COLFAX CITY COUNCIL MEETING
REGULAR SESSION AGENDA

City Council Chambers
33 S. Main Street, Colfax, CA.

November 14, 2012
6:00 PM (Closed Session)
7:00 PM (Regular Session)

Last Ordinance #519 | Last Resolution 42-2012

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the building & safety director, (530) 346-2313. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibilities to this meeting.

1. **OPENING**
   - A. Call to Order
   - B. Roll Call

2. **PUBLIC COMMENT**

3. **CLOSED SESSION**

Conference with Legal Counsel - Anticipated Litigation. Initiation of Litigation pursuant to Government Code Section 54956.9(c). Number of Potential Cases: 1

Conference with Labor Negotiators pursuant To Government Code Section 54957.6
Employee Organization: General Employees and Bargaining Unit Represented by Operating Engineers, Local 39
City's Designated Representative: Bruce Kranz

4. **OPENING**
   - A. Pledge Of Allegiance
   - B. Announcement of Action Taken at Closed Session
   - C. Approval of Agenda Order

   This is the time for changes to the agenda to be considered including removal, postponement or change to agenda sequence.

   Recommended Action: By motion accept the agenda as presented or amended.

Members of the public who addresses the Council shall do so in an orderly manner. No person shall yell or make profane or threatening remarks to any member of the Council, staff or general public. No person shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, whistling, stamping of feet, clapping, or other acts that unreasonably disturb, disrupt, delay or otherwise impede the orderly conduct of any Council meeting. Except as allowed by rules of order, a councilmember or staff person shall not by conversation or other means delay the Council proceedings or disturb any other councilmember or staff person while speaking.

5. **CITY COUNCIL COMMITTEE REPORTS**

The purpose of these reports is to provide information to the City Council and public on projects and programs that are discussed at committee meetings. No decisions are to be made on these issues. If a

Council member would like formal action on any of these discussed items, it will be placed on a future Council Agenda

6. INFORMATION REPORTS FROM STAFF AND OTHERS

7. CONSENT AGENDA

All matters listed under the Consent Agenda are considered to be routine in nature and will be approved by one blanket motion with a roll call vote. There will be no separate discussion of these items unless persons request specific items to be removed from the Consent Agenda for discussion and separate action. Any items removed will be considered after the motion to approve the Consent Agenda. If you wish to have an item pulled from the Consent Agenda for discussion, please notify the City Clerk.

	RECOMMENDED ACTION
A. Minutes: October 10, 2012	*Receive and File*
B. Cash Balance Summary: September 30, 2012	*Receive and File*
C. Consideration of upgrading Microsoft Office 2007 to the 2010 version	*Approve Purchase*
D. Consideration of Adoption of Resolution No. 43-2012 : A Resolution Of The City Of Colfax Authorizing The City Manager To Execute An Interlocal Agreement With Region Viii Education Service Center, Mount Pleasant, Texas, For The Cooperative Purchase Of Musco Lights For The Prop 40 Project At The Regional Park.	*Adopt Resolution No. 43-2012*
E. Consideration of Adoption of Resolution No. 44-2012: A Resolution Of The City Council Of The City Of Colfax Authorizing The City Manager To Execute A Professional Services Agreement With Hach Company for the I&I Mitigation Project, Post Construction Flow Monitoring	*Adopt Resolution No. 44-2012*

CONSENT ITEMS PULLED FOR DISCUSSION

8. PUBLIC COMMENT

At this time, members of the audience are permitted to address the City Council on matters of concern to the public not listed on this agenda. Please make your comments as brief as possible, comments should not exceed three (3) minutes in length or fifteen (15) minutes on one topic. The Council cannot act on items not included on this agenda; however, if action is required it will be referred to staff.

9. PUBLIC HEARING

Notice to Public

City Council, when considering a matter scheduled for hearing, will take the following actions:

1. Open the Public Hearing
2. Presentation by Staff
3. Presentation, when applicable, by Applicant or Appellant
4. Accept Public Testimony

5. When applicable, Applicant or Appellant rebuttal period
6. Close public hearing (No public comment is taken hearing is closed)
7. Council comments and questions
8. City Council action

Public hearings that are continued will be so noted. The continued public hearing will be listed on a subsequent council agenda and posting of that agenda will serve as notice

10. COUNCIL BUSINESS

A. Consideration of Adoption of Resolution 45-2012: A Resolution of the City Council Authorizing the City to Enter into a Digital Billboard Sign and Relocation Agreement with Sierra Property Development
Recommended Action: Adopt Resolution 45-2012

B. Consideration of Adoption of Resolution No. 46-2012: A Resolution Of The City Council Of The City Of Colfax Supporting A Terminal Access Application For New STAA Local Truck Route On Interstate 80 On-Ramps And Off-Ramps #133 In The City Of Colfax
Recommended Action: Adopt Resolution No. 46-2012

C. Consideration of Adoption of Revised Joint Powers Agreement (JPA)
Recommended Action: With council approval authorize Mayor to sign JPA

D. Discussion of City of Colfax Conflict of Interest Code
Recommended Action: Discuss and direct staff

E. Discussion of Election Results
Recommended Action: Provide direction to staff

11. PRESENTATIONS

12. ADJOURNMENT

Administrative Remedies must be exhausted prior to action being initiated in a court of law. If you challenge City Council action in court, you may be limited to raising only those issues you or someone else raised at a public hearing described in this notice/agenda, or in written correspondence delivered to the City Clerk of the City of Colfax at, or prior to said public hearing.

AGENDA POSTED, November 9, 2012
at City Hall and Post Office locations

Karen Pierce

Karen Pierce, City Clerk

7A

Minutes
City Council Meeting
October 10, 2012

1. OPENING

Mayor Harvey called the meeting to order at 6:00pm.

Present and answering roll call were Council members Delfino, Barkle, Alpine and Mayor Harvey.

Councilmember Hesch is out of town on vacation.

2. PUBLIC COMMENT

There was no public comment

3. CLOSED SESSION

Mayor Harvey called the closed session to order at 6:00pm

Conference with Legal Counsel - Anticipated Litigation.
Initiation of Litigation pursuant to Government Code Section 54956.9(c).
Number of Potential Cases: 2

Conference with Labor Negotiators pursuant To Government Code Section 54957.6
Employee Organization: General Employees and Bargaining Unit Represented by Operating Engineers, Local 39
City's Designated Representative: Bruce Kranz

Mayor Harvey closed the closed session at 7:04pm.

4. OPENING AND AGENDA APPROVAL

Mayor Harvey called the regular meeting to order at 7:10pm.

Brigit Barnes led the Pledge of Allegiance

Mayor Harvey stated that there was no reportable action taken in Closed Session.

Councilman Alpine requested the Council Business Items A and and B be rotated. A motion was made by councilman Delfino and seconded by councilwoman Barkle to approve the agenda as presented with the noted change. The motion was passed by the following vote:

AYES: Delfino, Barkle, Alpine and Mayor Harvey
NOES:
ABSENT: Hesch
ABSTAIN:

5. CITY COUNCIL COMMITTEE REPORTS

Councilman Alpine reported on the LAFCO meeting.
Councilman Delfino reported on the SEDDCorp meeting. The next meeting will be hosted in Colfax. The Law Enforcement PLEA Awards will be next month. Councilman Delfino also reported about receiving the title of Train Town USA from Union Pacific last week. He also spoke about Agenda 21 issues.
Mayor Harvey reported on the Hwy. 65 Grand Opening in Lincoln and spoke about Cap and Trade in California

6. INFORMATION REPORTS FROM STAFF AND OTHERS

City Manager, Bruce Kranz reported on the following:

- Updated Council on meeting with Little League and progress on Ball Field.
- Met with EPA, USDA and the Water Board and gave update on Pond 3 Liner Project.

Sgt. Ty Conners updated council on the proposed Skate Park he is working on with local youth.

7. CONSENT AGENDA

	ACTION TAKEN
A. Minutes: September 26, 2012	*Received and Filed*
B. Consideration of New Color Copy Machine Proposal	*Authorized City Manager to enter lease agreement*
C. Proclamation Proclaiming October 14, 2012 National Prisoner of War Recognition Day.	*Approved Proclamation*
D. Consideration of Adoption of Resolution No. 41-2012: A Resolution of the City Council of the City of Colfax Authorizing the City Manger to File Claims or Execute Agreements for Local Transportation Funds in the Amount of $87,293 for Street and Roads Purposes (Article 8a), Local Transportation Funds of $1,994 for Transit Services (Article 8c), and State Transit Assistance Funds in the Amount of $9,726 for contracted Transit Services	*Adopted Resolution No. 41-2012*
E. Consideration of Adoption of Resolution No. 42-2012: A Resolution Of The City Council Of The City Of Colfax Certifying Compliance With The 2011-2012 Appropriation Limitation And Establishing The Appropriation Limitation For The 2012-2013 Fiscal Year	*Adopted Resolution No. 42-2012*

A motion was made by councilman Delfino and seconded by councilman Alpine to approve the consent agenda as presented. The motion was passed by the following vote:

AYES: Delfino, Barkle, Alpine and Mayor Harvey
NOES:
ABSENT: Hesch
ABSTAIN:

8. PUBLIC COMMENT

Frank Klein, President Chamber of Commerce gave a report and Railroad Days. Everything went successfully, but there was low turnout. Last night there was a Non-Profit group meeting. There was great turnout. They are working on getting together for community events.

9. PUBLIC HEARING

10. COUNCIL BUSINESS

A. Consideration of approval for Colfax Lioness Club to make repairs to and maintain the flower bed by the flag pole on N. Main for three (3) years

City manager, Bruce Kranz went over the staff report. Gabe Armstrong, Community Services noted that he had no problem with the project. Speaking for the Lioness Club was Joan Bridgeman. They would like to begin work on November 5, 2012.

Speaking from the public was:
Frank Klein, Chamber President

Council discussed. A motion was made by councilman Delfino and seconded by councilwoman Barkle to approve the project. The motion was passed by the following vote:

AYES: Delfino, Barkle, Alpine and Mayor Harvey
NOES:
ABSENT: Hesch
ABSTAIN:

B. Information Item – Highway 80 Revitalization Zone Project (#PL-03-12): Preliminary Council Review of Action/Phase Plan

Land Use Attorney, Brigit Barnes went over the staff report and proposed project.

Speaking from the public was:
Frank Klein, Chamber President

Council discussed and by unanimous vote approved the concept and direction to move forward.

11. PRESENTATION

12. ADJOURNMENT

Being no further business to come before council by voice vote the meeting was adjourned at 8:47pm.

7B

City of Colfax
Cash Summary
September 30, 2012

	Balance 08/31/2012	Debits	Credits	Transfers	Balance 09/30/2012
US Bank	$ 282,661.03	$ 312,802.96	$ (837,206.57)	$ 380,000.00	$ 138,257.42
LAIF	$ 1,041,569.46			$ (380,000.00)	$ 661,569.46
LAIF - County Loan		$ 3,000,000.00			$ 3,000,000.00
Collateral Deposit (USBank)	$ 40,000.00		$ (40,000.00)		$ -
Total Cash - General Ledger	$ 1,364,230.49	$ 3,312,802.96	$ (877,206.57)	$ -	$ 3,799,826.88
Petty Cash (In Safe)	$ 300.00				$ 300.00
Total Cash	$ 1,364,530.49	$ 3,312,802.96	$ (877,206.57)	$ -	$ 3,800,126.88

Change in Cash Account Balance - Total **$ 2,435,596.39**

Attached Reports:

1. Cash Transactions Report (By Individual Fund)
2. Check Register Report (Accounts Payable) $ (825,197.82) AP
3. Cash Receipts - Daily Cash Summary Report $ 3,227,386.03 CR

Payroll Checks and Tax Deposits	$	(42,299.00)	PR, GJ
Utility Billings - Receipts	$	75,792.07	UB
Bank Service Charges	$	(84.89)	
	$	**2,435,596.39**	$ -

Prepared by: Laurie Van Groningen 10/8/12
Laurie Van Groningen, Finance Consultant

Reviewed by: Bruce Kranz 10/10/12
Bruce Kranz, City Manager

CASH TRANSACTIONS REPORT

MONTH: SEPTEMBER

10/8/2012

City of Colfax

8:53 AM

	Beginning Balance	Debit	Credit	Ending Balance
Fund: 100 - GENERAL FUND	74,524.87	3,080,924.77	200,775.83	2,954,673.81
Fund: 120 - LAND DEVELOPMENT FEES	11,158.12	1,835.05	5,968.25	7,024.92
Fund: 210 - MITIGATION FEE - TRAFFIC	75,725.18	0.00	0.00	75,725.18
Fund: 211 - MITIGATION FEE - DRAINAGE	2,968.41	0.00	0.00	2,968.41
Fund: 212 - MITIGATION FEE - TRAILS	45,509.73	0.00	0.00	45,509.73
Fund: 213 - MITIGATION FEE - PARK & REC	119,061.99	0.00	0.00	119,061.99
Fund: 214 - MITIGATION FEE -CITY BUILDINGS	665.80	0.00	0.00	665.80
Fund: 215 - MITIGATION FEE - VEHICLES	229.65	0.00	0.00	229.65
Fund: 217 - MITIGATION FEE - D.T. PARKING	25,921.51	0.00	0.00	25,921.51
Fund: 218 - SUPPORT LAW ENFORCEMENT	0.00	0.00	26,423.25	-26,423.25
Fund: 236 - CDBG - Economic Revitalization	-3,792.90	0.00	3,664.30	-7,457.20
Fund: 241 - HOUSING REHABILITATION	124,978.61	0.00	0.00	124,978.61
Fund: 244 - MICROENTERPRISE LENDING-CDBG	93,723.39	300.00	0.00	94,023.39
Fund: 250 - TRANSPORTATION	-28,844.88	3,846.15	8,927.20	-33,925.93
Fund: 253 - GAS TAXES	49,263.15	0.00	1,748.08	47,515.07
Fund: 270 - BEVERAGE RECYCLING	23,888.78	0.00	0.00	23,888.78
Fund: 280 - Used Oil Grant UOG3-95-1432-31	1,201.54	0.00	215.08	986.46
Fund: 286 - BRICKS	5,208.86	0.00	0.00	5,208.86
Fund: 292 - FIRE CAPITAL FUND	27,046.73	0.00	0.00	27,046.73
Fund: 344 - PROP 40 - POOL IMPROVEMENT	-2,111.67	0.00	225.00	-2,336.67
Fund: 350 - STREETS IMPROVEMENT PROJECTS	235,908.85	0.00	2,077.50	233,831.35
Fund: 560 - SEWER	-639,151.08	46,038.99	104,624.58	-697,736.67
Fund: 561 - SCSWAD LIFT	291,032.21	10,644.56	5,826.20	295,850.57
Fund: 563 - WASTEWATER TREATMENT PLANT	83,714.25	21,951.33	0.00	105,665.58
Fund: 565 - GENERAL OBLIGATION BOND	22,769.55	0.79	0.00	22,770.34
Fund: 567 - I & I	420,217.61	1,269.76	0.00	421,487.37
Fund: 569 - Pond 3 Lining- I&I Repair	-16,434.39	145,721.64	512,677.59	-383,390.34
Fund: 570 - GARBAGE	-399,516.30	13.68	0.00	-399,502.62
Fund: 571 - 2% AB939	30,559.83	0.25	0.00	30,560.08
Fund: 572 - 27% LANDFILL	688,697.38	255.99	3,948.00	685,005.37
Fund: 998 - PAYROLL CLEARING ACCOUNT	105.71	0.00	105.71	0.00
Grand Totals:	1,364,230.49	3,312,802.96	877,206.57	3,799,826.88

Check Register Report

Date: 10/05/2012
Time: 11:36 am
Page: 1

CITY OF COLFAX

BANK: US BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
US BANK Checks							
48616	09/07/2012	Printed		01448	AMERIGAS - COLFAX	PROPANE DEPOT	53.63
48617	09/07/2012	Printed		01650	AQUA SIERRA CONTROLS INC.	WWTP SCADA SYSTEM	5,364.20
48618	09/07/2012	Printed		01661	ARC	I & I PLANS	375.11
48619	09/07/2012	Printed		01790	AUBURN OFFICE PRODUCTS	SUPPLIES	73.81
48620	09/07/2012	Printed		02084	BRIGIT BARNES	PLANNING AUGUST 2012	8,884.40
48621	09/07/2012	Printed		07460	GOLD COUNTRY MEDIA	PUBLIC NOTICE ZONING CODE	84.48
48622	09/07/2012	Printed		07465	GOLD MINER PEST CONTROL	PEST CONTROL CITY HALL	125.00
48623	09/07/2012	Printed		08084	HDR ENGINEERING, INC.	CONSTRUCTION MANAGEMENT POND 3	5,167.81
48624	09/07/2012	Printed		12181	LAWYERS FOR CLEAN WATER	SETTLEMENT AGREEMENT	10,000.00
48625	09/07/2012	Printed		06011	PELLETREAU, ALDERSON & CABRAL	LEGAL SERVICES AUGUST	11,677.90
48626	09/07/2012	Printed		16035	PG&E	UTILITIES	21,678.83
48627	09/07/2012	Printed		16040	PITNEY BOWES	POSTAGE	196.88
48628	09/07/2012	Printed		16300	PLACER COUNTY WATER AGENCY	WATER	3,594.44
48629	09/07/2012	Printed		14295	SPRINT NEXTEL COMMUNICATIONS	CELL PHONES	337.60
48630	09/07/2012	Printed		22106	VAN GRONINGEN & ASSOCIATES	FINANCE CONSULTANT	5,070.00
48631	09/07/2012	Printed		23169	WAVE BUSINESS SOLUTIONS	INTERNET	182.95
48632	09/13/2012	Printed		01414	ALHAMBRA & SIERRA SPRINGS	WATER CITY HALL/CORP YARD	314.50
48633	09/13/2012	Printed		30021	TIM CALVERT	BUILDING PERMIT REFUND	75.66
48634	09/13/2012	Printed		08660	HUNT AND SONS, INC.	GASOLINE PUBLIC WORKS	599.13
48635	09/13/2012	Void	09/14/2012	16300	PLACER COUNTY WATER AGENCY	WATER	0.00
48636	09/13/2012	Printed		16140	PLACER COUNTY AIR POLLUTION	PER CAPITA ASSESMENT	988.00
48637	09/13/2012	Printed		16200W	PLACER COUNTY SHERIFFS DEPT.	TELEPHONE	129.14
48638	09/13/2012	Printed		16821	PSOMAS	WWTP POND 3 LINER	23,346.00
48639	09/13/2012	Printed		18193	RECOLOGY AUBURN PLACER	WWTP DEBRIS BOX	690.00
48640	09/13/2012	Printed		19591	STANLEY CONVERGENT SECURITY	DEPOT SECURITY	111.30
48641	09/13/2012	Printed		21560	US BANK CORPORATE PMT SYSTEM	CREDIT CARD PURCHASES	2,648.93
48642	09/19/2012	Printed		01500	ANDERSON'S SIERRA	BELT PRESS POLYMER	305.03
48643	09/19/2012	Printed		03118	CALCON SYSTEMS, INC	WWTP MAINTENANCE	619.30
48644	09/19/2012	Printed		04400	DIAMOND WELL DRILLING CO.	WWTP TESTING AUGUST	5,137.00
48645	09/19/2012	Printed		05500	EXTRA MILE DELIVERY SERVICE	WWTP TESTING	465.00
48646	09/19/2012	Printed		07147	TRINIDAD GARCIA	ROBBERS FIRE 20120314	1,676.88
48647	09/19/2012	Printed		08050	HACH COMPANY	WWTP LAMP	1,445.16
48648	09/19/2012	Printed		08084	HDR ENGINEERING, INC.	WWTP POND 3 MANAGEMENT	7,134.92
48649	09/19/2012	Printed		08159	HILL BROTHERS CHEMICAL CO.	WWTP CHEMICALS	5,492.84
48650	09/19/2012	Printed		08170	HILLS FLAT LUMBER CO	SUPPLIES	1,143.45
48651	09/19/2012	Printed		10570	JS WEST	ESCROW REFUND UP01-09/PM01-09	43,198.90
48652	09/19/2012	Printed		10800	SHERRY KEYES	ROBBERS FIRE 20120314	1,676.88
48653	09/19/2012	Printed		12180	LAWRENCE & ASSOCIATES INC	LANDFILL MONITORING JULY	99.69
48654	09/19/2012	Printed		12555	LOMEN, SEAN	ROBBERS FIRE 20120314	1,676.88
48655	09/19/2012	Printed		12564	LORANG BROTHERS CONSTRUCTION	I & I PROJECT	86,340.75
48656	09/19/2012	Printed		16009	SEAN PATRICK	WWTP CONSULTING AUGUST	627.50
48657	09/19/2012	Printed		16200	PLACER COUNTY SHERIFF DEPT.	LAW ENFORCEMENT CONTRACT	136,975.00
48658	09/19/2012	Printed		16211	PLACER COUNTY TAX COLLECTOR	WWTP FACILITY NOTE COST OF INS	400.00
48659	09/19/2012	Printed		18400	RIEBES AUTO PARTS	SUPPLIES	233.27
48660	09/19/2012	Printed		19390	SIERRA MARKET	SUPPLIES	25.60
48661	09/19/2012	Printed		19397	SIERRA SAW	CHISEL CHAIN	30.89
48662	09/19/2012	Printed		20085	SHAUN THOMPSON	ROBBERS FIRE 20120314	1,676.88
48663	09/19/2012	Printed		23301	WESTERN PLACER WASTE	SLUDGE REMOVAL	488.25

Check Register Report

CITY OF COLFAX BANK: US BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
US BANK Checks							
48664	09/28/2012	Printed		01414	ALHAMBRA & SIERRA SPRINGS	WATER WWTP	12.45
48665	09/28/2012	Printed		01448	AMERIGAS - COLFAX	PROPANE FIRE DEPT	9.87
48666	09/28/2012	Printed		01460	AMERIPRIDE UNIFORM SERVICE	UNIFORMS	528.65
48667	09/28/2012	Printed		01673	GABE ARMSTRONG	HEALTH INS REIMB. OCTOBER	762.00
48668	09/28/2012	Printed		03151	CAMPBELL CONSTRUCTION, INC	POND 3 LINER PROJECT	352,754.00
48669	09/28/2012	Printed		04220	DC FROST ASSOCIATES, INC.	UV MAINTENANCE	9,566.11
48670	09/28/2012	Printed		04575	DOWNEY BRAND	WWTP LEGAL SERVICES	4,961.15
48671	09/28/2012	Printed		08660	HUNT AND SONS, INC.	GASOLINE FIRE DEPT	606.38
48672	09/28/2012	Printed		09513	INTERNATIONAL CODE COUNCIL	MEMBER DUES	125.00
48673	09/28/2012	Printed		12180	LAWRENCE & ASSOCIATES INC	LANDFILL MONITORING AUGUST	966.52
48674	09/28/2012	Printed		16040	PITNEY BOWES	POSTAGE LEASE 6/30-9/30/12	155.98
48675	09/28/2012	Printed		16211	PLACER COUNTY TAX COLLECTOR	LOT OF ART LEASE	573.38
48676	09/28/2012	Printed		16727	PONTICELLO ENTERPRISES	ENGINEERING AUGUST	39,462.75
48677	09/28/2012	Printed		19279	SERVICE ENGINEERING	WWTP SEAL KIT	651.22
48678	09/28/2012	Printed		19387	SIERRA FOOTHILL LABORATORY,INC	WWTP TESTING	1,600.00
48679	09/28/2012	Printed		14295	SPRINT NEXTEL COMMUNICATIONS	CELL PHONES	367.10
48680	09/28/2012	Printed		16600	STATIONARY ENGINEERS, LOCAL 39	HEALTH INSURANCE NOVEMBER	9,210.00
48681	09/28/2012	Printed		21500	USA BLUE BOOK, INC	WWTP GLASS FIBER	329.17
48682	09/28/2012	Printed		22115	VERIZON CALIFORNIA	TELEPHONE	885.31
48683	09/28/2012	Printed		23101	LARRY WALKER	NPDES PERMIT/POND 3 AUGUST	2,670.00
48684	09/28/2012	Printed		23169	WAVE BUSINESS SOLUTIONS	INTERNET COUNCIL	42.51
48685	09/28/2012	Printed		23221	WESTCON CONSTRUCTION CORP	LAND DEVELOPMENT REFUND	24.50
48686	09/28/2012	Printed		23436	WILEY PRICE AND RADULOVICH,LLP	LOCAL 39 TRUST SETTLEMENT	294.00

Total Checks: 71 **Checks Total (excluding void checks): 825,197.82**

Total Payments: 71 **Bank Total (excluding void checks): 825,197.82**

Total Payments: 71 **Grand Total (excluding void checks): 825,197.82**

DAILY CASH SUMMARY REPORT

09/01/2012 - 09/30/2012

City of Colfax

			Debit	Credit	Net Chng
Fund: 100 - GENERAL FUND					
09/06/2012	Daily Totals		5,691.85	0.00	5,691.85
09/07/2012	Daily Totals		25.00	0.00	25.00
09/12/2012	Daily Totals		1,395.51	0.00	1,395.51
09/14/2012	Daily Totals		405.00	0.00	405.00
09/17/2012	Daily Totals		3,612.17	0.00	3,612.17
09/19/2012	Daily Totals		3,000,000.00	0.00	3,000,000.00
09/20/2012	Daily Totals		1,968.03	0.00	1,968.03
09/26/2012	Daily Totals		63,557.37	0.00	63,557.37
09/27/2012	Daily Totals		1,021.62	0.00	1,021.62
Fund: 100 - GENERAL FUND		**TOTALS:**	**3,077,676.55**	**0.00**	**3,077,676.55**
Fund: 120 - LAND DEVELOPMENT FEES					
09/12/2012	Daily Totals		392.05	0.00	392.05
09/20/2012	Daily Totals		693.00	0.00	693.00
09/26/2012	Daily Totals		750.00	0.00	750.00
Fund: 120 - LAND DEVELOPMENT FEES		**TOTALS:**	**1,835.05**	**0.00**	**1,835.05**
Fund: 244 - MICROENTERPRISE LENDING-CDBG					
09/20/2012	Daily Totals		300.00	0.00	300.00
Fund: 244 - MICROENTERPRISE LENDING-CDBG		**TOTALS:**	**300.00**	**0.00**	**300.00**
Fund: 250 - TRANSPORTATION					
09/20/2012	Daily Totals		24.00	0.00	24.00
Fund: 250 - TRANSPORTATION		**TOTALS:**	**24.00**	**0.00**	**24.00**
Fund: 560 - SEWER					
09/06/2012	Daily Totals		200.00	0.00	200.00
Fund: 560 - SEWER		**TOTALS:**	**200.00**	**0.00**	**200.00**
Fund: 561 - SCSWAD LIFT					
09/06/2012	Daily Totals		407.00	0.00	407.00
09/12/2012	Daily Totals		407.00	0.00	407.00

Limited to include: JE Types of: CR

			Debit	Credit	Net Chng
09/26/2012	Daily Totals		814.00	0.00	814.00
Fund: 561 - SCSWAD LIFT		**TOTALS:**	**1,628.00**	**0.00**	**1,628.00**
Fund: 565 - GENERAL OBLIGATION BOND					
09/17/2012	Daily Totals		0.79	0.00	0.79
Fund: 565 - GENERAL OBLIGATION BOND		**TOTALS:**	**0.79**	**0.00**	**0.79**
Fund: 569 - Pond 3 Lining- I&I Repair					
09/14/2012	Daily Totals		122,766.64	0.00	122,766.64
09/17/2012	Daily Totals		22,955.00	0.00	22,955.00
Fund: 569 - Pond 3 Lining- I&I Repair		**TOTALS:**	**145,721.64**	**0.00**	**145,721.64**
		GRAND TOTALS:	**3,227,386.03**	**0.00**	**3,227,386.03**

REPORT TO COLFAX CITY COUNCIL

Agenda Item No. 7C

COUNCIL MEETING OF November 14, 2012

To:	Honorable Mayor and Members of the City Council
From:	Travis Berry – Technical Services Administrator
Date:	October 10th, 2012
Subject:	Consideration of upgrading Microsoft Office 2007 to the 2010 version

Recommended Action: Allow the City Manager to authorize the purchase and installation of Microsoft Office 2010 on all PC's that currently run Microsoft Office 2007.

