



CITY OF DIXON, CALIFORNIA

REQUEST FOR PROPOSALS FOR PROFESSIONAL AUDITING SERVICES

Release Date: December 4, 2024

Deadline for submitting questions in writing: December 27, 2024, by 5:00 pm, PDT

Due Date: January 15, 2025, by 3:00 pm, PDT

For additional information, please contact:

Kate Zawadzki, Finance Director (707) 678-7000 or Kzawadzki@cityofdixonca.gov

CITY OF DIXON, CALIFORNIA

REQUEST FOR PROPOSALS FOR PROFESSIONAL AUDITING SERVICES

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CITY OF DIXON, CALIFORNIA

REQUEST FOR PROPOSALS

PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF DIXON AND

FOR PROFESSIONAL AUDITING SERVICES

I. INTRODUCTION

A. General Information

The City of Dixon is requesting proposals from qualified firms of certified public accountants to audit its annual financial statements for the fiscal years ending June 30, 2025 through June 30, 2030. These audits are to be performed in accordance with generally accepted auditing standards (GAAS), the standards set forth for financial statement audits in the Government Accountability Office's (GAO) Government Auditing Standards and subsequent revisions, the provisions of the federal Single Audit Act and Amendments and the U.S. Office of Management and Budget's Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

There is no express or implied obligation for the City of Dixon to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the California Public Records Act, unless exempt.

For questions, submit all inquiries via email to Kate Zawadzki by Friday, December 27, 2024 by 5:00 pm Pacific Daylight Time (PDT). Responses to questions will be posted on the City's website no later than Monday, January 6, 2025 by 5:00 pm.

For a firm to be considered, the RFP response must be emailed to Kate Zawadzki at Kzawadzki@cityofdixonca.gov by **3:00 p.m. on Wednesday, January 15, 2025**.

The subject of the email must be labeled "Proposal-Professional Auditing Services."

The City of Dixon reserves the right to accept or reject any and all proposals and to use any ideas in a proposal regardless of whether or not the proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals and in the attached standard professional services agreement, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of Dixon and the firm selected.

Proposals will be reviewed by an Evaluation Committee which is expected to include the following: Finance Director and the Accounting Manager.

During this process, the Evaluation Committee and the City of Dixon reserves the right to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of the City of Dixon or the Evaluation Committee, firms submitting proposals may be requested to participate in an interview as part of the evaluation process.

PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF DIXON AND

It is anticipated the selection of a firm and approval by City Council will be completed on Tuesday, February 4, 2025.

B. Terms of Engagement

A Six-year contract is contemplated; subject to annual review and recommendation of the Evaluation Committee, satisfactory negotiation of terms (including a price acceptable to both the City of Dixon and the selected firm), concurrence of the City Council and annual availability of an appropriation.

II. NATURE OF SERVICES REQUIRED

A. Scope of Work to be Performed

The City of Dixon desires an Annual Comprehensive Financial Report (ACFR) and financial statements for its associated agencies to be prepared by the independent auditor and to be fully compliant with all GASB standards for the fiscal year ending June 30, 2025 and each of the subsequent years of the audit firm's contract with the City. The City will continue to submit the ACFR to the GFOA (Government Finance Officers Association) for review in their Certificate of Achievement for Excellence in Financial Reporting Program.

The selected independent auditor will be required to perform the following tasks:

1. The audit firm will perform an audit of all funds in the City of Dixon and its associated agencies, the Transit Fund, the Housing Successor Agency and the Dixon Fire Protection District, a special district of the County of Solano. The District has entered into a joint exercise power agreement with the City of Dixon under which the City provides all fire services to the entire territory and provides accounting services for consideration of 92.5% of the District's property tax revenues. The audit will be conducted in accordance with auditing standards. The City's ACFR and financial statements will be prepared and processed by the audit firm. The audit firm will also apply limited audit procedures to Management's Discussion and Analysis (MD&A) and required supplementary information pertaining to the General Fund and each major fund of the City.
2. The audit firm may be required perform a single audit on the expenditures of federal grants in accordance with OMB circular A-133 and render the appropriate audit reports on Internal Control over Financial Reporting based upon the audit of the City's financial statements in accordance with Government Auditing Standards and the appropriate reports on Compliance and the Schedule of Expenditures of Federal Awards in Accordance with

OMB Circular A-133. The single audit report will include the appropriate schedule of expenditures of federal awards, footnotes, findings and questioned costs, including reportable conditions and material weaknesses, and follow up on prior audit findings where required.

