



CITY OF DIXON
REQUEST FOR
PROPOSAL
FOR PROJECT MANAGEMENT SERVICES FOR
ENTERPRISE RESOURCE PLANNING (ERP)
SYSTEM IMPLEMENTATION

Issue Date:
March 16, 2022
Response Due Date/Time:
April 13, 2022 before 5:00 PM PT

This page intentionally left blank.

1 RFP Introduction

1.1 General Information

The City of Dixon (City) is requesting proposals from qualified individuals or firms to provide project management services for implementation of an Enterprise Resource Planning (ERP) system.

There is no expressed or implied obligation for the City to reimburse responding individuals or firms for any expenses incurred in preparing proposals in response to this request. Materials submitted by proposers are subject to public inspection under the California Public Records Act unless exempt. Any language purporting to render the entire proposal confidential or proprietary will be ineffective and disregarded.

During the evaluation process the City reserves the right to request additional information or clarifications from the proposer. At the discretion of the City, individuals or firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether the proposal was selected. Submission of a proposal indicates acceptance by the proposer of the conditions contained in this Request for Proposal, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the selected firm.

Proposer must agree to use the City's contract template without amendment (attached to this RFP). A recommendation and proposed contract will be prepared for City Council consideration at a May 2022 meeting. The City reserves the right to reject any or all proposals. The proposal package shall present all-inclusive fees for each phase of the engagement.

1.2 Term of Engagement

It is the intent of the City to contract for the services presented herein for a term of twenty (20) to twenty-four (24) months, depending upon the project implementation timeline. The City reserves the right to extend the term of the contract to complete the project; or cancel the contract at any time with 10 days written notice.

The estimated implementation timeline is subject to change

1.3 RFP Coordinator

All communications concerning this RFP must be submitted via email to the RFP Coordinator identified below.

Name and Title: Kate Zawadzki, Finance Director
Email: Kzawadzki@cityofdixon.us

The RFP Coordinator will be the sole point of contact for this RFP. Proposer contact with any person(s) in the City other than the RFP Coordinator is expressly forbidden, and may result in disqualification of the Proposer's bid. Any communications other than via email to the RFP Coordinator will be considered unofficial and non-binding on the City.

1.4 RFP Amendment and Cancellation

The City reserves the unilateral right to amend this RFP in writing at any time. The City also reserves the right to cancel or reissue the RFP at its sole discretion. If an amendment is issued, notification shall be provided to all Proposers complying with Section 1.6 Intent to Propose and the amendment posted on the City's website:

<https://www.dixonplanroom.com/>

Proposers must respond to the final written RFP, including and any exhibits, attachments, and amendments.

1.5 RFP Questions

Questions concerning the RFP should be submitted via e-mail to the RFP Coordinator identified in Section 1.3 prior to 5:00 pm March 23, 2022 which is the "Deadline for Proposer Questions". Proposer questions should clearly identify the relevant section of the RFP and page number(s) related to the question being asked. The questions submitted and the City's responses shall be posted on the City website identified in Section 1.4.

1.6 Intent to Propose

Each Proposer who plans to submit a proposal should register by email to the RFP Coordinator. The email should indicate the Proposer's intent to respond to this RFP. The email should include:

- Proposer's company name
- Proposer's intent to respond to this RFP
- Name and title of Proposer main contact
- Address, telephone, and email address

The "Intent to Propose" email does not bind Proposers to submitting a proposal.

1.7 Proposal Submittal

Proposals are to be submitted no later than April 13, 2022 at 5:00 PM PST. A Proposer's failure to submit a proposal as required before the deadline may cause the proposal to be disqualified.

Proposers must submit in an electronic copy, a single .pdf file containing all submitted material. The proposal package shall be emailed to the City at:

Kzawadzki@cityofdixon.us

The email subject line should be as follows: Proposal for Project Management Services for ERP System Implementation Services.

All information must be received by the City on the date/time indicated in Section 1.7. Information received after this time and date may not be considered.

2 City Overview

The City of Dixon is located in Northern California in Solano County, 20 miles southwest of Sacramento and 65 miles northeast of San Francisco. The City of Dixon is a general law city incorporated in 1878 with a Council-Manager form of government. The five-member Mayor/Council serves four-year terms, staggered at even numbered years. The City was originally developed as the commercial and service center for the surrounding agricultural area and was known as “Dicksonville”, after a prosperous rancher, named Thomas Dickson, donated a portion of land to create a railroad depot. When the first consignment of goods arrived by rail, the address mistakenly read “Dixon” which ultimately became the City’s name. The population as of July 2021 is 21,138 in a 7.1 square mile area.

