

# **REQUEST FOR PROPOSALS (RFP)**

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## **2021 COMPREHENSIVE ZONING CODE AND ZONING MAP UPDATE**



### **City of Dixon Community Development Department**

**DATE ISSUED: Friday, July 9, 2021, 12:00 PM**

**DATE DUE: Friday, August 13, 2021, 3:00 PM**

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## ATTACHMENT 1 Sample City of Dixon, Professional Services Agreement

## **I. INTRODUCTION**

The City of Dixon invites proposals from qualified firms with expertise in zoning code preparation and updates to lead a process resulting in the preparation of a comprehensive new Zoning Ordinance and Map for the City, including any necessary environmental (CEQA) clearances. Proposals received through the RFP process will be reviewed by a selection committee comprised of City staff and appointed officials in the City of Dixon.

The City adopted a new General Plan (General Plan 2040) on May 18, 2021. The General Plan update did not include any concurrent edits to the Zoning Ordinance or Zoning Map to implement any of the changes adopted by the General Plan. Rather than make additional patch-work edits to an extremely outdated Ordinance, the City is choosing to invest its resources into the development of a new comprehensive Zoning Ordinance and Map. In the interim, should any applications be received that seek to utilize any of the changes adopted by the General Plan, applicants will be required to submit for a zoning amendment to develop an interim zoning change to make zoning consistent with the General Plan. Therefore, the City will be utilizing the current Zoning Ordinance and Map until the new Zoning Ordinance and Map are completed.

The City is seeking a Consultant Team to assist in developing a Zoning Ordinance that focuses on implementing the recently adopted General Plan, while maintaining the historical level of regulation desired by the community. The City seeks to streamline and simplify its zoning districts and regulations. The Code should be delivered in an editable, consolidated, user-friendly format with tables and illustrative graphics that clearly communicate standards and regulations. The firm shall commit to participation by high-level professionals to ensure that all products are well-written and technically accurate. Completing the project within the specified time frame and budget is a key factor.

### **Primary Work Product**

Responsive proposals will describe the approach, process and costs to:

- Prepare a new comprehensive Zoning Code and Zoning Map;
- Plan and conduct associated public outreach and involvement activities;
- Prepare necessary environmental review and clearances in accordance with CEQA; and
- Optional development of Zoning Handbook, Infill Guidelines Handout and Objective Standards for Multi-Family Development Handout.

### **The deadline for submitting the proposal is Friday, August 13, 2021 at 3:00 P.M.**

Proposals must be received by the City of Dixon, at 600 East A Street, Dixon, CA 95620 by the time and date stated.

## **II. BACKGROUND**

The City of Dixon, situated in California's fertile Central Valley between the major population centers of Sacramento and the Bay Area, has a rich agricultural heritage and a distinctive small-town feel. The City is home to the Dixon May Fair, the oldest district fair and fairgrounds in the

state of California, and Downtown Dixon, which boasts numerous historic resources dating back to its past as a 19th Century railroad town.

Dixon is composed of 7.2 square miles of incorporated land, with an additional 1.4 square miles of unincorporated land within the City's sphere of influence. The community has experienced higher than average residential growth since 2000, mostly in the past three years. The City features an existing core of established neighborhoods, surrounded by three large residential subdivisions to the south and southwest, clusters of highway-oriented commercial businesses at the five Interstate 80 (I-80) freeway interchanges and a mixture of light industrial and commercial along the town's main north-south spine.

With its ready access to I-80 along the northern boundary of the city and State Route 113 through the heart of the City (north-south, through Downtown) coupled with vacant and underutilized land available for development, Dixon is poised to leverage its location for continued housing, job creation and economic growth that can improve the quality of life for local residents. Critical for achieving that objective will be ensuring a measured pace of growth, concentrating development within the City limits to maintain the green belt of open space and agricultural land that rings the community, and providing a range of housing types and price level options that provide opportunity to individuals and families of diverse backgrounds and income levels.

A lack of infrastructure available to serve portions of the Northeastern part of the City, including significant storm drainage and water/wastewater issues, pose a distinct challenge to the City's potential for larger commercial/industrial development.

The official population of the City as of 2018 was 20,100 and General Plan 2040 build out estimate of just over 28,000 residents. Dixon is a full-service city, with its own utilities (water and sewer) and emergency services. The City's General Fund Budget (2021-22) is approximately \$25.3 million.

a. General Plan 2040

On May 18, 2021, the Dixon City Council unanimously adopted the General Plan 2040, culminating a multi-year process. The update was focused on six key themes, which formed the vision statement, including small town character, agricultural heritage, economic development, quality of life, plentiful, well-maintained parks, and engaged youth and seniors.

b. Housing Element (2015-2023)

The recent General Plan update did not include the Housing Element, as that was updated as a standalone document in 2015. The City is currently embarking on a Housing Element update for the 6<sup>th</sup> cycle (2023-2031), with anticipated start date of late summer 2021 and adoption by 2023. Placeworks was selected as the consultant to prepare the City of Dixon's Housing Element update, as a joint effort with nearly all other cities in Solano County, and the county.

c. Southwest Dixon Specific Plan (SWDSP)

The SWDSP approved in 2005, includes 478 acres land, 20% of which is, commercial and 80% is residential. Adopted with the plan are specific design guidelines. The Plan is finally coming to fruition, with high-paced construction of single family residential lots that commenced in 2019. There are also supplemental design guidelines for the SWDSP.

d. Northeast Quadrant Specific Plan (NEQSP)

The NEQSP was approved in 1995, with various amendments over the years. The Plan area includes 643 acres of property. About one-third of the plan area has been developed to date, with significant large tracts still vacant and available, though infrastructure challenges have posed a challenge to the area's marketability.

e. Downtown Dixon Business Association Design Guidelines

The City's has some outdated Downtown Design Guidelines that are a separate document than the zoning ordinance.

f. Priority Production Area (PPA)

In 2000, the City applied for and was granted a PPA designation by ABAG/MTC. The PPA area covers a portion of the Northeast Quadrant. There is still some question and potential conflict with the PPA designation, given that the recently adopted General Plan designates much of the PPA area as a Campus Mixed use land use designation.

g. Current Zoning Code

The City's current zoning code is decades old and has been modified through various amendments in order to keep up with changes and new State requirements. The City is looking for a complete overhaul of its current Zoning Ordinance and Map. This would involve a repeal and replacement of the existing code. The state of the current zoning code is as follows:

- It has been regularly patch worked and not been comprehensively updated in several decades.
- Requires amendments to conform to the recently adopted General Plan.
- It contains standards that are outdated, difficult to administer, and are difficult to find.
- It does not provide a good mechanism for implementing the City's new mixed use land use designations created by the new General Plan.
- Numerous amendments have been made that may be inconsistent with the rest of the code and State and Federal law..
- The language is not as clear and precise as it should be and lacks comprehensive definitions.
- The code does not include an appropriate or complete administrative section or procedures.
- The code does not include a clear process and findings in it's Design Review, Use Permit and Temporary Use Permit sections.

