

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



**ITEM: 12.1
(ID # 18387)**

MEETING DATE:
Tuesday, May 24, 2022

FROM : DEPARTMENT OF WASTE RESOURCES:

SUBJECT: DEPARTMENT OF WASTE RESOURCES: Approve the Professional Services Agreement with Empire Southwest, LLC for heavy equipment repair services without seeking competitive bids for five years; District 4. [\$400,000 Total Cost - Department of Waste Resources Enterprise Funds 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Professional Services Agreement with Empire Southwest, LLC for heavy equipment repair services without seeking competitive bids for an aggregate amount of \$400,000 for five years through March 31, 2027 (\$80,000 annually) and authorize the Chairman of the Board to sign the Agreement on behalf of the County; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding, and as approved as to form by County Counsel, to sign amendments that exercise the options of the agreement including modifications of the statement of work that stay within the intent of the Agreement; and sign amendments to the compensation provisions that do not exceed 10% of the total annual cost of the contract.

ACTION:Policy


Hans Keinkamp, General Manager - Chief Engineer 5/10/2022

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: May 24, 2022
xc: Waste Resource

Kecia R. Harper
Clerk of the Board

By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 80,000	\$ 80,000	\$ 400,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Department of Waste Resources Enterprise Funds 100%			Budget Adjustment: No	
			For Fiscal Year: 21/22 - 26/27	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Department proposes to award a contract to Empire Machinery to provide repair, maintenance, parts, and services for both on and off-highway County equipment located at the Blythe Landfill. A Sole Source agreement request was previously approved under SSJ# 17-164. This new Sole Source award has been approved by Purchasing under SSJ Req# 148571555.

Impact on Residents and Businesses

Utilizing local vendors as much as possible keeps tax revenue within Riverside County. Utilizing Empire Machinery will result in the need for less travel to/from Blythe and associated overnight stays/costs for Department mechanic staff who otherwise would be required to travel to Blythe to effect repairs. This also reduces the need for costly heavy equipment transport to haul equipment to western Riverside County. Compared to performing the repairs ourselves with limited mechanic staff, work performed by the local Caterpillar vendor are completed sooner, resulting in less downtime of machinery and fewer delays at public landfills. Empire CAT in Blythe, California is the sole local vendor with Caterpillar authorization to complete these repairs with the next nearest dealer being 64.2 miles away in Yuma, Arizona. All other authorized dealers are hours away which could lead to issues with repair delays, incurring extra mileage charges, out of state fees and longer response times for urgent requests.

Additional Fiscal Information

Estimated annual amounts are based on past expenditures and projected future repair needs.

Description:	FY22	FY23	FY24	FY25	FY26	Total
One-time Costs:	\$0	\$0	\$0	\$0	\$0	\$0
Ongoing Costs:	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$400,000
Previous SSJ Approved Amounts:	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$400,000

The Department is requesting an aggregate of \$400,000 over five (5) years based on past expenditures and projected future repair needs.

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STATE OF CALIFORNIA**

Contract History and Price Reasonableness

The rates being charged by Empire Machinery are competitive with other vendors used for heavy equipment repairs. Empire Machinery is closest and only CAT authorized dealer in proximity to the Blythe landfill, thus travel charges are minimal. Alternatives would be to transport equipment to another landfill or service provider and/or to arrange for overnight accommodations for department mechanic staff to service equipment, both of which would increase costs due to permitting, transportation, and travel costs, and would extend down time, potentially negatively affecting service to the public.

ATTACHMENTS:

ATTACHMENT A. AGREEMENT WITH EMPIRE SOUTHWEST, LLC.

ATTACHMENT B. COMPLETED SOLE SOURCE PROCUREMENT REQUEST


Suzanna Hankley, Assistant Director of Purchasing and Fleet Service

5/16/2022


Jason Farin, Principal Management Analyst

5/16/2022


Cynthia M. Gurzel, Chief Deputy County Counsel

5/10/2022

PROFESSIONAL SERVICE AGREEMENT

for

HEAVY EQUIPMENT REPAIR AT THE BLYTHE LANDFILL

between

COUNTY OF RIVERSIDE

and

EMPIRE SOUTHWEST, LLC DBA EMPIRE MACHINERY



MAY 24 2022 12.1

TABLE OF CONTENTS

<u>SECTION HEADING</u>	<u>PAGE NUMBER</u>
1. Description of Services	3
2. Period of Performance	3
3. Compensation	3
4. Alteration or Changes to the Agreement	4
5. Termination	5
6. Ownership/Use of Contract Materials and Products	6
7. Conduct of Contractor	6
8. Inspection of Service: Quality Control/Assurance	7
9. Independent Contractor/Employment Eligibility	7
10. Subcontract for Work or Services	9
11. Disputes	9
12. Licensing and Permits	9
13. Use by Other Political Entities	10
14. Non-Discrimination	10
15. Records and Documents	10
16. Confidentiality	10
17. Administration/Contract Liaison	11
18. Notices	11
19. Force Majeure.....	11
20. EDD Reporting Requirements.....	11
21. Hold Harmless/Indemnification	12
22. Insurance	13
23. General	15
Exhibit A-Scope of Service	18
Exhibit B- Payment Provisions	20

