

ENVIRONMENTAL CONSULTANT SERVICES AGREEMENT

(California Environmental Quality Act)

This AGREEMENT is made and entered into this [REDACTED] day of [REDACTED], 2017 (“EFFECTIVE DATE”), between the Dixon Unified School District, hereinafter referred to as (“DISTRICT”), and [REDACTED], hereinafter referred to as “CONSULTANT”. The DISTRICT and the CONSULTANT are sometimes referred to herein as a “PARTY” and collectively as the “PARTIES”. This AGREEMENT is made with reference to the following facts:

WHEREAS, the DISTRICT requires specialized services and/or advice pertaining to environmental assessment and compliance services, including the California Environmental Quality Act (“CEQA”) in connection with the Former Dixon High School Modernization Project (“Project”); and

WHEREAS, CONSULTANT is specially experienced and competent to provide to the DISTRICT, certain specialized services and/or advice to assist the DISTRICT with CEQA compliance; and

WHEREAS, DISTRICT desires to obtain environmental and CEQA compliance services for the Project; and

WHEREAS, CONSULTANT has indicated its willingness and commitment to provide its specialized services and/or advice to the DISTRICT on the terms hereafter set forth in this AGREEMENT.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I **SCOPE AND SERVICES TO BE PROVIDED BY CONSULTANT**

1. Services to be Provided by the CONSULTANT. The CONSULTANT shall provide to the DISTRICT on the terms set forth herein all the services articulated in the DISTRICT’s Request for Proposals, which is attached hereto and incorporated by reference as **EXHIBIT “A”** (“RFP”) and CONSULTANT’s proposal which is attached hereto and incorporated herein by this reference as **EXHIBIT “B”** (the “PROPOSAL”). The DISTRICT and CONSULTANT expressly agree to incorporate the terms and conditions of the RFP and the PROPOSAL into this AGREEMENT by this reference and the PARTIES understand that the RFP and the PROPOSAL shall constitute a binding part this AGREEMENT. In the event of a conflict, discrepancy, or inconsistency, between the terms of the RFP or the PROPOSAL with this AGREEMENT, the PARTIES agree that the terms of this AGREEMENT shall be controlling and, in the event of a discrepancy, inconsistency, or other difference between the terms of the RFP and the PROPOSAL, the RFP shall be controlling.

2. Period of Performance. This AGREEMENT shall commence on the EFFECTIVE DATE, and shall terminate on [REDACTED], (“Period of Performance”). CONSULTANT shall complete all services for the Project within the Period of Performance.

3. CEQA Analysis and Compliance. The CONSULTANT shall provide all services necessary to ensure the Project complies with CEQA and all related regulations, rules and laws. CONSULTANT shall conduct a detailed analysis of the Project and develop a specific “Action Plan” to meet the requirements of CEQA as determined by the CONSULTANT. This Action Plan shall be presented to the DISTRICT in writing for DISTRICT’s review and approval. Upon DISTRICT’s approval, CONSULTANT shall assist the DISTRICT with all actions necessary to carry out the Action Plan and comply with CEQA, including, but not limited to, the following:

- a. Preparation of a final CEQA document, including, as necessary and in accordance with the Action Plan a Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report, with all required associated documents;
- b. Issuance of all required notices to comply with Public Resources Code Section 21000 et seq.;
- c. Participation in meetings with District staff and project consultants as necessary and as requested by the DISTRICT to ensure CEQA compliance;
- d. Coordination and participation in any and all public meetings/hearings required by CEQA and/or requested by the DISTRICT to address CEQA related issues;
- e. Preparation of presentations to discuss the Project’s progress with respect to CEQA;
- f. Supervision of any specialist hired or requested by DISTRICT to review any aspect of CEQA compliance including traffic, biology, pipelines, railroads and other areas as appropriate; and
- g. Preparation of any appropriate responses to public or governmental comments to any CEQA related work or document.

CONSULTANT’s services shall also include all services set forth in the PROPOSAL and the RFP and any related or tangential services necessary to ensure the Project complies with CEQA, except for those Additional Services set forth in Article VII below.