- The code does not reflect recent changes resulting from legal decisions and changes to state laws (i.e. SB 35, ADU/JADU, Density Bonus, Telecommunications etc.)
- The code lacks the ability to address modern development trends and patterns in City's corridors, mixed use, and overlay areas.
- The code includes antiquated use tables, use classifications and land use definitions.
- Some sections of the code lack specificity or clarity, making zoning enforcement often difficult.
- It is not user-friendly and lacks graphics to improve readability.

### **III. SCOPE OF WORK**

Following the section of the Consultant, the consultant will develop a final work program in conjunction with City staff. The scope of work should include the following:

#### **a. Goals/Principles for update**

With assistance from City Staff, the selected Consultant will conduct a public process to develop an approach to updating the City's Zoning Ordinance and Map. Initial City priorities include:

- Implement General Plan 2040 goals and policies.
- Be consistent with State and Federal law in all standards and requirements, including, but not limited to, ADU/JADU, SB 35, Telecommunications, Density Bonus.
- Be intuitive, graphic and user-friendly.
- Create a transparent, predictable and consistent development review process.
- Promote high quality design.
- Respond to community concerns.
- Promote infill and mixed-use along key corridors.
- Create flexibility and relief for development standards.
- Standardize, streamline and simplify development review.
- Promote economic development.
- Coordinate to the greatest extent possible with the concurrent Housing Element update process.
- Respect and maintain to the greatest extent possible Dixon's current attitude to government regulation and process in the development of the new Ordinance.

In addition, the following more specific goals include:

- Ensure proper public engagement.
- Use the City's limited resources efficiently.
- Produce a simpler, cohesive and more user-friendly Zoning Ordinance and Map.
- Simplify and reduce the number of Zoning districts.
- Create development and land use standards that are reflective of current trends and nomenclature broad enough to allow for future changes, including the new mixed use land use designations established by the General Plan.

- Allowance for city staff to make a determination on corresponding and appropriate land uses for a district, without immediately needing to go to PC for a determination as is done presently.
- Create a regulatory framework consistent with past City practice and community trends (focus on less regulation, than more)
- Encourage walkable, complete neighborhoods and corridors in an urban form.
- Provide for administrative review procedures for minor permits, deviations and procedures; rather than requiring Planning Commission review for all actions.
- Ensure internally consistent regulations and procedures.
- Create a Zoning Map to reflect changes to districts in a format that is easily read, can be used online or on paper, and can be integrated into GIS or electronic formats.
- Be organized and written in a manner that can be easily understood and used by staff, elected/appointed officials, developers, homeowners and the public at large

b. Background Review:

The City is seeking the Consultant's recommended approach and strategy(ies) to updating the City's Zoning Ordinance and Map in a manner that addresses those initial City policy priorities that are reflected in the implementing policies of the General Plan 2040 and adhere to the priorities and goals noted above.

The Consultant will review the key background materials and will join City staff on a tour of the community. In addition, the Consultant shall prepare a proposed outline laying out the recommended format, content, and organization of the new Zoning Code. It is expected that the consultant will review key policies and development standards from the following documents:

- General Plan 2040
- General Plan 2040 Draft and Final EIR
- Housing Element (2015-2023) and track current update for 6<sup>th</sup> Cycle Housing Element (2023-2031).
- Northeast Quadrant (NEQ) Specific Plan (1995), with amendments
- Southwest Dixon Specific Plan (2005) and Southwest Dixon Supplemental Design Guidelines
- Downtown Dixon Business Association Design Guidelines
- Existing Zoning Code and Map
- Development standards from Planned Development (PD) districts in the City.

The City contains a variety of land uses, which will require differing and specific regulations. The Consultant will work with staff to identify these areas, determine the appropriate zoning approach (e.g., form-based, performance-based, incentive-based, or conventional) and draft appropriate zoning regulations.

c. Public Outreach:

The Consultant should incorporate a public outreach component designed to inform community stakeholders, the Planning Commission, City Council, and the public on the new Zoning Code. It should include six (6) focused workshops by area and then four (4) workshops with the Planning Commission and/or City Council, based on the phases for the project.

Recommend one public workshops for each primary area, including the N First St corridor, Downtown/Old Town, Business/Industrial Park (east of N 1<sup>st</sup> St), Established residential subdivisions and New subdivisions (Homestead/Valley Glen and Parklane). Supplement public workshops with digital participation of public events through webcasting, surveys and/or polling devices, employing digital communications, computing, and visualization.

In addition, provide scenario-making and assessment tools to create, compare, and communicate the benefits and drawbacks of alternative zoning choices. Consultant shall prepare periodic public updates for the City's website and social media platforms to keep the public apprised and facilitate responses.

The Consultant should assume two (2) Planning Commission meetings and two (2) Council hearings for review and adoption of the new Zoning Code. The Consultant shall be responsible for preparing all presentation materials for the workshops and meetings, including staff reports and resolutions. The Consultant will assist the City in developing a project website or utilizing the city's existing website and will provide key updates at all phases throughout the project. The Consultant shall provide all outreach materials to the City for posting on its website, subject to prior staff review and approval.