Dixon offers a unique combination of an outstanding location, desirable housing and strong community values. Dixon can be characterized as a progressive city that seeks excellent development with a desire to maintain and enhance “quality of life” characteristics that are part of its history and agricultural heritage. Dixon’s proximity to Davis, Sacramento and San Francisco, affords the community with wide array of employment opportunities in areas such as government, technology, health care, and manufacturing. In fact, the top employment industries in Dixon are educational services, retail trade and health care. Within 25 miles are a skilled and diverse workforce of 237,900 and there is an estimated population of 460,306 within Solano County.

The City is a full-service organization providing residents with a range of municipal services including police and fire protection; construction and maintenance of streets, storm drains, and other infrastructure; economic development; an active planning and building permit center; Water; Wastewater, Transit and parks and recreational facilities including multi-use athletic fields, picnic sites, a skate park, a swim center, and a senior center. The City employs approximately 130 full-time employees in the following departments:

- City Clerk
- City Manager’s Office
- Community Development
- Engineering & Utilities Department
- Finance Department
- Fire Department
- Human Resources Department
- Police Department
- Public Works Department

3 Scope of Services

The City will acquire the Tyler Incode ERP system. A contract with Tyler Technologies was approved by City Council in October 2021. The City is contracting for a Hosted Solution (SaaS).

The purpose of this RFP is to solicit proposals from vendors qualified to provide professional project management and implementation services related to the implementation of a new organization-wide Enterprise Resource Planning (ERP) system for the City of Dixon. The chosen contractor will provide project management, consulting and technical assistance as specified herein, together with such other related functions and duties as directed by the City. The City will consider proposals from individuals, group of individuals, independent contractors, and businesses supplying an individual(s) to provide project management service. The ideal contractor will have:

- Experience working with Tyler Incode Financial Management and HR & Payroll applications;
- Experience working with Tyler Energov applications;
- Experience in California local government payroll including public safety, multiple labor groups and CalPERS;
- Experience in the full ERP lifecycle principally in implementation;
- Implementation project manager with experience providing professional project management and implementation services for municipal governments;
- Solid expertise in business process evaluation, improvement and change management in this arena.

The selected provider will have excellent operational and technical project management depth in areas of interest to the City under this RFP, and must be a highly-effective communicator, particularly in (1) translating technical concepts to non-technical audiences, and (2) persuading and leading organizations through radical change management efforts. They will have significant experience with public sector organizations, having worked with cities both larger and smaller than Dixon. They will also have significant experience implementing and working with human resource, payroll and permitting applications.

3.1 Modules Planned for Implementation

3.1.1 Incode 10 Customer Relationship Management Suite

- Core Financials
- Benefits Enrollment
- Capital Assets
- Personnel Management (Includes Position Budgeting)
- Employee Self-Service
- Purchasing
- Project & Grant Accounting
- Accounts Receivable
- General Billing
- Tyler Cashiering

3.1.2 Incode 10 Customer Relationship Management Suite

Functional Areas:

- Utility CIS System
- Cashiering
- Utility Billing Online Component
- Third Party Printing Interface
- Mobile Service Orders

3.1.3 Energov

Functional Areas:

- Business Management
- Citizen Self Service
- Community Development
- GIS
- IG Workforce Apps
- Report Toolkit
- Tyler 311

3.1.4 Executime

Functional Areas:

- Executime Time & Attendance
- Executime Advanced Scheduling

3.1.5 Socrata

Functional Areas:

- Open Finance Budget

3.1.6 Tyler Content Manager

3.1.7 Tyler Parks & Recreation

Functional Areas:

- Tyler Parks & Recreation
- Cashiering for Parks & Recreation

3.2 Scope of Work – Project Manager

The selected Project Manager (PM) will coordinate project team members and subject matter experts from City Staff, as well as the overall implementation schedule. The PM will serve as the primary point of contact with the Tyler's project manager; and will be responsible for regular reporting to the City's Executive team.

3.3 Specific Project Management tasks include:

3.3.1 Conduct and/or attending all ERP implementation-related regular and special meetings during the project, including reporting project status to the City Executive Team.

3.3.2 Provide updates for status reports, review status reports, and participate in bi- weekly

status meetings with Tyler Technologies.

