

**PROFESSIONAL SERVICES AGREEMENT
(Not Construction Related)**

Heavy Equipment Purchases, Parts, Rentals, Accessories, Supplies and Related
Services

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Empire Southwest, LLC, a Delaware company, authorized to do business in the State of Arizona, ("Contractor") as of the ____ day of _____, 20 ____ (“Effective Date”).

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Contractor to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work (“Scope”);
- C. Contractor desires to provide City with professional services (“Services”) consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

1. Key Personnel; Other Contractors and Subcontractors.

- 1.1 Professional Services. Contractor will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other Contractors or contractors, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement; and
 - (2) The City must approve the designated Project Manager.
 - b. Project Team.
 - (1) The Project Manager and all other employees assigned to the Project by Contractor will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Contractor.
 - c. Discharge, Reassign, Replacement.
 - (1) Contractor acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
 - (2) Contractor will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City

without City's prior written consent unless that person leaves the employment of Contractor, in which event the substitute must first be approved in writing by City.

(3) Contractor will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. Subcontractors. Contractor shall not engage any subcontractor for the work or services to be performed under this Agreement.

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Contractor's Work.**

3.1 Standard. Contractor must perform Services in accordance with the standards of due diligence, care, and quality prevailing among Contractors having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 Licensing. Contractor warrants that:

a. Contractor currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and

b. Neither Contractor nor any SubContractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").

(1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Contractor's contracting ability.

(2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Contractor to notify City as required will constitute a material default under the Agreement.

3.3 Compliance. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Coordination; Interaction.

a. For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").

b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

c. For projects not involving Coordinating Project Professionals, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Contractor grants to City exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.
 - (3) In such case, City will also remove any seal and title block from the Work Product.

4. **Compensation for the Project.**

- 4.1 Compensation. Contractor's compensation for the Project, including those furnished by its SubContractors or Subcontractors will not exceed \$12,735,000 as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
 - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 Expenses. City will reimburse Contractor for certain out-of-pocket expenses necessarily incurred by Contractor in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:
 - a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Contractor for review prior to the Agreement's execution, and which policies and procedures will be furnished to Contractor;
 - b. The Reimbursable Expenses in this section are approved in advance by City in writing; and

- c. The total of all Reimbursable Expenses paid to Contractor in connection with this Agreement will not exceed the “not to exceed” amount identified for Reimbursable Services in the Compensation.

5. Billings and Payment.

5.1 Applications.

- a. Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
 - (1) Completed work generated by Contractor and its SubContractors; and
 - (2) Unconditional waivers and releases on final payment from all SubContractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. Termination.

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Contractor will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Contractor will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Services furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provisions of Sec. 5.
- b. If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. Conflict. Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating,

securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or Contractor of any other party to this Agreement.

8. **Insurance.** For the duration of the term of this Agreement, Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Contractor, its agent(s), representative(s), employee(s) and any subcontractors.

8.1 Minimum Scope and Limit of Insurance. Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. Professional Liability. Contractor must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Contractor, or anyone employed by Contractor, or anyone for whose acts, mistakes, errors and omissions Contractor is legally liability, with a liability insurance limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.
- d. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

8.2 Indemnification.

- a. To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any SubContractor or Subcontractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- c. Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

8.3 Other Insurance Provisions. The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in

connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Contractor or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.

- b. For any claims related to this Project, the **Contractor's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

8.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Contractor has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.5 Waiver of Subrogation. **Contractor hereby agrees to waive its rights of subrogation which any insurer may acquire** from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agent(s) and subcontractor(s).

8.6 Verification of Coverage. Within 15 days of the Effective Date of this Agreement, Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Contractor's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Contractor's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Contractor to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

8.7 Subcontractors. Contractor shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

8.8 Special Risk or Circumstances. The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Contractor, the Project or the insurer.

