

REQUEST FOR QUALIFICATION

RFQ 2026-01

ON-CALL ENGINEERING SERVICES FOR THE CITY OF ELEPHANT BUTTE, NEW MEXICO

I. Introduction

A. Purpose of this Request for Qualifications

The City of Elephant Butte is soliciting sealed proposals that specialize in professional services based on the scope of work described below and in accordance with any federal, state, and local requirements. It is the intent of the City of Elephant Butte to execute an agreement with the most qualified Contractor that presents an economically viable proposal. All potential Offerors are to read, understand and accept the requirements of this Request for Qualification.

B. Project Description/Scope of Work

The scope of work is to provide services in accordance with "Attachment 3"

C. CHIEF PROCUREMENT OFFICER

1. Chief Procurement Officer is responsible for the conduct of this procurement whose name, address, telephone number, and e-mail address are listed below:

Name: Laura Whiteside, Chief Procurement Officer
Address: 103 Water Street, City of Elephant Butte, NM
87935
Telephone: (575) 744-4892
Email: l.whiteside@cityofebnm.gov

2. All deliveries of responses via express carrier must be addressed as follows:

Name: Laura Whiteside, CPO
Reference: RFQ 2026-01 On Call Engineering Services for the City of Elephant Butte
Address: 103 Water Street, City of Elephant Butte, NM 87935

3. Any inquiries or requests regarding this procurement should be submitted, in writing, to the Chief Procurement Officer, Laura Whiteside. Offerors may contact ONLY the Chief Procurement Officer regarding this procurement.

NOTE: DIRECT CONTACT WITH CITY ELECTED OFFICIALS OR CITY STAFF OTHER THAN PURCHASING STAFF REGARDING THIS RFQ WILL RENDER THE PROPOSAL NON-COMPLIANT.

II. Conditions Governing the Procurement

This section of the RFQ contains the schedule, description, and conditions governing the procurement.

A. SEQUENCE OF EVENTS

The Chief Procurement Officer will make every effort to adhere to the following schedule. However, if the Selection Committee makes a selection at the proposal Short Listing, an oral presentation will not apply.

Action	Responsible Party	Due Dates
Issue RFQ	City of Elephant Butte	June 10, 2026
Deadline to submit Written Questions	Potential Offerors	June 24, 2026
Addenda if necessary	City of Elephant Butte	June 30, 2026
Submission Proposals	Potential Offerors	July 10, 2026
Proposal Evaluation	Evaluation Committee	July 17, 2026
Oral Presentation if requested	City of Elephant Butte	TBD
Authorization of Award	City Commission	August 8, 2026

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A, above.

1. Issuance of RFQ

This RFQ is being issued on behalf of the City of Elephant Butte.

2. Distribution List Response Due

Potential Offerors can hand deliver, return by facsimile, email or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" accompanying this document, ATTACHMENT 2, to have their organization placed on the procurement distribution list. The form should be signed by an authorized organization representative, dated, and returned to the Chief Procurement Officer.

The procurement distribution list will be used to distribute written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFQ, and the potential organization name shall not appear on the distribution list.

3. Pre-Proposal Conference

A pre-proposal conference will not be held for this project.

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Chief Procurement Officer as to the intent or clarity of this RFQ until 3:00 PM Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Chief Procurement Officer as declared in Section II, Paragraph C.

5. Response to Written Questions

An Addendum will be issued in response to all written questions. It will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list and on the City's website. An e-mail copy will be sent to all Offerors that provide Acknowledgement of Receipt Forms described in II.B.2.

All offerors must acknowledge receipt of RFQ amendment(s) in writing as part of their proposal transmittal. A failure to acknowledge receipt of RFQ amendment(s) may cause rejection of the proposal.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE CHIEF PROCUREMENT OFFICER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON see Section II A. Sequence of Events. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Chief Procurement Officer at the address listed in Section I, Paragraph C2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **RFQ 2026-01 ON-CALL ENGINEERING SERVICES FOR THE CITY OF ELEPHANT BUTTE**. Proposals submitted by facsimile, or other electronic means, will not be accepted.

At all times, it shall be the offeror's responsibility to ensure its proposal is delivered to the City of Elephant Butte, by the proposal's due date and time. If the mail or delivery of said proposal is delayed beyond the deadline set for the proposal opening, proposals thus delayed will not be considered.

A public log will be kept of the names of all Offer organizations that submitted proposals. The contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Qualification has been awarded.

Proposals accepted by the City shall be valid for a period of ninety (90) days following the deadline for the proposal submittal.

8. Proposal Evaluation

A Selection Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Chief Procurement Officer may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. The Offerors SHALL NOT initiate discussions.

9. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation at a location to be determined as per schedule Section II, A Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Issuing Department and Chief Procurement Officer.

11. Contract Awards

The Contract will be finalized with the most advantageous Offeror. In the event that mutually agreeable terms cannot be reached within the time specified, the City of Elephant Butte reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process or reserves the right to cancel the award.

12. Protest Deadline

Any protest by an Offeror must be in conformance with Section 2-13-300 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the council’s approval to negotiate and will end at 5:00 pm MDT on the fifteenth (15) calendar day following that approval. Protests must be written and must include the name and address of the Protester and the solicitation number(s). It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Purchasing Manager. The protest must be delivered to the following address:

Name: Laura Whiteside
Title: Chief Procurement Officer
Address: 103 Water Street,
Elephant Butte, NM 87935
E-mail: l.whiteside@cityofebnm.gov

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

This procurement will be conducted in accordance with the City of Elephant Butte’s procurement regulations.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFQ shall be borne solely by the Offeror.

Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Subcontractors

The selected firm shall not assign, sublet, or transfer their interest in this agreement without prior written consent from the City. If such an assignment is allowed, the firm entering into this contract shall be ultimately responsible to ensure that the work is performed satisfactorily.

4. Consultants

Since the award is made on a quality-based evaluation process, replacement of consultants after award of and prior to the contract execution may cause the Offeror to be disqualified.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Agency personnel will not merge, collate, or assemble proposal materials.

6. Offerors Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Chief Procurement Officer and signed by the Offerors duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Disclosure of Proposal Contents

The proposals will be kept confidential until negotiations are completed by City of Elephant Butte. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Chief Procurement Officer will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offerors organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered, or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, City of Elephant Butte shall examine the Offerors request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

8. No Obligation

This procurement in no manner obligates the City of Elephant Butte any of its departments to the use of Offeror services until a valid written contract is awarded and approved by appropriate authorities.

9. Termination

This RFQ may be canceled at any time and any and all proposals may be rejected in whole or in part when Procurement Department determines such action to be in the best interest of the City of Elephant Butte.

10. Sufficient Appropriation

Any agreement or contract awarded as a result of this RFQ process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be effected by sending written notice to the offeror. The City's decision as to whether sufficient appropriations and authorizations are available will be accepted by the offeror as final.

11. Legal Review

The City requires that all Offerors agree to be bound by the General Requirements contained in this RFQ. Any Offeror concerns must be promptly brought in writing to the attention of the Chief Procurement Officer.

12. Governing Law

This procurement and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

13. Basis for Proposal

Only information supplied, in writing, by the City of Elephant Butte through the Chief Procurement Officer or in this RFQ should be used as the basis for the preparation of Offeror proposals.

14. Contract Terms and Conditions

The City of Elephant Butte reserves the right to negotiate with a successful Offeror provision in addition to those contained in this solicitation. The contents of this solicitation, as revised and/or supplemented, and the successful Offerors proposal will be incorporated into and become part of the contract.

Should an Offeror object to any of the City of Elephant Butte's terms and conditions, as contained in this Section, that Offeror must propose specific alternative language. The City of Elephant Butte may or may not accept the alternative language. General references to the Offerors terms and conditions or attempts at complete substitutions are not acceptable to the City of Elephant Butte and will result in disqualification of the Offerors proposal.

15. Offerors Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the City of Elephant Butte. Not to be included in page count.

16. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the City of Elephant Butte and the Offeror and shall not be deemed an opportunity to amend the Offerors proposal.

17. Offeror Qualifications

The Selection Committee may make such investigations, as necessary, to determine the ability of the potential Offeror to adhere to the requirements specified within this RFQ. Right to

18. Waive Minor Irregularities

The Chief Procurement Officer reserves the right to waive minor irregularities. The Chief Procurement Officer also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Chief Procurement Officer.

19. Change in Representatives

The City of Elephant Butte reserves the right to require a change in offeror representatives if the assigned representatives are not, in the opinion of the City of Elephant Butte, meeting its needs adequately.

20. Notice - Bribery and Kickbacks

New Mexico criminal statues imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. City of Elephant Butte Rights

The City of Elephant Butte in agreement with the Chief Procurement Officer reserves the right to accept all or a portion of a potential Offerors proposal.

This procurement in no manner obligates the City of Elephant Butte or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

22. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors must secure from the Chief Procurement Officer and the Owner written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offerors proposal.

23. Ownership of Proposals

All documents submitted in response to the RFQ shall become property of the City of Elephant Butte.

24. Confidentiality

Any confidential information provided to, or developed by, the firm in the performance of services under this contract shall be kept confidential and shall not be made available to any individual or organization by the firm without the prior written approval of the City Council.

The Offeror agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the City Council's written permission. By confidential information, we mean the software and related materials, including enhancements, which are designated as proprietary and confidential trade secrets of the licensor and licensee of the software. Firm(s) will not remove any copyright, trademark, and other proprietary rights notice from the licensed software or related materials.

25. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

26. Use of Electronic Versions of this RFQ

This solicitation is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the solicitation. In the event of conflict between a version of the solicitation in the Offerors possession and the version maintained by the City of Elephant Butte, the version maintained by the City of Elephant Butte shall govern.

27. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (See Attachment 1) as a part of their proposal. This requirement applies regardless of whether a covered contribution was made or not made. **Failure to complete and return the signed unaltered form will result in disqualification.**

28. Conflict of Interest; Governmental Conduct Act.

The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Offeror certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

29. Utilization of Proposal

The City of Elephant Butte may enter into cooperative purchasing agreements with other political subdivisions or other governmental entities of the State of New Mexico in order to conserve resources, reduce procurement costs, and improve the timely acquisition of supplies, equipment and services. The Respondent to whom a contract is awarded under this solicitation may be requested by other parties to such a cooperative purchasing agreement to extend to those parties the right to purchase supplies, equipment and services provided by the Respondent(s) under its contract with the City of Elephant Butte, pursuant to terms and conditions stated therein.