- 3.3.3** Manage City information on the project SharePoint site.
- 3.3.4** Review meeting agendas prepared by Tyler Technologies and distribute those agendas to City's meeting participants.
- 3.3.5** Review Tyler Technologies site reports posted to the project SharePoint site.
- 3.3.6** Work with Tyler Technologies' project manager to ensure the implementation and deployment is successfully completed. This will include reviewing the project Issues.
- 3.3.7** Log with the Tyler Technologies project manager, collaboratively assign a priority to each issue, and identify the individual responsible for facilitating resolution.
- 3.3.8** Work cooperatively with the City staff and legal counsel in implementing policies, procedures, and directives called for by the City.
- 3.3.9** Monitor and communicate any identified project risks to the Tyler Technologies project manager and the Executive Staff.
- 3.3.10** Prepare and deliver any scope change requests for Tyler Technologies implementation services to Tyler's Technologies project manager.
- 3.3.11** Prepare and submit to Tyler Technologies any product enhancement requests with sufficient detail for Tyler Technologies evaluation.
- 3.3.12** Coordinate any City requests for software development.
- 3.3.13** Review and accept/reject implementation control points and deliverables, providing feedback on rejections.
- 3.3.14** Assist with creation of software training user accounts for all users, ensure users are following curriculums, and monitor and communicate user progress to City Management.
- 3.3.15** Coordinate software installation activities.
- 3.3.16** Coordinate City staff training activities for all users.

- Coordinate user acceptance testing.
- Work with Tyler Technologies project manager to outline go-live steps, requirements and assignments.
- Coordinate final acceptance process for each phase of implementation.

In addition to the responsibilities and duties enumerated above, the successful Project Manager will also perform all other duties and responsibilities assigned by the City's Leadership Team related to management and coordination of the implementation of the Tyler Incode system.

The City expects the PM will need to dedicate an average of 15 hours per week for the duration of implementation. Actual time dedicated will be based on the phase of implementation; with some weeks requiring more hours, and some weeks requiring less.

PM services can be provided remotely although some in person visits may be necessary.

3.3 Other Information

- The individual or firm selected must acquire and maintain a City business license upon execution of the final agreement and maintain that business license

throughout the term of any agreement.

- The selected individual or firm shall maintain minimum insurance coverage as specified in the professional services agreement during the entire term of the engagement. Prior to commencement of project management services, the individual or firm will be required to provide a certificate of insurance to the City.

4 Proposal Submission

4.1 General Instructions

Proposals must be organized consistent with the outline provided in this section. Proposers must follow all formats and address all portions of the RFP set forth herein, providing all information requested. Proposers may retype or duplicate any portion of this RFP for use in responding to the RFP, provided that the proposal clearly addresses all of the City's information requirements.

The complete proposal shall include the proposal document with a point-by-point response to the RFP and all other materials requested in the RFP. Vendors may include any additional materials they feel could assist in the evaluation of the proposed system. However, each question shall be responded to completely. References to other documents shall not be accepted.

The City is interested in leveraging a joint ability to adjust the expenditure of contract project management hours in a manner that meets project needs at various stages of the project lifecycle, rather than requiring full-time resource commitment throughout the project. As such, the City is open to a contractual arrangement that allows the successful firm to engage in other business endeavors so long as the legal and performance requirements of the Professional Services Agreement between both parties is enforced at all times and conflicts of interest are avoided. The city is preparing a budget to allow for 15 hours per week for the duration of this project.

4.2 Content of the Proposal:

Proposals should be prepared simply and economically providing a straightforward, concise description of the vendor's ability to perform the following requirements of this RFP. This should include the five (5) section listed below (4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5):

4.2.1 Vendor Qualifications

Please provide a brief history and overview of your firm and its organizational structure, or if an individual, a description of your qualifications with special emphasis on your understanding of the services required and how you propose to fulfill the needs of the City, including the following information:

1. Name, mailing address, e-mail address, telephone, and fax number of the vendor.

2. Type of organization (individual, partnership, corporation, or other). Please include Federal Tax ID (FEIN).
3. Principals of your firm (as applicable).
4. State why you are well-qualified to provide the City with the ERP implementation services outlined in the "Scope of Work" section above. This must include the size of the organization, list of the staff qualified to provide these services, and the location of the coordinating office.
5. Provide specific descriptions of the experience of the vendor in providing these services to clients similar to the City.
6. Provide five (5) references from other clients to which the vendor has provided services similar to those outlined in this RFP. Include names, addresses, and phone numbers, a thorough description of project scope and deliverables, and dates of the service. Contacts shall be those who have personal knowledge of your vendor's performance for this requirement.