ISSUE STATEMENT AND DISCUSSION:

The Microsoft Office Suite is commonly used within the City. Every employee that uses a computer to perform their work duties uses one or more programs in the Office Suite on a daily basis. Some employees are using version 2007 while others are using the 2010 version. When a file is emailed from an employee with version A to an employee with version B, errors and inconsistencies occur for the end user. The inconsistencies range from visual to functional, with new issues being detected all the time.

It is the recommendation of the Technical Services Administrator that the City purchase and install a common version of Microsoft Office on all City PC's. The City Clerk (desktop and laptop), Clerk Typist, Building Official, and Chief Wastewater Plant Operator need upgrades to resolve the compatibility issues.

FINANCIAL AND/OR POLICY IMPLICATIONS:

Microsoft Office Home and Business Edition is $199.99 per user license. 5 x $199.99 = $999.95. If purchased on or after October 19th, 2012, each license is entitled to a free upgrade to Microsoft Office 2013, which is being released by the end of the year. If the City chooses to upgrade all PC's to the 2013 version the additional cost will be $219.99 per license. 3 x $219.99 = $659.97. It is the recommendation of the Technical Services Administrator that the City keep its computers up to date with the latest versions of most software, however, it is most important to maintain the same version on all PCs.

CITY OF COLFAX

REPORT TO COLFAX CITY COUNCIL

Agenda Item No. 7D

COUNCIL MEETING OF November 14, 2012

To:	Honorable Mayor and Members of the City Council
From:	Alan Mitchell, City Engineer
Date:	November 14, 2012
Subject:	Consideration of Adoption of Resolution No. 43-2012 : A Resolution Of The City Of Colfax for Membership Request in the Interlocal Purchasing System (TIPS), Region VIII Education Service Center, Mount Pleasant, Texas, for Cooperative Purchase Agreement to Procure Musco Lights for the Prop 40 Project at the Regional Park.

Recommended Action: Adopt Resolution No. 43-2012

ISSUE STATEMENT AND DISCUSSION:

The City of Colfax received Prop. 40 Per Capita Grant Program funds to renovate the lighting and electrical system of the Little League ball field at the Colfax Regional Park. The project will consist of demolition and disposal of existing lighting system, installation of city-supplied poles and lights, installation of a new electrical service, wiring, and controls to power the new lights, and retrofit of the existing electrical system to power existing uses ancillary to the ballfield lights.

Staff and representatives from Sierra Foothills Little League spent time researching sports field lighting and reached the conclusion that Musco Sports Lighting is the current industry leader for youth ball fields. They are an official Little League Partner and uniquely qualified to meet high safety and playability standards for facilities and recreational amenities. Little League solicited a lighting plan and quote from Musco, which will be the basis for the procurement.

To expedite the delivery and installation of the lights, the City will purchase the Musco Light Structure Green™ System equipment for this project. The City's Purchase Order will provide for fabrication of the lighting equipment, which includes the poles and luminaires. An RFP has been issued for selection of a design/build team who will be responsible for confirming pole locations and power requirements with Musco, designing the electrical service for the site, installation of the electrical system, and delivery, storage, and installation of the lighting equipment.

To further expedite the procurement process in a cost-effective manner, Musco referred staff to the Interlocal Purchasing System (TIPS), which provides a cooperative purchasing program established for the use by schools (public and private), colleges, universities, and city and county government entities. Members participating in the Program are not required to locally bid for products and services when using a TIPS-awarded vendor contract for their procurement needs. TIPS has done the bidding for the Agencies, and negotiated a low-cost price for the lights. Several other local agencies and districts in California have used this System.

The City would become a participating public agency under "The Interlocal Purchasing System" Cooperative Purchasing Agreement (Interlocal Agreement attached), which is a competitively solicited and awarded agreement with various certified vendors. The City is able to use the

City of Colfax

Resolution No. 43 - 2012

A RESOLUTION OF THE CITY OF COLFAX AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH REGION VIII EDUCATION SERVICE CENTER, MOUNT PLEASANT, TEXAS, FOR THE COOPERATIVE PURCHASE OF MUSCO LIGHTS FOR THE PROP 40 PROJECT AT THE REGIONAL PARK.

WHEREAS, the City of Colfax was granted Prop. 40 funds to renovate the lighting and electrical system of the Little League field lights at the Colfax Regional Park (the "Project"); and

WHEREAS, the City desires to purchase the Musco Light Structure Green™ System equipment for the Project; and

WHEREAS, the City Council of the City of Colfax, Colfax, California, pursuant to the authority granted by California Government Code § 6500, *et seq,* desires to participate in The Interlocal Purchasing System (TIPS) offered by the Region VIII Education Service Center; and

WHEREAS, the cost savings to be realized by the City's taxpayers by participating in the TIPS program for the purchase of the Musco Lights will be considerable such that participating in the TIPS program is in the best interests of the City and its residents; and

WHEREAS, all purchases through the TIPS program are made pursuant to contracts that are duly noticed, competitively bid and awarded to the lowest responsive, responsible bidder as required by California law.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Colfax as follows:

City Manager Bruce Kranz is hereby authorized for and on behalf of the City to execute the Interlocal Agreement with Region VIII Education Service Center in the form attached to this Resolution and directed to sign and deliver any and all necessary requests and documents in connection therewith for and on behalf of the City of Colfax.

The foregoing Resolution was duly and regularly adopted at a meeting of the City Council of the City of Colfax held on the 14th day of November, 2012 by the following roll call vote of the Council.

Ayes:
Noes:
Absent:
Abstain:

_____
Stephen Harvey, Mayor

ATTEST: _____
Karen Pierce, City Clerk

INTERLOCAL AGREEMENT
Region VIII Education Service Center
CALIFORNIA PUBLIC AGENCY
(School, College, University, State, City or County Office)

CALIFORNIA
Assign)
EDUCATIONAL OR GOVERNMENT ENTITY

_____ - _____
Control Number (TIPS will
Schools enter County-District Number

and

Region VIII Education Service Center
Mt. Pleasant, Texas

225 - 950
Region 8 County-District Number

The Texas Education Code §8.002 permits Regional Education Service Centers, at the direction of the Commissioner of Education, to provide services to assist school districts, colleges and universities in improving student performance and increasing the efficiency and effectiveness of school, college and university financial operations.

Government Authority:
Interlocal contracts in California are presumably authorized by the Joint Exercise of Powers Act ("JEPA"). CAL.GOV'T. CODE § 6500, et seq. JEPA provides that two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting agencies may be located outside California. CAL. GOV'T. CODE §6502. "Public Agency" includes but is not limited to "the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent or schools, public district of this state or another state." CAL. GOV'T. CODE §6500. While a public school district is not specifically identified as a public agency under the JEPA, school districts are mentioned in other areas of the Act and §6500 provides that the list is not inclusive. Accordingly, a public school district in California is permitted to participate in a joint powers agreement under the JEPA. Pursuant to the TICA, a Texas regional education service center is considered a political subdivision of the state of Texas; thus a Texas regional education service center would be considered a public agency for the purposes of JEPA. See TEX. GOV'T CODE §791.003 (5).

California law provides that the governing boards of school districts have broad discretion in the expenditure of funds and in the operation of the school districts. CAL. EDUC. CODE §35160.1. The Public Contract Code provides that the governing board of a school district, shall competitively let any contracts involving an expenditure of more than $50,000 for the purchase of equipment, materials, supplies, services, except for construction, and repairs to the lowest responsible bidder. CAL. PUB. CONT. CODE § 20111 (a) and (b). Accordingly, a school district in California could presumably purchase any of its goods and services from the cooperative as long as the cooperative's competitive bidding procedures comply with California law or the value of the goods and services is less than $50,000.

JFEPA provides that any agreements entered pursuant to the Act must state the purpose of the agreement or the power to be exercised and provide for the method by which purpose will be accomplished. CAL. GOV'T. CODE § 6503.

Vision:
TIPS/TAPS will become the premier purchasing cooperative in North America through developing partnerships with quality vendors, school districts, universities, colleges, all governmental entities, and public and private industry.

Mission:
Our mission is to provide a proven purchasing process through quality customer service including timely response, legal support and effective recruitment by providing sufficient resources to include personnel.

Purpose:
The purpose of the TIPS/TAPS program shall be to continue providing substantial savings and best value for participating educational entities or public agencies through cooperative purchasing.

Effective:
This Interlocal Agreement (hereinafter referred to as the "*Agreement*") is effective _____ and shall be automatically renewed annually unless either party gives sixty (60) days prior written notice of non-renewal. This Agreement may be terminated without cause by either party upon (60) days prior written notice, or may also be determined for cause at anytime upon written notice stating the reason for and effective date of such terminations and after giving the affected party a thirty (30) day period to cure any breach.

Statement of Services to be Performed:
Region VIII Education Service Center, by this *Agreement*, agrees to provide competitively bid cooperative purchasing services to the above-named public entity through a Program known as The Interlocal Purchasing System (TIPS/TAPS) Program.

Role of the TIPS/TAPS Purchasing Cooperative:
1. Provide organizational and administrative structure of the TIPS/TAPS Program.
2. Provide Administrative and Support Staff necessary for efficient operation of the TIPS/TAPS Program.
3. Provide marketing of the TIPS/TAPS program to expand membership, awarded contracts and commodity categories.
4. Initiate and implement activities required for competitive bidding and vendor award process including posting, advertising, collecting proposals, scoring proposals, and awarding of vendor contracts.
5. Provide members with current awarded vendor contracts, instructions for obtaining quotes and ordering procedures.
6. Maintain filing system for all competitive bidding procedure requirements.
7. Provide Reports as requested.
8. Maintain active membership database for awarded vendors.
9. Provide TIPS/TAPS training to members and vendors upon request.

Role of the Education or Government Entity:
1. Commit to participate in the TIPS/TAPS Program.
2. Designate a Primary and Technology Contact for the entity to be responsible for promoting TIPS/TAPS within the organization.
3. Commit to purchase products and services from TIPS/TAPS Vendor Awarded Contracts when in the best interest of the entity. **PURCHASE ORDER MUST ALWAYS BE MARKED TIPS/TAPS and FAXED to 866-839-8477 for processing.**

4. Accept shipments of products ordered from Awarded Vendors in accordance with standard purchasing procedures.
6. Pay Awarded Vendors in a timely manner for all goods and services received.
7. Report any vendor issues that may arise to the TIPS/TAPS Cooperative Coordinator.

General Provisions:
Both Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.

This Agreement shall be governed by the laws of the State of Texas and venue shall be in the county in which the administrative offices of RESC VIII are located which is Titus County,Texas.

It is the responsibility of the Entity purchasing from TIPS/TAPS to insure that the respective State purchasing laws are being followed.

This Agreement contains the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Parties.

If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.
Before any party may resort to litigation, any claims, disputes or other matters in question between the Parties to this Agreement shall be submitted to nonbinding mediation

No Party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their directors, officers, employees, and agents as a result of its execution of this Agreement and performance of the functions and obligations described herein.

This Agreement may be negotiated and transmitted between the Parties by means of a facsimile machine and the terms and conditions agreed to are binding upon the Parties.

Authorization:

Region VIII Education Service Center and The Interlocal Purchasing System (TIPS/TAPS) Program have entered into an Agreement to provide competitively bid cooperative purchasing opportunities to entities as outlined above.

This Interlocal Agreement process was approved by the governing boards of the respective parties at meetings that were posted and held in accordance with the respective STATE Open Meetings Act, for Texas it was Government Code Ch. 551.

The individuals signing below are authorized to do so by the respective parties to this Agreement.

Membership Entity-

_____

By: _____
Authorized Signature

Region 8 Education Service Center

By: _____
Authorized Signature

Title: _____ Title: Executive Director Region VIII ESC

_____ _____

Date Date

Public Entity Contact Information

_____ _____

Primary Purchasing Person's Name Primary Person's Email Address

_____

Street Address

_____ _____

City, State Zip Technology Coordinator's Name

_____ _____

Telephone Number Technology Coordinator's Email Address

_____

Fax Number

Instructions:

Please send two signed original Interlocal Agreements and one copy of Board Resolution (if required) to

TIPS/TAPS, Attn: Kim Thompson
C/O Region VIII Education Service Center
P.O. Box 1894, Mt. Pleasant, Texas 75456-1894

Upon execution, a signed original will be returned to the Purchasing Contact listed above.

CITY OF COLFAX

REPORT TO COLFAX CITY COUNCIL

Agenda Item No. 7E

COUNCIL MEETING OF November 14, 2012

To:	Honorable Mayor and Members of the City Council
From:	Bruce Kranz, City Manager
Prepared By:	Nicholas Ponticello, City Engineer
Subject:	Consideration of Adoption of Resolution No. 44-2012: A Resolution Of The City Council Of The City Of Colfax Authorizing The City Manager To Execute A Professional Services Agreement With Hach Company for the I&I Mitigation Project, Post Construction Flow Monitoring

Recommended Action: Staff recommends the City Council adopt Resolution 44-2012 that authorizes 1) the City Manager to execute a Professional Services Agreement with HACH Company for flow monitoring data delivery services; and 2) expenditure with HACH Company for an amount not to exceed $75,000.

ISSUE STATEMENT AND DISCUSSION: On September 19, 2011, the State Water Board approved and authorized the Clean Water State Revolving Fund (CWSRF) loan to the City of Colfax for Pond 3 liner construction at the wastewater treatment plant and inflow and infiltration mitigation (I&I Mitigation) project. Pre-construction flow monitoring for the I&I Mitigation project was conducted with Council's approval during the winter season in 2011/2012. This first flow monitoring, along with smoke testing, was used to quantify and isolate areas of I&I in order to optimize the design for the current construction project that is attempting to mitigate, and ideally eliminate, those identified I&I sources.

HACH Company provided the flow monitors last year because the City Engineer identified the company as the best source for flow monitoring services. HACH has proprietary equipment and resources to monitor the City's sewer flow real-time utilizing its FLO-DAR Sensor (FL904 Logger). Rental of these sensors will again be sole sourced through HACH and installed, maintained, recorded, and removed by HACH and its agents. Features that make these sensor unique include the capability to install the sensors above the sewer flow, completely out of the sewage stream, so that they are not subject to debris buildup and fouling. The flow and velocity data is collected real-time and transmitted by cellular link to a central data repository for time efficient review of the data and manhole performance. The City can be alerted when sewage rises above the pipe diameter and begins surcharging in the manhole, allowing the City to investigate potential overflows as they are occurring.

This year, approximately 12 sensors, about half of the sensors used last year, will be placed below the sewer segments that were rehabilitated with this summer's (2012) construction project. I&I will be compared to the previous year to quantify and analyze the overall improvement to I&I reduction before and after construction.

Each sensor will be left in the manholes until sufficient data collected for accurate analysis. It is anticipated that this process will take four month. The contract between HACH and the City is attached to this staff report. The contract allows the City to place the sensors in service for 4 or more months. The total cost for the 4-month installation is $56,800. HACH will charge $11,700 for each additional month that the flow monitors are needed. Staff is requesting an allowance of $75,000 to allow for flexibility in case it is necessary to move sensors to other locations, add additional sensors, or leave them installed beyond the four month period. $120,000 was budget through the SRF & USDA loan and grant applications for this post-construction flow monitoring.

FINANCIAL AND/OR POLICY IMPLICATIONS: Flow monitoring will be reimbursed by the CWSRF loan.

Attachments: (1) Resolution 44-2012
(2) HACH Company Agreement dated October 30, 2012

CITY OF COLFAX

RESOLUTION NO. 44-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLFAX AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH HACH COMPANY

WHEREAS, the City of Colfax had entered into a funding agreement with the USDA and the State for the "Collection System I&I Repair/Replacement and WWTP Reservoir Pond Lining" project, State Water Resource Control Board Project Number C-06-7806-110; and,

WHEREAS, the City of Colfax will perform post-construction flow studies for the project; and,

WHEREAS, the HACH Company provides flow monitoring services with proprietary equipment that is unique in the industry and the City of Colfax elects to sole source the HACH Company equipment and services.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Colfax hereby authorizes 1) the City Manager to execute an Professional Services Agreement with HACH Company for flow monitoring data delivery services; and, 2) expenditures with HACH Company for an amount not-to-exceed $75,000.

PASSED AND ADOPTED, this 14th day of November, 2012, by the City Council of the City of Colfax, by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Stephen Harvey, Mayor

ATTEST:

_____
Karen Pierce, City Clerk

Technical Proposal & Agreement #103012-02

Dated October 30, 2012

HACH COMPANY ("HACH")

FLOW MONITORING DATA DELIVERY SERVICES
Service Level 2 Utilizing
FLO-DAR® SENSOR WITH HACH FL904 LOGGER

For

City of Colfax
Colfax, CA

CONTENTS

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Specifications of Flowmeter Equipment 5

Subscriber License and Data Delivery Services Agreement 8

Data Delivery Services Service Order Form 12

TECHNICAL PROPOSAL

Equipment and Services Supplied by Hach Company

Hach Company is pleased to submit to City of Colfax ("Customer") this technical and business proposal for your review and consideration (the "Proposal"). Hach proposes to provide services to Customer as set forth below, subject to the terms and conditions of Hach Company's Subscriber License and Data Delivery Services Agreement:

Overview

The Hach Company: Hach Company has manufactured products for the environment for more than 50 years. Our commitment to research and development and state-of-the-art manufacturing keeps us firmly at the forefront of technology.

For over 35 years, Marsh-McBirney has provided innovative and award winning flow instrumentation for the industrial and municipal markets.

With more than 27 years of experience and cutting-edge technology, Sigma is a worldwide leader in the design and manufacture of innovative flow, sampling, rain and water quality instruments, communication products and data management software.

The combined strengths of Hach's Sigma and Marsh-McBirney flow meters provides our customers with over 70 years of flow experience.

Data Delivery Services (DDS)

High-level Description of Services: Hach proposes to install for Customer a collection system flow metering network utilizing open channel flow meters equipped with wireless data transmission. Data shall be delivered via a web server application. This enables the Customer to share data across a network (or the Internet) to operating workstations with common internet browser software. Data access is controlled by password permissions. Hach shall provide a desktop application to allow additional reports, editing, and analyses to be generated from data downloaded via web application.

Flow data presented to Customer via web server application provides collection system information that can be utilized to resolve a variety of critical issues, including, but not limited to:

- Inflow and Infiltration/Capacity Analysis
    - Average daily flow - dry weather
    - Peak flow - dry weather
    - Average daily flow - wet weather
    - Peak flow - wet weather
    - Peak inflow rates
    - Total I/I volume
    - In-situ pipe capacity (dry and wet weather)
- Operations and Maintenance
- Rehabilitation, Repair, or Replacement
- Billing

- Reporting
- Alarming
- Modeling
- Master Planning

Meter sites shall be selected by the Customer, after reviewing the collection system maps and preliminary field inspection of any sanitary sewer overflow (SSO) locations. Each monitoring site shall be selected so that the footage of the collection system upstream of the meter can be isolated, i.e., for the purposes of determining extraneous infiltration/inflow and for various engineering analysis. All meter sites shall be reviewed by Hach prior to installation.

Proposed Deliverables:

- Factory certified installation of flow meters as defined by this project scope
- Flow monitoring data, both graphical and tabular formats
- 24/7 Password Protected Access to Flow Data via Web Interface
    - SQL database
    - High performance graphical Customer interface and report generator.
    - Flow analysis and computation utility
    - Web server application for sharing data across an Intranet or the Internet.
    - Daily back-ups
- 95% up-time and "No Lost Data", subject to Hach's limited warranty

Details Regarding Equipment and Services

Measurement Instrumentation

Instrument Selection: Selection of the appropriate measurement technology to perform flow monitoring is critical to obtaining accurate data. Hach Company's portfolio of Flow measurement instruments allows maximum flexibility in determining the appropriate instrument to match the specific site conditions. All instrumentation utilized in fulfillment of this contract is designed, manufactured, and supported directly by Hach Company. Instrument specifications are included in the "Specifications of Flowmeter Equipment" section of this document.

Equipment and Factory Calibration: Flowmeter Equipment and accessories are stored at our factory at all times. Prior to storage, all meters are cleaned and checked for proper operation. Prior to shipment to a project, all meters are visually checked and calibrated to NIST traceable standards.

Communications and Security

Secure Data: Hach Data Delivery Services take full advantage of the security features provided by the isolated Hach Web server, such as CRC checking of transferred data, firewall protection, and control of Customer access according to their assigned Server Verification Code (SVC). In addition, Hach Data Delivery Services offers control of the contents of each page according to the Customer's authorization.

Remote Telemetry Unit (RTU) Communications: The RTU/flow meter communicates with the host computer to:

- Transfer instrument data
- Initiate alarms for user-defined events
- Reconfigure computations, schedules and site parameters
- Perform clock maintenance

Communication Methodology: The RTU configured with a 1xRTT or GSM cellular modem automatically transfers data to the host computer following each flow measurement, then powers off the modem between calls. This effectively provides near real time flow data on the network while consuming far less total energy than a method that permits direct call access to collect flow data. A data call following a flow measurement over the cellular network consists of two IP data packets; one from the RTU to the host; the second from the host to the RTU confirming valid receipt of error free data. The contents of the RTU packet will include the level, velocity, flow, and rainfall (if applicable) for all measurements since the previous data call. The battery voltage and any alarm messages shall also be included.

Data Security: Wireless cellular data occurs between specific IP addresses. The RTU generates data calls only to pre-programmed IP addresses, and never answers incoming, unsolicited calls from unknown IP addresses. Similarly, the host computer firewall accepts data calls only from RTUs with known IP addresses transferred over the cellular network.

Services

Installation and Maintenance Services. Hach agrees to install and maintain the Flowmeter Equipment in and around Customer's designated sewer manholes and effluent discharge areas (each a "Monitoring Site") for the fees and expenses set forth on the Service Order Form. Customer agrees to provide to Hach secure, safe and free access as Hach requires during the term of the engagement to each Monitoring Site for the purpose of installing, maintaining and retrieving the Flowmeter Equipment and to provide the Data Delivery and data storage Services. Customer shall not, nor shall it permit others to access the Flowmeter Equipment for any reason. Customer is responsible for risk of loss for damage to the Flowmeter Equipment installed in or around Customer's Monitoring Site(s). Customer agrees that in the event the Flowmeter Equipment sustains loss or is damaged, whether or not such loss or damage is Customer's fault, Customer will pay Hach the full cost of replacement of such Flowmeter Equipment including the cost of labor, if any, required for the removal of damaged Flowmeter Equipment and for the replacement installation.

Meter In-Situ Calibration: Hach agrees to perform in-situ calibrations. A velocity profile shall be taken using a portable velocity meter and shall be recorded on the velocity profile worksheet. The average velocity determined by the velocity profile is compared to the velocity measured by the Flowmeter equipment. Also, the depth of flow shall be physically measured and compared against the depth measured by the Flowmeter equipment. The depth measurement of the Flowmeter equipment is adjusted to the depth measured manually and then verified that the depth has not changed.