30. Award of Contract

The award shall be made to the responsible Offeror whose proposal is most advantageous to the City of Elephant Butte taking into consideration the evaluation factors set forth in this solicitation. After initial ranking of the proposals, at the City's sole option, the City may decide to interview the top three ranked firms to develop final rankings or may consider the rankings based on the proposals as final.

The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

31. Registration

All work shall be under the direction of a Professional Engineer registered by the State of New Mexico. (If Applicable)

32. Insurance

The firm must hold errors and omissions/professional liability insurance of at least \$1,000,000.

III RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFQ.

B. PROPOSAL FORMAT

1. Proposal Organization

Offerors shall submit **THREE (3) hard copies and ONE (1) electronic copy** of their proposal to the location specified in this RFQ, on or before the closing date and time for receipt of proposals. Proposals shall follow the format as described below:

- A maximum of **TWENTY (20)** pages of 8.5“ by 11” paper, including title, index, and other required information, not including front and back covers, transmittal letter, Veteran’s Certification, Resident Business Certificate, or Campaign Contribution Disclosure Form.
- Bound on left-hand margin.
- Minimum font size 10.
- Front cover with RFQ number, project title, date, and firm’s name (not included in page limit).
- Back cover without any text (not included in page limit).
- The proposal must be organized and indexed in the following format and order and must contain, as a minimum, all listed items in the sequence indicated:
 1. Letter of transmittal, not to exceed one page (not included in page limit). If applicable, will include **written acknowledgment of receipt of RFQ amendment(s)**;
 2. Responses to the seven (7) Selection Criteria items, addressing all requested information, in the order presented in this RFQ above. Provide the Selection Criteria title at the beginning of each response so that it is clear what proposal text is addressing each Selection Criteria item.
- Offerors shall complete Attachment 1 – Campaign Contribution Disclosure Form and submit with each copy of the proposal (not included in page count).
- To preclude possible errors and/or misinterpretations, the proposal must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Offeror prior to scheduled proposal submittal deadline. Failure to do so may be just cause for rejection of proposal.
- Proposals shall be delivered in sealed envelopes which shall be clearly marked “**RFQ 2026-01 On Call Engineering Services for the City of Elephant Butte**” on the outside of the envelope. Proposals shall be signed by a representative authorized to bind the company.

IV. EVALUATION

A. CRITERIA

Proposals must address each of the following criteria. Each proposal may be awarded points up to the amount listed.

1. Specialized Design and Technical Competence Available Points = 30

Offerors will provide the firm's and personnel's experience and technical competence related to the scope of this project. Include familiarity with applicable regulations and permits. Include qualifications for the key personnel who will be assigned to this specific project and summaries of their relative experience. Include information that is relevant to delivery of this project.

2. Capacity and Capability Available Points = 20

Offerors will provide the firm's current capacity and capability (resources) available to perform services specifically for this project, including specialized services that may be required. Include proposed schedule to perform the work with sufficient detail to understand the timing for delivery of the project deliverables. Include information about other projects that key personnel will be working on during this project and the associated completion schedules as compared to the progress of this project. Address the firm's potential to effectively replace key personnel, if necessary. Note that Firm Capacity identified that would not be utilized specifically on this project will not be credited. The "capacity and capability" must directly apply to delivery of this particular project.

3. Past Record of Performance Available Points = 20

Offerors will provide the past record of performance on contracts for delivery of work relevant to this project scope. An emphasis will be placed on the firm's demonstrated ability to meet project schedules and provide a quality product. Include experience and successful project delivery history of the Project Manager responsible for delivery of this project scope on similar projects. As part of the response, firms will provide a list of four (4) projects of similar scope for reference. The reference projects will include a listing of personnel that worked on the reference projects that will also work on this project. A minimum of two (2) references will be provided for the Project Manager who will be responsible for delivery of this project, which may be included in the four (4) reference projects or may be separate reference projects in addition to the four (4) required reference projects. For all reference projects, including those for the Project Manager, list the name of the entity for which the reference project was performed, a brief description of the project, amount and time of initial construction contract award as compared to final contract price and time for completion, name of contact person with the entity who can discuss your firm's or personnel's role and performance. Provide current telephone numbers for which to contact these references.

4. Approach to Providing Services Available Points = 15

Offerors will describe their approach to managing and providing the scope of this project successfully. Include the internal Quality Assurance/Quality Control (QA/QC) processes to be utilized on this project. Describe the firm's approach to communicating effectively with the City of Elephant Butte to facilitate successful delivery of this project.

5. Amount of design work that will be produced by a New Mexico business within this state
Available Points = 5

Firm will indicate the approximate value of work that will be produced by New Mexico business (es) within this state. Points will be determined as follows:

<u>Estimated Percentage of Work</u>	<u>Points</u>
100%	7
50%	3
Less than 50%	0

B. EVALUATION PROCESS:

1. All offeror proposals will be reviewed for compliance with the mandatory requirements as stated within the RFQ. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Chief Procurement Officer may contact the offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors in Section IV that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors may be asked to present oral presentation. Points awarded from oral presentations will be added to the previously assigned points to attain final scores.
5. The responsible Offeror (s) whose proposals is most advantageous to the City, taking into consideration the evaluation factors in Section IV, will be recommended for Contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

ATTACHMENT 1

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a Contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or local public body during the two (2) years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable Public Official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or un-reimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family Member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the Procurement Process” means the time period commencing with the public notice of the Request for Proposals and ending with the award of the Contract or the cancellation of the Request for Proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective Contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Codes or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a Prospective Contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contributions(s): _____

Signature

Date

Title

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

ATTACHMENT 2

ACKNOWLEDGMENT OF RECEIPT FORM

**REQUEST FOR PROPOSALS
Qualification Based**

Acknowledging receipt of this Request for Proposal, the undersigned agrees that he/she has received a complete copy of acknowledged **RFQ 2026-01 On Call Engineering Services for the City of Elephant Butte.**

The acknowledgment of receipt should be signed and returned to the Chief Procurement Officer. Only potential Offerors who elect to return this form completed to submit a proposal will receive copies of all Offeror written questions and the City's written responses to those questions in the form of an addendum.

