

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

853



**FROM:** Waste Management Department

**SUBMITTAL DATE:**

June 22, 2011

**SUBJECT:** Sole Source Agreement with Empire Machinery for Heavy Equipment Maintenance and Repairs in Blythe

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve a Sole Source Agreement with Empire Machinery in a not-to-exceed amount of \$80,000 annually, renewable in one (1) year increments for five (5) years; and
2. Authorize the Chairman to execute the Agreement on behalf of the Department

**BACKGROUND:** Due to the remote location of the Blythe Landfill and staffing limitations, the Department's Fleet section requires outside vendor support to assist in the maintenance/repair of heavy equipment stationed at this location, costs which routinely exceed \$1,000 per repair. Due to jurisdictional limitations imposed by equipment manufacturers, only designated vendors are able to provide service for equipment maintenance/repair needs for the majority of the fleet at the Blythe Landfill. Empire Machinery of Tucson Arizona controls the jurisdiction of the Blythe Landfill. Additionally, the remote location makes the services of alternate suppliers impossible or not cost effective. The rates being charged by Empire Machinery are competitive with other vendors used for heavy equipment repairs outside of Blythe. (continued)

Hans W. Kernkamp, General Manager-Chief Engineer

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 80,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	FY11/12

<b>SOURCE OF FUNDS:</b> Waste Management Enterprise Funds	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

**APPROVE**  
BY:   
**Alex Gann**

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Tavaglione, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Benoit and Ashley  
 Nays: None  
 Absent: Stone  
 Date: September 13, 2011  
 Cx: Waste, Purchasing

Kecia Harper-Ihem  
 Clerk of the Board  
 By:   
 Deputy

**Prev. Agn. Ref.:** \_\_\_\_\_ **District:** 4th **Agenda Number:**

**12.1**

**ATTACHMENTS FILED**  
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL  
BY: NEAL R. KIPNIS  
DATE: \_\_\_\_\_

Purchasing:   
Mark Seller, Assistant Director  
Departmental Conference

Dep't Recomm.:  Consent  Policy   
 Per Exec. Ofc.:  Consent  Policy

**BACKGROUND (cont.):**

The Blythe Sanitary Landfill averages 51.96 tons per day. In order to maintain landfill operations, equipment must be maintained and repaired. Due to the remote location and limited staffing, it is more cost effective and beneficial for the Department to outsource maintenance/ repair services. The alternatives would be to transport equipment to another landfill facility or service provider for maintenance/repair needs and/or to arrange for overnight accommodations for Department mechanic staff to service the equipment at this remote site. Both of these alternatives would delay availability of equipment for landfill operations, and would increase maintenance/repair costs due to permitting, transportation and travel costs. Additionally, the Department is bound by landfill regulatory permitting requirements to maintain a certain level of equipment availability at the site. Failure to maintain the required availability would result in a violation of permitting requirements and fines could be imposed.

**REVIEW/APPROVAL:** This procurement was reviewed and approved by the County Purchasing Agent.



**Riverside County**  
**Waste Management Department**

*Hans W. Kernkamp, General Manager-Chief Engineer*

**Date:** May 5, 2011  
**From:** Waste Management Fleet    **Department/Agency:** Waste Management  
**To:** Central Purchasing  
**Via:** Clifford Goss Buyer I  
**Subject:** **Sole Source Procurement; Repair Services for Equipment located in Blythe**

The information below is provided in support of the Waste Management Department's (Department) request for sole source approval. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

**Supply/Service being requested:**

Repair service for heavy and light duty equipment located in the remote location of Blythe, CA (see attached map).

**Supplier being requested:**

Empire Machinery

**Alternative suppliers that can or might be able to provide supply/service:**

Heavy equipment manufacturer, CATERPILLAR (CAT), approved vendors are assigned specific boundaries and are not permitted to perform business outside of their respective boundaries. Empire Machinery is the CAT dealer for the Blythe area. Alternative suppliers are not available.

**Extent of market search conducted:**

The Department's Fleet section has done a thorough search of all available vendors that are qualified to service/maintain/repair heavy equipment in the Blythe area. Empire Machinery is the only CAT approved vendor in the vicinity.

**Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** Due to the remote location of the Blythe Landfill and staffing limitations, the Department's Fleet section requires outside vendor support to assist in the maintenance/repair of heavy equipment stationed at this location, costs for which routinely exceed \$1,000 per repair. Due to jurisdictional limitations imposed by equipment manufacturers, only designated vendors are able to provide quotes for equipment maintenance/repair needs in the Blythe area. Additionally, the remote location makes the services of alternate suppliers impossible or not cost effective.

**Reasons why my department requires these unique features and what benefit will accrue to the county:** The Blythe Sanitary Landfill averages 51.96 tons per day. In order to maintain landfill operations, equipment must be maintained and repaired. Due to the remote location and limited staffing, it is more cost effective and beneficial for the Department to outsource maintenance/repair services. The alternatives would be to transport equipment to another landfill facility or service provider for maintenance/repair needs and/or to arrange for overnight accommodations for Department mechanic staff to service the equipment at this remote site. Both of these alternatives would delay availability of equipment for landfill operations, and would increase maintenance/repair costs due to permitting, transportation and travel costs. Additionally, the Department is bound by landfill regulatory permitting requirements to maintain a certain level of equipment availability at the site. Failure to maintain the required availability would result in a violation of permitting requirements and fines could be imposed.

**Price Reasonableness:**

Cost submitted was found acceptable and similar to the cost of services rendered on other Department equipment.

**Does moving forward on this product or service further obligate the county to future similar contractual arrangements?**

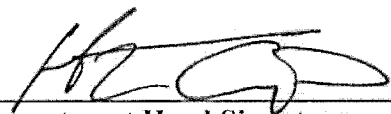
No

**Period of Performance:**

NA


**Provide a defined period of performance. Please note multi-year terms require Board approval, unless renewable in one year increments and the Purchasing Agent approves the terms.**

NA

  
\_\_\_\_\_  
Department Head Signature 5/6/11  
Date

Purchasing Department Comments:

Approve       Approve with Condition/s       Disapprove

  
\_\_\_\_\_  
Purchasing Agent 2-11-11  
Date

**PROFESSIONAL SERVICE AGREEMENT**

**for**

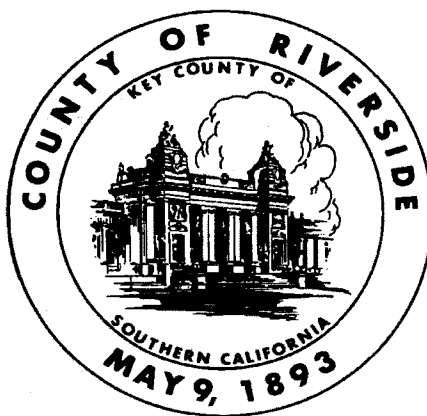
**Heavy Equipment Repair at Blythe landfill**

**between**

**COUNTY OF RIVERSIDE**

**and**

**Empire Southwest, LLC dba Empire Machinery**



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This Agreement, made and entered into this 16<sup>th</sup> day of Aug, 2011, by and between Empire Southwest, LLC dba Empire Machinery, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

**1. Description of Services**

**1.1** CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of two (2) pages at the prices stated in Exhibit B, Payment Provisions, consisting of one (1) page.

**1.2** CONTRACTOR represents that it has the skills, experience and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

**1.3** CONTRACTOR affirms that it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

**1.4** Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

**2.1** This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through September 2012 with the option to renew for four (4) years, renewable in one year increments by written amendment, signed by both parties unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

**3. Compensation**

**3.1** The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed eighty thousand dollars (\$80,000) annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted maximum amount (unless specifically authorized in writing by COUNTY) and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 A minimum of 30-days advance notice in writing of any price increase is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. Increases shall be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

Riverside County Waste Management  
14310 Frederick Street  
Moreno Valley CA, 92553  
Attention: Accounts Payable

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (WMARC-92800-6/11) quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

#### 4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the



CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change, provided CONTRACTOR is compensated for additional costs associated with such change.

## **5. Termination**

**5.1.** COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

**5.2** COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

**5.3** After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

**5.4** After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

**5.5** CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

**5.6** The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

## **6. Ownership/Use of Contract Materials and Products**

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to

this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports or products without prior written authorization of the COUNTY.