Schedule regular working sessions (bi-weekly) with staff throughout the project to discuss ideas and seek direction and track tasks.

d. Draft Zoning Code:

At a minimum, the comprehensive update of the City's zoning code should address the following topics:

- Zoning Code Administration & Permits
- Zoning Districts with Permitted and Conditionally Permitted Uses
- Overlay Districts
- Development Standards – Standards and guidelines should be clearly identified as such, separately provided, and their appropriate use clarified.
- Citywide Regulations
- Standards for Special Uses and Activities
- Definitions/Glossary
- Accompanying Zoning Map

The Consultant shall prepare the following documents:

- Administrative Draft
- Public Review Draft
- Revised Public Review Draft incorporating changes resulting from the hearing process and other outreach, and
- Final Draft of the Code for presentation at the Planning Commission and City Council hearings.
- Final adopted version incorporating any changes made in the course of the adoption process

The Public Review Drafts and Final Draft will be fully formatted and will contain a range of graphics, diagrams, tables, and charts that complement and supplement the Code. The Consultant will need to coordinate closely with the City’s Project Manager as the draft advances from Administrative Draft to Public Review Draft and to Final Draft. Once the Final Draft has been approved by the City Council, the Consultant shall provide within 21 days, a final version that includes any changes approved by Council.

e. Integration of the New Code into User-Friendly Formats:

The Consultant shall work with City staff as well as its information technology vendors to ensure that the new Code is easily accessible by the public, interactive, searchable and ADA compliant. The City uses *Code Publishing Company* for its web platform for the Municipal Code, including the Zoning Ordinance. The City hopes to soon migrate its entitlement and permitting process to an electronic software system.

f. Zoning Map Revisions:

The Consultant shall work with City staff to identify areas that will require map changes. Staff anticipates that zoning map changes will be required to simplify and reduce the number of zoning districts and match the land use changes adopted by the General Plan. Depending on the timing of the Housing Element update, there may be zoning changes necessary to comply with the Housing Element update (2023-2031)

g. Environmental Review/CEQA Documentation:

The Consultant shall prepare the appropriate CEQA document necessary for adoption of the zoning code. The Consultant should be able to tier from the recently completed General Plan 2040 EIR (*SCH No. 2018112035*) and prepare either a Finding of Conformance or Addendum.

If higher level of CEQA review is recommended, a letter discussing the reasons for that level of review will be required. Should Consultant’s environmental review require more than an Finding of Conformance or Addendum, Consultant should include the recommended CEQA tasks as an additional task. Consultants may partner with an environmental sub-consultant if they do not have the expertise in-house.

h. Project Schedule:

The Consultant shall provide the City with an anticipated schedule for the work broken

down by phase with a goal of completion adoption by December 2023.

i. Deliverables:

The Consultant shall provide the complete Zoning Code and Zoning Map in both hard copy (5 copies) and electronic format (Word and PDF) for each draft:

- Administrative Draft (Internal – staff review only);
- Public Review Draft (Public document);
- Revised Public Review Draft (Public document incorporating comments from meetings)
- Final Draft for final City Council hearings

The Consultant shall incorporate all changes to the Zoning Code and Map upon final approval by City Council. The Consultant will provide staff with five (5) hard copies and electronic files of the approved Code. In addition, final versions of the Zoning Map shall be presented in electronic version, both PDF and GIS shape file)

The Consultant shall prepare an initial draft and final version of the CEQA document. Two (2) hard copies and an electronic version shall be provided for each draft. In addition, preparation of applicable NOD to be submitted following adoption.

j. Optional Tasks:

The City is considering three optional tasks. In the project budget, the cost of the items should be listed separately and independently. These items would not count against the current not-to exceed amount identified in this RFP. Please provide a separate estimate/proposal for each optional item.

*Option 1 - Zoning Handbook:*

The Consultant will prepare a simple user-guide/handbook for the public that explains how to use the new zoning code. The handbook should be easy to understand with graphics and examples that demonstrate how the public can navigate the code and find answers to frequently requested information (e.g., residential setbacks, lot coverage, commercial building signage, accessory structure standards, development standards, etc.). This should be provided in editable PDF format that is internally hyperlinked for easy navigation within the handbook and ADA compliant.

*Option 2 – Infill Guidelines Handout:*

The Consultant will prepare a handout that is specifically tailored for infill development strategies and design standards or guidelines. The goal will be to provide an easy to understand guide that will help facilitate and streamline infill development.

*Option 3 – Objective Standards for Multi-Family Development Handout.*

The Consultant will prepare a handout that specifically outlines the objective standards that can be used when considering multi-family development projects. The document shall clearly identify when and how these standards may be used.

**IV. RFP SCHEDULE**

Responses are due no later than:  
**FRIDAY, AUGUST 13, 2021 AT 3:00 PM**  
 Responses received after this date and time will not be considered.

**PROPOSED SCHEDULE FOR THE REVIEW AND SELECTION PROCESS AND  
 DESIRED TIMELINES FOR DELIVERABLES**

<b>MILESTONE</b>	<b>DATE</b>	<b>TIME</b>
Release RFP	July 9, 2021	12:00 PM
Question submittal deadline	July 23, 2021	4:00 PM
Questions posted on City website	July 30, 2021	4:00 PM
Proposal due date	August 13, 2021	3:00 PM
Review and scoring of submittals	Aug 16-Aug 20, 2021	N/A
Interviews w/finalists (Top Three)	Aug 31-Sept 2, 2021	TBD
Consultant selection	September 9, 2021	5:00 PM
City Council Contract Approval	October 5, 2021	7:00 PM

It is anticipated that award of the formal contract with the City of Dixon will occur on October 5, 2021. Following a written notice-to-proceed, to be issued by the City, the Consultant’s work shall begin no later than 15 days after City Council approval and shall be completed in accordance with the agreed upon schedule.

The notice to proceed issued by the City will specify the work including phases to be completed, a schedule for the work, the basis for payment, and the limits of compensation. The Consultant shall not begin work nor incur any costs associated with any task identified herein without an explicit written notice to proceed.

**V. COMPENSATION**

The City will negotiate a contract with the selected Consultant based on the following assumptions and conditions:

- All services rendered as described in the Scope of Work, including all labor, equipment, materials, and expenses, the Consultant shall be compensated on a time and expenses basis by task or phase for work completed.
- The not-to-exceed amount should be broken down by phase

- This project has been authorized and appropriated by the 2021-22 budget. A portion of this funding for this project is expected to come from a community grant (SB 2) and or LEAP Grants awarded from the State of California and Association of Bay Area of Governments (ABAG), the regional planning agency for the nine-county region. The City and Consultant will be bound by the requirements of those grants.

