

CITY COUNCIL MEETING

COUNCIL CHAMBERS, 33 SOUTH MAIN STREET, COLFAX, CA

MAYOR DONNA BARKLE • MAYOR PRO-TEM TONY HESCH
COUNCILMEMBERS • KIM DOUGLASS • JASON MCKINNEY • TOM PARNHAM



REGULAR MEETING AGENDA

CLOSED SESSION at 6:00pm • August 14, 2013 • REGULAR SESSION at 7:00pm



Colfax City Council Meetings are ADA compliant. If you need special assistance to participate in this meeting, please contact the City Clerk at (530) 346-2313 at least 72 hours prior to make arrangements for ensuring your accessibility.

1) OPENING of CLOSED SESSION

- A. Call to Order
- B. Roll Call

2) PUBLIC COMMENT – CLOSED SESSION ITEMS

3) CLOSED SESSION AGENDA

- A. 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: Gabe Armstrong
- B. Public employee performance evaluation pursuant to Government Code Section 54957. Title: Technical Services Administrator
- C. Public employee employment pursuant to Government Code Section 54957 Title of position to be filled: City Manager

4) OPENING of REGULAR SESSION

- A. Pledge of Allegiance
- B. Roll Call
- C. Announcement of Action Taken in Closed Session
- D. 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 the Council meeting. Except as allowed by rules of order, a Councilmember or staff member shall not by conversation or other means delay the Council proceedings or disturb any other Councilmember or staff member while speaking.

5) COUNCIL, STAFF AND OTHER REPORTS

The purpose of these reports is to provide information to the Council and public on projects, programs, and issues discussed at committee meetings and other items of general information. No decisions will be made on these issues. If a member of the Council prefers formal action be taken on any committee reports or other information, the issue will be placed on a future Council meeting agenda.

6) CONSENT AGENDA

All matters listed under the Consent Agenda are considered 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.

AGENDA ITEM	RECOMMENDED ACTION
A. Minutes: July 24, 2013	<i>Receive and File</i>
B. Cash Summary: June 30, 2013	<i>Receive and File</i>
C. Consideration of Adoption of Resolution No. 32-2013: A Resolution of the City Council of the City of Colfax Authorizing the Interim City Manager To Execute the Fourth Amendment to the Consultant Services Agreement between the City of Colfax and Psomas	<i>Adopt Resolution No. 32-2013</i>
D. Consideration Of Adoption Of Resolution No. 33– 2013 : A Resolution Of The City Council Of The City Of Colfax Authorizing The City Manager To Execute An Agreement With Lawrence And Associates For Continued Monitoring Of The Ground Water And Gas Monitoring At The Colfax Landfill.	<i>Adopt Resolution No. 33-2013</i>
E. Proclamation Proclaiming November 1, 2013 as Extra Mile Day	<i>Approve Proclamation</i>

7) PRESENTATIONS

8) PUBLIC COMMENT

At this time, members of the audience are permitted to address the Council on matters of concern to the public that are not listed on this agenda. Please make your comments as brief as possible. Comments should not exceed three (3) minutes in length. 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

10) COUNCIL BUSINESS

- A. Conduct discussion and consider adopting Resolution No. 34 – 2013 : A Resolution Of The City Council Of The City Of Colfax Authorizing The City To Enter And The Interim City Manager To Execute A Billboard Sign, Relocation And Settlement Agreement With Sierra Property Development
Recommended Action: Staff recommends that the City Council adopt Resolution No. 34-2013.
- B. Conduct Discussion And Consider Adopting Resolution No. 35-2013: A Resolution Of The City Council Of The City Of Colfax Reducing The Number Of Regular Monthly Meetings.
Recommended Action: Conduct discussion and adopt Resolution No. 35-2013.

11) ADJOURNMENT

**Agenda Posted at Colfax City Hall
and Colfax Post Office locations August 9, 2013.**

Karen Pierce

Karen Pierce, City Clerk

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.

Minutes
City Council Meeting
July 24, 2013

1. OPENING

Mayor Barkle called the meeting to order at 5:35pm.

Present and answering roll call were Council members Hesch, Douglass, Parnham, McKinney and Mayor Barkle.

2. PUBLIC COMMENT

There was no public comment

3. CLOSED SESSION

Mayor Barkle called the closed session to order at 5:35pm

- A. Conference With Legal Counsel - Anticipated Litigation: Initiation of litigation pursuant to Government Code Section 54956.9(c), 1 case
- B. 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: Gabe Armstrong
- C. Public employee performance evaluation pursuant to Government Code Section 54957.
Title: Technical Services Administrator
- D. Public employee employment pursuant to Government Code Section 54957
Title of position to be filled: City Manager

Mayor Barkle closed the closed session at 6:58pm.

4. OPENING AND AGENDA APPROVAL

Mayor Barkle called the regular meeting to order at 7:02pm.

VFW Commander David Green led the Pledge of Allegiance

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

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

AYES: Hesch, Douglass, Parnham, McKinney and Mayor Barkle

NOES:

ABSENT:

ABSTAIN:

5. CITY COUNCIL COMMITTEE REPORTS

Councilman McKinney reported on upcoming events the Lions Club is participating in
Councilman Parnham reported on attending the Mosquito and Vector Control meeting
Councilman Douglass reported on attending the SEDCorp and Project Go meetings
Councilman Hesch reported on attending the Downtown Merchants meeting
Mayor Barkle reported on attending the Downtown Merchants meeting

6. INFORMATION REPORTS FROM STAFF AND OTHERS

Interim City Manager, Gabe Armstrong reported on the following:

- Met with the owners and architect of the old Hotel Building and made a punch list of necessary repairs that need to be completed.
- A basin at the bottom of the dam for Pond 3 has been installed
- The Mink Creek sewer item will be on the next city council agenda

City Clerk, Karen Pierce went over upcoming events.

7. CONSENT AGENDA

AGENDA ITEM	ACTION TAKEN
A. Minutes: July 10, 2013	<i>Received and Filed</i>
B. Final Acceptance – Prop. 40 Splash Park	<i>Accepted Project as complete and directed the City Clerk to file a Notice of Completion</i>
C. Proclamation declaring the week of July 21-27, 2013 as “Korean War Veterans Week”	<i>Approved Proclamation</i>

Councilman Hesch requested that his requests for Agenda Items to be placed in the minutes for the record and that all future agenda requests be recorded.

Councilman McKinney noted a mistake on the vote for the public hearing on the minutes
A motion was made by councilman McKinney and seconded by councilman Hesch to approve the consent agenda as presented with the above noted amendments. The motion was passed by the following vote:

AYES: Hesch, Douglass, Parnham, McKinney and Mayor Barkle

NOES:

ABSENT:

ABSTAIN:

8. PRESENTATION

Mayor Barkle presented to the Veterans of Foreign War and American Legion a proclamation for Korean War Veterans Week.

9. PUBLIC COMMENT

Councilman Hesch presented a basket of tomatoes to Councilmembers McKinney, Parnham and Douglass and asked Mayor Barkle to explain what problem she had with these being sold in a local market.

Mayor Barkle read a letter explaining the circumstances on the issues Will Stockwin presented at the previous council meeting regarding vegetables being sold in a local market.

Al Turner, resident presented Mayor Barkle with an organic tomato

Lynn Fontana, resident asked about the CHS Football Tailgate BBQ at the ball field. He wants to do a walk through with Interim City Manager, Gabe Armstrong to go over safety issues. Inquired about the I-80 meeting.

Jim Wood, Placer Sierra Railroad Heritage Society (PSRHS) spoke about the photo taken of the Depot that he wants to mount.

Malcolm Frost, President PSRHS spoke about Railroad Days

Logan West, county resident spoke about coverage the city has gotten from the Visitors Guide and requested that council write a letter to the Visitors Guide.

Jim Wood, county resident spoke about the Visitors Guide and stated that the Chamber puts the Ad in the magazine.

10. PUBLIC HEARING

11. COUNCIL BUSINESS

A. Grass Valley Pavement Rehabilitation, Project No. 12-01.01, and Grass Valley St. UPRR Pedestrian Crossing and Bike Improvements, Project No. 12-01.02

City Engineer, Alan Mitchell went over the staff report, project and project budget reports. Speaking form the public was:

Will Stockwin, resident asked about traffic slow down options on W. Grass Valley St.

Council discussed. A motion was made by councilman McKinney and seconded by councilman Hesch to approve Project Budget Sheets (PBS) for Grass Valley Pavement Rehabilitation, Project No. 12-01.01, and Grass Valley St. UPRR Pedestrian Crossing and Bike Improvements, Project No. 12-01.02. The motion was passed by the following vote:

AYES: Hesch, Douglass, Parnham, McKinney and Mayor Barkle

NOES:

ABSENT:

ABSTAIN:

B. Discussion of special events, how they impact the downtown merchants including booth placement, signs and access, and how they can be improved

Councilman Hesch went over reasons he wanted this added to the agenda.
Council discussed. Speaking from the public was:

Al Turner, resident
Jim Bowers, Event Coordinator
Jim Wood, PSHRS
Logan West, Art Walk Chairman

12. ADJOURNMENT

Being no further business to come before council by voice vote the meeting was adjourned at 8:49pm.

CASH TRANSACTIONS REPORT

MONTH: JUNE
City of Colfax

Page: 1
7/19/2013
1:34 pm

	Beginning Balance	Debit	Credit	Ending Balance
Fund Type: 1.11 - General Fund - Unassigned				
Fund: 100 - General Fund	3,398,135.74	146,853.28	2,180,408.67	1,364,580.35
Fund: 120 - Land Development Fees	6,051.34	11,938.90	1,691.70	16,298.54
Fund: 570 - Garbage Fund	-367,036.87	11,370.87	337.50	-356,003.50
Fund Type: 1.11 - General Fund - Unassigned	3,037,150.21	170,163.05	2,182,437.87	1,024,875.39
Fund Type: 1.14 - General Fund - Restricted				
Fund: 571 - AB939 Landfill Oversion	30,563.77	203.47	0.00	30,767.24
Fund: 572 - Landfill Post Closure Main	717,871.53	3,944.31	1,648.48	720,167.36
Fund Type: 1.14 - General Fund - Restricted	748,435.30	4,147.78	1,648.48	750,934.60
Fund Type: 1.24 - Special Rev Funds - Restricted				
Fund: 210 - Mitigation Fees - Roads	75,868.32	0.00	0.00	75,868.32
Fund: 211 - Mitigation Fees - Drainage	2,974.04	0.00	0.00	2,974.04
Fund: 212 - Mitigation Fees - Trails	45,595.88	0.00	0.00	45,595.88
Fund: 213 - Mitigation Fees - Parks/Re	108,494.07	0.00	0.00	108,494.07
Fund: 214 - Mitigation Fees - City Bldg	666.96	0.00	0.00	666.96
Fund: 215 - Mitigation Fees - Vehicles	230.09	0.00	0.00	230.09
Fund: 217 - Mitigation Fees - DT Parki	25,970.52	0.00	0.00	25,970.52
Fund: 218 - Support Law Enforcement	-11,341.87	0.00	26,780.50	-38,122.37
Fund: 236 - CDBG Revitalization Zone	-34,244.09	0.00	23,364.17	-57,608.26
Fund: 241 - CDBG Housing Rehabiliati	124,802.45	0.00	0.00	124,802.45
Fund: 244 - CDBG MicroEnterprise Le	82,045.16	300.00	0.00	82,345.16
Fund: 250 - Streets - Roads/Transport	-17,036.02	270.00	8,264.83	-25,030.85
Fund: 253 - Gas Taxes	69,518.37	4,026.04	1,720.67	71,823.74
Fund: 270 - Beverage Container Recyc	23,893.96	0.00	0.00	23,893.96
Fund: 280 - Oil Recycling	2,865.40	400.00	262.82	3,002.58
Fund: 286 - Bricks	5,218.73	0.00	0.00	5,218.73
Fund: 292 - Fire Department Capital Ft	27,097.94	0.00	0.00	27,097.94
Fund Type: 1.24 - Special Rev Funds - Restricted	532,619.91	4,996.04	60,392.99	477,222.96
Fund Type: 1.3 - CAPITAL PROJECT FUNDS				
Fund: 380 - CABOOSE RESTORATIO	-5,944.88	0.00	0.00	-5,944.88
Fund Type: 1.3 - CAPITAL PROJECT FUNDS	-5,944.88	0.00	0.00	-5,944.88
Fund Type: 1.34 - Capital Projects - Restricted				
Fund: 344 - PROP 40 Capital Projects	-231,311.89	0.00	76,128.67	-307,440.56
Fund: 350 - Streets Improvements Proje	233,308.42	0.00	3,985.00	229,323.42
Fund Type: 1.34 - Capital Projects - Restricted	1,996.53	0.00	80,113.67	-78,117.14
Fund Type: 2.11 - Enterprise Funds - Unassigned				
Fund: 560 - Sewer	-729,598.81	107,728.69	74,630.28	-696,500.40
Fund: 561 - Sewer Liftstations	348,103.12	21,204.93	84,316.48	284,991.57
Fund: 563 - Wastewater Treatment Pla	377,836.82	42,869.33	0.00	420,706.15