3. The audit firm shall perform the agreed-upon auditing procedures pertaining to the City's GANN Limit (Appropriations Limit) and render a report annually to the City regarding compliance.

B. Auditing Standards to be Followed

To meet requirements of this request for proposal, the audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, the standards for financial audits set forth in the U.S. Government Accountability Office's Government Auditing Standards and subsequent revisions, the provisions of the Single Audit Act Amendments and the provisions of U.S. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

C. Reports to be Issued

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue:

1. A report on the fair presentation of the financial statements of the City, the Transportation Development act, the Housing Successor Agency and the Dixon Fire Protection District in conformity with generally accepted accounting principles.
2. A report on the City's compliance with the Gann appropriation limit
3. A Single Audit report (If required)
4. A report on the internal control structure based on the auditor's understanding of the control structure and assessment of control risk.
5. A report on compliance with applicable laws and regulations.
6. An "in-relation-to" report on the schedule of federal financial assistance.
7. A report on the internal control structure used in administering federal financial assistance programs.
8. A report on compliance with general and specific requirements related to

major and non major federal financial assistance programs.

In the required reports on internal controls, the auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure which could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

Reportable conditions that are also material weaknesses shall be identified in the report.

Nonreportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referred to in the reports on internal controls.

The reports on compliance shall include all instances of noncompliance.

Irregularities and illegal acts. Auditors shall be required to make an immediate, written report of all irregularities and illegal acts of which they become aware to the following parties:

Mayor
City Treasurer
City Manager
Finance Director

D. Special Considerations

1. The City of Dixon will send its comprehensive annual financial report to the Government Finance Officers Association of the United States and Canada for review in its financial reporting award program. The auditor selected will be expected to review the ACFR in relation to the award checklist to ensure compliance with the award program.
2. The schedules of federal financial assistance and related auditors' report, as well as the reports on compliance and internal controls, are not to be included in the annual comprehensive financial report, but are to be issued separately.

E. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of seven (7) years, unless the firm is notified in writing by the City of Dixon of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the City of Dixon or any government

agencies included in the audit of federal grants.

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

III. DESCRIPTION OF GOVERNMENT

A. Contact Persons/Organizational Chart

The auditor's principal contact with the City of Dixon will be Holly Alves, Accounting Manager, or a designated representative, who will coordinate the assistance to be provided by the City of Dixon to the auditor. The organizational chart can be found on the City website www.cityofdixon.gov

B. Background Information

The City of Dixon is a general law city operating under the Council-Manager form of government and serves an area of 6.5 square miles. The City has a population of approximately 20,000 and is located 20 miles Southwest of Sacramento and 65 miles Northwest of San Francisco. The City of Dixon provides all municipal services. The fiscal year 2024-2025 budget has been approved by the City Council with total expenditures for all funds recommended at approximately \$55 million. Audit reports were issued for the City's Annual Comprehensive Financial Report (ACFR), the Dixon Fire Protection District, the Housing Successor, the Transit Fund, and the Gann Appropriation Limit for the fiscal year ending June 30, 2023. A single audit for this period was also issued.

The June 30, 2024 audit is underway with interim audit procedures completed in May 2024 and the final audit document is scheduled to be presented to the City Council on January 7, 2025.

C. Services Provided

The City of Dixon provides the following services to its citizens:

- General Government
- Public Safety
- Community Development
- Parks and Recreation
- Economic Development
- Housing
- Public Works
- Capital Projects

Enterprises (Water, Sewer & Transit)

D. Accounting and Fund Information

The City of Dixon uses the following fund types and account groups in its financial reporting:

<u>Fund type/Account Group</u>	<u>Number of Funds</u>
General Fund	1
Special Revenue Funds	11
Debt Service Funds	1
Capital Projects Funds	13
Enterprise Funds	3
Internal Service Funds	0

The City of Dixon prepares its budget on a basis consistent with generally accepted accounting principles.

