RESOLUTION NO. 2017-090

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DIXON RATIFYING THE CITY MANAGER’S APPROVAL OF THE CITY ENGINEER/PUBLIC WORKS DIRECTOR EMPLOYMENT AGREEMENT FOR JOSEPH M. LEACH

WHEREAS, pursuant to the City of Dixon’s ("City") Municipal Code, Section 2.09.040, the City Manager is authorized to hire and appoint City Staff, subject to review and ratification by the City Council, in the case of department heads; and

WHEREAS, on August 11, 2015, the City Council adopted Resolution No. 2015-102 approving a two-year contract between the City and Joseph M. Leach; and

WHEREAS, the City wishes to continue to employ Joseph M. Leach as City Engineer/Public Works Director ("Public Works Director") based on favorable performance evaluations; and

WHEREAS, the City and the Public Works Director now wish to enter a new employment agreement ("Agreement") for a term of one year, which will adjust the Public Works Director’s salary, benefits, and make other minor changes as reflected in the Employment Agreement between Joseph M. Leach and the City of Dixon, which is attached hereto as Exhibit A.

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

PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF DIXON ON THE 27TH DAY OF JUNE, 2017, BY THE FOLLOWING VOTE:

AYES: Bird, Hickman, Minnema, Pederson, Bogue
NOES: None
ABSTAIN: None
ABSENT: None

ATTEST:

Leticia I. Miguel
City Clerk

Thom Bogue
Mayor
EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into this 1st day of July, 2017 by and between the City of Dixon, a municipal corporation ("City"), and Joseph M. Leach, 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. Employee began employment with the City on December 12, 2012 ("Anniversary Date").

B. Employee is presently employed with the City and serves as City Engineer/Public Works Director ("Public Works Director"). The Public Works Director is the head of the City Engineering and Public Works Departments and provides departmental and complex administrative support to the Dixon City Manager ("City Manager").

C. 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.

D. On August 11, 2015, the City Council approved an employment agreement between Employee and the City.

E. The Parties wish to enter into a new employment agreement as Employee wishes to continue his employment with the City, and the City wishes to continue Employee’s employment with the City as Public Works Director.

F. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee as Public Works Director and replace any previous employment relationship and benefits previously conferred on the Public Works Director through the City personnel system.

G. 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 covenants entered into between the Parties, and in consideration of the benefits that accrue to each, it is agreed as follows:

RESOLUTION NO.: 17-090
DATE: JUN 27 2017
AGREEMENT

Section 1. Recitals. The recitals set forth above ("Recitals") 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 10 of this Agreement, Sections 1 through 10 will prevail.

Section 2. Effective Date. This Agreement shall become effective once executed by both the City and Employee ("Effective Date").

Section 3. Appointment of Public Works Director, Duties, and Term.

Section 3.1. Appointment of Public Works Director and Duties. The City Manager hereby appoints Employee to the position of Public Works Director, in and for the City, to perform the function and duties of the Public Works Director 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 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 City's Municipal Code, Ordinances, and Resolutions, and such other duties and functions as the City Manager may from time-to-time assign.

Section 3.2. No Secondary Employment. Employee agrees to devote all of his productive time, ability, and attention to the City's business. During the Term, as defined in Section 3.5 of this Agreement, Employee shall not hold secondary employment, and shall be employed exclusively by the City, subject to any exceptions approved in writing by the City Manager or the City Council. Provided, however, that Employee has the right to volunteer for such nonprofit organizations as he may see fit; and further provided that such volunteer services shall not interfere with his duties as Public Works Director.

Section 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 of 1938 (29 U.S.C. § 201 et seq.). Employee shall not receive overtime or extra compensation for hours worked outside of the City's general business hours, which are necessary to fulfill the duties of the Public Works Director position, unless otherwise provided in this Agreement.

Section 3.4. Schedule. The Public Works Director's daily and weekly work schedule shall vary in accordance with the work required to be performed. The Public Works Director 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 Public Works Director must devote a great deal of his time outside normal office hours to business of the City and, to that end, will be allowed to take compensatory time off as he shall deem appropriate during said normal office hours.