CASH TRANSACTIONS REPORT

MONTH: JUNE

City of Colfax

	Beginning Balance	Debit	Credit	Ending Balance
Fund: 565 - General Obligation Bond 1	22,000.04	19.09	0.00	22,019.13
Fund: 567 - Inflow & Infiltration	499,247.79	2,693.16	0.00	501,940.95
Fund Type: 2.11 - Enterprise Funds - Unassigned	517,588.96	174,515.20	158,946.76	533,157.40
Fund Type: 2.14 - Enterprise Funds - Restricted				
Fund: 569 - Pond 3 Lining- I&I Repair	-623,539.38	306,453.00	238,886.13	-555,972.51
Fund Type: 2.14 - Enterprise Funds - Restricted	-623,539.38	306,453.00	238,886.13	-555,972.51
Fund Type: 9.0 - CLEARING ACCOUNT				
Fund: 998 - PAYROLL CLEARING FU	130.33	36,698.08	36,827.75	0.66
Fund Type: 9.0 - CLEARING ACCOUNT	130.33	36,698.08	36,827.75	0.66
Grand Totals:	4,208,436.98	696,973.15	2,759,253.65	2,146,156.48

Check Register Report

Checks Processed - June 2013

Date: 07/24/2013

Time: 9:41 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							
49211	06/07/2013	Reconciled		01448	AMERIGAS - COLFAX	PROPANE FIRE DEPT	128.92
49212	06/07/2013	Reconciled		01500	ANDERSON'S SIERRA	SPLASH PARK SUPPLIES	273.26
49213	06/07/2013	Reconciled		01790	AUBURN OFFICE PRODUCTS	OFFICE SUPPLIES	45.12
49214	06/07/2013	Reconciled		04234	DE LANG LANDEN	COPY MACHINE CONTRACT	170.93
49215	06/07/2013	Reconciled		08500	HOLT OF CALIFORNIA	BACKHOE REPAIR CABLE	49.70
49216	06/07/2013	Reconciled		09455	INLAND BUSINESS SYSTEMS	COPY MACHINE MAINTENANCE	123.73
49217	06/07/2013	Reconciled		12180	LAWRENCE & ASSOCIATES INC	LANDFILL MONITORING APR '13	193.26
49218	06/07/2013	Reconciled		14370	NTU TECHNOLOGIES, INC	WWTP CHEMICALS	411.19
49219	06/07/2013	Reconciled		30023	PATRICK CLARK CONSULTING	UNION CONSULTING FEES	750.00
49220	06/07/2013	Reconciled		06011	PELLETREAU, ALDERSON & CABRAL	LEGAL FEES MAY 2013	13,304.65
49221	06/07/2013	Reconciled		16035	PG&E	UTILITIES	15,353.07
49222	06/07/2013	Reconciled		16559	PLAZA TIRE AND AUTO SERVICE	TIRE FLAT REPAIR	15.00
49223	06/07/2013	Reconciled		19300	SHAW ENVIRONMENTAL, INC.	UNDERGROUND TANK TESTING	3,384.88
49224	06/07/2013	Reconciled		14295	SPRINT NEXTEL COMMUNICATIONS	CELL PHONES	333.22
49225	06/07/2013	Reconciled		19599	STAPLES BUSINESS ADVANTAGE	SUPPLIES	17.93
49226	06/07/2013	Reconciled		19706	STATIONARY ENGINEERS LOCAL 39	UNION SETTLEMENT AGREEMENT	25,000.00
49227	06/07/2013	Reconciled		22106	VAN GRONINGEN & ASSOCIATES	FINANCE CONSULTANT	4,355.00
49228	06/07/2013	Reconciled		23169	WAVE BUSINESS SOLUTIONS	INTERNET/PHONE CITY HALL	245.40
49229	06/13/2013	Reconciled		01448	AMERIGAS - COLFAX	DEPOT PROPANE	134.01
49230	06/13/2013	Reconciled		01460	AMERIPRIDE UNIFORM SERVICE	UNIFORMS	336.13
49231	06/13/2013	Reconciled		02084	BRIGIT BARNES	PLANNING SERVICES MAY 2013	16,667.99
49232	06/13/2013	Reconciled		02863	BT CONSULTING	POND 3 LINER	250.00
49233	06/13/2013	Reconciled		08170	HILLS FLAT LUMBER CO	SUPPLIES	990.61
49234	06/13/2013	Reconciled		08660	HUNT AND SONS, INC.	GASOLINE PUBLIC WORKS	502.53
49235	06/13/2013	Reconciled		11130	KRUGER, INC.	WWTP CHAIN	166.17
49236	06/13/2013	Reconciled		12564	LORANG BROTHERS CONSTRUCTION	I & I MITIGATION	106,956.17
49237	06/13/2013	Reconciled		13274	MIRACLE PLAYSYSTEMS, INC	SPLASH PARK	75,199.17
49238	06/13/2013	Reconciled		16009	SEAN PATRICK	WWTP CONSULTING MAY 2013	840.00
49239	06/13/2013	Printed		16200	PLACER COUNTY SHERIFF DEPT.	DISTRACTED DRIVING REIMBURSE	4,154.43
49240	06/13/2013	Reconciled		16821	PSOMAS	POND 3 LINER PROJECT	2,202.66
49241	06/13/2013	Reconciled		18193	RECOLOGY AUBURN PLACER	WWTP DEBRIS BOX RENTAL	1,150.00
49242	06/13/2013	Reconciled		18400	RIEBES AUTO PARTS	SUPPLIES	115.80
49243	06/13/2013	Reconciled		21560	US BANK CORPORATE PMT SYSTEM	CREDIT CARD PURCHASES	1,252.71
49244	06/13/2013	Reconciled		23169	WAVE BUSINESS SOLUTIONS	INTERNET HESCH	37.95
49245	06/13/2013	Reconciled		23301	WESTERN PLACER WASTE	WWTP SLUDGE REMOVAL	763.57
49246	06/19/2013	Reconciled		01414	ALHAMBRA & SIERRA SPRINGS	WATER CITY HALL/CORP YARD	149.73
49247	06/19/2013	Reconciled		01766	AT&T MOBILITY	CELL PHONES	393.24
49248	06/19/2013	Reconciled		03164	CASH- PETTY CASH REIMBURSEMENT	PETTY CASH REIMBURSEMENT	45.88
49249	06/19/2013	Printed		30028	MAYLENE COONEY	SEWER BILL REFUND	624.27
49250	06/19/2013	Reconciled		04400	DIAMOND WELL DRILLING CO.	WWTP MONITORING APR '13	4,359.00
49251	06/19/2013	Reconciled		04592	DWAYNE ARMSTRONG COMMUNICATION	INTERNET WWTP JULY '13	99.95
49252	06/19/2013	Reconciled		10550	JOSEPH HALTON	ENVELOPES	155.88
49253	06/19/2013	Reconciled		14370	NTU TECHNOLOGIES, INC	WWTP CHEMICALS	2,101.63
49254	06/19/2013	Printed		16165	PLACER COUNTY ENVIRONMENTAL	WWTP HAZMAT FEES	929.00
49255	06/19/2013	Printed		16200	PLACER COUNTY SHERIFF DEPT.	SHERIFFS CONTRACT Q4	141,453.00
49256	06/19/2013	Reconciled		16211	PLACER COUNTY TAX COLLECTOR	WWTP FACILITY NOTE 2012	2,000,000.00
49257	06/19/2013	Reconciled		19591	STANLEY CONVERGENT SECURITY	DEPOT SECURITY 7/1-9/30/13	111.30
49258	06/19/2013	Reconciled		21131	UNION PACIFIC RAILROAD COMPANY	DINKY CLOSURE FENCE	250.00

DAILY CASH SUMMARY REPORT

06/01/2013 - 06/30/2013

City of Colfax

MJE No.	Line	Posting Date	Type	GL Number	Debit	Credit	Net Chng
Fund: 100 - General Fund							
	79042	5 06/06/2013	CR	100-000-1000	61.00	0.00	61.00
	79042	7 06/06/2013	CR	100-000-1000	2,528.85	0.00	2,528.85
	79042	9 06/06/2013	CR	100-000-1000	178.25	0.00	178.25
	79042	11 06/06/2013	CR	100-000-1000	121.00	0.00	121.00
	79042	13 06/06/2013	CR	100-000-1000	872.71	0.00	872.71
	79042	15 06/06/2013	CR	100-000-1000	1,000.00	0.00	1,000.00
	79042	19 06/06/2013	CR	100-000-1000	1.65	0.00	1.65
	79048	1 06/06/2013	CR	100-000-1000	37.50	0.00	37.50
06/06/2013	Daily Totals				4,800.96	0.00	4,800.96
	79043	9 06/11/2013	CR	100-000-1000	61.00	0.00	61.00
	79043	11 06/11/2013	CR	100-000-1000	1,133.27	0.00	1,133.27
	79049	1 06/11/2013	CR	100-000-1000	544.00	0.00	544.00
06/11/2013	Daily Totals				1,738.27	0.00	1,738.27
	79044	1 06/13/2013	CR	100-000-1000	20.00	0.00	20.00
	79044	5 06/13/2013	CR	100-000-1000	4,154.43	0.00	4,154.43
	79050	1 06/13/2013	CR	100-000-1000	1,684.50	0.00	1,684.50
	79057	1 06/13/2013	CR	100-000-1000	26.00	0.00	26.00
06/13/2013	Daily Totals				5,884.93	0.00	5,884.93
	79035	1 06/17/2013	CR	100-000-1000	965.55	0.00	965.55
	79035	3 06/17/2013	CR	100-000-1000	125.64	0.00	125.64
	79035	5 06/17/2013	CR	100-000-1000	1,909.49	0.00	1,909.49
	79051	1 06/17/2013	CR	100-000-1000	5,170.00	0.00	5,170.00
06/17/2013	Daily Totals				8,170.68	0.00	8,170.68
	79052	1 06/18/2013	CR	100-000-1000	615.00	0.00	615.00
06/18/2013	Daily Totals				615.00	0.00	615.00
	79037	1 06/20/2013	CR	100-000-1000	47,729.00	0.00	47,729.00
	79045	5 06/20/2013	CR	100-000-1000	1,047.84	0.00	1,047.84
	79045	7 06/20/2013	CR	100-000-1000	150.00	0.00	150.00
	79045	9 06/20/2013	CR	100-000-1000	1.20	0.00	1.20
	79045	11 06/20/2013	CR	100-000-1000	2.10	0.00	2.10
	79045	13 06/20/2013	CR	100-000-1000	0.15	0.00	0.15
	79053	1 06/20/2013	CR	100-000-1000	2,344.00	0.00	2,344.00
	79059	1 06/20/2013	CR	100-000-1000	38.50	0.00	38.50
06/20/2013	Daily Totals				51,312.79	0.00	51,312.79
	78476	1 06/23/2013	CR	100-000-1000	0.00	82.50	-82.50
	79263	1 06/23/2013	CR	100-000-1000	82.50	0.00	82.50
06/23/2013	Daily Totals				82.50	82.50	0.00
	79054	1 06/24/2013	CR	100-000-1000	3,010.30	0.00	3,010.30
06/24/2013	Daily Totals				3,010.30	0.00	3,010.30
	79036	1 06/26/2013	CR	100-000-1000	61,935.44	0.00	61,935.44
	79046	1 06/26/2013	CR	100-000-1000	1,180.00	0.00	1,180.00

