

# CITY OF SUTTER CREEK PLANNING DEPARTMENT



## REQUEST FOR QUALIFICATIONS FOR ENVIRONMENTAL SERVICES FOR THE YEARS 2024-2029

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**CITY OF SUTTER CREEK  
PLANNING DEPARTMENT**

**ENVIRONMENTAL CONSULTING SELECTION  
FOR THE YEARS 2024-2029**

**1. INTRODUCTION**

The City of Sutter Creek, California (herein referred as "CITY ") is releasing this Request for Qualifications (RFQ) to consultant firms (hereinafter referred to as "Consultant") interested in placement on the City 's 2024-2029 list of environmental firms pre-qualified to prepare Initial Studies, Negative Declarations, Environmental Impact Reports and Environmental Impact Statements (collectively, "Environmental Documents") for a variety of projects including residential, commercial, and industrial developments as well as public planning projects.

In addition, the City welcomes Noise, Traffic, Air Quality, Historic Resource and other specialty consultants to submit, since there may be instances where an environmental document will be prepared in-house with support needed in these subject areas.

The primary objective of the RFQ is to develop an approved list of pre-qualified Consultants to prepare environmental documents ("Environmental Consultant") and special environmental impact studies, e.g., Noise, Traffic, Air Quality, Historic Resource etc. ("Special Study Consultant") in accordance with local, state, and federal regulations. For approximately the next five years, the City will select firms from the list of pre-qualified consulting firms to perform these services for the City on an as-needed basis.

The City is expecting new development projects and additions to existing businesses over the next few years. In addition, the City is in the beginning stages of processing a Specific Plan.

**2. BACKGROUND**

The City of Sutter Creek is located in central Amador County, approximately forty-five miles south east of Sacramento. Sutter Creek has a population of about 2,500 residents and an area of 2.5 square miles.

The City of Sutter Creek is a general law City with a Council-City Manager form of government. Legal, Engineering, and Planning services for the City are provided by an independent contractor. The City of Sutter Creek has a Police Department and Fire Services are provided by the Sutter Creek Fire Protection District. The City provides sewer services and Water services are provided by the Amador Water Agency (AWA).

**3. SCHEDULE**

*Deadline.* To be considered, a Statement of Qualifications which meets the requirements set forth hereinafter, must be received by the Contract City Planner, via email, no later than the date and time shown in the right column.

**June 7, 2024  
12:00 PM**

***Requests for Further Information.*** Any person seeking further information or clarification about this RFP shall submit a request, in writing, which must be received by the City Planner no later than close of business on...

**June 4, 2024  
4:00 PM**

***Request for Copy of Responses.*** A copy of all questions and responses will be sent to each person who submits a written request for such information before ...

**June 7, 2024  
4:00 PM**

***Notice of Selection.*** On or about the date shown, the City will mail notices to all firms submitting proposals notified whether they have been placed on the approved list of pre-qualified consultants.

**June 28, 2024**

#### **4. SCOPE OF SERVICES**

(a) *Process of Assigning Work to Pre-qualified Consultant*

When an applicant submits a project application to the City, the City Planner reviews the application and determines what level of environmental review may be required. If an environmental document is required, the City will select one or more pre-qualified Environmental Consultants to prepare a Scope of Work to conduct the environmental review. The City may also ask one or more pre-qualified Special Study Consultants to prepare a proposal for conducting an analysis of Noise, Traffic, Air Quality\Greenhouse Gases, Cultural Resources (AB 52), Wetlands, Biologic or other specialized studies.

The City will select the successful Consultant from the submitted Scopes of Work\Proposal. If the submission is rejected, another Consultant on the list will be asked to prepare a submittal.

(b) *Environmental Consultant*

The selected pre-qualified Environmental Consultant will be tasked to analyze the project for potential or actual impacts on the environment, identify those impacts, prepare a Negative Declaration, Mitigated Negative Declaration or Environmental Impact Report, develop workable mitigations for the reduction of the impacts, and prepare a monitoring plan that will ensure the mitigations are implemented.

(c) *Special Studies Consultants*

The Special Studies Consultant will be tasked with analyzing the project for potential or actual impacts based on their area of expertise. For example, a traffic consultant may be asked to analyze potentially impacted intersections and provide recommended mitigations for impacts.

