

**CITY OF SUTTER CREEK  
AGREEMENT FOR FEDERALLY FUNDED  
ENGINEERING CONSULTING SERVICES**

This Agreement is made and entered into as of **September 1, 2024** by and between the City of Sutter Creek, a California municipal corporation ("City") and Weber, Ghio and Associates, Inc., ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement

**RECITALS**

A. Consultant desires to perform and assume responsibility for the provisions of certain federally funded professional engineering services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing engineering services to public clients, is licensed in the State of California, and is familiar with the City.

B. In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

C. Consultant agrees that it is satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Agreement is based on such independent investigation and research.

D. City must utilize a specific rate of compensation type contract for contracting for Consultant's services because it is not possible at the time of execution of this Agreement to estimate the extent or duration of the services needed by the City or to estimate costs with any reasonable degree of accuracy due to the unknown projects that City may engage in during the term of this Agreement.

E. City desires to engage Consultant to render such services, on a task order basis, for federally funded City engineering services for the administration and delivery of state and federally funded projects.

**AGREEMENT**

**1. Scope of Services and Term**

1.1 General Scope of Services – Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering consulting services necessary for the City's projects ("Services"). The Services are more particularly described in Exhibit A attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

1.2 Term – The term of this Agreement is three years and shall go into effect on September

1, 2024. The Agreement may be extended by written amendment, but in no case shall the term of this Agreement exceed five (5) years. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. The Parties may, by mutual written consent, extend the term of this Agreement if necessary to complete the Services. Consultant's performance may be evaluated and reviewed by City on an annual basis. A copy of the evaluation will be sent to Consultant for comments. If performed, the evaluation, together with the comments shall be retained as part of the Agreement record.

## **2. Schedule of Values**

2.1 Schedule of Services – Consultant shall perform the Services expeditiously, within the term of this Agreement and with due and reasonable diligence consistent with sound professional practices and in accordance with the standard of care set forth in Section 5.5. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

2.2 Extension of Time – Consultant may, for good cause, request extensions of time to perform the Services required hereunder. Such extensions shall be authorized in advance by the City in writing and shall be incorporated in written amendments to this Agreement.

2.3 Period of Performance – Consultant shall perform and complete all Services under this Agreement within the term set forth in Sections 1.2 and 2.1 above as it may be extended pursuant to Section 2.2 ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or project milestones described in the Exhibits attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

## **3. Fees and Payments**

### **3.1 Compensation**

#### **3.1.1 Federal Compensation Requirements**

3.1.1.1 Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Rate Schedule (Exhibit B). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fees. These rates are not adjustable for the performance period set forth in this Agreement.

3.1.1.2 In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the Federal Cost Proposal and identified in the Federal Cost Proposal and in the executed task order.

3.1.1.3 Specific projects will be assigned to Consultant through issuance of task orders.

3.1.1.4 After a project to be performed under this Agreement is identified by

City, City will prepare a draft task order, less the cost estimate. A draft task order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a City project coordinator. The draft task order will be delivered to Consultant for review. Consultant shall return the draft task order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost, the finalized task order shall be signed by both City and Consultant.

3.1.1.5 Task orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Federal Cost Proposal.

3.1.1.6 Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Federal Cost Proposal.

3.1.1.7 When milestone cost estimates are included in the approved Federal Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the City's contract administrator before exceeding such estimate.

3.1.1.8 Progress payments for each task order will be made monthly in arrears based on services provided and actual costs incurred.

3.1.1.9 Consultant shall not commence performance of work or services until this Agreement has been approved by City, and notification to proceed has been issued by City's contract administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.

3.1.1.10 A task order is of no force or effect until returned to City and signed by an authorized representative of City. No expenditures are authorized on a project and work shall not commence until a task order for that project has been executed by City.

3.1.1.11 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by City's contract administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each task order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the task order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Federal Cost Proposal and shall reference this Agreement, project title and task order number. Credits due City that include any equipment purchased under the provisions of Section 3.4 - Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to City's contract administrator at the following address: City of Sutter Creek; City Manager; 18 Main Street, Sutter Creek, CA 95685.