**7. Conduct of Contractor**

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no subcontractor having any such interest shall be retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

**8. Inspection of Service; Quality Control/Assurance**

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times upon reasonable advance notice to CONTRACTOR. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

9. **Independent Contractor**

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. **Subcontract for Work or Services**

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. **Disputes**

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute, provided COUNTY continues to pay CONTRACTOR in accordance with this Agreement.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

12. **Licensing and Permits**

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

**13. Use By Other Political Entities**

The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity located within CONTRACTOR's territory in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

**14. Non-Discrimination**

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

**15. Records and Documents**

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

**16. Confidentiality**

**16.1** Neither party shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or

confidential information” includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; information or data which is not subject to public disclosure; operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

**16.2** The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR’s obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

**17. Administration/Contract Liaison**

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement

**18. Notices** All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Waste Management Department  
Attention: Purchasing  
14310 Frederick Street  
Moreno Valley CA, 92553

**CONTRACTOR**

Empire Machinery  
Attention: Dan Nasca  
190 S. Intake Boulevard  
Blythe CA, 92225

**19. Force Majeure**

If either party is unable to comply with any provision of this Agreement (other than payment provisions) due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

**20. EDD Reporting Requirements**

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at [www.edd.ca.gov](http://www.edd.ca.gov).

**21. Hold Harmless/Indemnification**

**21.1** CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability for third party claims to the extent caused by the negligence, or gross negligence or reckless conduct of CONTRACTOR, its officers, employees, subcontractors, agents or representatives in the performance of this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever to the extent caused by the negligent or grossly negligent performance or reckless conduct of CONTRACTOR, its officers, employees, subcontractors, agents or representatives under this Agreement. CONTRACTOR shall defend the Indemnitees against all claims covered by the foregoing indemnity, at its sole expense, including, but not limited to attorney fees, cost of investigation, defense and settlements or awards.

**21.2** With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein. CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

**21.3** The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

**21.4** In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782.

**21.5** CONTRACTOR's indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

**21.6** Notwithstanding anything in this Agreement to the contrary, in no event shall CONTRACTOR be liable, in contract, tort, indemnity or otherwise, for special, incidental, indirect, punitive or consequential damages related to this Agreement in any way, regardless of whether or not CONTRACTOR was advised of the possibility of such damages.

## **22. Insurance**

**22.1** Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

**22.2** Workers' Compensation: If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

**22.3** Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as

Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

**22.4 Vehicle Liability:** If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

**22.5 General Insurance Provisions - All lines:**

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the COUNTY'S Risk Manager, COUNTY may terminate this Agreement.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*



4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

### **23. General**

**23.1** CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**23.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

**23.3** CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

**23.4** CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims or encumbrances.

**23.5** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to

be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.6 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.7 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.8 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

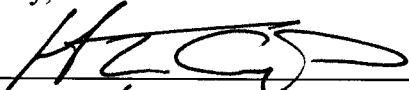
23.9 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.10 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.11 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

**COUNTY:**

Waste Management Department  
14310 Frederick Street  
Moreno Valley, CA 92553

Signature: 

Print Name: HANS KERNKAMP

Title: GEN. MGR - CHIEF ENGINEER

**CONTRACTOR:**

Empire Southwest, LLC dba Empire Machinery  
1725 S Country Club Dr  
Mesa AZ 85210

Signature: 

Print Name: John Helms

Title: VP & CFO

Dated: 8/17/11

Dated: 8-16-2011

COUNTY:

Signature: Bob Buster

Print Name: Bob Buster

Title: Chairman, Board of Supervisors

Dated: SEP 13 2011

ATTEST:  
KECIA HARPER-IHEM, Clerk  
By Kellie Barton  
DEPUTY

FORM APPROVED COUNTY COUNSEL  
BY: Neal R. Kipnis DATE 8/17/11  
NEAL R. KIPNIS DATE

## EXHIBIT A SCOPE OF SERVICE

### 1. General:

CONTRACTOR will provide repair, maintenance, parts, and services to both on and off-highway County equipment located at 1000 Midland Rd, Blythe CA. by Caterpillar dealership trained technicians and OEM machine specific parts.

