



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

SPECIAL MEETING AGENDA

CLOSED SESSION at 6:00pm • NOVEMBER 7, 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. 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
 - a. 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.

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.

10) COUNCIL BUSINESS

- A. Discuss and Consider Adopting Resolution No. 44-2013: A Resolution of the City Council of the City of Colfax Authorizing the Execution of an Employment Agreement with Mark A. Miller to serve as Colfax City Manager

Recommended Action: Adopt Resolution No. 44-2013

11) ADJOURNMENT

**Agenda Posted at Colfax City Hall
and Colfax Post Office locations November 6, 2013.**



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.



STAFF REPORT TO THE COLFAX CITY COUNCIL

FOR THE NOVEMBER 7, 2013 COUNCIL MEETING

FROM: Alfred A. "Mick" Cabral, City Attorney

DATE: November 4, 2013

SUBJECT: Discuss and Consider Adopting Resolution No. 44-2013: A Resolution of the City Council of the City of Colfax Authorizing the Execution of an Employment Agreement with Mark A. Miller to serve as Colfax City Manager

<input type="checkbox"/>	N/A	<input type="checkbox"/>	FUNDED	<input type="checkbox"/>	UN-FUNDED	AMOUNT: \$100,000 yr.	FROM FUND: General
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RECOMMENDED ACTION: Adopt Resolution No.44-2013

ISSUE STATEMENT AND DISCUSSION:

A subcommittee of the City Council was tasked with recruiting a new city manager. The committee received and reviewed 27 completed applications and interviewed several prospective candidates. The subcommittee recommended hiring Mark Miller as its new full time city manager.

A draft employment agreement is attached. The essential terms are (1) \$100,000 annual salary subject to annual cost of living adjustments, (2) a discretionary performance based bonus of up to 10% of base salary, (3) vacation, holidays, sick leave, bereavement leave, health insurance and pension contributions on the same terms as other City department heads and (4) mileage reimbursement at the allowable IRS rate. It also authorizes the city manager to sign contracts and otherwise bind the City for amounts up to \$5,000 without Council approval. The term is for one year and automatically renews from year-to-year unless either party terminates it.

The city manager is an at will employee. This means that he can be terminated at any time, for any reason. The proposed agreement requires the City to pay three months of severance compensation if the city manager is terminated without good cause.

Mr. Miller had not seen this draft agreement when this staff report was written. There may be changes in the final draft once he has had an opportunity to review it.

FINANCIAL AND/OR POLICY IMPLICATIONS:

The City Manager's salary and benefits will be paid from the City's general fund and applicable special funds.

SUPPORTING DOCUMENTS:

Employment Agreement.

COMMITTEE RECOMMENDATION:

The ad hoc committee involved in Mr. Miller's recruitment recommends approval of this agreement.

**EMPLOYMENT AGREEMENT
FOR CITY MANAGER**

THIS EMPLOYMENT AGREEMENT (“AGREEMENT”), is made and entered into effective the ___ day of _____ 2013 (the “Effective Date”), by and between the City of Colfax, a California municipal corporation and general law city (the “City”) and Mark A. Miller (“City Manager”), both of whom understand and agree as follows:

RECITALS

This Agreement is made with respect to the following facts:

- A. The City wishes to employ Mark A. Miller as its City Manager, subject to the following terms and conditions and consistent with applicable laws of the State of California and City ordinances; and
- B. Mark A. Miller desires to accept employment by the City as its City Manager, subject to the following terms and conditions and consistent with applicable laws of the State of California and City ordinances.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises, terms and conditions of this Agreement, the City and City Manager agree as follows:

Section 1. Employment.