9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Contractor warrants their compliance and that of its subContractors with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor or subContractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subContractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto

their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

10. **No Boycott of Israel.** To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

11. **Uyghur Forced Labor Prevention Act (UFLPA).** Contractor certifies that it does not currently, and during the term of this Agreement, will not use:

- a. the forced labor of ethnic Uyghurs in the People's Republic of China;
- b. any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and
- c. any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

12. **Attestation of PCI Compliance.** When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

13. **Notices.**

13.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a. The Notice is in writing; and
- b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

13.2 Representatives.

- a. Contractor. Contractor's representative (the "Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Empire Southwest, LLC
c/o Doug Madsen
1725 S. Country Club Dr.
Mesa, AZ 85210
Doug.Madsen@empire-cat.com

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Ernie Ruiz, Solid Waste Superintendent LF/MRF
6210 W. Myrtle Avenue Suite 111
Glendale, Arizona 85301

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.
 - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
 - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.
- d. Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

14. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

15. **Entire Agreement; Survival; Counterparts; Signatures.**

15.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

15.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

- 15.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
- 15.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.
- 15.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 15.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.
- 15.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

16. Term.

- 16.1 Renewals. The term of this Agreement commences upon the effective date and continues for a one (1) year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional four (4) years, renewable on an annual basis. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.
- 16.2 Extension for Procurement Process. Upon the expiration of the Term of this Agreement, including the initial term and any renewals, at the City’s sole discretion, this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City to complete its procurement process to select a vendor to provide the services/materials similar to those provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension provided under this subsection will continue under the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

17. Dispute Resolution. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association’s Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

18. Cooperative Use of Contract. This agreement may be extended for use by other governmental agencies And political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. For a list of SAVE members, click on the following link:
<http://www.mesaaz.gov/business/purchasing/save>

19. Exhibits. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

- Exhibit A Project
- Exhibit B Scope of Work
- Exhibit C Schedule
- Exhibit D Compensation

(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation

By: Kevin Phelps
Its: City Manager

ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Empire Southwest, LLC,
a Delaware company



By: John Phelps
Its: Vice-President/CFO

EXHIBIT A
Professional Services Agreement

PROJECT
(Heavy Equipment Purchases, Parts, Rentals, Accessories, Supplies and Related Services)

Empire Southwest, LLC will provide services in accordance with the City of Tucson, AZ Contract No. 212816-01 for Heavy Equipment Purchases, Parts, Rentals, Accessories, Supplies and Related Services.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK
(Heavy Equipment Purchases, Parts, Rentals, Accessories, Supplies and Related Services)

The Landfill and MRF equipment are utilized for multiple tasks within the Landfill operation. Earthwork, processing waste and recyclables, and road maintenance are the primary functions that create wear on the equipment. The Agreement with Empire Southwest, LLC, will be utilized to purchase, rentals, provide parts, service, repairs and rebuilds on heavy equipment on an as-needed basis

EXHIBIT C
Professional Services Agreement

SCHEDULE
(Heavy Equipment Purchases, Parts, Rentals, Accessories, Supplies and Related Services)

Empire Southwest, LLC will provide Heavy Equipment, Pruchases, Parts, Rentals, Accessories, Supplies, and Related Services over the next 5 years.

EXHIBIT D
Professional Services Agreement

COMPENSATION
(Heavy Equipment Purchases, Parts, Rentals, Accessories, Supplies and Related Service)

METHOD AND AMOUNT OF COMPENSATION

Not to exceed \$12,735,000 if all renewal options are exercised in accordance with Section 4 of the Agreement..

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$12,735,000.

DETAILED PROJECT COMPENSATION

The City shall pay contractor compensation in accordance with the rates as set forth in the City of Tucson Contract No.212816-01..



Empire Southwest, LLC

1725 S. Country Club Dr.
Mesa, AZ 85210-6003
480.633.4300 tel
480.633.4489 fax

February 23, 2023

Nancy Mangone
City of Glendale
5850 W. Glendale Ave
Glendale, AZ 85301

Re: Empire as Authorized Caterpillar Dealer

Dear Ms. Mangone:

The City of Glendale has requested documentation regarding Empire Southwest, LLC's ("Empire") relationship with Caterpillar. This letter will confirm that Empire is the only dealer authorized to sell and service Caterpillar equipment in the State of Arizona.