Data Access and Storage Services. Hach agrees to develop a Customer-specific web page on Hach's Data Delivery Services web site(s) ("Customer's Web Page"), accessible only by Hach and its suppliers, Customer, Customer's Administrator and Authorized Customer Users, through which Customer Data may be accessed by Customer. Hach agrees to make all Customer Data

collected by the Flowmeter Equipment at the Monitoring Sites accessible to Customer through Customer's Web Page, via a commercial digital wireless network or otherwise in Hach's sole discretion.

Meter Repairs and Maintenance: All repairs and maintenance to the flow meters shall be the responsibility of Hach. Any costs associated with repairs and/or maintenance shall be paid by Hach and will not be incurred by the Customer. Routine replacement of batteries is considered routine maintenance and typically performed only once a year.

Service Levels. Subject to all limitations of liability contained herein, Hach will endeavor to provide Customer with access to Customer's Web Page twenty-four (24) hours a day, Monday through Sunday, excluding periods of routine planned maintenance and upgrade services (the "Routine Window") and emergency services, with ninety-five percent (95%) uptime. Such periods are subject to change upon notice to Customer. Hach shall provide maintenance and upgrades to the Data Delivery Services, including Customer's Web Page, during the Routine Window unless deferral of such maintenance or upgrades would materially and adversely affect the performance or security of the Data Delivery Services, Hach's network, data center or other customers. Hach shall endeavor to perform such maintenance or upgrades in such a manner so as to not adversely impact Customer's use of the Data Delivery Services. To the extent possible, Hach shall notify Customer as far in advance as practicable of any maintenance or upgrades outside the Routine Window. Hach agrees to back up and store flow data collected by the Flowmeter Equipment at Customer's Monitoring Sites ("Customer Data") using industry standard security means. Hach will back up Customer Data on a daily basis and store it during the term of this engagement.

Data Analysis. No consulting or other services are provided by Hach to Customer. Customer acknowledges and agrees that Hach does not review, edit, investigate, confirm or analyze Customer Data or exercise any form of control over Customer Data other than those specific collection and storage services set forth in this Proposal.

Customer Responsibilities

Site Selection Criteria: Selection of the appropriate site to perform flow monitoring is critical to obtaining accurate data. The ideal site will have a straight run of pipe with at least three pipe diameters upstream and downstream of the probe location, and no dimensional variations that will change the hydraulic characteristics of the flow. Understanding that the probe will generally be placed in close proximity to a manhole, flow direction should not change abruptly going through the manhole, i.e., there should be a straight run through the manhole. The manhole should not have debris, brick or any other objects that might disrupt the flow. There should be a smooth transition through the manhole with flow conditions resembling that of pipe flow; and the incoming pipe invert should be higher than the outgoing pipe invert. The manhole must also be accessible, not only for installation and recovery of the meter, but also for periodic inspections during the flow monitoring period. Flow conditions at the ideal site (prior to installation of the sensor) should have a minimum velocity of 0.75 feet per second. The final list of sites to be utilized in fulfillment of this agreement is listed in Appendix A.

Customer Administrator. Customer agrees to designate a single individual (its "Administrator") who shall be Customer's agent in designating those employees of Customer who may, through unique Passwords, Customer IDs or other security means, access Customer's Web Page and

Customer Data. Each Customer employee authorized to access Customer's Web Page and to whom a unique Password or Customer ID is assigned and issued shall be an "Authorized Customer User." The Administrator shall be responsible for the relationship between Hach and each Authorized Customer User. Only the Administrator may contact Hach to update Authorized Customer User profiles, approve new and close Authorized Customer User accounts. Hach shall issue and provide to each Administrator all security certificates, passwords and Customer identifications (collectively "Passwords and Customer IDs") for distribution to Authorized Customer Users. Customer shall keep full and accurate records of all issued, active and inactive passwords and Customer IDs. The right to use passwords or Customer IDs terminates immediately upon the earlier of termination of the engagement or an Authorized Customer User authorization to access Data Delivery Services. Customer is responsible for issuing, administering, updating and ensuring that proper security measures are in effect with respect to all Passwords and Customer IDs. Customer is solely responsible for monitoring, supervising and terminating, when appropriate, its Authorized Customer User access to Data Delivery Services. The use of Passwords and Customer IDs constitutes acts of Customer and Hach may rely upon the instructions, consent given and all action taken, without verifying the identity or authority of any person accessing Data Delivery Services by means of such Passwords and Customer IDs. Although each Authorized Customer User is personally responsible for its use of Data Delivery Services, Customer's Web Page and Customer Data, Customer is responsible for ensuring that it's Administrator and each Authorized Customer User is aware of and complies with this Agreement.

Customer Equipment. Certain hardware, software and telecommunications and other services and equipment (collectively "Customer Equipment") are required to access and use the Data Delivery Services. Customer is responsible for obtaining, implementing and operating and maintaining all Customer Equipment and bearing all related costs and expenses. Hach does not provide and Customer agrees it is not relying on Hach to provide advice or other assistance in selecting and acquiring Customer Equipment necessary for Customer to access the Data Delivery Services. Hach is not responsible for any change to the Services that may cause Customer Equipment to become obsolete, require modification or alteration or otherwise affect the performance of the Services.

SPECIFICATIONS OF FLOWMETER EQUIPMENT

FLO-DAR® Sensor with Hach FL904 Logger Specification

General

The Hach/Marsh-McBirney Flo-Dar® Sensor with Hach FL904 Logger consists of three components: an electronics unit, sensor, and interconnecting cable. The sensor combines advanced radar velocity sensing technology with ultrasonic pulse echo level sensing to remotely measure open channel flow. Flow shall be calculated based on the Continuity Equation (Q= V x A), where Q= Flow, V= Average Velocity and A= Area. The flow meter is of assured quality and provided by Hach Company, an ISO 9001:2000 Certified Manufacturer.

Sensor

The sensor consists of four transducers housed in a single polystyrene watertight enclosure. The sensors are mounted above the flow surface. The four transducers consist of a digital Doppler radar for surface velocity, an ultrasonic pulse echo for fluid level, a piezo-resistive

pressure measurement for surcharge level and an electro-magnetic sensor for surcharge velocity measurement. The radar beam transmits signals, which interact with the fluid and reflect back at a different frequency. These reflected signals are compared with the transmitted frequency, resulting in a frequency shift. The frequency shift provides an accurate measurement of the flow velocity. Fluid levels are measured with an ultrasonic pulse echo transceiver by transmitting a sound wave to the fluid surface. The sensor accurately measures flows in circular and rectangular channels down to flow depths of ¼ inch. A Piezo-resistive pressure sensor is used to measure the level of fluid above the sensor if a surcharge condition occurs. An electro-magnetic sensor is used to measure surcharge velocity by measuring the change in the magnetic field caused by the velocity of the water flow.

Electronics
The electronics consist of the Hach FL904 Logger to receive, process, and transmit the data received from the FloDar Sensors. Each remote panel transmits level, velocity and flow signals via 1xRTT or GSM packet switched cellular wireless technology. The data is transmitted to the Customer via a password protected secure web application.

The Hach FL904 Logger has storage capacity of 325,000 data points; 1128 days for 3 channels at 15-minute log intervals. The electronics housing material is sealed, watertight PC/ABS structural foam and enclosures are NEMA 6P/IP68 rated. Electronics operating temperature range is between –18 to 60°C (0 to 140°F) at 95% RH. Storage temperature for electronics is –40 to 60°C (–40 to 140°F)

Sensor Cable
The standard sensor cable is abrasive resistant polyurethane jacket with waterproof connectors on each end. The connectors allow for each connection of the logger unit to the Flo-Dar® sensor. The FloDar Sensors are provided with 30 feet of cable. Additional sensor cable lengths are available.

Sensor Specifications

Flow Calculation
Method: Based on Continuity Equation, Q=V x A
Accuracy: ±5.0% of reading typical where flow is in a channel with uniform flow conditions and is not surcharged.

Velocity Measurement
Method: Radar
Range: 0.75 to 20 ft/s (0.23 m/s to 6.10 m/s)
Accuracy: ±0.5%; ±0.1 ft/s (±0.03 m/s)

Level Measurement
Method: Ultrasonic
Operating Range: 0.25 to 60 in. (0.634 to 152.4cm)
Optional Operating Range: 0 (0 cm) to 224" (5.7M) with 16" dead band)
Temperature Compensated
Accuracy: ±0.25 in. (±0.64 cm)

Surcharge Level Measurement
Method: Piezo-resistive pressure transducer
Maximum Range: 138 inches (3.5 meters)

Surcharge Velocity Measurement
Method: Electromagnetic
Range: -5 to +20 ft/s

Enclosure
Material: Polystyrene (IP68)
Dimensions: 6.9"W X 16.65"L X 11.7"D (17.5 cm X 42.3 cm X 29.7 cm)
Weight: 10.5 lbs.
Operating Temperature Range: 14°F to 122°F (-10° C to 50°C)
Storage Temperature Range: -40°F to 140°F (-40°C to 60°C)

Sensor Cable
Material: Polyurethane jacketed
Standard Length: 30 feet

Hach FL904 Logger

Data Storage:
Event Log: 1,000 events maximum in non-volatile flash memory
Sample History: 2,000 sample events maximum in non-volatile flash memory
Datalog: 325,000 data points; 1128 days for 3 channels at
15-minute log intervals

Local Terminal
USB
RS232 (Baud rates: 9600, 19200, 38400, 57600, 115200)

Power Requirements
8 to18 Vdc from batteries or external power source,
2.5W max.

Housing
Dimensions -- (W x D x H) 25.4 x 22 x 40 cm (10.0 x 8.7 x 16.0 in.)
Enclosure -- PC/ABS structural foam
Environmental Rating -- NEMA 6P (IP68)
Weight (Using Model FL900)
4.5 kg (10 lb)—no batteries; 6.3 kg (14 lb)—2 batteries;
8.2 kg (18 lb)—4 batteries
Operating Temperature
–18 to 60°C (0 to 140°F) at 95% RH
Storage Temperature
–40 to 60°C (–40 to 140°F)

TERMS AND CONDITIONS FOR SUBSCRIBER LICENSE AND DATA DELIVERY SERVICES

1. **TERMS AND CONDITIONS**
These "Terms and Conditions" mean collectively, the terms and conditions contained herein. Any Terms and Conditions originating with Customer are superseded by these Terms and Conditions and shall not be or become part of the contract between HACH COMPANY and Customer unless specifically accepted in a writing signed by a duly authorized officer of HACH COMPANY. HACH COMPANY'S commencement of work shall not be construed as acceptance of an order from Customer containing additional or different terms and conditions. HACH COMPANY shall have no liability to Customer of any nature until Customer signs and delivers to the HACH COMPANY the Service Order Form.

2. **LIMITED LICENSE**
HACH COMPANY grants to Customer during the term hereof a nonexclusive, non-transferable, non-sublicensable, limited, revocable license to access Customer's Web Page solely through HACH COMPANY's network, solely for (a) Customer's internal business operations and (b) accessing Customer Data retrieved from Customer's Monitoring Sites by the Flowmeter Equipment. HACH COMPANY grants no rights other than those granted explicitly herein and reserves and retains for itself and/or its licensors all title, copyright and other proprietary rights in the Flowmeter Equipment, Data Delivery Services and Customer's Web Page, including all updates, custom modifications and derivatives, all of which shall become the property of HACH COMPANY.

3. **SERVICES**
Restrictions and Requirements. Customer is responsible for all activities that occur under its Authorized Customer User accounts. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Hach promptly of any such unauthorized use; (iii) adhere to all Customer requirements set forth in the Technical Proposal; and (iv) comply with all applicable local, state, federal, and foreign laws in using the Services and, if using the Services outside of the United States, not use the Data Delivery Services in a manner that would violate any federal or state laws of the United States if conducted therein.

Use Guidelines: Customer shall and shall cause its Administrative and Authorized Customer Users to use the Data Delivery Services solely for its own internal business purposes as contemplated by this Agreement and not that of any third party and shall not: (a) license, sublicense, sell, resell (except as may be expressly permitted by Hach in the Service Order Form, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party, other than as contemplated by this Agreement; (b) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (c) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (d) send or store material containing software viruses, worms, Trojan Horses or other harmful computer code, files, scripts, agents or programs; (e) interfere with or disrupt the integrity or performance of the Data Delivery Services, the data contained therein or the web page of other Hach customers; (f) attempt to gain unauthorized access to the Data Delivery Services, its related systems or networks or the web page or data of other Hach customers; or (g) cause or permit the reverse engineering, disassembly or decompilation of the Flowmeter Equipment, Data Delivery Services or of Customer's Web Page. Customer shall not (h) modify, copy or create derivative works based on the Data Delivery Services or Hach technology; (i) create Internet "links" to or from the Data Delivery Services, or "frame" or "mirror" any content forming part of the Data Delivery Services, other than on Customer's own intranets or otherwise for its own internal business use for the purposes set forth in this Agreement; or (j) disassemble, reverse engineer, or decompile the Data Delivery Services or Hach technology, or access it in order to (I) build a competitive product or service, (II) build a product or service using similar ideas, features, functions or graphics of the Service, or (III) copy any ideas, features, functions or graphics of the Service.

4. **FEES; PAYMENTS; TAXES**
Customer shall pay all Fees specified in US dollars. Except as provided below, Fees are non-refundable. HACH COMPANY shall invoice Customer monthly in advance and Customer shall pay HACH COMPANY fees for the Services in the amount and on the following terms, free and clear of, and without any reduction for, any and all taxes (the "Fees"). Fees are due thirty (30) days from the invoice date. Delinquent payments shall bear interest at the rate of one and one half percent (1.5%) per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Payments may be applied first against interest and collection costs and then Fees. Customer agrees to pay all late charges imposed and all reasonable expenses (including attorneys' fees) incurred by HACH COMPANY in collecting unpaid or delinquent amounts. If Customer's account is thirty (30) or more days overdue, in additional to any of its other rights and remedies, HACH COMPANY may suspend Customer's access to the Data Delivery Services without liability to Customer.

5. **ACCEPTABLE USE**
HACH COMPANY may, in its sole discretion, restrict, suspend, refuse access and/or terminate the access should HACH COMPANY learn of any violation. Customer shall conform to and comply with all applicable laws, rules, regulations, orders and other governmental requirements, now or hereafter in force, related to the Services.

6. **TERM AND TERMINATION**

This Agreement is effective on the date set forth in the Proposal, and shall continue for the term set forth therein. After the initial term, this Agreement shall continue on a month to month basis at HACH COMPANY's then current applicable rates unless terminated by either party upon thirty (30) days written notice to the other party given prior to the expiration of the applicable term. Either party may terminate this Agreement in the event the Data Delivery Services are not accessible by Customer at least ninety-five (95%) percent of the time during three (3) consecutive months of any term.

Except as otherwise provided for herein, either party may terminate this Agreement upon the material breach of the other party, if such breach remains uncured for thirty (30) days following written notice to the breaching party. The foregoing notwithstanding, HACH COMPANY may terminate immediately upon Customer's breach of Section 8 or upon Customer's second breach of any other Section.

Upon any termination of this Agreement, all rights to access the Data Delivery Services and Customer's Web Page terminate. Customer shall provide to HACH COMPANY secure, safe and free access to the Monitoring Site for the purpose of retrieving the Flowmeter Equipment for a period of ninety (90) days from the date of notice of termination. HACH COMPANY shall have no obligation to refund to Customer any Fees and any unpaid Fees shall immediately be due and payable upon termination. The foregoing notwithstanding, should either party terminate due to the unavailability of the Data Delivery Services as provided in this Section 6 above, Customer shall not be obligated to pay Fees for the pertinent months and if already paid, HACH COMPANY agrees to refund to Customer Fees paid during the period of unavailability. The foregoing shall be HACH COMPANY's sole obligation and Customer's exclusive remedy for unavailability of the Data Delivery Services. HACH COMPANY may destroy all backup and stored Customer Data within thirty (30) days of the expiration or termination of this Agreement. Termination of this Agreement for cause shall not limit HACH COMPANY from pursuing other remedies available to it, including equitable relief, nor shall such termination relieve Customer of its payment obligations hereunder.

7. **OWNERSHIP OF FLOWMETER EQUIPMENT**

Customer acknowledges and agrees that the Flowmeter Equipment and all hardware, software and other equipment of any nature comprising and/or utilized by HACH COMPANY in the delivery of the Services or otherwise supplied to Customer is and remains the sole and exclusive property of HACH COMPANY and its suppliers. The Flowmeter Equipment, Customer's Web Page, Data Delivery Services, including all Intellectual Property Rights therein, created or developed under this Agreement are, will be and remain the sole and exclusive property of HACH COMPANY and/or its licensors or suppliers. For purposes herein, "Intellectual Property Rights" shall mean any and all now known or hereafter known tangible and intangible (A) rights associated with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works; (B) trademark and trade name rights and similar rights; (C) trade secret rights; (D) all Data Delivery Services data, content, software, text, typefaces, graphics, and any other documents or information of any kind relating to Data Delivery Services and Customer's Web Page including selection and arrangement of materials therein and "look and feel" thereof (but excluding Customer Data); (E) patents, designs, algorithms and other industrial property rights; and (F) all other intellectual and industrial property rights, whether arising by operation of law, contract, license, or otherwise. Neither Customer, its employees, Administrator, Authorized Users nor agents shall assert or claim any ownership interest in the Services, the Flowmeter Equipment, Data Delivery Services, or Customer's Web Page.

8. **NON-DISCLOSURE OF INFORMATION**

Customer Data is confidential and proprietary information to Customer. HACH COMPANY acknowledges that it will have access to Customer Data in the course of providing the Services and agrees to hold Customer Data in confidence and not to release or give access to Customer Data to any third party unless such individual or entity has a need for such knowledge to perform Services in the furtherance of this Agreement. HACH COMPANY further agrees not to make use of Customer Data for its own benefit or for the benefit of any third parties, other than for the performance of this Agreement. Notwithstanding the foregoing, HACH COMPANY may retain Customer Data for the purpose of analysis and research and to aggregate it with that of other HACH COMPANY customers for statistical analysis, trends or other industry-related purposes so long as such use does not result in the identification of Customer.

The Flowmeter Equipment and all components thereof, such as the Flo-Dar appliance, antennae, related software and documentation, Data Delivery Services technology and architecture, terms of this Agreement, Service Order Form including pricing, and any information that comes into Customer's possession or knowledge in connection with HACH COMPANY's interests, including without limitation its methods, equipment, financials, or marketing and sales information (collectively "HACH COMPANY Confidential Information") consists of confidential and proprietary information of HACH COMPANY, its affiliates, licensors, or third parties. Customer agrees to hold HACH COMPANY Confidential Information in confidence and agrees not to release such information to any individual whether employee, subcontractor or subcontractor employee, unless such individual has a need for such knowledge for the performance of this Agreement. Customer further agrees not to make use of HACH COMPANY Confidential Information for its own benefit or for the benefit of any third parties other than as specifically required in the performance of this Agreement.

The above limits on disclosure do not include information which the receiving party can prove (A) is or becomes known publicly without its fault; (B) is learned by it from a third party entitled to disclose the information; (C) is already known to it before receipt from the disclosing party; or (D) is independently developed by it.

In the event of any breach of these confidentiality obligations, each party acknowledges that the non-breaching party would

be irreparably injured and shall be entitled to seek equitable relief, including injunctive relief and specific performance, in any court of competent jurisdiction. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement.

Upon termination of this Agreement, such Confidential Information shall, upon request of the party who disclosed the information, be returned thereto or permanently destroyed. The terms of this Section shall survive the termination of this Agreement.

9. **REPRESENTATIONS AND WARRANTIES**

HACH COMPANY warrants that the Services will be performed in a professional and workmanlike manner and will be of a quality conforming to general standards of care and to Section 3(c) of this Agreement.

HACH COMPANY DOES NOT GUARANTEE THE AVAILABILITY OF THE DATA DELIVERY SERVICES OR THAT ACCESS WILL BE UNINTERRUPTED OR ERROR FREE. HACH MAY INTERRUPT, LIMIT, SUSPEND OR TERMINATE THE DATA DELIVERY SERVICES FROM TIME-TO-TIME FOR MAINTENANCE, UPGRADES OR ANY REASONABLE PURPOSE PROVIDED THAT WHEN PRACTICABLE HACH COMPANY WILL USE COMMERCIALLY REASONABLE EFFORTS TO NOTIFY CUSTOMER IN ADVANCE.

CUSTOMER'S EXCLUSIVE REMEDY AND HACH COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF THIS WARRANTY SHALL BE RE-PERFORMANCE OF THE SPECIFIC NON-CONFORMING SERVICE.

HACH COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

Customer for itself and on behalf of its Administrator and each Authorized Customer User represents and warrants to HACH COMPANY that: (A) it owns or has the right to permit HACH COMPANY to access its Monitoring Sites and surrounding areas for installation, maintenance and retrieval of the Flowmeter Equipment; (B) it, its Administrator and Authorized Customer Users shall comply with all terms and conditions and policies for use of the Data Delivery Services.

Customer shall and hereby agrees to defend, indemnify and hold HACH COMPANY and its affiliates, suppliers and licensors harmless from and against any and all claims, losses, damages, liabilities, obligations, judgments, causes of action, costs, charges and expenses (including without limitation, reasonable attorneys' and consultants' fees and such fees and penalties as any third party licensors may impose) arising out of or in connection with: (i) any breach of this Agreement by Customer and/or its Authorized Customer Users; (ii) any civil and/or criminal suit alleging that HACH COMPANY had no right or authority to access the Monitoring Sites; (iii) any Customer and/or Authorized User negligence, recklessness or willful misconduct; or (iv) any violation of, or non-compliance with applicable laws. Customer's obligations hereunder do not apply to the extent of damages directly caused by the gross negligence of HACH COMPANY.

10. **LIMITATION OF LIABILITY**

IN NO EVENT SHALL HACH COMPANY, ITS AFFILIATES, SUPPLIERS, OR SUBCONTRACTORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, OR FOR CORRUPT OR UNAVAILABLE CUSTOMER DATA, OR COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, WARRANTY, TORT OR STRICT LIABILITY, EVEN IF HACH COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING NOTWITHSTANDING, IN NO EVENT SHALL HACH COMPANY'S LIABILITY FOR DAMAGES HEREUNDER TO CUSTOMER EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER PURSUANT TO THE APPLICABLE SERVICE ORDER UNDER THIS AGREEMENT FOR THE SIX (6) MONTH PERIOD PRIOR TO THE CLAIM GIVING RISE TO THE LIABILITY. CUSTOMER HEREBY INDEMNIFIES, HOLDS HARMLESS AND AGREES TO DEFEND HACH COMPANY AGAINST ANY THIRD PARTY CLAIM.

THE FOREGOING LIMITATION OF LIABILITY SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE FOREGOING DISCLAIMERS AND LIMITATIONS SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

11. **INITIAL DISPUTE RESOLUTION/JURY WAIVER**

All disputes shall be referred to the parties' respective representative designated by each party. If such designated representative(s) are unable to resolve the dispute within seven (7) business days, the parties shall submit the dispute to a senior executive from each party for resolution. Thereafter if the dispute remains unresolved for an additional seven (7) day period, the parties may pursue resolution through any lawful means.

12. **GENERAL**

(a) As between themselves, the parties are independent contractors with no authority to contract for or in any way to bind or to commit the other to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of the other.

(b) This Agreement shall be governed by the laws of the State of Colorado without giving effect to principles of conflict of laws and shall benefit and be binding upon the parties hereto and their respective successors and

assigns. The parties hereby consent to jurisdiction in the State of Colorado and agree that, subject to HACH COMPANY's right to seek equitable relief in any court of competent jurisdiction, the courts within Colorado shall have exclusive jurisdiction over any issues regarding the enforcement of this Agreement. The United Nations Convention on the International Sale of Goods shall not apply.

(c) Any notice given pursuant to this Agreement must be in writing and will be given by overnight courier service, personal delivery, or by United States certified mail, return receipt requested, postage prepaid, to the addresses appearing in the Proposal. Notice will be deemed effective on the date delivered to the addressee as confirmed by the applicable delivery service. Either party may change its address for notice purposes by giving the other party notice of such change in accordance with this Section.

(d) The failure of either party to insist upon a strict performance of or to seek remedy of any one of the terms or conditions of this Agreement or to exercise any right, remedy or election set forth herein or permitted by law shall not constitute nor be construed as a waiver or relinquishment for the future of such term, condition, right, remedy or election, but such items shall continue and remain in force and effect. All rights or remedies specified in this Agreement and all other rights or remedies that either party may have at law, in equity or otherwise shall be distinct, separate and cumulative rights or remedies, and no one of them, whether exercised by the party seeking enforcement or not, shall be deemed to be in exclusion of any other right or remedy. Any consent, waiver or approval by either party of any act or matter must be in writing and shall apply only to the particular act or matter to which such consent or approval is given.

(e) Neither this Agreement nor any license granted hereunder may be assigned by Customer without the prior written consent of HACH COMPANY which may be withheld for any reason and any such assignment is void.

(f) The captions are for convenience and in no way define, limit or enlarge the scope of this Agreement or any of its Sections.

(g) If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement, or the application of such provisions or circumstances shall be valid and shall be enforced to the fullest extent permitted by law.

(h) HACH COMPANY shall have no liability for delays, failure in performance or damages due to fire, explosion, terrorism, lightning, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities, inability to secure materials, transportation facilities, fuel or energy shortages, acts or omissions of communications carriers or any other causes beyond HACH COMPANY's control.

(i) Customer agrees to comply fully with all relevant export laws and regulations of the United States to assure that neither the Hach Intellectual Property Rights nor any direct product thereof are (a) exported directly or indirectly, in violation thereof; or (b) are intended to be used for any purposes prohibited thereby.

(j) The definitions wherever located and any other provisions or terms that by their nature should survive, shall survive the expiration or termination of this Agreement.

