

**EMPLOYMENT AGREEMENT
for the Position of
CITY ENGINEER/DIRECTOR OF UTILITIES**

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into by and between the City of DIXON, a California municipal corporation (“City”) and Christopher Fong, an individual (“Employee”). City and Employee may individually be referred to herein as “Party” or collectively as “Parties.” There are no other parties to this Agreement.

RECITALS

A. The City Manager is authorized to appoint City staff pursuant to Dixon Municipal Code (“Municipal Code”) Section 2.09.040, subject to review and ratification by the City of Dixon City Council (“City Council”) in the case of department heads.

B. The City Manager has evaluated Employee’s knowledge, experience, administrative skills, and ability to serve as the City’s City Engineer/Director of Utilities and recommends that Employee be appointed as the City Engineer/Director of Utilities pursuant to the terms of this Agreement.

C. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee as City Engineer/Director of Utilities.

D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of California Government Code (“Government Code”) section 53260 et seq.

NOW THEREFORE, in consideration of the mutual promises herein contained, City and Employee agree as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above are incorporated herein by this reference and made a part of this Agreement. In the event of any inconsistencies between the Recitals and Sections 1 through 11 of this Agreement, Sections 1 through 11 will prevail.

Section 2. Effective Date. Once executed by both City and Employee and approved by the City Council, this Agreement shall become effective on March 4, 2024 (“Effective Date”).

Section 3. Appointment of City Engineer/Director of Utilities, Duties, and Term.

3.1. Appointment. The City Manager hereby appoints Employee to the position of City Engineer/Director of Utilities, in and for the City, to perform the function and duties of the City Engineer/Director of Utilities under the direction of the City Manager, as the City Manager is authorized to oversee City employees under Section 2.09.040 of the Municipal Code. Employee’s initial duties shall be as shown in the Job Description attached as **Exhibit A**. Employee understands that Employee’s duties may be amended from time to time by the City, as necessary, to meet the

City's needs. No modification or change in Employee's responsibilities, duties, or position shall otherwise change or revoke any other provision of this Agreement. Employee accepts such appointment and employment pursuant to the terms of this Agreement. Employee shall further perform the functions and duties specified under the laws of the State of California, the Municipal Code, the Ordinances and Resolutions of the City, and such other duties and functions as the City Manager may from time-to-time assign.

3.2. Secondary Employment. Employee agrees that he will devote his productive time, abilities, and attention as necessary to the full accomplishment of his duties and the City's business needs. Accordingly, Employee shall not hold secondary employment or engage in activities which conflict with or present the appearance of or possibility of conflicting with City's legitimate business interests. As such, Employee agrees that Employee will notify the City Manager in writing if Employee wishes to accept secondary employment, with sufficient advance notice to allow the City Manager enough time to determine whether there is the appearance of, or an actual conflict or potential conflict with, the satisfactory performance of Employee's duties and/or the best interest of City. Should the City Manager make such a determination, Employee agrees that Employee will forgo the proposed secondary employment. Notwithstanding the foregoing, Employee shall have the right to volunteer for such nonprofit organizations as he may see fit, provided that such volunteer services shall not interfere with his duties on behalf of City.

3.3. Exempt Employee. The general business hours for City employees are Monday through Friday, 9:00 A.M. to 5:00 P.M. However, it is recognized by the Parties that Employee is an exempt employee for purposes of the Fair Labor Standards Act (29 U.S.C., § 201 et seq.). Employee acknowledges that he does not have set hours of work and is expected to be reasonably available at all times and work such hours as may be necessary to fully accomplish his duties. As such, Employee shall not receive overtime or extra compensation for hours worked outside of City's general business hours which are necessary to fulfill the duties of the City Engineer/Director of Utilities, unless otherwise provided in this Agreement.