4.2.2 Project Manager Qualifications and Experience:

Please identify the individual staff member(s) who will be assigned to provide the professional project management and technical assistance services outlined in the RFP, including:

1. Identify and provide the resume of the individual who will be assigned to provide these contracted services on a day-to-day basis to include:
 - a. Identify at a minimum: the person's name, education, position, and total years and types of experience relevant to the performance of the agreement.
 - b. Identify the assigned individual's position within the vendor and the degree to which they will be able to commit resources and time to provide the services.
2. Identify and provide resumes of any individuals who will be assigned to assist the individual assigned to provide the services to include:
 - a. Identify at a minimum: the person's name, education, position, and total years and types of experience relevant to the performance of the agreement.
 - b. Identify the staff roles and responsibilities, and how these individuals will work with the assigned primary individual providing these services.

4.2.3 Technical Approach to Service Provision:

1. Provide a written explanation detailing how the assigned individual will approach the provision of the services outlined in this RFP to include:
 - a. The management of time, resources, and staff to accomplish goals.
 - b. Working with the project team on issues for consideration by the City Executive Team.
 - c. Working with ERP functional and technical staff members on issues of a routine nature and those that are urgent or emergencies.
 - d. Developing and modifying policies and procedures.
2. Describe in detail the information and assistance you will require from the City Executive Team in providing these services and indicate if additional information or resources will be required.
3. Provide samples of an actual report or work product that you have performed for

services similar to those required in this RFP.

4.2.4 Tyler Incode & Energov Specific Knowledge and Experience:

Please discuss relevant experience with answer the supplemental questions below.

1. What is your experience providing project management to financial / human capital management implementation?
2. Discuss your knowledge and experience with Tyler Incode ERP products. How well do you know the product? What product versions are you experienced with?
3. What technical resources do you have available to assist with legacy data conversion, either internal or contracted?
4. What is your experience providing project management to permitting application implementation?
5. Discuss your knowledge and experience with Tyler Energov products. How well do you know the product? What product versions are you experienced with?

4.2.5 Financial/Pricing Proposal:

It is the intent of the City to purchase these services for a specific time period at a specific unit cost. The Vendor will be engaged as an independent contractor (see Provider Agreement, attached), and will be responsible for all benefits, any and all taxes (including without limitation all income, payroll, and self-employment taxes), and insurance requirements. As noted above, the City is open to negotiating an agreement that adjusts the expenditure of project management professional services hours to meet cyclical project needs. Please keep this in mind as you consider the proposal pricing options below:

1. The vendor must propose a total per hour charge for the individual or individuals assigned to provide the services described above to include all costs for salaries and benefits.
2. In addition, the vendor should propose a fixed amount, Not to Exceed cost estimate for the entire project, from initial assessment through system acceptance (approximately 20 - 24 months).
3. Mileage expense reimbursement will be at the Internal Revenue Service rate.

Provide a brief description of the vendor's approach to this project to include:

4. All other expenses will require pre-approval from the City. Vendor shall identify other expenses for which reimbursement will be sought, including any fixed rates or charges applicable to any category of expenses.

Pricing:

Please complete the following pricing table and answer the supplementary pricing questions that follow.

Per Hour Charge to Provide Services \$_____per hour

AND (optional)

Total monthly fees (all-inclusive) \$_____

AND (optional)

Total per Project Charge to Provide Services \$_____

Questions:

- 1) Please describe what costs or expenses are included in the above rate.
- 2) What costs or expenses do you anticipate may be required in addition to those included in the above rate?

4.3 Proposal Format and Content

Submit by email an electronic copy (a single.pdf file) containing all submitted material

The proposal package shall be emailed to the City at:

Kzawadzki@cityofdixon.us

The email should be contain the subject line as follows:

Proposal for Project Management Services for ERP System Implementation Services

The following information should be included in the body of the email:

Name of Proposing Firm
Proposer's Address
Proposer's Contact Person
Proposer's Telephone Number

No fax proposals will be accepted. Proposals received after April 13, 2022 at 5:00pm will not be considered.

4.4 Technical Proposal Format

4.4.1 Title Page

Show the subject, name of the proposer, contact information and date of submission.

4.4.2 Table of Contents

Provide a complete identification of materials submitted by section and page number.

4.4.3 Transmittal Letter

Provide a general introduction, a brief statement of the proposer's understanding of the engagement, and the name and contact information of the person authorized to represent the proposer.

4.4.4 Contents of Proposal as outlined above in Section 4

5 Evaluation Procedures and Criteria

5.1 Proposals will be evaluated based on the following criteria:

City staff will evaluate the submitted proposals.

The evaluators will consider how well the vendor's qualifications and costs meet the needs of the City as described in this document. It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal. The evaluation process is not designed to simply award the contract to the lowest cost vendor. Rather, it is intended to help the City select the vendor with the best combination of attributes, including price, based on the evaluation factors. City Staff will invite finalists to participate in an interview to be conducted the week of April 18th.