E. Federal and State Financial Assistance

During the first fiscal year to be audited (2024-25), the City of Dixon anticipates federal expenditures requiring a single audit to be performed.

F. Pension Plans

The City of Dixon participates in the Public Employees' Retirement System of the State of California (CalPERS). The fund is an agent multiple-employer defined benefit retirement plan that acts as a common investment and administrative agent for various state and local governmental agencies within the State of California. The fund provides retirement, disability and death benefits based on an employee's years of service, age and final compensation.

G. Other Post-Employment Benefits

The City of Dixon does provide other post-employment benefits. The City maintains reserves in-house for the funded portion of this liability.

H. Finance Department Operations

The Finance Department is headed by a Finance Director, and consists of ten employees. The Finance Division has a Accounting Manager, Finance Analyst II, three Finance Analysts, Accounting and Payroll Analyst, a Senior Account Clerk an Account Clerk II and an Account Clerk I. Functions of the division include utility billing and collection, accounts payable, business licensing, payroll, general ledger, budgeting, debt administration and financial reporting and providing financial

administrative support to operating departments.

The City’s accounting system is fully automated using Tyler Technologies accounting software.

City staff will generally be available to provide customary information, explanation or other assistance.

H. Availability of Prior Audit Reports

Proposers who wish to review prior years’ audit reports can obtain reports beginning with fiscal year 2005-2006 from the City’s website at www.cityofdixon.gov

For questions, submit all inquiries via email to Kate Zawadzki at kzawadzki@cityofdixonca.gov by Friday, December 20, 2024 by 5:00 pm Pacific Daylight Time (PDT). Responses to questions will be posted on the City’s website no later than Monday, January 6, 2025 by 5:00 pm.

IV. TIME REQUIREMENTS

The City will use the following schedule, which should result in selection of an auditor by the City Council on Tuesday, February 4, 2025. **The deadline to submit proposals is, January 15, 2025 by 3:00 p.m.**

Issue RFP.....	Wednesday, December 4, 2024
Proposals due.....	3:00 P.M., Wednesday, January 15, 2025
Oral Interviews at City’s discretion.....	Wednesday, January 22, 2025
Consideration by City Council.....	Tuesday, February 4, 2025

It is expected that interim field work will commence in early May. The City will close its books and be ready for the final audit by the end of September.

Upon completion of the audit examination and prior to issuing any audit reports or the management letter, the auditor will participate in an exit conference with the Finance Director and the Accounting Manager to discuss observations and findings. During the course of the engagement, the auditor will meet with and provide periodic status reports to the Accounting Manager on a daily basis. The auditor should also be available to meet with the Finance Director as needed, to provide consultation on various accounting and auditing matters.

The Auditor shall provide drafts and recommendations for improvements to the Finance Director within a reasonable period after the last day of field work. The auditor should be available to answer any questions related to the draft reports. Once all of the issues and

questions have been resolved, the completed ACFR, financial statements, Single Audit report, and other reports shall be delivered to the City of Dixon. It is anticipated that this process will be completed and the final products delivered by November 30, 2025.

V. ASSISTANCE TO BE PROVIDED TO THE AUDITOR; REPORT PREPARATION

A. Finance Department and Clerical Assistance

The Finance Department staff and responsible management personnel will be available during the audit to assist the auditor by providing information, documentation and explanations. The preparation of confirmations will be the responsibility of the City of Dixon.

Finance staff and the City's Information Services Division will be available to provide systems documentation and explanations, or facilitate auditor contact with the City's accounting software providers. Auditors will also be provided access to the City's network and accounting system.

B. Work Area, Telephones, Photocopying and Fax

The auditor will be provided with reasonable work space, access to telephones, photocopying and fax machines, and wi-fi for use in connection with work as described in this request for proposals.

C. Report Preparation

The auditor will prepare a draft copy of all of the reports and City of Dixon Finance staff will review prior to the auditor finalizing the report. Finance staff is responsible for preparing the Schedule of Federal Financial Assistance, if applicable.