The City hereby employs Mark A. Miller as City Manager to perform the duties and functions identified in Colfax Municipal Code Title 2, Chapter 2.08, and other duties and functions as the Mayor and/or the City Council assign either orally or in writing to the City Manager. Mark A. Miller hereby accepts employment as City Manager subject to the terms and conditions of this Agreement and agrees (1) to devote his full time, attention and energies to performing all such duties and functions in a professional and ethical manner to the best of his skill and ability and (2) to use his best efforts to promote and advance the interests of the City. City Manager shall have the authority to execute contracts on behalf of and bind the City for amounts up to and including \$5,000 per contract. With this exception, City Manager agrees that he has no authority to bind the City or any of its elected or appointed officials or commit the City to any course of action without the duly authorized written consent of the Mayor and/or the City Council. City Manager acknowledges that the position of City Manager is a position of high visibility before the public and agrees that he shall conduct himself before the public and City staff, both during and outside of regular working hours, in a manner that reflects favorably on the City.

Section 2. No Other Employment.

City Manager agrees not to undertake any other employment during the term of this Agreement that will diminish the number of hours he has available to lawfully work for the City. City Manager further agrees to confer with the Mayor and/or the City Council or a designated subcommittee thereof before undertaking any projects for organizations other than the City which may require a time commitment by City Manager that may diminish the number of hours he has available to lawfully work for the City.

Section 3. Employment Agreement Controls.

In the event of any conflict or ambiguity between the terms of this Agreement and the Colfax Municipal Code Title 2, Chapter 2.08, the terms of this Agreement shall control.

Section 4. At-Will Employment.

A. This Agreement is effective _____, 2013 and shall automatically renew from year to year unless and until it is terminated by either party as hereinafter provided. City Manager agrees that he serves at the pleasure of the City. Either the City or City Manager may, consistent with the provisions of Section 5 of this Agreement, terminate this Agreement and the relationship created hereby at any time for any reason with or without good cause or prior notice.

B. Notwithstanding any other provision of this Agreement or of the Colfax Municipal Code, City Manager shall not be removed from office, except for Good Cause as defined in Section 5 C (iii) below, during or within a period of 30 days prior and 90 days immediately succeeding any general or special election held in the City at which a member of the City Council is elected, or within a period of 90 days immediately after a new member of the City Council is appointed. In this regard, Colfax Municipal Code Title 2, Chapter 2.08, Section 2.08.040 in effect as of the Effective Date is expressly made applicable to City Manager.

Section 5. Termination of Agreement.

A. City Manager may terminate this Agreement and resign as City Manager at any time, for any reason, upon three months prior written notice to the City. Upon receipt of written notice from City Manager, the City may elect to immediately remove City Manager from his position as City Manager or to allow City Manager to remain as City Manager for all or any part of the three month notice period. If the City removes City Manager from his position as City Manager prior to the expiration of the three month notice period, the City will pay City Manager an amount equal to the salary and benefits that City Manager would have received if he had remained in the City Manager position until the expiration of the three month notice period, less legally required

withholdings. If the City advises City Manager that he should continue to perform his duties and functions as City Manager during the three month notice period, and City Manager fails to do so, City Manager will receive no salary or benefits after the last date on which he actually performs his City Manager duties and functions.

B. If the City elects to terminate this Agreement and City Manager's employment without Good Cause as defined in Section 5 C (iii) of this Agreement ("Good Cause"), then as of the effective date of termination the term of this contract shall be deemed to have a then remaining duration of three months. The City will pay City Manager for all earned pay and accrued, unused vacation benefits up to but not including the effective date of termination, less legally required withholdings.

C. (i) If the City elects to terminate this Agreement for Good Cause, it will pay City Manager for all earned pay and accrued, unused vacation benefits at the time it notifies City Manager of the termination decision, less legally required withholdings. City Manager will be entitled to no pay or benefits after the date that the City notifies him that this Agreement and his employment by the City are being terminated for Good Cause. If the City elects to terminate this Agreement with Good Cause, it will provide City Manager with a brief, written explanation for that decision sent to City Manager's last known home address. City Manager shall have no right to be heard publicly by the City Council prior or subsequent to a final vote on his termination and hereby waives any right to be heard publicly under any provision of the Colfax Municipal Code or otherwise. City Manager shall have the right to meet with the City Council in closed session for the purpose of discussing the basis for his proposed termination for Good Cause prior to a final vote on his termination for Good Cause. In order to exercise that right, he must provide a written request to meet in closed session to the Mayor of the City within fifteen days of the effective date of his termination for Good Cause. Failure to timely provide such written notice shall constitute a waiver of the right to be heard.

