SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 3 OF 5
(RFP No. 13-14-308)

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Mechanical Engineering Services Service Agreement (Agreement) dated January 6, 2014 between the City of Las Cruces (City) and TME, Inc. (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin January 6, 2016 and terminate January 5, 2017.

All other terms of the Service Agreement remain the same.

AGREED:

TME, INC.

Signature 10/10/2015 Date

BENJAMIN R. MULLEN / CEO
Printed Name/Title

CITY OF LAS CRUCES

Deb Smith 10/19/15

Deb Smith
Purchasing Manager
Date

SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 2 OF A POSSIBLE 5
(RFP No. 13-14-308)

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Mechanical Engineering Services Service Agreement (Agreement) dated 1/6/2014 between the City of Las Cruces (City) and TME, Inc. (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin January 6, 2015 and terminate January 5, 2016.

All other terms of the Service Agreement remain the same.

AGREED:

TME, INC.		CITY OF LAS CRUCES	
Thomas Spears	03/12/15	Deb Smith	3/13/15
Signature	Date		Date
		Purchasing Manager	

Thomas Spears, P.E.
Printed Name/Title

Vice President of Design Solutions

City of Las Cruces
PEOPLE HELPING PEOPLE

PROFESSIONAL SERVICES AGREEMENT
FOR
MECHANICAL ENGINEERING SERVICES

RFP/CONTRACT NO. 13-14-308

This AGREEMENT, made and entered into on this 6th day of January, 2014, by and between the City of Las Cruces, New Mexico (CITY), and TME, Inc., of 5800 Evergreen Drive, Little Rock, AR 72205 (CONTRACTOR).

1. PROJECT DESCRIPTION
Mechanical engineering services, ordered as-needed, via Project Assignment Agreements (Attachment A) during the term of this AGREEMENT.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S RFP No.13-14-308 incorporated herein by reference.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

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 agreed to for each assigned project, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a written Notice to Proceed for each PAA issued by the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

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 projects 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 be effective from January 6, 2014 for a term of 12 months and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms for a total of five (5) years.

a. The City reserves the right to renew the agreement conditioned upon the minimum number of firms deemed by the City to be necessary for meeting the City's estimated needs during any forthcoming renewal period, and, upon the highest ranking firms resulting from the RFP selection process.
b. Renewal of the agreement shall be based on the following considerations:
    1. The volume of projected work anticipated to be assigned during the forthcoming renewal period or,
    2. Level of performance experienced on work assigned during the previous contract period, or
    3. Level of responsiveness experienced in meeting the City's time requirements.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth and agreed upon by the CITY and CONTRACTOR for each project assigned under the terms of this Agreement.

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

The Engineer will be required to provide proof of insurance for each separate project prior to performing work on City owned property. The requirements are as follows:

1. General Liability: $1,000,000.00 per occurrence
   $2,000,000.00 Aggregate
   a. Includes Coverage for Premises/Operation Coverage & Products/ Completed Operations
   b. Must be Occurrence form coverage
   c. Coverage shall remain in force for the duration of the contract.
2. Auto Liability: $1,000,000.00 Each Accident
   Covers all owned, leased, hired and non-owned autos or "any auto"
3. Professional Liability: $1,000,000 per claim
   Must be Occurrence form coverage
4. Workers Compensation:
   a. Not applicable to firms with less than three employees, or, to out-of-state firms unless hiring in New Mexico.
   b. When applicable, firm must provide the New Mexico statutory limits as follows:
      $1,000,000.00 – Bodily Injury: By Accident – Each Accident
      $1,000,000.00 – By Disease: Policy Limit
      $1,000,000.00 – By Disease: Each Employee
5. City of Las Cruces Named as Additionally Insured:
   a. This condition is required for General Liability and Auto Liability.
   b. 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.
6. Waiver of Subrogation:
   This condition is required on **all** coverage and must be stated on proof of insurance certificate.

7. Notification:
   The certificate must state that coverage afforded under the policies will not be canceled or allowed to expire until at least **30** days prior written notice has been given to the City.

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 PO Box 20000 Las Cruces, NM 88004 ATTENTION: Louis Grijalva, Project Development Administrator
With Copies to:	City Attorney Purchasing Manager
TO CONTRACTOR:	TME, Inc. 5800 Evergreen Drive Little Rock, AR 72205 ATTENTION: Rusty Mullen

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.

TME, Inc.

BY: _____
PRINCIPAL

DATE: 3/5/14

CITY OF LAS CRUCES

BY: Karen Medina
PURCHASING MANAGER

DATE: 3/6/14

APPROVED AS TO FORM: _____
CITY ATTORNEY

ATTACHMENT A

CITY OF LAS CRUCES
PROJECT ASSIGNMENT AGREEMENT
UNDER
MECHANICAL ENGINEERING CONTRACT NO. 13-14-308

PROJECT NAME

Pursuant to terms and conditions of PROFESSIONAL SERVICE AGREEMENT No. 13-14-308 dated month/day/year, between the City of Las Cruces (City) and name of company, (ENGINEER), as amended and incorporated herein by reference, the City and the ENGINEER hereby agree on this _____ day of _____, 20___, as follows:

1. The ENGINEER shall perform all work described in Scope of Work dated month/day/year, herein attached as EXHIBIT A, consisting, but not limited to, (provide brief scope of project work within 1-3 sentences)

2. The estimated completion date is _____ days after a Notice to Proceed is issued by the City to the ENGINEER.

3. In consideration for the satisfactory completion of the scope of work agreed to herein, the ENGINEER shall be compensated $_____, plus NMGRT. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the City being made within 30 days upon receipt of undisputed invoice.

ENGINEER

By: _____
Signature

_____
Print Name and Title

CITY OF LAS CRUCES

By: _____
Karen Medina
Purchasing Manager

Requisition No. Number