COMPANY: _____

REPRESENTED BY: _____

TITLE: _____ **PHONE NO.:** _____

E-MAIL: _____ **FAX NO.:** _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP CODE:** _____

SIGNATURE: _____ **DATE:** _____

This name and address will be used for all correspondence related to the Request for Proposals.

Company does/does not (circle one) intend to respond to this Request for Proposals.

Acknowledgments must be delivered to the Chief Procurement Officer at the following address:

Laura Whiteside
Chief Procurement Officer
103 Water Street, City of
Elephant Butte, NM 87935
lwhiteside@cityofebnm.go

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ATTACHMENT 3

SCOPE OF WORK

RFQ NO. 2026-01

On Call Engineering Services for the City of Elephant Butte.

The City of Elephant Butte seeks the services of qualified consulting engineering firms to provide On-call Engineering Services on various projects throughout the City of Elephant Butte. As individual projects are identified, the selected consultant shall provide a scope of work and cost proposal to provide design services as described herein. As requested, the selected consultant shall provide construction plans, technical specifications, bid and construction phase support, and other related services. All work shall be in accordance with all applicable local, state, and federal rules, regulations, and standards. The professional engineering services that may be requested on an as-needed basis may include, but are not limited to, the following:

- City projects include but are not limited to water transmission and distribution, wastewater collection and conveyance, roadways and sidewalks, drainage facilities, site work, land surveying, and other services included in Exhibit A.
- Meet with City staff as required to discuss operational considerations, staff requirements, system preferences, prioritization of the project scope, and coordinate the project's engineering design.
- Provide the necessary field survey services to determine the existing field conditions, including all utilities and surface features, to the maximum extent possible.
- Perform the necessary testing to determine the existing site conditions and proper methods of construction and demolition.
- Provide alternative design concepts for the implementation of the project.
- At the direction of City staff, the consultant may be required to attend and participate in public, City Council, board, commission, and other stakeholder meetings.
- Provide Opinion of Probable Construction Costs at various stages throughout the design.
- Provide the design to the City at progress intervals in appropriate, requested formats (may include hard copy, .pdf, and .dwg)
- Provide detailed plans and specifications for the project to be used in the award of a construction contract or construction by City staff.
- Other related services to design the project and prepare for the bid phase.

- The consultant shall prepare documents for and coordinate with other utilities and associated local, state, and federal agencies (including NMDOT, NMED, EPA, USDA, UPRR, etc.) as required for the approval of all necessary permits.
- Provide lump sum and unit price bid quantities on the City bid form format for use in bid documents.
- Provide bid sets of the contract, technical specifications, plans, and any other necessary documents in hard copy and digital format.
- Attend the pre-bid conference and prepare responses to questions and addenda as necessary.
- Research qualifications and references of apparent responsible low bidder, prepare bid tabulation and provide a letter of recommendation for contract award.
- Prepare necessary change order plans and specifications, and documentation.
- Review and make recommendations on Contractor change order requests to the City.
- Attend progress meetings and monitor construction schedule.
- Provide an appropriate level of observation and Owner representation during construction.
- Observe and assist in project performance tests and initial operations as needed.
- Prepare record drawings from information submitted by the contractor in accordance with City standards.
- Assist City Staff with reviewing development submittals for compliance with City codes and ordinances and provide a comment letter. Submittals may include but are not limited to construction plans, stormwater management plans, traffic impact analysis reports, and opinions of probable cost.
- When requested Act as the authorized representative Resident Project Representative (RPR) of the City assigned to assist the City at the Site of a Specific Project during the Construction Phase. The duties and responsibilities of the RPR will be defined for each project. The RPR may provide full-time representation or may provide representation to a lesser degree.
- City staff will request and approve the proposed schedule for each individual project. Projects may need to be completed on an expedited schedule basis. Flexibility may be required to meet the City's needs in a timely manner.
- The total estimated professional services fee will be determined on a project-by-project basis.

Please provide notes for each service your firm is submitting on detailing specialties related to the service. Additionally, if your firm provides services not included on the list, please provide a list with details for the service.

Exhibit A

RFQ 2026-01 On Call Engineering Services for the City of Elephant Butte.

It is not a requirement that firms be able to provide all the services outlined below. The services required will vary depending upon the scope of services requested for a particular project.