**VI. PROPOSAL REQUIREMENTS AND CONTENT**

Interested firms are invited to submit one (1) electronic copy (PDF format) and five (5) hard copies of their proposals no later **August 13, 2021 at 3:00 PM (PST)**. Any proposal shall be submitted to the following address:

City of Dixon  
 Community Development Department  
 600 East A Street, Dixon, CA 95620  
 ATTN: Raffi Boloyan, Community Development Director

**Contents of the Proposal:**

At a minimum, the proposal should contain the information outlined herein, in the order indicated below. Additional information that the applicant deems relevant to the selection process may be included; however, concise and focused submittals are strongly encouraged.

By submitting a proposal, and unless otherwise stated, it is understood that the Consultant has reviewed the relevant information, and that based on that review, the Consultant has developed an informed understanding of the projected scope of work and has satisfied itself with the applicable conditions and requirements expressed in those documents.

1. Information Page:  
 Include the project name, name of firm submitting proposal, contact information of the person who will act as the project lead, including name, title, address, and telephone and email address.
2. Statement of Understanding:  
 Outline of the proposer's understanding of the project and summary of the basic approach to the project.
3. Methodology:  
 Descriptions which enable the City of Dixon to assess the proposer's capability to conduct this project in a structured and efficient fashion.
4. Scope of Work:  
 Proposals should provide a statement of proposer's understanding of the project by highlighting the primary issues and outlining the proposed approach toward addressing those issues. Any recommendations regarding improvements or changes to the process, in

order to more effectively meet the City’s stated objectives, should be emphasized in the proposal, as a clear means of demonstrating an understanding of the project requirements.

5. Timetable/Schedule:

A timetable which identifies the main elements of the project, according to the scope of work, and deliverable dates, duration of each phase, milestones and project completion dates throughout the project period.

6. Project Team/Personnel:

Provide an organizational chart that identifies the individuals (and sub consultants, if applicable) assigned to and responsible for the key elements of the work scope and their relationship to those elements. Indicate the number of hours each member has been budgeted and will be assigned to the project. Specifically, identify the personnel assigned to the following duties: the principal-in-charge; the project director and team leader, the daily project manager, the code organizer and lead writer, land use and environmental expert, urban form and graphics, the public engagement expert, and administration. Though the roles may overlap, provide specific, professional qualifications for each team member. It is the City’s intent that the proposed project team be committed to this project as a contract provision (see Standard Agreement in Attachment 1).

7. Individual Qualifications and Experience:

Provide relevant qualifications of both the firm, any sub consultants, as well as specific personnel assigned to this project

Provide resumes for each key staff member. Provide up to three examples of recent projects completed (or ongoing) by the proposed project team (staff members, sub-consultants, and public agencies).

For each relevant project: 1) indicate the Consultant’s role and the staff members who were responsible for the cited project work; 2) provide a brief description of the contract scope of work; 3) state the contract amount and completion date; and 4) include the name, title and phone number of a client reference.

8. Fee Proposal:

This section of the proposal must be submitted in a **separate sealed envelope** marked “**Cost Proposal – Dixon Zoning Ordinance/Map Update**” and “**Name of firm**” should provide a full description of the expected expenditure of funds for the work described in this RFP. The cost breakdown should include, but is not limited to, the following:

Task Budget: A breakdown of expenses by task and key personnel, to insure a full understanding of the resources committed to this work. The fee proposal should reflect the scope of work, term, and compensation conditions cited above.

Optional Tasks: Include the aforementioned optional task as separate line items

Bill Rate Breakdown: A breakdown of billing rates (direct, labor overhead, fee).

Sufficient information should be provided to justify the proposed fee and to serve as a basis for negotiating a contract. The fee proposal should identify personnel, estimated number of hours, and rate; type of equipment, hours, and rate; and any outside costs for each identified work element.

Any Contract resulting from this solicitation will specify a maximum, not-to-exceed fee amount. Except in the unusual situation wherein the Consultant encounters circumstances that could not be reasonably anticipated, the City will not authorize payment beyond this amount. In consideration of this, any assumptions and/or the need for any contingencies must be clearly spelled out in the Fee Proposal and used as a basis to compute a “not-to-exceed” figure for the project. This figure should be sufficient to provide for any reasonably anticipated circumstances that may be encountered during project execution and completion.

**Inquiries:**

All requests for clarifications or interpretations shall be made in writing and shall be emailed to the project manager for the update, **Raffi Boloyan, Community Development Director** at **rboloyan@cityofdixon.us**. Inquiries shall contain the firm's name, contact person, and email address and be titled “Zoning Code Update – RFP.” Deadline for inquiries is July 23, 2021 at 4:00 pm PST. City staff will post responses to all inquiries in the form of an addendum with the RFP documents at <https://www.cityofdixon.us/ZoningOrdinance> on or before July 30, 2021 by 4:00 pm PST.

**VII. EVALUATION CRITERIA AND PROCESS**

The following is an outline of the procedures the City will use in the selection process:

1. Selection Committee may include:
  - City Manager and/or Finance Director
  - Economic Development Director
  - Community Development Director
  - Planning Commissioner
  
2. Selection Committee reviews the proposals submitted by the prospective consultants and selects and reviews proposals which qualify based on the following factors:
  - a. Experience of the firm and project manager and assigned team in preparing a new zoning ordinance.
  - b. Record of the firm, project manager and assigned team in preparing a new zoning ordinance within required time frames.
  - c. Record of the firm and project manager in being responsive to the clients’ requests.

- d. Quality of work previously performed by the firm for the City and other agencies.
  - e. Community relations, including evidence of sensitivity to citizen concerns.
  - f. Ability to communicate effectively with citizens, elected officials, and staff professionals.
  - g. Ability to tailor the new zoning ordinance to meet the requirements and needs of the City.
3. Based upon the proposals submitted, the Committee will short-list up to three qualified firms for this project.
  4. The Committee will interview the short-listed firms. Based upon the proposal and interview, the Committee will rank the finalists as to qualifications. The Committee will enter into negotiations with the selected firm. (The City Council has final authority for selection.) The selection committee will score finalists on a 100-point scale based on criteria that include:
    - Proposal clarity in expressing the understanding of the City needs, defining a work plan for satisfying these needs; and understanding the scope of work. (20 points)
    - Relevant Experience of Firm, sub consultants and personnel in conducting similar projects. Particular attention will be given to project manager (20 points)
    - Methodology (10 points)
    - Public Outreach Process (10 points)
    - Proposer's support organization and in house quality control and quality assurance methods (10 points)
    - Client satisfaction and recommendations. (15 points)
    - Cost of services (15 points)

Please note that if the Consultant does not have in-house expertise to prepare the CEQA document necessary for the adoption of the new zoning code and map, the Consultant may select a sub-consultant to perform that work. However, the City reserves the right to accept or reject that sub-consultant based on their qualifications and experience.

