

**SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 5 OF 5
No. 12-13-377 Water Treatment Services**

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Water Treatment Services Service Agreement (Agreement) dated between the City of Las Cruces (City) and Western Environmental Management Corporation (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin January 25, 2017 and terminate January 24, 2018. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

WESTERN
ENVIRONMENTAL
MANAGEMENT
CORPORATION

CITY OF LAS CRUCES

Kelly Laird 12-12-16
Signature Date

Deb Smith 12/12/16
Deb Smith Date
Purchasing Manager

Kelly Laird CFO
Printed Name/Title

**PRICE AGREEMENT
ANNUAL EXTENSION – YEAR 4 OF A POSSIBLE 5
(No. 12-13-377)**

Pricing submitted by Western Environmental Management Corporation (Contractor) in response to the City of Las Cruces No. 12-13-377 is hereby agreed to renew for a period of one (1) year, to begin January 25, 2016 and terminate January 24, 2017. All other terms/conditions of the related to this extension agreement remain the same.

AGREED:

WESTERN
ENVIRONMENTAL
MANAGEMENT
CORPORATION

CITY OF LAS CRUCES

Kelly Laird 10/21/15
Signature Date

Deb Smith 10/22/15
Deb Smith Date
Purchasing Manager

Kelly Laird CFO
Printed Name/Title



SERVICE AGREEMENT

THIS AGREEMENT made and entered into on this ^{25th} of January, 2013 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Western Environmental Management Corp., of PO Box 1807, Carlsbad, NM 88221 hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

The Water Treatment Services Price Agreement will provide water treatment for various City buildings. Products used must aid in prevention of corrosion and scale protection and include a biocide for aiding with the prevention of biological growth.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S Bid #12-13-377 incorporated herein by reference and as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S, decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY, shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount not to exceed \$685.00 per month or \$8,220.00 annually, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order from the CITY. The CITY cannot authorize costs to be incurred prior to such purchase order.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project that are required by the CITY, and it will serve the CITY, diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on January 25, 2013 for a term of one (1) year through 01/~~24~~/14 and has four (4) one-year renewable options to be exercised at the discretion of the CITY, upon mutual written consent. CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR in Exhibit B.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY, of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY, with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY, for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY, deliver to the CITY, the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S, right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY, will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S, prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY, and shall be delivered to the CITY, when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY, CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY, by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY, shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. \$1,000,000 (One Million Dollars) General Liability Insurance with the City named as an additional named insured with the same coverage as the CONTRACTOR.

2. \$100,000 (One Hundred Thousand Dollars) Property Damage Insurance.
3. In the case of any approved subcontract, the CONTRACTOR shall require the subcontractor to provide statutory Workers' Compensation and Employers' Liability Insurance, with the same limits as those required by the CONTRACTOR.
4. Worker's Compensation Per New Mexico Statute (3 or more employees)
 - \$1,000,000 - Bodily Injury: By Accident - Each Accident
 - \$1,000,000 - By Disease: Policy Limit
 - \$1,000,000 - By Disease: Each Employee
 - This coverage required for non-construction contractor with three (3) or more employees
 - Exception: Not applicable to out-of-state companies unless they are hiring in NM
5. The CONTRACTOR must immediately notify the CITY if insurance is canceled or not renewed.

The City must be named as additional insured - This coverage must be as broad as the coverage provided to the insured; coverage must be primary and non-contributory before any other insurance or self-insurance. A copy of endorsement for this coverage must be provided as a condition of this Agreement.

Waiver of Subrogation will apply and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY, with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement.