(k) Any claim by a Customer arising out of or in connection with this Agreement shall be brought within one (1) year of the date on which the claim first arose. In the event any legal action is taken by either party to enforce the terms of this Agreement, the non-prevailing party shall pay all related court costs and expenses, including without limitation, the prevailing party's reasonable consultants' and attorneys' fees.

(l) In dealings between HACH COMPANY and Customer, HACH COMPANY shall be entitled to rely upon any assent by a person using its assigned Password and User ID.

(m) HACH COMPANY shall have the right, upon reasonable notice to Customer and during normal business hours, to periodically conduct an audit of Customer's usage, subject to the confidentiality provisions of this Agreement, in order to verify Customer's compliance with this Agreement.

(n) HACH COMPANY may disclose that Customer is approved to conduct or is conducting business through the Data Delivery Services and may provide a brief description of Customer's business and appropriate Customer contact information to current and potential customers, other customers, HACH COMPANY suppliers and/or in marketing and advertising material promoting HACH COMPANY, Flo-Dar and/or Data Delivery Services.

(o) These Terms and Conditions and any written modifications thereto contained in a HACH COMPANY Service Order Form executed by both parties, constitute the entire agreement between the parties and supersede any and all previous representations, understandings, discussions or agreements, oral or written, between Customer and HACH COMPANY. This Agreement may only be amended by an instrument in writing signed by Customer and HACH COMPANY.

Data Delivery Services
Service Order Form No. 103012-02
Dated October 30, 2012

Customer: City of Colfax
Customer P.O.#:

Bill to
Customer contact: Jim Fletter
Address:
PO Box 702
Colfax, CA 95713

Ship to
Customer contact:
Address

Phone: 530-668-5883 x208
Fax:
Email: jim.fletter@ponticelloinc.com

Phone:
Fax:
Email:

Customer Administrator: Jim Fletter
Customer Authorized Users: Jim Fletter

ORDER DESCRIPTION:

Quantity	Service P/N	Instrument/ Description	Start Date	Duration (months)	Price	Unit
12	DDS-SL2-UST	Flo-Dar FL904		4	$975	Per Meter / Month
1	DDS-INSTALL	Installation		N/A	$10,000	One Time Fee

DESCRIPTION OF SERVICES: Refer to Technical Proposal and Agreement 103012-02 dated October 30, 2012

TERMS AND CONDITIONS: As stated in the Subscriber License and Data Delivery Services Agreement

SPECIAL OR ADDITIONAL TERMS AND CONDITIONS:

N/A

Each person signing this Service Order Form represents that he/she intends to and has the authority to bind his/her respective party to this Agreement.

IN WITNESS WHEREOF, the parties by their authorized representatives have signed this Service Order Form No. 103012-02 as of October 30, 2012 (the "Effective Date").

HACH COMPANY

Signature: _____

Name: _____

Title: _____

Date: _____

CUSTOMER

Signature: _____

Name: _____

Title: _____

Date: _____

REPORT TO COLFAX CITY COUNCIL

Agenda Item No. 10A

COUNCIL MEETING OF November 14, 2012

To:	Honorable Mayor and Members of the City Council
From:	Brigit S. Barnes, Planning Director and Land Use Attorney
Date:	November 14, 2012
Subject:	Consideration of Adoption of Resolution 45-2012: A Resolution of the City Council Authorizing the City to Enter into a Digital Billboard Sign and Relocation Agreement with Sierra Property Development

Recommended Action: Adopt Resolution 45-2012

PROJECT LOCATION: 962 and 1534 South Canyon Way, Colfax, Placer County, CA
APNs: 100-152-011-000 and 101-132-022-000

PROJECT DESCRIPTION: Digital Billboard Sign and Relocation Agreement with Sierra Property Development intended to replace two existing "V" static display billboard signs located at 962 and 1534 South Canyon Way along the I-80 corridor in Colfax. APNs: 100-152-011-000 and 101-132-022-000 with the placement of four (4) digital sign faces in the existing cradles.

PROJECT BACKGROUND:

Sierra Property Development ("SPD") owns two existing "V" static display billboard signs each containing two faces located at 962 and 1534 South Canyon Way along the I-80 corridor in Colfax. These signs are permitted by Colfax Permits and Caltrans Permits as follows:

1534 S. Canyon Way, Colfax Permit No. 68-00, Caltrans Permit Nos. N03-0037 and N03-0038.
962 S. Canyon Way, Colfax Permit No. 13-90, Caltrans Permit Nos. N03-0039 and N03-0040.
See Attachment 1.

SPD recently applied for Sign Permits to replace the two existing static sign faces in each existing cradle with digital billboard sign faces. The City previously determined that the installation of digital billboards, when replacing existing signage, are in the best interests of the City: On March 14, 2012, the City adopted Ordinance 516 allowing Digital Billboard Signs.

The Sign Permits will be approved by the Planning Director upon receipt of SPD down payment of $7,500.00 which will be conditioned upon SPD's execution of a Digital Billboard Sign and Relocation Agreement with the City of Colfax and formal approval by Caltrans of SPD's application. Illustrative Examples of the Digital Sign Faces are attached. See Attachment 2. For these reasons the City and SPD have agreed that the effective date of the Agreement is postponed for 90 days to allow all final approvals of the digital signs from Caltrans.

The City has determined that the project qualifies for an exemption under the California Environmental Quality Act, because SPD plans to replace the existing static board displays with digital displays in the same cradles without any change in display size or any requirement that the foundations for the existing signs be modified in any way.

The purpose of the Digital Billboard Sign and Relocation Agreement with SPD is to allow the City and SPD to agree to a long term agreement which provides the City with an initial payment of $95,000.00 and maintains the historic payments for Sign Permits No. 68-00 and 13-00 under the 2000 Settlement Agreements with SPD, and assures the City that all four digital sign faces will be installed within five years. Once the digital faces are emplaced, the City receives rights to air public service and city special events messages on each of the new digital sign faces at no cost to the City. This Agreement also allows the City to assist small merchants on occasion with the use of the City messages coordinated with City special events.

FINANCIAL AND/OR POLICY CONSIDERATIONS:

The project provides a payment of $95,000 to the City, with no adverse direct fiscal impact on the City. Moreover, the project will continue to provide the City with annual rental income maintained by the Settlement Agreements, in addition to other public benefits. The Project will provide multiple opportunities for transmission of important information for regular and special municipal events and services and emergency notices to all motorists on both sides of I-80, at no cost to the City. Thus, the Project will result in encouraging business and retail investment and increased patronage for businesses throughout Colfax.

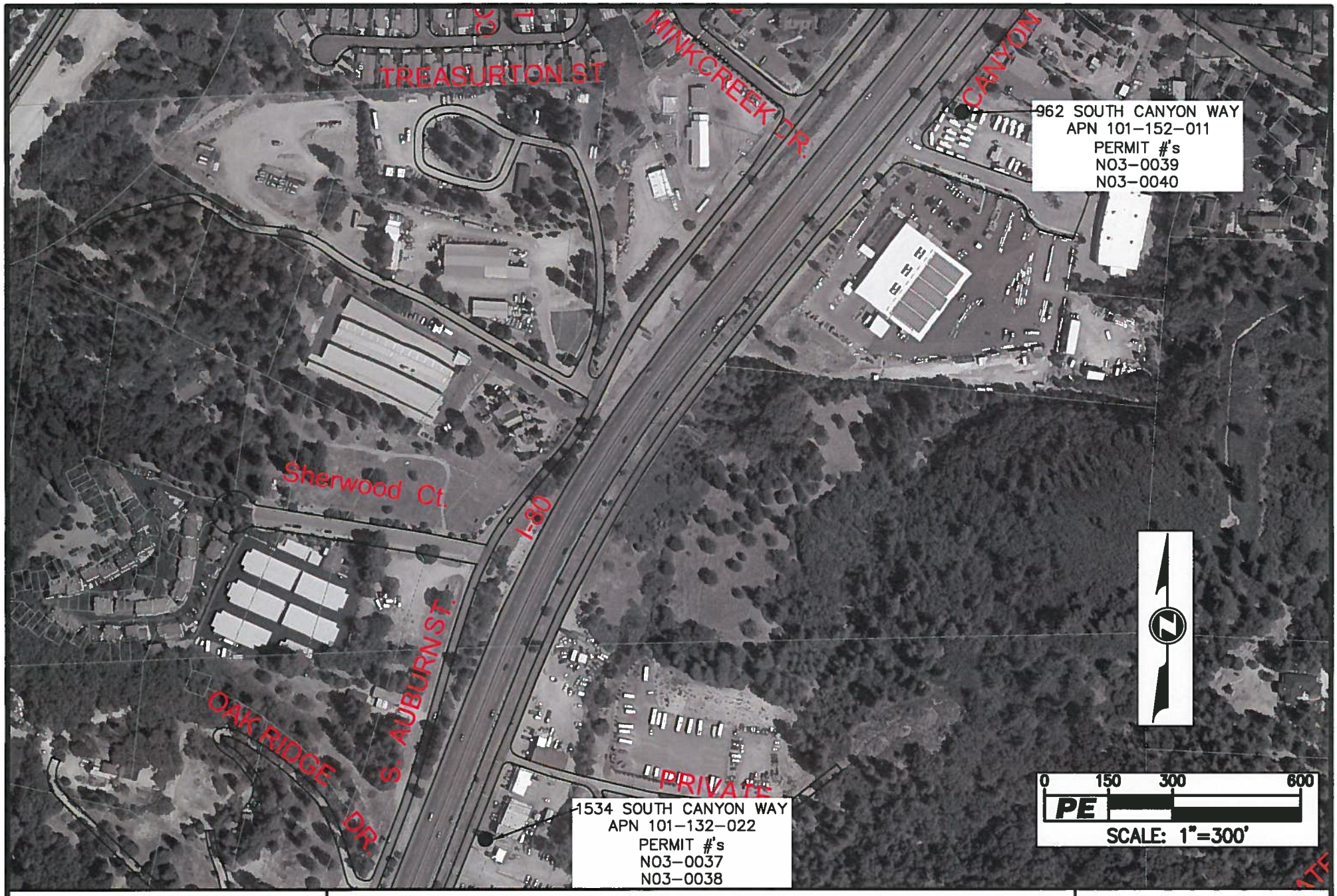
ALTERNATIVES:

None recommended by Staff.

Staff recommends that the City Council adopt the Resolution authorizing the City to enter into the Digital Billboard Sign and Relocation Agreement with Sierra Property Development attached to this Staff Report. See Attachment 3 – Resolution.

ATTACHMENTS:

1. Digital Billboard Sign Location Map
2. Illustrative Examples of 14' x 48' Digital Sign Faces to replace existing static boards
3. Resolution 45-2012: A Resolution of the City Council Authorizing the City to Enter into a Digital Billboard Sign and Relocation Agreement with Sierra Property Development



PONTICELLO ENTERPRISES
CONSULTING ENGINEERS
1216 Fortna Avenue
Woodland, CA 95776
Phone: (530) 668-5883
Fax : (530) 668-5893

SIERRA PROPERTY DEVELOPMENT DIGITAL BILLBOARD SIGN LOCATIONS

Date: 10/15/12
By: JC
Sheet: 1 of 1

DIGITAL BILLBOARD SIGN AND RELOCATION AGREEMENT

THIS DIGITAL BILLBOARD SIGN AND RELOCATION AGREEMENT ("Agreement") is entered into as of this 14th day of November, 2012 by and between the CITY OF COLFAX, a municipal corporation of the State of California ("City"), and SIERRA PROPERTY DEVELOPMENT, a partnership consisting of Dennis Freidig and David Gard, a California partnership("SPD") . The City and SPD may be referred to individually as a "Party" and collectively as the "Parties".

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intention of the Parties:

A. SPD is a partnership, organized and existing under the laws of the State of California, in good standing thereunder, and qualified to conduct business in California. SPD has a legal and equitable interest in the Project Sites, all of which are located within the City of Colfax, Placer County, State of California, and which are more particularly depicted in **Exhibit A**. SPD represents that the nature of its property interest is accurately set forth in Exhibit A, and that any other persons or entities holding legal or equitable interests in the Project Sites are bound by this Agreement.

B. SPD owns two static display signs with four tri-vision sign faces and the Existing Sign Faces already emplaced on the Project Sites, subject to existing Caltrans permits, and permitted by the City. A list of the Existing Constructed Caltrans Permits is attached as **Exhibit B**.

C. Pursuant to the Settlement Agreements, SPD obtained Caltrans permits for future signage in addition to the Existing Sign Faces within City limits. Signs pursuant to the Unconstructed Caltrans Permits have never been constructed, although SPD has in good faith attempted to maintain them pursuant to the Settlement Agreements. SPD was recently notified that Caltrans intends to terminate or revoke the Unconstructed Caltrans Permits. SPD appealed that notification on behalf of the City and itself, but as of the Effective Date no final decision from Caltrans has been received. A list of the Existing Unconstructed Caltrans Permits is attached as **Exhibit C**.

D. SPD proposes the issuance and approval by the City of one building permit to allow the installation of four Digital Display Faces to replace the Existing Sign Faces on the Project Sites. The City completed its preliminary review of the designs for these Digital Display Faces and concurs that these designs and their proposed placement fully comply with Colfax Municipal Code Title 17, Chapter 17.112, Section 17.112.175.

E. The Project has been analyzed and reviewed by the City under all Governing Ordinances. The City previously determined that the replacement of the Existing Sign Faces with Digital Display Faces is in the best interests of the City and in accordance with the public purposes and provisions of applicable federal, state, and local laws and the specific requirements of Colfax Municipal Code Title 17, Chapter 17.112, Section 17.112.175.

F. Development of the Project in an orderly fashion as contemplated in this Agreement will result in substantial public benefits to the City, its residents, and surrounding communities. Among other public benefits, the Project anticipates City's rights to publicize events of municipal interest, which will provide multiple opportunities for transmission of important information for regular municipal events and services and emergency notices, at no cost to City, and will result in additional freeway signage compatible with the commercial properties located along Interstate Highway 80 and California Highway 174. In exchange for these benefits to the City, SPD desires to receive the assurance that it may proceed with the Project in accordance with the Project Approvals and Governing Ordinances, subject to the terms and conditions contained in this Agreement and any permit issued by the City or Caltrans to implement the Project. The City has therefore determined that the Project is one for which this Agreement is appropriate.

G. On November 14, 2012, after consideration of the staff report and all other documentary and oral evidence submitted, the City Council finds and determines that: (1) this Agreement and the Project are consistent with the standards of Colfax Municipal Code Chapter 17.112, and the objectives and policies of the City's General Plan, and any applicable design guidelines in general, and Colfax Municipal Code Section 17.112.175 in particular; and (2) the Project conforms to applicable development standards and will not be detrimental to the public health, safety, or welfare; and (3) the physical location or placement of the Project is compatible with the surrounding neighborhood and will not pose a safety risk; and (4) the Project and this Agreement will not interfere with onsite access or circulation or significantly interfere with visibility.

AGREEMENT

In consideration of the mutual covenants contained in this Agreement, City and SPD agree as follows:

Section 1. Definitions

Each capitalized reference in this Agreement to any of the following terms shall have the meaning set forth below:

1.1 Caltrans. The State of California Department of Transportation.

1.2 Conditions of Approval. The Conditions of Approval are as set forth in this Agreement.

1.3 Digital Billboard Sign. A Digital Billboard Sign is an advertising structure as defined in the Digital Sign Ordinance. A Digital Billboard Sign typically has two Digital Display Faces, one of which faces in one direction and the other of which faces in the opposite direction. For example, along Highway 80 a Digital Billboard Sign may have one Digital Display Face that can be seen from the west and another Digital Display Face that can be generally seen from the east. This is illustrative only and not exclusive, because there are many variations on Digital Billboard Signs. For purposes of this Agreement, each Digital Billboard Sign will be allowed only two Digital Display Faces.

1.4 Digital Display Face. A Digital Display Face is one of the two primary surfaces of a Digital Billboard Sign upon which advertising information is displayed.

1.5 Digital Sign Ordinance. City Ordinance 516 adopted by the City on March 14, 2012 and set forth in Colfax Municipal Code Title 17, Chapter 17.112, Section 17.112.175.

1.6 Effective Date. The Effective Date of this Agreement shall be the 90 days after the date the Enacting Resolution approving this Agreement is adopted by the City Council.

1.7 Enacting Resolution. The Resolution adopted by the City Council on November 14, 2012, approving this Agreement.

1.8 Event of Default. Failure or unreasonable delay by either Party to perform any term, provision or condition of this Agreement as set forth in Section 9.1 of this Agreement.

1.9 Exactions. All exactions that will or may be imposed by City as a condition of approving the Project, including but not limited to fees, in-lieu payments, or other monetary payments or obligations, whether such exactions constitute mitigation measures in connection with environmental review of the Project or impositions made under other Governing Ordinances. For purposes of this Agreement, the Exactions for the Project shall total $95,000.00, payable as follows: a $7,500.00 non-refundable sign application review fee shall be paid to the City within three business days of the date the Enacting Resolution is adopted. The $87,500.00 balance shall be paid within three business days after the later of the Effective Date of this Agreement, or Caltrans issues its permit for the first Digital Sign Face to be installed as part of the Project, whichever occurs last.

1.10 Existing Caltrans Permits. The Existing Caltrans Permits are Caltrans Permit Nos. N03-0037and N03-0038 for the Existing Sign Faces located at 1534 South Canyon Way, APN: 101-132-018, and N03-0039 and N03-0040 for the Existing Sign Faces located at 962 South Canyon Way, APN: 100-150-011 **[Exhibit B]**.

1.11 Existing Sign Faces. The Existing Sign Faces are the four static display sign faces that have been constructed and are presently being utilized pursuant to authority granted by the Existing Caltrans Permits and the Existing Static Permits. The Existing Sign Face locations are more particularly depicted on **Exhibit A** attached hereto and by this reference incorporated herein.

1.12 Existing Static Permits. The Existing Static Permits are those permits issued by the City for the Existing Sign Faces, Permit No. 68-00 for 1534 South Canyon Way, and Permit No. 13-00 for 962 South Canyon Way. Copies of the Existing Static Permits are attached hereto as **Exhibit D**.

1.13 Governing Ordinances. Federal Highway Laws and Regulations, the Outdoor Advertising Act (California Business and Professions Code §5200 et seq.), California Code of Regulations Title 4 "Business Regulations" Division 6 "Outdoor Advertising, Department of Transportation and the ordinances, resolutions, official policies, fees, rules and regulations of the City governing signage, the permitted uses of land, intensity of development, improvement and construction standards and requirements, specifications and conditions of approval applicable to the development of the Project as of the Effective Date including, but not limited to, the Enacting Resolution, the City's General Plan, Zoning Ordinances, the "Digital Sign Ordinance", Municipal Code, and applicable construction codes.

1.14 Laws. The constitutions and laws of the State of California, the United States, any political subdivision within the State of California, any codes, statutes, ordinances, regulations, official policies, or rules of any of them, and any court decision, state or federal, thereunder which are applicable to the Project.

1.15 Memorandum of Agreement. A memorandum of this Agreement substantially in the form attached as **Exhibit E** hereto that will be recorded in accordance with Section 2.1.

1.16 Message Center. "Message Center" is an advertising display where the message is changed more than once every two minutes, but no more than every four seconds per California Business & Professions Code 5216.4, and as listed on the Caltrans Outdoor Advertising Act Regulations.

1.17 Project. The Project consists of replacing the four Existing Sign Faces with four 14' x 48' "V"-type Digital Display Faces without modification of the foundations, or any

changes in the cradles, angles, or size of sign faces on the Project Sites pursuant to a single building permit and subject to the terms and conditions of this Agreement. Illustrative examples of the Digital Display Faces to replace the Existing Sign Faces are depicted on **Exhibit F**.

1.18 Project Approvals. All City approvals, entitlements, and permits required for the Project include Existing Approvals and Subsequent Project Approvals. These approvals include, but are not limited to, sign review approval in accordance with Colfax Municipal Code §117.112.140 and issuance of one building permit for all four Digital Display Faces.

1.19 Project Sites. That certain real property described in **Exhibit A** to this Agreement.

1.20 Settlement Agreements. The Settlement Agreement And Release dated October 19, 2000, whereby the City, Dennis R. Freidig and Robert D. Townsend resolved Placer County Superior Court Action M-CV-5793, and the Stipulation For Entry Of Judgment In Favor Of City Of Colfax filed January 7, 2000 in United States District Court For The Eastern District Of California Case No. CIV-S-98-1553 WBS GGH (the "Federal Lawsuit"), attached to which is a Settlement Agreement And Mutual Release pursuant to which the City, its City Council, David Gard, Robert Townsend, and Dennis Freidig resolved Placer County Superior Court Action SCV-7400 and the Federal Lawsuit.

1.21 Sign Face. A Sign Face is one of the two primary surfaces of an advertising display upon which advertising information is displayed.

1.22 Subsequent Project Approvals. All Project Approvals to be issued by the City after the Effective Date including, without limitation, sign review approval of each Digital Sign Face in accordance with Colfax Municipal Code §117.112.140 upon receipt of a complete application for sign review approval and issuance of one building permit for all four Digital Display Faces.

1.23. Term. The Term of this Agreement as provided in Section 2.2 below.

1.24 Unconstructed Caltrans Permits. SPD previously obtained the following permits from Caltrans for future signage within City limits: 41140; 41209; N03-0014; and N03-0015 **[Exhibit C]**. Those permits will collectively be referred to as the "Unconstructed Caltrans Permits."

Section 2. Effective Date; Term

2.1 Effective Date; Recordation. This Agreement shall be dated and the obligations of the City and SPD hereunder shall be effective as of the Effective Date. Not later than

ten (10) days after the Effective Date, the City shall cause the Memorandum of Agreement in the form attached as **Exhibit E** to be recorded in the Official Records of the County of Placer, State of California. The City shall forward a copy of the recorded Memorandum of Agreement to SPD.

2.2 Term. The Term of this Agreement shall commence on the Effective Date and shall expire twenty-five (25) years thereafter unless it is terminated earlier pursuant to the terms of this Agreement or otherwise. SPD shall have the right to extend the Term for five additional five year terms if all of the following conditions are met prior to the commencement of each five year extension: (a) SPD must give the City written notice of its intention to extend the Term for five years not less than 90 days before the expiration of the Term or extension in effect when the written notice is given; and (b) SPD must not be in material breach of its obligations under this Agreement. All Project Approvals shall be effective for the Term.

Provided that such proposed reversion is approved by Caltrans, SPD shall also have the right to revert back to the current tri-vision or static board use of the same located as described in §§1.10 and 1.11.

Section 3. General Development of the Project

3.1 Fees and Credits. The Exactions shall be paid from SPD to the City as follows: a $7,500.00 non-refundable sign application review fee shall be paid to the City within three business days of the date the Enacting Resolution is adopted. The $87,500.00 balance shall be paid within three business days after Caltrans issues its permit for the first Digital Sign Face to be installed as part of the Project. SPD will also undertake, in reliance on the execution of this Agreement, negotiation for the transfer of its Existing Caltrans permits and the decommissioning and dismantling costs for its Existing Sign Faces at its sole cost and expense, and continue to make its annual rental payments as set forth in in the Settlement Agreements regardless of whether or not its efforts to market the Project is successful.

3.2 Vested Right to Develop the Project. SPD shall have the vested right to develop the Project in accordance with the terms and conditions of this Agreement. The City shall have the right to regulate development of the Project and use of the Project Sites in accordance with the terms and conditions of this Agreement and the Governing Ordinances. Upon approval of this Agreement, SPD shall be entitled to all such other Subsequent Project Approvals including, without limitation, such City permits and approvals as are required to develop, construct, complete and operate the Project. Except as otherwise specified in this Agreement, the Governing Ordinances shall control the overall design, development and construction of the Project and the issuance of Subsequent Project Approvals. To the extent that the Governing Ordinances conflict with this Agreement, including new, conflicting, or potentially conflicting fee schedules,

this Agreement shall take precedence. Subject to these general restrictions, SPD shall develop the Digital Sign Faces prior to the following project deadlines and as otherwise follows:

3.2.1 Project Deadlines. The following deadlines are material provisions of this Agreement. Although SPD retains the right to determine the sequence in which it will construct and install the Digital Sign Faces allowed by this Agreement, it must timely meet each of the following deadlines. Failure by SPD to comply with any of the following Deadlines shall constitute a material breach by SPD of its obligations under this Agreement. For purposes of this Agreement, construction and installation of such Digital Sign Face shall be deemed "completed" only if the Digital Sign Face is fully permitted, installed and operating by the applicable deadline.

3.2.2.1 SPD shall complete the construction and installation of the first Digital Sign Face not later than 18 months after the Effective Date.

3.2.2.2 SPD shall complete the construction and installation of the second Digital Sign Face not later than 24 months after the Effective Date.

3.2.2.3 SPD shall complete the construction and installation of the third and fourth Digital Sign Faces not later than 60 months after the Effective Date.

3.2.3 If SPD fails to complete construction and installation of any Digital Sign Face within any Project deadline or any extension thereof mutually agreed to in writing, SPD's vested right to replace any Existing Sign Face with a Digital Display Face pursuant to this Agreement shall expire and the building permit shall be revoked as to the incomplete portion of the Project. In such event, the City shall be free of any further obligation to SPD under this Agreement and shall be entitled, without any liability to SPD whatsoever, to negotiate with any vendor for the installation of Digital Display Faces at locations within the City other than the Project Sites. Notwithstanding the revocation of any building permit for uncompleted Sign Faces for SPD's failure to meet any Project deadline, SPD shall be allowed to continue to operate and maintain the completed Digital Sign Faces and the Existing Sign Faces as long as it continues to timely pay all rents due under the Settlement Agreements, and SPD's prior Caltrans permits for its Existing Sign Faces remain valid. Nothing in this section abrogates SPD's obligation to pay rent to the City pursuant to its Settlement Agreements.

