



**CONTRACT NUMBER
MA-299-23011568
WITH
WHITTIER FERTILIZER COMPANY
FOR
ON-SITE CHIP & GRIND SERVICES**

THIS Contract Number MA-299-23011568 for On-Site Chip & Grind Services (“**Contract**”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, through its OC Waste & Recycling Department (“**County**”) and Whittier Fertilizer Company, with a place of business at 9441 Kruse Road, Pico Rivera, CA 90660 (“**Contractor**”), with County and Contractor sometimes individually referred to as “**Party**” or collectively referred to as “**Parties**.”

RECITALS

WHEREAS, Contractor and County are entering into Contract Number MA-299-23011568, for On-Site Chip & Grind Services, under a firm-fixed price Contract, for a three-year term, effective November 17, 2023 through November 16, 2026, in an amount not to exceed \$4,500,000, with unused funds to be rolled over from year to year; and

WHEREAS, County solicited Contract for On-Site Chip & Grind Services as set forth herein, and Contractor represented that it is qualified to provide On-Site Chip & Grind Services to the County as further set forth herein; and

WHEREAS, Contractor agrees to provide On-Site Chip & Grind Services to the County as set forth in Attachment A, Scope of Work; and

WHEREAS, County agrees to pay Contractor the rates as set forth in Attachment A, Scope of Work; and

WHEREAS, the County Board of Supervisors has approved OC Waste & Recycling to enter into a Contract for On-Site Chip & Grind Services;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including

but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

- C. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any

portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

- J. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor, and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier).

If the insurance carrier does not have ac7ggn A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability coverage including <i>Owned, Non-Owned and Hired Vehicles</i>	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange, its elected and appointed officials, officers, employees and agents* as Additional Insureds, or provide blanket coverage, which will state *As Required By Written Contract*.
- 2) A primary non-contributing endorsement using ISO Form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary, and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents*, or provide blanket coverage, which will state *As Required By Written Contract*.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interests' clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates shall list the County of Orange, along with the agency/department address listed in Notices, as the Certificate Holder.

Insurance certificates shall be emailed to OCWRPurchasing@ocwr.ocgov.com.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- P. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County

INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

- U. Freight:** Prior to the County's express acceptance of delivery of products, Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.
- Y. Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The 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. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and

other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's Project Manager.

- BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS

- 1. Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure On-Site Chip & Grind Services from Contractor as detailed in Attachment A, Scope of Work.
- 2. Term of Contract:** This Contract is for a three-year term, effective November 17, 2023 through November 16, 2026, in an amount not to exceed \$4,500,000, with unused funds to be rolled over from year to year.
- 3. Renewable Annually with Concurrence:** This Contract may be renewed, by mutual written agreement of both Parties for an additional two-year period. The County does not have to give reason if it elects not to renew. Renewal may be subject to approval by the County of Orange Board of Supervisors.
- 4. Authorization Warranty:** The Contractor represents and warrants that the person executing this Contract on behalf of and for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition and obligation of this agreement and that all requirements of the Contractor have been fulfilled to provide such actual authority.
- 5. Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and

articles of this Contract, and then the exhibits and attachments.

- 6. Compensation:** The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.
- 7. Substitutions:** The Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.
- 8. Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
- 9. Price Increase/Decrease:** No price increases will be permitted during the first period of the price agreement. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
- 10. Amendments – Changes/Extra Work:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven (7) calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract amendment. Said amendment shall be issued by the County assigned Deputy Purchasing Agent, shall require the mutual consent of all parties, and may be subject to approval by the County Board of Supervisors. Nothing herein shall prohibit the Contractor from proceeding with the work as set forth in this Contract.

- 11. Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

- 12. Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in

another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.

13. Data – Title To: All materials, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

14. Contractor Personnel: The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.

15. Contractor Personnel – Drug Free Workplace: The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
2. The Contractor violates the certification by failing to carry out the requirements as noted above.