ON NO.: 17-090
DATE: JUN 27 2017

City of Dixon
Public Works Director Employment Agreement
Page 2 of 10
Section 3.5. Term. The term of this Agreement shall be for one (1) year from the Effective Date ("Term"). 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 may terminate Employee’s employment at any time, with or without cause. Only if Employee is terminated by the City without Good Cause, as defined in Section 6.3 of this Agreement, shall Employee be entitled to a Severance, as defined in Section 6.3 of this Agreement.

Section 5. Compensation and Evaluations.

Section 5.1. Base Salary. Effective in the first pay period of July 2017, the City agrees to pay Employee an annual salary, One Hundred Forty-Seven Thousand Six Hundred Six Dollars and Forty-Five Cents ($147,606.45) ("Base Salary"), payable in installments at the same time that the other City employees are paid.

Section 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.

Section 5.3. Review and Evaluation. The City Manager agrees to review and evaluate Employee’s performance of his duties as Public Works Director 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 April of each year, or at the City Manager’s discretion.

Section 5.4. 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” (the "Compensation Plan") attached hereto as Exhibit A, or as may be amended from time to time. Any benefits listed in Sections 5.5-5.10 of this Agreement shall be in lieu of those benefits provided in the Compensation Plan. Any benefits not specifically listed in Sections 5.5-5.10 of this Agreement are enumerated in the attached Compensation Plan.

Section 5.5. Retirement Benefits. The City will continue its participation in the Public Employees Retirement System ("PERS"). Employee is not currently defined as a "New Member," pursuant to Government Code section 7522.04, and is eligible for the Tier One Miscellaneous 2.5% @ 55 retirement formula. Employee shall continue to contribute eight percent (8%) towards Employee’s share of the PERS contributions.
Section 5.6. Medical Benefits. The City will contribute to Employee’s Monthly Benefit Allowance (“MBA”). Employee shall receive seventy percent (70%) of the Kaiser (Bay Area) family rate.

Section 5.7. Deferred Compensation. To promote retention, and to reward longevity, the City shall provide a deferred compensation incentive to Employee. Effective the first full pay period of July 2017, Employee shall receive a City contribution for deposit into a deferred compensation retirement account. The City agrees to contribute a two percent (2%) match of Employee’s base pay each month.

Section 5.8. Vacation. Employee shall be entitled to three (3) weeks of vacation leave per year. Upon separation, Employee is entitled to receive payment at their current base pay for all vacation time earned, but not taken as of the effective date of separation.

Section 5.9. Administrative Leave. Employee is exempt from coverage under the Fair Labor Standards Act (“FLSA”). As such, he does not receive compensation for hours worked over forty (40) hours per week. In recognition of the extra hours required, Employee shall earn one hundred twenty (120) hours of administrative leave per year to be available at the commencement of the Fiscal Year. This leave shall be used in the same manner as vacation.

   a) Upon Employee’s request, administrative leave can be cashed out each year.

   b) The permissible cash-out shall be fifty-seven (57) hours per year in years one (1) through three (3).

   c) The cash-out rate shall increase by five (5) hours each year, commencing with the fourth (4th) year of City employment, to a maximum of one hundred twenty (120) hours.

   d) Payout may either be taken in cash or directed to a Deferred Compensation Plan, subject to annual limits.

   e) Any unused administrative leave balance remaining as of June 30 each year will be lost.

   f) Upon separation, Employee is entitled to receive payment for any accrued and unused administrative leave as of the effective date of separation.

Section 5.10. Longevity Increment. Based on his service to the City for five (5) consecutive years, Employee shall receive longevity pay as set forth below. Beginning on the fifth (5th) year of Employee’s Anniversary Date through the end of the Term, the City shall pay Employee a two percent (2%) longevity pay increase based on the Base
Salary. The longevity increase shall be applied and paid in each pay period, payable in installments at the same time that the other City employees are paid.

Section 6. Termination of Employment and Severance.

Section 6.1 Voluntary Resignation. Employee may resign at any time and agrees to give the City at least sixty (60) days advance written notice of the effective date of Employee's resignation, unless the Parties otherwise agree in writing. If Employee retires from full time public service with the City, Employee shall provide three (3) months advance written notice. Employee's actual retirement date will be mutually established between the Parties. During the 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, the City shall pay to Employee all salary and benefit amounts, both accrued and owing, under this Agreement. In the event of voluntary resignation, Employee shall not be entitled to a Severance, as set forth in Section 6.3 of this Agreement.