5. Once the Committee completes their ranking, the next step is negotiation with the top ranked firm. The negotiations will cover: scope of work, contract schedule, contract terms and conditions, technical specifications, and price. If the negotiating team is unable to reach an acceptable agreement with the selected firm, the negotiating team will recommend that negotiations be terminated and that negotiations with the second ranked firm be initiated. The City Manager has final authority to terminate negotiations and move to the next ranked firm.
6. After negotiating a proposed agreement that is fair and reasonable, the negotiating team will recommend to the City Council that the City of Dixon enter into the proposed agreement. Final authority to approve the agreement rests with the City Council.

## VIII. RESOURCES

The following documents are available for viewing and download at the locations listed below:

Dixon General Plan 2040 and General Plan EIR (Draft and Final)

<http://www.cityofdixon.us/GeneralPlanUpdate>

Zoning Code (Title 18)

<https://www.codepublishing.com/CA/Dixon/#!/Dixon18/Dixon18.html>

Zoning Map

<https://www.cityofdixon.us/media/CommunityDevelopment/Planning/Dixon%20Zoning%20Map%20-%20Jan%202018.pdf>

Downtown Dixon Business Association Design Guidelines

<https://www.cityofdixon.us/media/SupplementalDesign/Downtown%20Dixon%20Business%20Association%20Design%20Guidelines.pdfs>

Northeast Quadrant Specific Plan (April 1995, with various amendments)

<https://www.cityofdixon.us/departments/CommunityDevelopment/SpecificPlans>

Southwest Dixon Specific Plan (August 2005)

<https://www.cityofdixon.us/departments/CommunityDevelopment/SpecificPlans>

Southwest Dixon Supplemental Design Guidelines

<https://www.cityofdixon.us/media/SupplementalDesign/Southwest%20Dixon%20Supplemental%20Design%20Guidelines.pdf>

City of Dixon Housing Element (2015-2023)

<https://www.cityofdixon.us/media/GeneralPlan/2015-2023%20-%20Final%20Draft.pdf>

## IX. RFP TERMS

### **Non-Obligation**

The City retains sole discretion to evaluate submittals and may make an award to the consultant(s) the City deems to be most responsive to the request for proposals. Receipt of submittals in response to its request for proposals does not obligate the City in any way to engage any consultant and the City reserves the right to reject any or all submittals, wholly or in part, at any time, without penalty. The City shall retain the right to abandon the request for proposals and selection process at any time prior to the actual execution of a contract with a consultant, and the City shall bear no financial or other responsibility in the event of such abandonment. The City reserves the right to negotiate all final terms and conditions of any agreements entered into.

### **Additional Information**

The City assumes no responsibility for delays caused by delivery service. Postmarking by the due date will not substitute for actual receipt.

All costs incurred during submittal preparation or in any way associated with the Consultant's preparations, submission, presentation, or oral interview shall be the sole responsibility of the Consultant.

If awarded a contract, the consultant shall maintain insurance coverage, including worker's compensation, reflecting the minimum amounts and conditions specified by the City. Consultants are liable for all errors or omissions contained in their proposals.

### **X. CONTRACT CONDITIONS**

The selected Consultant will be required to sign a standard City agreement and maintain required insurance coverage as indicated in Attachment 1. Unless indicated otherwise, submission of a proposal indicates that the proposer accepts the terms of the standard agreement.

### **XI. FIRMS RECEIVING RFP**

The following firms have been sent this RFP and the RFP has been posted on City's web site <https://www.cityofdixon.us/ZoningOrdinance>

- Raney Planning and Management, *Sacramento, CA*
- Stantech, *Walnut Creek CA*
- Lisa Wise Consulting, *San Luis Obispo, CA*
- Ascent Environmental, *Sacramento, CA*
- Mintier-Harnish, *Sacramento, CA*
- DeNovo Planning, *El Dorado Hills, CA*
- Clarion Associates, *Denver, CO*
- M-Group, *Santa Rosa, CA*
- Miller Planning Associates, *San Luis Obispo, CA*
- Bob Brown, *Novato CA*
- Placeworks, *Sacramento, CA*

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**PROFESSIONAL SERVICES AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Dixon, a municipal corporation of the State of California ("City"), whose address is 600 East A Street, Dixon, California 95620 and \_\_\_\_\_ ("Professional") for environmental planning assistance related to a preliminary development application. Each is individually a "Party" and collectively the "Parties". There are no other parties to this Agreement.

**RECITALS**

City seeks to contract for consulting services to provide an update to the City's Zoning Code and Map, as outlined in the Proposal, Exhibit A (the "Project"); and

City desires to retain Professional to perform the Services, subject to the terms and conditions set forth in this Agreement; and

The Parties have outlined that the services would be established as a time and materials/not-to-exceed basis; and

The Parties have outlined the rates and method of payment to Professional for its performance of the Services under this Agreement, which shall be as included in the Scope of Services in **Exhibit A**.

**NOW, THEREFORE**, in consideration of the promises and covenants set forth below, the Parties agree as follows:

**AGREEMENT**

**Section 1. Recitals.** The recitals set forth above ("Recitals") are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Section 1 through 31 of this Agreement, Sections 1 through 31 shall prevail.

**Section 2. Term.** The term of this Agreement will commence on the Effective Date and terminate on \_\_\_\_\_ ("Term") unless the Parties mutually agree in writing to terminate the Agreement earlier or extend the Term pursuant to this Agreement.

**Section 3. Effective Date.** This Agreement shall only become effective once all of the Parties have executed the Agreement (the "Effective Date").

**Section 4. Work.**

**4.1. Services.** Subject to the terms and conditions set forth in this Agreement, Professional

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shall provide City the Services described in **Exhibit A**, when so requested by the City.

Professional shall provide City the requested services within 3 days of such request.

Any request for Services not included in **Exhibit A** will be considered a request for additional or modified Services ("Modification" or "Modifications").

Professional shall not receive additional compensation for any Modification of the Services unless the Parties agree otherwise in a writing executed by both Parties.