16. Conditions Affecting Work: The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and

to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

17. Emergency/Declared Disaster Requirements: In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

18. Default – Equipment, Software, or Service: In the event any equipment, software or service furnished by the Contractor in the performance of this Contract should fail to conform to the specifications therein, the County may reject same, and it shall become the duty of the Contractor to reclaim and remove the items without expense to the County and to immediately replace all such rejected equipment, software or service with others conforming to such specifications, provided that should the Contractor fail, neglect or refuse to do so, the County shall have the right to purchase on the open market a corresponding quantity of any such equipment, software or service and to deduct from any monies due or that may thereafter become due to the Contractor the difference between the price specified in this Contract and the actual cost to the County.

In the event the Contractor shall fail to make prompt delivery as specified of any equipment, software or service, the same conditions as to the rights of the County to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this Contract.

In the event of the cancellation of this Contract, either in whole or in part, by reason of the default or breach by the Contractor, any loss or damage sustained by the County in procuring any equipment, software or service which the Contractor agreed to supply under this Contract shall be borne and paid for by the Contractor.

The rights and remedies of the County provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

19. County Cooperative Contract: The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the

Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

- 20. Contractor Safety:** Contractor shall comply with County's Safety and Loss Prevention Policy and Procedure #306 ("Contractor Safety Responsibilities") and submit a copy of its Injury and Illness Prevention Program (IIPP) and Contractor Safety-Activity Checklist to the designated County Procurement staff as part of the solicitation and/or contract process. Contractor will notify County Project Manager of any revisions to the Safety Activity Checklist and will provide a new Safety-Activity Checklist upon County request. The IIPP shall comply with California Code of Regulations, Title 8, Section 1509 or 3203 (whichever applies). Contractor shall submit other safety programs that pertain to the type of job that will be performed on site. County reserves the right to conduct inspections and audits as necessary for the purpose of evaluating any aspect of safety performance under this Contract.
- 21. Safety Data Sheets (SDS):** Contractor is required to provide a Safety Data Sheet (SDS) compliant with California Code of Regulations, Title 8, Section 5194, for each hazardous substance that is provided, used or created as part of the goods or services provided by Contract to County. The SDS for each substance must be sent to either the County Project Manager, as specified in the "Notices" provision of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.
- 22. Notices:** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA) listed below, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor

Name: Whittier Fertilizer Company
 Address: 9441 Kruse Rd.
 Pico Rivera, CA 90660
 Attn: Jim Osborn
 Phone: 562-843-3813
 Email: jmosborn@verizon.net

County

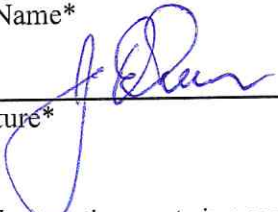
Name: County of Orange, OC Waste & Recycling
 Address: 601 N. Ross St. 5th Floor
 Santa Ana, CA 92701
 Attn: Alan Araujo
 Phone: 714-834-4140
 Email: Alan.araujo@ocwr.ocgov.com

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

WHITTIER FERTILIZER COMPANY*:


**If Contracting party is a corporation the following signature requirement applies: First (1st) signature by the Chairman of the Board, the President or any Vice President.*

Jim Osborn V.P.
Print Name* Title*

 8-23-23
Signature* Date*

***If Contracting party is a corporation the following signature requirement applies: Second (2nd) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.*