Sincerely,


Jim Smith
Executive Vice President

JS/jp

CITY OF TUCSON
BUSINESS SERVICES DEPARTMENT
SHARED SERVICES PROCUREMENT DIVISION
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701

PROPOSAL NO. 212816
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CONTRACT OFFICER: CYNTHIA THOMPSON, NIGP-CPP, CPPB
PH: (520) 837-4134

OFFER AND ACCEPTANCE

OFFER

TO THE CITY OF TUCSON:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as if fully set forth herein. Signature includes acceptance of exceptions in attached EXCEPTIONS document.

For clarification of this offer, contact:

Caterpillar Inc.
Company Name

Name: Tirena Pavelka

100 NE Adams St
Address

Title: Government Account Manager

Peoria IL 61629
City State Zip

Phone: 309-675-1589

Patrick Kearns
Signature of Person Authorized to Sign

Fax: _____

Printed Name

E-mail: Pavelka_tirena_L@cat.com

Patrick Kearns, NA Industry Manager
Title

ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as **Contract No. 212816**.

CITY OF TUCSON, a municipal corporation

Approved as to form:

Awarded:

This 3rd day of October 2022

This 3rd day of October 2022

Regina Nassen for _____
As Tucson City Attorney and not personally

Matthew Sage for _____
As Director of Business Services and not personally



Glendale

Procurement Sole Source and Special Procurement Request

(ONCE FORM IS COMPLETED AND SIGNED BY DIRECTOR, PLEASE SEND TO YOUR PROCUREMENT LIASON)

REQUESTOR INFORMATION:

Requestor: Ernie Ruiz Jr	Date: 03-29-23	Department: Field Operations/Landfill
Phone Number: 623-930-4722	Email Address: eruiz@glendaleaz.com	
Return To: Ernie Ruiz Jr		

PROPOSED VENDOR INFORMATION:

Proposed Vendor: Empire Southwest LLC	Proposed Vendor Contact: Doug Madsen, Account Manager
Proposed Vendor Address: 1725 S. Country Club Drive City, State and Zip Code: Mesa, AZ 85210	
Vendor Phone: 602-622-4869	Vendor Fax: NA

Procurement method requested:

- Sole Source
- Special Procurement

PURCHASE INFORMATION:

Total Cost of this Order: \$12,735,000	One time purchase: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
	Federal Money: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Org #: 6110 / Object #: varies /	If yes, explain funding source:
Description of the product or service requested: Caterpillar heavy equipment, parts, services and rentals, 5 year contract, Cooperative purchase process using the Omnia/Tucson agreement with Empire SW LLC/Caterpillar Inc	

In accordance with Finance Administrative Policy No. 1, I have conducted a good faith review of available sources and determine that there is only one known and/or one practical source for the required items in accordance with the Guidelines for Justification attached.

REQUESTOR CERTIFICATION:

<i>Ernie Ruiz Jr</i> Requestor Ernie Ruiz Jr	Division Landfill	Date 3-29-23
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DEPARTMENT DIRECTOR APPROVAL:

<i>Michelle Woytenko</i> Director	Division	Date 3/29/2023
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MATERIALS MANAGER APPROVAL:

In accordance with Finance Administrative Policy No. 1, I have conducted a good faith review of this request and agree that there is only one known and/or one practical source for the required items in accordance with the Guidelines for Justification attached.