**4.2. City Requested Modification of Services.** City may, by written order, authorize Modifications to the Services described in **Exhibit A**. If such Modifications cause an increase in the cost or time required for performance of Professional's Services, the Parties shall enter into a written amendment to this Agreement to adjust the Services and the compensation to be paid to Professional and, if necessary, amend the Completion Schedule or Compensation Schedule. The Services, Completion Schedule, or Compensation Schedule shall not be revised unless City and Professional mutually agree to a written amendment to this Agreement reflecting such revisions, additional compensation, time for performance or such other terms or conditions mutually agreed upon by the Parties.

**4.3. Professional Requested Modification in Services.** Professional shall not be compensated for work outside the Services described in this Agreement, unless, prior to the commencement of the Services:

Professional provides City with written notice that specific work requested by City or required to complete the Project is outside the agreed upon Services. Such notice shall: (1) be supported by substantial evidence that the work is outside the Services; (2) set forth the Professional's proposed course of action for completing the work and a specific request for the City to approve the Modification to the Services; (3) set forth the Professional's proposed revisions, if any, to the Completion Schedule; and (4) set forth the Professional's proposed revisions, if any, to the Compensation Schedule; and

City agrees that the work requires a Modification;

City approves all adjustments, if any, to the Completion Schedule and Compensation Schedule; and

The Parties execute a written amendment to this Agreement describing any Modification, together with any adjustment in the Completion Schedule and Compensation Schedule for Professional's work. Compensation for any additional Services shall not exceed One Hundred Seventy Dollars (\$170.00) per hour.

**Section 5. Compensation.**

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**5.1. Amount, Time and Manner of Payment for Professional Services.** City shall pay Professional according to the rates and timing set forth in the Compensation Schedule, included in **Exhibit A**. City's total compensation to Professional shall not exceed \_\_\_\_\_ Dollars ("Maximum Payment"), unless the Parties mutually agree in writing otherwise.

**5.2. Subsequent Payments.** City shall make monthly payments in the amount invoiced by Professional within thirty (30) calendar days of receiving such invoice. In the event that an amount of an invoice is in dispute, City shall inform Professional of the amount and basis for the dispute and may withhold the amount which is in dispute until the dispute has been resolved.

**5.3. Invoices.** Professional shall provide City with monthly invoices sufficiently evidencing Professional's expenses and completion of the Services. All invoices furnished to City by Professional shall be in a form approved by City. The payments specified shall be the only payments made to Professional for performance of the Services including compensation for any Modification. Professional shall submit all billings for Services to City within forty-five (45) days of the performance of such Services. City shall issue payment according to City's customary procedures and practices for issuing payments to independent contractors.

**Section 6. Time of Performance.** Professional shall conform to the Completion Schedule as requested by City. The time of performance is a material term of this Agreement relied on by City in entering into this Agreement.

**Section 7. City Assistance to Professional.** Professional shall, at its sole cost and expense, furnish all facilities, equipment, materials, information, personnel and administrative assistance which may be required to perform its obligations under this Agreement. Notwithstanding the foregoing, City shall cooperate with Professional and shall not actively interfere with Professional's performance of Services under this Agreement.

**Section 8. Time and Personnel Devoted to Services.** Professional shall devote such time and personnel to the performance of this Agreement, as is necessary to perform the Services in compliance with the Completion Schedule, Compensation Schedule, and this Agreement.

**Section 9. Performance by Qualified Personnel; No Subcontracting.** Services under this Agreement shall be performed only by competent personnel under the supervision and direct employment of Professional. Professional will conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Professional. Professional is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is expressly approved by City in writing. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void.

**Section 10. Representations of Professional.** City relies upon the following

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representations by Professional in entering into this Agreement:

**11.1. Qualifications.** Professional represents that it is qualified to perform the Services provided in **Exhibit A** and that it possesses the necessary licenses, permits required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are required. Professional shall also ensure that all subcontractors are similarly licensed and qualified. Professional and all subcontractors shall also obtain a business license from City before they commence performance of the Services. Professional represents and warrants to City that Professional shall, at Professional's sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and approvals which are legally required for Professional to practice Professional's profession at the time the Services are rendered.

**11.2. Professional Performance.** Professional represents and warrants that all Services under this Agreement shall be performed in a professional manner and shall conform to the customs and standards of practice observed on similar, successfully completed projects by specialists in the Services to be provided. Professional shall adhere to accepted professional standards as set forth by relevant professional associations and shall perform all Services required under this Agreement in a manner consistent with generally accepted professional customs, procedures and standards for such Services. All work or products completed by Professional shall be completed using the best practices available for the profession and shall be free from any defects. Professional agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Professional shall re-perform or replace unsatisfactory Service at no additional expense to City.

**11.3. No Waiver of Claims.** The granting of any progress payment by City, or the receipt thereof by Professional, or any inspection, review, approval or oral statement by any representative of City, or state certification, shall not, in any way, waive, limit, or replace any certification or approval procedures normally required or lessen the liability of Professional to re-perform or replace unsatisfactory Service, including but not limited to cases where the unsatisfactory character of such Service may not have been apparent or detected at the time of such payment, inspection, review or approval.

**11.4. City's Remedies are Cumulative.** Nothing in this Section shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which City or Professional may have under this Agreement or any applicable law. All rights and remedies of City, whether under this Agreement or applicable law, shall be cumulative.

**11.5. No Conflict of Interest.** Professional represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement.

**Section 12. Conformity with Law and Safety.** Professional shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the

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scope of Services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the American with Disabilities Act, any copyright, patent or trademark law and all other applicable federal, state, municipal and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. All Services performed by Professional must be in accordance with these laws, ordinances, codes and regulations. Professional's failure to comply with any laws, ordinances, codes or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Professional shall immediately notify the City's risk manager by telephone. If any accident occurs in connection with this Agreement, Professional shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: (a) name and address of the injured or deceased person(s); (b) name and address of Professional's subcontractor, if any; (c) name and address of Professional's liability insurance carrier; and (d) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

**Section 13. Confidentiality.** Professional understands and agrees that, in the performance of Services under this Agreement or in the contemplation thereof, Professional may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City ("Confidential Information").

Professional shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Professional written authorization to make any such disclosure, Professional shall do so only within the limits and to the extent of that authorization. Professional may be directed or advised by the City Attorney on various matters relating to the performance of the Services on the Project or on other matters pertaining to the Project, and in such event, Professional agrees that it will treat all communications between itself, its employees and its subcontractors as being communications which are within the attorney-client privilege.