3.1.1.12 The period of performance for task orders shall be in accordance with dates specified in the task order. No task order will be written which extends beyond the expiration date of this Agreement.

3.1.1.13 The total amount payable by City for an individual task order shall not exceed the amount agreed to in the task order, unless authorized by contract amendment.

3.1.1.14 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a task order, no payment will be made until the deliverable has been satisfactorily completed.

3.1.1.15 Task orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.

3.1.2 Not to Exceed Amount – The total amount payable by City for all Services resulting from this Agreement shall not exceed \$4,000,000, which may be renegotiated in emergency situations. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through task orders or otherwise.

3.2 Payment of Compensation – Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon.

No retainage will be withheld by the City from progress payments due the Consultant. Retainage by the Consultant or subconsultants is prohibited, and no retainage will be held by the Consultant from progress due subconsultants. Any violation of this provision shall subject the violating Consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the Consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE consultants and subconsultants.

3.3 Extra Work – At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Services, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.4 Equipment Purchase – Prior authorization in writing by City's Representative shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or services in furtherance of Consultant's performance of Services under this Agreement for which Consultant intends to charge City. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this Agreement is subject to the following: Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit City in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent

appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to City and Consultant. If Consultant desires to sell equipment purchased as a result of this Agreement, the terms and conditions of such sale must be approved in advance by City. 2 CFR, Part 200 requires a credit to federal funds when equipment with a fair market value greater than \$5,000 is credited to the project.

#### **4. Changes**

4.1 The Parties may, from time to time, request changes in the scope of the Services of Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of Consultant's compensation and/or changes in the schedule must be authorized in advance by City in writing amendments to the Agreement.

4.2 This Agreement may be amended or modified only by mutual written agreement of the Parties.

4.3 Consultant shall only commence work covered by an amendment after the amendment is executed by City and notification to proceed has been provided by City's Representative.

#### **5. Responsibilities of Consultant**

5.1 Independent Contractor; Control and Payment of Subordinates – The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

5.2 Conformance to Applicable Requirements – All work prepared by Consultant shall be subject to the approval of City.

5.3 Substitution of Key Personnel – Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute for other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property, shall be promptly removed from performance of any Services under this Agreement by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: Matt Ospital

5.3.1 City's Representative – The City hereby designates Tom DuBois, City Manager or his designee, to act as its Representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

5.3.2 Consultant's Representative – Consultant hereby designates Matt Ospital, or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

5.4 Coordination of Services – Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

5.5 Standard of Care; Performance of Employees – Consultant shall perform all Services under this Agreement in a skillful, competent and customary manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the same region and performing similar services as defined by this Agreement. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed by the Consultant and shall not be re-employed to perform any of the Services.

5.6 Safety – Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures.

Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

Any subcontract entered into as a result of this Agreement, shall contain all provisions of this Section.

## 6. Insurance

6.1 Time for Compliance – Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

6.2 Types of Required Coverages – As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance.

6.2.1 Commercial General Liability – Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$1,000,000 per occurrence. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims; or (4) cross liability exclusion for claims or suits by one insured against another.

6.2.2 Automobile Liability – Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 for each accident.

6.2.3 Workers' Compensation – Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

6.2.4 Professional Liability – Professional Liability insurance for errors and omissions with minimum limits of \$1,000,000. Covered Professional Services shall specifically include all work to be performed under the Agreement.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

### 6.3 Endorsements

6.3.1 The policy or policies of insurance required by Sections 6.2.1 Commercial General Liability and 6.2.2 Automobile Liability shall be endorsed to provide the following:

6.3.1.1 Additional Insured – The City, its officials, officers, employees, agents and volunteers shall be additional insureds. The Commercial General Liability policy shall give City, its officials, officers, employees, agents and volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

6.3.1.2 Primary Insurance and Non-Contributing Insurance – This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City. its officials, officers, employees, agents and volunteers shall not contribute with this primary insurance.

