

# WATER SYSTEM SERVICES AGREEMENT

## Introduction

This Water System Services Agreement continues, with modification, one made effective November 1, 2011 by and between the Board of Directors of the La Mesa Water Cooperative and Mr. Phillip Carter, DBA Water Systems Management, Inc., P. O. Box 10657, Albuquerque, NM 87184-0657, operating as an independent contractor.

## Definitions

Agreement: This Water System Services Agreement

Contractor: Mr. Phillip Carter, residing at 8814 Aztec Road, NE, Albuquerque, NM 87184; NM CRS # 03-002100-006

POC: The person on the LMWC Board of Directors who serves as the primary point of contact between the Contractor and LMWC and who provides direction on work to be performed by Contractor

LMWC: La Mesa Water Cooperative

President: The president of the LMWC Board of Directors

The Work: Water system services including but not limited to those generally described in Exhibit A.

## Terms

1. Term: The Agreement shall remain in full force and effect and govern performance of The Work by Contractor for LMWC. The Agreement shall expire one year from the agreement effective date above and shall be automatically renewed unless otherwise terminated as described in §9, Termination.
2. Services: Contractor will provide water system services as defined by The Work.
3. Standards of Performance: Contractor and Contractor's employees agree to perform services with a professional standard of care, skill and diligence normally provided by professional persons in the performance of such Work. Contractor and Contractor's employees shall also take all reasonable precautions and actions consistent with delivering professional work pursuant to the Agreement. Contractor and Contractor's employees shall make best efforts to maintain schedules and if timely completion is in jeopardy shall promptly notify the POC. Contractor and Contractor's employees realize that they are agents of LMWC and will perform all assigned tasks, activities and projects in the best interests of LMWC and its members. Contractor and Contractor's employees agree to abide by the LMWC Articles of Incorporation, Bylaws, and directives of the Board of Directors. All work shall be in accordance with AWWA, NEC, NMED, EPA, OSHA standards and/or regulations.
4. Insurance: Contractor shall be responsible for maintaining insurance as described in Exhibit A. Contractor shall provide a copy of insurance certificates to LMWC within 30 days after the contract effective date and thereafter on an annual basis.
5. Taxes: Contractor shall be responsible for all State and Federal taxes, Social Security and Medicare taxes, gross receipts taxes, and any other applicable taxes incurred by the Contractor.
6. Compensation: Contractor shall be compensated for services as provided in Exhibit B.
7. Expense Reimbursement: Contractor's expenses shall be reimbursed as described in Exhibit B.

8. Invoices: Contractor shall invoice LMWC monthly. Invoice shall describe the date, hours expended and specific services provided, and an accounting, with receipts, for all reimbursable expenses. The invoice shall separately identify monitoring, meter reading, routine maintenance, repair/modification and special project charges.
9. Termination: Either party may terminate this Agreement upon 60 days notice, with or without cause. However, if Contractor becomes disabled or otherwise unable to perform The Work this contract may be cancelled immediately by LMWC without the required 60 days notice. If LMWC shall cease to exist or is merged or acquired by another entity then this Agreement shall become null and void, unless the superceding entity shall decide to continue the Agreement.
10. Confidentiality: Contractor and Contractor's employees agree not to divulge to third parties any information that may be detrimental to LMWC and/or its members. This includes member names, address, phone numbers, member water usage, member billing information, and any other individual member specific information. Contractor realizes that any breach of confidentiality may result in LMWC seeking injunctive relief against Contractor. Contractor agrees not to provide access to LMWC cooperative records to any third party or member without the specific authorization of the Board of Directors. Contractor also agrees to abide by the license restrictions on all software furnished by LMWC and not to allow third parties to copy or use LMWC software without the written permission of the LMWC.
11. Benefits: Contractor operates as an independent contractor and is responsible for its own benefits and tax payments (see §5). Benefits such as paid holidays and other paid leave; medical or dental insurance or savings plans; retirement plans or insurance; or other types of benefits are not provided by LMWC for Contractor or Contractor's employees.
12. Work Hours: Contractor shall provide a mutually acceptable schedule when Contractor or Contractor's employees will be available to perform The Work. Generally, monitoring and routine maintenance may be done at the convenience of the Contractor.
13. Exclusive Agreement: The Agreement shall be the sole and exclusive statement of intent and work between LMWC and Contractor. The Agreement sets forth the entire agreement between LMWC and Contractor and supersedes any other agreements written or oral. The Agreement may not be altered or amended, except in writing and with mutual consent of both parties.
14. No Waiver: The failure of either party to enforce any provision of the Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with any and every provision of the Agreement.
15. Notices: All notices or communications shall be in writing and shall be considered to have been given when delivered or mailed by certified or registered mail to the other party, as follows:

Contractor: Phillip Carter  
Water Systems Management, Inc.  
P. O. Box 10657  
Albuquerque, NM 87184-0657

LMWC: President  
P.O. Box 53  
Placitas, NM 87043-0053

16. Indemnification: Contractor agrees to indemnify and hold harmless and defend LMWC from all costs, claims, demands and actions, legal or equitable, arising from Contractor or Contractor's employees, agents or representatives, including payment of all attorneys fees and costs. LMWC will not hold Contractor liable for under or over dosing of chlorine.
17. Arbitration: If any controversy or claim arises out of or relates to the Agreement or breach thereof, and if said dispute can not be settled through negotiations, the parties shall submit to binding arbitration in accordance with Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each party shall be responsible for their own legal or representatives costs.
18. Applicable Law: Contractor shall abide by all applicable federal, state and local laws and regulations during the term of the Agreement. In any lawsuit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern.
19. Direction: The President or his/her designated representative shall serve as the POC, unless otherwise determined by the Board of Directors. The POC may not contradict specific resolutions passed by the Board of Directors, nor requirements of the LMWC Articles of Incorporation or LMWC Bylaws.