DAILY CASH SUMMARY REPORT

06/01/2013 - 06/30/2013

City of Colfax

MJE No.	Line	Posting Date	Type	GL Number	Debit	Credit	Net Chng	
79046	3	06/26/2013	CR	100-000-1000	2,305.00	0.00	2,305.00	
79046	9	06/26/2013	CR	100-000-1000	61.00	0.00	61.00	
06/26/2013		Daily Totals			65,481.44	0.00	65,481.44	
79047	3	06/28/2013	CR	100-000-1000	2,528.85	0.00	2,528.85	
79047	5	06/28/2013	CR	100-000-1000	721.00	0.00	721.00	
79264	1	06/28/2013	CR	100-000-1000	1,846.00	0.00	1,846.00	
06/28/2013		Daily Totals			5,095.85	0.00	5,095.85	
Fund: 100 - General Fund					TOTALS:	146,192.72	82.50	146,110.22
Fund: 120 - Land Development Fees								
79043	7	06/11/2013	CR	120-000-1000	3,960.08	0.00	3,960.08	
06/11/2013		Daily Totals			3,960.08	0.00	3,960.08	
79047	1	06/28/2013	CR	120-000-1000	5,478.82	0.00	5,478.82	
79047	7	06/28/2013	CR	120-000-1000	2,500.00	0.00	2,500.00	
06/28/2013		Daily Totals			7,978.82	0.00	7,978.82	
Fund: 120 - Land Development Fees					TOTALS:	11,938.90	0.00	11,938.90
Fund: 244 - CDBG MicroEnterprise Lending								
79043	1	06/11/2013	CR	244-000-1000	176.81	0.00	176.81	
79043	3	06/11/2013	CR	244-000-1000	123.19	0.00	123.19	
06/11/2013		Daily Totals			300.00	0.00	300.00	
Fund: 244 - CDBG MicroEnterprise Lending					TOTALS:	300.00	0.00	300.00
Fund: 250 - Streets - Roads/Transportation								
79045	1	06/20/2013	CR	250-000-1000	90.00	0.00	90.00	
79045	3	06/20/2013	CR	250-000-1000	90.00	0.00	90.00	
06/20/2013		Daily Totals			180.00	0.00	180.00	
79046	7	06/26/2013	CR	250-000-1000	90.00	0.00	90.00	
06/26/2013		Daily Totals			90.00	0.00	90.00	
Fund: 250 - Streets - Roads/Transportation					TOTALS:	270.00	0.00	270.00
Fund: 253 - Gas Taxes								
79039	1	06/28/2013	CR	253-000-1000	1,045.77	0.00	1,045.77	
79039	3	06/28/2013	CR	253-000-1000	735.30	0.00	735.30	
79039	5	06/28/2013	CR	253-000-1000	1,000.96	0.00	1,000.96	
79039	7	06/28/2013	CR	253-000-1000	1,244.01	0.00	1,244.01	

DAILY CASH SUMMARY REPORT

06/01/2013 - 06/30/2013

City of Colfax

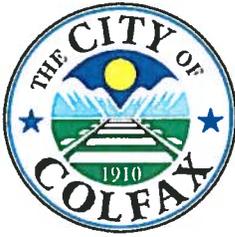
MJE No.	Line	Posting Date	Type	GL Number	Debit	Credit	Net Chng	
06/28/2013		Daily Totals			4,026.04	0.00	4,026.04	
Fund: 253 - Gas Taxes					TOTALS:	4,026.04	0.00	4,026.04
Fund: 280 - Oil Recycling								
79044	7	06/13/2013	CR	280-000-1000	400.00	0.00	400.00	
06/13/2013		Daily Totals			400.00	0.00	400.00	
Fund: 280 - Oil Recycling					TOTALS:	400.00	0.00	400.00
Fund: 560 - Sewer								
79038	1	06/05/2013	CR	560-000-1000	200.00	0.00	200.00	
06/05/2013		Daily Totals			200.00	0.00	200.00	
Fund: 560 - Sewer					TOTALS:	200.00	0.00	200.00
Fund: 561 - Sewer Liftstations								
79042	1	06/06/2013	CR	561-000-1000	407.00	0.00	407.00	
79042	3	06/06/2013	CR	561-000-1000	407.00	0.00	407.00	
79042	17	06/06/2013	CR	561-000-1000	407.00	0.00	407.00	
06/06/2013		Daily Totals			1,221.00	0.00	1,221.00	
79044	3	06/13/2013	CR	561-000-1000	407.00	0.00	407.00	
06/13/2013		Daily Totals			407.00	0.00	407.00	
79058	1	06/20/2013	CR	561-000-1000	407.00	0.00	407.00	
79058	3	06/20/2013	CR	561-000-1000	407.00	0.00	407.00	
06/20/2013		Daily Totals			814.00	0.00	814.00	
79046	5	06/26/2013	CR	561-000-1000	407.00	0.00	407.00	
79046	11	06/26/2013	CR	561-000-1000	407.00	0.00	407.00	
06/26/2013		Daily Totals			814.00	0.00	814.00	
Fund: 561 - Sewer Liftstations					TOTALS:	3,256.00	0.00	3,256.00
Fund: 565 - General Obligation Bond 1978								
79035	7	06/17/2013	CR	565-000-1000	18.06	0.00	18.06	
79035	9	06/17/2013	CR	565-000-1000	1.03	0.00	1.03	
06/17/2013		Daily Totals			19.09	0.00	19.09	
Fund: 565 - General Obligation Bond 1978					TOTALS:	19.09	0.00	19.09

DAILY CASH SUMMARY REPORT

06/01/2013 - 06/30/2013

City of Colfax

MJE No.	Line	Posting Date	Type	GL Number	Debit	Credit	Net Chng	
Fund: 569 - Pond 3 Lining- I&I Repair								
	79043	5 06/11/2013	CR	569-000-1000	71,987.00	0.00	71,987.00	
06/11/2013		Daily Totals			71,987.00	0.00	71,987.00	
	79041	1 06/13/2013	CR	569-000-1000	117,233.00	0.00	117,233.00	
	79055	1 06/13/2013	CR	569-000-1000	117,233.00	0.00	117,233.00	
06/13/2013		Daily Totals			234,466.00	0.00	234,466.00	
	79265	1 06/28/2013	CR	569-000-1000	0.00	117,233.00	-117,233.00	
06/28/2013		Daily Totals			0.00	117,233.00	-117,233.00	
Fund: 569 - Pond 3 Lining- I&I Repair					TOTALS:	306,453.00	117,233.00	189,220.00
GRAND TOTALS:					473,055.75	117,315.50	355,740.25	



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE August 14th, 2013 COUNCIL MEETING

FROM: Gabe Armstrong, Interim City Manager

PREPARED BY: Alan Mitchell, City Engineer

SUBJECT: Consideration of Adoption of Resolution No. 32-2013: A Resolution of the City Council of the City of Colfax Authorizing the Interim City Manager To Execute the Fourth Amendment to the Consultant Services Agreement between the City of Colfax and Psomas.

RECOMMENDED ACTION: Adopt Resolution No. 32-2013

ISSUE STATEMENT AND DISCUSSION:

On May 21, 2012, through Resolution 19-2012 adopted May 23, 2012, the City entered into a Consulting Services Agreement (CSA) with Psomas for resident engineering, inspection and geotechnical services for the construction of the Pond 3 Liner Project. The Agreement was further amended on July 25, 2012, January 23, 2013, and February 13, 2013, to add inspection and geotechnical services for the I&I Mitigation project and increase allowable compensation due to an extended construction period. The contract currently totals \$376,498 for both projects.

A subsequent amendment is required for the following reasons: 1) actual costs for the I&I Mitigation project exceeded the budget amount, which was discovered as the project came to a close. This amendment (fourth) covers that additional compensation. 2) the Pond 3 Liner Project was temporarily stopped while the City completed dewatering of the pond following the winter rain events. Psomas is tasked with providing additional inspection services as the remaining work is completed in August by Campbell Construction. This amendment covers the cost for these added services.

Staff recommends that Council amend Psomas' contract to a total contract amount of \$415,000, for the I&I Mitigation project and the Pond 3 Liner project.

FINANCIAL AND/OR POLICY IMPLICATIONS

The cost will be covered by State Revolving Fund loan and there are adequate funds budgeted to cover the revised costs.

SUPPORTING DOCUMENTS

- (1) Fourth Amendment to the Consultant Services Agreement between the City and Psomas
- (2) Resolution

COMMITTEE RECOMMENDATION

This report was not discussed by any committee.

**FOURTH AMENDMENT TO CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF COLFAX AND PSOMAS**

ARTICLE 1. PARTIES AND DATE

This Fourth Amendment to the Consultant Services Agreement (“Fourth Amendment”) dated as of the 15th day of August, 2013 is entered into by and between the City of Colfax (“City”) and Psomas (“Consultant”).

ARTICLE 2. RECITALS

2.1 City and Consultant entered into that certain Consultant Services Agreement dated May 21, 2012 (“Agreement”), whereby Consultant agreed to provide Resident Inspection and Geotechnical Services for the WWTP Pond 3 Liner, Project No. 11-01.02.

2.2 City amended the Agreement on July 25, 2012, January 23, 2013, and February 13, 2013 to included Inspection and Geotechnical Services for the I&I Mitigation, and to increase compensation for both the I&I Mitigation and Pond 3 Liner projects.

2.4 Due to project delays and additional work associated with the I&I Mitigation and Pond 3 Liner project, the budget for the Consultant’s services has exceed the amount provided in the original Agreement and subsequent amendments. This amendment revises the compensation to the Consultant, both projects.

ARTICLE 3. TERMS

3.1 Compensation. Section 3A. shall be amended to read as follows:

A. Except as may otherwise be provided in Exhibits A or B or the original agreement, or elsewhere in this Agreement or its exhibits, Consultant shall invoice City once each month for the Services performed during the preceding month. Such invoices shall itemize all charges in such detail as may reasonably be required by City in the usual course of City business but shall include at least (i) the date of performance of each of the Services, (ii) identification of the person who performed the Services, (iii) a detailed description of the Services performed on each date, (iv) the hourly rate at which the Services on each date are charged, (v) an itemization of all costs incurred and (vi) the total charges for the Services for the month invoiced. As long as the Consultant performs the Services to the satisfaction of the City, the City shall pay the Consultant an all-inclusive compensation that **shall not exceed \$415,000**, except pursuant to an authorized written change order issued pursuant to Section 15 of this Agreement before the Services requiring additional compensation are performed. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City’s staff.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after

**FOURTH AMENDMENT TO CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF COLFAX AND PSOMAS**

the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

3.4 Counterparts. This Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

PSOMAS
A California Corporation

CITY OF COLFAX
A Municipal Corporation

Kenneth D. Stram
Vice President/Principal

Gabe Armstrong
Interim City Manager

ATTEST:

APPROVED AS TO FORM:

Karen Pierce, City Clerk

Alfred A. Cabral, City Attorney

CITY OF COLFAX

RESOLUTION NO. 32-2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLFAX AUTHORIZING CITY MANAGER TO EXECUTE THE FOURTH AMENDMENT TO CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF COLFAX AND PSOMAS

WHEREAS, the Council of the City of Colfax on May 23, 2012 adopted Resolutions 19-2012 for a Consulting Services Agreement with Psomas for Resident Engineer/Inspection and Geotechnical Engineering Services for the WWTP Pond 3 Liner Project.in the amount of \$213,552; and,

WHEREAS, three subsequent amendments were issued for the project that revised the contract amount to \$376,498; and,

WHEREAS, the City requires further inspection services for the Pond 3 Liner and I&I Mitigation Projects; and,

WHEREAS, Psomas' cost due to these inspections has and will exceed the contracted amount.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Colfax hereby authorizes the Interim City Manager to execute the Fourth Amendment to Consulting Services Agreement between the City of Colfax and Psomas for a total contract price of \$415,000.

PASSED AND ADOPTED, this 14th day of August, 2013, by the City Council of the City of Colfax, by the following roll call vote:

AYES:

NOES:

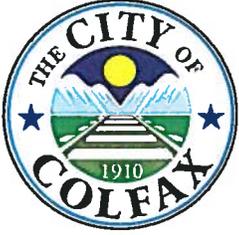
ABSENT:

ABSTAIN:

Donna Barkle, Mayor

ATTEST:

Karen Pierce, City Clerk



CITY of COLFAX

C A L I F O R N I A



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE COUNCIL MEETING OF AUGUST 14, 2013

FROM: Gabe Armstrong, Interim City Manager

PREPARED: August 6, 2013

SUBJECT: Consideration Of Adoption Of Resolution No. 33 – 2013 : A Resolution Of The City Council Of The City Of Colfax Authorizing The City Manager To Execute An Agreement With Lawrence And Associates For Continued Monitoring Of The Ground Water And Gas Monitoring At The Colfax Landfill.