ARTICLE II
CONSULTANT’S RESPONSIBILITIES

1. CONSULTANT's Certifications, Representations and Warranties. CONSULTANT makes the following certifications, representations, and warranties for the benefit of the DISTRICT and CONSULTANT acknowledges and agrees that the DISTRICT, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT's engagement hereunder:

a. CONSULTANT is qualified in all respects to provide to the DISTRICT all of the services contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONSULTANT has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the DISTRICT, such services as are called for hereunder.

b. CONSULTANT, in providing the services and in otherwise carrying out its obligations to the DISTRICT under this AGREEMENT, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including worker's compensation and equal protection and non-discrimination laws.

ARTICLE III **TERMINATION**

1. This AGREEMENT may be terminated by either party upon fourteen (14) days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of CONSULTANT; or if the DISTRICT should decide to abandon or indefinitely postpone any or all of the Projects. The DISTRICT, at its sole discretion, may terminate services for an individual Project in accordance with this section and continue with the remaining projects identified on the Project list or terminate the entire AGREEMENT for all current and remaining Projects as set forth herein.

2. In the event of a termination based upon abandonment or postponement by DISTRICT, the DISTRICT shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, up until the date of the abandonment or postponement plus any sums due the CONSULTANT for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the DISTRICT or in the possession of the CONSULTANT. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased consultant and replacement costs shall be deducted from payments to the CONSULTANT.

3. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in

accordance with Article III, Section 4 below, and CONSULTANT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by CONSULTANT.

4. This AGREEMENT may be terminated without cause by DISTRICT upon fourteen (14) days written notice to the CONSULTANT. In the event of a termination without cause, the DISTRICT shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the CONSULTANT for Board approved extra services. The DISTRICT, at its sole discretion, may terminate services for an individual Project in accordance with this section and continue with the remaining projects identified on the Project list or terminate the entire AGREEMENT for all current and remaining Projects as set forth herein.

5. In the event of a dispute between the parties as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, CONSULTANT agrees to continue the work diligently to completion. If the dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop the progress of the work on any current Project, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the Project has been completed, and not before.

6. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE III OF THIS AGREEMENT SHALL GOVERN ALL TERMINATION RIGHTS AND PROCEDURES BETWEEN THE PARTIES. ANY TERMINATION PROVISION THAT IS ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

ARTICLE IV **REPORTS AND/OR OTHER DOCUMENTS**

1. The reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's consultants in accordance with this AGREEMENT, including any document related to CEQA compliance, shall be and remain the property of the DISTRICT (hereinafter "PROPERTY"). The DISTRICT may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the DISTRICT's written request, CONSULTANT shall return the requested PROPERTY to the DISTRICT within seven (7) calendar days. Failure of the CONSULTANT to provide the DISTRICT with its PROPERTY within the time detailed herein this section shall be a material breach of this AGREEMENT.

ARTICLE V
ACCOUNTING RECORDS OF THE CONSULTANT

1. Records of the CONSULTANT's direct personnel and reimbursable expenses pertaining to any extra services provided by the CONSULTANT, which are in addition to those services already required by this AGREEMENT, and any records of accounts between the DISTRICT and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the DISTRICT or DISTRICT's authorized representative at mutually convenient times.

ARTICLE VI
COMPENSATION TO THE CONSULTANT

1. The DISTRICT shall compensate the CONSULTANT as follows:

a. The DISTRICT agrees to pay the CONSULTANT in accordance with the fee, rate and/or price schedule information set forth in the PROPOSAL for the services performed pursuant to this AGREEMENT. In no event shall the CONSULTANT's total compensation exceed \$ [REDACTED] for performing all the basic services necessary to complete the Project as detailed in **EXHIBITS "A" and "B"**.