Preparation, editing and printing of all reports will be the responsibility of the auditor.

VI. PROPOSAL REQUIREMENTS

A. Submission of Proposal

The following material is required to be received by **3:00 p.m. on Wednesday, January 15, 2025** for a firm to be considered:

1. Emailed copy of a Technical Proposal, to include the following:

a. Title Page

b. Table of Contents

c. Transmittal Letter

A signed letter of transmittal briefly stating the proposer's understanding of the work to be done, the commitment to perform the work within the time period, a statement as to why the firm believes itself to be best qualified to perform the engagement and a statement that the proposal is a firm and irrevocable offer for sixty (60) days.

A statement that all work covered under this contract will be performed by employees of the firm residing within the United States should also be included.

d. Detailed Proposal

The detailed proposal should follow the order set forth below in Section VI B of this request.

The proposer shall submit a copy of the Audit Work Cost Proposal Form (Appendix A) and the Schedule of Professional Fees and Expenses (Appendix B).

Proposers should send the completed proposal to:

Kzawadzki@cityofdixonca.gov

All emailed proposals must contain the following subject line "*Proposal-Audit Services.*" All proposals must be received by **3:00 p.m.** on **Wednesday, January 15, 2025.**

B. Technical Proposal

1. General Requirements

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firm seeking to undertake an independent audit of the City of Dixon in conformity with the requirements of the request. As such, the substance of proposals will carry more weight than their form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposals' requirements.

The Technical Proposal should address all the points outlined in the request for proposals. The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities

to satisfy the requirements of the request for proposals. While additional data may be presented, the following subjects, items 2 through 10, must be included. They represent the criteria against which the proposal will be judged.

2. Independence

The firm should provide an affirmative statement that it is independent of the City of Dixon, as defined by generally accepted auditing standards and the U.S. Government Accountability Office's *Government Auditing standards*. The firm should also provide an affirmative statement that it is independent of all the associated agencies of the City of Dixon, as defined by those same standards.

The firm should list and describe the firm's professional relationships involving the City of Dixon or any of its agencies or component units for the past five years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.

3. License to Practice in California

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice as certified public accountants in California.

4. Firm Qualifications and Experience

To qualify, the firm must have extensive experience in audits of local governments as well as experience with preparation of Comprehensive Annual Financial Statements. It is also expected that the firm will have the ability to collect and review client submissions electronically.

The proposal should state the size of the firm; the size of the firm's governmental audit staff; the location of the office from which this engagement is to be performed; the number and nature of the professional staff to be employed in this engagement on a full-time basis; and the number and nature of the staff to be so employed on a part-time basis. Staff consistency is an important consideration.

The Proposer should provide the range of activities performed by the local office, e.g., audit, accounting, tax service and or management consulting services.

The Proposer must provide a list of current clients.

The firm is also required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific governmental audit engagements.

The firm shall also provide information on the results of any Federal or State of California desk reviews or field reviews of its audits during the past three (3) years. In addition, the firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years by state regulatory bodies or professional organizations.

5. Partner, Supervisory and Staff Qualifications and Experience

The firm should identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement and indicate whether each such person is registered/licensed to practice as a certified public accountant in California. The firm also should provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

The firm should provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. The firm also should indicate how the quality and continuity of staff assigned over the term of the agreement will be assured.

Consultants and firm specialists mentioned in response to this request for proposals may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior permission of the City. However, in all cases, the City retains the right to approve or reject the replacements.

All personnel assigned to perform the services identified in this proposal must reside within the United States.

6. Please include contact information for at least 3 recent client references. The City of Dixon will contact references for the most qualified firms.

7. Prior Engagements with the City of Dixon

The firm should list separately all engagements within the last five years, ranked on the basis of total staff hours, for the City of Dixon by type of

engagement (i.e., audit, management advisory services, other). For each such engagement, the firm should list partners, total hours, the location of the firm's office from which the engagement was performed, and the name and telephone number of the principal client contact.

8. Similar Engagements with Other Government Entities

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (maximum of 5) performed in the last five years that are similar to the engagement described in this request for proposals. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

9. Specific Audit Approach

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section II of this request for proposals. In developing the work plan, reference should be made to such sources of information as the City of Dixon's budget and related materials, organizational charts, manuals and programs, and financial and other management information systems.