RECOMMENDED ACTION: Adopt Resolution No. 33 -13

ISSUE STATEMENT AND DISCUSSION:

Groundwater monitoring at the landfill is regulated by the California Regional Water Quality Control Board (RWQCB) under Waste Discharge Requirements Order No. R5-2005-0161 (WDR).

Gas monitoring is regulated by the California Integrated Waste Management Board (CIWMB), through *Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 3, Subchapter 4, Article 6.*

This mandatory monitoring is required for 30 years after approval of the certification of the landfill closure. The City has 25 years remaining of this requirement. The City adopted a landfill surcharge on refuse disposal fees for funding of this monitoring.

FINANCIAL AND/OR POLICY IMPLICATIONS:

\$13,441.60 for fiscal year 2013-14 which is below budget. The adopted budget for fiscal year 2013-14 estimated \$20,000 for Testing and Monitoring.

SUPPORTING DOCUMENTS:

Consultant Agreement
Exhibit A: Cost Estimate
Resolution No. 33-2013

COMMITTEE RECOMMENDATION:

This report was not discussed by any committee

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on this 14th day of August, 2013 by and between the City of Colfax, a municipal corporation of the State of California (“City”) and Lawrence and Associates (“Consultant”).

RECITALS

A. The City desires to retain Consultant to provide the Services set forth in detail in Exhibit A hereto (the “Services”) subject to the terms and conditions of this Agreement.

B. Consultant is duly licensed and sufficiently experienced to undertake and perform the Services in a skilled and workmanlike manner and desires to do so in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual covenants, promises and conditions set forth in this Agreement, the City and Consultant agree as follows:

Section 1. Services.

Subject to the terms and conditions set forth in this Agreement, Consultant shall furnish and perform all of the Services described in detail in Exhibit A hereto and incorporated herein by this reference (the “Services”) to the satisfaction of the City. Consultant shall not perform any work exceeding the scope of the Services described in Exhibit A without prior written authorization from the City.

Section 2. Time of Completion.

Consultant’s schedule for performance of the Services is set forth in Exhibit A hereto which is incorporated herein by this reference. Consultant shall commence performance of the Services promptly upon receipt of written notice from the City to proceed. Performance of the Services shall progress and conclude in accordance with the schedule set forth in Exhibit A. During the performance of the Services, Consultant shall provide the City with written progress reports at least once each month and at such additional intervals as City may from time to time request.

Section 3. Compensation.

A. Except as may otherwise be provided in Exhibit A or elsewhere in this Agreement or its exhibits, Consultant shall invoice City once each month for the Services performed during the preceding month. Such invoices shall itemize all charges in such detail as may reasonably be required by City in the usual course of City business but shall include at least (i) the date of performance of each of the Services, (ii) identification of the person who performed the Services, (iii) a detailed description of the Services performed on each date, (iv) the hourly rate at which the Services on each date are charged, (v) an itemization of all costs incurred and (vi) the total charges for the Services for the month invoiced. As long as the Consultant performs the Services to the satisfaction of the City, the City shall pay the Consultant an all inclusive compensation that shall

not exceed the amount as detailed in Exhibit A except pursuant to an authorized written change order issued pursuant to Section 15 of this Agreement before the Services requiring additional compensation are performed. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City's staff.

B. The Consultant's compensation for the Services shall be full compensation for all indirect and direct personnel, materials, supplies, equipment and services incurred by the Consultant and used in carrying out or completing the Services. Payments shall be in accordance with the payment schedule established in Exhibit A or elsewhere in this Agreement or its exhibits.

C. The City shall have the right to receive, upon request, documentation substantiating charges billed to the City pursuant to this Agreement. The City shall have the right to perform an audit of the Consultant's relevant records pertaining to the charges.

D. Any Services performed more than sixty (60) days prior to the date upon which they are invoiced to the City shall not be compensable.

Section 4. Professional Ability; Standard of Quality.

City has relied upon the professional training and ability of Consultant to perform the Services described in Exhibit A as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all Services under this Agreement. All Services performed by Consultant under this Agreement shall be in a skillful, workmanlike manner in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

Section 5. Indemnification.

Consultant shall hold harmless and indemnify, including without limitation the cost to defend, the City and its officers, agents and employees from and against any and all claims, demands, damages, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and/or its agents in the performance of the Services. This indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, arising from the sole negligence, willful misconduct or material defects in design by the City or its agents, servants employees or independent contractors other than Consultant who are directly responsible to the City, or arising from the active negligence of the City officers, agents, employees or volunteers

Section 6. Insurance.

Without limiting Consultant's indemnification obligations provided for above, Consultant shall take out before beginning performance of the Services and maintain at all times during the life of this Agreement the following policies of insurance with insurers possessing a Best rating of not less than A. Consultant shall not allow any subcontractor, professional or otherwise, to commence work on any subcontract until all insurance required of the Consultant has also been obtained by the

subcontractor.

- A. Workers' Compensation Coverage. Statutory Workers' Compensation insurance and Employer's Liability Insurance to cover its employees. In the alternative, Consultant may rely on a self-insurance program to meet its legal requirements as long as the program of self-insurance complies fully with the provisions of the California Labor Code. Consultant shall also require all subcontractors, if such are authorized by the City, to similarly provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the subcontractor's employees. All Workers' Compensation policies shall be endorsed with the provision that the insurance shall not be suspended, voided, or cancelled until thirty (30) days prior written notice has been provided to City by the insurer. The Workers' Compensation insurance shall also contain a provision whereby the insurance company agrees to waive all rights of subrogation against the City and its elected or appointed officials, officers, agents, and employees for losses paid under the terms of such policy which arise from the Services performed by the insured for the City.
- B. General Liability Coverage. General liability insurance, including personal injury and property damage insurance for all activities of the Consultant and its subcontractors, if such are authorized by the City, arising out of or in connection with the Services. The insurance shall be written on a comprehensive general liability form and include a broad form comprehensive general liability endorsement. In the alternative, the City will accept, in satisfaction of these requirements, commercial general liability coverage which is equivalent to the comprehensive general liability form and a broad form comprehensive general liability endorsement. The insurance shall be in an amount of not less than \$1 million combined single limit personal injury and property damage for each occurrence. The insurance shall be occurrence based insurance. General liability coverage written on a claims made basis shall not be acceptable absent prior written authorization from the City.
- C. Automobile Liability Coverage. Automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$1 million combined single limit for each occurrence.
- D. Policy Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following provisions:
1. The City, and its elected or appointed officials, employees and agents shall be named as insureds or additional insureds with regard to damages and defenses of claims arising from activities performed by or on behalf of the Consultant.
 2. The insurance afforded by each policy shall apply separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limits of liability.
 3. The insurance shall be primary insurance as respects the City and its elected or appointed officers, officials, employees and agents. Any other insurance maintained by

the City or its elected or appointed officers, officials, employees, agents or volunteers shall be in excess of this insurance and shall not contribute with it.

4. The insurance shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been provided to the City.
 5. Any failure to comply with the reporting requirements of any policy shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, or agents.
- E. Professional Liability Coverage. If required by the City, Consultant shall also take out and maintain professional liability, errors and omissions insurance in an amount not less than \$1 million. The professional liability insurance policy shall be endorsed with a provision stating that it shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days written notice has been provided to the City.
- F. Insurance Certificates and Endorsements. Prior to commencing the Services under this Agreement, Consultant shall submit to the City documentation evidencing the required insurance signed by the insurance agent and the companies named. This documentation shall be on forms which are acceptable to the City and shall include all required endorsements and verify that coverage is actually in effect. This Agreement shall not be effective until the required insurance forms and endorsements are submitted to and approved by the City. Failure to provide these forms within the time period specified by City may result in the award of this Agreement to another Consultant should the City, in its sole discretion, decide to do so. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.
- G. Deductible and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City.
- H. Termination of Insurance. If the City receives notification that Consultant's insurance will be suspended, voided, cancelled or reduced in coverage or in limits, and if the Consultant does not provide for either the reinstatement of that insurance or for the furnishing of alternate insurance containing all of the terms and provisions specified above prior to the termination of that insurance, City may either terminate this Agreement for that breach, or City may secure the required insurance to satisfy the conditions of this Agreement and deduct the cost thereof from compensation which would otherwise be due and payable to the Consultant for Services rendered under the terms of this Agreement.

Section 7. Subcontracts.

Consultant may not subcontract any portion of the Services without the written authorization of City. If City consents to a subcontract, Consultant shall be fully responsible to the City and third parties for all acts or omissions of the subcontractor to which the Services or any portion thereof are subcontracted. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor, nor shall it create any obligation on the part of the City to pay or cause the

payment of any monies due to any such subcontractor except as otherwise is required by law.

Section 8. Assignment.

Consultant shall not assign any right or obligation under this Agreement without the City's prior written consent. Any attempted assignment of any right or obligation under this Agreement without the City's prior written consent shall be void.

Section 9. Entire Agreement.

This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties.

Section 10. Jurisdiction.

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction over any litigation arising from this Agreement shall be in the Superior Court of the State of California with venue in Placer County, California.

Section 11. Suspension of Services.

Upon written request by Consultant, City may suspend, in writing, all or any portion of the Services if unforeseen circumstances beyond the control of the City and Consultant make normal progress of the Services impossible, impractical or infeasible. Upon written City approval to suspend performance of the Services, the time for completion of the Services shall be extended by the number of days performance of the Services is suspended.

Section 12. Termination of Services.

City may at any time, at its sole discretion, terminate all or any portion of the Services and this Agreement upon seven (7) days written notice to Consultant. Upon receipt of notice of termination, Consultant shall stop performance of the Services at the stage directed by City. Consultant shall be entitled to payment within thirty (30) days for Services performed up to the date of receipt of the written notice of termination. Consultant shall not be entitled to payment for any Services performed after the receipt of the notice of termination unless such payment is authorized in advance in writing by the City.

Should Consultant fail to perform any of the obligations required of Consultant within the time and in the manner provided for under the terms of this Agreement, or should Consultant violate any of the terms and conditions of this Agreement, City may terminate this Agreement by providing Consultant with seven (7) days written notice of such termination. The Consultant shall be compensated for all Services performed prior to the date of receipt of the notice of termination. However, the City may deduct from the compensation which may be owed to Consultant the amount of damage sustained or estimated by City resulting from Consultant's breach of this

Agreement.

Consultant's obligations pursuant to Sections 5 and 6 of this Agreement shall survive termination, and continue in effect for as long as necessary to fulfill the purposes of Sections 5 and 6.

Section 13. Independent Contractor.

Consultant shall in all respects be an independent contractor and not an employee of City. In particular, the following are specifically applicable to Consultant's performance of the Services:

- A. Consultant shall receive no premium or enhanced pay for work normally understood as overtime; nor shall Consultant receive holiday pay, sick leave, administrative leave, vacation or pay for any other time not actually worked.
- B. Consultant shall not be eligible for benefits and shall receive no compensation from the City, except as expressly set forth in this Agreement.
- C. From time to time during the term of this Agreement, Consultant will be unavailable to perform the Services outlined in this Agreement. Consultant will be responsible to make appropriate arrangements to ensure that no interruption to the fiscal workflow of City occurs. Times of unavailability will be negotiated between Consultant and the City Manager/Executive Director.
- D. Consultant may contract to perform services for other clients or entities as long as performance of said services does not interfere or conflict with Consultant's performance of Services for the City.
- E. Consultant retains exclusive control over the means and methods of performing the Services pursuant to this Agreement. Consultant shall have no established hours or schedule and shall be permitted to perform the Services according to its own schedule. The City shall have the right to maintain control over only the end product or final result of the Services, but not over how such end product or final result are achieved. The City shall not provide, and Consultant shall not receive, any training or directions from the City regarding how Consultant performs the Services pursuant to this Agreement.
- F. Consultant shall supply its own instrumentalities, tools and place of performing the Services pursuant to this Agreement.
- G. Consultant's compensation shall be based on the actual number of hours for which Consultant provides the Services multiplied by Consultant's hourly rate plus reimbursable expenses. The City will report Consultant's compensation for federal income tax purposes on an IRS Form 1099-Misc. The City shall not withhold any federal income tax, FICA or Medicare nor any California personal income tax (CAPIT), SDI, SUI, ETT or similar withholdings from Consultant's compensation. Consultant shall be solely responsible for paying all self employment and similar taxes from Consultant's compensation under this Agreement.