(ii) If the City Council proposes to terminate this Agreement and City Manager's employment for Good Cause, the City Council may consider granting City Manager, upon City Manager's written request, the opportunity to cure the proposed reason for termination within a thirty (30) business day period after City Manager is advised of the reason the City Council is considering termination of this Agreement and City Manager's employment.

(iii) For purposes of this Section 5, "Good Cause" includes without limitation, as determined in the sole discretion of the City, any of the following: (1) neglect of or failure to adequately perform the essential duties or functions of City Manager, (2) insubordination, (3) dishonesty, (4)

embezzlement, (5) violation of Federal, State or local requirements pertaining to conflict of interest, (6) appearance of a conflict of interest, (7) conviction of a criminal act, other than minor traffic violations or similar offenses, which is likely to have a material adverse impact on the City or City Manager's reputation, (8) involvement in any act involving moral turpitude that would compromise City Manager's effective performance as City Manager, (9) taking a position adverse to the interests of the City without the City's prior written consent, (10) violation of any fiduciary duty owed to the City, (11) proven failure of City Manager to observe or perform any of his duties and obligations under this Agreement or (12) inability to perform the essential duties and functions of the City Manager position as referred to in Section 6 of this Agreement.

(iv) If termination of this Agreement is the result of the death of City Manager, the City shall pay all salary and benefits due up to and including City Manager's date of death to City Manager's legal heir(s).

D. In the event this Agreement is terminated by the City or City Manager for any reason, the City and City Manager agree that neither party shall make any written or oral statements to members of the public, the press, or any City employee concerning City Manager's termination except in the form of a joint press release or statement which is mutually agreeable to both parties. The joint press release or statement shall not contain any text or information that is disparaging to the City or City Manager. Either party may orally repeat the substance of the joint press release or statement in response to any inquiry.

Section 6. Inability To Perform Essential Duties and Functions.

City Manager agrees that if he is unable to perform the essential duties and functions of the City Manager position for any reason for more than 60 consecutive calendar days, the City may terminate this Agreement. If the City elects to terminate this Agreement based on City Manager's inability to perform the essential duties and functions of the City Manager position, it will so advise City Manager in a writing sent to City Manager's last known home address. At the time the City provides such notice, it will pay City Manager for all earned pay and accrued, unused vacation benefits, less legally required deductions. Once said amounts have been paid, all financial obligations between City and City Manager shall cease.

Section 7. Compensation

A. Base Compensation

The City agrees to pay City Manager for the performance of his duties and functions an initial compensation of \$100,000.00 per year of service under this Agreement. City Manager's salary will be paid in installments at the same time that other employees of the City are paid, prorated for any partial month of service. The City shall have the right to increase City Manager's base annual salary at any time. Any adjustment to City Manager's salary must be authorized in writing by the City. City Manager shall not be entitled to receive payment or credit for, and the City shall not pay or credit City Manager for, overtime, compensated time off in lieu of overtime or other compensation except as expressly provided in this Agreement. City Manager acknowledges that the position of City Manager is exempt from the provisions of the Fair Labor Standards Act (FLSA).

B. Annual Cost Of Living Adjustment.

On each annual anniversary date of this Agreement (the "Adjustment Date"), and provided that City Manager remains employed by the City, the City Manager's annual salary shall increase by the increase in the Consumer Price Index (CPI), calculated as follows. The base for computing the annual salary adjustment is 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 Effective Date.(the "Beginning Index"). The Index published most immediately preceding the Adjustment Date in question ("Extension Index") is to be used in determining the amount of the adjustment. If the Extension has increased over the Beginning Index, the increase in the City Manager's salary shall be set by multiplying the City Manager's gross annual salary immediately prior to the Adjustment Date 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 City Manager's salary be decreased. If the CPI is discontinued by the Bureau of Labor Statistics, the Index designated by the Bureau of Labor Statistics as replacing the CPI shall be used. The CPI increase provided for in this paragraph shall be in addition to any other salary or benefit increase the City Council may authorize.