The City plans to apply the following criteria in selecting a project management partner:

- Project Management Experience (e.g. certifications; successful, "full life cycle" completion of similar ERP projects, particularly in municipal government environments)
- Technical Knowledge (e.g. knowledge of and experience with ERP applications and associated infrastructure platforms)
- Functional Technical Knowledge (e.g., knowledge of and experience of human resource, payroll functions and permitting functions, particularly in:
 - California municipal government
 - Building, Fire, Engineering Permitting
 - Public safety employees and labor agreements
 - CalPERS
 - SDI & workers compensation
- Product Specific Knowledge and Experience (e.g., knowledge of and experience in Tyler Incode human resource and payroll applications including employee self-service and Tyler Energov permitting applications)
- Management and Interpersonal Skills (e.g. ability to manage and reconcile stakeholders issues and priorities; successful experience designing, implementing and managing comprehensive change management programs during ERP implementations)
- Pricing (e.g. price proposal, contract requirements and objections)

5.2 Proposal Review

- Proposals will be evaluated by City Staff, including but not limited to Director of Finance,

Human Resources Director and the Community Development Director.

- Interviews will be conducted with the top ranked proposers the week of April 18, 2022.
- Staff will present its findings to the City Council for selection. The City Council will have final authority to award the contract. It is anticipated that selection and award of contract will be made at a May 2022 City Council meeting.

6 RFP Timeline Summary

March 16, 2022	RFP issued
March 23, 2022	Deadline for RFP questions
April 13, 2022	RFP submission due by 5:00
April 18 – 22, 2022	Interviews
May 3 or May 17, 2022	Report to Council approving contract

7 RFP Terms and Conditions

7.1 Collusion

By submitting a response to the RFP, each Proposer represents and warrants that its response is genuine and made in the interest of or on behalf of any person not named therein; that the Proposer has not directly induced or solicited any other person to submit a sham response or any other person to refrain from submitting a response; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a response.

7.2 Gratuities

No person will offer, give or agree to give any City employee or its representatives any gratuity, discount or offer of employment in connection with the award of contract by the City. No City employee or its representatives will solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a City contract.

7.3 Required Review and Waiver of Objections by Proposers

Proposers should carefully review this RFP and all attachments, including but not limited to the Standard Provider Agreement, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called “comments”). Comments concerning RFP objections must be made in writing and received by the City no later than the "Deadline for Proposal Questions" detailed in Table 1 - RFP Timeline. This will allow issuance of any necessary amendments and help prevent the opening of defective information upon which contract award could not be made.

Protests based on any objection will be considered waived and invalid if these faults have not been brought to the attention of the City, in writing, by the Deadline for Proposal Questions.

7.4 Nondiscrimination

No person will be excluded from participation in, be denied benefits of, be discriminated against

in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or California State Constitutional or statutory law; nor will they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's contractors. Accordingly, all Proposers entering into contracts with the City will, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

7.5 Proposal Preparation Costs

The City will not pay any costs associated with the preparation, submittal, or presentation of any proposal.

7.6 Proposal Withdrawal

To withdraw a proposal, the Proposer must submit a written request, signed by an authorized representative, to the RFP Coordinator (Section 1.3). After withdrawing a previously submitted proposal, the Proposer may submit another proposal at any time up to the Deadline for Proposal Submission.

7.7 Proposal Errors

Proposers are liable for all errors or omissions contained in their information. Proposers will not be allowed to alter proposal documents after the Deadline for Proposal Submission.

7.8 Incorrect Proposal Information

If the City determines that a Proposer has provided, for consideration in the evaluation process or contract negotiations, incorrect information which the Proposer knew or should have known was materially incorrect, that proposal will be determined non-responsive, and the proposal will be rejected.

7.9 Prohibition of Proposer Terms and Conditions

A Proposer may not submit the Proposer's own contract terms and conditions in a response to this RFP. If a proposal contains such terms and conditions, the City, at its sole discretion, may determine the proposal to be a nonresponsive counter-offer, and the proposal may be rejected.

7.10 Assignment and Subcontracting

The Contractor may not subcontract, transfer, or assign any portion of the contract without prior, written approval from the City. Each subcontractor must be approved in writing by the City. The substitution of one subcontractor for another may be made only at the discretion of the City and with prior, written approval from the City.

Notwithstanding the use of approved subcontractors, the Proposer, if awarded a contract under this RFP, will be the prime contractor and will be responsible for all work performed and will be responsible for all costs to subcontractors for services provided by the Proposer. The Proposer

is prohibited from performing any work associated with this RFP or using contractors for any service associated with this RFP offshore (outside the United States).

