assignment shall be void. Notwithstanding the foregoing, OC San understand that Contractor may, from time to time, assign certain security interests in its commercial contracts to its lenders. Nothing in this section 37 shall be construed to prohibit such assignment, or to require Contractor to obtain permission or consent from OC San for such assignment.
38. **Third Party Rights** Nothing in this Contract shall be construed to give any rights or benefits to anyone other than OC San and Contractor.
39. **Non-Liability of OC San Officers and Employees** No officer or employee of OC San shall be personally liable to Contractor, 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 Contractor or to its successor, or for breach of any obligation for the terms of this Contract.
40. **Read and Understood** By signing this Contract, Contractor represents that he has read and understood the terms and conditions of the Contract.
41. **Authority to Execute** The persons executing this Contract on behalf of the Parties warrant that they are duly authorized to execute this Contract and that by executing this Contract, the Parties are formally bound.
42. **Entire Contract** This Contract 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.



**43. Notices** All notices under this Contract must be in writing. Written notice shall be delivered by personal service 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: Jackie Lagade, Principal Buyer  
Orange County Sanitation District  
10844 Ellis Avenue  
Fountain Valley, CA 92708

Contractor: Yaniv Scherson, Vice President  
Rialto Bioenergy Facility, LLC  
705 Palomar Airport Road, Suite 200  
Carlsbad, CA 92011

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

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

**ORANGE COUNTY SANITATION DISTRICT**

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

By: \_\_\_\_\_  
John B. Withers  
Chair, Board of Directors

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

By: \_\_\_\_\_  
Kelly A. Lore  
Clerk of the Board

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

By: \_\_\_\_\_  
Ruth Zintzun  
Purchasing & Contracts Manager

**RIALTO BIOENERGY FACILITY, LLC**

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

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

\_\_\_\_\_  
Print Name and Title of Officer

CMM