Amy Stark Secretary/Treasurer
Print Name** Title**

 8-23-23
Signature** Date**

***The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee to bind the corporation.

County of Orange, a political subdivision of the State of California

Print Name Title

Signature Date

APPROVED AS TO FORM
County Counsel

By Paul Albarian
Paul Albarian, Senior Deputy

Date 08/28/2023

ATTACHMENT A
SCOPE OF WORK

- I. Scope of Work:** This Contract is for On-Site Chip & Grind Services for OC Waste & Recycling Landfills. Contractor shall furnish all staffing, labor, equipment, and incidentals required for the On-Site Chip & Grind Services with Operator. Services shall be provided on an as-needed basis as required by County.
- A. On-Site Chip & Grind Services with Operator shall be utilized as needed by County.
 - B. Work shall consist of chip & grind services for green waste, wood pallet waste, and construction & demolition (C&D) material.
 - C. Contractor may be required in areas of limited access and under adverse conditions such as day and night operations, during rain, fire and/or storm related events.
- II. Equipment:** Contractor shall provide all equipment as specified herein. Name brand(s), if listed, is for equipment type and size reference.
- A. All vehicles utilized in the performance of this Contract must meet all vehicle operating requirements of the State of California Department of Motor Vehicles, CAL OSHA, AQMD regulations, and all other applicable codes required in the State of California.
 - B. All vehicles shall be adequately maintained both mechanically and visually by Contractor and shall be fully operational at all times.
 - C. Equipment Type:
 - 1. Horizontal grinder
 - 2. Throughput Capacity: 60 to 90 tons per hour depending on material to be processed and finished material size
 - 3. Mobile Chassis: Track Version
 - 4. Reference Model: Vermeer HG6800TC or equivalent.
 - D. Contractor shall provide support equipment such as a loader with a grapple attachment or an excavator with 3 or 4-finger grapple to feed pre-sorted green waste, wood waste, and C&D material into the horizontal/tub grinder. Additional equipment such as portable compressor for cleaning equipment shall also be included.
 - E. Fuel usage for all equipment shall be included and provided by the service provider. OCWR reserves the option to provide fuel associated with chip & grind and support equipment. OCWR currently uses Neste RD99.
 - F. Miscellaneous equipment (shredder, or tub grinder) to be used to process material can be considered as substitute to horizontal grinder, subject to OCWR Project Manager or designee approval.

III. Equipment Breakdown Replacement/Repair

- A. If any of the equipment is down that result in disruption of service, the contractor shall have the ability to provide replacement equipment or equipment shall be repaired within 5 business days window. Replacement shall have similar processing capacity. Replacement option shall be approved by OCWR prior to proceed. OCWR shall not be subject to additional fees associated with replacement, repair and transportation.

IV. Contractor Requirements:

- A. Contractor shall have the capability of supplying as many as 3-6 operational machines at any given time for any one job site or for use at multiple job sites as required by County.
- B. Contractor shall provide all necessary permits & registrations associated with equipment used for chip & grind services. Copies of all applicable permits shall be provided to site operation prior to services rendered.

- C. Contractor shall provide all necessary equipment operators, and other personnel during on-site services.
- D. Equipment Transportation: Service provider shall provide transportation, including transportation permits associated with mobilization, and demobilization.

V. Performance Requirements:

- A. Operators are required to sign-in with the job site operation superintendent or designee upon arrival and sign-out upon leaving the job site for the day.
- B. Contractor shall provide a report of hours worked, for each day that chip & grind has taken place for each site location. This report shall also be included as support documentat as part of payment invoice.
- C. Contractor shall be responsible for moving requested equipment to work location as specified by site operations superintendent or designee. Contractor shall be responsible for obtaining all necessary transportation permits if applicable.
- D. Contractor shall provide electronic copies of equipment permits and registrations to site operations superintendent or designee.
- E. Contractor shall comply with all County and local sound control and noise level rules, regulations, and ordinance, which apply to any work performed pursuant to the Contract and will make every effort to control an undue noise resulting from its operation.
- F. Contractor shall be responsible for any damages sustained to any private and/or County equipment or facilities as a result of Contractor's operations. All damage will be repaired or replaced, at the option of County, at Contractor's expense after notification of such damage by site operations superintendent or designee. Repairs and/or replacements will be equal to original in all aspects. Contractor will submit a proposal as to repairs necessary including a proposed completion date, if repairs take longer than proposed completion date reprourement costs may be extended to Contractor in order to supplement missing equipment.
- G. Finished material size product shall be determined on a site by site and case by case basis. Service provider shall perform all necessary screen changeovers.
- H. Maintenance: Service provider shall provide all necessary maintenance services on all equipment (primary & support) used for chip & grind. Any maintenance to be conducted on-site shall be responsible for providing necessary documentation such as hot work permits, confine space plan, lockout/tag out including hazardous waste prevention plan. Personnel conducting maintenance activities shall adhere to OCWR's PPE requirements.
- I. Contractor shall handle all maintenance charges in regard to normal operational wear and tear. If a malfunction or damage is deemed fault of County by way of negligence or misuse, repair costs will be negotiated with Contractor and must be approved by OCWR Project Manager or designee in writing. All supporting documents must be attached to appropriate invoice.