3.2.4 During the term of this Agreement, and provided that SPD is not

otherwise in default of its obligations under the Governing Ordinances or this Agreement, the City will not install or operate any Digital Display Faces on the City-owned sign without SPD's prior written consent, which consent shall not be unreasonably withheld. Prior to entering into any negotiations with any third party for the replacement of the city-owned sign with digital faces, City agrees to provide 30 days advance notice of City interest coupled with a right of first refusal to SPD to design and operate the City sign with digital technology.

3.2.5. All costs of developing the Project shall be borne exclusively by SPD.

3.2.6 SPD shall secure, or cause to be secured, all Caltrans permits and approvals prior to the commencement of Project construction, provided, however, that SPD shall be entitled to undertake any work necessary to dismantle the Existing Sign Faces. The City will timely issue all Subsequent Project Approvals needed to construct and develop the Project in compliance with this Agreement, the Project Approvals, and the Governing Ordinances, and provide any assurances requested by Caltrans.

3.3 Issuance of Subsequent Project Approvals. SPD shall submit to the City applications for any and all Subsequent Project Approvals needed to construct and develop the Project under this Agreement and the Governing Ordinances. City shall issue such Subsequent Project Approvals as set forth in this Agreement; nothing in this Section shall obligate City to issue any approval that is not in compliance with this Agreement and the Governing Ordinances. Upon submission by SPD of any application, City shall promptly commence and diligently complete all steps necessary to review and process the requested Subsequent Project Approvals, including, but not limited to, the granting of the requested Subsequent Project Approval to the extent that it is consistent with the Project, the terms and conditions of this Agreement, the Governing Ordinances, and state and federal law. The permitted uses of the Project Sites, the type of use, design, the maximum height, bulk, and size of proposed signs, and the location of the proposed signs shall not exceed the height or width of the Existing Static Board Signs, and any fees and exactions, and other terms and conditions of development applicable to the Project Sites, shall be those set forth in this Agreement. No permit or approval shall be conditioned nor shall any discretion on the part of City be exercised to require a change or alteration in the proposed development of the Project, or to be inconsistent with the terms of this Agreement. Notwithstanding the foregoing, City is not obligated to issue any Subsequent Project Approval unless and until all rents, fees and charges due and payable for that part of the Project have been received by the City.

3.4 Environmental Review. In connection with City's Project Approvals subject to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"):

3.4.1 The City acknowledges that this Agreement is in full compliance with the conditions precedent contained in the Governing Ordinances which were adopted to ensure that all environmental impacts would be mitigated to a level of insignificance; and that the Project anticipated by this Agreement replaces Existing Sign Faces with 14' x 48' Digital Display Faces into the existing cradles, attached to the pre-existing sign foundations at the locating of the existing permitted board signs at their current locations. The City has therefore determined that the scope of this Project and its Approvals without any change or modification to existing sign heights, location, or foundations has no effect on the environment, and that the environmental review undertaken at the time the City adopted the Digital Sign Ordinance sufficiently incorporated all appropriate environmental mitigation measures (collectively, "Measures") in terms of lumen control, number of message displays per minute, and other requirements of the Governing Ordinances. The City further acknowledges that this Agreement bars the imposition and implementation of additional Measures on the later installation of Digital Sign Faces as part of the Project. On that basis, the City shall not require a supplemental or subsequent environmental review prior to the approval of this Agreement, or other form of subsequent environmental documentation (other than Findings and the Notice of Exemption) which were issued upon review of the Permit applications submitted by SPD which contained the designs for all four Digital Display Faces prior to considering or approving an application for a Subsequent Project Approval.

3.5 Other Governmental Permits. SPD shall apply for such other Project permits and approvals as may be required by governmental or quasi-governmental agencies other than the City that have or claim to have jurisdiction over the Project or Project Sites, including, without limitation, Caltrans, and any public utilities, utility districts, or publicly regulated private entitles. City shall cooperate with SPD in its endeavors to obtain such permits and approvals in order to facilitate the availability of such permits and approvals or services, at each stage of the development of the Project, including as appropriate to serve as a co-applicant with SPD for permits and approvals required from other public agencies.

3.6 Exactions. SPD shall pay and perform the following:

3.6.1 Fees and Charges. SPD shall timely pay the Exactions in accordance with Section 3.1 of this Agreement.

3.6.2 Rents. SPD shall continue to timely make all rental payments required by the Settlement Agreements for the Existing Sign Faces as follows, and

whether or not it completes the Project or any aspect thereof:

(A) From and after the adoption of the Enacting Resolution, and continuing for a period of five years and six months thereafter, SPD shall pay the City rent in the sum of $30,346.20 per year ("Base Rent"). Said annual rent can be paid in a single lump sum at the commencement of each year, or in equal monthly installments of no less than $2,528.85 on or before the first day of each and every month.

(B) At the commencement of the seventh month of the fifth year after the Enacting Resolution is adopted, and at the commencement of each fifth year thereafter, annual Base Rent shall be increased as follows. The base for computing the increase of Base Rent shall be the Consumer Price Index, All Urban Consumers, All Items, for the San Francisco Bay Area published by the United States Department of Labor, Bureau of Labor Statistics (the "Index") which is in effect on the date the Enacting Resolution is adopted (the "Beginning Index"). The Index published most immediately preceding the adjustment date in question (the "Extension Index") is to be used in determining the amount of the adjustment. If the Extension Index has increased over the Beginning Index, the Base Rent for the following five years until the next Base Rent adjustment shall be set by multiplying the Base Rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. In no case shall the Base Rent be reduced, nor shall any increase exceed 12% for each adjustment period. If the Consumer Price Index is discontinued by the Bureau of Labor Statistics, the index designated by the Bureau of Labor Statistics as replacing said index shall be used.

3.6.3 Special Assistance to City of Colfax - City Message Center Displays. SPD shall provide City, at no charge or cost to City, one advertising message center display "per rotation" per Digital Sign Face, each message display to be not less than six seconds per slot. SPD's provision of these message displays and City's acceptance and use of these message displays are subject to the following terms and conditions:

(A) The six second exposure time per message is in compliance with California Outdoor Advertising Act §5216.4, and is not less than six (6) seconds per slot;

(B) SPD will produce, at SPD's expense, three (3) generic advertisements per Digital Sign Face covering topics of municipal benefit. These three advertisements will be produced and placed in rotation on the Digital Sign Faces at City's direction. Such generic advertisements shall allow for promotion of the City, special city-wide events, public services, or emergency advertisements. City may also submit additional special promotional advertisements in addition to those identified above; however, the costs and expenses of design and development of all advertisements greater than three will be paid for by City, and produced by SPD and charged to the City at SPD's cost. City may choose to use their message displays for "Amber Alerts" and other public service & safety messages, instead of the generic ads.

(C) The Digital Sign Face message displays allocated to the City under this Agreement are intended to promote the City and businesses within the City in general. SPD's obligation to produce the generic advertisements will not apply to any advertising of for-profit businesses in the City. City shall not use its message displays to specifically promote any one business that otherwise could be a client for SPD, or that because of its location along Interstate 80 already maintains I-80 signage. However, City reserves the right to plan signage for advertising multiple [not less than 3 businesses whose business may be related to special city-wide promotions] small businesses; for example, small merchants in downtown Colfax, provided the message display is split between several businesses. Graphics design and production for individual businesses shall be borne by the individual businesses, not SPD.

(D) After all four sign faces have been constructed, and in the event of peak seasonal demand, and further provided City has not planned seasonal or special event signage, SPD shall be allowed, with the City's consent, to sell up to two of the four message displays earmarked for the City. In that event, SPD will pay the City $500 per month or portion thereof or 50% of the revenue generated, whichever is greater, for the time the City message display will be used by SPD.

3.6.4 License Imposed On SPD Message Boards - City Owned Property. SPD agrees that this Agreement constitutes a license for the City, its officers, agents and employees to enter the Project Sites and maintain, repair, remove, or replace any Digital Sign Face in the event of SPD's default of any of its obligations under this Agreement.

3.6.5 Maintenance of Unconstructed Caltrans Permits. Unless revoked by Caltrans, SPD shall maintain the Unconstructed Caltrans Permits in full force and effect.

3.6.6 No Other Fees or Charges. Except as provided herein or as may otherwise be required by Caltrans, no other fees or charges shall be imposed by the City or upon the Project or Project Sites.

3.7 Limit on Future Exactions. As a material part of the consideration for this Agreement, SPD has received the assurances of City that SPD shall not be subject to future Exactions established by City on or after the Effective Date that otherwise might be imposed on a discretionary basis as conditions to granting land use permits, or sign permits, and approvals. Therefore, this Agreement fully sets forth all of SPD's obligations pertaining to the Project, and SPD's performance of its obligations under this Agreement shall fully satisfy all present and future requirements of City for Exactions that could be required for the Project, and City shall not require from SPD any additional Exactions in granting land use permits or approvals. Notwithstanding the foregoing prohibition on any future Exactions, after five years from the Effective Date, the City may impose increases in fee amounts applicable to the Project under this Agreement to the extent that such increases are imposed on a city-wide basis.

Notwithstanding the foregoing, any variation, modification, change, or amendment to the Project, Project Approvals, or this Agreement shall entitle City to impose new or increased Exactions on the remaining Project.

3.8 Taxes and Assessments. SPD shall pay when due all *ad valorem* property taxes and special assessments imposed on the Project Sites and the improvements thereon. In addition, SPD shall pay all other valid and applicable City, County, and other taxes and assessments.

Section 4. Specific Criteria Applicable To The Project

4.1 Applicable Ordinances And Approvals. This Agreement and the Governing Ordinances shall govern the development of the Project. In the event of any conflict between this Agreement and the Governing Ordinances, this Agreement shall control.

4.2 Rights of Access During Construction. Representatives of City shall have the reasonable right of access to the Project Sites without charges or fees, at normal construction hours during the period of construction of the Project or issuance of Project Approvals for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Project or any aspect of the Project.

4.3 Rights of Access in General. For the purposes of assuring compliance with this Agreement, representatives of City shall have the reasonable right of access to the Project Sites without charges or fees for the purpose of inspection of the Project Sites as to maintenance of the signs placed thereon, provided the City provides at least 48 hours advance written notice, except in the case of an emergency. Representatives of City shall have the reasonable right of access to the Project Sites for the purpose of inspection and repair of public utilities and facilities, provided City shall repair any damage occasioned by such access and restore the Project Sites to the condition which existed prior to the access so far as is reasonably practicable. To the extent such repair and restoration is not reasonably practicable, City shall compensate SPD for all damages occasioned by such access.

Section 5. Permitted Delays; Supersedure by Subsequent Laws

5.1 Permitted Delays. In addition to any specific provisions of this Agreement, performance by SPD of its obligations hereunder may be excused during any period of delay caused at any time by reason of: (i) war or civil commotion, riots, strikes, picketing, or other labor disputes; (ii) shortage of materials or supplies, or damage to work in process by reason of fire, rains, floods, earthquake, or other casualties; (iii) restrictions or delays caused, imposed, or mandated by governmental or quasi-governmental entities; (iv) enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations); (v) litigation, including that initiated by a non-Party challenging this Agreement or any Project Approval; (vi) failure of non-Party agencies to promptly process and grant a Project Application; (vii) any actions or inactions on the part of City, or any other governmental or quasi-governmental entity (including, without limitation, utilities) having jurisdiction over the Project or the Project Sites; or (viii) any other cause beyond the reasonable control of SPD. SPD shall promptly notify the City of any delay hereunder as soon as possible after the same begins. The Term of this Agreement shall be extended by the period of any approved delay.

5.2 Supersedure by Subsequent Laws. If any State or Federal Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the City and SPD shall meet in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in SPD's reasonable business judgment, then SPD shall have the right to terminate this Agreement by written notice to the City. In the alternative, at SPD's election and subject to approval by the City Council, the Term of this Agreement may be extended pursuant to Section 2.2 for the duration of the period during which such new Law precludes compliance with the provisions of this

Agreement. In addition, SPD shall have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

Section 6. Transfers and Assignments

6.1 Right to Assign Upon City Approval. During the term of this Agreement, SPD and its successors and assigns shall have the right to sell, assign, or transfer this Agreement and all or a portion of its rights, duties, and obligations hereunder to any entity first approved by the City in writing. The City's approval thereof shall not be unreasonably withheld.

6.2 Agreement Binding on Successors. Except as otherwise provided in this Agreement, the burdens of this Agreement shall be binding on, and the benefits of this Agreement shall inure to, all successors-in-interest to City and SPD.

Section 7. Amendment and Termination

7.1 In General. Except as provided in Section 9.1(a), (b) and (c) relating to termination in the Event of Default, this Agreement may be canceled, modified, or amended only by mutual written consent of the Parties. Within ten (10) days after adoption of any amendment or termination of the Agreement, the City shall cause a Memorandum of Amendment of Agreement, or Memorandum of Termination of Agreement, as the case may be, to be recorded in the Official Records of the County of Placer, State of California.

Section 8. Notices

8.1 Procedure. Any notice or communication required pursuant to this Agreement by any Party ("Notices") shall be in writing and shall be given either personally, by facsimile transmission, by Federal Express or other similar courier promising overnight delivery, or by regular U.S. mail.

(a) If given by Federal Express or similar courier, the Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier.

(b) If personally delivered, a Notice shall be deemed to have been given when actually delivered to the Party to whom it is addressed.

(c) If delivered by facsimile transmission, a Notice shall be deemed to have been given upon receipt of the entire document by the receiving Party's facsimile

machine as shown by the transmission report issued by the transmitting facsimile machine. Notice transmitted after 5 p.m. or on Saturday, Sunday, or holiday shall be deemed to have been given on the next business day.

(d) If delivered by regular U.S. mail, a Notice shall be deemed to have been given five (5) calendar days after deposit with the U.S. Postal Service.

Notices shall be given to the Parties at their addresses set forth below:

City: City Clerk
City of COLFAX
33 S. Main Street
P.O. Box 702
Colfax, CA 95713
Telephone: (530) 346-2313
Facsimile: (530) 346-6214

With a
Copy to: City Attorney, City of Colfax
33 S. Main Street
Colfax, CA 95713
Telephone: (530) 346-2313
Facsimile: (530) 346-6214

SPD: Sierra Property Development
c/o Dave Gard
P.O. Box 1240
Colfax, CA 95713
Telephone: 530-346-8313
Facsimile: 530-346-8258

With a
Copy to: Marcus J. Lo Duca, Esq.
Lo Duca & Avdis, LLP
3200 Douglas Blvd., Suite 300
Roseville, CA 95661
Telephone: 916-774-1636, Ext. 300
Facsimile: 916-774-1646

Any Party may change its mailing address or contact person(s) at any time by giving written notice of such change to the other Party in the manner provided herein at least ten (10) days prior to the date such change is effective.

8.2 Form and Effect of Notice. Every Notice (other than the giving or withholding of consent, approval, or satisfaction under this Agreement, but including requests therefor) given to a Party shall comply with the following requirements. Each such Notice shall state: (i) the Section of this Agreement pursuant to which the Notice is given; (ii) the period of time within which the recipient of the Notice must respond, or if no response is required, a statement to that effect; and (iii) if applicable, that the failure to respond to the Notice within the stated time period shall be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the Notice. Each request for consent or approval shall contain reasonably sufficient data or documentation to enable the recipient to make an informed decision. In no event shall Notice be deemed given, nor shall a Party's approval of, consent to, or satisfaction with the subject matter of a Notice be deemed given by such Party's failure to object or respond thereto if such Notice does not fully comply with the requirements of this Section. No waiver of this Section shall be inferred or implied from any act (including conditional approvals, if any) of a Party, unless such waiver is in writing, specifying the nature and extent of the waiver.

Section 9. Miscellaneous Provisions

9. 1. Default; Termination.

(a) Failure or unreasonable delay by either Party to perform any obligation under this Agreement for a period of sixty (60) days after written Notice thereof from the other Party shall constitute an Event of Default under this Agreement, subject to extensions of time by mutual consent in writing or discretionary approval of extensions by the City Manager, subject to the applicant's right of appeal to the City Council. Said Notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such sixty (60) day period, the commencement of the cure within such time period and the subsequent diligent prosecution to completion of the cure shall be deemed a cure within such period. Subject to the foregoing, after notice and expiration of the sixty (60) day period without cure, if applicable, the other Party to this Agreement, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate this Agreement.

(b) Any notice of intent to terminate this Agreement ("Termination Notice") shall be provided in any manner authorized by Section 8.1 of this Agreement not less than ten (10) days before any hearing on the Termination Notice. The hearing on the Termination Notice shall be conducted by the City Council at such time as the City Council may establish as long as the Termination Notice is given at least ten (10) days in advance of the hearing. The procedure for conducting the hearing on the Termination Notice and the taking of evidence thereon shall be as established by the City Council, in its sole discretion. The non-terminating Party shall be required to demonstrate good faith compliance with the terms of this Agreement.

(c) If, at the conclusion of the hearing, the City Council finds and determines, on the basis of substantial evidence, that the non-terminating Party has not complied in good faith with the terms or conditions of this Agreement, the City Council may terminate this Agreement, modify any of its provisions, or modify any of the Project Approvals. The determination by the City Council in this regard shall be final and binding, and shall constitute the exhaustion of all applicable administrative remedies. The waiver by either Party of any Event of Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

(d) Within ten (10) days after adoption of any amendment or termination of the Agreement, the City shall cause a Memorandum of Amendment of Agreement, or Memorandum of Termination of Agreement, as the case may be, to be recorded in the Official Records of the County of Placer, State of California. The City shall forward a copy of the recorded Memorandum of Amendment of Agreement, or Memorandum of Termination of Agreement, as the case may be, to SPD.

9.2 Cooperation in the Event of Third-Party Legal Challenge

(a) In the event of any legal or equitable action or proceeding instituted by a third party challenging the validity of any provision of this Agreement or the procedures leading to its adoption or the issuance of any of the Project Approvals, SPD reserves the right to withdraw its application for the Project. However, in the event that SPD elects not to withdraw its application, the Parties agree to cooperate in defending said action or proceeding, and SPD agrees to diligently defend any such action or proceeding and to bear the litigation expenses of defense, including attorney's fees. The City retains the option to employ independent defense counsel at SPD's expense unless SPD elects to withdraw its application. If the City exercises its option hereunder to employ its own defense counsel at SPD's expense, the City shall retain an experienced litigation attorney, require such attorney to prepare and comply with a litigation budget, and present that litigation budget to SPD prior to incurring obligations to pay legal fees in excess of $2,500.00. SPD further agrees to hold City harmless from all claims for recovery of the third party's litigation expenses, including attorney's fees, expert fees, and court costs.

(b) If SPD elects not to contest such litigation, the City shall have no obligation to contest such litigation and may require preparation of such subsequent or supplemental environmental review or reports, prior to further review or approval of the challenged Subsequent Project Approval(s).

(c) Such obligation of SPD to (1) defend diligently any litigation provided for in Section 9.2, (2) bear the litigation expenses for defense, including attorney's fees, and the city attorney's fees, expert fees, and court costs, and (3) hold the City harmless from

any and all claims for recovery of third parties' litigation expenses, including attorney's fees, expert fees, and court costs, shall expire ninety (90) days after the date the Enacting Resolution approving this Agreement is adopted by the City Council, as set forth in California Government Code Section 65009(b)(3)(E), provided that no such litigation has been filed during such ninety (90) day statute of limitations.

9.3 Actions; Remedies; Attorney's Fees. In addition to any other rights and remedies, either Party may institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by specific performance the obligations and rights of the Parties hereto, or an action to terminate this Agreement and all rights and obligations hereunder. In no event shall either Party or its officers, agents, or employees be liable in monetary damages for any breach or violation of this Agreement, it being expressly understood and agreed that the sole legal or equitable remedy available to either Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance, injunctive or declaratory relief to enforce the provisions of this Agreement, or an action to terminate this Agreement and all rights and obligations hereunder. Notwithstanding the foregoing, the City shall not be foreclosed from initiating an action to enforce SPD's obligations to make monetary payments under this Agreement as a condition for completing the Project. In any such legal action, the prevailing Party shall be entitled to recover all litigation expenses, including reasonable attorney's fees and court costs.

9.4 Effect of Termination. Termination of this Agreement shall not affect the Parties' obligations to comply with the standards, terms, and conditions of any approvals issued with respect to the Project Sites or any portion thereof, nor shall it affect any covenants of any Party which are specified in this Agreement to continue after termination or which must remain in effect to achieve their intended purpose. Termination of this Agreement shall not affect SPD's right to continue to maintain the Existing Sign Faces on the Project Sites as long as SPD continues to timely pay when due all rents required under the Settlement Agreements, but termination shall allow the City to negotiate with other vendors for the placement of Digital Display Faces on other than the Project Sites.

9.5 Negation of Partnership and Joint Venture. The City and SPD specifically acknowledge that the Project is a private development, that no Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of SPD, or the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any person who is not expressly made a party and signatory to this Agreement.

9.6 Severability. Invalidation of any provision of this Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstances, and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances, or would frustrate the purposes of this Agreement.

9.7 Entire Agreement. This Agreement, the Settlement Agreements, and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, all prior correspondence, memoranda, agreements, warranties, or representations are superseded in total by this Agreement and the Exhibits hereto; provided, however, that if this Agreement is terminated, the Settlement Agreements shall remain in full force and effect.

9.8 Further Documents. Each Party shall execute and deliver such further documents as may be reasonably necessary to achieve the objectives of this Agreement.

9.9 Governing Law; Interpretation of Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of the United States, the State of California, and the City of Colfax.

9.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement.

9.11 Time of Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

9.12 Notice of Termination. Upon the expiration of this Agreement or its termination, the Parties hereto shall, if requested by another Party, execute for recordation in the Official Records of Placer County, a notice stating that this Agreement has expired or been terminated and that this Agreement is no longer in effect.

9.13 Estoppel Certificate. Any Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing to such requesting Party that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been modified either orally or in writing, or if modified, to describe the nature of the modifications; (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults; and (iv) the status of performance of the obligations of the Parties to this Agreement. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following receipt thereof. The [City Manager]

shall have the right to execute any certificate requested by SPD hereunder.

9.14 Powers of SPD. SPD shall have full power over and exclusive control of development of the Project, subject only to the limitations and obligations of SPD under this Agreement.

9.15 Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

A. Depiction of Project Sites, Assessor Parcel Numbers, Addresses, and Caltrans permits;

B. Existing Constructed Caltrans Permits;

C. Existing Unconstructed Caltrans Permits;

D. Copies of Existing Sign Permits Issued by City of Colfax;

E. Memorandum of Agreement; and

F. Illustrative Examples of 14 x 48 Digital Display Faces Intended to Replace Existing Static Displays.

[Signatures and Exhibits on following pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY:

CITY OF COLFAX, a California municipal corporation

By: _____
Mayor

Approved as to Form:

_____
a Professional Corporation

By: _____
_____, City Attorney

SPD:

SIERRA PROPERTY DEVELOPMENT,
a California Partnership

By: _____
David Gard, Partner

By:_____
Dennis Freidig, Partner

Approved as to Form:

Lo Duca & Avdis, LLP

By: _____
Marcus J. Lo Duca, Esq.