C. Performance Based Bonus

If the City Council, in its sole discretion, concludes that City Manager has performed satisfactorily as City Manager, the City may award the City Manager a performance based bonus of not more than 10% of his then base compensation, prorated on an annual basis, which bonus may be paid to City Manager in the form of additional salary, additional benefits, or in such other manner as City Manager and the City Council agree. Annual bonuses paid pursuant to this Section shall not, unless otherwise specified in writing, constitute or create an increase in City Manager's base compensation.

Section 8. Benefits.

During the term of this Agreement and his employment hereunder, City Manager shall be entitled to receive the following benefits on the same terms and conditions as other City department heads:

- A. Vacation: __ days per year, accrued at the rate of __ hours per month commencing on the Effective Date.
- B. Holidays: consistent with the City's holiday policy.
- C. Sick Leave: __ hours per full month of service for use due to a bona fide illness, off-duty injury or confinement for medical treatment. City Manager's maximum accrual of sick leave shall be as provided to other City employees.
- D. Bereavement Leave: consistent with the City's policy.
- E. Health Plan. Employee and Employee's qualified dependents shall be eligible to participate in Employer's sponsored health plan. The Employer shall pay up to \$800 toward medical insurance each month, prorated for any partial month of employment. Any and all monthly premium payments in excess of \$800 shall be paid by the Employee and shall be deducted from the Employee's paycheck as a pre-tax deduction as allowed by applicable law. Employee shall be permitted, at Employee's election, to receive \$400 per month in lieu of medical insurance.
- F. Pension: On the same basis as other department heads employed by the City.
- G. Compensated Time Off / Administrative Time: On the same basis as other department heads employed by the City.

Section 9. Automobile

City Manager understands that the City does not provide a vehicle for City Manager's use and that City Manager shall be required to use his privately owned vehicle on City business. City Manager shall be reimbursed for mileage actually driven on City business at the IRS standard mileage rate per City business mile driven, as such mileage rate may be adjusted from time-to-time. At all times during this Agreement, City Manager shall keep and maintain a policy of comprehensive automobile insurance (Bodily Injury and Property Damage) on owned, leased and non-owned vehicles used in connection with City business of no less than \$500,000 combined single limit per occurrence. Proof of such insurance shall be provided to the City's risk manager. The City Manager's insurance coverage shall be primary as respects the City, its officers, agents, employees and volunteers. Any insurance kept or maintained by the City, its

officers, agents, employees and volunteers shall be excess of City Manager's and shall not contribute with it.

Section 10. Performance Evaluations

The City Council shall review and consider City Manager's performance as City Manager as close as reasonably possible to the beginning of each year while this Agreement, or any renewal or extension of this Agreement, remains in effect. The review shall be discussed with City Manager and reduced to writing, and shall only cover the annual period of performance being reviewed.

Section 11. Confidential Information.

City Manager agrees that he will not reveal any confidential information about the City or City employees that he learns while performing the duties and functions of City Manager.

Section 12. City Property.

City Manager agrees that all materials, regardless of their form, that he receives, creates or produces in connection with this Agreement and/or his employment as City Manager are and will remain the exclusive property of the City. City Manager will immediately deliver all originals and all copies of such materials that are in his possession or control to the City upon termination of this Agreement or upon any request from the Mayor and/or the City.

Section 13. Assistance in Litigation.