- H. Consultant shall not be eligible for coverage under the City's Workers Compensation or similar insurance coverage.

Section 14. Ownership of Documents.

Within thirty (30) days after the Consultant substantially completes performance of the Services, or within thirty (30) days after the termination of this Agreement, the Consultant shall deliver to the City all files, records, materials and documents drafted or prepared by Consultant's in the performance of the Services. It is expressly understood and agreed that all such files, records, materials and documents are the property of the City and not the property of the Consultant. All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of performing the Services shall become the sole property of the City upon payment to Consultant for the Services, and the City shall have the exclusive right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and writings to City or any party the City may designate, upon written request. Consultant may keep file copies of all documents prepared for City. Use of any such documents by the City for projects that are not the subject of this Agreement or for purposes beyond the scope of the Services shall be at the City's sole risk without legal liability or expense to Consultant.

Section 15. Changes and/or Extra Work.

Only the City Council may authorize extra and/or changed Services, modification of the time of completion of the Services, or additional compensation for the tasks to be performed by Consultant. Consultant expressly recognizes that other City personnel are without authorization to order extra and/or changed Services or to obligate the City to the payment of additional compensation. The failure of Consultant to secure the prior written authorization for such extra and/or changed Services shall constitute a waiver of any and all right to adjustment in the contract price due to such unauthorized Services, and Consultant thereafter shall not be entitled to any compensation whatsoever for the performance of such extra or changed Services. In the event Consultant and City agree that extra and/or changed Services are required, or that additional compensation shall be awarded to Consultant for performance of the Services under this Agreement, a supplemental agreement providing for such compensation shall be prepared and shall be executed by the Consultant and the necessary City officials before the extra and/or changed Services are provided.

Section 16. Compliance with Federal, State and Local Laws.

Consultant shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations affecting the Services, including without limitation laws requiring licensing and prohibiting discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases. City shall not be responsible or liable for Consultant's failure to comply with applicable laws, statutes, ordinances, rules or regulations.

Section 17. Retention of Records.

Consultant and any subconsultants authorized by the terms of this Agreement shall keep and maintain full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to the Services, and Consultant shall make such documents available for review and/or audit by City and City's representatives at all reasonable times during performance of the Services and for at least four (4) years after completion of the Services and/or termination of this Agreement.

Section 18. Alternative Dispute Resolution

- A. Before resorting to mediation, arbitration or other legal process, the primary contacts of the parties shall meet and confer and attempt to amicably resolve any dispute arising from or relating to this Agreement subject to the following provisions. Any party desiring to meet and confer shall so advise the other party pursuant to a written notice. Within 15 days after provision of that written notice by the party desiring to meet and confer, the primary contacts for each party shall meet in person and attempt to amicably resolve their dispute. Each primary contact, or the person acting in their absence with full authority to resolve the dispute, shall attend the meeting and shall be prepared to devote an entire day thereto. If any dispute remains unresolved at the end of the meeting, any party to this Agreement shall have the right to invoke the mediation process provided for in the subparagraph B below.
- B. Subject to the provisions of subparagraph A, any dispute that remains unresolved after the meet and confer shall immediately be submitted to non-binding neutral mediation, before a mutually acceptable, neutral retired judge or justice at the Sacramento Office of the Judicial Arbitration and Mediation Service ("JAMS"). If within five days after the meet and confer the parties are unable to agree upon the selection of a neutral mediator, then the first available retired judge or justice at the Sacramento office of JAMS shall serve as the neutral mediator. The parties agree to commit to at least one full day to the mediation process. Additionally, to expedite the resolution of any dispute that is not resolved by mediation, the parties agree to each bring to the neutral mediation a list of at least five neutral arbitrators, including their resumes, whose availability for an arbitration hearing within 30 days after the mediation has been confirmed.
- C. If mediation is unsuccessful, before the mediation concludes, the parties shall mediate the selection of a neutral arbitrator to assist in the resolution of their dispute. If the parties are unable to agree on an arbitrator, the parties agree to submit selection of an arbitrator to the mediator, whose decision shall be binding on the parties. In that case, the mediator shall select a neutral arbitrator from the then active list of retired judges or justices at the Sacramento Office of the JAMS. The arbitration shall be conducted pursuant to the provisions of the California Arbitration Act, sections 1280-1294.2 of the California Code of Civil Procedure. In such case, the provisions of Code of Civil Procedure Section 1283.05 and 1283.1 shall apply and are hereby incorporated into this Agreement.
- D. This section 18 shall survive the termination or expiration of this Agreement. If there is no Sacramento office of JAMS, then the office of JAMS closest to the City shall be used

produce or account for more than one such counterpart.

Section 24. Successors. This Agreement shall be binding on and inure to the benefit of the respective parties hereto except to the extent of any contrary provision in this Agreement.

Section 25. Attorney's Fees. If any party to this Agreement commences legal proceedings to enforce any of its terms or to recover damages for its breach, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and the expenses of expert witnesses, including any such fees costs and expenses incurred on appeal.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written:

CITY

CONSULTANT

Signature_____

Signature_____

Printed Name_____

Printed Name_____

Title_____

Title_____

Date_____

Date_____

APPROVED AS TO FORM:

City Attorney

Exhibit: A



P03020.06, Tasks 1 & 2

July 22, 2013

Mr. Gabe Armstrong
City of Colfax
P.O. Box 702
Colfax, CA 95713

Dear Mr. Armstrong:

**SUBJECT: COST ESTIMATE FOR 2013-2014 CONSULTING SERVICES AT
COLFAX LANDFILL**

This letter presents Lawrence & Associates' (L&A) cost estimate to provide consulting services at the Colfax Landfill for the 2013-2014 fiscal year. Services will include groundwater and landfill-gas monitoring.

Groundwater monitoring at the landfill is regulated by the California Regional Water Quality Control Board (RWQCB) under Waste Discharge Requirements Order No. R5-2005-0161 (WDR).

Gas monitoring is regulated by the California Integrated Waste Management Board (CIWMB), through *Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 3, Subchapter 4, Article 6.*

Groundwater Monitoring

Currently, L&A conducts the sampling for the four groundwater-monitoring wells. City staff is responsible for sampling the two surface-water monitoring points. L&A also prepares the monitoring reports, in conjunction with City staff. The cost estimate for the

2013-2014 fiscal year includes two sampling events and two reports, for the semiannual sampling required by the WDR. The cost estimate assumes that the City will continue to contract directly with the laboratory for the analysis (this is the most cost-effective option for the City).

For each sampling event, depth to groundwater will be measured to the nearest 0.01 foot with an electric well sounder. Each well will then be purged of at least three well volumes using the dedicated electric submersible pumps. Samples will be collected in appropriate containers obtained directly from the City's laboratory of choice. Samples will be hand delivered or shipped to the laboratory, accompanied by chain-of-custody documentation.

Results will be presented in semiannual reports, due by January 31 and July 31 each year. The reports will include the items required by the WDR, which are, at a minimum, Standard Observations, a description of sampling and testing methods, results, interpretation of the results, and maps showing the well locations, groundwater elevations, and groundwater-elevation contours. Appendices will contain laboratory sheets, field-data sheets, and historical data summaries and time-series graphs (required once per year).

Landfill-Gas Monitoring

Currently, L&A conducts the quarterly sampling for the one landfill-gas well at the site. L&A also prepares the monitoring reports. The cost estimate includes four sampling events (per State regulations) and four reports. If possible, the gas monitoring will be combined with the groundwater monitoring to reduce costs.

Gas pressure will be measured in each probe before sampling using a water manometer. Each probe will be purged using a vacuum pump designed for gas sampling and constructed of nonreactive materials.

The samples will be analyzed in the field using a gas monitor capable of quantifying methane, oxygen, and carbon dioxide. Results will be presented in a quarterly letter report. The reports will include, at a minimum, a description of field and testing methods, results, interpretation of the results, and a map showing the well location.

Cost Estimate

The detailed cost estimate is shown below. All billing will be on a time-and-expense basis except for outside expenses (subcontractors). Additional work would be on a time-and-expenses basis, at the rates shown in the 2013 Fee Schedule (attached).

COST ESTIMATE

Task 1: Water-Quality Monitoring & Reporting

Labor:

Travel time (4 events, 1 staff)	Hr	16	\$80.00	\$1,280.00
Senior Hydrogeologist: Review reports; technical support	Hr	8	\$120.00	\$960.00
Associate Geologist: Conduct water-quality sampling; prepare reports	Hr	32	\$105.00	\$3,360.00
CAD, Level I: Prepare site map & figures	Hr	4	\$75.00	\$300.00
Clerical: edit, reproduce data & report	Hr	6	\$60.00	<u>\$360.00</u>

Labor subtotal

\$6,260.00

Inside expenses:

Mileage	Mi	680	\$0.56	\$380.80
Equipment/materials	Day	4	\$75.00	\$300.00
Report materials	LS	1	\$200.00	<u>\$200.00</u>

Inside expenses subtotal

\$880.80

Task 1 Total:

\$7,140.80

Task 2: Landfill-Gas Monitoring & Reporting

Labor:

Travel time (4 events, 1 staff)	Hr	32	\$80.00	\$2,560.00
Senior Geologist: Review reports; technical support	Hr	2	\$120.00	\$240.00
Associate Geologist: Conduct landfill-gas sampling; prepare reports	Hr	16	\$105.00	\$1,680.00
CAD, Level I: Prepare site map & figures	Hr	4	\$75.00	\$300.00
Clerical: edit, reproduce data & reports	Hr	4	\$60.00	<u>\$240.00</u>

Labor subtotal

\$5,020.00

Inside expenses:

Mileage	Mi	680	\$0.56	\$380.80
Equipment	Day	4	\$200.00	\$800.00
Report materials	LS	1	\$100.00	<u>\$100.00</u>

Inside expenses subtotal

\$1,280.80

Task 2 Total:

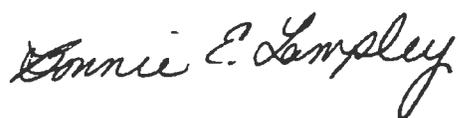
\$6,396.00

TOTAL

\$13,441.60

Please provide your preferred authorization if you would like us to conduct the work.
Please feel free to call us at (530) 275-4800 if you have any questions regarding this proposal.

Sincerely,

A handwritten signature in black ink that reads "Bonnie E. Lampley". The signature is written in a cursive style with a large, prominent initial "B".

Bonnie Lampley
President/Principal Hydrogeologist

Enc.: 2013 Fee Schedule



SCHEDULE OF FEES

Professional Services

Engineering Geologist/Hydrogeologist	
Principal	\$145/hour
Senior	\$120/hour
Associate	\$105/hour
Staff	\$95/hour
Assistant	\$90/hour
Engineer	
Principal Engineer	\$150/hour
Senior Registered Civil	\$125/hour
Associate Civil	\$115/hour
Assistant Civil	\$95/hour
Engineering Technician	\$80/hour
Project Manager	\$120/hour
AutoCAD Operator (Level I)	\$75/hour
AutoCAD Operator (Level II)	\$65/hour
Field Technician	\$80/hour
Laborer	\$60/hour
Surveyor	\$75/hour
Tank Fund Administrator	\$60/hour
Clerical	\$60/hour
Word Processor	\$60/hour

Deposition and Court Appearances

Minimum charge	\$1200 part or full day
Deposition Rate	\$180/hr
Preparation at consulting-service rates	as listed above

Drilling Services (CME-55 drilling rig)

7-5/8 and 9-5/8-inch OD augers with operator and helper	(See drilling schedule of fees)
Mobilization	

Other In-House Equipment

Test pumps (submersible, through 5 HP)	quoted/job
Campbell 21X data loggers w/ transducers (water and gas)	quoted/job
Conductivity, oxygen, temperature and dissolved oxygen probes	quoted/job
Meteorological station (wind direction and velocity)	quoted/job
Gas-extraction and air-monitoring pumps	quoted/job
Mileage	\$0.56
Mileage (drilling rig)	\$1.00
Per diem (per person/day; may vary dep. upon location)	\$120+/day
Level D protection (per person/day)	\$30/day
Level C protection (per person/day)	\$50/day
Survey equipment (per day)	\$50/day
GPS Survey (per day)	\$150/day

Expenses, Materials, Outside Services

(All direct-job related expenses: reproduction, rental equipment, materials, subcontracted labor and equipment)	at cost + 15%
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CITY OF COLFAX

RESOLUTION NO 33 - 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLFAX AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE AN AGREEMENT WITH LAWRENCE & ASSOCIATES FOR CONTINUED GROUND WATER AND LANDFILL GAS MONITORING AT THE COLFAX LANDFILL

WHEREAS, the City previously entered into an agreement with Lawrence & Associates to provide engineering services associated with the closure of the Colfax Landfill; and

WHEREAS, continued monitoring of the ground water at the Colfax Landfill is required by the California Regional Water Quality Control Board under Waste Discharge Requirements Order No. R5-2005-0161 and continued monitoring of the landfill gas at the Colfax Landfill is required by the California Integrated Waste Management Board; and

WHEREAS, said monitoring is required to continue for a period of 30 years after closure of the Colfax Landfill; and

WHEREAS, approximately 25 years remains on the continuous monitoring requirement; and

WHEREAS, Lawrence & Associates submitted a proposal to provide continued ground water and landfill gas monitoring at the Colfax Landfill; and

WHEREAS, the Colfax City Council finds and determines that it is in the best interests of the City to enter into an agreement with Lawrence & Associates on the terms and conditions contained in its proposal.