This Agreement, made and entered into this ____ day of _____, 2022, by and between EMPIRE SOUTHWEST, LLC, a Delaware limited liability company 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, and at the prices stated in Exhibit B, Payment Provisions to the Agreement.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to 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 continues in effect through March 21, 2027, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

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 annual maximum amount 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.

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 Department of Waste Resources
14310 Frederick Street
Moreno Valley CA, 92553
Attn: 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-92900-003-02/27); 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, and invoices shall be rendered "monthly" in arrears. In the State of California, Government agencies are not allowed to pay excess interest and late charges, per Government Codes, Section 926.10. 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 that may 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 If the Agreement is federally or State funded, CONTRACTOR cannot be debarred from the System for Award Management (SAM). CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central

Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

5.7 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. The material, reports or products may be used by the COUNTY for any purpose that the 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 person or subcontractor having any such interest shall be employed or 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 perceived as 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. 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 in accordance with Section 5.2 and, if the CONTRACTOR fails to cure the default within the time specified, charge to CONTRACTOR any reasonable costs actually incurred by the COUNTY because of the CONTRACTOR's failure to perform.

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 the CONTRACTOR.

9. Independent Contractor/Employment Eligibility

9.1 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.

9.2 CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

9.3 Ineligible Person shall be any individual or entity who: Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

9.4 CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services directly relative to this Agreement. CONTRACTOR shall screen all current Covered Individuals within sixty (60) days of execution of this Agreement to ensure that they have not become Ineligible Persons unless CONTRACTOR has performed such screening on same Covered Individuals under a separate agreement with COUNTY within the past six (6) months. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.

9.5 CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

9.6 CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

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 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 particulars 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

Department of Waste Resources

14310 Frederick Street

Moreno Valley, CA 92553

Email: WastePurchasing@rivco.org

CONTRACTOR

Empire Southwest, LLC

1725 S. Country Club Dr.

Mesa, AZ 85210

Attn: tony.smith@empire-cat.com

19. Force Majeure

If either party is unable to comply with any provision of this Agreement 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.

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, action, claim or damage whatsoever, to the extent caused by the 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. CONTRACTOR shall defend the Indemnitees at its sole expense, including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.

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.

21.3 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.

21.4 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.

21.5 Notwithstanding anything in this Agreement to the contrary, in no event shall either party be liable, for special, incidental, indirect, punitive or consequential damages related to this Agreement, regardless of whether the party 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.

A. 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.

B. 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.

C. Vehicle Liability:

If vehicles or mobile equipment is 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.

D. 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 exceeds \$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, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

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 orally or 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. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. 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 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 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

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

23.5 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.

23.6 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.

23.7 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.

23.8 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.

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

23.10 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).

23.11 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.

23.12 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.

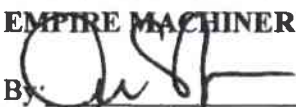
IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political
subdivision of the State of California

By: 
JEFF HEWITT
CHAIR, BOARD OF SUPERVISORS

Dated: MAY 24 2022

EMPIRE SOUTHWEST, LLC DBA
EMPIRE MACHINERY

By: 
Name: John Helms Jim Smith
Title: ~~VP/COO~~ EVP

Dated: 4-27-2022

ATTEST:
Kecia Harper
Clerk of the Board

By: *Zulyma...*
Deputy

APPROVED AS TO FORM:
County Counsel

By: *Synthia M. Gunzel*
Synthia M. Gunzel
Chief Deputy County Counsel

EXHIBIT "A"
SCOPE OF SERVICES

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 Program Administrator-Fleet Services or Equipment Services Supervisor (ESS) at (951) 486-3200. After the repair items or related component are disassembled and inspected, the CONTRACTOR shall contact the Program Administrator-Fleet Services or 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.

5. Warranties:

Warranty on all parts and labor required to replace or repair the aforementioned repair items in the event of failure is six (6) months from the original date of delivery. Certain products provided by CONTRACTOR may carry extended original equipment manufacturer warranties.