VI. Operational Hours:

- A. Regular Work Hours: shall match job site work hours, Monday-Saturday and shall be provided at conclusion of each service provided.
- B. Contractor shall perform work in strict accordance with the work hours and workdays arranged with the site operation superintendent(s) or designee.

VII. General Conditions:

- A. If or when Contractor does not provide services as specified, County may procure the services or Contract with other vendors.

- B.** No guarantee is given by County regarding usage of this Contract. Estimated quantities are approximates, based upon estimated tonnage received. Usage may decrease or increase at any time during the Contract. Contractor agrees to supply services requested as needed by County, at prices listed herein.
- C.** Portal to portal charges shall NOT be allowed by County. Labor hours shall be charged on basis of actual time spent on each job, not on a portal-to-portal basis and shall be computed to the nearest one-quarter (1/4) hour. Operator is required to check in and check out of the job site with the site operations team or designee(s).

VIII. County's Requirements:

- A.** County Project Manager or designee will be responsible for placing work orders with Contract.
- B. Routine Requests:**
1. County will place orders for services at least 24 hours in advance of the required date. The request will be made for a specific type of equipment and substitution will not be allowed unless prior authorization is given in writing (email is satisfactory). If other equipment is to be considered, a prior on-site meeting with County personnel may be necessary.
 2. Specific information regarding the job location, work hours, possible special conditions, and other job information will be provided at the time of the request.
 3. Period of usage shall be given at the time of the request to the best of County's estimation.

IX. Service Locations:

Frank R. Bowerman Landfill 11002 Bee Canyon Access Road Irvine, CA 92602 Hours: 7AM-5PM Att: Nathan Waites Office: 949-551-7103 Mobile: 714-659-5947	Prima Deshecha Landfill* 32250 Avenida La Pata San Juan Capistrano, CA 92675 Hours: 7AM-5PM Att: Jose Gamboa Office: 949-728-3050 Mobile: 714-342-8168	Olinda Alpha Landfill 1942 N. Valencia Avenue Brea, CA 92823 Hours: 6AM-4PM Att: Jim Markham Office: 714-986-2671 Mobile: 949-279-8085
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***Prima Deshecha Landfill will not have work performed until CEQA approvals are received.**

- X. Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

Line Item:	Equipment:	Hourly Rate: Regular Work Hours	Hourly Rate: Non-Routine Work Hours
1.	Vendor supplies grinder, loader, operator, and fuel	\$825.00	\$850.00
2.	Vendor supplies grinder, loader and operator, OCWR supplies fuel	\$675.00	\$700.00
3.	Vendor supplies grinder and operator, OCWR supplies loader and fuel	\$625.00	\$650.00
4.	Trip charge, move in and out for equipment (no charge is allowed if machine is required to be removed from site due to Contractor need/request)	\$600 Flat Rate	\$600 Flat Rate

ATTACHMENT B
PAYMENT TERMS AND INVOICING INSTRUCTIONS

TERMS

Contractor shall submit a monthly invoice in arrears for the materials/services provided in the amounts listed which shall become effective and billable upon delivery and acceptance of said materials as outlined in Attachment A, Scope of Work. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor.