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 incorporated by reference into this resolution.
2. The Interim City Manager is hereby authorized to execute on behalf and in the name of the City of Colfax an Agreement with Lawrence & Associates to provide ground water and landfill gas monitoring at the Colfax Landfill in the form attached to this Resolution in an amount not to exceed \$13,441.00.
3. The Interim City Manager is hereby authorized to appropriate and encumber sufficient funds to pay for the services provided for in said agreement.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Colfax held on the 14th day of August, 2013 by the following roll call vote of the Council:

Ayes:

Noes:

Absent:

Abstain:

Donna L. Barkle, Mayor

ATTEST:

Karen Pierce, City Clerk

City of Colfax

A Proclamation of the City of Colfax proclaiming November 1, 2013 as “Extra Mile Day”

WHEREAS, the City of Colfax is a community which acknowledges that a special vibrancy exists within the entire community when its individual citizens collectively “go the extra mile” in personal effort, volunteerism, and service; and

WHEREAS, the City of Colfax is a community which encourages its citizens to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

WHEREAS, the City of Colfax is a community which chooses to shine a light on and celebrate individuals and organizations within its community who “go the extra mile” in order to make a difference and lift up fellow members of their community; and

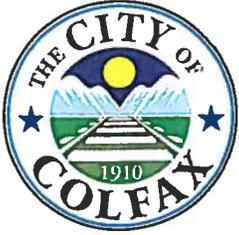
WHEREAS, the City of Colfax acknowledges the mission of the Extra Mile America Foundation to create 400 Extra Mile cities in America and is proud to support “Extra Mile Day” on November 1, 2013.

NOW THEREFORE, I, Mayor of the City of Colfax do hereby proclaim November 1, 2013 to be Extra Mile Day. I urge each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those around who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

Donna L. Barkle, Mayor

Attest:

Karen Pierce, City Clerk



CITY of COLFAX

C A L I F O R N I A



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE COUNCIL MEETING OF AUGUST 14, 2013

FROM: Gabe Armstrong, Interim City Manager
Alfred A. "Mick" Cabral, City Attorney

PREPARED: August 8, 2013

SUBJECT: Conduct discussion and consider adopting Resolution No. 34 – 2013 : A Resolution Of The City Council Of The City Of Colfax Authorizing The City To Enter And The Interim City Manager To Execute A Billboard Sign, Relocation And Settlement Agreement With Sierra Property Development

RECOMMENDED ACTION: Staff recommends that the City Council adopt Resolution No. 34-2013.

ISSUE STATEMENT AND DISCUSSION:

The proposed agreement, if approved, will allow Sierra Property Development (SPD) to construct a static or digital billboard sign on what is commonly known as the "Dingus McGee's" site in exchange for surrendering three other permits issued by CalTrans that have not been constructed.

SPD owns two existing billboard signs each containing two faces located at 962 and 1534 South Canyon Way along the I-80 corridor in Colfax. On November 14, 2012, the City and SPD entered into a Digital Sign and Relocation Agreement which allowed SPD to replace the existing static billboards with digital sign faces. That Digital Sign and Relocation Agreement became effective February 12, 2013.

Billboard placement is generally regulated by the California Outdoor Advertising Act, its accompanying administrative regulations, various provisions of federal law and, to a lesser extent, the Colfax Municipal Code. The State of California Department of Transportation (CalTrans) is in charge of administering the Outdoor Advertising Act and the administrative regulations and issuing permits.

SPD presently holds four permits that CalTrans has issued for billboards along the I-80 corridor in Colfax. The general location of those billboards is shown on Exhibit A to this staff report. The CalTrans permit numbers are 41140 (the "Dingus McGee's Site"), 41209 (RT80-32.18R, APN 101-132-018-000), N03-0014 (RT80-32.16L, APN 101-131-041-000, Luther Presson/LDS) and N03-0015 (RT80-32.26L, APN 101-131-041-000, Luther Presson/LDS).

SPD holds these permits as required by settlement agreements executed in two lawsuits between SPD and the City. The relevant part of those settlement agreements, which were entered in 1999 and 2000, obliges SPD, at its sole expense, to "...make every reasonable effort to identify and secure all possible State of California permits for outdoor display signs along the I-80 corridor in the City of Colfax" and to "...maintain such permits and ...not use or attempt to use" them without the agreement of the City Council.

The settlement agreements and, therefore, the rights and duties of the City and SPD under them, are at best ambiguous and obscure. The agreement before the Council will in effect cancel those settlement agreements by declaring that both the City and SPD have fully performed their obligations. The only aspect of the settlement agreements that will remain in effect will be SPD's obligation to pay rent to the City for the space the billboards occupy.

The proposed agreement will also cancel three of SPD's four CalTrans permits [41209 (RT80-32.18R, APN 101-132-018-000), N03-0014 (RT80-32.16L, APN 101-131-041-000, Luther Presson/LDS) and N03-0015 (RT80-32.26L, APN 101-131-041-000, Luther Presson/LDS)] in exchange for allowing SPD to construct one [41140 (the "Dingus McGee's Site")]. This will therefore reduce the number of permitted billboards in Colfax.

Approving the proposed agreement will also allow Stewart Wells to construct a static billboard on his property. On July 10, 2013, the Council conditionally approved issuing a static billboard permit to Mr. Wells. The conditions of approval included a requirement that the Council approve this proposed agreement with SPD before Mr. Wells can proceed with his billboard.

The proposed agreement does not constitute a permit for SPD to construct its billboard. SPD will still have to apply for issuance of a permit and comply with all City, State and Federal laws, rules and regulations.

The net effect of the proposed agreement will be to reduce the number of possible billboards along the Colfax I-80 corridor. SPD will be allowed to construct one billboard in exchange for surrendering three other permits and Mr. Wells will be allowed to build one. Since this action will result in a decrease in the number of permitted signs and does not constitute the issuance of a permit, staff is of the opinion that the Council's action is exempt from the provisions of the California Environmental Quality Act ("CEQA").

FINANCIAL AND/OR POLICY IMPLICATIONS:

The proposed agreement requires SPD to pay \$500 per month beginning on the first day of the month after SPD constructs a static or digital billboard. Monthly rent will increase by the change in the Consumer Price Index every five years. The maximum increase is 3%. Monthly rent will not be reduced. SPD will also be required to pay all applicable City fees when it applies for its permits.

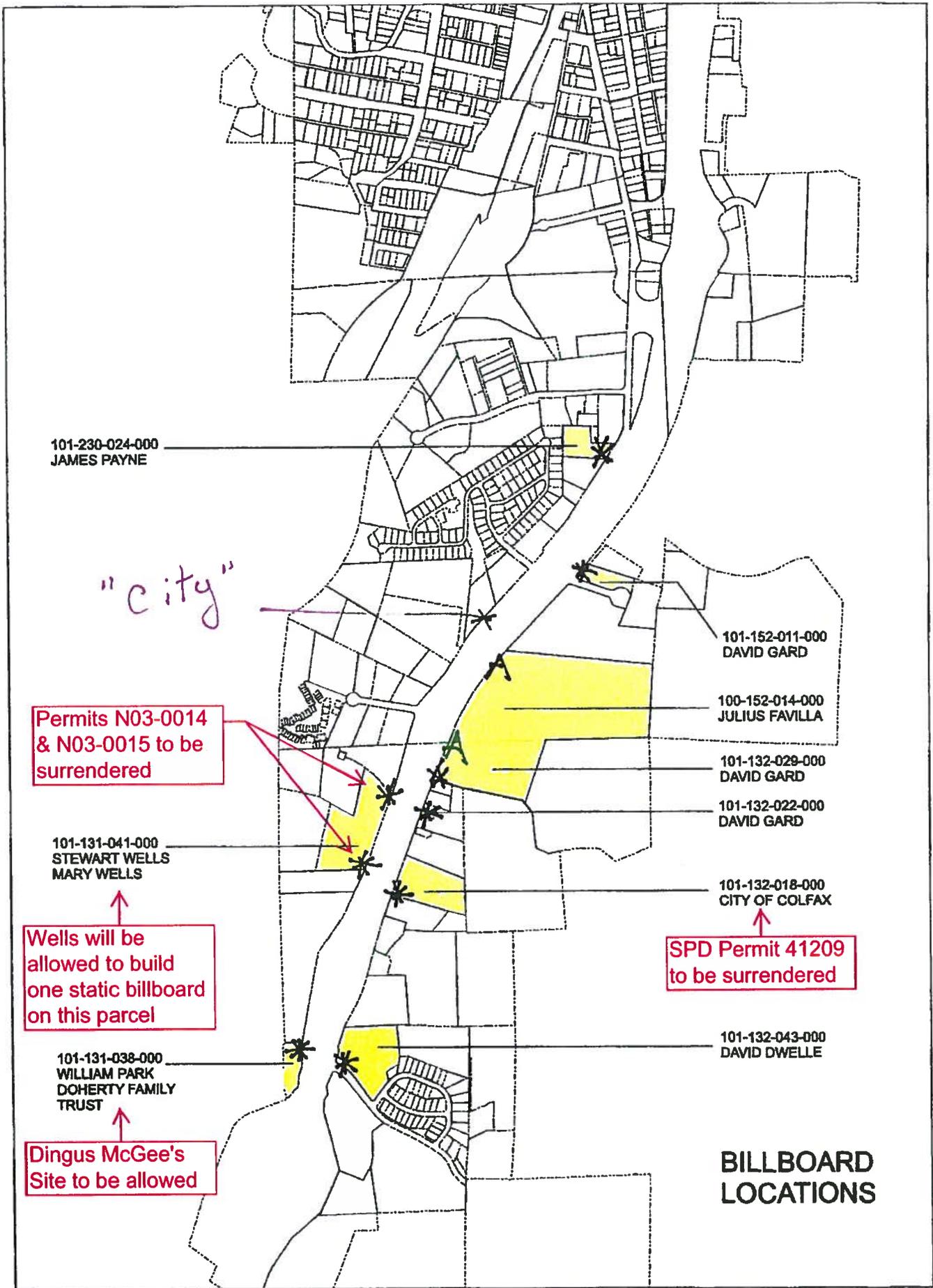
The proposed agreement also provides for City time slots if, and presumably when, a digital display face is constructed in place of a static display face. The City will be allowed one advertising slot per rotation with each message being not less than six seconds per slot to promote the City, City activities and businesses in general.

SUPPORTING DOCUMENTS:

Attachments:

- A. Map of sign permit locations
- B. Billboard Sign Relocation And Settlement Agreement.
- C. Resolution
- D. Notice of Exemption from CEQA

EXHIBIT A: MAP OF PERMIT LOCATIONS



101-230-024-000
JAMES PAYNE

"city"

Permits N03-0014
& N03-0015 to be
surrendered

101-131-041-000
STEWART WELLS
MARY WELLS

Wells will be
allowed to build
one static billboard
on this parcel

101-131-038-000
WILLIAM PARK
DOHERTY FAMILY
TRUST

Dingus McGee's
Site to be allowed

101-152-011-000
DAVID GARD

100-152-014-000
JULIUS FAVILLA

101-132-029-000
DAVID GARD

101-132-022-000
DAVID GARD

101-132-018-000
CITY OF COLFAX

SPD Permit 41209
to be surrendered

101-132-043-000
DAVID DWELLE

**BILLBOARD
LOCATIONS**

EXHIBIT B: AGREEMENT

BILLBOARD SIGN RELOCATION AND SETTLEMENT AGREEMENT

THIS BILLBOARD SIGN, RELOCATION AND SETTLEMENT AGREEMENT ("Agreement") is entered this ____ day of _____, 2013 by and between the CITY OF COLFAX, a Municipal Corporation of the State of California ("City"), and SIERRA PROPERTY DEVELOPMENT, a California partnership consisting of Dennis Freidig and David Gard , and as parties or successors-in-interest to the Settlement Agreements as defined below (collectively "SPD"). The City and SPD may be referred to individually as a "Party" and collectively as the "Parties".