7.11 Right to Refuse Personnel

The City reserves the right to refuse, at its sole discretion, any subcontractors or any personnel provided by the prime contractor or its subcontractors. The City reserves the right to interview and approve all Proposer staff members. Proposer's staff may be subject to the City's background and drug testing processes at any time.

7.12 Proposal of Additional Services

If a Proposer indicates an offer of services in addition to those required by and described in this RFP, these additional services may be added to the contract before contract signing at the sole discretion of the City.

7.13 Licensure

Before a contract pursuant to this RFP is signed, the Proposer must hold all necessary, applicable business and professional licenses. The City may require any or all Proposers to submit evidence of proper licensure.

7.14 Conflict of Interest and Proposal Restrictions

By submitting a response to the RFP, the Proposer certifies that no amount will be paid directly or indirectly to an employee or official of the City as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the procurement under this RFP.

Notwithstanding this restriction, nothing in this RFP will be construed to prohibit another governmental entity from making a proposal, being considered for award, or being awarded a contract under this RFP.

Any individual, company, or other entity involved in assisting the City in the development, formulation, or drafting of this RFP or its scope of services will be considered to have been given information that would afford an unfair advantage over other Proposers, and said individual, company, or other entity may not submit a proposal in response to this RFP.

7.15 Contract Negotiations

After a review of the information and completion of the interviews, the City intends to enter into contract negotiations with the selected Proposer. These negotiations could include all aspects of services and fees. If a contract is not finalized in a reasonable period of time, the City will open negotiations with the next ranked Proposer.

7.16 Execution of Contract

If the selected Proposer does not execute a contract with the City within fifteen (15) business days after notification of selection, the City may give notice to that service provider of the City's intent to select from the remaining Proposers or to call for new information, whichever the City

deems appropriate.

7.17 Right of Rejection

The City reserves the right, at its sole discretion, to reject any and all information or to cancel this RFP in its entirety.

Any proposal received which does not meet the requirements of this RFP may be considered to be nonresponsive, and the proposal may be rejected. Proposers must comply with all of the terms of this RFP and all applicable State laws and regulations.

The City may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP.

Proposers may not restrict the rights of the City or otherwise qualify their information. If a Proposer does so, the City may determine the proposal to be a nonresponsive counter offer, and the proposal may be rejected.

The City reserves the right, at its sole discretion, to waive variances in technical information provided such action is in the best interest of the City. Where the City waives minor variances in information, such waiver does not modify the RFP requirements or excuse the Proposer from full compliance with the RFP. Notwithstanding any minor variance, the City may hold any Proposer to strict compliance with the RFP.

7.18 Disclosure of Proposal Contents

All information and other materials submitted in response to this RFP procurement process become the property of the City. Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process. Upon the completion of the evaluation of information, the information and associated materials will be open for review by the public to the extent allowed by the California Public Records Act, (Government Code Section 6250-6270 and 6275-6276.48). By submitting a proposal, the Proposer acknowledges and accepts that the contents of the proposal and associated documents will become open to public inspection.

7.19 Proprietary Information

The master copy of each proposal will be retained for official files and will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law (Government code §6276). Each Proposer may clearly label part of a proposal as "CONFIDENTIAL" if the Proposer thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any information that is released by the City will constitute a complete waiver of all claims for damages caused by any release of the information.

7.20 RFP and Proposal Incorporated into Final Contract

This RFP and the successful proposal will be incorporated into the final contract.

7.21 Proposal Amendment

The City will not accept any amendments, revisions, or alterations to information after the Deadline for Proposal Submission unless such is formally requested, in writing, by the City.

7.22 Consultant Participation

The City reserves the right to share with any consultant of its choosing this RFP and proposal responses in order to secure a second opinion. The City may also invite said consultant to participate in the Proposal Evaluation process.

7.23 Rights of the City

The City reserves the right to:

- Make the selection based on its sole discretion
- Reject any and all information
- Issue subsequent Requests for Proposal
- Postpone opening proposals, if necessary, for any reason
- Remedy errors in the Request for Proposal process
- Approve or disapprove the use of particular subcontractors
- Negotiate with any, all, or none of the Proposers
- Accept other than the lowest offer
- Waive informalities and irregularities in the proposal
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City

An agreement will not be binding or valid with the City unless and until it is approved by the City Council and executed by authorized representatives of the City and of the Proposer.

8 Appendix A- City Standard Service Provider Agreement

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 20____, 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 _____, a _____, (“Professional”), whose address is _____ (each individually a “Party” and collectively the “Parties”). There are no other parties to this Agreement.