**Section 14. Excusable Delays; Notice to Other Party of Delay.** Professional shall not be in breach of this Agreement in the event that performance of Services is temporarily interrupted or discontinued due to a "Force Majeure" event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, explosion, an act of government, such as a declaration of national, state, or local emergency, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Professional. Force Majeure does not include: (a) Professional's financial inability to perform; (b) Professional's failure to obtain any necessary permits or licenses from other governmental agencies; or (c) Professional's failure to obtain the right to

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use the facilities of any public utility where such failure is due solely to the acts or omissions of the Professional.

**Section 15. Assignment Prohibited.** No Party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

**Section 16. Ownership of Work Product.** Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes, professional or technical information or data, photographs, notes, letters, emails or any original works of authorship created by Professional or its subcontractors or subcontractors in connection with Services performed under this Agreement ("Products") shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of City. In the event that it is ever determined that any Product created by Professional or its subcontractors or subcontractors under this Agreement are not works for hire under U.S. law, Professional hereby assigns all copyrights to such Products to City. With the prior written approval of City's point of contact for the Project, Professional may retain and use copies of such Products for reference and as documentation of its experience and capabilities.

All Products shall become the property of City irrespective of where located or stored and Professional agrees to deliver all such documents and information to City, without charge and in whatever form it exists, on the completion of the Professional's services hereunder. Professional shall have no ownership interest in such Products.

All work product of Professional under this Agreement, including written information which City will cause to be distributed for either internal or public circulation, including both preliminary and final drafts shall be delivered to City in both printed and electronic form, or as may be specified in **Exhibit A**.

When this Agreement is terminated, Professional agrees to return to City all documents, drawings, photographs and other written or graphic material, however produced, that it received from City, its contractors or agents, in connection with the performance of its Services under this Agreement. All materials shall be returned in the same condition as received.

**Section 17. Termination of Work by City for Its Convenience.** City shall have the right to terminate this Agreement at any time for its convenience by giving notice of such termination to Professional. In the event City shall give such notice of termination, Professional shall cease rendering Services upon receipt of said notice given as required in this Agreement. If City terminates this Agreement:

Professional shall deliver copies of all Products prepared by it pursuant to this Agreement.

If City terminates this Agreement after Professional has commenced performance under this

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Agreement, City shall pay Professional the reasonable value of the Services rendered by Professional pursuant to this Agreement prior to termination of this Agreement. City shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the Services. Professional shall furnish to City such financial information, as in the judgment of the City Manager, is necessary to determine the reasonable value of the Services rendered by Professional prior to termination. In the event of a dispute as to the reasonable value of the Services rendered by Professional prior to termination and the Parties are unable to agree upon said amount within sixty (60) calendar days following the date of the notice of termination by the City, such dispute may, upon the request of either Party, be resolved by arbitration conducted in accordance with Section 21.

(c) Except as provided in this Agreement, in no event shall City be liable for costs incurred by or on behalf of Professional after the date of the notice of termination.

**Section 18. Assurance of Performance.** If, at any time, City believes Professional may not be adequately performing its obligations under this Agreement or may fail to complete the Services as required by this Agreement, City may submit a written request to Professional for written assurances of performance and a plan to correct observed deficiencies in Professional's performance. Failure to provide written assurances subsequent to such written request, constitutes grounds to declare a breach under this Agreement.

**Section 19. Cancellation for Breach by Either Party.** Should either Party fail to substantially perform its obligations in accordance with the provisions of this Agreement, the other Party shall thereupon have the right to cancel the Agreement by giving written notice and specifying the effective date of such cancellation. If City cancels this Agreement for breach and it is subsequently determined that Professional did not fail to substantially perform its obligations in accordance with this Agreement, then cancellation for breach by City shall be deemed, and treated, as termination for convenience.

Neither Party waives the right to recover damages against the other for breach of this Agreement including any amount necessary to compensate City for all detriment proximately caused by Professional's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. City reserves the right to offset such damages against any payments owed to Professional.

City shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the Services required by this Agreement.

In the event of cancellation by either Party, copies of all finished or unfinished Products shall become the property of City.

**Section 20. Non-Discrimination.** In its performance of the Services, Professional shall adhere to the City's EEO Policy which states, "The City is committed to ensuring that all qualified individuals have a full and fair opportunity to compete in all phase of the hiring

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process and promotion, and to enjoy the benefits of employment with the City. All employees and applicants shall receive equal consideration and treatment in employment without regard to race, color, religion, gender, sexual orientation, national origin, age, disability, genetic information, marital status, amnesty, or status as a covered veteran in accordance with applicable federal or state statutes, the City's ordinances, resolutions, rules or regulations."

In addition, all agreements with sub-contractors will include language as required by the Office of Federal Contract Compliance Programs (OFCCP) that requires sub-contractors to maintain equal employment opportunity policies, and, as necessary, affirmative action policies.

**Section 21. Arbitration of Disputes.** All claims, disputes and other matters in question between City and Professional arising out of, or relating to this Agreement or the breach thereof, including claims of Professional for extra compensation for Services related to the Project shall be decided by arbitration before a single arbitrator in accordance with the provisions of Sections 1281 to 1284.2 of the California Code of Civil Procedure (the "Arbitration Laws") unless the Parties mutually agree otherwise. The provisions of Section 1283.05 of the Arbitration Laws apply to any arbitration proceeding except as otherwise provided in this Agreement. The arbitrator shall have authority to decide all issues between the Parties including, but not limited to, claims for extras, delay and liquidated damages, if any, provided for in this Agreement, matters involving defects in the work product of the Professional, rights to payment, and whether the necessary procedures for arbitration have been followed. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Notice of the demand for arbitration shall be filed in writing with the other Party. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitation.

The Parties shall jointly appoint an arbitrator within fifteen (15) calendar days of the date of giving of the notice of the demand for arbitration. If the Parties are unable to jointly agree upon the appointment of an arbitrator within said fifteen (15) calendar day period, and do not agree in writing to extend said period for a fixed period, then either Party may seek to have the arbitrator appointed by the Superior Court of Solano County in accordance with the Arbitration Laws.

If any proceeding is brought to contest the right to arbitrate and it is determined that such right exists, the losing Party shall pay all costs and attorneys' fees incurred by the prevailing party.