RECITALS

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

- A. SPD is a partnership organized, existing and qualified to do business under the laws of the State of California. SPD or its members are parties or successors-in-interest to the Settlement Agreements as defined below.
- B. SPD owns two static display billboards and the Existing Sign Faces permitted and emplaced on Placer County, California Assessor's Parcel Nos. 101-132-022 and 100-152-011 (the "Existing Billboards"), subject to the Existing Caltrans Permits and permits issued by the City.
- C. Effective February 12, 2013, the City and SPD entered into a Digital Sign and Relocation Agreement (the "Digital Sign Agreement") which, among other things, allows SPD to replace the Existing Sign Faces with four 14' x 48' "V"-type Digital Display Faces on the Existing Billboards. The Digital Sign Agreement remains in full force and effect. .
- D. Pursuant to the Settlement Agreements as hereafter defined, SPD obtained CalTrans permits (the "Unconstructed CalTrans Permits") for future signage in addition to the Existing Billboards within City limits. Signs pursuant to the Unconstructed CalTrans Permits have never been constructed although SPD has in good faith attempted to maintain those permits pursuant to the Settlement Agreements by annually paying all fees required by Caltrans and by appealing CalTrans purported revocation of those permits.
- E. SPD was notified that CalTrans intended to terminate or revoke the Unconstructed CalTrans Permits. SPD timely appealed that notification on behalf of the City and itself. On June 19, 2013, CalTrans issued its written notice that the notices of revocation for the Unconstructed CalTrans Permits have been withdrawn and that the

August 8, 2013 Draft

Unconstructed CalTrans Permits were temporarily reinstated during the pendency of SPD's timely appeal to CalTrans.

F. One of the Unconstructed CalTrans Permits is for Placer County, California Assessor's Parcel Number 101-131-038-000, CalTrans Permit #41140, which is commonly known as the "Dingus McGee's" site." A static billboard once existed on the Dingus McGee's site but has since been removed and there is presently no billboard constructed on it. The City is informed that SPD or its members are the sole beneficiaries of easements or other real property interests which would permit SPD to successfully complete permit negotiations to construct, operate, maintain, repair and remove a static Sign Face or a Digital Billboard Sign on the Dingus McGees site, provided that a City investigation determines that the Dingus McGee's site fully complies with the City's Digital Sign Ordinance and other laws and regulations of the City and State of California.

G. If CalTrans grants SPD's appeal and permanently reinstates the Unconstructed CalTrans Permits, there will be substantial risk of a conflict between one or more of the billboards allowed by the Unconstructed CalTrans Permits and billboard permits that other individuals or entities have applied for.

H. The existing circumstances between SPD and the City regarding signage are confused and confusing. In order to alleviate some of that confusion, the City and SPD propose to structure a settlement (the "Settlement") of their differences and the issues related thereto pursuant to which SPD will be allowed to construct a static Sign Face or a Digital Billboard Sign on the Site as hereafter defined (the "SPD Sign") under the terms and conditions of this Agreement in exchange for the surrender and cancellation by SPD of all remaining Existing Unconstructed CalTrans Permits except for the SPD Sign and the City's consent thereto, subject to this Agreement and the Governing Ordinances.

I. On August 14, 2013, after consideration of the staff report and all other documentary and oral evidence submitted the City Council finds and determines that this Agreement is (1) 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, (2) this Agreement will not be detrimental to the public health, safety or welfare, (3) the physical location or placement of the SPD Sign on the Site is compatible with the surrounding neighborhood and will not pose a safety risk and (4) the SPD Sign and this Agreement will not interfere with onsite access or circulation or significantly interfere with visibility.

AGREEMENT

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

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Section 1. Definitions.

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

1.0 CalTrans. The State of California Department of Transportation.

1.1 Conditions of Approval. Any Condition of Approval as set forth in this Agreement or in any Subsequent Approval related to the SPD Sign.

1.2 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, 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, the SPD Sign will be allowed only one Sign Face.

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

1.4 Digital Sign Agreement. The Digital Sign and Relocation Agreement effective February 12, 2013 between the City and SPD which, among other things, allows SPD to replace the Existing Sign Faces with four 14' x 48' "V"-type Digital Display Faces on the Existing Sign Locations. The Digital Sign Agreement was entered and approved by the Colfax City Council on November 14, 2012.

1.5 Digital Sign Ordinance. City Ordinance 516 adopted 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 90th day after the date the Enacting Resolution approving this Agreement is adopted by the City Council, or 30 days after the City's adoption of a Notice of Exemption for the SPD Sign, whichever is later.

1.7 Enacting Resolution. The Resolution adopted by the City Council on August 14, 2013 approving this Agreement.

1.8 Event of Default. The failure or unreasonable delay by either Party to perform any term, provision or condition as and when required by this Agreement shall constitute an Event of Default.

1.9 Exactions. All exactions that will or may be imposed by City as a condition of

August 8, 2013 Draft

approving the SPD Sign 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 SPD Sign or impositions made under other Governing Ordinances. Unless otherwise provided herein, the amount of all fees, rates and charges payable to the City under this Agreement shall be calculated as of the date a building permit for the SPD Sign is issued.

1.10 Existing Caltrans Permits. The Existing Caltrans Permits are CalTrans Permit Nos. N03-0037 and N03-0038 for the Existing Sign Faces located at 1534 South Canyon Way, APN: 101-132-022 and N03-0039 and N03-0040 for the Existing Sign Faces located at 962 South Canyon Way, APN: 100-152-011 .

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 as more particularly defined in the Digital Sign Agreement.

1.12 Existing Billboards. The locations of the structures that support the Existing Sign Faces already emplaced and permitted on Placer County, California Assessor's Parcel Nos. 101-132-022 and 100-152-011.

1.13 Existing Static Permits. The Existing Static Permits are those permits issued by the City for the Existing Sign Faces, Permit No. 68-00 for 1624 S. Canyon Way, and Permit No. 13-00 for 962 S. Canyon Way.

1.4 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, improvement and construction standards and requirements, specifications and conditions of approval applicable to the SPD Sign 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.

1.15 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 SPD Sign.

1.16 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 MCV-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 Action.

1.17 Sign Face. A Sign Face the primary surface of an advertising display upon which advertising information is displayed.

1.18 SPD Sign. The static Sign Face or the Digital Billboard Sign that SPD will be allowed to construct, operate, maintain, repair and remove on or from the SPD Site pursuant to the terms and conditions of this Agreement and the Governing Ordinances.

1.19 SPD Sign Approvals. All approvals to be issued by the City after the Effective Date including, without limitation, design review approval of the SPD Sign in accordance with Colfax Municipal Code §117.112.140 and the Governing Ordinances.

1.20 SPD Site. Placer County, California Assessor’s Parcel Number 101-131-038-000, CalTrans Permit #41140.

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

1.22 Unconstructed CalTrans Permits. SPD previously obtained the following permits from CalTrans for future signage within City limits: 41140, 41209, N03-0014 and N03-0015. 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. Any time after the Effective Date, either Party may cause a memorandum of this Agreement to be recorded in the Official Records of the County of Placer, State of California. The recording Party shall promptly forward a copy of the recorded Memorandum of Agreement to the other.

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 intent 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 approvals shall be effective for the Term and any extension thereof.

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Section 3. The SPD Sign.

3.1 Fees and Credits. The Exactions that shall be paid from SPD to the City are the City's customary permit and administrative fees at the time SPD submits an application for approval of the SPD Sign provided, however, that if SPD initially installs a static Sign Face and later changes it to a Digital Billboard Sign, then SPD shall pay the difference between the permit and administrative fees for a static Sign Face and a Digital Billboard Sign applicable when the Digital Billboard Sign is approved.

3.2 SPD's Vested Right. SPD shall have the vested right to construct, operate, maintain, repair and remove the SPD Sign on the SPD Site in accordance with the terms and conditions of this Agreement and the Governing Ordinances. The City shall have the right to regulate the construction, operation, maintenance, repair and removal of the SPD Sign on the SPD Site 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 approvals, including without limitation, such City permits and approvals as are required to construct, operate, maintain, repair and remove the SPD Sign.. Except as otherwise specified in this Agreement, the Governing Ordinances shall control the overall design, development and construction of the SPD Sign and any related approvals.

3.2.1. All costs of construction, operation, maintenance, repair and removal of the SPD Sign shall be borne exclusively by SPD.

3.2.2 SPD shall secure, or cause to be secured, all CalTrans permits and approvals prior to the commencement of construction of the SPD Sign. The City will timely issue all Subsequent SPD Sign Approvals needed to construct and develop the SPD Sign in compliance with this Agreement, the SPD Sign Approvals, and the Governing Ordinances, and provide any assurances requested by Caltrans.

3.3 Issuance of Sign Approvals. SPD shall submit applications to the City for any and all approvals needed to construct the SPD Sign under this Agreement and the Governing Ordinances. 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 complete application and the applicable Exactions, City shall promptly commence and diligently complete all steps necessary to review and process the requested SPD Sign Approvals, including, but not limited to, the granting of the requested SPD Sign Approval to the extent that it is consistent with the terms and conditions of this Agreement, the Governing Ordinances, and state and federal law.

3.4 Environmental Review. SPD's installation and construction of the SPD Sign shall be subject to the California Environmental Quality Act (Public Resources Code Section

21000 et seq.) ("CEQA"). As of the Effective Date, the Parties are of the opinion that installation and construction of the SPD Sign should require no more than a notice of exemption from CEQA but recognize that something more than a notice of exemption may be required depending upon the circumstances existing when the SPD Sign is installed and constructed.:

3.5 Other Governmental Permits. SPD shall apply for such other 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 SPD Sign including, without limitation, CalTrans, and any public utilities, utility districts or publicly regulated private entities. City shall cooperate with SPD in its endeavors to obtain such permits and approvals, 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.

- (a) On the first day of the month following completion of construction of a static Sign Face or a Digital Display Face on the SPD site, whichever is earlier, and continuing for a period of five years thereafter, SPD shall pay the City rent in the sum of \$500.00 per month / \$6,000.00 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 \$500.00 on or before the first day of each and every month.
- (b) At the commencement of the sixth year after the Effective Date and at the commencement of each fifth year thereafter, annual Base Rent shall be increased as follows. (1) 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 3% 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 Time Slots. The provisions of this paragraph 3.6.3 shall apply if SPD constructs and installs a Digital Sign Face on the SPD Site but not if it constructs and installs a static Sign Face:

(a) SPD shall provide City, at no charge or cost to City, one advertising message “per rotation” per Digital Sign Face, each message to be not less than six seconds per slot. SPD’s provision of these time slots and City’s acceptance and use of these time slots are subject to the following terms and conditions:

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

(c) SPD will produce at SPD’s expense 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 slots for “Amber Alerts”, and other public service & safety messages, instead of the generic ads.

(d) The Digital Sign Face time slots 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 City for-profit businesses. City shall not use its time slots 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 business whose business may be related to special city wide promotions] small businesses; for example, small merchants in downtown Colfax, provided the time-slot is split between several businesses. Graphics design and production for individual businesses shall be borne by the individual businesses, not SPD.

(e) After the SPD Sign has been constructed, and in the event of peak seasonal demand, and 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 slots 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 slot will be used by SPD.

3.6.4 License Imposed On Message Boards- City Owned Property. SPD agrees that this Agreement constitutes a license for the City, its officers, agents and employees, to enter the SPD Site 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.

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

Section 4. Settlement.

4.1 Cancellation of Unconstructed Caltrans Permits. From and after the Effective Date, SPD shall not be obliged to identify or secure any CalTrans permits for outdoor display signs along the I-80 corridor in Colfax except for the permits and approvals required to construct, operate, maintain, repair and remove the SPD Sign. SPD shall likewise not be required to maintain any of the Unconstructed CalTrans Permits and shall be permitted to surrender or allow such permits to lapse.