RECITALS

A. City seeks to hire an independent contractor to perform professional services to assist the City with the _____ (the “Project”).

B. Professional has made a proposal to City to provide such professional services. A description of the services Professional proposes to provide is included in the Scope of Services in **Exhibit A** (“Services”). City desires to retain Professional to perform the Services, subject to the terms and conditions set forth in this Agreement.

C. The Parties have outlined the schedule or timeline for providing the Services (“Completion Schedule”), which shall be included in the Scope of Services in **Exhibit A**.

D. The Parties have outlined the rates and method of payment to Professional for its performance of the Services under this Agreement (“Compensation Schedule”), which shall be 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 34 of this Agreement, Sections 1 through 34 shall prevail.

Section 2. Term. The term of this Agreement shall be ____ years and will commence on the Effective Date and terminate on the ____ day of _____, 20____ (“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. Extension of Agreement. City may elect to extend this Agreement for _____ (___) additional ___ year (___) terms, on the same terms and conditions, upon issuing an “Election to Extend Agreement” letter executed by the City Manager to Professional thirty (30) days prior to the expiration of this Agreement.

Section 5. Work.

5.1. Services. Subject to the terms and conditions set forth in this Agreement, Professional shall provide City the Services described in Exhibit A. 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.

5.2. 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.

5.3. 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:

(a) 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

(b) City agrees that the work requires a Modification;

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

(d) 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 _____ Dollars per hour.

Section 6. Compensation.

6.1. 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. City's total compensation to Professional shall not exceed _____ Dollars ("Maximum Payment"), unless the Parties mutually agree in writing otherwise.

6.2. Deposit. City shall pay Professional an initial deposit in the amount of _____ Dollars (\$_____) within five (5) business days of the Effective Date of this Agreement ("Deposit").

6.3. 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.

6.4. 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 7. Notice to Proceed. Professional shall not commence the performance of the Services until it has been given notice by City ("Notice to Proceed"), with which City shall also deliver the Deposit.

Section 8. Time of Performance. Professional warrants that it will commence performance of the Services within thirty (30) calendar days of the Notice to Proceed, and shall conform to the Completion Schedule. The time of performance is a material term of this Agreement relied on by City in entering into this Agreement.

Section 9. 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, with the exception of items of City assistance provided in **Exhibit B: City Assistance to Professional** ("City Assistance to Professional"). City shall furnish to Professional only the facilities, equipment, materials, information, personnel and administrative assistance listed in Exhibit B. Notwithstanding the foregoing, City shall cooperate with Professional and shall not actively interfere with Professional's performance of Services under this Agreement.

Section 10. 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 11. 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 12. Representations of Professional. City relies upon the following representations by Professional in entering into this Agreement:

12.1. 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.

12.2. Professional Performance. Professional represents 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. 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.

12.3. 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.

12.4. 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.

12.5. 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 13. 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 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.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of this Agreement, Professional shall immediately notify City. Professional shall not store hazardous materials or hazardous waste within the City limits without a proper permit from City.

Section 14. Contact by Professional with Project Owner or Project Applicant. Unless otherwise set forth in the Services, neither Professional nor Professional's subcontractors shall directly contact the owner of the property involved in the Project or any party who is the applicant for the Project ("Interested Party"), or an employee or contractor of an Interested Party, on any matter relating to the Project without the prior consent of the City Manager. In no event shall Professional take any instructions or directions from an Interested Party, on any matter pertaining to the Professional's Services to be performed for City under this Agreement.

Section 15. 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.

Notwithstanding the foregoing, Professional may disclose Confidential Information required to be disclosed under law, provided that, prior to disclosure, Professional shall first give notice to City and make a reasonable effort to obtain a protective order requiring that City's Confidential Information not be disclosed. This exception is limited to the extent disclosure is required under law.

Section 16. 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, 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 use the facilities of any public utility where such failure is due solely to the acts or omissions of the Professional.

Section 17. 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 18. Suspension of Services by City. City reserves the right to suspend Professional's Services under this Agreement when City determines that it is necessary to do so. When possible, City shall give Professional notice of such suspension and Professional shall, upon receipt of said notice, suspend all Services except any Services, the completion of which is authorized by the notice given by City. If the Services are suspended by City for more than sixty (60) consecutive days, for reasons other than the fault of the Professional, the Professional shall be compensated for Services performed prior to notice of such suspension. When the Project is resumed, the Professional's compensation shall be equitably adjusted by the City to provide for expenses incurred by the interruption of the Services. In this regard, 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 during the period when Services were suspended.