In addition to the other rules of law which may be applicable to any arbitration hereunder, the following shall apply:

Promptly upon the filing of the arbitration each Party shall be required to set forth in writing

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and to serve upon each other Party a detailed statement of its contentions of fact and law.

All parties to the arbitration shall be entitled to the discovery procedures as provided in Section 1283.05 of the California Code of Civil Procedure.

The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein.

These additional rules shall be implemented and applied by the arbitrator.

The costs of arbitration shall be borne by the Parties as determined by the arbitrator, but each Party shall bear its own attorney's fees associated with the dispute with the other Party and to the arbitration.

**Section 22. Insurance Coverage.** During the Term, the Professional shall maintain in full force and effect policies of insurance set forth herein, which shall be placed with insurers with a current A M Best's rating of no less than A VII, and will provide the City with written proof of said insurance. Professional shall maintain coverage as follows:

**General Liability.** Professional shall carry general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or another form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate shall be Two Million Dollars (\$2,000,000.00).

**Reserved.**

**Errors and Omissions Liability.** Professional shall carry errors and omissions liability insurance in the amount of no less than One Million Dollars (\$1,000,000.00) per occurrence or greater if appropriate for the Professional's profession. Architects and engineers coverage is to be endorsed to include contractual liability. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents"); or the Professional shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claims administration and defense expenses.

**Commercial Automobile Liability.** Professional shall carry commercial automobile liability insurance in the amount of Two Million Dollars (\$2,000,000) or greater per occurrence for owned, leased, hired, and borrowed automobiles.

**Section 23. Additional Insurance Requirements.** Within five (5) days of the Effective Date, Professional shall provide City with certificates of insurance for all of the policies required

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under this Agreement (“Certificates”), excluding the required worker’s compensation insurance. Such Certificates shall be kept current for the Term of the Agreement and Professional shall be responsible for providing updated copies and notifying City if a policy is cancelled, suspended, reduced, or voided. With the exception of the worker’s compensation insurance, all of the insurance policies required in this Agreement shall: (a) provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days’ prior written notice to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; (b) name City, and City’s Agents as additional insureds with respect to liability arising out of Services, work or operations performed by or on behalf of the Professional; products and completed operations of the Professional; premises owned, occupied, or used by the Professional, or automobiles owned, leased, or hired or borrowed by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to the City; (c) be primary with respect to any insurance or self-insurance programs covering City or City’s Agents and any insurance or self-insurance maintained by City or City’s Agents shall be in excess of Professional’s insurance and shall not contribute to it; (d) contain standard separation of insured provisions; and (e) state that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to the City.

**Section 24. Indemnification by Professional.** To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Professional shall defend with legal counsel reasonably acceptable to City, indemnify and hold harmless the City and City’s Agents from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Professional or its subcontractors), expense and liability of every kind, nature and description that arise out of, pertain to or relate to acts or omissions of Professional, or any direct or indirect subcontractor, employee, contractor, representative or agent of Professional, or anyone that Professional controls (collectively “Liabilities”). Such obligations to defend, hold harmless and indemnify City and City’s Agents shall not apply to the extent that such Liabilities are caused in whole by the sole negligence, active negligence, or willful misconduct of City or City’s Agents, but shall apply to all other Liabilities. With respect to third party claims against the Professional, the Professional waives any and all rights of any type of express or implied indemnity against City and City’s Agents.

**Section 25. Liability of City.** Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

**Section 26. Independent Contractor.** At all times during the Term, Professional shall be deemed to be an independent contractor and shall be wholly responsible for the manner in which Professional performs the services required under this Agreement. Professional shall be liable for its acts and omissions, and those of its employees, contractors, subcontractors,



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Dixon, California 95620  
Attention: City Manager  
Tel: (707) 678-7000 ext. 101

and White/Brenner, LLP  
1414 K Street, 3<sup>rd</sup> Floor  
Sacramento, California 95814  
Attention: Douglas L. White, Esq.  
Tel: (916) 468-0950  
Fax: (916) 468-0951

and City of Dixon  
600 East A Street  
Dixon, California 95620  
Attention: Raffi Boloyan, Community Development Director  
Tel: (707) 678-7000 ext. 1114

If to Professional:

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**Section 30. Exhibits.** All "Exhibits" referred to below or attached to herein are by this reference incorporated into this Agreement:

<u>Exhibit Designation</u>	<u>Exhibit Title</u>
<b>Exhibit A:</b>	<b>Scope of Services</b>

**Section 31. General Provisions.**

**31.1. Modification.** No alteration, amendment, modification, or termination of this Agreement shall be valid unless made in writing and executed by all of the Parties to this Agreement.

**31.2. Waiver.** No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

**31.3. Assignment.** No Party to this Agreement shall assign, transfer, or otherwise dispose of this Agreement in whole or in part to any individual, firm, or corporation without the prior written consent of the other Party. Subject to the forgoing provisions, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties

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hereto.

**31.4. Authority.** All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into the Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

**31.5 Drafting and Ambiguities.** Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

**31.6. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of California.

**31.7. Venue.** Venue for all legal proceedings shall be in the Superior Court of California for the County of Solano.

**31.8. Severability.** If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

**31.9. Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**31.10. Audit.** City shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Professional's charges to City under this Agreement.

**31.11. Entire Agreement.** This Agreement, together with its specific references, attachments and exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, understanding and agreements with respect hereto, whether oral or written.

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**31.12. Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, whether written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

**31.13. Mandatory and Permissive.** “Shall” and “will” and “agrees” are mandatory. “May” and “can” are permissive.

**31.14. Successors and Assigns.** All representations, covenants, and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of, any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

**31.15. Headings.** Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

**31.16. Attorney’s Fees and Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

**31.17. Necessary Acts and Further Assurances.** The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

**31.18. Time is of the Essence.** Time is of the essence in this Agreement for each covenant and term of a condition herein.

**IN WITNESS WHEREOF**, this Agreement has been entered into by and between City and Professional as of the Effective Date.

**CITY:**

City of Dixon, a municipal corporation of the  
State of California

By: \_\_\_\_\_  
Jim Lindley, City Manager

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

Approved as to Form:

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By: \_\_\_\_\_  
Douglas L. White, City Attorney

Attest:

By: \_\_\_\_\_  
Kristin M Janisch  
Interim Elected City Clerk

**PROFESSIONAL:**

Name of Firm

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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