6. Warranty Conditions and Requirements:

The CONTRACTOR shall meet applicable California laws and guidelines for travel time, overnight stay, mileage, and applicable zone charges to and from RCWMD Blythe facility where the machine in which repairs were made is located. CONTRACTOR shall supply all parts, material and labor, at no cost to the Department, to effect repair or replacement of any parts and workmanship that prove defective during the warranty period, including removal and reinstallation of the reconditioned item if necessary. CONTRACTOR shall be responsible for any transportation cost for a power train component if it has to be removed from the Department's facility for warranty repair(s). The CONTRACTOR shall not be responsible for repairs resulting from improper operation, maintenance, negligence, or physical damage from external sources causing damage to any reconditioned item.

**EXHIBIT "B"
PAYMENT PROVISIONS**

California Locations		
EMPIRE MACHINERY Labor Rates		
Effective January 31, 2022		
	Regular	Overtime
Shop Rates / All Stores		
Construction Equipment	\$144.75	\$189.65
Welding	\$144.75	\$189.65
AGCO / BCP / CCE	\$140.80	\$185.90
Lube Services	\$121.40	\$165.15
Ag Special Rate **	\$137.45	\$182.30
Machinery Field Service (All)		
1st Man	\$193.55	\$244.80
2nd Man	\$135.60	\$186.70
Lube Services	\$150.05	\$201.20
Boom Truck	\$193.55	\$244.80
Mining Shop		
All Other Mining	\$196.30	\$248.40
Mining Lube	\$150.05	\$201.40
PER DIEM	\$211.95	
Arizona Locations EPM/Hydraulics		
EMPIRE MACHINERY Labor Rates		
Effective January 31, 2022		
	Regular	Overtime
Empire Precision Machine		
Inspection	\$135.65	\$178.25
Weld Shop	\$135.65	\$178.25
Small Machines	\$135.65	\$178.25
Medium Machines	\$168.45	\$211.10
Large Machines	\$187.40	\$230.00
Metal Spray	\$178.85	\$221.45
Empire Hydraulics		
Shop Service	\$125.15	\$167.70

ETT and EPS Labor Rates		
Effective January 1, 2022		
Description	Regular	Overtime
Power Systems Field	\$185.00	\$277.50
Commercial Shop	\$138.00	\$207.00
Major Engine Work - Shop	\$170.00	\$255.00
Commercial Contract - Core	\$132.00	\$198.00
Used / Rental Refurb Rate	\$127.78	\$191.67
Used / Rental Rate	\$127.78	\$191.67
Weld Shop	\$95.00	\$142.50
UPS/Switchgear - CSA	\$230.00	\$345.00
After hour call out fee	\$75.00	
Truck Engines	\$168.00	\$252.00
Chassis Work - Shop	\$150.00	\$225.00
Other OEM's	\$150.00	\$225.00
Motorhome	\$198.00	\$297.00
Motorhome Field	\$248.00	\$372.00
FleetDirect Contract	\$140.00	\$210.00
Cat Truck Warranty (Phx)	\$166.00	
Cat Truck Warranty (Tuc)	\$155.00	
Fuso Warranty PHX	\$150.00	\$225.00
Fuso Warranty Tucson	\$145.00	\$217.50
Trip Charge - Non Machinery	\$75.00	
After hour call out fee	\$100.00	

Summary - Requisition 148571555

General		Shipping		Billing
Status	✓ Completed (1/26/2022 5:10 PM)	Ship To	Contact Line 1 Derek Price-Nolen Fl/bldg: 1 Department of Waste Resources DWR Main Off Moreno Valley 14310 Frederick Street Moreno Valley, CA 92553 United States	Bill To Contact Line 1 Accounts Payable Waste WMD Main Off Riverside 14310 Frederick Street Moreno Valley, CA 92553 United States
Submitted	1/19/2022 10:56 AM			
Department	Department Of Waste Resources (WMARC)			
Cart Name	2021-09-10 258417 01			
PO BU	WMARC Department of Waste Resources			Billing Options Accounting Date 1/19/2022
PO Type	REGG Regular Purchase Order for One-time Purchase of Goods	Delivery Options	Expedite ✘ Ship Via Best Carrier-Best Way Requested Delivery Date 12/22/2021	
Description				
Priority	Normal			
Prepared by	Derek Price-Nolen			
Tax Code	SC7 7.75% TAX RATE			
SSJ	no value			
After-the-fact	✘			

Accounting Codes

GL Unit	Account	Fund	Dept	Program	Class	PC Bus Unit	Project	Activity	Source Type	Category
RIVCO COUNTY OF RIVERSIDE	521400 Maint-Diesel Equip/Truck/Bus	40200 Waste Disposal Enterprise	4500100000 Department of Waste Resources	no value	no value	RIVCO COUNTY OF RIVERSIDE	no value	no value	no value	no value

Internal Notes and Attachments

Internal Note *no note*

Internal Attachments

↓ F11 Empire Machin...