If the Parties are unable to agree upon the amount of extra compensation which is due to Professional within thirty (30) days of Professional resuming Services, the amount of such additional compensation, if any, that is required to appropriately compensate the Professional for its expenses incurred by the interruption of Services may, upon the request of either Party, be determined by arbitration conducted in accordance Section 24. Such arbitration shall be commenced by the

Professional no later than sixty (60) calendar days following the event which entitles the Parties to pursue arbitration unless the Parties agree in writing to an extended time period for commencement of arbitration. Unless otherwise agreed in writing, all Parties shall carry on the Services and perform their duties during any arbitration proceedings, and the City shall continue to make payments for the Services in progress as required by this Agreement.

Section 19. 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 20. 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:

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

(b) If City terminates this Agreement for convenience before City issues the Notice to Proceed to Professional or before Professional commences any Services hereunder, whichever last occurs, City shall not be obligated to make any payment to Professional. If City

terminates this Agreement after City has issued the Notice to Proceed to Professional and after Professional has commenced performance under this 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 24.

(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 21. 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 22. 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.

Section 23. 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 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 24. 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:

(a) Promptly upon the filing of the arbitration each Party shall be required to set forth in writing and to serve upon each other Party a detailed statement of its contentions of fact and law.

(b) 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.

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

(d) 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 25. 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:

25.1. 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).

25.2. Worker's Compensation Insurance and Employer's Liability. Professional shall carry workers' compensation insurance as required by the State of California under the Labor Code. Professional shall also carry employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) per accident, with a One Million Dollar (\$1,000,000.00) policy limit for bodily injury by disease, and a One Million Dollar (\$1,000,000.00) limit for each employee's bodily injury by disease.

25.3. Errors and Omissions Liability. Professional shall carry errors and omissions liability insurance in the amount of no less than Two Million Dollars (\$2,000,000.00) per claim or greater if appropriate for the Professional's profession. 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.

25.4. Commercial Automobile Liability. Professional shall carry commercial automobile liability insurance in the amount of One Million Dollars (\$1,000,000) or greater per occurrence for owned, leased, hired, and borrowed automobiles.

25.5. Waiver of Subrogation. With the exception of errors and omissions liability insurance, Professional hereby agrees to waive subrogation which any insurer of Professional may acquire from Professional by virtue of the payment of any loss. The commercial general liability policy and workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of City for all work performed by Professional, its agents, employees, independent contractors,

and subcontractors. Professional agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Section 26. 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 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 27. 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 28. 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 29. 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, representatives, volunteers, and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between City and Professional. City shall have the right to control Professional only insofar as the result of Professional's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Professional accomplishes Services rendered pursuant to this Agreement.

Section 30. Professional Not Agent. Except as City may specify in writing, Professional shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Professional shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 31. Payment of Taxes and Other Expenses. Payment of any taxes, including California sales and use taxes, levied upon this Agreement, the transaction, or the Services or goods delivered pursuant hereto, shall be the obligation of Professional.

Section 32. Notices. Any notice or communication required hereunder between City and Professional must be in writing, and may be given either personally, by electronic mail ("email") (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by email transmission, a notice or communication shall be deemed to have been given and received upon actual receipt of the entire document by the receiving Party's email server. Notices transmitted by email after 5:00 p.m. on a normal business day, or on a Saturday, Sunday or holiday, shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Dixon
600 East A Street
Dixon, California 95620
Attention: Administrative City Clerk
Tel: (707) 678-7000
lruiz@cityofdixon.us

With courtesy copies to: City of Dixon
600 East A Street

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

and

White Brenner LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.
Tel: (916) 468-0950
doug@whitebrennerllp.com

If to Professional:

Section 33. 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>
Exhibit A:	Scope of Services
Exhibit B:	City Assistance to Professional

Section 34. General Provisions.

34.1. 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.

34.2. 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.

34.3. 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 hereto.

34.4. 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.

34.5 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.

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

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

34.8. 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.

34.9. 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.

34.10. 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.

34.11. 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.

34.12. 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.

34.13. Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory. "May" and "can" are permissive.

34.14. 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.

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

34.16. Attorney's Fees and Costs. If any action at law or in equity not resolved pursuant to Section 24 of this Agreement, 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.

34.17. 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.

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

[SIGNATURES ON FOLLOWING PAGE.]

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:

By: _____
Douglas L. White, City Attorney

Attest:

By: _____
_____, City Clerk

By: _____

Title

PROFESSIONAL:

_____, a _____

By: _____

Title

Date Signed: _____

EXHIBIT A
Scope of Services

EXHIBIT B

City Assistance to Professional