(d) *Each Consultant*

A selected Consultant will be required to perform all tasks in a timely manner to meet the time constraints established by state law or the City, and may be required to:

- Establish working relationships with City Staff, City Council and other public agencies;
- Make presentations to local community groups, the City Council, and the City Staff;
- Provide a consistent standard of quality and standard of objectivity for the project(s);
- Maintain reasonable costs for preparation, review, and completion of any necessary documentation; and
- Evaluate projects based upon the CEQA Environmental Checklist (Appendix G of the CEQA Guidelines) as well as other unique conditions and/or impacts.

## **5. FEES AND EXPENSES**

(a) The City will consider an hourly fee, a task-based fee or a flat-fee Proposal, or any combination thereof. The contract to the successful bidder, however, will contain agreed-upon maximum limit(s). Thus, each bidder is invited to provide a reasonable estimate of the maximum fee for the project.

(b) City will agree to reimburse Consultant for its direct, reasonable and necessary expenses incurred on the project, including but not limited to the following:

- (i) Expense of transportation in connection with the Project to and from the company's closest office;
- (ii) Expense of reproductions, postage and handling of Drawings, Specifications and other documents, excluding reproductions for office use of Contractor;
- (iii) Expense of renderings, models and mock-ups; and
- (iv) Other items authorized writing and in advance by City Manager.

(c) All expenses in excess of \$1000.00 per month must be approved in advance in writing by the City Manager.

## **6. PROPOSAL DOCUMENTS**

*Copies.* one PDF of the proposal documents shall be submitted in the format described below for a proposing firm to be considered. Incomplete proposals and proposals not organized according to this RFQ may be rejected. Proposals will only be accepted via email, sent directly to the Contract City Planner.

(a) *Transmittal Letter.* The proposal shall contain a letter duly executed by an authorized agent of the proposer, the contents of which are described below.

## **7. STATEMENT OF QUALIFICATIONS**

The Proposal should describe the qualifications, knowledge, background and experience of the bidder, including:

- (a) A clear, concise statement as to actual ownership of the bidder, including the name of any parent company and whether the bidder is operating under a fictitious name;
- (b) Names and titles of key management persons;
- (c) Name and qualifications of the lead person; and
- (d) An organization chart showing key personnel, along with a description of staffing levels, and availability, including the current staffing;
- (e) Each Consultant must have either its own staff or approved sub-consultants with the expertise to evaluate the items identified in the CEQA checklist form. Consultants must also be able to work with sub-consultants that may have been selected by the City for certain specific projects.
- (f) The Consultant must not have a conflict of interest with regard to any other work performed by the firm for the City .
- (g) A list of the three most significant engagements performed in the last five years for a California public agency (preference given to work in Amador County and adjacent counties) that are similar to the engagement described in this request for proposal, showing for each engagement:
  - (v) Name of the client and a contact name, address, and telephone number.
  - (vi) Month and year the projects started and the month and year they were completed;
  - (vii) Scope of work;
  - (viii) Total charge for the services provided, budget performance, and schedule performance;
  - (ix) Key personnel involved and the sub-consultants employed.
  - (x) Time and materials compensation schedule.
- (h) A statement disclosing each governmental agency contract disqualification or termination, whether for convenience or default, that occurred within the past five years, including the name of the government agency, the date of disqualification or termination, and the reason for disqualification or termination;
- (i) Each license or certificate that is legally required for preparing and signing plans for the work that may be involved in the project;

(j) Anticipated Potential Problems. The proposal should identify and describe any anticipated potential problems, the bidder's approach to resolving these problems and any special assistance that will be requested from the City.

## **8. PROJECT TEAM**

The Proposal should highlight and summarize the qualifications, knowledge, background and experience of the bidder's Project Team, including:

- (i) A description of the project team's proposed technical and management approach to the project. Include the following information:
  - (A) A description of the project team's organization required to conduct this project.
  - (B) The team's identification of the critical project elements that may arise during the term of the contract.
  - (C) The team's approach to control cost, schedules, and quality.
- (ii) Provide the following information on the team's personnel:
  - (D) The name, position, and a detailed resume, and proposed Key Contact.
  - (E) The name, position, and resume key personnel. Indicate their present assignments and their availability. Include alternate personnel that would be used if the persons identified as key personnel are not available at the time a specific project arises.
- (iii) Current rate sheet for personnel
- (iv) Describe any special resources the project team may bring to the Project. Such resources and experience may include items such as special computerized drafting systems, specific recent experience working on related projects, and recent experience in the City of Sutter Creek and/or other Amador County jurisdictions. Elaborate on why the team stands above the competition.