City Manager agrees that he will furnish information and proper assistance to the City as it may reasonably require with any litigation in which it is or may become involved, either during or after the termination of this Agreement. City Manager further agrees that he will not discuss, reveal or convey any information or documents pertaining to the City to any person or entity, or to any attorney for or representative of any person or entity, with actual or potential claims adverse to the City except pursuant to duly issued legal process or as otherwise authorized by the City. City Manager agrees to notify the City immediately upon receipt of any legal process pertaining to the City.

Section 14. Alternative Dispute Resolution

(a) City Manager and the City agree that if a dispute arises from or relates to this Agreement, to City Manager's employment as City Manager or his termination or resignation from that position, or to the amount of pay or benefits which City Manager is owed, then before resorting to mediation, arbitration or other legal process, City Manager and a committee of two

elected City Council members appointed by the Mayor and approved by a majority of the City Council shall first meet and confer and attempt to amicably resolve any such dispute subject to the following provisions. Any party desiring to meet and confer shall so advise the other party pursuant to a written notice. Within 30 days after provision of that written notice by the party desiring to meet and confer, City Manager and a committee of two elected City Council members appointed by the Mayor and approved by a majority of the City Council shall meet in person and attempt to amicably resolve their dispute. 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 sub-Section 14 (b) below. Any resolution shall be subject to approval by a majority of the City Council.

(b) Subject to the provisions of sub-Section 14 (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 nearest 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 nearest 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, then 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 shall submit selection of an arbitrator to the mediator, whose selection of an arbitrator 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, other than himself/herself, at the nearest office of the Judicial Arbitration and Mediation Service (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 or pursuant to such other process as the City and City Manager may agree. In either case, the provisions of Code of Civil Procedure Section 1283.05 and 1283.1 shall apply and are hereby incorporated into this Agreement. The award of the arbitrator shall be subject to the provisions of the California Arbitration Act, sections 1280-1294.2 of the California Code of Civil Procedure. The City shall pay the costs incurred with JAMS for the arbitration. The arbitration hearing shall last as long as is reasonably necessary for the arbitrator to decide all issues in dispute. Both parties shall be allowed to present to the arbitrator all legal and equitable claims available to them under law.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO

HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL.

BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 14. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THIS AGREEMENT TO ALTERNATIVE DISPUTE RESOLUTION AS PROVIDED IN THIS SECTION 14.

City Initial: _____ City Manager's Initials: _____

Section 15. Indemnification

This section was intentionally omitted.

Section 16. Governing Law.

This Agreement will be construed and enforced in accordance with the laws of the State of California.

Section 17. Headings.

The headings used in this Agreement are provided for convenience only and may not be used to construe meaning or intent.

Section 18. Assignment.

Neither this Agreement nor any interest in this Agreement may be assigned by City Manager without the prior express written approval of the City.

Section 19. Severability.

If any provision or portion of this Agreement is held to be invalid or unenforceable, this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable provision(s) or portion(s) had never been included.

Section 20. Notices.

Notices pursuant to this Agreement shall be given in writing and shall be deemed given when personally served upon the person to whom addressed or when mailed by certified or registered mail and deposited with the United States Postal Service, postage prepaid and addressed as follows:

City: Mayor, City of Colfax
P.O. Box 702
33 S. Main Street
Colfax, CA 95713

City Manager:

Mark Miller
426 Jordan Street
Nevada City, CA 95959

Section 21. Modification.

This Agreement may only be modified in a writing signed by the City and the City Manager.

Section 22. Entire Agreement.

This Agreement supersedes any and all other agreements, either oral or in writing, and contains all agreements between City Manager and the City regarding his employment as City Manager. City Manager and the City agree that no representations, inducements, promises or agreements, oral or otherwise, have been made to either party, or anyone acting on behalf of either party, which are not stated herein, and that no agreement, statement, or promise not contained in this Agreement will be valid or binding on either party.

City of Colfax

By: _____
Donna Barkle
Mayor, City of Colfax

Mark A. Miller
City Manager

ATTEST:

Approved As To Form

Karen Pierce
City Clerk

Alfred A. Cabral
City Attorney

DRAFT