List of Services	Service Offered	Service Not Offered
Water Transmission and Distribution Engineering	<input type="checkbox"/>	<input type="checkbox"/>
Reclaimed Water Collection and Distribution Engineering	<input type="checkbox"/>	<input type="checkbox"/>
Wastewater Collection and Conveyance Engineering	<input type="checkbox"/>	<input type="checkbox"/>
RTU/PLC SCADA Telemetry Design	<input type="checkbox"/>	<input type="checkbox"/>
Water Plant Design	<input type="checkbox"/>	<input type="checkbox"/>
Wastewater Treatment Plant Design	<input type="checkbox"/>	<input type="checkbox"/>
Design for Rehabilitation of Sanitary Sewer Collection Systems	<input type="checkbox"/>	<input type="checkbox"/>
Design for Rehabilitation of Water Distribution Systems	<input type="checkbox"/>	<input type="checkbox"/>
Drainage and Stormwater Engineering Services	<input type="checkbox"/>	<input type="checkbox"/>
Design for Rehabilitation of Wastewater Treatment Plants	<input type="checkbox"/>	<input type="checkbox"/>
Electrical Engineering	<input type="checkbox"/>	<input type="checkbox"/>
Civil Engineering	<input type="checkbox"/>	<input type="checkbox"/>
Street Maintenance/Rehabilitation Design	<input type="checkbox"/>	<input type="checkbox"/>
Pavement Management	<input type="checkbox"/>	<input type="checkbox"/>
General Site Design	<input type="checkbox"/>	<input type="checkbox"/>
Transportation and Traffic Engineering	<input type="checkbox"/>	<input type="checkbox"/>
Review of Civil Construction Plans	<input type="checkbox"/>	<input type="checkbox"/>
Review of Storm Water Management Plans	<input type="checkbox"/>	<input type="checkbox"/>
Land Surveying	<input type="checkbox"/>	<input type="checkbox"/>
Geotechnical Engineering Services	<input type="checkbox"/>	<input type="checkbox"/>
Structural Engineering Services	<input type="checkbox"/>	<input type="checkbox"/>
GIS Mapping Services	<input type="checkbox"/>	<input type="checkbox"/>
ROW/Easement Acquisition Services	<input type="checkbox"/>	<input type="checkbox"/>
Grant Acquisitions and Federal/State Funding Administration	<input type="checkbox"/>	<input type="checkbox"/>
Grant Writing/Application Administration	<input type="checkbox"/>	<input type="checkbox"/>
Resident Project Representative	<input type="checkbox"/>	<input type="checkbox"/>

Infrastructure Construction Inspection and Training	<input type="checkbox"/>	<input type="checkbox"/>
Inspection of Stormwater Facilities	<input type="checkbox"/>	<input type="checkbox"/>
Capital Improvement Projects (CIP) Management	<input type="checkbox"/>	<input type="checkbox"/>
Sidewalk/Trail Design	<input type="checkbox"/>	<input type="checkbox"/>
Water System Modeling	<input type="checkbox"/>	<input type="checkbox"/>
Federal and State-Mandated Permitting Administration	<input type="checkbox"/>	<input type="checkbox"/>
Architectural Design Services	<input type="checkbox"/>	<input type="checkbox"/>
Landscape Engineering	<input type="checkbox"/>	<input type="checkbox"/>
CAD Services	<input type="checkbox"/>	<input type="checkbox"/>
Lighting Design	<input type="checkbox"/>	<input type="checkbox"/>
Traffic Control Plan Development and Review	<input type="checkbox"/>	<input type="checkbox"/>
Project Management	<input type="checkbox"/>	<input type="checkbox"/>
Master Planning	<input type="checkbox"/>	<input type="checkbox"/>
Project Development	<input type="checkbox"/>	<input type="checkbox"/>
Subsurface Utility Engineering	<input type="checkbox"/>	<input type="checkbox"/>
Cost Estimating	<input type="checkbox"/>	<input type="checkbox"/>
Constructability Reviews	<input type="checkbox"/>	<input type="checkbox"/>
ADA Compliance Review, Inspection, and Training	<input type="checkbox"/>	<input type="checkbox"/>

Company Name

Address

City/State/Zip Code

Phone/Fax/Email

Authorized Signature

Print Name and Title

DRAFT

A. ON-CALL ENGINEERING SERVICES AGREEMENT

THIS ON-CALL ENGINEERING SERVICES AGREEMENT made this _____ day of _____, 2026, by and between the CITY of Elephant Butte, a New Mexico municipal corporation (the "CITY"), and _____ (the "ENGINEER").

WHEREAS, CITY is in need of On-Call Engineering Services ("Services"), pursuant to the requirements set forth in RFQ No. 2026-01;

WHEREAS the ENGINEER represents that it is qualified to provide the services as required by this Agreement and is duly licensed pursuant to the Engineering and Surveying Practice Act (61-23-1 NMSA 1978).

NOW, THEREFORE, CITY and ENGINEER agree as follows:

1. Scope of Services. Upon execution of this Agreement and subsequent Task Orders by both parties, and upon receipt of written authorization by CITY, ENGINEER, to the satisfaction of ENGINEER, shall perform the Services set forth in each Task Order. The Services shall be assigned to ENGINEER by CITY for the various projects as planned and developed by the CITY. Each Task Order shall specify the Services to be performed, the time schedules for completion of the Task Order and completion of all tasks (Tasks) within the Task Order, and the cost, including fees, costs and expenses, both direct and indirect, of the Task Order, but shall otherwise be governed by the terms and conditions of this Agreement, as modified by the individual Task Orders. Task Orders shall be in writing, signed by both parties in advance, and shall be attached to this Agreement as consecutive exhibits beginning with Task Order 1.
2. Method of Performing Services. Subject to the terms and conditions of this Agreement, ENGINEER may determine the method, details, and means of performing the services described herein.
3. Standard of Performance. ENGINEER agrees to undertake and complete these services to conclusion, using that standard of care, skill, and diligence normally provided by a professional person in performance of similar consulting services.
4. Nonexclusive Services. This Agreement shall not be interpreted to prevent or preclude ENGINEER from rendering any services for ENGINEER's own account or to any other person or entity as ENGINEER in its sole discretion shall determine. ENGINEER agrees that performing such services will not materially interfere with services to be performed for the CITY.
5. Coordination of Services. All services are to be coordinated with the City Manager or designee and shall be performed under the general direction of the Utilities Department Director or designee.
6. Correction of Errors. ENGINEER agrees to correct, at its expense, all errors which may be disclosed during review of ENGINEER's services. Should ENGINEER fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be paid by ENGINEER.
7. Time for Performance. All services performed under this Agreement shall be completed pursuant to the schedule provided in the Task Order. CITY agrees to amend the performance termination date whenever ENGINEER is delayed by action or inaction of CITY and ENGINEER promptly notifies CITY of such delays.
8. Permits, Licenses, Certificates. ENGINEER, at ENGINEER's sole expense, shall obtain and maintain during the term of this Agreement, all permits, licenses, and certificates required in connection with the performance of services under this Agreement.
9. CITY's Responsibility. CITY shall cooperate with ENGINEER as may be reasonably necessary for ENGINEER to perform its services. CITY agrees to provide direction to ENGINEER as requested regarding particular project requirements.

10. Term of Agreement. The term of this Master Agreement shall be for one (1) year from the Effective Date, during which period individual Task Orders may be initiated, unless terminated sooner by CITY as provided herein. The Agreement shall be extended annually upon approval of both parties. The term of this Agreement, including all extensions, shall not exceed four (4) calendar years. Task Orders may allow for completion of work after the term of the Master Agreement.

B. SECTION A - GENERAL CONDITIONS

1 GENERAL

- 1.1 This Agreement, together with the exhibits identified below, represents the entire and integrated Agreement between the CITY and the ENGINEER for the Project and supersedes all prior negotiations, representations, or Agreements, either written or oral. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. In the event any provisions of this Agreement or any subsequent addendum shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General Conditions of this Agreement supersede any conflicting SPECIAL PROVISIONS.
- 1.2 CITY is relying upon the skill and expert knowledge of ENGINEER to furnish CITY with an accurate work product within the allocated budget.
- 1.3 Unless expressly provided otherwise in this Agreement: (1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by CITY or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them; and (2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of CITY and ENGINEER and not for the benefit of any other party.

2 THE ENGINEER'S RESPONSIBILITIES

- 2.1 The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all reports and other services furnished by the ENGINEER under this Agreement. The ENGINEER shall keep the CITY informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the reports and other services provided by ENGINEER under terms of this Agreement.
- 2.2 The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement in accordance with this Agreement.
- 2.3 CITY's review of any documents prepared by ENGINEER is only general in nature, and its obligation to approve and accept the work in no way relieves ENGINEER of responsibility and liability for any specific deficiencies in the work products. The CITY's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement. Further, approval by CITY is not an assumption by CITY of responsibility for any defect in the work of ENGINEER, its agents or employees.
- 2.4 Throughout the performance of the project, ENGINEER agrees to perform those services required to correct errors or omissions without additional cost to CITY. ENGINEER shall respond in twenty-four (24) clock hours to any questions and/or inquiries concerning the project, unless otherwise agreed to by CITY.
- 2.5 The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the CITY caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the CITY or CITY-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.
- 2.6 The standard of care of all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with ENGINEER's services.
- 2.7 Audits and Access to Records The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The books, records, documents, and other evidence shall be maintained and made available by the ENGINEER during performance of services under this

Agreement and for three (3) years from the date of final payment to the ENGINEER for the Project. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

2.8 Equal Employment Opportunity In providing services under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. ENGINEER shall take affirmative action to ensure that applicants for employment are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ENGINEER shall post in conspicuous places, available to employees and applicants for employment notices to be provided by the government setting forth the provisions of this nondiscrimination clause. ENGINEER shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age, or national origin. ENGINEER shall incorporate the foregoing requirements of this section in all of its subcontracts for work to be performed on this Project.

2.9 The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the CITY may have against the ENGINEER for faulty materials, equipment, or work.

3 THE CITY'S RESPONSIBILITIES

3.1 The CITY shall designate in writing a person authorized to act as the CITY's representative. The CITY or its representative shall receive and examine documents submitted by the ENGINEER, review all studies, reports, specifications, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto within a reasonable time so as not to unreasonably delay the work of ENGINEER. Any review of studies, reports, specifications, proposals, and other documents by CITY shall not relieve ENGINEER of the responsibility for providing CITY with complete and accurate documents.

3.2 The CITY shall provide to the ENGINEER full and free access to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

3.3 The CITY may make and retain copies of Documents for information and reference in connection with use on the Project by CITY. Such Documents are not intended or represented to be suitable for reuse by CITY or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at CITY's sole risk and without liability or legal exposure to ENGINEER. Any verification or adaptation as stated above, will entitle ENGINEER to further compensation at rates to be agreed upon by CITY and ENGINEER.