4.2 Settlement Agreements. SPD and the City shall each be deemed to have performed and satisfied all of the obligations to be performed by them under the Settlement Agreements up to and including the Effective Date provided, however, that nothing in this Agreement shall be deemed to modify in any respect SPD's obligation to pay rent to the City under the Digital Sign Agreement which incorporates the same obligation under the Settlement Agreements.

4.3 Mutual Release. Up to and including, but not after, the Effective Date, each Party hereby releases and fully discharges the other, and covenants not to sue the other and each of their elected officials, staff, officers, directors, managers, shareholders, members, employees, agents, attorneys, assigns, successors, predecessors, partners, subsidiaries, or related companies and entities, affiliates, associations, management companies, and other similarly related persons, agencies, organizations and entities from and against all claims, demands, causes of action, obligations and damages, including, but not limited to, incidental, consequential, ensuing or resulting damages, losses, costs, attorneys' fees, and expenses of every kind and nature whatsoever, known or unknown, fixed or contingent, that arise from or relate to the Settlement Agreements, the performance or failure to

perform by any Party under the Settlement Agreements, the Existing Caltrans Permits, the Existing Sign Faces, the Existing Static Permits, the Unconstructed CalTrans Permits and the acts or failure to act by either Party regarding signage in the City of Colfax (the "Released Matters"). The Released Matters shall not include the Digital Sign Agreement, this Agreement or SPD's obligation to pay rent to the City under the Digital Sign Agreement which incorporates the Settlement Agreements, or otherwise.

4.4 No Admission Of Liability. This Agreement is a compromise of disputed claims. This Agreement is not and may not be construed as an admission of liability, fault or responsibility by either of the Parties. Each of the Parties expressly denies any and all liability or wrongdoing with respect to the Released Matters.

Section 5. Transfers and Assignments.

5.1 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.

5.2 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 6. Amendment and Termination.

6.1 In General. Except as provided in Section 8.1 relating to termination in the Event of Default, this Agreement may be canceled, modified or amended only by mutual written consent of the Parties

Section 7. Notices.

7.1 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.

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(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
P.O. Box 702
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

August 8, 2013 Draft

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.

7.2 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 8. Miscellaneous Provisions.

8. 1. Default; Termination. 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. Any notice of intent to terminate this Agreement ("Termination Notice") shall be provided in any manner authorized by Section 7 of this Agreement not less than ten 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 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. 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 SPD Sign 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.

8.2 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 SPD Sign approvals, SPD reserves the right to withdraw its application for the SPD Sign. 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 SPD Sign Approval(s).

8.3 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 SPD Sign. In any such legal action, the prevailing Party shall be entitled to recover all litigation expenses, including reasonable attorney's fees and court costs.

8.4 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 SPD Site 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 in their present location 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 property within the City.

8.5 Negation of Partnership and Joint Venture. The City and SPD specifically acknowledge that the SPD Sign 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.

8.6 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.

8.7 Entire Agreement. This Agreement contains all the representations and the entire agreement between the Parties with respect to the SPD Sign.

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

8.9 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.

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

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

8.12 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.

8.13 Powers of SPD. SPD shall have full power over and exclusive control of construction of the SPD Sign, subject only to the limitations and obligations of SPD under this Agreement.

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:

By: _____
Alfred A. Cabral, City Attorney

SIERRA PROPERTY DEVELOPMENT,
a California Partnership

By: _____
David Gard, Partner

By: _____
Dennis Freidig

Approved as to Form:

SPD's attorneys

EXHIBIT C: RESOLUTION

City of Colfax

Resolution No. 34 - 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLFAX AUTHORIZING THE CITY TO ENTER AND THE INTERIM CITY MANAGER TO EXECUTE A BILLBOARD SIGN, RELOCATION AND SETTLEMENT AGREEMENT WITH SIERRA PROPERTY DEVELOPMENT

Whereas, it is proposed that the City Council authorize the City to enter and the Interim City Manager to execute on behalf of the City a Billboard Sign Relocation and Settlement Agreement with Sierra Property Development in the form attached to this Resolution (the "Agreement"); and

Whereas, the Agreement will provide the City with annual rental income and the opportunity 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 Agreement will result in the surrender of three issued and valid CalTrans billboard permits in exchange for allowing one to remain in effect, thereby reducing the total number of permitted billboards in the City; and

Whereas, the Agreement will clarify the relationship between the City and Sierra Property Development ("SPD") and therefore settle many of the reasons that disputes have arisen between the City and SPD from time-to-time; and

Whereas, the Agreement will result in encouraging business and retail investment and increased patronage for businesses throughout Colfax; and

Whereas, the City Council hereby makes the following findings and determinations pursuant to the California Environmental Quality Act, Public Resources Code §21000 et seq ("CEQA") and the Guidelines for Implementation of the California Environmental Quality Act published by the State of California Office of Planning and Research ("CEQA Guideline"):

1. Adopting this Resolution and approving the Agreement does not constitute a "Project" as that term is defined by or used in CEQA, the CEQA Guidelines or any court or attorney general opinion construing the same, and that the provisions of CEQA and the CEQA Guidelines are not applicable.
2. Adopting this Resolution and the Sewer Use (Environmental Quality) Charges fall within the "common sense" CEQA exemption provided in 14 CCR 15061(b)(3) in that CEQA applies only to projects which have the potential for causing a significant effect on the environment and, where it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment, the action is not subject to CEQA. In this case,

it can be seen with certainty that that there is no possibility that the proposed rate adjustment may have a significant effect on the environment.

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 incorporated into this Resolution by reference.

2. The City is hereby authorized to enter the Agreement and the Interim City Manager is hereby authorized to execute on behalf and in the name of the City of Colfax a Billboard Sign Relocation and Settlement Agreement in the form attached to this Resolution.

3. The City Clerk is hereby authorized to file a Notice of Exemption from CEQA with the County Clerk of the County of Placer, California regarding this Resolution and the Agreement hereby adopted.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Colfax held on the 14th day of August 2013 by the following roll call vote of the Council:

Ayes:

Noes:

Absent:

Abstain:

Donna L. Barkle, Mayor

ATTEST:

Karen Pierce, City Clerk

EXHIBIT D: NOTICE OF EXEMPTION

CITY OF COLFAX
NOTICE OF EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT, PUBLIC RESOURCES CODE §21000 ET SEQ

CITY ACTION

The City of Colfax has adopted its Resolution 34-2013 entitled, "A Resolution Of The City Council Of The City Of Colfax Authorizing The City To Enter And The Interim City Manager To Execute A Billboard Sign, Relocation and Settlement Agreement With Sierra Property Development ." That resolution was adopted August 14, 2013.

The City of Colfax finds that, if the provisions of the California Environmental Quality Act, Public Resources Code §21000 et seq (hereinafter "CEQA") apply, such designation would constitute a brief description of the "Project" as required by Section 15062(a)(1) of the Guidelines for Implementation of the California Environmental Quality Act published by the State of California Office of Planning and Research (hereinafter the "CEQA Guidelines").

FINDING OF NO PROJECT

The City of Colfax finds that its above-referenced action does not constitute a "Project" as that term is defined by or used in CEQA, the CEQA Guidelines or any court of attorney general opinion construing the same. Accordingly, the City of Colfax finds that the provisions of CEQA and the CEQA Guidelines are not applicable to said action.

FINDING OF EXEMPTION

In the event that it is found that the said action constitutes a "Project" as defined by or used in CEQA or the CEQA Guidelines, which finding would be contrary to the City's opinion of its action, the City of Colfax hereby finds that said action is exempt from compliance with CEQA and the CEQA Guidelines, for the following reasons:

- (1) The action falls within the "common sense" CEQA exemption provided in 14 CCR 15061(b)(3) in that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment, the action is not subject to CEQA. CEQA Guidelines, Section 15061(b)(3). It can be seen with certainty that City Resolution ___-2013 cannot possibly have a significant effect on the environment.

Dated: August 14, 2013

City of Colfax

By: Gabe Armstrong, Interim City Manager



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE AUGUST 14, 2013 COUNCIL MEETING

FROM: Gabe Armstrong, Interim City Manager
Alfred A. "Mick" Cabral, City Attorney

PREPARED: August 8, 2013

SUBJECT: Conduct Discussion And Consider Adopting Resolution No. 35-2013: A Resolution Of The City Council Of The City Of Colfax Reducing The Number Of Regular Monthly Meetings.

RECOMMENDED ACTION: Conduct discussion and adopt Resolution No. 35-2013

ISSUE STATEMENT AND DISCUSSION:

California Government Code Section 36805 requires the City Council to hold at least one regular meeting each month at times fixed by ordinance or resolution. Colfax Municipal Code Section 2.04.010 establishes the regular Council meeting days as the second and fourth Wednesday of each month or at such other days and times as may be established by resolution of the Council. Regular public meetings presently begin at 7:00 pm and are typically preceded by closed sessions beginning at 6:00 pm or earlier.

The essential question for Council discussion is whether two meetings per month are necessary. Some recent agendas have had relatively few action items that needed to be addressed. In most cases, the items on both regular monthly agendas could have been handled at one monthly meeting instead of two.

Preparing for meetings requires considerable staff time no matter how light the agenda is. Staff and the Mayor typically need to determine which items to place on each agenda. This is followed by researching each agenda item, preparing staff reports and resolutions and engaging consultants whenever necessary. The City Attorney is frequently involved in reviewing and commenting on agenda items, preparing ordinances and resolutions and preparing staff reports. Overall, reducing the number of regular monthly meetings can save the City a considerable amount of staff time and money.

Reducing the regular monthly meetings from two to one is not a panacea. The opportunity for the public to provide comment at regular meetings is important but will be less frequent. Ordinances can only be adopted at regular meetings so the time needed to adopt an ordinance will be extended. The results of the vote at a consolidated election must be presented at the Council's next regular meeting to declare results and install the newly elected officers.

There are several ways to reduce the number of Council meetings, including:

1. Amend Colfax Municipal Code Section 2.04.010 to require only one meeting per month. This would require adopting an ordinance.
2. Adopt a resolution reducing the number of regular meetings from two to one per month.
3. Adopt a resolution canceling one of the regular meetings each month for a specified period of time.
4. Adopt a resolution authorizing the Mayor or City Manager to cancel one meeting each month unless circumstances justify a second meeting.
5. Do nothing and leave the meeting schedule as it is.

On balance, the most efficient direction would likely be to adopt a resolution reducing the number of regular meetings to one each month. Most if not all City business can be handled in a single monthly meeting. A special meeting can always be called on 24 hour notice on those rare occasions when a second meeting is needed. This gives the City Council adequate time to address its important business and sufficient flexibility to hold the second meeting when needed.

FINANCIAL AND/OR POLICY IMPLICATIONS

Reducing the number of regular monthly meetings will reduce City expenses and allow more efficient use of staff, consultant and meeting time.

SUPPORTING DOCUMENTS

Resolution No. 35-2013

COMMITTEE RECOMMENDATION

This report was not discussed by any committee.

City of Colfax

Resolution No. 35 - 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLFAX REDUCING THE NUMBER OF REGULAR MONTHLY MEETINGS

Whereas, Colfax Municipal Code §2.04.010 provides that the regular meetings of the City Council shall be held on the second and fourth Wednesdays of each month at such times or on such other days and times as may be established by resolution of the Council; and

Whereas, California Government Code §36805 requires the City Council to hold regular meetings at least once each month at times fixed by ordinance or resolutions; and

Whereas, preparing for and conducting two regular meetings each month causes an expenditure of staff time, resources and City funds that can be saved by reducing the number of regular monthly City Council meetings; and

Whereas, the City Council can reduce its regular monthly meetings from two to one without adversely affecting its ability fulfill its essential functions or the right of the public to participate in the democratic process; and

Whereas, the City Council can call special meetings as needed to address issues that require its attention between regular monthly meetings.

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 incorporated into this Resolution by reference.

2. From and after the adoption of this Resolution, the regular meetings of the City Council of the City of Colfax shall be held on the second Wednesday of each month at such times or on such other days and times as may be established by resolution of the City Council.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Colfax held on the 14th day of August 2013 by the following roll call vote of the Council:

Ayes:

Noes:

Absent:

Abstain:

Donna L. Barkle, Mayor

ATTEST:

Karen Pierce, City Clerk