3.4. Schedule. The City Engineer/Director of Utilities' daily and weekly work schedule shall vary in accordance with the work required to be performed. The City Engineer/Director of Utilities position may include frequent attendance at evening meetings and frequent irregular hours as necessary to meet deadlines and achieve objectives. The City Council and the City Manager recognize that the City Engineer/Director of Utilities must devote a great deal of his time outside normal office hours to business of the City and, to that end, Employee will be allowed to take compensatory time off as he shall deem appropriate during said normal office hours. Employee agrees to be reachable by telephone for consultation and advice when he is not physically present during work hours.

3.5. Term. The term of this Agreement shall be for two (2) years from the Effective Date ("Term"). The City Manager, in his sole discretion, may extend the Term from time to time in increments of at least one (1) year. No later than three (3) months prior to the expiration of the Term, the City Manager shall provide written notice to Employee as to whether the City Manager intends to extend the Term.

Section 4. At-Will Employment. Employee is an at-will employee serving at the pleasure of the City Council and City Manager, as provided in Government Code Section 36506 and Municipal Code Section 2.09.040. Accordingly, the City Manager, with concurrence of the City Council, may terminate Employee's employment at any time, with or without cause. Unless otherwise specified in this Agreement, Employee shall be bound by all the policies, rules, and regulations of City now in force and effect applicable to Employee's position, and by all such other applicable policies, rules, and regulations as may be hereafter implemented and called to his notice and will observe and abide by the same. No such policy, rule, or regulation shall alter, modify, or revoke Employee's status as an at-will employee or any other provision of this Agreement. Notwithstanding the foregoing, nothing in this Agreement confers upon Employee any right to or property interest in continued employment, or any due process right to a hearing before or after a decision by the City Manager to terminate his employment, except as expressly provided for in Section 6 [Termination] of this Agreement.

Section 5. Compensation and Benefits.

5.1. Base Salary. The City agrees to pay Employee an initial salary of One Hundred Seventy-Five Thousand Dollars (\$175,000.00), ("Base Salary"), payable in installments at the same time that other City employees are paid.

Effective the first pay period following September 4, 2024, Employee's Base Salary shall be One Hundred Seventy-Seven Thousand and Five Hundred Dollars (\$177,500.00), payable in installments at the same time that other City employees are paid.

Effective the first pay period following March 4, 2025, Employee's Base Salary shall be One Hundred Eighty Thousand Dollars (\$180,000.00), payable in installments at the same time that other City employees are paid.

5.2. Pro-rata Decrease. Employee acknowledges that the Base Salary may be subject to a pro-rata decrease based on the City Council's adoption of an unpaid Mandatory Furlough Program adopted as a budgetary measure.

5.3. Reopener. Employee acknowledges that in the event City's monetary reserves fall below fifteen percent (15%) before the expiration of the Term of this Agreement, City may elect to reopen this Agreement for negotiations.

5.4. Review and Evaluation. The City Manager agrees to review and evaluate Employee's performance of his duties as City Engineer/Director of Utilities, pursuant to the terms of this Agreement ("Review and Evaluation"), on not less than an annual basis, and to provide Employee with a written performance review. The annual Review and Evaluation shall be conducted in March of each year, or at the City Manager's discretion.

5.5. Benefits. During the Term of this Agreement, Employee shall be entitled to receive the same benefits provided in the City's "Compensation Plan for Confidential Senior Management Classifications" ("Compensation Plan"), attached hereto as **Exhibit B**, and incorporated herein by reference, or as may be amended from time to time. Any benefits listed in Sections 5.6-5.11 of this

Agreement shall be in lieu of those benefits provided in the Compensation Plan. Any benefits not specifically listed in Sections 5.6-5.11 of this Agreement shall be provided to Employee pursuant to the Compensation Plan.

5.6. Deferred Compensation. Employee shall receive a City contribution for deposit into a deferred compensation retirement account. City agrees to contribute a three percent (3%) match of Employee's Base Salary each month.