Proposers are expected to provide the following information on their audit approach:

- a. Proposed segmentation of the engagement
- b. Level of staff and number of hours to be assigned to each proposed segment of the engagement
 - c. Sample sizes and the extent to which statistical sampling is to be used in the engagement
- d. Extent of use of information technology in the engagement
 - e. Type and extent of analytical procedures to be used in the engagement
- f. Approach to be taken to gain and document an understanding of the City of Dixon's internal control structure
- g. Approach to be taken in determining laws and regulations that will be subject to audit test work

- h. Approach to be taken in drawing audit samples for purposes of tests of compliance

10. Identification of Anticipated Potential Audit Problems

The proposal should identify and describe anticipated potential audit problems, if any, the firm's approach to resolving these problems and any special assistance that will be requested from the City of Dixon.

C. Cost Bid

1. Cost Proposal

The cost bid should contain all pricing information relative to performing the audit engagement as described in this request for proposals. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs, including all out-of-pocket expenses (Appendix A).

The City of Dixon will not be responsible for the expenses incurred in preparing and submitting the technical proposal or the sealed cost bid. Such costs should not be included in the proposal.

The first page (Appendix A) of the cost bid should include the following information:

- a. The total cost per service for each of the six years beginning with the 2024/2025 engagement
- b. A Total All-inclusive Maximum Price for the 2024/2025 engagement

2. Rates by Partner, Specialist, Supervisory and Staff and the Hours Anticipated for Each

The second page (Appendix B) of the cost bid should include a schedule of professional fees and expenses, presented in the format provided in the attachment, that supports the total all-inclusive maximum price.

3. Rates for Additional Professional Services

If it should become necessary for the City of Dixon to request the auditor to render any additional services, either to supplement the services requested in this request for proposals or to perform additional work, then such additional work shall be performed only if set forth in an addendum to the contract

between the City of Dixon and the firm. Any such additional work agreed to between the City of Dixon and the firm shall be performed at the same rates set forth in the schedule of fees and expenses included in the sealed dollar cost bid.

4. Manner of Payment

Progress payments will be made on the basis of hours of work completed during the course of the engagement in accordance with the firm's cost bid proposal. Interim billings shall cover a period of not less than a calendar month. Final payment will be made after delivery of the firm's final reports.

VII. EVALUATION PROCEDURES

A. Evaluation Committee

Proposals will be reviewed by an Evaluation Committee which is expected to include the Finance Director and Accounting Manager.

B. Review of Proposals

The Evaluation Committee will use a point formula during the review process to score proposals. Each member will first score each technical proposal by each of the criteria described in Section VII (C) below. The full Evaluation Committee will then convene to review and discuss these evaluations and to combine the individual scores to arrive at a composite technical score for each firm. At this point, firms with an unacceptably low technical score will be eliminated from further consideration.

After the composite technical score for each firm has been established, additional points will be added to the technical score based on the price bid. The maximum score for price will be assigned to the firm offering the lowest total all-inclusive maximum price. Proportionate fractional scores will be assigned to other proposers.

C. Evaluation Criteria

Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria which will be considered during the evaluation process.

1. Mandatory Elements

- a. The audit firm is independent and licensed to practice in California
- b. The audit firm's professional personnel have received adequate

- c. continuing professional education within the preceding two years
 - c. The firm has no conflict of interest with regard to any other work performed by the firm for the City of Dixon
 - d. The firm submits a copy of its most recent external quality control review report and the firm has a record of quality audit work
 - e. The firm adheres to the instructions in this request for proposals on preparing and submitting the proposal
 - f. The firm utilizes electronic workpapers as their primary audit procedure
 - g. The firm states that all work will be performed by employees of the firm that reside within the United States.
2. Technical Qualifications:
- a. Expertise and Experience
 - (1) The firm's past experience and performance on comparable government engagements
 - (2) The quality of the firm's professional personnel to be assigned to the engagement
 - b. Audit Approach
 - (1) Adequacy of proposed staffing plan for various segments of the engagement
 - (2) Adequacy of sampling techniques
 - (3) Adequacy of analytical procedures
 - (4) Commitment to timeliness in the conduct of the audit
 - c. Price

THOUGH COST IS AN IMPORTANT FACTOR, IT IS NOT THE MOST IMPORTANT CONSIDERATION.