6.3.1.3 Waiver of Subrogation – The insurance shall contain or be endorsed to contain a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

6.3.1.4 Severability - In the event of one insured, whether named or additional, incurs liability to any other of the insureds, whether named or additional, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

6.3.1.5 Cancellation – The policy shall not be canceled, or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

6.3.1.6 Duties – Any failure by the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the indemnified parties.

6.3.1.7 Applicability – That the coverage provided therein shall apply to the obligations assumed by the Consultant under the indemnity provisions of the Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

6.3.2 The policy or policies of insurance required by Section 6.2.3 Workers' Compensation shall be endorsed, as follows:

6.3.2.1 Waiver of Subrogation – The insurance shall contain or be endorsed to contain a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

6.3.2.2 Cancellation – The policy shall not be canceled, or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

6.3.3 The policy or policies of insurance required by Section 6.2.4 Professional Liability shall be endorsed, as follows:

6.3.3.1 Cancellation – The policy shall not be canceled, or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

6.4 Deductible – Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they



would have been protected had the policy or policies not contained a deductible or self-insured retention.

6.5 Evidence of Insurance – The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least ten (10) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

6.6 Failure to Maintain Coverage – Consultant agrees to suspend and cease all operations hereunder during such period of time if the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

6.7 Acceptability of Insurers – Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A-: VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

6.8 Insurance for Subconsultants – All subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured to the subconsultant's policies.

## **7. Ownership of Materials and Confidentiality**

7.1 Documents & Data; Licensing of Intellectual Property – This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded electronically, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the

termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of four (4) years following completion of the Agreement and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

7.1.1 Subconsultants – Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

7.1.2 Right to Use – City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Agreement or any project, provided that any such use not within the purposes intended by this Agreement without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than a project for which Services are rendered under this Agreement, it shall remove the Consultant's seal from the Documents & Data. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant, or for the use of Documents & Data on any other project by City.

7.1.3 Electronic Copies – Consultant shall provide electronic copies of the finished products in the original software format at the conclusion of the respective phases of work. Complex documents such as reports that utilize more than one type of software shall also be provided in a common format such as Adobe Acrobat (\*.pdf). Files of construction drawings shall be provided in a current version of AutoCAD. The Consultant shall archive and maintain copies of all electronic copies of Documents and Data provided to the City. Any claim arising from the use, unintended use, reuse or modifications made of the electronic copies shall be settled by the copies maintained by the Consultant.

7.2 Confidentiality – All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of City or except pursuant to court order, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia or any publicity pertaining to the Services in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

7.3 Indemnification – Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use under this Agreement by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

## **8. Accounting Records**

8.1 Accounting Records – Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final closeout report to FEMA or other Federal Agency and determined that it is no longer needed.

8.2 Retention of Records/Audit - For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All Parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, City, Federal Highway Administration, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the Agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

### 8.3 Audit Review Procedure

8.3.1 Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by City.

8.3.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by City of unresolved audit issues. The request for review will be submitted in writing.

8.3.3 Neither the pendency of a dispute nor its consideration by City will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

8.3.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The

Agreement, cost proposal, and ICR shall be adjusted by Consultant and approved by City to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by City at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

8.3.5 Consultant Cost Proposal is subject to a CPA ICR Audit Work Paper Review by Caltrans' Audit and Investigation (Caltrans). Caltrans, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the Consultant and approved by the City's Representative to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the Consultant to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

8.3.5.1 During a Caltrans' review of the ICR audit work papers created by the Consultant's independent CPA, Caltrans will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each Party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, City will reimburse the Consultant at a provisional ICR until a FAR compliant ICR {e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I Provisional rates will be as follows:

8.3.5.1.1 If the proposed rate is less than 150% - the provisional rate reimbursed will be 90% of the proposed rate.

8.3.5.1.2 If the proposed rate is between 150% and 200% - the provisional rate will be 85% of the proposed rate.

8.3.5.1.3 If the proposed rate is greater than 200% - the provisional rate will be 75% of the proposed rate.

8.3.5.2 If Caltrans is unable to issue a cognizant letter per paragraph 8.3.5.1. above, Caltrans may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

8.3.5.3 If the Consultant fails to comply with the provisions of this Section, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the provisional ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

8.3.5.4 Consultant may submit to City final invoice only when all of the following items have occurred: (1) Caltrans approves or rejects the original or revised independent CPA-audited ICR; (2) all work under this Agreement has been completed to the satisfaction of City;

and (3) Caltrans has issued its final ICR review letter. The Consultant MUST SUBMIT ITS FINAL INVOICE TO City no later than 60 days after the occurrence of the last of these items.