b. The CONSULTANT shall invoice all fees and/or costs monthly for the services that are provided in accordance with this AGREEMENT from the time the CONSULTANT begins work on the Project in accordance with the progress payment schedule set forth in the PROPOSAL. The CONSULTANT shall submit one (1) invoice monthly to the DISTRICT detailing all the fees associated with the applicable progress or services performed, reimbursable expenses (if any), and Additional Services (if any) incurred for the monthly billing period. Invoices requesting reimbursement for expenses incurred during the billing period must clearly list items for which reimbursement is being requested and be accompanied by proper documentation (e.g., receipts, invoices), including a copy of the DISTRICT's authorization notice for the invoiced item(s), if applicable. Invoices requesting payment for Additional Services must reflect the negotiated compensation previously approved by the DISTRICT and include a copy of the DISTRICT's written authorization notice approving the Additional Services and the additional compensation approved by the DISTRICT. No payments will be made by the DISTRICT to the CONSULTANT for monthly invoices requesting reimbursable expenses or Additional Services absent the prior written authorization of the DISTRICT. The DISTRICT's prior written authorization is an express condition precedent to any payment by the DISTRICT for Additional Services or reimbursable expenses and no claim by the CONSULTANT for additional compensation related to Additional Services or reimbursable expenses shall be valid absent such prior written approval by the DISTRICT.

ARTICLE VII
ADDITIONAL CONSULTANT SERVICES

1. CONSULTANT shall notify the DISTRICT in writing of the need for Additional Services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering such services. The DISTRICT may require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. In no event shall CONSULTANT seek additional payment for services required or contemplated by this AGREEMENT, including the PROPOSAL. In order to be considered a valid Additional Service, CONSULTANT must demonstrate that the Service is either: 1) caused by an additional request by the DISTRICT outside of the scope of this AGREEMENT or 2) required due to changing conditions of the Project that were not foreseen or anticipated based on the scope of work described herein. Compensation for all Additional Services shall be negotiated and approved in writing by the DISTRICT before CONSULTANT performs such Additional Services. CONSULTANT shall not be entitled to any compensation for performing Additional Services that are not previously approved by the DISTRICT in writing.

ARTICLE VIII
REIMBURSABLE EXPENSES

1. Reimbursable expenses are in addition to compensation for Basic and Additional Services and shall be paid to the CONSULTANT at one and one-tenth (1.1) times the expenses incurred by the CONSULTANT, the CONSULTANT's employees and consultants for the specified items approved by the DISTRICT in writing.

ARTICLE IX
MISCELLANEOUS

1. To the fullest extent permitted by law, CONSULTANT agrees to indemnify, defend and hold DISTRICT entirely harmless from all liability arising out of:

a. Workers Compensation and Employers Liability: Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to CONSULTANT's employees or CONSULTANT's subcontractor's employees arising out of CONSULTANT's work under this AGREEMENT; and

b. General Liability: Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the CONSULTANT or the DISTRICT, or any person, firm or corporation employed by the CONSULTANT or the DISTRICT upon or in connection with the Project and/or this AGREEMENT, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, or agents who are directly employed by the DISTRICT;

c. Professional Liability: Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the CONSULTANT, or any person, firm or corporation employed by the CONSULTANT, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the DISTRICT, arising out of, or in any way connected with the services performed by CONSULTANT in accordance with this AGREEMENT, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the DISTRICT.

d. The CONSULTANT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings, arising out of Article IX, Sections 1(a) and (b) above, that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof. With regard to the CONSULTANT's obligation to indemnify for acts of professional negligence under Article IX, Section 1(c) above, such obligation does not include the obligation to provide defense counsel or to pay for the defense of actions or proceedings brought against the DISTRICT, but rather to reimburse the DISTRICT for attorney's fees and costs incurred by the DISTRICT in defending such actions or proceedings brought against the DISTRICT that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT.

e. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE IX, SECTION 1 OF THIS AGREEMENT SHALL BE THE SOLE INDEMNITY, AS DEFINED BY CALIFORNIA CIVIL CODE § 2772, GOVERNING THIS AGREEMENT. ANY OTHER INDEMNITY THAT MAY BE ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

f. ANY ATTEMPT TO LIMIT THE CONSULTANT'S LIABILITY TO THE DISTRICT IN AN ATTACHED EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE DISTRICT AND THE CONSULTANT.

2. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which will protect CONSULTANT and DISTRICT from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.

However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

b. Commercial general liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) and automobile liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury.

c. Professional liability insurance, including contractual liability, with limits of \$1,000,000, per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

d. Valuable Document Insurance. The CONSULTANT shall carry adequate insurance on all reports, drawings, specifications, record drawings and/or other documents as may be required to protect the DISTRICT in the amount of its full equity in those reports, drawings, specifications, record drawings and/or other documents, and shall file with the DISTRICT a certificate of that insurance. The cost of that insurance shall be paid by the CONSULTANT, and the DISTRICT shall be named as an additional insured.

e. Each policy of insurance required in Article IX, Section 2(b) above shall name DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse DISTRICT upon demand for the cost thereof.

3. CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages and all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees.

4. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONSULTANT.

5. The DISTRICT and CONSULTANT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this AGREEMENT with respect to the terms of this AGREEMENT. CONSULTANT shall not assign this AGREEMENT.

6. This AGREEMENT shall be governed by the laws of the State of California.

7. THIS AGREEMENT SHALL NOT INCLUDE OR INCORPORATE THE TERMS OF ANY GENERAL CONDITIONS, CONDITIONS, MASTER AGREEMENT OR ANY OTHER BOILERPLATE TERMS OR FORM DOCUMENTS PREPARED BY THE CONSULTANT. THE ATTACHMENT OF ANY SUCH DOCUMENT TO THIS AGREEMENT AS EXHIBIT "B" SHALL NOT BE INTERPRETED OR CONSTRUED TO INCORPORATE SUCH TERMS INTO THIS AGREEMENT UNLESS THE DISTRICT APPROVES OF SUCH INCORPORATION IN A SEPARATE WRITING SIGNED BY THE DISTRICT. ANY REFERENCE TO SUCH BOILERPLATE TERMS AND CONDITIONS IN THE PROPOSAL OR QUOTE SUBMITTED BY THE CONSULTANT SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT. PROPOSALS, QUOTES, STATEMENT OF PROPOSALS AND OTHER SIMILAR DOCUMENTS PREPARED BY THE CONSULTANT MAY BE INCORPORATED INTO THIS AGREEMENT AS EXHIBIT "B" BUT SUCH INCORPORATION SHALL BE STRICTLY LIMITED TO THOSE PARTS DESCRIBING THE CONSULTANT'S SCOPE OF WORK, RATE AND PRICE SCHEDULE AND PROPOSALS.

8. Each of the PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and

CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONSULTANT.

9. Time is of the essence with respect to all provisions of this AGREEMENT.

10. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.

11. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each instance in the text hereof with the exception of those documents or provisions that are subject to the exclusions specifically set forth in this AGREEMENT.

12. In accordance with California Education Code Section 17604, this AGREEMENT is not a valid or enforceable obligation against the DISTRICT until approved or ratified by motion of the Governing Board of the District duly passed and adopted.

13. This AGREEMENT shall be liberally construed to effectuate the intention of the PARTIES with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to any word, phrase or provision of this AGREEMENT, neither this AGREEMENT nor any uncertainty or ambiguity herein will be construed or resolved against either party (including the PARTY primarily responsible for drafting and preparation of this AGREEMENT), under any rule of construction or otherwise, it being expressly understood and agreed that the PARTIES have participated equally or have had equal opportunity to participate in the drafting hereof.

The parties, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

CONSULTANT:

By: _____

DISTRICT:

DIXON
UNIFIED SCHOOL DISTRICT

By: _____

APPROVED AS TO FORM:

Atkinson, Andelson, Loya, Ruud & Romo

David A. Soldani,
Attorneys for Dixon Unified School District

EXHIBIT A

(INSERT COPY OF RFP)

EXHIBIT B

(INSERT COPY OF CONSULTANT'S PROPOSAL)