Levi D. Gibson, CPA, M.Acc. Materials Manager	<i>Levi D. Gibson</i>	Date 5/11/2023
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Procurement requires reevaluation and resubmission of a Sole Source Request for this procurement:

- | | | | |
|--------------------------------|--------------------------|--|-------------------------------------|
| Single Use Only: | <input type="checkbox"/> | Annually: | <input type="checkbox"/> |
| End of first term of Contract: | <input type="checkbox"/> | End of Contract, including any extensions: | <input checked="" type="checkbox"/> |



Glendale

Procurement Sole Source and Special Procurement Request

(ONCE FORM IS COMPLETED AND SIGNED BY DIRECTOR, PLEASE SEND TO YOUR PROCUREMENT LIASON)

Check the reason(s) below to identify why you have determined the purchase is a **Sole Source or Special Procurement** and attach supporting documentation. Use only column. A purchase cannot be BOTH a sole source and a special procurement

SOLE SOURCE	SPECIAL PROCURMENT
<input type="checkbox"/> Compatibility. Indicate system, make, model and function	<input type="checkbox"/> Presents such limited competition that a competitive bid or proposal process cannot reasonably be used
<input type="checkbox"/> Unique repair/replacement item. Identify item to be used with previous PO number item purchased, and warranty period	<input type="checkbox"/> Discourages the use of a competitive bid or proposal as
<input type="checkbox"/> Supplementary or necessary part required from same manufacturer. Identify in-house equipment and use with existing system	<input type="checkbox"/> it will result in a substantially higher cost to the city, or will otherwise impair the city's financial interests
<input checked="" type="checkbox"/> Unique Item	<input type="checkbox"/> Substantially impede the city's administrative functions or the delivery of services to the public
<input checked="" type="checkbox"/> Unique Service	<input type="checkbox"/> Does not qualify as a sole source or emergency
<input type="checkbox"/> Proprietary Specifications (Copyright, patented, etc.)	<input type="checkbox"/> Has only one provider with the experience and capability to successfully perform the contract
<input type="checkbox"/> Other reasons, if not above. Explain in detail	<input type="checkbox"/> Presents a significant time constraint as the need was not known in sufficient time to allow for competitive procurement and time is of the essence
<input type="checkbox"/> Other reasons, if not above. Explain in detail	<input type="checkbox"/> Other reasons, if not above. Explain in detail

JUSTIFICATION:

Use the Guidelines for Justification of the selected reason(s) above, and provide a full explanation of your reason that the product/service is a sole source or special procurement: See emails from the legal department...

MANDATORY RESEARCH DOCUMENTATION REQUIREMENT:

Provide a detailed explanation of efforts made to determine the availability of the product or service from any other vendor, including other distributors: See emails from the legal department...

PREPARER NOTE: If this is a vehicle or technology purchase, concurrence of the Fleet Director or the IT Director will be required.

ADDITIONAL APPROVAL:		
IT Director NA	Fleet Director NA	Date NA

Approval of a vendor as a sole source or a special procurement only determines the procurement method. Council approval and a signed contract may also be required.

Ruiz Jr, Ernie

From: Mangone, Nancy
Sent: Wednesday, March 8, 2023 3:50 PM
To: Wilson, Lisa
Cc: Ruiz Jr, Ernie; Herrera, Desaree
Subject: RE: City of Glendale Linking Agreement on Contract 212816-01

I talked to Michael Bailey about this one. He too was concerned about using a Linking Agreement and then changing the contracting party on the underlying contract being used cooperatively. So we decided the best approach would be to have Empire Southwest to agree to use the same scope and pricing as in the Caterpillar agreement with City of Tucson and issue a Sole Source Procurement because they are the Caterpillar authorized dealer in the region covering Glendale. Then we can use the City template agreement for good and services. That way we still get the benefit of the negotiated prices, but don't have to issue and RFP.

From: Wilson, Lisa <LWilson1@GLENDALEAZ.com>
Sent: Wednesday, March 8, 2023 8:11 AM
To: Mangone, Nancy <NMangone@GLENDALEAZ.COM>
Cc: Ruiz Jr, Ernie <ERuiz@GLENDALEAZ.com>; Herrera, Desaree <DHerrera@GLENDALEAZ.COM>
Subject: RE: City of Glendale Linking Agreement on Contract 212816-01

Hi Nancy

Do you have a recommendation on what mechanism would be best?