Payment due to the Contractor will be made within 30 days after receipt of a correctly submitted invoice. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods/services not provided.

Payment made by the County shall not preclude the right of the County from thereafter disputing any goods or services billed or involved under this Contract and shall not be construed as acceptance of any part of the work.

INVOICING INSTRUCTIONS

The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and shall be returned to the Contractor for correction.

The Contractor shall provide an invoice on the Contractor's letterhead. The invoice shall have a unique number and shall include the following information:

- a. Contractor's Name and Address
- b. Contractor's Federal Tax I.D. Number
- c. Contractor's Remittance Address, if different from above
- d. Name of County Department
- e. MA Number MA-299-23011568
- f. Complete Breakdown of Charges including Service Address
- g. Product/Service description, hours worked, pricing
- h. Sales tax, if applicable
- i. Total

Invoices and supporting documents shall be submitted electronically to ocwrinvoice@ocwr.ocgov.com or mailed to:

OC Waste & Recycling
Attn: Accounts Payable
601 N. Ross St. 5th Floor
Santa Ana, CA 92701

Payment (Electronic Funds Transfer EFT): The County of Orange offers contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. To request a form, please contact the department's procurement representative. Completed form and required documentation must be submitted by mail to the physical address listed on the EFT form. Forms submitted electronically will not be accepted.

ATTACHMENT C
HIGH-RISK CONTRACT REQUIREMENTS (COUNTY)

The County of Orange has designated this Contract for On-Site Chip & Grind Services for OCWR as a High-Risk Contract. This Safety Packet specifies the requirements expected from the Contractor performing Services for OCWR. The Contractor shall be liable for any action or inaction resulting in a fine imposed by regulatory agencies on incidents of noncompliance within the Contractor's area of responsibility. The Contractor shall be responsible for ensuring that the Contractor's Subcontractor(s) comply with these Safety provisions.

A. CONTRACTOR SAFETY

Contractor shall conduct all operations and perform all services in a safe manner. Contractor shall implement and maintain all proper health and safety precautions to protect its employees, subcontractors, County staff, the public, and the environment. Contractor shall conform to the OC Waste & Recycling Code of Safe Practices (Exhibit 4), the County of Orange Safety and Loss Prevention Program #306 and CAL/OSHA standards (Exhibit 1), as well as all other applicable laws, codes and regulations.

Contractor shall submit Contractor's Injury and Illness Prevention Program (IIPP) - *reference Exhibits 1 and 2*. Contractor's IIPP shall meet the minimum requirements of California Code of Regulation (CCR), Title 8, Section 1509 and 3203 and maintain compliance with all local, municipal, state and federal safety and health laws, orders, and regulations applicable to Contractor operations in performance of this Scope of Work. At a minimum, the IIPP must comply with the minimum site-specific standards as set by OCWR .

EXHIBIT 1
COUNTY'S SAFETY AND LOSS PREVENTION POLICY AND PROCEDURE
#306

** This Exhibit 1 signed, Exhibit 2 completed, and Contractor's H&SP/IILP shall be submitted and approved before any work shall begin.*

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Exhibits attached separately as OC Waste & Recycling Safety Packet

EXHIBIT 2
CONTRACTOR SAFETY – ACTIVITY CHECKLIST

** This Exhibit 2 completed, Exhibit 1 signed, and Contractor's H&SP/IILP shall be submitted and approved before any work shall begin.*

Exhibits attached separately as OC Waste & Recycling Safety Packet

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**EXHIBIT 3
JOBSITE SAFETY CHECKLIST**

****This Exhibit 3 is for reference. During this Contract term, the Project Manager will utilize the most current Jobsite Safety Inspection checklist when conducting regular inspections of the Contractor's jobsite.***

Exhibits attached separately as OC Waste & Recycling Safety Packet

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EXHIBIT 4
OC WASTE & RECYCLING CODE OF SAFE PRACTICES

Exhibits attached separately as OC Waste & Recycling Safety Packet

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