**WESTERN ENVIRONMENTAL
MANAGEMENT CORP.**

BY: Kelly Laird
PRINCIPAL

DATE: 1-18-2013

CITY OF LAS CRUCES

BY: [Signature]
PURCHASING MANAGER

DATE: 1/25/2013

Approve as to Form

[Signature]
CITY ATTORNEY

EXHIBIT A

SERVICES

The City of Las Cruces is seeking water treatment services for various City buildings. The products used must aid in the prevention of corrosion and scale protection and include a biocide for aiding with the prevention of biological growth. Product fact sheets as well as MSDS sheets must be attached to the bid. Following is a list of the City buildings to be serviced:

Service Center, 1501 East Hadley:

Two Pipe - Hot/Chilled Combined Loop - Estimated Volume - 1500 Gallons

Police Dept, 217 East Picacho:

Chilled Loop – Estimated Volume – 1500 Gallons

Hot Loop – Estimated Volume – 1500 Gallons

Fire Station #1, 201 East Picacho:

Chilled Loop – Estimated Volume – 1500 Gallons

Hot Loop – Estimated Volume – 1500 Gallons

Judicial Complex, 151 North Church:

Chilled Loop – Estimated Volume – 2000 Gallons

Hot Loop – Estimated Volume – 2000 Gallons

Munson Center, 975 S. Mesquite:

Chilled Loop – Estimated Volume – 1500 Gallons

Hot Loop – Estimated Volume – 1500 Gallons

City Hall, 700 North Main:

Cooling Tower

Closed Loop

EXHIBIT B SCHEDULE

ITEM	DESCRIPTION	UNIT PRICE (MONTHLY)
1.	Service Center, 1501 East Hadley Two Pipe - Hot/Chilled Combined Loop - Estimated Volume - 1500 Gallons	\$60 (\$720 Annual)
2.	Police Dept, 217, East Picacho Chilled Loop – Estimated Volume – 1500 Gallons Hot Loop – Estimated Volume – 1500 Gallons	\$100 (\$1,200 Annual)
3.	Fire Station #1, 201 East Picacho Chilled Loop – Estimated Volume – 1500 Gallons Hot Loop – Estimated Volume – 1500 Gallons	\$100 (\$1,200 Annual)
4.	Judicial Complex, 151 North Church Chilled Loop – Estimated Volume – 2000 Gallons Hot Loop – Estimated Volume – 2000 Gallons	\$100 (\$1,200 Annual)
5.	Munson Center, 975 S. Mesquite Chilled Loop – Estimated Volume – 1500 Gallons Hot Loop – Estimated Volume – 1500 Gallons	\$100 (\$1,200 Annual)
6.	City Hall, 700 North Main Cooling Tower Closed Loop	\$225 (\$2,700 Annual)

ANNUAL TOTAL

\$8,220



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/18/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Carlebad Insurance 313 N. Canyon St. P O Box 490 Carlsbad NM 88220	CONTACT NAME: Veronica Lara PHONE (A/C No. Ext): (575) 887-1181 FAX (A/C No.): (575) 865-6589 E-MAIL ADDRESS: veronicalara@carlsbadinsurance.com													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Occidental Fire & Casualty</td> <td>23248</td> </tr> <tr> <td>INSURER B: Wilshire Insurance Company</td> <td>13234</td> </tr> <tr> <td>INSURER C: New Mexico Mutual</td> <td>40627</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Occidental Fire & Casualty	23248	INSURER B: Wilshire Insurance Company	13234	INSURER C: New Mexico Mutual	40627	INSURER D:		INSURER E:		INSURER F:
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INSURER F:														
INSURED Western Environmental Management Corp. Ltd. PO Box 1807 Carlsbad NM 88220														

COVERAGES **CERTIFICATE NUMBER:** CL1311804319 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURER (Y/N)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		CF00136494	12/1/2012	12/1/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 2,000,000
	GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CF00136494	12/1/2012	12/1/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Medical payments \$ 5,000
	B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	UL00007580	12/1/2012	12/1/2013
<input checked="" type="checkbox"/> RETENTION \$ 10,000						
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	023777.112	3/10/2012	3/10/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 With respects to active policies show above EXCLUDING WORKERS COMPENSATION the City of Las Cruces is named as additional insured. Waiver of Subrogation applies in favor of the City of Las Cruces with respects to the active policies show above.

CERTIFICATE HOLDER City of Las Cruces PO Box 20000 Las Cruces, NM 88004	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE David Long/VCL <i>David Long</i>
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