From: Mangone, Nancy <NMangone@GLENDALEAZ.COM>
Sent: Tuesday, March 7, 2023 10:47 AM
To: Wilson, Lisa <LWilson1@GLENDALEAZ.com>
Cc: Ruiz Jr, Ernie <ERuiz@GLENDALEAZ.com>; Herrera, Desaree <DHerrera@GLENDALEAZ.COM>
Subject: Re: City of Glendale Linking Agreement on Contract 212816-01

Their response really doesn't help. The underlying agreement is with Caterpillar. Empire is an authorized representative but there is no assignment or parent-subsiary or affiliated legal relationship. I'm not sure a linking agreement is the correct mechanism to use.

Nancy A. Mangone
Deputy City Attorney
City of Glendale
5850 W Glendale Avenue
Glendale, AZ 85301
(623) 930-2990

From: Wilson, Lisa <LWilson1@GLENDALEAZ.com>
Sent: Tuesday, March 7, 2023 10:40:22 AM
To: Mangone, Nancy <NMangone@GLENDALEAZ.COM>
Cc: Ruiz Jr, Ernie <ERuiz@GLENDALEAZ.com>
Subject: RE: City of Glendale Linking Agreement on Contract 212816-01

Hi Nancy

Where are we with this agreement? Are you still waiting for information?

From: Mangone, Nancy <NMangone@GLENDALEAZ.COM>
Sent: Monday, February 27, 2023 10:34 AM
To: Pollard, Joyce <Joyce.Pollard@empire-cat.com>
Cc: Mcgee, Mark <Mark.Mcgee@empire-cat.com>; Davidson, Jenna <Jenna.Davidson@empire-cat.com>; Herrera, Desaree <DHerrera@GLENDALEAZ.COM>; Ruiz Jr, Ernie <ERuiz@GLENDALEAZ.com>; Wilson, Lisa <LWilson1@GLENDALEAZ.com>
Subject: RE: City of Glendale Linking Agreement on Contract 212816-01

Thank you Joyce. Unfortunately, this doesn't resolve my issue.

The City of Glendale wishes to link to the Tucson agreement cooperatively. The contracting party is Caterpillar, Inc. not Empire Southwest. We can have Empire actually provide the goods and services as an authorized Caterpillar dealer, but the contracting party should be whomever is the contracting party on the underlying agreement. Can you please provide any assignment or other novation where Empire is substituted as the contracting party and Tucson has approved that substitution?

Thank you,
Nancy

From: Pollard, Joyce <Joyce.Pollard@empire-cat.com>
Sent: Friday, February 24, 2023 11:08 AM
To: Mangone, Nancy <NMangone@GLENDALEAZ.COM>
Cc: Mcgee, Mark <Mark.Mcgee@empire-cat.com>; Davidson, Jenna <Jenna.Davidson@empire-cat.com>
Subject: City of Glendale Linking Agreement on Contract 212816-01

You don't often get email from joyce.pollard@empire-cat.com. Learn why this is important

Nancy, thank you for your call yesterday requesting clarification concerning the relationship between Caterpillar and Empire Southwest, LLC, dba Empire Machinery, specifically as it relates to Contract 212816-01 between the City of Tucson and Caterpillar (the "Omnia Contract").

Attached is a copy of Caterpillar's Intent to Award Notice letter to the City of Tucson. The letter specifically lists Empire as Caterpillar's Local Authorized Dealer.

Also attached is a copy of Contract 212816-01, which is available, together with various other contract documents, at <https://www.omniapartners.com/publicsector/suppliers/caterpillar/contract-documentation#c63109>. There are many references to authorized dealers and Empire in the contract documents. Page 77 states the following:

- d. Describe your dealer network and their role in providing products, services, etc. under this contract

Caterpillar Response (only)

Cat machines and engines are distributed principally through a worldwide network of dealers. In the United States there are 45 dealers, two in Canada (see dealer map below) and 114 located outside North America.