3.4 The CITY shall obtain approval of all governmental agencies having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.

4 CHANGES

4.1 The CITY may at any time, by written order, make changes within the general scope of the Agreement in the services or work to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the services or work under this Agreement, whether or not changed by the order, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the Agreement accordingly.

4.2 The ENGINEER must submit any "request for equitable adjustment", hereafter referred to as "claim", under this clause within thirty (30) days from the date of receipt of the written order. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the ENGINEER from proceeding with the Agreement.

4.3 Notwithstanding the terms and conditions of paragraphs 1 and 2 above, the maximum amount payable for this Agreement, shall not be increased or considered to be increased except by specific written supplement to this Agreement.

5 TERMINATION OF AGREEMENT

5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided

that no such termination may be effected unless the other party is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

- 5.2 This Agreement may be terminated in whole or in part in writing by the CITY for its convenience, provided that the ENGINEER is given (1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the CITY prior to termination.
- 5.3 If termination for default is effected by the CITY, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the CITY because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the CITY effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.
- 5.4 Upon receipt of a termination action under paragraphs 5.1 or 5.2 above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.
- 5.5 Upon termination under paragraphs 5.1 or 5.2 above, the CITY may take over the work and may award another party an Agreement to complete the work under this Agreement.
- 5.6 If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the Agreement price shall be made as provided in paragraph 5.3 of this clause.

6 PAYMENTS TO THE ENGINEER

- 6.1 The ENGINEER will submit to the CITY for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the CITY. Such invoices are limited to no more than one per month. Requests for payment will be submitted to CITY no later than the 10th of each month. Compensation will be based on the Fee Proposal attached as "Exhibit A" and the costs, including fees and expenses, both direct and indirect, of each executed Task Order.
- 6.2 The CITY shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If CITY contests an invoice, CITY may withhold only that portion so contested, and must pay the undisputed portion.
- 6.3 Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the CITY's claims against the ENGINEER under this Agreement. In the event of a dispute in respect to fees for services or other amount as per an invoice submitted by ENGINEER, the parties shall resolve the dispute as expeditiously as possible.
- 6.4 If CITY fails to make any payment due ENGINEER within forty-five (45) calendar days after CITY's receipt of ENGINEER's invoice, the amount due ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. In addition, after ten (10) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. CITY waives any and all claims against ENGINEER for any such suspension.

7 PERIOD OF SERVICE

7.1 PROGRESS AND COMPLETION

- 7.2 By executing the Agreement, ENGINEER confirms that the Contract Time(s) is (are) reasonable periods for performing each phase of the Work.
- 7.3 The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
- 7.4 The CITY shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and

then is not able to achieve intended accelerated schedule regardless of the reason.

- 7.5 If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or neglect of the CITY, changes in the Work as directed by the CITY in writing, or other causes beyond the ENGINEER'S control, then the Contract/Task Order Time may be extended by CITY per Section 4, paragraph 4.1 of this Agreement. Extensions of time not associated with modifications or change to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply toward liquidated damages.
- 7.6 The ENGINEER shall promptly notify CITY in writing of any conditions that may delay delivery of work beyond the Contract Time.
- 7.7 CITY shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER'S performance of its Services.

8 CONTRACT TIME

- 8.1 The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract/Task Order Time. It is expressly understood and agreed, by and between ENGINEER and the CITY, that the Contract/Task Order Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. ENGINEER agrees to promptly notify CITY of delays in completing the services under this Agreement that are beyond ENGINEER's control and for which a Contract/Task Order Time extension will be requested.

9 SUBCONTRACTS

Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The CITY must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

10 INSURANCE

ENGINEER shall secure and maintain such insurance as shall protect ENGINEER and firm from claims under the Worker's Compensation Act and such comprehensive general liability and automobile insurance as will protect the CITY and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount at least equal to that required by the New Mexico Tort Claims Act. ENGINEER shall procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the CITY a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the CITY. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

11 OWNERSHIP OF DOCUMENTS

Tracings, drawings, studies, deliverables, plans, specifications, original survey field notes, maps, diskettes, and other recordations prepared or obtained under the terms of this Agreement shall be delivered to and become the property of CITY prior to payment to ENGINEER. If this Agreement is terminated at any time for any reason prior to payment to ENGINEER, all tracings, drawings, studies, deliverables, plans, specifications, original survey field notes, maps, electronic media, and other original recordations prepared or obtained under the terms of this Agreement shall upon termination be delivered in Microsoft product and/or Autodesk product format on CD-ROM or flash drive within fourteen (14) calendar days after ENGINEER's receipt of a termination notice under paragraph 5 above, and shall become the property of CITY prior to payment to ENGINEER as provided in paragraph 5.4. Sketches, charts, computations, and other data prepared for and under this Agreement shall be made available to CITY upon request and without restriction on their use, or further compensation to ENGINEER. CITY in requiring ownership of the above listed documents hereby releases ENGINEER from all responsibility in connection with their use on any project other than their use on this Project.

12 ENVIRONMENTAL CONDITION OF SITE(S)

- 12.1 CITY has disclosed to ENGINEER in writing the existence of all known and suspected Asbestos, PCBs,

Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site(s), including type, quantity, and location.