The provisional ICR will apply to this Agreement and all other contracts executed between City and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

8.4 Inspection of Work – Consultant and any subconsultant shall permit City and the state, if federal participating funds are used in this Agreement; to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

## **9. Subcontracting**

9.1 Prior Approval Required – City recognizes Consultant, in performance of engineering services set forth herein, will subcontract portions of the work related to the fulfillment of this Agreement. When any such subconsultant work exceeds \$25,000 or 25% of a “specified project” Consultant shall obtain prior written approval of CITY. All approved subcontracts, if any, shall be accomplished by a written instrument. Such instrument shall contain an express assumption by the subcontractor of all conditions and terms and covenants contained in this Agreement. Appurtenant professional services may but are not limited to include:

- A. Transportation and Traffic Engineering
- B. Structural Engineering
- C. Surveying
- D. Geotechnical Investigation
- E. Environmental Investigation and Report Preparation and Mitigation Monitoring
- F. Hydraulic Analysis
- G. Electrical Engineering
- H. Right of Way Appraisal & Acquisition
- I. Soil and Materials Testing
- J. Specialty Construction Inspection (Welding, Coatings, etc.)
- K. Labor Compliance Verification

Consultant will utilize DBE and UDBE subconsultants to meet any required DBE goals of City.

9.2 Subcontracting – Nothing contained in this Agreement or otherwise, shall create any contractual relation between City and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from City's obligation to make payments to the Consultant. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by City's Representative, except that, which is expressly identified in the approved Cost Proposal.

Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by City.

All subcontracts entered into as a result of this Agreement shall contain all the provisions stipulated

in this Agreement to be applicable to subconsultants.

Any substitution of subconsultant(s) must be approved in writing by City's Representative prior to the start of work by the subconsultant(s).

## **10. Termination of Agreement**

10.1 Grounds for Termination – City may cancel this Agreement at any time and without cause upon written notification to Consultant. If City terminates this contract with Consultant, City shall pay Consultant the sum due to Consultant under this contract prior to termination, unless the cost of completion to City exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand. The maximum amount for which the City shall be liable if this Agreement is terminated is the lesser of the reasonable value of unpaid Services rendered prior to termination or \$50,000.

Consultant may not terminate this Agreement except for cause.

10.2 Effect of Termination – If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data, and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) calendar days of the request.

10.3 Right to Procure Other Services – Nothing contained herein shall prevent City from hiring other consultants as City may deem appropriate to assist in the performance of services hereunder and City shall not be required to consult with Consultant beforehand.

## **11. General Provisions**

11.1 Delivery of Notices – All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

City:

City of Sutter Creek  
18 Main Street  
Sutter Creek, CA 95685  
Attn: City Manager

Consultant:

Weber Ghio & Associates, Inc.  
P.O. Box 251  
San Andreas, CA 95249  
Attn: Matt Ospital

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred,

regardless of the method of service.

11.2 Indemnification – To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

11.3 Laws and Regulations: Employee/Labor Certifications – Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

11.3.1 Employment Eligibility; Consultant – By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement and shall not violate any such law at any time during the term of the Agreement. Consultant shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to the Consultant's compliance with the requirements provided for in Section 11.3 or any of its sub-sections.

11.3.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants – To the same extent and under the same conditions as Consultant, Consultant shall require all its subcontractors, consultants, sub-subcontractors and subconsultants performing any work relating to this Agreement to make the same verifications and comply with all

requirements and restrictions provided for in Section 11.3.1.

11.3.3 Employment Eligibility: Failure to Comply – Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 11.3.1 or 11.3.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 11.3.2); or (3) failure to immediately remove any person found not to be in compliance with such requirements.