5.7. Retirement Benefits. The City agrees to contribute to Employee's retirement benefits into the State of California Public Employees Retirement System ("PERS"), as set forth in the Compensation Plan.

5.8. Vacation. Upon commencement of employment, Employee will be credited eighty hours (80) vacation leave for use pursuant to City policies and practices. Employee shall accrue twelve days (12) days of vacation leave per year. Upon separation, Employee is entitled to receive payment at his then current Base Salary for all unused vacation time as of the effective date of separation.

5.9. Administrative Leave. In recognition of the extra hours required, Employee shall earn one hundred and twenty (120) hours of Administrative Leave every July 1st. Upon commencement of employment, Employee shall be credited Administrative Leave hours prorated from the Effective Date. This leave shall be used in the same manner as vacation leave. All Administrative Leave received by Employee pursuant to this Agreement must be used prior to July 1st of each year and any unused Administrative Leave time shall automatically expire. During the term of this Agreement, Employee may cash-out up to fifty percent (50%) of Administrative Leave hours each fiscal year. The City's fiscal year begins on July 1st and ends on June 30th each year.

5.10. Monthly Benefit Allowance. City will contribute seventy percent (70%) of the Kaiser (Region 1) family rate to Employee's Monthly Benefit Allowance.

5.11. Cell Phone. Employee shall receive a monthly stipend in the amount of Ninety-Five Dollars (\$95.00) to use towards the cost of, and in lieu of, a City-provided cell phone for use at work. This stipend will be governed by the City of Dixon Mobile Phone Stipend Policy.

Section 6. Termination.

6.1. Voluntary Resignation. Employee agrees to provide City with at least sixty (60) days' advance written notice of Employee's intent to resign unless the Parties otherwise agree in writing. If Employee retires from public service with City, Employee shall provide three (3) months' advance written notice. Employee's actual retirement date will be mutually established between the Parties. During any notice period, all rights and obligations of the Parties under this Agreement shall remain in full force and effect. Promptly after the effective date of resignation, City shall pay to Employee all salary and benefit amounts due and owing under this Agreement through the effective date of the resignation. In the event of a voluntary resignation, Employee acknowledges he shall forfeit any Severance entitlement pursuant to Section 6.2(a) of this Agreement.

6.2. Termination by City Manager. The City Manager may terminate this Agreement and remove Employee from his position as City Engineer/Director of Utilities at any time with or without cause. If Employee's termination is based on charges of misconduct that publicly stigmatizes Employee's reputation or impairs his ability to earn a living, or might damage his standing in a community, Employee may, within five (5) business days of the City Manager's notice to Employee of his or her intent to terminate Employee's employment, make a written request for a "name-clearing" hearing (as described in *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340 at its progeny) before the City Council. The "name-clearing" hearing is solely to provide Employee the opportunity to clear his name. The City Council may determine whether the allegations contained in the notice of termination are supported. If the City Council determines that the allegations are not supported, a decision shall be issued to reflect that Employee's termination was without fault. This decision will not, however, require that Employee be reinstated to his position. In the event Employee does not request a "name-clearing" hearing before the City Council, the City Manager's decision to terminate will be effective by the close of business on the fifth (5th) day after the City Manager provided notice to Employee of his or her intent to terminate Employee's employment.

6.2(a). Termination Without Good Cause. If Employee's employment and this Agreement are terminated without Good Cause, as defined in Section 6.2(b) below, during such time that Employee is willing and able to perform his duties, Employee shall no longer be entitled to accrue or receive any wages or benefits afforded to him by City after the date of termination; however, City shall pay Employee a sum equal to three (3) months of Employee's then current base salary ("Severance Pay").

