

SERVICE AGREEMENT

This Service Agreement (“Agreement”) is dated September 5, 2023 and is between Quinn Company, a California corporation (“Contractor”), and the County of Fresno, a political subdivision of the State of California (“County”).

Recitals

A. The County has need for Caterpillar Original Equipment Manufacturer (“OEM”) parts and repairs provided by the Contractor.

B. The County desires to engage the Contractor to provide Caterpillar OEM parts and repairs, pursuant to the terms and conditions of this Agreement.

C. The County previously entered into Procurement Agreement No. P-20-278-P (“Original Agreement”) with the Contractor for Caterpillar OEM parts and repairs, with a total maximum compensation payable of \$625,000, effective August 15, 2020, for a potential five-year term not to exceed August 14, 2025. In order to avoid a lapse in service and parts availability, the first extension option was utilized.

D. The County and the Contractor now wish to replace and supersede the Original Agreement with this Agreement, subject to approval by the County’s Board of Supervisors, which is necessary to allow not only for an increase of services to be performed by the Contractor, but for the increase in the total maximum compensation payable over the potential five-year term up to \$920,000. The term will remain a potential five-year maximum, and this Agreement will be retroactive to the Original Agreement’s effective date of August 15, 2020.

The parties therefore agree as follows:

Article 1

Contractor’s Services

1.1 **Scope of Services.** The Contractor shall perform all of the services provided in Exhibit A to this Agreement, titled “Scope of Services.”

1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and able to perform all of the services provided in this Agreement.

1 333 W. Pontiac Way
2 Clovis, CA 93612
3 isdcontracts@fresnocountyca.gov

4 **For the Contractor:**
5 Chief Financial Officer
6 Michelle Locke
7 10006 Rose Hills Rd
8 City of Industry, CA 90601
9 michelle.locke@quinngroup.net

10 5.2 **Change of Contact Information.** Either party may change the information in section
11 5.1 by giving notice as provided in section 5.3.

12 5.3 **Method of Delivery.** Each notice between the County and the Contractor provided
13 for or permitted under this Agreement must be in writing, state that it is a notice provided under
14 this Agreement, and be delivered either by personal service, by first-class United States mail, by
15 an overnight commercial courier service, or by Portable Document Format (PDF) document
16 attached to an email.

17 (A) A notice delivered by personal service is effective upon service to the recipient.

18 (B) A notice delivered by first-class United States mail is effective three County
19 business days after deposit in the United States mail, postage prepaid, addressed to the
20 recipient.

21 (C) A notice delivered by an overnight commercial courier service is effective one
22 County business day after deposit with the overnight commercial courier service,
23 delivery fees prepaid, with delivery instructions given for next day delivery, addressed to
24 the recipient.

25 (D) A notice delivered by PDF document attached to an email is effective when
26 transmission to the recipient is completed (but, if such transmission is completed outside
27 of County business hours, then such delivery is deemed to be effective at the next
28 beginning of a County business day), provided that the sender maintains a machine
record of the completed transmission.

5.4 **Claims Presentation.** For all claims arising from or related to this Agreement,
nothing in this Agreement establishes, waives, or modifies any claims presentation

1 requirements or procedures provided by law, including the Government Claims Act (Division 3.6
2 of Title 1 of the Government Code, beginning with section 810).

3 **Article 6**

4 **Termination and Suspension**

5 **6.1 Termination for Non-Allocation of Funds.** The terms of this Agreement are
6 contingent on the approval of funds by the appropriating government agency. If sufficient funds
7 are not allocated, then the County, upon at least 30 days' advance written notice to the
8 Contractor, may:

9 (A) Modify the services provided by the Contractor under this Agreement; or

10 (B) Terminate this Agreement.

11 **6.2 Termination for Breach.**

12 (A) Upon determining that a breach (as defined in paragraph (C) below) has
13 occurred, the County may give written notice of the breach to the Contractor. The written
14 notice may suspend performance under this Agreement, and must provide at least 30
15 days for the Contractor to cure the breach.