Section 6.2. Termination by City Manager. The City Manager may terminate this Agreement and remove Employee from his position as Public Works Director at any time with or without cause and with or without notice. Within ten (10) days of the City Manager’s termination of this Agreement, Employee may make a written request for hearing before the City Council, at which time the City Council will have the option to ratify the City Manager’s termination decision. In the event Employee does not request a hearing before the City Council, the City Manager’s termination decision will stand. The hearing shall take place in closed session at a regularly scheduled City Council meeting. Upon Employee’s request for the hearing to take place in open session, he will waive any claims to privacy associated with his rights to employment information that is the basis for his termination, including, but not limited to, his personnel file and any information contained therein, which would otherwise be private.

Section 6.3. Termination Without Good Cause. In the event the City terminates this Agreement without Good Cause, as defined in Section 6.4, below, the City shall pay Employee a sum equal to three (3) months Base Salary (“Severance”). Such Severance 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 (i) six (6) months Base Salary or (ii) Base Salary for the number of months remaining on the term of this Agreement. Any cash settlement related to the termination of this Agreement received by Employee from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position while employed with the City pursuant to Government Code section 53243.2. Severance shall be paid in the same manner as other City employees unless otherwise agreed to by the City and Employee. The City agrees to make a contribution to Employee’s deferred compensation account (including the City’s contribution described in Section 5.7, above) on the value of the Severance, calculated using the rate ordinarily contributed on regular compensation. In the event the City terminates 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").

Section 6.4. Termination For Good Cause. The City may at any time immediately terminate this Agreement for Good Cause, as defined below. If Employee is terminated for Good Cause, the City shall not be required to pay any Severance under this Agreement, and the City shall have no obligation to Employee beyond those benefits accrued as of Employee’s last day of employment and those the City is 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 and for which a City employee may be terminated;
8. Repeated and protracted unexcused absences from the Public Works Director’s office and duties;
9. Willful 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 Public Works Director;
13. Refusal to take or subscribe any oath or affirmation which is required by law; or
14. Permanent disability of Employee, or Employee becoming otherwise unable to perform the duties of Public Works Director, by reason of sickness, accident, illness, injury, mental incapacity, or health for a period of six (6) weeks following the exhaustion of all available leave balances and any applicable Family Medical Leave Act or California Medical Leave Act leaves, or where the same occurs for forty (40) working days over a sixty (60) working day period following exhaustion of such leaves.

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. The City shall defend, hold harmless, and indemnify Employee against any tort, personnel, civil rights, or professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee’s duties as Public Works Director in accordance with California’s Tort Claims Act (Government Code section 825 et seq.), and shall provide a defense to Employee in accordance with Government Code sections 995-996.5. The City may decline to defend or indemnify Employee only as permitted by the Government Code. The 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 the City provides funds for legal criminal defense pursuant to this Section, Employee shall reimburse the 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 53243-53243.4.

Section 8. Bonding. The City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

Section 9. Notices. Any notice or communication required hereunder between the City and Employee must be in writing, and may be given either personally, by facsimile (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 shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party’s facsimile machine. Notices transmitted by facsimile 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 (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

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

If to Employee: City of Dixon
ATTN: Joseph M. Leach
600 East A Street
Dixon, CA 95620
w/ cc: home address on file

Section 10. General Provisions.

10.1. Modification of Agreement. This Agreement may be supplemented,
amended, or modified only by a writing signed by the City and Employee.

10.2. 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.

10.3. 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.
10.4. **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 state or federal law in order to enter into this Agreement had 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.

10.5. **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.

10.6. **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.

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

10.8. **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.

10.9. **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.

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

10.11. **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: [Signature]
    Jim Lindley, City Manager

Date Signed: 7-7-17

EMPLOYEE:

By: [Signature]
    Joseph M. Leach, City Engineer/Public Works Director

Date Signed: 7-7-17

By: [Signature]
    Leticia L. Miguel, City Clerk

Date Signed: 7-7-17

Approved as to Form and Content:

By: [Signature]
    Douglas L. White, City Attorney