11.3.4 Air Quality – To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board ("CARB"). Consultant shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

#### 11.4 Prohibited Interests

11.4.1 Consultant warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid, nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

11.4.2 Consultant shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this Agreement, or any ensuing City construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing City construction project, which will follow.

11.4.3 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

11.4.4 To the extent Consultant performed any services related to any federally funded project under separate agreement with City, and Consultant now intends to perform any construction management for such projects under the terms of this Agreement, Consultant agrees as follows:

11.4.4.1 Consultant hereby certifies that neither Consultant, its employees, nor any firm affiliated with Consultant providing services on this project prepared the Plans, Specifications, and Estimate for any construction project included within this Agreement. An



affiliated firm is one which is subject to the control of the same persons through joint- ownership, or otherwise.

11.4.4.2 Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this Agreement shall have provided services on the design of any project included within this Agreement.

11.4.5 Consultant further certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any construction subcontracts included within the construction contract. Additionally, Consultant certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.

11.5 Contingent Fee – Consultant warrants, by execution of this Agreement that no person or selling agency has been employed, or retained, to solicit or secure this Agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, City has the right to annul this Agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

11.6 Prevailing Wages – Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Agreement term and require the same of any subconsultants, as applicable. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

11.7 Equal Opportunity Employment – Consultant represents that it is an equal opportunity employer, and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

11.8 Labor Certification – By its signature hereunder, Consultant certifies that it is aware

of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

11.9 Attorneys' Fees – If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.

11.10 Assignment or Transfer – Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

11.11 Successors and Assigns – This Agreement shall be binding on the successors and assigns of the Parties.

11.12 Amendment; Modification – No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

11.13 Waiver – No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

11.14 Entire Agreement - This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

11.15 Governing Law; Government Code Claim Compliance – This Agreement shall be governed by the laws of the State of California. The venue shall be in Amador County. In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims, and any subsequent lawsuit based upon the Government Code claims, shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

11.16 SAM.gov Validation Requirement – As a condition of this contract, Consultant must maintain an active registration in the System for Award Management (SAM.gov) throughout the term of this agreement. The Consultant shall ensure that all necessary validations, including the Unique Entity Identifier (UEI), Taxpayer Identification Number (TIN), and bank information, are current and accurate in the SAM.gov database. Failure to maintain an active registration or comply with SAM.gov requirements may result in delays, suspension, or termination of this agreement. Consultant is responsible for promptly addressing any issues related to their SAM.gov registration and must notify City of any changes in registration status.

11.17 Time of Essence – Time is of the essence for each and every provision of this Agreement and Consultant agrees to provide Services with due and reasonable diligence consistent with sound professional practices to endeavor to meet the project schedule.

11.18 Construction; References; Captions – Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

11.19 No Third-Party Beneficiaries – There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

11.20 Authority to Enter Agreement – Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

11.21 Invalidity; Severability – If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

11.22 Counterparts – This Agreement may be signed in counterparts, each of which shall constitute an original.

11.23 City's Right to Employ Other Consultants – City reserves right to employ other consultants in connection with this Agreement.

11.24 Cooperation; Further Acts – The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

11.25 Federal Provisions – When funding for the Services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions included in Exhibit C (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

11.26 Cost Principles and Administrative Requirements – Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items for federal aid projects.

Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to City.

11.27 Rebates, Kickbacks or Other Unlawful Consideration – Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### 11.28 Prohibition of Expending City, State, or Federal Funds for Lobbying

11.28.1 Consultant certifies to the best of his or her knowledge and belief that:

11.28.1.1 No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

11.28.1.2 If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

11.28.1.3 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

11.28.1.4 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

#### 11.29 Statement of Compliance

11.29.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury wider the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

11.29.2 During the performance of this Agreement, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and

subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

11.29.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally assisted programs of the Department of Transportation- Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

11.29.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

11.30 Debarment and Suspension Certification – Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (non-procurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City.

Exceptions will not necessarily result in denial of recommendation for award but will be considered in determining Consultant responsibility Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

11.31 Funding Requirement – It is mutually understood between the Parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both Parties, in order to avoid program and fiscal delays that would

occur if the Agreement were executed after that determination was made.