### 2. Inspections:

Empire Machinery (CONTRACTOR) is encouraged to review oil samples, perform a physical inspection of machine, and obtain data relevant to component failure prior to quoting. To gain access to these records, schedule an appropriate time with the Equipment Services Supervisor (ESS), Kerry Moore at (951) 486-3322. After the repair items or related component are disassembled and inspected, the CONTRACTOR shall contact the ESS to discuss findings. The CONTRACTOR shall not proceed with repairs until components have been inspected by a Department representative or until a Department representative provides verbal approval to proceed with repair. The Department reserves the right to inspect repair items and related component reconditioning work in progress at CONTRACTOR's facilities at any time upon reasonable advance notice while a component is in their care.

### 3. Reconditioning Criteria:

The CONTRACTOR shall base decisions on whether to replace, remanufacture, or reinstall a part by determining the level of wear using the appropriate descriptions included in the Caterpillar "Guidelines for Reusable Parts and Salvage Operations" (SEBF8029, revision 30). The CONTRACTOR shall recondition repair items and related components in accordance with the Caterpillar disassembly/assembly instructions found in the applicable *Caterpillar Equipment Service Manual*, including the latest updates. Caterpillar parts shall be used exclusively when reconditioning repair items and related components. Certain parts will always be replaced as specified in the applicable Caterpillar assembly/disassembly instructions. CONTRACTOR shall not deviate below minimum standards as specified in the Caterpillar Reusable Guidelines. Where applicable, the quote shall include the cost for all manufacturers' updates to a given component as issued by the OEM.

### 4. Quality:

Each repair item or related component shall be reconditioned on the basis of Caterpillar's Reusability Guidelines. When properly installed, the reconditioned item(s) are expected to perform comparable to a like new component. It is equally important that the reconditioned component(s) be new in appearance (including repainting) and operation characteristics. A decision by the CONTRACTOR to compromise on any of the explicit standards set forth with respect to always replaced component parts, CAT Reusable Guidelines, or a decision not to perform certain tests or not to make the quality checks outlined in the Disassembly and Assembly section and Systems Operation and Testing section of the Caterpillar Service Manuals may result in a rejection of a reconditioned component by the Department. Reconditioning of power train and related components shall involve cleaning, disassembly, rebuilding/replacement using new gaskets/seals, bearings, clutch and disc plates, and bench testing of all transfer gears, control valves, planetary groups, bevel gear, torque converters, and oil pumps are required. All attached harnesses, solenoids, sensors, and switches shall be inspected and up-dated or replaced as part of the reconditioning process. In addition, all housings, valve bodies, carriers, and gears that are reused must meet Caterpillar Reusable Guidelines. Normal reconditioning shall include any machine work required to deburr, polish, or otherwise make housings, valve bodies, carriers, and gears reusable.

**EXHIBIT B  
PAYMENT PROVISIONS**

Overnight stay if required:  
(Covers lodging and meals)  
\$135 per person per night

Travel Time:  
\$128.85 per hour x Amount of time to work Site.

Parts Pricing:  
Contractor agrees to provide an electronic price list, including any discounts, specific to Riverside County.

Consumable Parts Pricing Discounts:

Consumable Product	Discount
Filters	20%
Undercarriage	15%
G.E.T (Ground Engaging Products)	30%
ARM (Abrasion Resistance Material)	25%

Labor rates for 2011 are as follows:

**1 Machinery Shop Service**

	REG	OT
Construction Equipment	\$ 96.35	\$ 126.35
Welding	\$ 96.35	\$ 126.35
BCP/CCE	\$ 93.75	\$ 123.80
Lube Services	\$ 80.05	\$ 110.05

**2 Machinery Field Service (All Stores & Residents)**

1 <sup>st</sup> Man Rate	\$ 128.85	\$ 163.00
2 <sup>nd</sup> Man Rate	\$ 90.30	\$ 124.45
Lube Services (Field – TLC)	\$ 99.90	\$ 134.05
Boom Truck	\$ 128.85	\$ 163.00

**3 Empire Precision Machining (EPM)**

(MA) Inspection	\$ 95.70	\$ 125.70
(MA) Weld Shop	\$ 95.70	\$ 125.70
(MA) Small Machines	\$ 95.70	\$ 125.70
(MA) Medium Machines	\$ 118.85	\$ 148.90
(MA) Large Machines	\$ 132.20	\$ 162.25
(MA) Metal Spray	\$ 126.20	\$ 156.25