↓ Suzanna Email.pdf

External Notes and Attachments

Note to all Vendors *no note*

Attachments for all vendors

Vendor / Line Item Details

Empire Southwest LLC

DPBRC Only

Contract *no value*





PO Number N/A

PO Box 842381, Los Angeles, California 90084 United States

Account Code

Pricing Code

Quote number

Product Description	Catalog No	Size / Packaging	Unit Price	Quantity	Ext. Price
1  Sole Source Request 			400,000.00 USD	1	400,000.00
<p>Justification Preventative maintenance programs are utilized by the department for Caterpillar and other heavy equipment, which includes the repair and/or replacement of major components and, diagnosing operational repair needs. This assists in prolonging the useful life of these machines and provides an alternative to replacement of fleet equipment. Utilizing local vendors as much as possible keeps tax revenue within Riverside County. Utilizing Empire Machinery will result in the need for travel to/from Blythe and associated overnight stays/costs for mechanic staff who otherwise would be required to travel to Blythe to effect repairs and, reduces the need for costly heavy equipment transport to haul equipment to western Riverside County. Compared to performing the repairs ourselves with limited mechanic staff, component repairs are completed sooner, resulting in less downtime of machinery and fewer delays at public</p>	Taxable		Internal Note	<i>no note</i>	
	Capital Expense		Internal Attachments		
	Commodity Code	92950 Machinery And Heavy Hardware (Not Lawn Equipment) Maintenance And Repair	External Note	<i>no note</i>	Attachments for vendor
	Asset Profile ID	<i>no value</i>			

landfills. Empire CAT in Blythe, CA is the sole local vendor with Caterpillar authorization to complete these repairs with the next nearest being 64.2 miles away in Yuma, AZ. All other authorized dealers are hours away which could lead to issues with repair delays, incurring extra mileage charges, out of state fees and longer response times for urgent requests.

Vendor subtotal	400,000.00
Sales Tax	35,000.00
Use Tax	0.00
Shipping	0.00
Handling	0.00
Vendor total	435,000.00 USD

Shipping, Handling, and Tax charges are calculated and charged by each vendor. The values shown here are for estimation purposes, budget checking, and workflow approvals.

Subtotal	400,000.00
Sales Tax	35,000.00
Use Tax	0.00
Shipping	0.00
Handling	0.00
Total	435,000.00 USD

Approvals - Requisition 148571555

<p>➔ <i>Submitted</i> Derek Price- Nolen 1/19/2022 10:56 AM</p>	<p>Purchasing Pre-Approval <i>Approved</i> ✓ ✓ Riley James</p>	<p>Fiscal Approval <i>Approved</i> ✓ ✓ Anthony Maldonado</p>	<p>Department Management Approval <i>Approved</i> ✓ ✓ Hans Kernkamp</p>	<p>Exception Approval <i>Approved</i> ✓ ✓ Suzanna Hinckley</p>	<p>✓ <i>Completed</i> 1/26/2022 5:10 PM</p>
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Boydd, April

From: cob@rivco.org
Sent: Monday, May 23, 2022 11:09 PM
To: COB; ba4612442@gmail.com
Subject: Board comments web submission

CAUTION: This email originated externally from the Riverside County email system. **DO NOT** click links or open attachments unless you recognize the sender and know the content is safe.



First Name: B
Last Name: Anderson
Address (Street, City and Zip): N/A
Phone: 7603249637
Email: ba4612442@gmail.com
Agenda Date: 05/24/2022
Agenda Item # or Public Comment: 12.1
State your position below: Oppose
Comments: Another "without seeking competitive bids" from the Riverside County Board of Supervisors. This and other radical political element of only supplying one vender a 5 year service contract appears to be unethical behavior?

Thank you for submitting your request to speak. The Clerk of the Board office has received your request and will be prepared to allow you to speak when your item is called. To attend the meeting, please call (669) 900-6833 and use Meeting ID # 864 4411 6015 . Password is 20220524 . You will be muted until your item is pulled and your name is called. Please dial in at 9:00 am am with the phone number you provided in the form so you can be identified during the meeting.