LIST OF EXHIBITS

A. Depiction of Project Sites, Assessor Parcel Numbers, Addresses, and Caltrans permits;

B. Existing Constructed Caltrans Permits;

C. Existing Unconstructed Caltrans Permits;

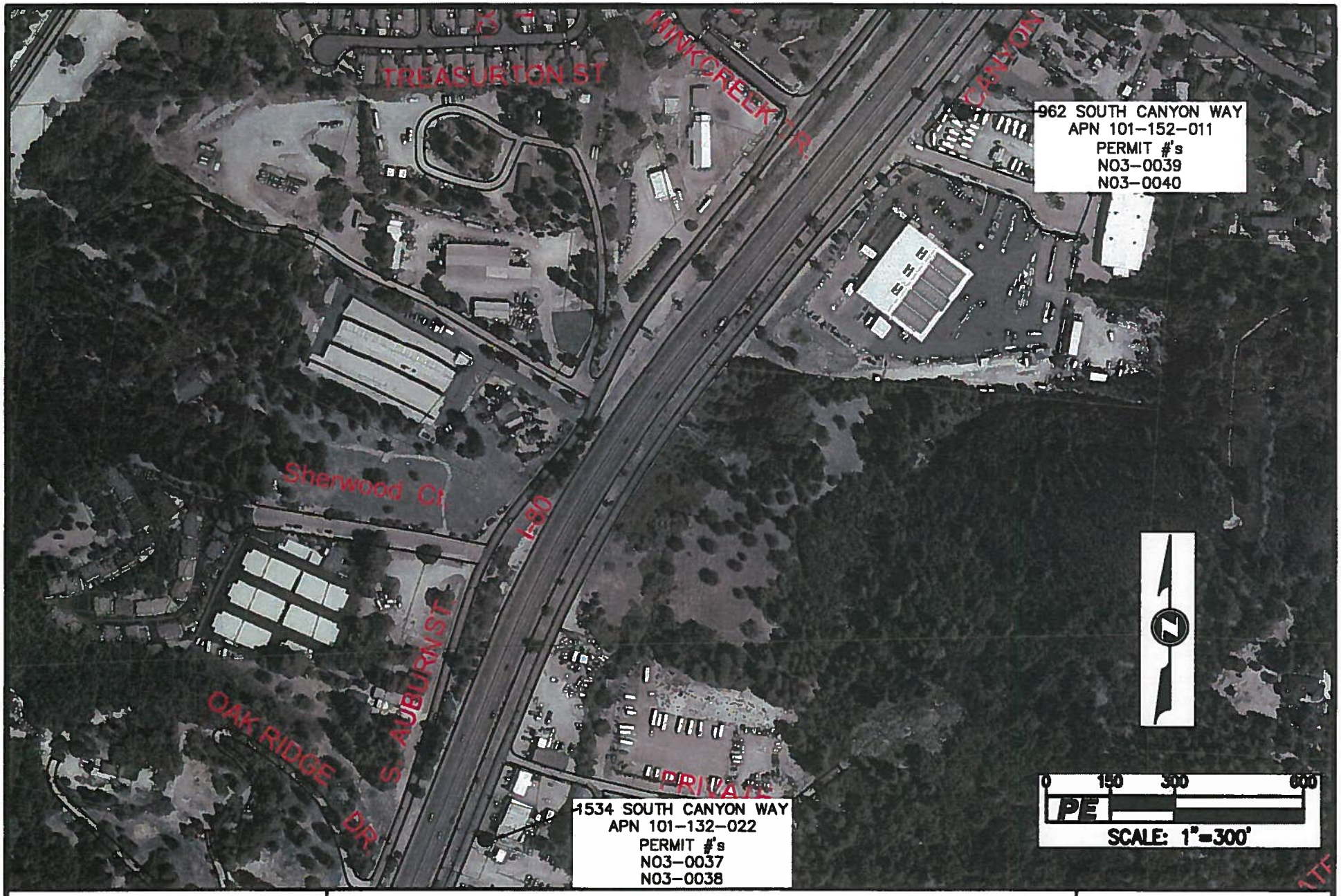
D. Copies of Existing Sign Permits Issued by City of Colfax;

E. Memorandum of Agreement; and

F. Illustrative Examples of 14 x 48 Digital Display Faces Intended to Replace Existing Static Displays.

EXHIBIT A

Depiction of Project Sites, Assessor Parcel Numbers, Addresses, and Caltrans Permits



PONTICELLO ENTERPRISES
CONSULTING ENGINEERS
1216 Farina Avenue
Woodland, CA 95776
Phone: (530) 668-5883
Fax : (530) 668-5893

SIERRA PROPERTY DEVELOPMENT DIGITAL BILLBOARD SIGN LOCATIONS

Date: 10/15/12
By: JC
Sheet: 1 of 1

EXHIBIT B

Existing Constructed Caltrans Permits

PERMIT	POST MILE/LOCATION	APN#
N03-0037	RT80-32.30R (Winner Chevrolet–1534 S. Cyn Wy)	101-132-022-000
N03-0038	RT80-32.30R (Winner Chevrolet–1534 S. Cyn Wy)	101-132-022-000
N03-0039	RT80-32.70R (Sierra RV–962 S. Cyn Wy)	100-152-011-000
N03-0040	RT80-32.70R (Sierra RV–962 S. Cyn Wy)	100-152-011-000

EXHIBIT C

Existing Unconstructed Caltrans Permits

PERMIT	POST MILE/LOCATION	APN#
41140	RT80-31.95L (Dingus McGee's)	101-131-038-000
41209	RT80-32.18R (City of Colfax – Winner)	101-132-018-000
N03-0014	RT80-32.16L (Luther Presson – e/o LDS)	101-131-041-000
N03-0015	RT80-32.26L (Luther Presson – e/o LDS)	101-131-041-000

EXHIBIT D

Copies of Existing Sign Permits Issued by City of Colfax

CITY OF COLFAX
P.O. Box 702, Colfax, CA 95713
(916) 346-2313

BUILDING PERMIT

PERMIT NO. 86-00

BUILDING PROJECT IDENTIFICATION

Job Address 1624 South Canyon Way (Sierra Chevrolet)
Parcel# APN 101 132 22 Zoning Hwy/Commercial
Owner/Lessee David Gard/Lessee Phone 346 8313
Address ViaCom OUTDOOR - Owner Box 3335, Auburn CA 95604-3335
Contractor Sunset Signs Lic. No. 620332
Address 1777 N Parreson Stockton CA 95215 Phone 209 931 5535
Arch./Engr Gerald Caratens Lic No CA 25418/////
Address 5544 N. 147th, Oak Forest, IL 60452 Phone 708 489 0400

THIS PERMIT INCLUDES:

☒ Building ☐ Plumbing ☒ Electrical
☒ Mechanical ☒ Grading
☐ Residential ☒ Commercial
☒ New ☐ T.I./Fill In
☐ Addition ☐ Demolition
☐ Alteration ☒ Sign 16' x 50' "V"
☐ Repair ☐ Outdoor Disp.

Describe work to be done Pursuant to st
lawsuit MCU 5793 settlement agree
applicants will be constructing o
double faced "Vee" display (see
attached photocopy.
Contract price is $32,018.00 - se
attached contract.

PLEASE DO NOT WRITE BELOW

LICENSED CONTRACTORS DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ Lic. No. _____
Date _____ Contractor _____

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors License Law for the following reason (Sec. 7031.5, Business and Professions Code): Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($500).

☐ I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who does such work himself or herself or through his or her own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).

☒ I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor(s) licensed pursuant to the Contractors License Law.)

☐ I am exempt under Sec. _____ B.&P.C. for this reason _____

Date _____ Owner _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

_____ I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

_____ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier _____
Policy Number _____

(This section need not be completed if the permit is for one hundred dollars ($100) or less).

_____ I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date 11/20/00 Applicant [signature]

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS ($100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____
Lender's Address _____

APPLICANT

NAME Dennis R. Freidig
ADDRESS Box 3335 CITY Auburn ZIP CODE CA 95604-3335

I certify that I have read this application and state that the above is correct. I agree to comply with all City & County Ordinances and State Laws that relate to building construction, and do authorize representatives of th City to enter the above mentioned property for inspection purposes.

[signature] 11/20/2000
Signature Date

☐ CONTRACTOR ☒ OWNER ☐ AGENT FOR CONTRACTOR ☐ AGENT FOR OWNER

697

PAID NOV 24 2000 CITY OF COLFAX R2139258

Change of Use from VACANT
Change of use to SIGN
Valuation of work $ 32018
SPECIAL CONDITIONS

APPLICATION ACCEPTED BY	PLANS CHECKED BY	APPROVED FOR ISSUANCE
[signature]	[signature]	[signature]

PLAN CHECK FEE 48.75 PERMIT FEE 75.00

Type of Const. SIGN	Occupancy Group	Environ.	
Size of Bldg. (Total) Sq. Ft.	No. of Stories	Max. Occ. Load	
Fire Zone	Use Zone	Fire Sprinklers Required ☐ Yes ☐ No	
No. of Dwelling Units	OFF-STREET PARKING SPACES Covered	Uncovered	

Special Approvals	Required	Received	Not Required
ZONING	OK		
HEALTH DEPT.			
FIRE DEPT.			
SOIL REPORT			
OTHER (Specify)			

CITY OF COLFAX
P.O. Box 702, Colfax, CA 95713
(916) 346-2313

BUILDING PERMIT

PERMIT NO. 13-00

BUILDING PROJECT IDENTIFICATION

Job Address 962 South Canyon Way
Parcel# 100 152 011 Zoning Hwy/Commercial
Owner/Lessee David C. Gard Phone 530 346 8313
Address Box 1240, Colfax CA 95713
Contractor Millar Crane & Sign Lic. No. CA 762366
Address 9310 W. Ball Rd., Phoenix AZ 85029 Phone 602 978 4141
Arch/Engr Gerald Carateno Lic. No CA 25418
Address 5544 N. 147th, Oak Forest, IL Phone 708 489 0400

THIS PERMIT INCLUDES:

☒ Building ☐ Plumbing ☒ Electrical
☒ Mechanical ☒ Grading
☐ Residential ☒ Commercial

☒ New ☐ T.I./Fill in
☐ Addition ☐ Demolition
☐ Alteration ☒ Sign 14' x 48' n
☐ Repair ☐ Type Outdoor Di

LICENSED CONTRACTORS DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ Lic. No. _____
Date _____ Contractor _____

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors License Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he is licensed pursuant to the provisions of the Contractors License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($500):

☐ I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who does such work himself or through his own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).

☐ I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor(s) licensed pursuant to the Contractors License Law.).

☐ I am exempt under Sec. _____ B.&P.C. for this reason _____

Date _____ Owner _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

_____ I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

_____ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

(This section need not be completed if the permit is for one hundred dollars ($100) or less).

_____ I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date _____ Applicant _____

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS ($100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____
Lender's Address _____

Describe work to be done Pursuant to settlement of a federal lawsuit in December, 1999, applicant will be contracting for the construction of 14' x 48' double faced "pre-display" steppa 35' +/- monopole. See attached photocopy. Contract price is $23,947.00 - as per attached contract. $17,000 Engr

PLEASE DO NOT WRITE BELOW THIS LINE

INSTALL

Type of Use _____
Type of Const. _____
Valuation of work $ 41,000
SPECIAL CONDITIONS: _____

APPLICATION ACCEPTED BY _____ PLANS CHECKED BY _____ APPROVED FOR ISSUANCE _____

PLAN CHECK FEE 266.50 PERMIT FEE 410.00

Type of Const.	Occupancy Group	Stories
Use of Bldg. Height Sq. Ft.	No. of Stories	Area Occ. Load
Fire Zone	Use Zone	Fire Sprinklers Required ☐ Yes ☐ No
No. of Dwelling Units	OFF-STREET PARKING SPACES Covered	Uncovered

Special Approvals	Required	Received	Not Required
ZONING			
HEALTH DEPT.			
FIRE DEPT.			
PUBLIC WORKS DIRECTOR			
OTHER (Specify)			

APPLICANT

NAME David C. Gard

ADDRESS c/o Sierra Chevrolet, Box 1240, CITY Colfax ZIP CODE 95713

I certify that I have read this application and state that the above is correct. I agree to comply with all City & County Ordinanaces and State Laws that relate to building construction, and do authonze representatives of th City to enter the above mentioned property for inspection purposes

Signature _____ Date 2/17/00

☐ CONTRACTOR ☒ OWNER ☐ AGENT FOR CONTRACTOR ☐ AGENT FOR OWNER

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EXHIBIT E

Memorandum of Agreement

Recording Requested By and)
When Recorded Return To:)
)
Sierra Property Development)
c/o Dave Gard)
P.O. Box 1240)
Colfax, CA 95713)

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

MEMORANDUM OF AGREEMENT

BY THIS MEMORANDUM OF AGREEMENT ("Memorandum"), THE CITY OF COLFAX, a municipal corporation of the State of California ("City") confirms that it has granted to SIERRA PROPERTY DEVELOPMENT, a California partnership ("SPD") certain rights to replace SPD's Existing Sign Faces on certain properties owned by SPD or David Gard located at 1534 South Canyon Way, APN No. 101-132-018; and 962 South Canyon Way, APN: 100-150-011, with Digital Display Faces. These certain properties owned by SPD or David Gard are located within the City of Colfax, and more particularly described in the attached **Exhibit A**, incorporated in this Memorandum ("Real Property").

Section 1. Price and Terms

The terms and conditions of SPD's right to install Digital Display Faces are set forth in that "Digital Billboard Sign And Relocation Agreement" dated November 14, 2012, adopted by Resolution No. _____ ("Agreement"). Copies of the Digital Billboard Sign And Relocation Agreement and Resolution No. _____ are on file with the City Clerk. The City has determined that the design and location of the Digital Display Faces and all other terms and conditions contained in the Agreement comport with City Ordinance 516, adopted by the City March 14, 2012.

The parties have executed and recorded this instrument to give notice of the Agreement and the respective rights and obligations of City and SPD. Pursuant to the Agreement, City issued specific Sign Permits No._____ to SPD.

The Initial Term of the of the Agreement is 25 years, unless terminated or modified at an earlier date pursuant to the terms of the Agreement, and the Agreement provides for successive five year extensions provided no default has occurred. SPD has agreed, in addition to monthly rents continuing under its prior agreements, to pay the City the sum of $95,000.00 to permit the installation of these Signs. The price and other terms are in the unrecorded Agreement, which is

incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the Agreement, the Agreement shall control.

Section 2. Assignment

SPD's rights and obligations under the Agreement shall not be assigned without City's prior written consent. Any assignment without that consent shall be void.

Section 3. Successors and Assigns

This Memorandum and the Agreement shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Agreement on assignment.

Section 4. Governing Law

This Memorandum and the Agreement are governed by California law.

IN WITNESS WHEREOF, City has signed this Memorandum as of _____.

THE CITY OF COLFAX, a Municipal Corporation

By: _____
Name:
Its: Mayor

[Acknowledgment and Exhibit A on following pages]

ACKNOWLEDGMENT

State of California)
County of Placer)

On _____, 2012, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

I certify under the PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of notary

_____ Seal

DRAFT

EXHIBIT A TO MEMORANDUM OF AGREEMENT

Legal Description

[still need legal descriptions for the two properties – Dave]

DRAFT

EXHIBIT F

Illustrative Examples of 14 x 48 Digital Display Faces
Intended to Replace Existing Static Displays

DOWNTOWN
New Bedford Inc.
explore
enjoy
shop
visit
VIBCom
BigBear
Plants
Finder
Seeds
Spices
atchfire
Time-O-Matic
14' x 48' 19mm
FOR DEMONSTRATION PURPOSES ONLY
©Time-O-Matic, Inc. 2012

#2

atchfire
Time-O-Matic

14' x 48' 19mm

FOR DEMONSTRATION PURPOSES ONLY

©Time-O-Matic, Inc. 2012

#3

explore
visit
atchfire
Time-O-Matic
14' x 48' 19mm
FOR DEMONSTRATION PURPOSES ONLY
©Time-O-Matic, Inc. 2012

City of Colfax

Resolution No. 45 - 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLFAX AUTHORIZING THE CITY TO ENTER INTO A DIGITAL BILLBOARD SIGN AND RELOCATION AGREEMENT WITH SIERRA PROPERTY DEVELOPMENT

Whereas, it is proposed that the City Council authorize the City to enter into a Digital Billboard and Sign Relocation Agreement with Sierra Property Development allowing for the replacement of the existing four static sign faces on two existing billboards with four digital sign faces, in the form attached as Exhibit A; and

Whereas, the proposed Digital Billboard Sign and Relocation Agreement would not result in any direct fiscal impact to the City, it would provide the City with an initial payment together with annual rental income paid for the existing billboards; and

Whereas, the proposed Digital Billboard Sign and Relocation Agreement would provide the City with multiple opportunities for transmission of important information for regular and special municipal events and services and emergency notices at no cost to the City; and

Whereas, the proposed Digital Billboard and Sign Relocation Agreement would result in encouraging business and retail investment and increased patronage for businesses throughout Colfax; and

Whereas, replacement of the static boards with digital sign faces of the same size, into existing cradles already constructed with no change in the existing foundations has no adverse additional impact on either the surrounding properties or the environment;

NOW THEREFORE, BE IT RESOLVED by the City Council:

1. That the City, by and through its Mayor, is hereby authorized to enter into a Digital Billboard Sign and Relocation Agreement with Sierra Property Development allowing for the replacement of four static sign faces on two existing billboards to four digital sign faces, in the form attached as Exhibit A;

2. That the City, by and through its Mayor, is hereby authorized to conduct negotiations, execute documents, and take any other action with respect to the Digital Billboard Sign and Relocation Agreement consistent with this Resolution and its basic purpose;

3. That prior to execution, all contracts and agreements shall be reviewed and approved for form and legality by the City Attorney and a final copy shall be placed on file in the Office of the City Clerk.

Passed and Adopted this 14th day of November, 2012 by the following roll call vote:

Ayes:

Noes:

Absent:

Abstain:

Stephen Harvey, Mayor

ATTEST:

Karen Pierce, City Clerk

REPORT TO COLFAX CITY COUNCIL

Agenda Item No. 10B

COUNCIL MEETING OF November 14, 2012

To:	Honorable Mayor and Members of the City Council
From:	Bruce Kranz, City Manager
Date:	November 9, 2012
Subject:	Consideration of Adoption of Resolution No. 46-2012: A Resolution Of The City Council Of The City Of Colfax Supporting A Terminal Access Application For New STAA Local Truck Route On Interstate 80 On-Ramps And Off-Ramps #133 In The City Of Colfax

Recommended Action: Adopt Resolution No. 46-2012

ISSUE STATEMENT AND DISCUSSION:

MillerCoors recently purchased the Crispin Cider Works from its prior owners. Crispin operates a manufacturing plant at 1213 South Auburn Street and a warehouse located at 986 South Canyon Way. Both are significant local employers and businesses.

Crispin recently learned that its STAA trucks cannot legally use the east and west bound I-80 on ramps and off ramps because neither are designated as appropriate to handle STAA trucks and there are no approved routes for STAA trucks within the City. Crispin has filed an application with the State of California Department of Transportation (CalTrans) that proposes four new access routes to accommodate their trucks.

CalTrans ramp and route designations are somewhat arbitrary and can be changed upon application. Crispin would like the City to formally support their application and has indicated that they may have to relocate their warehouse and manufacturing facility if the application is denied. An October 8, 2012 letter from Crispin's representative is attached.

FINANCIAL AND/OR POLICY IMPLICATIONS:

GT GreenbergTraurig

PARKE TERRY
TEL 916 442 1111
FAX 916 448.1709
TERRYP@GTLAW.COM

October 8, 2012

VIA E-MAIL AND U.S. MAIL

Bruce Kranz, City Manager
City of Colfax
33 South Main Street
Colfax, CA 95713

Re: Terminal Access Application for New STAA Local Truck Route Interstate 80 On-Ramps and Off-Ramps #133 in the City of Colfax, California

Dear Mr. Kranz:

Our firm represents MillerCoors and its wholly owned subsidiary, The Crispin Cider Works, located in the City of Colfax. On behalf of Crispin we are requesting the City's support for our application to the California Department of Transportation to open a new STAA truck route that will allow Crispin STAA trucks to utilize the east and west bound I-80 on-ramps and off-ramps to access their manufacturing plant at 1213 South Auburn Street and their warehouse located at 986 South Canyon Way. Both facilities are entirely located within the jurisdiction of the City of Colfax.

We are proposing four new terminal access routes (see enclosed maps) to accommodate Crispin STAA trucks:

Route #1 would begin at the eastbound I-80 off-ramp (#133-Pinecroft) and then proceed eastbound along Canyon Way to the Crispin warehouse at 986 South Canyon Way, at approximately the intersection of Iowa Hill Road.

Route #2 would begin at the eastbound I-80 off-ramp (#133-Pinecroft), cross I-80 at Illinoistown Road, and proceed eastbound on South Auburn Street to the Crispin plant at 1213 South Auburn Street.

Route #3 would begin at the westbound I-80 off-ramp (#133-Pinecroft) and then proceed eastbound on South Auburn Street to the Crispin plant at 1213 South Auburn Street.

Route #4 would begin at the westbound I-80 off-ramp (#133-Pinecroft), then eastbound on Placer Hills Road, crossing I-80 at Illinoistown Road, and then proceeding eastbound on Canyon Way to the Crispin warehouse at 986 South Canyon Way.

ALBANY
AMSTERDAM
ATLANTA
AUSTIN
BOSTON
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON*
LOS ANGELES
MIAMI
MILAN**
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PALM BEACH COUNTY
PHILADELPHIA
PHOENIX
ROME**
SACRAMENTO
SAN FRANCISCO
SHANGHAI
SILICON VALLEY
TALLAHASSEE
TAMPA
TYSONS CORNER
WASHINGTON, D.C.
WHITE PLAINS
*OPERATES AS GREENBERG TRAURIG MAHER LLP
**STRATEGIC ALLIANCE

Both the plant and the warehouse will provide on-site turnaround areas that are accessible to all STAA trucks 24 hours a day.

As you know, Crispin has used these off-ramps safely for many years and has only recently become aware that they are not a permitted STAA truck route. The inability to use STAA trucks on these routes has forced Crispin to use smaller, less efficient, trucks and added significantly to the cost of doing business. We therefore respectfully request the City of Colfax to provide an expedited response to Cal Trans in support of its application for the new terminal access routes referenced above.

Sincerely yours,

PARKE D. TERRY

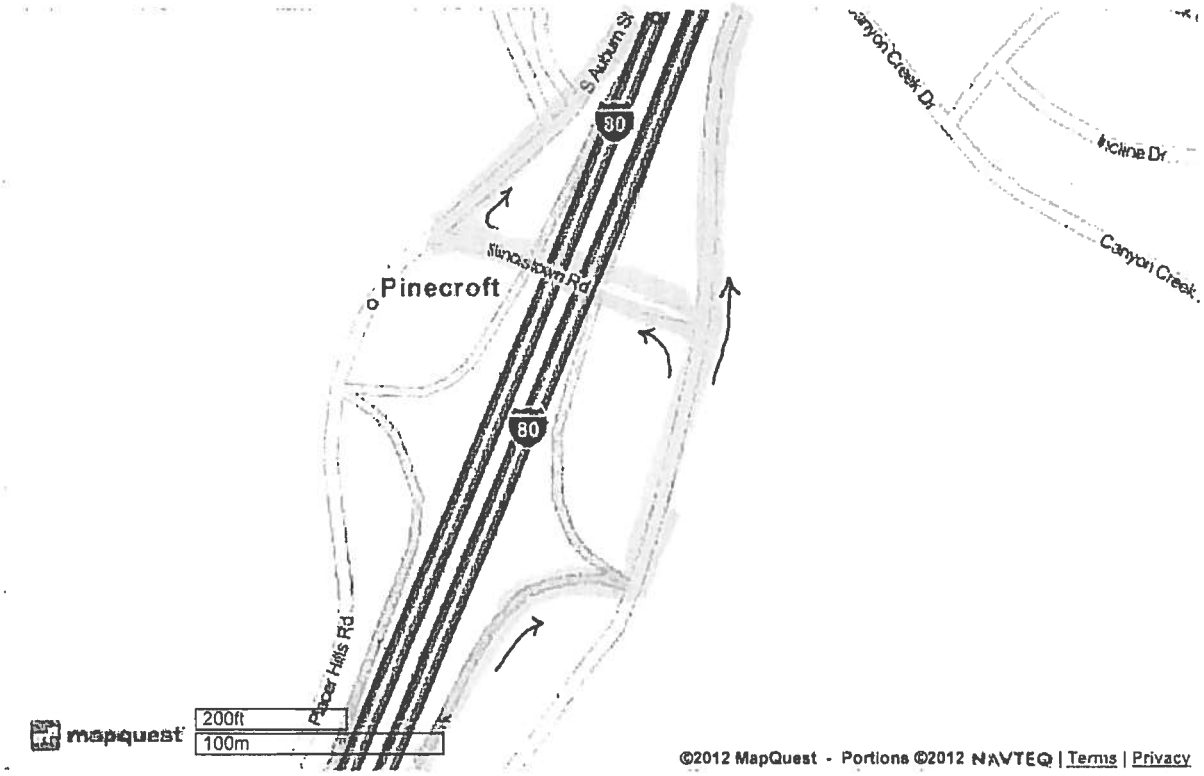
cc: James Michaelis
District 3 Truck Coordinator
California Department of Transportation

Eric Stone
Plant Manager
Crispin Cider Works

mapquest

Map of:
896 S Canyon Way
Colfax, CA 95713

Notes



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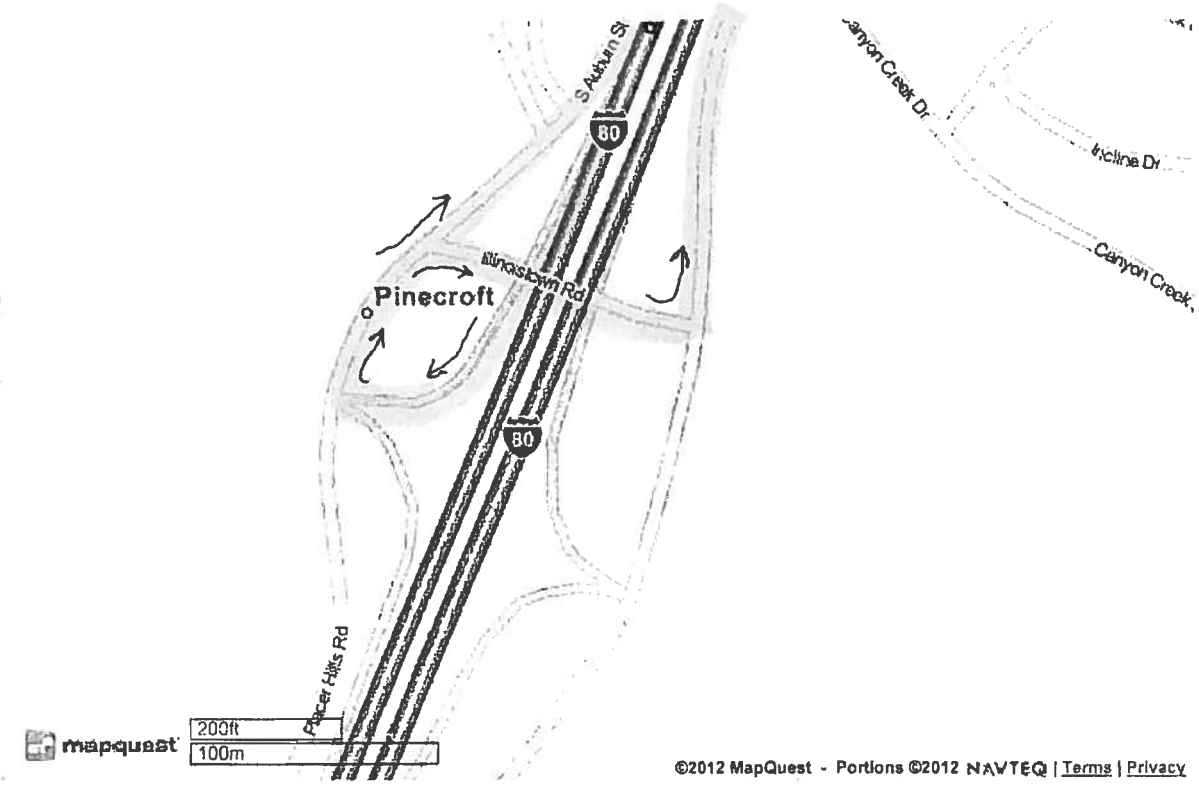
Map of:
896 S Canyon Way
Colfax, CA 95713