Caterpillar and Cat Dealers will provide governmental customers with a reliable and viable distribution channel. They will manage the entire sales process from machine selection, quotation, PO acceptance and product delivery. In addition to sales, Cat dealers also will provide parts and service support. All Participating Dealers are financially healthy with no outstanding issues that would disrupt service within these territories. Cat dealers average more than 80 years of experience within their respective territories. Specific information about dealers is located on http://www.cat.com/en_US/support/dealer-locator.html

Caterpillar's North American dealer network currently employs over 59,000 total employees. Many dealers have salespersons dedicated to the governmental market. Approximately 70% of dealer employees are dedicated to product support. The Cat dealer network brings value to customers through unmatched service, integrated solutions, after-sales support, and fast and efficient parts fulfillment.

Finally, attached is a letter from Empire to the City of Glendale confirming that Empire is the only authorized Cat dealer in Arizona. Therefore, Empire is an authorized Cat dealer under the Omnia Contract, and any contract from the City of Glendale, or any other public entity using the Omnia Contract, will be between that public entity and Empire as the Cat dealer.

Please feel free to give me a call if you still have questions. Thank you.

Joyce Pollard
Paralegal | Executive Assistant
Empire Southwest, LLC
1725 S. Country Club Dr.
Mesa, AZ 85210
480-633-4462
joyce.pollard@empire-cat.com

Our Corporate Values:

Safety. Respect. Integrity. Teamwork. Excellence. Stewardship. Astonishment.

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EMPIRE
Since 1950



Empire Southwest, LLC

1725 S. Country Club Dr
Mesa, AZ 85210-8003
480.633.4300 tel
480.633.4489 fax

February 23, 2023

Nancy Mangone
City of Glendale
5850 W. Glendale Ave
Glendale, AZ 85301

Re: Empire as Authorized Caterpillar Dealer

Dear Ms. Mangone:

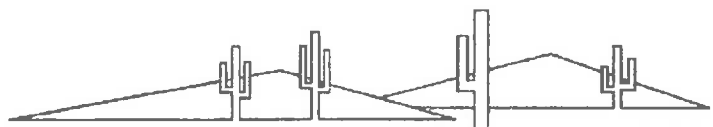
The City of Glendale has requested documentation regarding Empire Southwest, LLC's ("Empire") relationship with Caterpillar. This letter will confirm that Empire is the only dealer authorized to sell and service Caterpillar equipment in the State of Arizona.

Sincerely,



Jim Smith
Executive Vice President

JS/jp



ENTITY INFORMATION

Search Date and Time: 12/1/2022 1:15:35 PM

Entity Details

EMPIRE SOUTHWEST, LLC

Entity Name:

R08238673

Entity ID:

Foreign LLC

Entity Type:

Active

Entity Status:

10/28/1997

Formation Date:

In Good Standing

Reason for Status:

10/28/1997

Approval Date:

10/28/1997

Status Date:

Original Incorporation Date:

Perpetual

Life Period:

Privacy Policy (<http://azcc.gov/privacy-policy>) | Contact Us (<http://azcc.gov/corporations/corporation-contacts>)

Business Type:

Last Annual Report Filed:
 Domicile State:
 Annual Report Due Date:
 Years Due:
 Original Publish Date:

Statutory Agent Information

Name:
 Appointed Status:
 Attention:
 Address:

1725 S COUNTRY CLUB DR , MESA, AZ 85210, USA

Agent Last Updated:
 E-mail:
 Attention:
 Mailing Address:
 County:


1725 S COUNTRY CLUB DR , MESA, AZ 85210, USA

Principal Information

Title Name Privacy Policy <http://www.azcc.gov/privacy-policy> | Contact www.azcc.gov/corporations/corporation-cobartts | Updated

Title	Name	Attention	Address	Date of Taking Office	Last Updated
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No records to view.

Address 

Attention:

Address: 1725 S COUNTRY CLUB DR, MESA, AZ, 85210, USA

County: Maricopa

Last Updated:

Entity Principal Office Address

Attention:

Address: INCORP SERVICES INC 1201 ORANGE STREET #600 ONE COMMERCE CENTER, WILMINGTON, DE, 19899, USA

County: Maricopa

Last Updated:

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