D. Possible Oral Presentations

During the review process, the Evaluation Committee may, at its discretion, request any one or all firms to participate in an oral interview. Such an interview will provide firms with an opportunity to answer any questions the Evaluation Committee may have about a firm's proposal. Not all firms may be asked to make such oral presentations.

E. Final Selection

The Dixon City Council will select a firm based upon the recommendations of the Evaluation Committee.

It is anticipated that a firm will be chosen on Tuesday, February 4, 2025.

F. Right to Reject Proposals

Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of Dixon and the firm selected.

The City of Dixon reserves the right, without prejudice to reject any or all proposals.

VIII. ELECTED OFFICIALS

The audit firm selected will be required to make an on-site presentation of the final audited statements to the City Council at a regularly scheduled Council meeting. These occur at 7:00 P.M. on the first and third Tuesdays of each month.

Audit Work Cost Proposal Form

Service	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
ACFR Preparation						
City Audit & Related Reports						
Gann Limit Review Report						
Single Audit and Related Reports						
Transit Fund Financial Statements, Audit and Report						
Housing Successor Agency Audit and Report						
Dixon Fire Protection District Financial Statements, Audit and Report						

Appendix B

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES FOR THE AUDIT OF THE 2024/25
FINANCIAL STATEMENTS

	<u>Hours</u>	<u>Standard Hourly Rates</u>	<u>Quoted Hourly Rates</u>	<u>Total</u>
Partners				
Managers				
Supervisory staff				
Staff				
Other (specify):				
<i>Subtotal</i>				
Out-of-pocket expenses:				
Meals & Lodging				
Transportation				
Other (specify):				
Total for services described in Section II of the RFP				

TOTAL ALL-INCLUSIVE MAXIMUM PRICE
FOR 2024-25 AUDIT \$

Note: The rate quoted should *not* be presented as a general percentage of the standard hourly rate or as a gross deduction from the total all-inclusive maximum price.

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 annual audit and financial report preparation.

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 Services, which shall be included in the Scope of Work 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, which shall be included in the Budget and Fee Schedule in **Exhibit B**.

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 six (6) 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. Work.

4.1. 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.

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:

(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 5. Compensation.

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. City’s total compensation to Professional shall not exceed Amount in Exhibit B (Budget and Fee Schedule), unless the Parties mutually agree in writing otherwise.

5.2. Deposit. City shall not pay Professional an initial deposit.

5.3. 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.

5.4. 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 6. 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 7. 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 8. 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 D: 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 D. Notwithstanding the foregoing, City shall cooperate with Professional and shall not actively interfere with Professional's performance of Services under this Agreement.

Section 9. 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 10. 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 11. Representations of Professional. City relies upon the following 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 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. All work shall be completed by employees of the firm that physically reside within the United States.

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 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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:

24.1 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).

24.2 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.

24.3 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.

24.4 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.

24.5 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 25. 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 26. 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 27. 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 28. 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 29. 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 30. 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 31. 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@cityofdixonca.gov

With courtesy copies to: City of Dixon
600 East A Street
Dixon, California 95620
Attention: City Manager
Tel: (707) 678-7000 ext. 101
Fax: (707) 678-1489

and Churchwell White LLP
1608 T Street
Sacramento, California 95811
Attention: Douglas L. White, Esq.
Tel: (916) 468-0950
Fax: (916) 468-0951

If to Professional:

Section 32. 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:	Services
Exhibit B:	Completion Schedule
Exhibit C:	Compensation Schedule
Exhibit D:	City Assistance to Professional

Section 33. General Provisions.

33.1. 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.

33.2. 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.

33.3. 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.

33.4. 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.

33.5 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.

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

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

33.8. 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.

33.9. 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.

33.10. 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.

33.11. 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.

33.12. 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.

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

33.14. 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.

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

33.16. 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.

33.17. 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.

33.18. 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: _____