16 (B) If the Contractor fails to cure the breach to the County's satisfaction within the
17 time stated in the written notice, the County may terminate this Agreement immediately.

18 (C) For purposes of this section, a breach occurs when, in the determination of the
19 County, the Contractor has:

20 (1) Obtained or used funds illegally or improperly;

21 (2) Failed to comply with any part of this Agreement;

22 (3) Submitted a substantially incorrect or incomplete report to the County; or

23 (4) Improperly performed any of its obligations under this Agreement.

24 **6.3 Termination without Cause.** In circumstances other than those set forth above, the
25 County may terminate this Agreement by giving at least 30 days advance written notice to the
26 Contractor.

27 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County
28 under this Article 6 is without penalty to or further obligation of the County.

1 the performance or failure to perform by the Contractor (or any of its officers, agents,
2 subcontractors, or employees) under this Agreement. The County may conduct or participate in
3 its own defense without affecting the Contractor's obligation to indemnify and hold harmless or
4 defend the County.

5 8.2 **Survival.** This Article 8 survives the termination of this Agreement.

6 **Article 9**

7 **Insurance**

8 9.1 The Contractor shall comply with all the insurance requirements in Exhibit D to this
9 Agreement.

10 **Article 10**

11 **Inspections, Audits, and Public Records**

12 10.1 **Inspection of Documents.** The Contractor shall make available to the County, and
13 the County may examine at any time during business hours and as often as the County deems
14 necessary, all of the Contractor's records and data with respect to the matters covered by this
15 Agreement, excluding attorney-client privileged communications. The Contractor shall, upon
16 request by the County, permit the County to audit and inspect all of such records and data to
17 ensure the Contractor's compliance with the terms of this Agreement.

18 10.2 **State Audit Requirements.** If the compensation to be paid by the County under this
19 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the
20 California State Auditor, as provided in Government Code section 8546.7, for a period of three
21 years after final payment under this Agreement. This section survives the termination of this
22 Agreement.

23 10.3 **Public Records.** The County is not limited in any manner with respect to its public
24 disclosure of this Agreement or any record or data that the Contractor may provide to the
25 County. The County's public disclosure of this Agreement or any record or data that the
26 Contractor may provide to the County may include but is not limited to the following:
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1 (A) The County may voluntarily, or upon request by any member of the public or
2 governmental agency, disclose this Agreement to the public or such governmental
3 agency.

4 (B) The County may voluntarily, or upon request by any member of the public or
5 governmental agency, disclose to the public or such governmental agency any record or
6 data that the Contractor may provide to the County, unless such disclosure is prohibited
7 by court order.

8 (C) This Agreement, and any record or data that the Contractor may provide to the
9 County, is subject to public disclosure under the Ralph M. Brown Act (California
10 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

11 (D) This Agreement, and any record or data that the Contractor may provide to the
12 County, is subject to public disclosure as a public record under the California Public
13 Records Act (California Government Code, Title 1, Division 10, Chapter 3, beginning
14 with section 7920.200) ("CPRA").

15 (E) This Agreement, and any record or data that the Contractor may provide to the
16 County, is subject to public disclosure as information concerning the conduct of the
17 people's business of the State of California under California Constitution, Article 1,
18 section 3, subdivision (b).

19 (F) Any marking of confidentiality or restricted access upon or otherwise made with
20 respect to any record or data that the Contractor may provide to the County shall be
21 disregarded and have no effect on the County's right or duty to disclose to the public or
22 governmental agency any such record or data.

