

**SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 5 OF 5
Bid No. 12-13-101 Natural Gas & Diesel Engine Repair & Maintenance**

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Natural Gas & Diesel Engine Repair & Maintenance Service Agreement (Agreement) dated January 10, 2013 between the City of Las Cruces (City) and Southwest Commercial Engines Inc. (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin January 10, 2017 and terminate January 9, 2018. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

SOUTHWEST
COMMERCIAL ENGINES
INC.

CITY OF LAS CRUCES


Signature

12/6/16
Date


Deb Smith

12-9-16
Date

Purchasing Manager

Ismael Morales / president
Printed Name/Title

**SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 4 OF 5
(Bid No. 12-13-101)**

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Natural Gas & Diesel Engine Repair & Maintenance Service Agreement (Agreement) dated between the City of Las Cruces (City) and Southwest Commercial Engines Inc. (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin January 10, 2016 and terminate January 9, 2017.

All other terms of the Service Agreement remain the same.

AGREED:

SOUTHWEST
COMMERCIAL ENGINES
INC.

CITY OF LAS CRUCES

[Handwritten Signature]
Signature

11/13/15
Date

Deb Smith
Deb Smith
Purchasing Manager

11-13-15
Date

Tamara Mendez - President
Printed Name/Title

**SERVICE AGREEMENT
 ANNUAL EXTENSION – YEAR 3 OF A POSSIBLE 5
 (Bid No. 12-13-101)**

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Natural Gas & Diesel Engine Repair & Maintenance Service Agreement (Agreement) dated July 2, 2010 between the City of Las Cruces (City) and Southwest Commercial Engines Inc. (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin January 10, 2015 and terminate January 9, 2016.

All other terms of the Service Agreement remain the same.

AGREED:

SOUTHWEST
 COMMERCIAL ENGINES
 INC.

CITY OF LAS CRUCES

Ismael Mirales
 Signature

12/5/14
 Date

Karen Medina
 Karen Medina
 Purchasing Manager

1/5/15
 Date

Ismael Mirales - President
 Printed Name/Title



**AMENDMENT TO
Natural Gas & Diesel Engine Repair & Maintenance PA
CLC File No. 12-13-101**

This amendment, made this 11th day of July, 2014 by and between the CITY OF LAS CRUCES and Southwest Commercial Engine of El Paso, TX

WITNESSTH

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated January 10, 2013, the parties hereby agree as set forth below:

The following provisions are changed:

Section 6. Term and Schedule

"This Agreement shall become effective on January 10, 2013 for one (1) year through January 9, 2014 and is a four (4) year term subject to annual renewals"

Is corrected to read:

"This Agreement shall become effective on January 10, 2013 for one (1) year through January 9, 2014 and is a five (5) year term subject to annual renewals"

Subject to the modifications set forth in this amendment, the above referenced original agreement dated January 10, 2013 between the parties is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have affixed the signatures below.

COMPANY NAME Southwest Commercial Engines CITY OF LAS CRUCES

BY: [Signature]
Name
Title President

BY: [Signature]
Karen Medina
Purchasing Manager

July 14, 2014
Date

7/15/14
Date

APPROVED AS TO FORM
[Signature]
City Attorney



SERVICE CONTRACT #12-13-101

**NATURAL GAS AND DIESEL ENGINE REPAIR AND MAINTENANCE SERVICES
PRICE AGREEMENT**

THIS AGREEMENT made and entered into on this **10 day of January 2013**, (although may be signed on a different date) by and between the City of Las Cruces, New Mexico, hereinafter called "CITY", and **Southwest Commercial Engine of El Paso, TX** hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION: Gas & Diesel Engine Repair & Maintenance Services Price Agreement.

2. SCOPE OF SERVICES: In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S, **Bid #12-13-101** incorporated herein by reference 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 **Utilities Board** for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Utilities Board, 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 for **an estimated annual amount of \$363,856.39** plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order from the CITY with Net 30 day payment terms. 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 10, 2013** for one (1) year through **January 9, 2014** and is a four (4) year term subject to annual renewals initiated by the City pending appropriated budget for an **indefinite quantity and indefinite amount**. CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY, and CONTRACTOR.

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, neither fiduciary nor 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. The CONTRACTOR must immediately notify the CITY if insurance is canceled or not renewed.
5. 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 EmployeeThis 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

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 attached to the Certificate of Insurance.

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.

20. BREACH: In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY, shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION: In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

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.

22. NOTIFICATION: All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces,
P. O. Box 20000
Las Cruces, NM 88004
ATTENTION: Eric Lopez

With Copies to: Purchasing Manager

TO CONTRACTOR: Southwest Commercial Engines, Inc.
315 Ivey Rd.
El Paso, TX 79927
ATTN: Ismael Morales

23. SCOPE OF AGREEMENT: This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

CONTRACTOR

CITY OF LAS CRUCES

BY: 
PRINCIPAL

BY:  2/12/13
ROBERT TELLES, PURCHASING MANAGER

DATE: Feb, 11 - 2013

DATE: 2/12/13

APPROVED AS TO FORM BY CITY ATTORNEY: 