## **9. SUBCONTRACTORS**

The bidder must provide for each subcontractor of the bidder, the scope of services to be provided by such subcontractor and a Statement of Qualifications containing the information specified in section 8, above, for such subcontractor.

## **10. COMMUNICATIONS ABOUT THE RFQ**

Telephone communications with City staff about the RFQ are not encouraged but will be permitted. However, any such oral communication will not be binding on the City. All telephone questions regarding this project should be directed to:

Erin Ventura, Contract City Planner  
City of Sutter Creek Planning Department  
Email: [eventura@haugebrueck.com](mailto:eventura@haugebrueck.com)

## **11. FORM AND TRANSMITTAL OF PROPOSALS**

- (a) The proposal documents shall consist of:
  - (i) A signed transmittal letter stating the Bidder's interest in pre-qualifying, a commitment to perform work if selected, and a commitment to enter into a contract in substantially the same form as that which is attached hereto as Attachment A.
  - (ii) One copy of the Proposer's Statement of Qualifications.
- (b) The Qualifications documents shall be emailed to: [eventura@haugebrueck.com](mailto:eventura@haugebrueck.com)

## **12. SELECTION PROCESS**

- (a) The evaluation committee will make a determination of the firms to be included on the list of consultants, based upon the highest relative scores.
- (b) The evaluation committee will consist of at least two members who have technical expertise in relevant fields or who are involved in project review at various managerial levels.
- (c) The identity of members of the committee will be confidential.

## **13. EVALUATION CRITERIA**

The determination whether a Proposer is pre-qualified will be based on a combination of factors as determined to be in the best interests of the City, which include, but are not limited to the following factors:

- (a) Ability of the bidder to best perform the work, as measured by qualifications, past performance, knowledge of and experience with local, state and federal standards, regulations, guidelines, criteria and laws;
- (b) The bidder's responsiveness to this Request for Qualifications;
- (c) Quality of Proposal, including but not limited to the Bidder's planned approach to the project;

## **14. PUBLIC RECORDS ACT**

Each bidder should be aware that although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Sutter Creek may not be in a position to establish that the Proposal which the candidate submits is a trade secret. If a request is made for any information marked "confidential" by a bidder, the City will provide the

candidate who submitted such information with reasonable notice to allow the candidate to seek protection from disclosure by a court of competent jurisdiction.

## **15. RELEASE OF REPORTS AND INFORMATION**

Any reports, information, data, or other material given to, prepared by or assembled by the bidder as part of the work or services under these specifications shall be the property of the City and shall not be made available to any individual or organization by the bidder without the prior written approval of the City .

## **16. CONTRACT DOCUMENTS**

The successful Consultants will be expected to execute a Master Professional Services Agreement that contains the terms and conditions set forth in the form contract that is attached hereto as Attachment A. The Consultant is reminded that any proposed change to the form contract will be considered in determining the firm's suitability for inclusion in the interview process.

## **17. TERMS AND CONDITIONS**

(a) *Proposal Costs.* This request for proposals does not commit the City to pay for any costs incurred in the submission of a response or make any necessary studies or designs for the preparation thereof nor the purchase or contract for services in connection with the preparation of a submission. All costs in preparing and submitting a proposal shall be borne by the person making the proposal.

(b) *Withdrawal.* A bidder may withdraw a proposal without prejudice prior to the time specified for opening by submitting a written request to the City Manager for its withdrawal, in which event, the proposal will be returned to the bidder unopened. No proposal received after the time specified or at any place other than that stated in the "Notice Requesting Proposals" will be considered.

(c) *Retention and Use of Proposals.* The City reserves the right to retain all proposals and use any idea in any proposal regardless of whether that proposal is selected. The City also reserves the right to waive non-substantial irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and to accept others, except to the extent that proposals are qualified by specific limitations, and to make an award as the interest of the City may require.

(d) *Agreement.* The City reserves the right to negotiate any and all terms of an agreement including length, scope of services and compensation.

(e) *Awarding Authority.* An agreement with the Contractor shall not be binding unless and until it is approved and executed by the City Council or City Manager depending on the dollar amount.

(f) *Competency and Responsibility.* The City reserves full discretion to determine the competence and responsibility, professionally and/or financially, of bidders. Bidders will provide, in a timely manner, any and all information that the City deems necessary to make such decision.

(g) *No Award.* The City may, for any reason, not award an agreement as a result of this RFP.