23 **10.4 Public Records Act Requests.** If the County receives a written or oral request
24 under the CPRA to publicly disclose any record that is in the Contractor's possession or control,
25 and which the County has a right, under any provision of this Agreement or applicable law, to
26 possess or control, then the County may demand, in writing, that the Contractor deliver to the
27 County, for purposes of public disclosure, the requested records that may be in the possession
28 or control of the Contractor. Within five business days after the County's demand, the

1 Contractor shall (a) deliver to the County all of the requested records that are in the Contractor's
2 possession or control, together with a written statement that the Contractor, after conducting a
3 diligent search, has produced all requested records that are in the Contractor's possession or
4 control, or (b) provide to the County a written statement that the Contractor, after conducting a
5 diligent search, does not possess or control any of the requested records. The Contractor shall
6 cooperate with the County with respect to any County demand for such records. If the
7 Contractor wishes to assert that any specific record or data is exempt from disclosure under the
8 CPRA or other applicable law, it must deliver the record or data to the County and assert the
9 exemption by citation to specific legal authority within the written statement that it provides to
10 the County under this section. The Contractor's assertion of any exemption from disclosure is
11 not binding on the County, but the County will give at least 10 days' advance written notice to
12 the Contractor before disclosing any record subject to the Contractor's assertion of exemption
13 from disclosure. The Contractor shall indemnify the County for any court-ordered award of costs
14 or attorney's fees under the CPRA that results from the Contractor's delay, claim of exemption,
15 failure to produce any such records, or failure to cooperate with the County with respect to any
16 County demand for any such records.

17 **Article 11**

18 **Disclosure of Self-Dealing Transactions**

19 11.1 **Applicability.** This Article 11 applies if the Contractor is operating as a corporation,
20 or changes its status to operate as a corporation.

21 11.2 **Duty to Disclose.** If any member of the Contractor's board of directors is party to a
22 self-dealing transaction, he or she shall disclose the transaction by completing and signing a
23 "Self-Dealing Transaction Disclosure Form" (Exhibit C to this Agreement) and submitting it to
24 the County before commencing the transaction or immediately after.

25 11.3 **Definition.** "Self-dealing transaction" means a transaction to which the Contractor is
26 a party and in which one or more of its directors, as an individual, has a material financial
27 interest.

1 **Article 12**

2 **General Terms**

3 12.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this
4 Agreement may not be modified, and no waiver is effective, except by written agreement signed
5 by both parties. The Contractor acknowledges that County employees have no authority to
6 modify this Agreement except as expressly provided in this Agreement.

7 12.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
8 under this Agreement without the prior written consent of the other party.

9 12.3 **Governing Law.** The laws of the State of California govern all matters arising from
10 or related to this Agreement.

11 12.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
12 County, California. The Contractor consents to California jurisdiction for actions arising from or
13 related to this Agreement, and, subject to the Government Claims Act, all such actions must be
14 brought and maintained in Fresno County.

15 12.5 **Construction.** The final form of this Agreement is the result of the parties' combined
16 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
17 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
18 against either party.

19 12.6 **Days.** Unless otherwise specified, "days" means calendar days.

20 12.7 **Headings.** The headings and section titles in this Agreement are for convenience
21 only and are not part of this Agreement.

22 12.8 **Severability.** If anything in this Agreement is found by a court of competent
23 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
24 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
25 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
26 intent.

27 12.9 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall
28 not unlawfully discriminate against any employee or applicant for employment, or recipient of

1 services, because of race, religious creed, color, national origin, ancestry, physical disability,
2 mental disability, medical condition, genetic information, marital status, sex, gender, gender
3 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
4 all applicable State of California and federal statutes and regulation.

5 12.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
6 of the Contractor under this Agreement on any one or more occasions is not a waiver of
7 performance of any continuing or other obligation of the Contractor and does not prohibit
8 enforcement by the County of any obligation on any other occasion.

9 12.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
10 between the Contractor and the County with respect to the subject matter of this Agreement,
11 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
12 publications, and understandings of any nature unless those things are expressly included in
13 this Agreement. If there is any inconsistency between the terms of this Agreement without its
14 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
15 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
16 exhibits.

17 12.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
18 create any rights or obligations for any person or entity except for the parties.

19 12.13 **Authorized Signature.** The Contractor represents and warrants to the County that:

20 (A) The Contractor is duly authorized and empowered to sign and perform its
21 obligations under this Agreement.