This Agreement is valid and enforceable only if sufficient funds are made available to City for the purpose of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or City Council that may affect the provisions, terms, or funding of this Agreement in any manner.

It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.

City has the option to void the Agreement under the 30-day termination clause pursuant to Section 10, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

11.32 Disadvantaged Business Enterprises (DBE) Participation – This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-OI), or in the Consultant Contract DBE Information (Exhibit 10- O2). If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

A DBE firm may be terminated only with prior written approval from City and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting City consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

A DBE does not perform a CUP if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment, and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the City's Representative with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the City's Representative.

If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to City's Representative within 30 days.

### 11.33 Disputes

11.33.1 Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of City's Representative and another City staff member to be designated by City when the dispute arises, who may consider written or verbal information submitted by Consultant.

11.33.2 Not later than 30 days after completion of all work under the Agreement, Consultant may request review by the City Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

11.33.3 Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

11.34 Construction Contractor Claims – If claims are filed by City's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with City's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

Consultant's personnel that City considers essential to assist in defending against construction contractor claims, will be made available on reasonable notice from City. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's

personnel services under this Agreement.

Services of Consultant's personnel in connection with City's construction contractor claims will be performed pursuant to a written amendment, if necessary, extending the termination date of this Agreement in order to resolve the construction claims.

**[SIGNATURES ON NEXT PAGE]**




**SIGNATURE PAGE  
TO  
CITY OF SUTTER CREEK  
AGREEMENT FOR CITY FEDERALLY FUNDED  
ENGINEERING CONSULTING SERVICES**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF SUTTER CREEK

WEBER, GHIO & ASSOCIATES, INC.

By: \_\_\_\_\_  
Tom DuBois  
City Manager

By:  \_\_\_\_\_  
Matt Ospital, P.E.  
President

Attest:

By: \_\_\_\_\_  
Karen Darrow  
City Clerk

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Engineer agrees to provide all professional services set forth below as directed by City Manager pursuant to issuance of a written task order:

1. Administer Federally Funded Public Works Projects
2. Federally Funded Public Works Project Coordination with City Building Official, City Planner, and Public Works Superintendents;
3. Coordinate Environmental Review and Reporting with City Planner and Funding Agency;
4. Preparation of Special and Technical Reports associated with Project Delivery;
5. Prepare Plans, Specifications and Related Reports, and Construction Cost Estimates for City delivery of State and Federally Funded Public Works Projects;
6. Provide Contract Administration and Construction Inspection of Designated State and Federally Funded Public Works Projects;
7. Represent City in attendance at meetings.



**EXHIBIT B**  
**RATE SCHEDULE**

**Effective January 2024**

Principal Engineer	\$200/hour
Senior Civil Engineer	\$180/hour
Associate Engineer	\$160/hour
Project Manager	\$150/hour
Engineering Technician	\$140/hour
General Office Personnel	\$110/hour
Resident Engineer	\$180/hour
Construction Manager	\$170/hour
Construction Inspector I	\$130/hour
Construction Inspector II*	\$160/hour
Senior Building Inspector	\$150/hour
2 Man Survey Field Crew	\$275/hour
1 Man Survey Field Crew	\$200/hour
Court Appearances - Expert Witness**	\$350/hour, \$600 minimum

Overtime (all Saturday work is overtime)                      1.3 times rate  
 Double-time (all Sundays and Holidays)                      1.7 times rate

Mileage will be billed at the current Federal/State reimbursement rate.

- \* Prevailing Wage: Group 2
- \*\* Rate to be applied to travel time, depositions, and court appearances.

**LARGE FORMAT PRINT SCHEDULE**

18" x 26" Bond Print	\$4.50/each
24" x 36" Bond Print	\$7.50/each
36" x 48" Bond Print	\$14.00/each

Materials and Outside Services will be billed at actual cost plus **15%**.

**All invoicing shall be in accordance with 48-CFR and 49-CFR, Part 18.20; FAR Compliant Indirect Cost Rates and Direct Cost**