Agreed for Contractor:

Agreed for LMWC:

\_\_\_\_\_  
(Phil Carter)

Date: \_\_\_\_\_

  
\_\_\_\_\_  
(Jock Embry, LMWC President)

Date: 2/27/2020

# **EXHIBIT A**

## **Typical Water System Services**

### **Monitoring**

#### **Daily**

- Check system via Contractor's computer
- On call 24/7 for emergencies and notify POC in emergencies

#### **Weekly**

- Inspect well houses (4), check off sheet (4 times per month)
- Inspect tank site pump house (1), check off sheet
- Inspect tanks and site, check off sheet
- Teleconference with LMWC representative

#### **Monthly**

- Read well meters and provide to bookkeeper
- Provide water samples to NMED-approved Lab
- Present bills with backup to LMWC Bookkeeper
- Attend LMWC Board of Directors meetings and give reports
- Fill chlorine drums as needed during the month
- Clean all pump houses

#### **Miscellaneous**

- Notify POC of needed repairs/maintenance
- Notify POC of customer complaints
- Adjust level control system

### **Routine Maintenance**

#### **As Scheduled by POC**

- Flush system
- Hydrant maintenance
- Exercise valves
- Pick up & mix chlorine agent
- Calibrate/maintain chlorine pumps
- Well testing
- Booster system testing
- Level control system
- PRV calibration/maintenance
- Tank inspection
- Waterline location for other utilities
- Install and replace meters
- Respond/resolve customer issues

### **Repairs and Modifications**

- Respond to emergencies and operate system as needed
- Supervise and/or make repairs as directed by POC
- Supervise subcontractors as directed by POC

## **Items to be supplied by Contractor**

### **Insurance**

\$1 million general liability insurance certificate

\$100,000/\$300,000/\$25,000 automobile insurance certificate

### **Obtain and maintain Water Operator Class I or better certification**

### **Tools and equipment**

Current NM drivers license and copy of driving record (if requested by LMWC)

Small hand tools

Small power tools

Mechanical and electrical testing tools

### **Administrative equipment**

Telephone, cell phone and any other contact numbers. Main contact numbers shall have voice mail

Office services, supplies and consumables as required. Physical mailing address and e-mail address

**Note:** As of January 1, 2020, the LMWC President is designated as the POC.

**EXHIBIT B**  
**Compensation and Reimbursements**

<b>Item</b>	<b>Reimbursement Rate*</b>
Monitoring, per Exhibit A	\$2,350.00 per month
Meter Reading	\$1.25 per meter read
Labor, other than Monitoring or Meter Reading; charged on a "portal to portal" basis	
Philip Carter, Performing work	\$53.00 per hour
Philip Carter, Supervising work	\$33.00 per hour
Philip Carter, Special Circumstances**	\$75.00 per hour
Semi-skilled Technician	\$38.00 per hours
Laborer	\$25.00 per hour
Motor Vehicle Mileage (excludes mileage for monitoring function)	The IRS Standard Mileage Rate for business miles driven.
* These rates do not include applicable NM Gross Receipts Tax, which will be paid in addition to the prescribed rate.	
** The POC (see §19) shall determine application of "Special Circumstances"	

**Materials, Tools and Supplies:** LMWC shall reimburse Contractor for all materials, tools and supplies normally used in monitoring, maintenance, repair or modification of the system. Contractor shall pay all applicable gross receipts taxes. LMWC shall pay Contractor a 15% "markup" on all reimbursable purchases. Payment shall be made by LMWC after presentation of an invoice with receipts attached. Any other purchase MUST have prior LMWC approval for reimbursement. Markup on Part/Service greater than \$2,000.00 will be at 7.5%.

**Sub-Contractors:** All approved LMWC contractors shall bill LMWC directly. Any sub-contractors arranged for by Contractor shall bill Contractor and LMWC shall reimburse Contractor the billed cost.

**Contractor's Employees:** Contractor shall pay all employee wages, benefits, taxes, etc.

**Other Expenses:** Long distance telephone calls to conduct LMWC business or to contact LMWC members are reimbursable at cost. Reasonable expenses for materials, supplies, postage, copies, telephone, and travel shall be reimbursed when used to execute special tasks, assignments, or projects authorized by the Board of Directors and not included in Exhibit A. Other expenses are not reimbursable without prior approval by the Board of Directors.

**Effective date:** This exhibit is effective January 1, 2020

JDE  
2/27/2020