22 (B) The individual signing this Agreement on behalf of the Contractor is duly
23 authorized to do so and his or her signature on this Agreement legally binds the
24 Contractor to the terms of this Agreement.

25 12.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by
26 electronic signature as provided in this section.

27 (A) An "electronic signature" means any symbol or process intended by an individual
28 signing this Agreement to represent their signature, including but not limited to (1) a

1 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
2 electronically scanned and transmitted (for example by PDF document) version of an
3 original handwritten signature.

4 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
5 equivalent to a valid original handwritten signature of the person signing this Agreement
6 for all purposes, including but not limited to evidentiary proof in any administrative or
7 judicial proceeding, and (2) has the same force and effect as the valid original
8 handwritten signature of that person.

9 (C) The provisions of this section satisfy the requirements of Civil Code section
10 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
11 Part 2, Title 2.5, beginning with section 1633.1).

12 (D) Each party using a digital signature represents that it has undertaken and
13 satisfied the requirements of Government Code section 16.5, subdivision (a),
14 paragraphs (1) through (5), and agrees that each other party may rely upon that
15 representation.

16 (E) This Agreement is not conditioned upon the parties conducting the transactions
17 under it by electronic means and either party may sign this Agreement with an original
18 handwritten signature.

19 12.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
20 original, and all of which together constitute this Agreement.

21 [SIGNATURE PAGE FOLLOWS]
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The parties are signing this Agreement on the date stated in the introductory clause.

Quinn Company

COUNTY OF FRESNO

Locke
Michelle Locke, Chief Financial Officer
10006 Rose Hills Rd
City of Industry, CA 90601

Sal Quintero
Sal Quintero, Chairman of the Board of
Supervisors of the County of Fresno

Attest:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: Alexandria Viera
Deputy

For accounting use only:

Org No.:8910
Account No.:7205
Fund No.:1000
Subclass No.:10000

Exhibit A

Scope of Services

The Contractor will provide Caterpillar OEM parts and repairs on an as requested basis to the County. The County shall be the sole determinative party regarding the necessity for any parts or repairs. There shall be no minimum order quantity and the County reserves the right to increase or decrease orders or quantities.

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Exhibit B

Compensation

The Contractor will be compensated for performance of its services under this Agreement as provided in this Exhibit B. The Contractor is not entitled to any compensation except as expressly provided in this Exhibit B, and subject to the terms and compensation provisions stated in Article 3.

Labor Rate: Labor is subject to overtime rate, time and half after eight hours, and double time after 12 hours. Saturdays are time and half, Sunday is double-time. A review will be completed by both parties, and a written notice will be submitted by the Contractor if a labor increase not to exceed three percent annually is warranted due to current economic conditions and minimum wage requirements by the state and or federal government. Any planned price increases must be sent to the County within 30 days before the increase goes into effect, not to exceed three percent.

Discounted Labor Rate	
<i>Description</i>	<i>Cost Per Hour</i>
Field Service	\$135.00
Shop Service	\$125.00

Parts Discount: Discounted percentages may change annually based on Caterpillar participation. The table below lists the discounted parts rate available to the County at the time of contract execution. The Contractor shall promptly provide the County with a written notice of any changes to the discount percentage.

Discounted Parts Rate	
Ground Engaging Tools (i.e. cutting edges, ripper points, scarifier teeth, blade bits)	35%
Hardware	20%
Battery	20%

Exhibit B

Hydraulic Hose and Couplings	25%
Caterpillar Filter	35%

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Exhibit C

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

Instructions

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit C

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	

Exhibit D

Insurance Requirements

1. Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, the Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Contractor shall maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Contractor shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.

Additional Requirements

- (A) **Verification of Coverage.** Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County's Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to receive notices under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.

Exhibit D

- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
 - (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor's policy.
 - (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
 - (iv) The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- (D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.

Exhibit D

- (E) **Waiver of Subrogation.** The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.
- (F) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.
- (G) **Subcontractors.** The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.