Any Severance Pay under this Agreement shall be contingent on Employee's signature on a waiver and release of all claims in a format satisfactory to City and is subject to the restrictions of Government Code Section 53260, including, without limitation, that the maximum amount of Severance Pay that Employee may receive shall be the lesser of twelve (12) months base salary or the number of months remaining on the term of this Agreement. Additionally, any cash settlement related to the termination of this Agreement received by Employee from City shall be fully reimbursed to City if Employee is convicted of a crime involving an abuse of his office or position while employed with City, pursuant to Government Code Section 53243.2. Severance Pay shall be paid in the same manner as other employees unless otherwise agreed to by the City and Employee. In no case shall Employee be entitled to Severance Pay in excess three (3) months base salary.

Upon Employee's request, City will make a contribution to Employee's deferred compensation account on the value of the Severance Pay, calculated using the rate ordinarily contributed on regular compensation. In the event City terminates Employee's employment and this Agreement, Employee shall be entitled to continued medical and dental benefits at his own cost, pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act ("COBRA").

6.2(b). Termination for Good Cause. City may at any time immediately terminate this Agreement for Good Cause, as defined below. If Employee is terminated for Good Cause, City shall not be required to pay any Severance Pay under this Agreement, and City shall have no

obligation to Employee beyond those wages and benefits accrued as of Employee's last day of employment and those City may be obligated to provide under federal or state law.

"Good Cause" for purposes of this Agreement, means a fair and honest cause or reason for termination. These reasons include, but are not limited to:

1. Conviction of a felony;
2. Disclosing confidential information of the City;
3. Gross carelessness or misconduct;
4. Unjustifiable and willful neglect of the duties described in this Agreement;
5. Mismanagement;
6. Non-performance of duties;
7. Any conduct which violates the City's Personnel Rules or other City policy and for which a City employee may be terminated;
8. Repeated and protracted unexcused absences from the City Engineer/Director of Utilities' office and duties;
9. Willful or grossly negligent destruction or misuse of City property;
10. Conduct that in any way has a direct, substantial, and adverse effect on the City's reputation;
11. Willful violation of federal, state, or City discrimination laws;
12. Continued substance abuse which adversely affects performance of Employee's duties as City Engineer/Director of Utilities and/or reporting to work while under the influence of alcohol or any drug (whether or not Employee has a valid prescription) which impairs, or has the potential to impair, Employee in the performance of Employee's duties;
13. Refusal to take or subscribe any oath or affirmation which is required by law;
14. Employee's death or diagnosis with a disability, as defined by state or federal law, that prevents him from performing the essential functions of the City Engineer/Director of Utilities position, even with reasonable accommodations;
15. Dishonesty;

16. Engaging in other employment or activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests;
17. Continuous or repeated failure or refusal to perform Employee's duties to the standards set by City; and
18. Failure to comply with any of Employee's obligations as set forth in this Agreement.

Notwithstanding any provision in this Agreement to the contrary, the City Manager may suspend Employee with full pay and benefits at any time during the Term of this Agreement.

Section 7. Indemnification. Subject to, in accordance with, and to the extent permitted by the California Government Claims Act (Government Code Section 810 et seq.), City will indemnify, defend, and hold Employee harmless from and against any action, demand, suit, monetary judgment, or other legal or administrative proceeding, and any liability, injury, loss, or other damages, arising out of any act or omission occurring in the performance of Employee's duties as City Engineer/Director of Utilities, except that this provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside the course and scope of his employment as City Engineer/Director of Utilities. City shall obtain and keep in full force and effect liability insurance, or risk pool coverage, including errors and omissions coverage on a "per occurrence" basis, in sufficient amounts to ensure fulfillment of this hold harmless and indemnification clause. City may compromise and settle any such claim or suit and pay the amount of any resulting settlement or judgment; provided, however, that the City's duty to defend and indemnify shall be contingent upon Employee's good faith cooperation with such defense. In the event City provides funds for legal criminal defense pursuant to this Section, Employee shall reimburse City for such legal criminal defense funds if Employee is convicted of a crime involving an abuse of office or position, as provided by Government Code Sections 53243 through 53243.4.