(h) *Execution of Contract.* The bidder to whom award is made will be expected to execute a written contract with the City within twenty (20) calendar days after notice of the award has been mailed to the address given in the proposal. The substance of the contract will include the terms of this Request for Proposals and the form will be mutually acceptable to both parties.

## ATTACHMENT A

### CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF SUTTER CREEK AND \_\_\_\_\_ FOR ONCALL AS NEEDED ENVIRONMENTAL CONSULTING SERVICES

THIS AGREEMENT for consulting services is entered into by and between the City of Sutter Creek, a municipal corporation in the State of California (“City”) and \_\_\_\_\_ (“Consultant”) as of \_\_\_\_\_, 2024 (the “Effective Date”).

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the on-call as needed environmental consulting services at the time and place and in the manner specified therein, as more fully described in the Task Order attached as Exhibit A.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on \_\_\_\_\_, 2029 and Consultant shall complete the work described above prior to that date, unless the term of the Agreement is otherwise terminated, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant’s obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant not to exceed \$XX,XXX notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice which shall include an estimate of the time necessary to complete the work;
- The Consultant's signature.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized

reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

- 2.3 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment approved by the City Manager, which shall not exceed the maximum amount allowed by the Sutter Creek Municipal Code.

- 2.4 Fees.** Fees for work performed by Consultant shall not exceed the amounts identified above.
- 2.5 Reimbursable Expenses.** There shall be no reimbursable expenses. Consultant shall receive compensation only in the amount as stated above.
- 2.6 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8 of this Agreement, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** As more fully set forth in Exhibit B to this Agreement, and before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City, and that such insurance is in effect prior to commencing work under this Agreement. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

**4.1 Variation.** The City may approve a variation in the insurance requirements, upon a determination that the coverage, scope, limit, and form of such insurance is either not commercially available, or that the City's interests are otherwise fully protected.

**4.2 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.3 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work

and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Terminate this Agreement.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

**Indemnity for Professional Liability:**

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

**Indemnity for Other Than Professional Liability:**

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

**Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this

Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant, Not Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition,

marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator of this Agreement.

**Section 8. TERMINATION AND MODIFICATION.**

- 8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.3 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.4 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability



between City and Consultant shall survive the termination of this Agreement.

**8.5 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to the following:

**8.5.1** Immediately terminate the Agreement;

**8.5.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

**8.5.3** Retain a different consultant to complete the work not finished by Consultant; or

**8.5.4** Charge Consultant the difference between the cost to complete the work that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 of this Agreement if Consultant had completed the work.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

**9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Amador.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

**10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by the City Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.**

Any written notice to Consultant shall be sent to:

Consultant  
Address  
Address

Any written notice to City shall be sent to:

City of Sutter Creek

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

- 10.11 Integration.** This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.12 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 10.13 Authorized Signature.** Each person and party signing this Agreement warrants that he/she has the authority to execute this Agreement on behalf of the principal and that the party will be bound by such signature.

The parties have executed this Agreement as of the Effective Date.

CITY

CONSULTANT

City of Sutter Creek, a municipal corporation  
of the State of California

CONSULTANT  
a California corporation

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

By: \_\_\_\_\_  
[insert name]

Approved as to Form:

\_\_\_\_\_  
Derek P. Cole, City Attorney

**EXHIBIT A**

[Insert task order]

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS**

#### **Specific Insurance Requirements and Required Policy Limits**

#### **PROFESSIONAL SERVICES CONTRACTS:**

##### Commercial General Liability

- a. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Consultant's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction projects, an endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37 (or equivalent), is also required.
- b. Any failure to comply with reporting provisions of the policies by Consultant shall not affect coverage provided the City.
- c. Coverage shall state that Consultant insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. Coverage shall contain a waiver of subrogation in favor of the City.

##### ii. Business Automobile Liability

- a. Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or

equivalent) with a limit of no less than two million dollars (\$2,000,000) per accident.

iii. Workers' Compensation and Employers' Liability

- a. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a waiver of subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

iv. All Coverages

- a. Each insurance policy required by the agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.
- b. All self-insurance, self-insured retentions, and deductibles must be declared and approved by the City.
- c. Evidence of Insurance - Prior to commencement of work, the Consultant shall furnish the City with certificates, additional insured endorsements, and waivers of subrogation evidencing compliance with the insurance requirements above. The Consultant must agree to provide complete, certified copies of all required insurance policies if requested by the City.
- d. Acceptability of Insurers - Insurance shall be placed with insurers admitted in the State of California and with an AM Best rating of A- VII or higher.