- 12.2 CITY represents to ENGINEER that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to ENGINEER, exist at the Site(s).
- 12.3 If ENGINEER encounters an undisclosed Constituent of Concern, then ENGINEER shall notify (1) CITY and (2) appropriate governmental officials if ENGINEER reasonably concludes that doing so is required by applicable Laws or Regulations.
- 12.4 It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until CITY: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- 12.5 If the presence at the Site(s) of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 calendar days notice.
- 12.6 CITY acknowledges that ENGINEER is performing professional services for CITY and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

13 MUTUAL WAIVER

To the fullest extent permitted by law, CITY and ENGINEER waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, punitive, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Services.

13.1 Force Majeure - Neither CITY or ENGINEER shall be considered in default of any obligations under this Agreement to the extent that the performance thereof is delayed or rendered impossible by acts of God or a public enemy, expropriation, or confiscation of facilities by governmental or military authorities, changes in laws, war, acts of terrorism, rebellion, sabotage or riots, fire, storm, flood, unusually severe weather that could not reasonably have been anticipated, explosion, strikes, walkouts, or other industrial disturbances, or any other cause, whether of the same or of a similar nature, which is beyond the reasonable control of such Party.

14 INDEPENDENT CONTRACTOR

ENGINEER will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by ENGINEER's performance of the Services.

15 DISPUTE RESOLUTIONS

- 15.1 The CITY and ENGINEER agree to actively negotiate in good faith to resolve any disputes between them. Any unresolved disputes which may arise from this Agreement shall be heard and settled within Sierra County, New Mexico.
- 15.2 All claims, disputes and other matters shall be governed by the laws of the State of New Mexico. It is hereby agreed that the parties will attempt in good faith to resolve promptly through negotiation any disputes between CITY and ENGINEER relating to this Agreement. For such purpose, either party may request the other to meet within seven (7) days at a mutually agreed upon time and place. If the parties are not able to conduct a meeting within said seven (7) day period, or a dispute cannot be settled through direct negotiations within thirty (30) days after their first negotiating meeting, then either party may refer the dispute for mandatory non-binding mediation in accordance with the American Arbitration Association procedures. Such mediation shall occur in Elephant Butte, New Mexico, or in such other places the parties may mutually agree upon. In the event of a dispute the CITY and ENGINEER shall continue to perform in accordance with this Agreement, without interruption or delay. Agreements reached in mediation shall be enforceable in any court of

competent jurisdiction as settlement Agreements. The mediation proceedings shall be confidential and shall be privileged from disclosure in any subsequent proceedings as settlement discussions. Each party shall pay an equal, pro rata share of the mediation fees and costs and of the mediator's fees and costs. In the event either party fails to proceed with mandatory mediation, the other party is entitled to costs of suit, including reasonable attorney's fees, for having to compel mediation.

- 15.3 If direct negotiations and mediation fail to resolve the dispute, then either party may submit a written demand for arbitration with the other party and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the parties have failed to resolve the dispute through direct negotiations and mediation. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on any claim, dispute or other matter in question would be barred by the applicable statutes or limitations. If submitted to arbitration, the award rendered by the arbitrator or arbitrators shall be non-binding. Each party shall be responsible for its share of the arbitration fees in accordance with the applicable Rules of Arbitration.
- 15.4 Except for provisional remedies, no party may seek relief through any judicial or non-judicial forum until good faith negotiations and mediation have been pursued. Submission for mediation may be made concurrently with the filing of a complaint or other appropriate action or proceeding for relief, but, in such event, mediation shall proceed in advance of legal, equitable or other proceedings (other than those associated with provisional remedies) which shall be stayed pending mediation for a period not exceeding sixty (60) calendar days from the date of filing and service of the complaint or other action for relief, unless stayed for a longer period by mutual Agreement of the parties or by court order.
- 15.5 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the CITY, ENGINEER, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. Any Agreement to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

16 OBLIGATIONS OF ENGINEER WITH RESPECT TO CERTAIN THIRD PARTY RELATIONSHIPS

ENGINEER shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project with respect to which assistance is being provided under this Agreement. Subconsultants shall not be employed without prior approval by CITY.

17 INTEREST-OF MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIAL

No member of the governing body of CITY, and no other public official of CITY who exercises any function or responsibility with respect to the Project during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project assisted under this Agreement.

18 SUCCESSORS AND ASSIGNS

No member of the governing body of CITY, and no other public official of CITY who exercises any function or responsibility with respect to the Project during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project assisted under this Agreement.

19 COMPLIANCE WITH LAWS

ENGINEER shall comply with all applicable federal, state, and local laws and ordinances applicable to the work covered hereunder.

20 LAW GOVERNING AGREEMENT

For the purpose of determining place of Agreement and the law governing same, this Agreement is entered into in the City of Elephant Butte , County of Sierra, State of New Mexico, and shall be governed by the laws of the State of New Mexico. Venue shall be the County of Sierra, New Mexico.

21 NOTICES

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other shall be in writing and shall be either personally delivered or sent by certified mail, return receipt, to the following addresses:

To the City:
City of Elephant Butte
103 Water St.
Elephant Butte, NM
87935

To the Engineer:

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, the Agreement.

ENGINEER

By: _____

NM Taxpayer Identification Number:
Federal Taxpayer Identification Number:

CITY OF Elephant Butte NEW MEXICO
a New Mexico municipal corporation

By: _____
Laura Whiteside, Interim City Manager

ATTEST:

APPROVED AS TO FORM:

Lindsey Cobleigh, City Clerk

Ben Young, City Attorney