Notes



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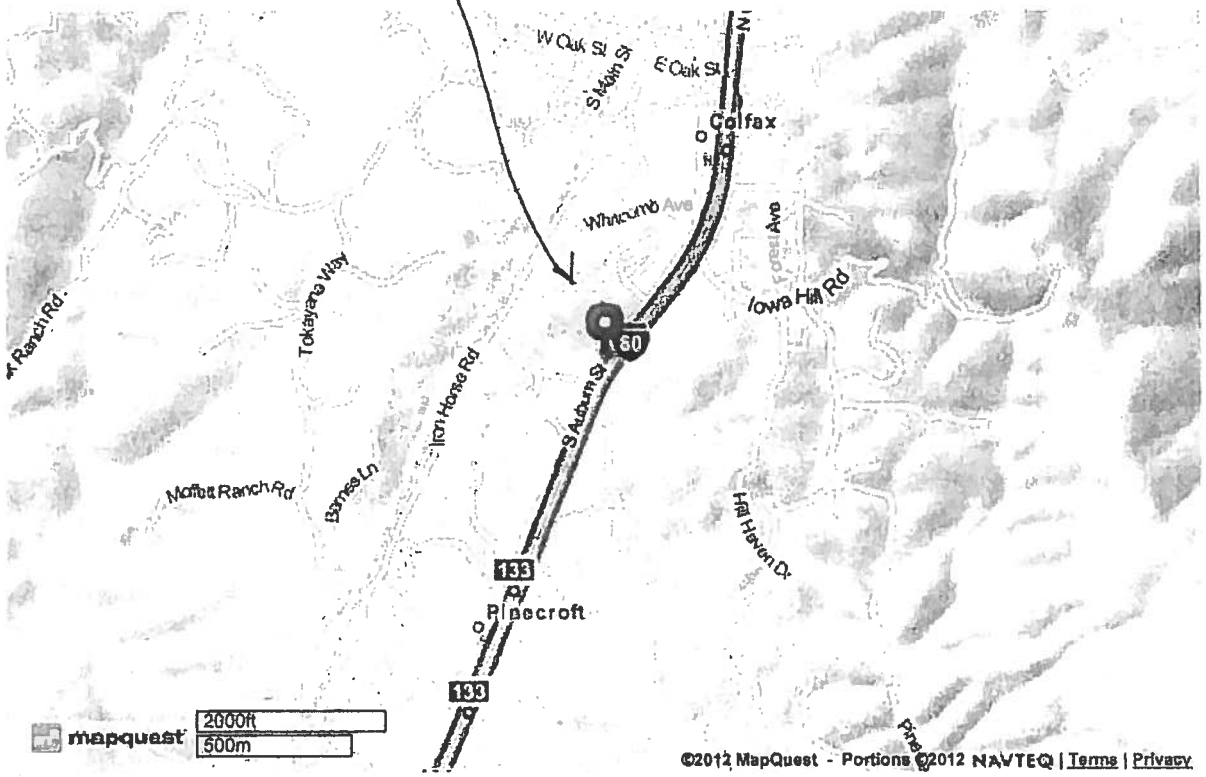
Map of:
1213 S Auburn St
Colfax, CA 95713-9800

Notes

CRISPIN CIDER PLANT



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Map of:
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Colfax, CA 95713-9800

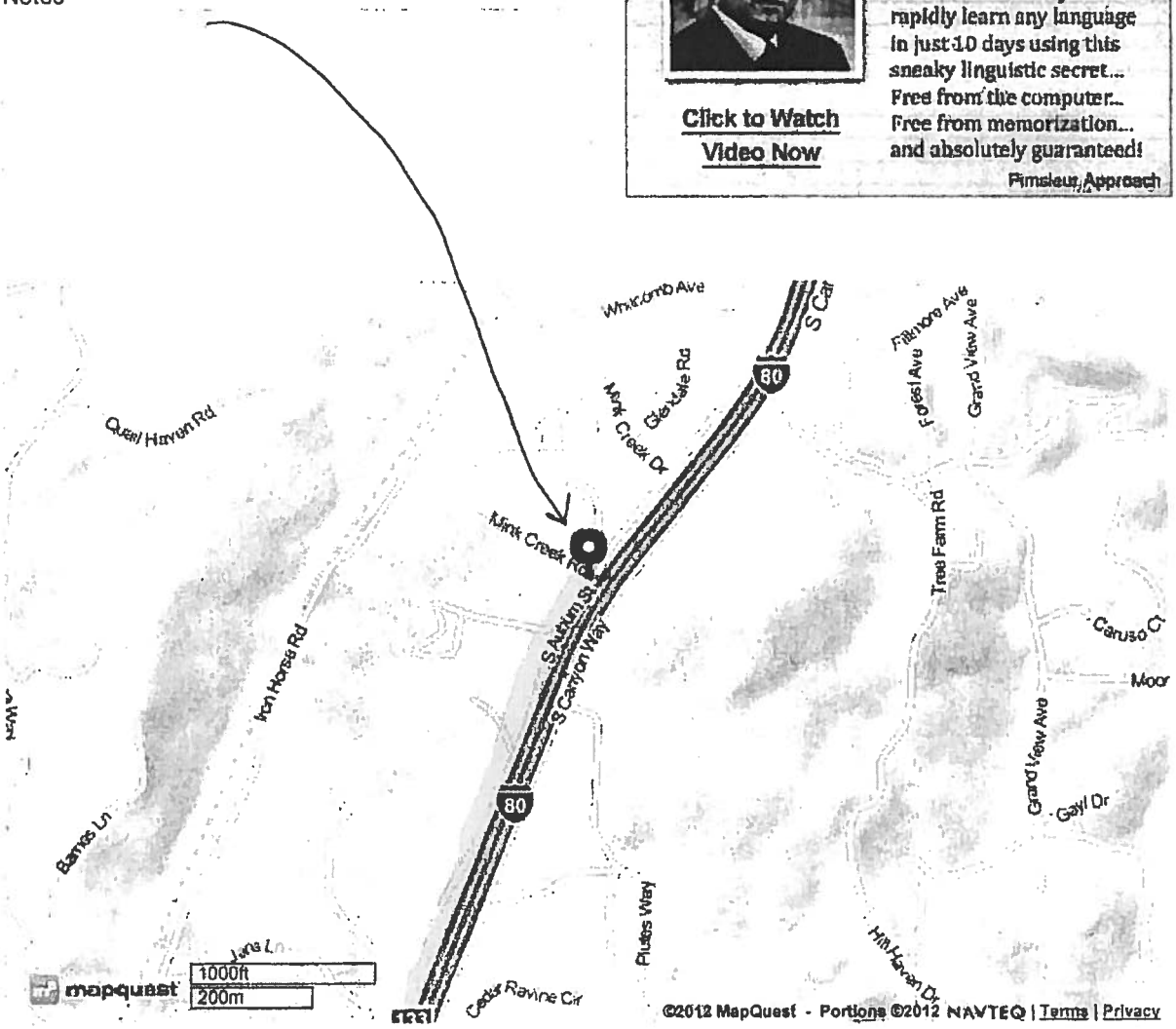
Notes

Language Professors Hate Him!

Doctor's discovery revealed the secret to speaking any language in just 10 days. Watch this shocking video and discover how you can rapidly learn any language in just 10 days using this sneaky linguistic secret... Free from the computer... Free from memorization... and absolutely guaranteed!

Click to Watch Video Now

Pimsleur Approach



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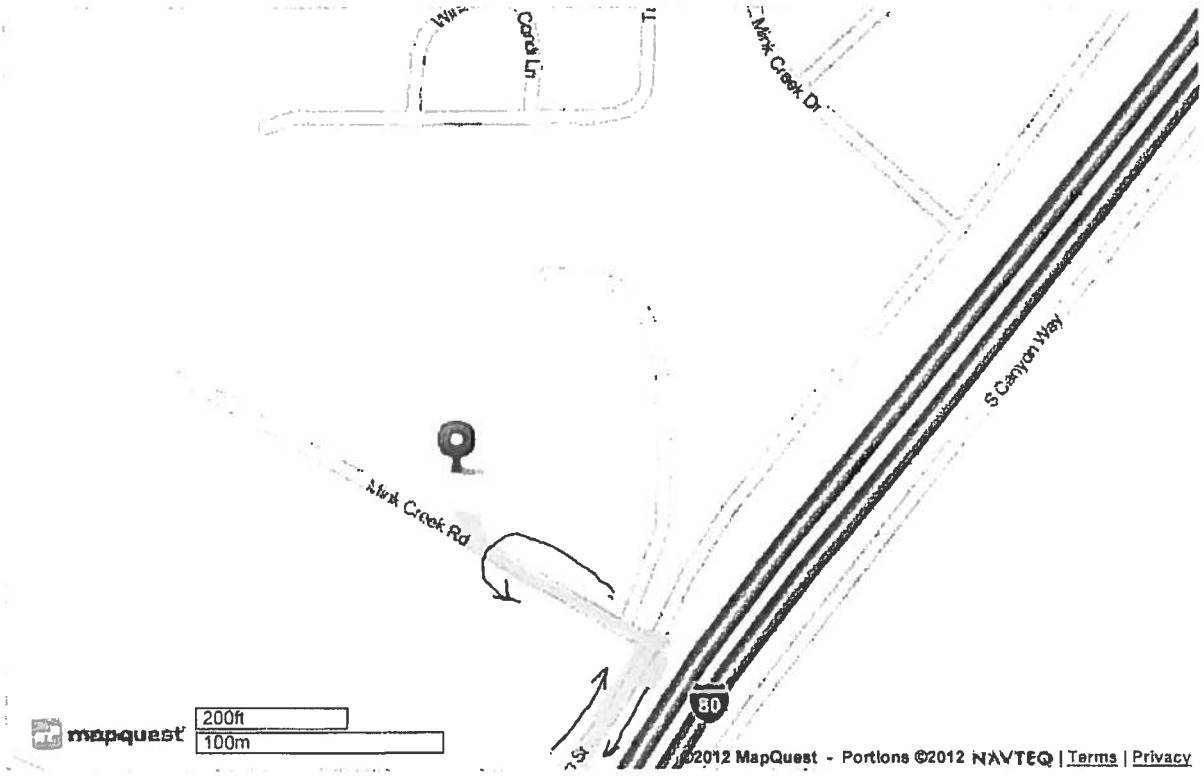
Map of:
1213 S Auburn St
Colfax, CA 95713-9800

Notes



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Map of:
896 S Canyon Way
Colfax, CA 95713

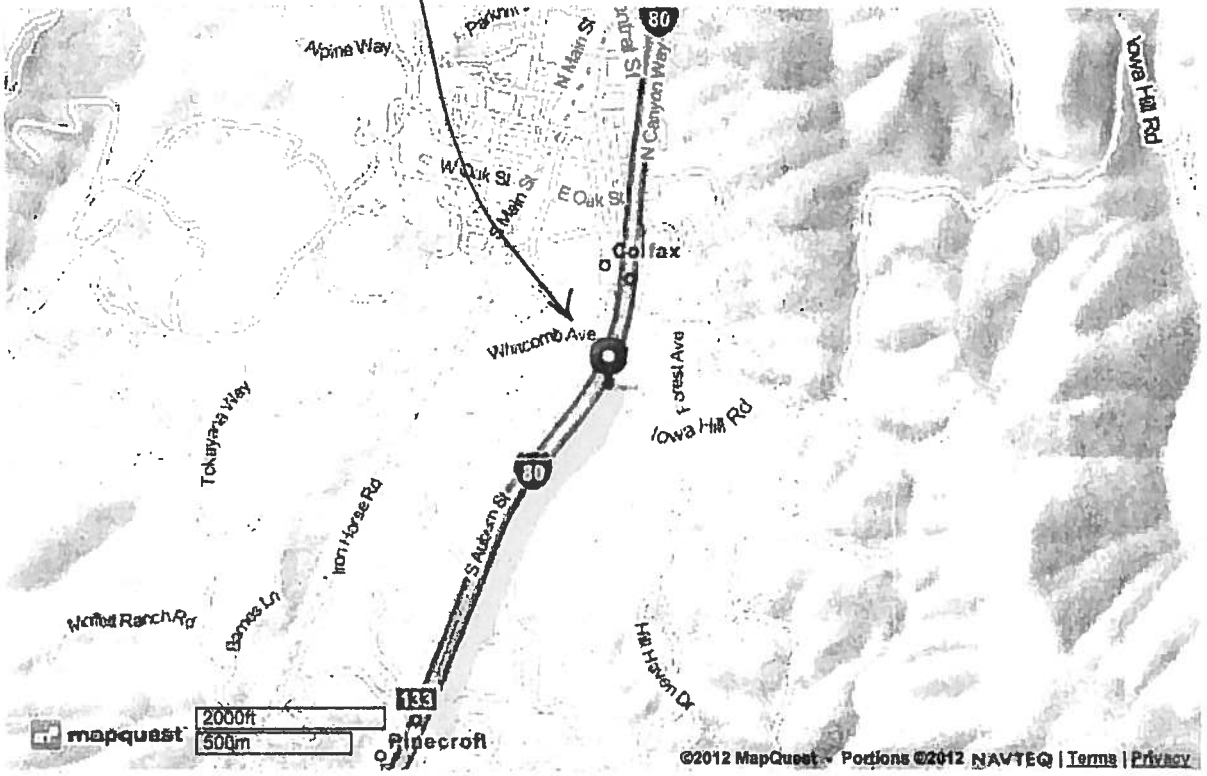
Notes

CRISPIN CIDER
WAREHOUSE

ONE KINGS LANE

Celebrate Summer
STYLISH HOME DECOR
AT EXCEPTIONAL VALUE

SHOP NOW



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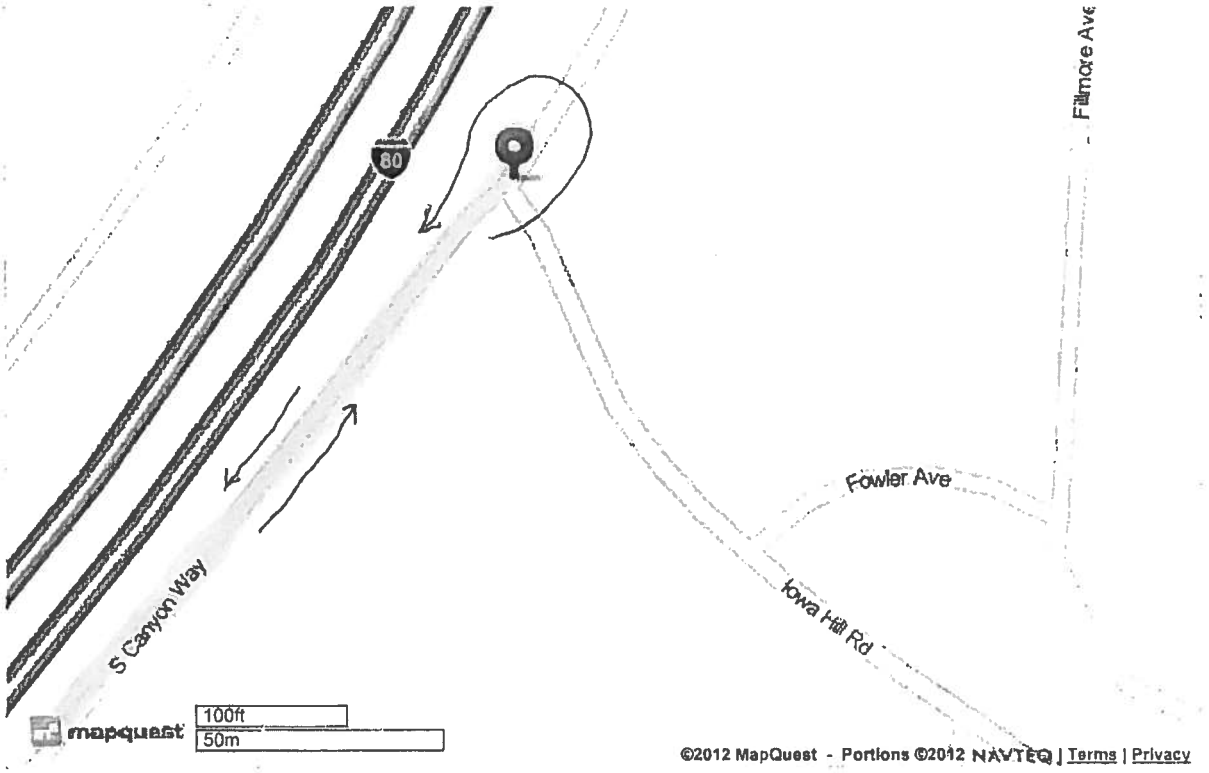
Map of:
896 S Canyon Way
Colfax, CA 95713

Notes



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City of Colfax

RESOLUTION NO. 46-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLFAX SUPPORTING A TERMINAL ACCESS APLICATION FOR NEW STAA LOCAL TRUCK ROUTE ON INTERSTATE 80 ON-RAMPS AND OFF-RAMPS #133 IN THE CITY OF COLFAX

Whereas, MillerCoors and its wholly owned subsidiary, The Crispin Cider Works (collectively "Crispin") own and operate a manufacturing facility at 1213 South Auburn Street in the City of Colfax ("City") and a warehouse at 986 South Canyon Way in the City; and

Whereas, Crispin has filed an application to the State of California Department of Transportation ("CalTRANS") to open a new STAA truck route that will allow Crispin's STAA trucks to utilize the eastbound and westbound Interstate 80 on-ramps and off-ramps in the City to access their manufacturing and warehouse facilities within the City; and

Whereas, the presence of Crispin's manufacturing and warehouse facilities are important to the economic vitality and continued success of the City; and

Whereas, unless Crispin's application with CalTRANS to open a new STAA truck route that will allow Crispin's STAA trucks to utilize the eastbound and westbound Interstate 80 on-ramps and off-ramps to access their manufacturing and warehouse facilities within the City is approved, Crispin may have to relocate its manufacturing and warehouse facilities to a location outside of Colfax that will provide its STAA trucks access to Interstate 80; and

Whereas, if Crispin moves its manufacturing or warehouse facilities out of the City limits, Colfax, which is a small, disadvantaged community, will suffer further adverse economic consequences; and

Whereas, obtaining approval of Crispin's application with CalTRANS is vital to the long term economic success of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Colfax as follows:

1. The foregoing recitals are true and correct statements of fact and are hereby incorporated into this Resolution.

2. The City of Colfax fully supports Crispin's application with CalTRANS to open a new STAA truck route that will allow Crispin's STAA trucks to utilize the

eastbound and westbound Interstate 80 on-ramps and off-ramps to access their manufacturing and warehouse facilities in the City of Colfax.

The foregoing Resolution was duly and regularly passed and adopted at a regular meeting of the City Council of the City of Colfax held on the 14th day of November, 2012 by the following vote on roll call:

AYES:

NOES:

ABSENT:

Stephen L. Harvey, Mayor

ATTEST:

Karen Pierce, City Clerk

REPORT TO COLFAX CITY COUNCIL

Agenda Item No.
10C

COUNCIL MEETING OF November 14, 2012

To:	Honorable Mayor and Members of the City Council
From:	Brent Smith, CEO, SEDCorp
Date:	November 9, 2012
Subject:	Consideration of Adoption of Revised Joint Powers Agreement (JPA)

Recommended Action: With council approval authorize Mayor to sign JPA

ISSUE STATEMENT AND DISCUSSION:

At its November 7, 2012 meeting, the Board of Directors of the Sierra Economic Development Corporation (SEDCorp) approved the attached JPA for distribution to the public jurisdictions in the four core counties SEDCorp serves. The attached JPA is intended to replace in its entirety the JPA drafted in 1969 and last amended in 1974 that led to the creation of the Sierra Economic Development District. The name was changed from "District" to "Corporation" in 2007 in recognition of its status as a private, non-profit corporation. After forty-three years, it was recommended that a more up-to-date JPA be created and adopted by the jurisdictions SEDCorp serves. The Colfax City Council is asked to authorize the Mayor of Colfax to sign the revised JPA on behalf of the City.

The updated JPA was prepared by the law firm that supports the cities of Auburn and Grass Valley and includes some important changes from the older one, as follows:

1. It iterates the desire to sustain SEDCorp (referred to in the updated JPA as "the Authority") for its service to the populations of the member counties (El Dorado, Nevada, Placer, Sierra) and their cities;
2. It stipulates that SEDCorp shall be governed by its Board of Directors in accordance with its bylaws;
3. It deletes references to a number of functions now performed by a variety of other organizations such as law enforcement and criminal justice planning, ancillary manpower planning, transportation planning, comprehensive health planning and ageing planning;
4. It eliminates possible conflicts by deleting operational details that are appropriately covered in the bylaws;
5. It clearly specifies the basis upon which annual member contributions, if needed, will be calculated, starting with the specification that member contributions will only be solicited if SEDCorp is unable to meet local matching fund requirements out of its available capital or earnings; if additional funds are required, the shares of those funds will be based on the

proportional populations of the member jurisdictions rather than the assessed value of properties in each jurisdiction;

6. It increases the number of jurisdictions that need to agree to a dissolution of SEDCorp from simply two counties to seventy-five percent of the members and requires a twelve-month dissolution period;
7. It specifies that, if a decision to dissolve SEDCorp is reached, SEDCorp's residual assets will be distributed to one or more other non-profits serving the multi-county area; and
8. It authorizes the purchase of property such as a building from which to operate SEDCorp, but it excludes the purchase of public lands.

The updated JPA continues a number of important authorities and responsibilities stated in the older JPA such as indemnification of the member jurisdictions, maintenance of financial records and continued authority to enter into contracts, seek grant funds, hire consultants, incur debt, sue and be sued, adopt and amend bylaws, invest assets and exercise the other general powers typical of similar organizations.

Copies of the updated JPA and the one it will replace are attached.

The SEDCorp Board of Directors requests that the Colfax City Council authorize the Mayor of Colfax to sign the updated JPA on behalf of the City.

FINANCIAL AND/OR POLICY IMPLICATIONS:

A JOINT EXERCISE OF POWERS AGREEMENT FOR THE PURPOSE OF SUSTAINING THE SIERRA ECONOMIC DEVELOPMENT CORPORATION (SEDCORP) TO SERVE THE NEEDS AND INTERESTS OF THE COUNTIES OF EL DORADO, PLACER, NEVADA AND SIERRA, CALIFORNIA, AND THEIR INCORPORATED CITIES FOR WHICH FEDERAL, STATE AND OTHER FUNDS MAY BE AVAILABLE

ADOPTED AS OF _____, 2012

(last amended on January 22, 1974)

A JOINT EXERCISE OF POWERS AGREEMENT FOR THE PURPOSE OF SUSTAINING THE SIERRA ECONOMIC DEVELOPMENT CORPORATION (SEDCORP) TO SERVE THE NEEDS AND INTERESTS OF THE COUNTIES OF EL DORADO, PLACER, NEVADA AND SIERRA, CALIFORNIA, AND THEIR INCORPORATED CITIES FOR WHICH FEDERAL, STATE AND OTHER FUNDS MAY BE AVAILABLE

This Joint Exercise of Powers Agreement ("Agreement") dated July 11, 1969 and last amended on January 22, 1974 by and between the Counties of El Dorado, Placer, Nevada and Sierra and the incorporated cities therein, each duly organized and existing in the State of California under the constitution and laws of the State and individually or collectively called Member or Members, is amended and restated to read as follows:

WITNESSETH:

WHEREAS, each of the Members has a vested interest in the economic development and well-being of its respective jurisdiction; and

WHEREAS, the Joint Exercise of Powers Act (Government Code 6500 et seq, the Act) provides that two or more public agencies may by agreement jointly exercise any powers common to the parties to the agreement; and

WHEREAS, each of the Members participated in the creation of the Sierra Economic Development Corporation (hereinafter "SEDCorp"), formerly called the Sierra Economic Development District, through approval of a Joint Powers Agreement (JPA) in 1969 or has participated in the oversight of SEDCorp continuously or from time to time since 1969; and

WHEREAS, SEDCorp was created as a non-profit corporation recognized by the State of California and organized per the provisions of Section 501(c)(4) of the Internal Revenue Service and has operated for more than four decades for the purpose of serving the economic development needs of the Members and their constituent populations; and

WHEREAS, the Members desire to amend the JPA agreement to sustain SEDCorp and its service to the Members and their constituent populations, including needs as defined under the Public Works and Economic Development Act of 1965, as amended, the Housing Act of 1954, as amended, the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Manpower Development and Training Act of 1962, as amended, the Rural Development Act of 1972, as amended, and the Federal Aid Highway Act of 1966, as amended.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties hereto agree to establish a joint powers authority as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. For the purposes of this Agreement, the following words shall have the following meanings:

"Act" means the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq., as they now exist or may hereafter be amended.

"Area" means the combined aggregate jurisdictional service areas of the Members as they now exist and as they may hereafter be modified by annexation of territory to or exclusion of territory from the boundaries of the Members or such additional areas as may, from time to time, be approved by the SEDCorp Board of Directors for the delivery of specific services in the furtherance of SEDCorp's purpose.

"Agreement" means this Joint Exercise of Powers Agreement.

"Authority" means the joint powers authority created by this agreement.