Section 8. Bonding. City shall bear the full cost of any bonds required of the City Engineer/Director of Utilities under any law or ordinance.

Section 9. Acknowledgment. Employee acknowledges that he has been afforded the opportunity to consult with counsel regarding this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

Section 10. Notices. Any notice or communication required hereunder between City and Employee must be in writing, and may be given either personally, 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 shall be deemed to have been given when delivered to the Party to whom it is addressed. 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 (a)

actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) 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 the City: City of Dixon
 ATTN: City Clerk
 600 East A Street
 Dixon, California 95620

If to the City Manager: City of Dixon
 ATTN: City Manager
 600 East A Street
 Dixon, California 95620

and White Brenner, LLP
 ATTN: Douglas L. White
 1414 K Street, 3rd Floor
 Sacramento, CA 95814

If to Employee: City of Dixon
 ATTN: Christopher Fong
 600 East A Street
 Dixon, CA 95620
 w/ cc: home address on file

Section. 11. General Provisions.

11.1. Council Approval/Modification of Agreement. This Agreement is contingent on approval by the City Council. The terms and conditions of this Agreement may not be modified or amended at any time except by written agreement signed by both Parties and approved by the City Council.

11.2. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

11.3. Severability of Agreement. If a court or an arbitrator of competent jurisdiction holds any Section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be affected.

11.4. 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 this 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.

11.5. Headings. The headings in this Agreement are included for convenience only and neither affect the construction or interpretation of any Section in this Agreement, nor affect any of the rights or obligations of the Parties to this Agreement.

11.6. 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.

11.7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

11.8. 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.

11.9. Counterparts. This Agreement may be executed in counterparts, and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

11.10. Venue. The venue for all legal proceedings shall be in the Superior Court of the State of California, in and for the County of Solano.

11.11. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret Sections 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.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Employee and City as of the date of the Agreement set forth above.

CITY:

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

By: 

Jim Lindley, City Manager

Date Signed: 3-4-24

By: 

Lupe Ruiz, City Clerk

Date Signed: 3/5/2024

EMPLOYEE:

By: 

Christopher Fong, an individual

Date Signed: 3-4-2024

Approved as to Form and Content:

By: 

for: Douglas L. White, City Attorney

RESOLUTION NO. 24-032

A RESOLUTION APPROVING THE RATIFICATION OF THE CITY MANAGER'S APPOINTMENT OF CHRISTOPHER FONG AS CITY ENGINEER/DIRECTOR OF UTILITIES AND APPROVING THE EMPLOYMENT AGREEMENT

WHEREAS, a vacancy existed for a City Engineer/Director of Utilities; and

WHEREAS, the City conducted an extensive outreach, recruitment and selection process for the City Engineer/Director of Utilities position; and

WHEREAS, after the conclusion of the interview process, the City Manager has selected Christopher Fong as the City Engineer/Director of Utilities and has negotiated the terms of his employment agreement.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Dixon ratifies the employment agreement, attached hereto as Exhibit A and authorizes the City Manager to execute and enter into the Agreement on behalf of the City.

BE IT FURTHER RESOLVED, that the City of Dixon Fiscal Year Budget 2023-24 is amended by \$5,657.

Account Number	Description	Current Budget	Adjustment	New Budget
100-14300-511000-00000	Salaries/Wages	553,436	1,480	554,916
100-14300-512100-00000	Medicare	9,284	21	9,305
100-14300-512200-00000	Retirement	41,720	4,150	45,870
100-14300-512600-00000	Workers' Compensation	6,763	6	6,769
			<u>5,657</u>	

PASSED AND ADOPTED AS A RESOLUTION AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF DIXON ON FEBRUARY 20, 2024.

AYES: Bogue, Ernest, Hendershot, Johnson, Bird

NOES: None

ABSTAIN: None

ABSENT: None

ATTEST:



Kristin M. Janisch
Elected City Clerk



Steven C. Bird
Mayor