"Board of Directors" ("Board") means the governing body of SEDCorp."Fiscal Year" means the period from October 1st to and including the following September 30th or such other period as the Board may specify by resolution.

"Member" means a signatory to this Agreement.

"State" means the State of California.

ARTICLE II

GENERAL PROVISIONS

Section 2.1 Governance The Authority shall be governed by the Board of Directors ("Board") of SEDCorp in accordance with the bylaws of SEDCorp. Each Member shall have the power to appoint Directors as described in the bylaws.

Section 2.2 Purpose The purpose of the Authority is to alleviate unemployment and underemployment through cooperation and participation in SEDCorp by expanding industrial, resource, and small business development while preserving the quality of life in the Sierra Nevada Foothills. This purpose is inclusive of the exercise of the responsibilities of the Sierra Economic Development District ("District") as recognized by the United States Department of Commerce Economic Development Administration (EDA).

Section 2.3 General Powers. The Authority shall have the power in its own name to exercise any and all common powers related to the purposes of SEDCorp including but not limited to the powers to:

(a) Seek, receive and administer funding from any available public or private source, including grants or loans under any available federal, state, local or private programs for assistance in achieving SEDCorp's purpose; and
(b) Contract for the services of necessary consultants; and
(c) Make and enter into contracts; and
(d) Employ agents, officers and employees; and
(e) Acquire, lease, construct, own, manage, maintain, dispose of or operate (subject to the limitations herein) any land, buildings, works or improvements, excluding public lands; and
(f) Acquire, hold, manage, maintain or dispose of any other property by any lawful means, including without limitation gift, purchase, lease, lease-purchase, license or sale; and
(g) Incur all authorized debts, liabilities, obligations and such other evidences of indebtedness as are common to SEDCorp's purpose, subject to the limitations herein; and
(h) Receive gifts, contributions and donations of property, funds, services and other forms of financial or other assistance from any persons, firms, corporations or governmental entities; and
(i) Sue and be sued in its own name; and
(j) Adopt rules, regulations, policies, bylaws and procedures governing the operation of SEDCorp; and
(k) To invest any money that is not required for the immediate necessities of SEDCorp, as the Board determines is advisable; and
(l) Carry out and enforce all the provisions of this Agreement; and

Exercise all other general powers not specifically mentioned herein but that are common to such organizations.

Section 2.4 Effective Date This Agreement shall be effective on the date it is signed by a majority of the Parties hereto.

Section 2.5 Term This Agreement shall continue in effect until such time as the Authority is dissolved according to section 2.7 below.

Section 2.6 Hold Harmless and Indemnification To the fullest extent permitted by law, the Authority agrees to save, indemnify, defend and hold harmless each Member from any liability, claims, suits, actions, arbitration proceedings, administrative

proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, interest, defense costs and expert witness fees where the same arise out of or are, in any way, attributable in whole or in part to negligent acts or omissions of the Authority or its employees, officers or agents or the employees, officers or agents of any Member while acting within the course and scope of an agency relationship with SEDCorp.

Section 2.7 Dissolution

(a) Dissolution Procedure The Authority can be dissolved by either of the following events:

1. By a vote of three-fourths of its Members with 12 months notice; or.
2. Upon dissolution of SEDCorp according to the bylaws

(b) Distribution of Funds and Property If the Authority is dissolved according to this agreement, any remaining funds, property or other assets of SEDCorp or the Authority, following discharge of all debts, liabilities and obligations of SEDCorp, shall be distributed among other non-profit organizations within and serving the Member counties. The formula by which such remaining funds, property or other assets shall be distributed shall be as approved by majority vote of the then-current Members prior to dissolution.

(c) Withdrawal of Members Any member can withdraw from participation in the Authority with 180 days notice to the other members. All contributions to SEDCorp or the Authority will be forfeited by the departing member. Additionally, the departing member will remain obligated to provide any contributions to SEDCorp to provide matching funds for any grants applied for prior to the issuance of notice of withdrawal under this paragraph. The Board may forgive any requirement of this paragraph by a three-fourths vote excluding the board members appointed by the departing member agency.

Section 2.8 Continuation of SEDCorp Responsibilities Until and following approval of this Agreement, SEDCorp shall continue to operate in fulfillment of its purpose and responsibilities and in accordance with its adopted bylaws, policies and procedures.

Section 2.9 Privileges and Immunities Pursuant to Government Code section 6513, all privileges and immunities from liability that apply to officers, agents, employees of the Members apply equally when they are performing duties for the Authority or SEDCorp.

ARTICLE III

PARTICIPATION IN SEDCORP

Section 3.1 Participation in Sierra Economic Development Corporation (SEDCorp)

(a) Pursuant to Section 6503.5 of the Act, the parties hereby recognize and confirm the continued existence of the private, non-profit corporation known as the Sierra Economic Development Corporation, known as "SEDCorp," Members shall participate in SEDCorp operations pursuant to the terms and conditions set forth in this Agreement and the bylaws and articles of incorporation of SEDCorp.

(b) Within thirty (30) days after the effective date of this Agreement and after any amendment, SEDCorp shall cause a notice of such Agreement or amendment to be prepared and filed with the office of the California Secretary of State containing the information required by California Government Code Section 6503.5.

(c) Within ten (10) days after the effective date of this Agreement, SEDCorp shall cause a statement of the information concerning SEDCorp required by California Government Code Section 53051 to be filed with the office of the California Secretary of State and with the County Clerk of each county that is a party hereto clarifying the facts required to be stated pursuant to subdivision (a) of Government Code Section 53051.

Section 3.2 Annual Budget The Board shall adopt an annual budget for each fiscal year no later than the end of the prior fiscal year. All expenditures made by or on behalf of SEDCorp shall be in accordance with the Annual Budget or an adopted amendment thereof.

Section 3.3 Funding Formula

(a) Requested contribution amounts for each fiscal year, as approved by the Board, shall be conveyed to the Members no later than the end of the third quarter of the prior fiscal year.

(b) The Annual Budget adopted by the Board shall take into account all funding sources and shall account for matching fund requirements and contributions from all sources towards meeting those requirements.

(c) Matching funds from SEDCorp shall first be provided by funding sources other than Member contributions. Any matching fund requirements unmet by other funding sources shall be met by contributions from the Members based on shares determined in accordance with SEDCorp bylaws except that in no case shall the share of matching funds to be contributed by a Member exceed the amount requested for each fiscal year without the approval of that Member. Shares for each Member shall be

calculated by dividing the population within the boundaries of the Member's jurisdiction by the total population within the jurisdictions of all Members.

Section 3.4 Expenditures Within Approved Annual Budget All expenditures within the limitations of the approved annual budget shall be made in accordance with the rules, policies and procedures adopted by the Board.

Section 3.5 Accounts All funds will be placed in such operating fund and other accounts as required by the various funding sources and shall be accounted for in accordance with the generally accepted accounting principles applicable to governmental entities. All revenues, expenditures and status of accounts and investments shall be reported to the Board at each Board meeting pursuant to procedures approved by the Board.

ARTICLE IV

MISCELLANEOUS

Section 4.1 Amendments This Agreement may be amended at any time pursuant to a written amendment adopted by the Board.

Section 4.2 Notice Any notice required to be given or delivered by any provision of this Agreement shall be personally delivered or deposited in the U.S. Mail, registered or certified, postage prepaid, addressed to the Members at their addresses as reflected in SEDCorp's records or delivered electronically in an unalterable format such as Adobe Acrobat, and shall be deemed to have been received by the Member to which the same is addressed upon the earlier of receipt or seventy-two hours after mailing or return electronic notification of receipt.

Section 4.3 Successors This Agreement shall be binding upon and inure to the benefit of any successor of a Member.

Section 4.4 Assignment and Delegation No Member may assign any rights or delegate any duties under this Agreement without the unanimous written consent of all other Members and any attempt to make such an assignment shall be null and void for all purposes.

Section 4.5 Counterparts This Agreement may be executed in one (1) or more counterparts, all of which together shall constitute a single agreement, and each of which shall be an original for all purposes.

Section 4.6 Severability Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any

applicable law, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected thereby and to that end the parts, terms and provisions of this Agreement are severable.

A JOINT EXERCISE OF POWERS AGREEMENT FOR THE PURPOSE OF CREATING A MULTICOUNTY JOINT POWERS AGENCY TO COORDINATE ALL AREAWIDE PROGRAMS WITHIN THE COUNTIES OF NEVADA, PLACER, EL DORADO, AND SIERRA, STATE OF CALIFORNIA FOR WHICH FEDERAL/ STATE AND OTHER FUNDS MAY BE AVAILABLE

(last amended January 22, 1974)

OBJECTIVE

A JOINT EXERCISE OF POWERS AGREEMENT FOR THE PURPOSE OF CREATING A MULTI-COUNTY JOINT POWERS AGENCY TO COORDINATE ALL AREAWIDE PROGRAMS WITHIN THE COUNTIES OF NEVADA, PLACER, EL DORADO, AND SIERRA, STATE OF CALIFORNIA FOR WHICH FEDERAL/STATE AND OTHER FUNDS MAY BE AVAILABLE

THIS AGREEMENT, dated the 11th day of July 1969 and amended the 22nd day of January, 1974, by and between:

COUNTY OF NEVADA
State of California

COUNTY OF PLACER
State of California

COUNTY OF EL DORADO
State of California

COUNTY OF SIERRA
State of California

and any cities within member counties which hereafter become parties hereto.

WITNESSETH

WHEREAS, under the provisions of the Government Code, State of California (Section 6500 et seq), the parties hereto may jointly exercise powers common to all relative to the accomplishment of the above-stated objectives, and

WHEREAS, there now exists within the area of jurisdiction of the parties hereto, needs as defined under the Public Works and Economic Development Act of 1965 as amended, the Housing

Act of 1954 as amended, the Omnibus Crime Control and Safe Streets Act of 1968 as amended, the Manpower Development and Training Act of 1962 as amended, the Rural Development Act of 1972 as amended, and the Federal Aid Highway Act of 1966 as amended, to jointly undertake solutions to the above related problems, and

WHEREAS, the parties hereto desire to create and participate in the Joint Powers Agency hereinafter established,

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE I - PURPOSE

The immediate purpose of this agreement is to accomplish a unified action by local governments in developing solutions to multi-county problems by the creation of a Joint Powers Agency which, among other purposes, will support an Areawide Planning Organization, a Non-Metropolitan Clearinghouse, an Economic Development District, Law Enforcement and Criminal Justice Planning, Ancillary Manpower Planning, Transportation Planning, Comprehensive Health Planning, Ageing Planning and any other multi-county planning function that the Joint Powers Agency may see fit to establish. The Joint Powers Agency may receive county, state and federal grants and disburse them for committee planning and program implementation.

An annual plan will be prepared under directions from the committees and then be submitted to the Joint Powers Agency for

their approval before transmission to other agencies for inclusion in their individual general plans and inclusion in the areawide plan sponsored by the agency.

Each committee established by the Joint Powers Agency is responsible for the preparation, maintenance and updating of the committee planning elements.

In addition, the Joint Powers Agency may conduct other studies and provide assistance and counsel to member jurisdictions and others as may be requested.

ARTICLE II - TERM

This agreement shall become effective as of the date of approval of all the counties named herein and shall continue in full force and effect until terminated as set forth in Article VI.

ARTICLE III - MEMBERSHIP

Membership of the Joint Powers Agency shall consist of two members from each member county selected in the manner set forth below, all of whom shall be elected officials of local county or city member jurisdictions.

Each member county shall have one member appointed by the Board of Supervisors and the combined member cities of each county shall have one voting member on the Joint Powers Agency appointed by the respective City Councils, provided, that if there are no member cities within the county, the Board of Supervisors shall appoint the second member who shall be an elected official of a city.

A. Officers

The Joint Powers Agency shall elect a chairman, a vice-chairman, and a secretary-treasurer to serve for one year. The executive director will be hired and subject to dismissal by the Joint Powers Agency.

B. By-Laws

The Agency may adopt such By-Laws as are deemed necessary and may from time to time adopt such rules and regulations for the conduct of its meetings and affairs as may be required. Any By-Laws or rules and regulations adopted by the Agency may be amended at any time by majority vote.

C. Committees

The Agency shall appoint such committees as are necessary, except for the special committee named below which shall be appointed as set forth in Article IV, Section B. All functions of the special committee shall be subject to review by the Joint Powers Agency. The Agency shall recognize as a special committee for economic development the Board of Directors of the Economic Development District, which Board of Directors shall be the governing body of the non-profit corporation formed under Article IV, Section A, Paragraph 3 hereof. The corporation will be the Joint Powers Agency's administrative vehicle as long as this arrangement is mutually satisfactory. This Economic Development

District shall be constructed to include broad representation from all segments of the community including business, labor, government, education, minorities, and the economically deprived. Membership in new committees formed under this Joint Powers Agreement or by order of the Joint Powers Agency shall be representative of the Agency. Such new committees and the members therein shall not be deemed established and appointed until ratified by the member County Boards of Supervisors.

ARTICLE IV - BOARD OF DIRECTORS OF ECONOMIC DEVELOPMENT DISTRICT (EDD)

A. The governing body of the Joint Powers Agency shall fund an Economic Development District Board of Directors whose functions and duties shall be as follows:

1. Perform as the Joint Powers' administrative vehicle;
2. Creation and establishment of an Economic Development District whose boundaries shall coincide with those of the Joint Powers Agency;
3. Continuation of the non-profit corporation formed under state statutes;
4. Make application for and accept Federal grants. Application for all grants shall be subject to prior review and approval by the Joint Powers Agency meeting in open session;
5. Prepare, maintain, review, update and make

progress reports on an Economic Development plan. The plan will be forwarded to the Joint Powers Agency.

6. May assist area and local Overall Economic Development Program organizations and staff members in the preparation of applications to state and federal agencies for the purpose of obtaining loans, grants, and technical services;

7. May assist local development corporations and the private sector in the applications for loans to be used in conjunction with new and expanded business pursuits by private enterprise;

8. Budgets

The Joint Powers Agency may authorize the Economic Development District Board of Directors to prepare the Agency's annual budget taking into account federal cost sharing and contributions of local funds and services from member jurisdictions which shall be appropriate to meet needs of the Joint Powers Agency's work program and with costs to be borne by the County members proportionately based upon assessed valuation of real property within each individual county. All budgets shall be subject to review and approval by the Joint Powers Agency. The total budget shall not exceed by 10 percent that for the previous fiscal year, without consent of all of the

participating counties acting through their Boards of Supervisors. The proposed budget shall be distributed to members by 1, March of each year.

9. Reports

The Economic Development District Board of Directors shall prepare and submit annual progress reports to the Joint Powers Agency and shall make additional reports as may be required or be appropriate.

B. Membership - Economic Development District

1. The membership of the Economic Development District Board of Directors shall be selected in the following manner: five (5) members shall be appointed from each county, to include one (1) elected county official, not a member of the Joint Powers Agency, appointed by the Board of Supervisors; one (1) elected city official, not a member of the Joint Powers Agency, to be appointed by the member cities of each county, or by the Board of Supervisors if there is no member city; and three (3) members to be appointed at large by the Board of Supervisors of each county to achieve representation as set forth in Article III, Section C, hereof, from a list containing at least six names submitted by the designated Overall Economic

Development Program (OEDP) organization of that county. The Joint Powers Agency may appoint one (1) member.

2. Terms of the members of the Board of Directors of the Economic Development District shall be for three years with staggered sequence of duration for each one-third of the membership.

ARTICLE V - POWERS

A. The Joint Powers Agency shall have the power, in its own name, to accept contributions; gifts and grants; make and enter into contracts; to sue and be sued; to incur debts, liabilities or obligations, to hire an executive director and to hire, through the executive director, the staff necessary for the accomplishment of the purposes set forth in this agreement within the budgeted funds available.

ARTICLE VI - TERMINATION

Notwithstanding anything to the contrary herein before contained, it is understood and agreed that any party to this agreement may cease to be a party hereto and may withdraw from membership in the Joint Powers Agency by the adoption by its legislative body of a resolution of intention to withdraw and by giving the secretary-treasurer of the agency and the other parties to this agreement written notice of its intention to withdraw addressed ninety (90) days before the effective date of withdrawal, but in no case to be effective prior to the end

of the current fiscal year.

If at any time after the effective date of this agreement more than fifty percent (50%) of the counties who are parties to this agreement have withdrawn, this agreement shall terminate.

Upon the termination of this agreement, any money or assets in possession of the agency after payment of all liabilities, costs, expenses and charges incurred under this agreement shall be returned to the parties in proportion to their contributions determined as of the time of termination.

ARTICLE VII - CITIES PARTICIPATION

Any city lying within the member counties may participate in this agreement. Such city may, by resolution of its governing body, agree to be bound by the provisions of this agreement and shall become a party thereto by signing this agreement. Such city shall thereafter be entitled to participate on the governing body of the Joint Powers Agency as provided in Article III.

IN WITNESS WHEREOF, the undersigned counties of the State of California have executed this agreement upon the respective dates set forth after their signatures:

COUNTY OF NEVADA

Robert W. Long, Chairman — December 26, 1973
Board of Supervisors — Date of Approval

COUNTY OF PLACER

Alex Ferreira, Chairman — Date of Approval
Board of Supervisors

COUNTY OF EL DORADO

Thomas L. Stewart, Chairman — Date of Approv.
Board of Supervisors
Attest: Carl A. Kelly, County Clerk
ex-officio Clerk of the Board

By _____
Deputy Clerk

COUNTY OF SIERRA

Thomas F. Booth, Chairman — Date of Approval
Board of Supervisors

CITY OF AUBURN

Henry Gonzales — Date of Approva
Mayor

CITY OF COLFAX

S. C. Ballenger — 1-22-74 Date of Appro
Mayor

CITY OF GRASS VALLEY

Edward Tellam — 1-22-74 Date of Approva
Mayor

CITY OF LINCOLN

Nello J. Stefani — Date of Approva
Mayor

CITY OF LOYALTON

Milton Gottardi — Date of Approva
Mayor

CITY OF NEVADA CITY

John Rankin — 1-29-74
Mayor

CITY OF PLACERVILLE

Mark Tetrault — Date of Approv
Mayor

CITY OF ROCKLIN

Paul I. Hoyenga — 2/12/74 Date of Approva

REPORT TO COLFAX CITY COUNCIL

Agenda Item No.
10D

COUNCIL MEETING OF November 14, 2012

To:	Honorable Mayor and Members of the City Council
From:	Bruce Kranz, City Manager
Date:	November 9, 2012
Subject:	Discussion of City of Colfax Conflict of Interest Code

Recommended Action: Discuss and Direct Staff

ISSUE STATEMENT AND DISCUSSION:
City Attorney, Mick Cabral has requested that this item be brought before Council for discussion prior to adopting due to some questions regarding the disclosure categories. This is an opportunity for council to modify and simplify the Code without diluting the disclosure requirements.

FINANCIAL AND/OR POLICY IMPLICATIONS:

City of Colfax

RESOLUTION NO. -2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLFAX, CALIFORNIA, AMENDING ITS CONFLICT OF INTEREST CODE

WHEREAS, The City of Colfax has duly adopted a Conflict of Interest Code as required by law; and

WHEREAS, California Government Code §87306.5 requires that in each even-numbered year cities review their adopted Conflict of Interest Code and submit an amended Conflict of Interest Code in accordance with California Government Code §§87302(a) and 87303 if necessitated by changed circumstances; and

WHEREAS, it is necessary to amend the Colfax Conflict of Interest Code to amend the list of individuals required to disclose economic interests under it and to make certain minor revisions to the Code; and

WHEREAS, a public notice of the proposed amendments was duly posted and provided to the affected employees and allowed sufficient time for the public and employees to provide meaningful comments

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Colfax, California as follows:

1. The amendments to the Conflict of Interest Code of the City of Colfax attached to this Resolution are hereby approved.

2. The rest of the City of Colfax Conflict of Interest Code shall be and remain in full force and effect subject to said amendments.

The foregoing Resolution was duly and regularly passed and adopted at a regular meeting of the City Council of the City of Colfax held on the 14th day of November, 2012 by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Stephen Harvey, Mayor

ATTEST:

_____
Karen Pierce, City Clerk

Draft

Conflict of Interest Code for
The City of Colfax

The Political Reform Act of 1974 (Government Code Section 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes.

The Fair Political Practices Commission ("FPPC") had adopted a regulation (2 Cal. Code of Regs. 18730) which contains the terms of a standard conflict of interest code which may be incorporated by reference in an agency's code, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act, following public notice and hearings.

Therefore, the terms of 2 Cal. Code of Regs. 18730 and any amendments to it duly adopted by the FPPC are hereby incorporated by reference. This regulation and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code for the City of Colfax.

Designated employees shall file statements of economic interests with the City of Colfax. The City of Colfax shall make all statements available for public inspection and reproduction, pursuant to Government Code section 81008.

CITY OF COLFAX
CONFLICT OF INTEREST CODE
APPENDIX "A"

LIST OF DESIGNATED EMPLOYEES

The following is a listing of those persons who are required to submit Statements of Economic Interests pursuant to the Political Reform Act of 1974, as amended, excluding those persons who are already required to file the Form 700 pursuant to Government Code §87200. Designated employees shall file statements of economic interests with the City Clerk.

1. Members of Boards and Commissions who are required to file Form 700:

Citizen Boards/Commissions:	Disclosure Category:
Economic Development Commission	All Boards and Commissions
Design Review Commission	are Category 1 filers
Ad-Hoc Finance Committee	

2. Persons occupying any of the following designated positions are required to file Form700:

Department:	Position:	Disclosure Category:
Administrative	Small Cities Organized Risk Group Effort Board of Directors	1
	City Clerk	1
Finance	City Accountant	1
Planning	Planning Director	1
Public Works	City Engineer	1
	Community Services Director	1
Building	Community Services Director	1
Police/Fire	Police Chief	1
	Fire Chief	1
Consultants		1

Notes:

1. Consultants. 2 Cal.Code Regs. §18701(a)(2) defines "consultant" as an individual who pursuant to a contract with a state or local government agency:

(A) Makes a government decision whether to:
- (i) Approve a rate, rule or regulation;
- (ii) Adopt or enforce a law;
- (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
- (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
- (v) Grant agency approval to a contract that requires approval and to which the agency is a party, or to the specifications for such a contract;
- (vi) Grant agency approval to a plan, design, report, study, or similar item;
- (vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

The disclosure required of consultants shall be determined on a case by case basis by the City Manager in consultation with the City Attorney. The City Manager may make a determination as to what disclosure, if any, is required by any particular consultant. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

APPENDIX "B"

DISCLOSURE
CATEGORIES

Definition:

"Unit" as used in this text means the particular department, board, commission, office or other entity using the disclosure category.

Disclosure Category:

1. All investments and business positions in business entities, sources of income and interests in real property.

2. Investments and business positions in business entities, and all sources of income.

3. Interests in real property.

4. Investments and business positions in, and sources of income from, business entities providing goods, supplies, services, materials, facilities, vehicles, equipment or machinery of the type used by the designated employee's unit.

5. Investments and business positions in, and income from business entities which are book outlets, vendors or providers of business services.

6. Investments and business positions in, and income from, business entities engaged in construction, building, or material supply.

7. Investments and business positions in, and income from business entities which supply or manufacture solar energy systems.

8. Investments and business positions in, and income from, business entities engaged in construction or development.

9. Investments and business positions in, and income from, business entities engaged in the construction of public works projects.

10. Investments and business positions in, and income from, construction companies involved in progress payments.

11. Investments and business positions in, and income from, construction firms involved in construction projects subject to acceptance by the City Council.

12. Investments and business positions in business entities and income from business entities of the type to provide bids, supplies, vehicles and equipment.

13. Investments and business positions in, and income from, entities which provide training, services or facilities of the type utilized by the City.

14. Investments and business positions in business entities and source of income which provide services and supplies of the type used in emergency services coordination and training activities.

15. Investments and business positions in, and income from, Union Pension funds that may be affected by the outcome of negotiations involving monetary settlements and employer employee memorandums.

16. Investments and business positions in, and income from, entities providing medical services of facilities of the type used by the City.

17. Investments and business positions in, and income from, business entities engaged in providing eye examinations and eye glasses, including, but not limited to, opticians, ophthalmologists, etc.

18. Investments and business positions in, and income from, business entities supplying or manufacturing electronic equipment, supplies or services of the type utilized by the employee's unit.

19. Investments and business positions in, and income from, business entities providing supplies, services, equipment or machinery of the type used by the City.

20. Investments and business positions in, and income from, employment agencies or entities which provide employment or pre-employment services. "Services" include, but are not limited to, testing, training, consulting, job classification studies and salary surveys.

21. Investments and business positions in, and income from, business entities which are of the type to provide any of the various types of employee insurance coverage and/or actuarial services.

22. Investments, business positions and income, including gifts, loans and travel payments, from sources that are subject to the regulatory, permit or licensing authority of, or have an application for a license or permit pending before the City.

EXHIBIT B

DISCLOSURE CATEGORIES

1. Full Disclosure. All interests in real property in the City of Colfax, as well as investments, business positions and sources of income, including gifts, loans and travel payments.

2. Full Disclosure Excluding Interests In Real Property. All investments, business positions and sources of income, including gifts, loans and travel payments.

3. Interests in Real Property. All interests in real property in the City of Colfax.

4. General Contracting. All investments, business positions and income, including gifts, loans and travel payments, from sources that provide leased facilities, goods, equipment, vehicles, machinery or services, including training or consulting services, of the type used by the City of Colfax.

5. Regulatory, Permit or Licensing. All investments, business positions and income, including gifts, loans and travel payments, from sources that are subject to the regulatory, permit or licensing authority of, or have an application for a license or permit pending before the City of Colfax.